

## Memorandum 98-46

**Environment Code: Draft Tentative Recommendation**

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

Attached for the Commission's consideration are the preliminary part and table of contents of the draft tentative recommendation on the reorganization of California's environmental statutes. The tentative recommendation proposes the creation of an Environment Code, and sets out its first four divisions. The proposed legislation and conforming revisions are not attached, due to their bulk (over 900 pages) and because the Commission has previously reviewed and approved all of the provisions (with the exception of Parts 5-9 of Division 4, which are presented separately in Memorandum 98-45). Copies of the entire tentative recommendation, including draft legislation, can be downloaded from the Commission's website (<http://www.clrc.ca.gov>). Hard copies will be available for review at the Commission's meeting on July 17, 1998, and will be provided to Commissioners in advance of the meeting on request.

The only significant changes that have been made in preparing the draft tentative recommendation are as follows:

- (1) A preliminary part has been drafted, explaining the purpose of the tentative recommendation and cataloging points on which the Commission would like to receive input from the public.
- (2) Conforming revisions and corrections to internal cross-references have been made. These were deferred until the entire draft was completed.
- (3) Technical errors and minor inconsistencies in Comment language have been corrected.

If the Commission approves the draft, the staff will prepare the tentative recommendation as a printed pamphlet and circulate it for a three-month public comment period.

Respectfully submitted,

Brian Hebert  
Staff Counsel

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

## Environment Code: Divisions 1-4

- Division 1. Rules of Construction and Definitions
- Division 2. General Provisions
- Division 3. California Environmental Quality Act
- Division 4. Air Resources

July 1998

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 15, 1998.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335 FAX: 650-494-1827

## SUMMARY OF TENTATIVE RECOMMENDATION

The California Law Revision Commission recommends the reorganization of California's environmental statutes into a new code, the Environment Code. This reorganization gathers related sections that are currently scattered throughout multiple codes and places them in a consolidated and well-ordered structure. In the process of reorganization, obsolete provisions and other drafting defects are identified and corrected. The proposed Environment Code improves the organization of environmental laws, but does not affect their substance.

The proposed law creates the Environment Code and its first four divisions:

Division 1. Rules of Construction and Definitions

Division 2. General Provisions

Division 3. California Environmental Quality Act

Division 4. Air Resources

Other broad areas of environmental law will be added to the Environment Code incrementally, by means of subsequent legislation.

This recommendation was prepared pursuant to Resolution Chapter 102 of the Statutes of 1997.

ENVIRONMENT CODE : DIVISIONS 1 -4

California's environmental statutes have developed in a piecemeal fashion over a period spanning more than a century.<sup>1</sup> As a consequence of this lengthy and unplanned development, these statutes are not well-organized and contain numerous obsolete provisions. The Legislature has instructed the California Law Revision Commission to study:

Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes.<sup>2</sup>

The Commission recommends the consolidation of most environmental statutes into a new code, the Environment Code. This will improve access to this body of law and simplify its maintenance by placing related provisions in proximity to each other, in an organized manner. This reorganization will continue existing law without substantive change. However, while the proposed reorganization is intended to be entirely nonsubstantive, it should facilitate subsequent substantive reforms by exposing inconsistencies and redundancy within the law.

The Environment Code will be developed in a series of bills. The first will create the Environment Code and its first four divisions.<sup>3</sup> Subsequent bills will cover other major areas of environmental law. This incremental approach is necessitated by the large volume of statutory material that must be collected, reviewed, and reorganized in order to prepare draft legislation. The overall structure of the proposed Environment Code is as follows:

Division 1. Rules of Construction and Definitions

Division 2. General Provisions

Division 3. California Environmental Quality Act

Division 4. Air Resources.

Division 5. Water Resources

Division 6. Toxic and Hazardous Substances

Division 7. Pesticides

Division 8. Radiation

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1. For example, one early environmental statute, regulating the use of poisons and explosives to capture fish, was enacted in 1872. See former Penal Code Section 635. This section has evolved into a general water pollution provision. See Fish & Game Code § 5650.

2. See 1997 Cal. Stat. res. ch. 102.

3. See the proposed legislation. Before being submitted to the Legislature, the proposed legislation will be revised to reflect this session's enactments.

1 Division 9. Solid and Hazardous Waste  
2 Division 10. Land Use and Conservation  
3 Division 11. Coastal, Estuary, and Riparian Management  
4 Division 12. Wildlife  
5 Division 13. Resource Development and Protection  
6 Division 14. Parks, Wilderness, and Public Lands  
7 Division 15. Noise Pollution  
8

## 9 PUBLIC COMMENT

10 In 1997, a detailed outline of the proposed Environment Code was developed by  
11 the Commission with the advice of its consultants, Professors John P. Dwyer<sup>4</sup> and  
12 Brian E. Gray.<sup>5</sup> The Commission circulated the outline and requested public  
13 comment on the advantages and disadvantages of reorganizing California's  
14 environmental statutes along the lines proposed. Public reaction was mixed. Some  
15 commentators felt that the creation of a consolidated and well-organized body of  
16 environmental statutory law would be quite beneficial. Others felt that  
17 reorganization was unnecessary, or that the disadvantages of reorganization would  
18 outweigh the advantages. The relative advantages and disadvantages of the  
19 proposed reorganization are discussed below.

## 20 ORGANIZATIONAL ADVANTAGES

21 The consolidation of environmental statutes into a single code would improve  
22 the organization of these statutes in three principal ways: (1) Scattered provisions  
23 would be gathered in a single location. (2) The organization of sections within  
24 divisions would be improved. (3) Unduly long sections would be broken up into  
25 their component parts.

### 26 Consolidation of Scattered Provisions

27 Under existing law, environmental statutes are located in at least nine different  
28 codes.<sup>6</sup> Consolidating these laws into a single code, divided by subject area, would  
29 simplify access to applicable statutory law. For example, a person researching a  
30 question relating to water resources under existing law might need to review  
31 various provisions of the Civil Code, Fish and Game Code, Harbors and

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4. Boalt Hall School of Law. Professor Dwyer is editor of California Environmental Laws Annotated (Bancroft-Whitney 1997).

5. Hastings College of Law. Professor Gray is editor of California Environmental Laws (West 1998).

6. These codes include the Civil Code, the Fish and Game Code, the Food and Agricultural Code, the Harbors and Navigation Code, the Health and Safety Code, the Government Code, the Public Resources Code, the Vehicle Code, and the Water Code.

1 Navigation Code, Health and Safety Code, Public Resources Code, and Water  
2 Code. After the proposed reorganization that person should only need to consult a  
3 single division of the Environment Code.

4 Consolidation of scattered sections should also encourage more orderly  
5 development of environmental law in the future. Under the current, fragmented  
6 scheme, the location of new environmental statutes in the codes may be arbitrary.  
7 The existence of a consolidated and well-organized Environment Code would  
8 encourage the logical placement of new environmental statutes.

### 9 **Reorganization of Sections Within Divisions**

10 In many cases, existing law is poorly organized at the level of articles, chapters  
11 and parts. In some cases, dissimilar provisions have been grouped together  
12 inappropriately. The organization of these sections would be substantially  
13 improved by relocating them in appropriate organizational groups.<sup>7</sup>

14 In other cases, sections are grouped together properly but are not further divided  
15 into useful subgroups. The organization of these sections would be improved by  
16 dividing them into appropriate subordinate organizational groups.<sup>8</sup>

### 17 **Unduly Long Sections**

18 Many sections are very long and contain a number of related, but distinct  
19 provisions. These sections can be difficult to understand, and their great length  
20 complicates any subsequent amendment. It is the Commission's practice, and good  
21 drafting practice generally, to divide long sections into shorter sections, where this  
22 can be done without affecting the meaning of the section.<sup>9</sup> In the proposed  
23 legislation, unduly long sections have been divided into shorter sections. In many  
24 cases, the resulting sections have been organized into one or more articles.<sup>10</sup>

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7. For example, Chapter 6 (commencing with Section 40700) of Part 3 of Division 26 of the Health and Safety Code nominally contains provisions relating to the general powers and duties of air pollution control districts. In fact, the chapter includes several provisions that establish very specific substantive programs. See, e.g., Health & Safety Code §§ 40709-40714.5 (emission reduction credit program). In the proposed law, provisions of this chapter that relate to general powers and duties of districts have been grouped with other such provisions, while provisions setting out specific programs have been assigned to their own organizational units. See, e.g., Chapter 1 (commencing with Section 32700) of Title 2 of Part 3 of Division 4 of the proposed Environment Code (Emission Reductions).

8. 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 unduly long. In the proposed law, this article has been promoted to a chapter and broken up into eight subordinate articles, consisting of 74 sections. See proposed Env't Code §§ 42700-43058.

9. See Legislative Counsel of California, Legislative Drafting Manual 26-27 (1975), Senate and Assembly Joint Rule 8.

10. For example, Health and Safety Code Section 41865, the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, contains 21 subdivisions, with 32 subordinate paragraphs and subparagraphs. In the proposed law, this section has been divided into 20 separate sections organized as an article. See proposed Env't Code §§ 38250-38269.

## NON-ORGANIZATIONAL ADVANTAGES

Many environmental statutes contain non-organizational defects, that is, defects at the level of the individual section rather than defects in the relationships between sections. These defects include simple errors, ambiguous drafting, obsolete provisions of various kinds, needless redundancy, and other technical drafting problems. Reorganization of environmental statutes would allow for correction of these defects.

### Errors and Ambiguities

Some sections contain outright errors, such as cross-references to sections that do not exist.<sup>11</sup> Others contain ambiguities. For example, some sections provide definitions but do not state the scope of their application.<sup>12</sup> Notes in the proposed legislation identify these defects and solicit input on resolving them.<sup>13</sup>

### Obsolete Provisions

The Commission has identified a number of provisions that appear to be obsolete. In some cases, it is clear that a provision is obsolete 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, it is less clear that the provision is obsolete. Notes to these sections request public input on the continued usefulness of the apparently obsolete provision.

*Start Dates.* The effect of a number of sections is deferred until a specified date.<sup>14</sup> Once past, these dates have historical relevance, but do not appear to have any continuing legal effect. These apparently obsolete dates are not continued in the proposed law, but are noted in the corresponding Comments.<sup>15</sup>

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11. For example, Health and Safety Code Section 43012(f) refers to penalties prescribed in Health and Safety Code Section 41963. Section 41963 does not exist. See proposed Env't Code § 40001.

12. For example, Health and Safety Code Sections 106755-106770 provide definitions, but do not state their application. This is resolved by adding a new section stating the application of these definitions. See proposed Env't Code § 47150.

13. See the Comments and Notes to proposed Env't Code §§ 8100, 8140, 10000-10001, 11000, 12000, 14100, 15001, 15100, 30150, 30850, 30855, 30857, 31758, 32951, 33100-33151, 33808, 34600, 35855, 36001, 36009, 36100, 36115, 36151, 36161, 36408, 36502, 37100, 37101, 37201, 38006, 38350, 38554, 38856, 39000, 39009, 39154, 39157, 39505, 39601, 39605, 39654, 40501, 40904, 41001, 41301, 41400, 41757, 41850, 42102, 42953, 43450, 43913, 44101, 44102, 44415, 44417, 45103, 45307, 45552, 46002, 47150, 47205, 47250, 47252, 47253.

14. For example, Health and Safety Code Section 41860(b) regulates the use of orchard or citrus grove heaters on or after January 1, 1975. The reference to the date on which the regulation began has not been continued. See proposed Env't Code § 38105.

15. See the Comments to proposed Env't Code §§ 8505, 15400, 30850-30851, 31001-31002, 31100, 31153, 31753, 32505, 32802, 32851, 32852, 33452, 33453, 33651, 33850, 33853, 34053, 34400, 34600, 35500, 35812, 35913, 36108, 36502, 36503, 37004, 37452, 38008, 38105, 38458, 40602, 41105, 41502, 41700, 41701, 41902, 42102, 43252, 43351, 43355, 43501, 43601, 45152, 45250, 46600, 47103.

1     *Deadlines.* A number of sections specify deadlines by which some requirement  
2 was to have been met.<sup>16</sup> These provisions appear to be obsolete, but may have  
3 some continuing relevance if the responsible party has not yet complied with the  
4 requirement. Notes to these sections raise this issue and request input on the  
5 continued relevance of the deadline provisions.<sup>17</sup>

6     *Transitional provisions.* A number of provisions govern legislative and  
7 administrative transitions that have already occurred.<sup>18</sup> These provisions appear to  
8 be obsolete, but may have some continuing relevance.<sup>19</sup>

9     *Miscellaneous obsolete provisions.* A number of sections appear to be obsolete  
10 for reasons other than those discussed above (e.g., a failed operation contingency,  
11 a satisfied sunset contingency, or completion of a statutory charge).<sup>20</sup>

## 12     **Miscellaneous Drafting Improvements**

13     A number of miscellaneous drafting improvements have been made in the  
14 proposed law. These correct obvious grammatical errors (such as the omission of  
15 an article) and inappropriate gender references, replace the term “such” where  
16 used inappropriately, and enumerate undesignated subdivisions and paragraphs.  
17 Other possible drafting improvements are discussed in Notes in the proposed  
18 law.<sup>21</sup>

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16. For example, Health and Safety Code Section 35003(e) requires that a particular report be submitted to the Legislature no later than June 30, 1991. The report requirement is probably obsolete. See proposed Env't Code § 35003.

17. See the Notes following proposed Env't Code §§ 11101, 12000, 14200, 15400, 21087, 30951, 31000, 31003, 31050, 31153, 31507, 31508, 32801, 33201, 33550, 33552, 35000, 35003, 35700, 35806, 36057, 36100, 36302, 37006, 37402, 38001-38005, 38262, 38300, 38602, 38652, 39158, 39801, 40101, 40103, 40605, 40755, 40805, 40850, 41850, 41861, 41901, 41903, 42201, 43500, 43706, 45300, 45400, 45401, 45500, 45703, 46506, 47050.

18. For example, Health and Safety Code Section 41242 provides that the Mojave Desert Air Quality Management District succeeded, on July 1, 1993, to the funds, property, and obligations of the San Bernadino County Air Pollution Control District. This succession has presumably been completed and is no longer relevant. See proposed Env't Code § 35252.

19. See the Comments and Notes following proposed Env't Code §§ 8000, 8504, 8700, 8702, 30003, 31509-31510, 31601, 32850, 32851, 35103, 35201, 35202, 35204, 35252, 35403, 35805, 35904, 35954, 36005, 36156.

20. See the Notes following proposed Env't Code §§ 30150, 30240, 30425, 32750, 32851, 35602, 36001, 36154, 36211, 37450, 38854, 39016.5, 39027.5, 39051.7, 40203, 40206, 40400, 40758, 40801, 40850, 40904, 41653, 41700, 41752, 41818, 41903, 41904, 42101, 42102, 42752, 43406, 43450, 44102, 44103, 44104, 44417, 45102, 45107, 45701, 46500, 46503- 46505, 47250.

21. See the Notes following proposed Env't Code §§ 8000, 8301, 8601-8603, 21060, 21060.1, 21061.2, 21065.5, 21080.5, 21172.5, 31457, 31458, 33100-33102, 33150-33151, 34600, 40904, 41301, 41506, 41757, 43706.



## DISADVANTAGES

There are two potential disadvantages to the proposed reorganization: (1) The transitional costs associated with section renumbering. (2) The potential for inadvertent changes to the substance of reorganized provisions.

### **Transitional Costs**

The proposed reorganization would require the renumbering of nearly all environmental statutes. This would require those who use the statutes to learn the new numbering scheme and replace obsolete reference materials. It would also be necessary to consult a statutory disposition table in order to relate statutory references in prior case law to the renumbered sections. The Commission believes that these transitional costs would be outweighed by the long-term benefits to be derived from the creation of a comprehensive, well-organized Environment Code.

### **Potential for Inadvertent Substantive Change**

Any large statutory reorganization involves the potential for inadvertent substantive change to the reorganized provisions. Such change could result from drafting errors or from changes in the interpretive context of relocated sections. While the Commission understands the seriousness of the potential for inadvertent change, the Commission believes that the problem is manageable.

*Drafting errors.* The Commission's procedures are designed to reduce the risk of error significantly:

(1) All materials related to this proposal are distributed to representatives of the environmental law community and other interested persons<sup>22</sup> and are available on the internet.

(2) The proposed Environment Code is being developed incrementally over several legislative sessions in order to keep the size of any single installment of the proposed legislation manageable. Each installment is drafted in parts. On completion, these parts are circulated for public comment and reviewed by the Commission at a public meeting. Any public comments relating to the part are considered by the Commission at the public meeting.

(3) Once all of the parts have been drafted, a tentative recommendation setting out the complete installment of the proposed legislation is circulated for public comment. Any public

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22. Recipients include representatives of the Association of California Water Agencies, the California Air Resources Board, the California County Counsels' Association, the California District Attorneys Association, the California Environmental Protection Agency, the California State Coastal Conservancy, the Environmental Defense Fund, the Executive Committee of the Environmental Law Section of the State Bar of California, the Natural Resources Defense Council, and the Planning and Conservation League.

1 comments relating to the tentative recommendation are considered  
2 by the Commission at a public meeting.

3 (4) After considering public response to the tentative  
4 recommendation, the Commission may make changes to the  
5 proposed legislation. If these changes are sufficiently significant, a  
6 revised tentative recommendation is prepared and circulated for  
7 comment. Proposed legislation is then recommended to the  
8 Legislature.

9 (5) If errors are detected after enactment of a bill, the  
10 Commission will propose clean-up legislation to correct them.

11 Based on the Commission's experience with other large statutory reform  
12 projects<sup>23</sup>, the Commission believes that this methodical and open approach  
13 facilitates the identification and correction of errors.

14 *Interpretive context.* Some commentators are concerned that a decision on  
15 whether to include a particular provision in the Environment Code will create an  
16 implication as to the character of that provision. In other words, it is feared that a  
17 provision in the Environment Code will be deemed more "environmental" than  
18 one that is not in the Environment Code.

19 The Commission addressed this problem in the Comment to proposed  
20 Environment Code Section 5, which provides in relevant part:

21 Location of a provision in this code, or relocation from another  
22 code, is strictly for organizational purposes and does not imply that  
23 the provision should necessarily be construed to give the provision  
24 an "environmental" emphasis.

25 Furthermore, Comments to sections included in the proposed Environment Code  
26 make clear that those sections are intended as continuations of existing law,  
27 without substantive change.<sup>24</sup>

## 28 SCOPE OF REORGANIZATION

### 29 Contents of Code

30 As a general principle, the proposed Environment Code should contain all  
31 environmental statutes. The Commission considers a statute to be environmental if  
32 it is predominantly concerned with either the conservation of natural resources  
33 (including wilderness and wildlife), or the protection of human health from the  
34 effects of pollutants and other hazardous materials. However, as a practical matter,

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23. For example, the Commission created the Evidence Code and the Family Code, and recodified the Probate Code.

24. See proposed Env't Code § 2 (continuation of existing law); Gov't Code § 9604 (construction of restatements and continuations).

1 some environmental statutes are better left in their current locations. For example,  
2 there are several acts governing environmental taxes and fees.<sup>25</sup> These provisions  
3 are directly related to environmental quality and many of them have corresponding  
4 substantive environmental laws.<sup>26</sup> While moving these provisions to the  
5 Environment Code would help make that code more comprehensive, it would  
6 come at the cost of making the Revenue and Taxation Code less comprehensive. In  
7 cases where the value of moving a provision to the Environment Code is  
8 outweighed by the value of preserving existing statutory organization,  
9 environmental statutes will not be moved to the Environment Code.

#### 10 **Governor's Reorganization Plan**

11 The Governor's Reorganization Plan Number 1 of 1991<sup>27</sup> (the "Plan")  
12 substantially reorganizes the environmental responsibilities of California's  
13 administrative agencies. A Governor's Reorganization Plan suspends prior  
14 inconsistent statutory law.<sup>28</sup> Ordinarily, approval of a Governor's Reorganization  
15 Plan is followed by conforming legislation to codify its effect.<sup>29</sup> However, in this  
16 case, a conforming statute was never adopted. Consequently, environmental  
17 statutes affected by the Plan do not accurately reflect controlling law.

18 The Commission has learned that the failure to enact a statute codifying the  
19 effect of the Plan was the result of political differences over the results of the Plan.  
20 It appears that the differences regarding the Plan may be resolved legislatively in  
21 the next session. Therefore, the Commission has decided to hold back the majority  
22 of the provisions affected by the Plan from the proposed law.<sup>30</sup> Once the political  
23 issues have been resolved, these sections can be added to the proposed  
24 Environment Code in a subsequent bill, with appropriate changes to reflect the  
25 state of the law at that time.

#### 26 **California Environmental Quality Act**

27 It is possible to incorporate the California Environmental Quality Act (CEQA)  
28 into the proposed Environment Code without changing the section numbers of  
29 most of the sections in CEQA. This has the advantage of preserving existing

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25. See, e.g., Rev. & Tax. Code §§ 43001-43651 (Hazardous Substances Tax Law), 46001-46751 (Oil Spill Response, Prevention, and Administration Fees), 50101-50161 (Underground Storage Tank Maintenance Fee Law).

26. See, e.g., Gov't Code §§ 8670.1-8670.72 (Oil Spill Prevention and Response Act); Health & Safety Code §§ 25100-25250.25 (Hazardous Waste Control Law), 25299.10-25299.82 (Petroleum Underground Storage Tank Cleanup), 25300-25395.15 (Hazardous Substances Account Act).

27. See Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

28. See Gov't Code § 12080.8 (suspension of prior inconsistent acts).

29. The Legislature is required to prepare a bill to effect "such changes in the statutes as may be necessary to reflect the changes made by the reorganization plan" but passage of the bill is not required. Gov't Code § 12081. Failure to enact the bill does not affect the validity of the plan. *Id.*

30. Part 1 (Environmental Agencies) of Division 2 of the proposed Environment Code has been reserved. The intended contents of this part will not be affected by the proposed law. See Gov't Code §§ 12805.5, 12812, 12812.1; Health & Safety Code §§ 57000-59019.

1 numbering for a widely and frequently used set of environmental statutes, but  
2 precludes making substantial improvements to CEQA's internal organization.<sup>31</sup> At  
3 least initially, the Commission proposes only very minimal changes to the  
4 organization of CEQA, in the interests of preserving the existing numbering. The  
5 Commission would be very interested in hearing the views of CEQA practitioners  
6 on the merits of this approach.

#### 7 CONFORMING REVISIONS AND REPEALS

8 Conforming revisions and repeals are also included in this tentative  
9 recommendation. A table indicating the disposition of sections to be repealed and  
10 continued in the Environment Code is also included.

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31. CEQA has many organizational problems. For example, some sections are unduly long and are the equivalent of articles; the great mass of "general" provisions are undifferentiated; unrelated provisions are intermingled; definition sections are not alphabetically ordered; some section numbers that use decimal extensions are sorted as decimals within the act, while others are sorted as serial numbers.

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# ENVIRONMENT CODE

## DIVISION 1. RULES OF CONSTRUCTION AND DEFINITIONS

### PART 1. RULES OF CONSTRUCTION

#### § 1. Title of code

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1. This code shall be known as the Environment Code.

**Comment.** Section 1 is a standard type of provision in the codes. See, e.g., Evid. Code § 1; Fam. Code § 1; Prob. Code § 1.

#### § 2. Continuation of existing law

---

2. A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment, and a reference in a statute to the provision of this code shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

**Comment.** Section 2 is a standard type of provision in the codes. See, e.g., Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a). See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new Environment Code provision includes a reference to the former law from which it is drawn. *Cf.* Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of the Environment Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision “continues” a former provision “without change” if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where a typographical error or punctuation is corrected without a change in meaning. Some Comments may describe the relationship by simply stating that the Environment Code provision “continues” or is “the same as” a former provision.

(2) *Continues without substantive change.* A new provision “continues” a former provision “without substantive change” if the substantive law remains the same, but the language differs to an insignificant degree. This may include revision of language to make a statute gender-neutral.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

☞ **Note.** Other terminology commonly used in Law Revision Commission Comments is described in paragraphs (4)-(11), below. Because this code, at least initially, is a nonsubstantive compilation of existing statutes, it is likely that this Comment terminology will be used sparingly, if at all.

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated, but also

1 note the specific differences as “exceptions to,” “additions to,” or “omissions from” the  
2 former provision.

3 (5) *Generalizes, broadens, restates in general terms.* A new provision may be described as  
4 “generalizing,” “broadening,” or “restating in general terms” a provision of prior law.  
5 This description means that a limited rule has been expanded to cover a broader class of  
6 cases.

7 (6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if  
8 the new provision deals with the same subject as the former provision, but treats it in a  
9 significantly different manner.

10 (7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

11 (8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source  
12 for a new provision, typically a source other than California statutes. For example, a provision  
13 may be “drawn from” a uniform act, model code, or the statutes of another state. In these  
14 cases, it may be useful to consult any available commentary or interpretation of the source  
15 from which the new provision is drawn for background information.

16 (9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has  
17 not previously been enacted into statutory law.

18 (10) *Makes clear, clarifies.* A new provision may be described as “making clear” a  
19 particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the  
20 situation under prior law was doubtful or contradictory.


21 (11) *Statement in Comment that section is “comparable” to another section.* A Comment  
22 may state that a provision is “comparable” to another provision. If the Comment to a section  
23 notes that another section is “comparable,” that does not mean that the other section is the  
24 same or substantially the same. The statement is included in the Comment so that the statute  
25 user is alerted to the other section and can review the cases under that section for possible use  
26 in interpreting the section containing the statement in the Comment.

### 27 § 3. Construction of provision drawn from uniform act

---

28 3. A provision of this code, insofar as it is the same in substance as a provision of a  
29 uniform act, shall be construed to effectuate the general purpose to make uniform the law in  
30 those states that enact the provision.

31 **Comment.** Section 3 is a standard type of provision in uniform acts. *Cf.* Fam. Code § 3 &  
32 Comment.

33  **Note.** This provision is a place holder. It is not clear at present whether any uniform  
34 acts enacted in California will be made part of the Environment Code.

### 35 § 4. Transitional provision for amendments, additions, and repeals

---

36 4. (a) As used in this section:

37 (1) “New law” means either of the following, as the case may be:

38 (A) The act that enacted this code.

39 (B) The act that makes a change in this code, whether effectuated by amendment,  
40 addition, or repeal of a provision of this code.

41 (2) “Old law” means the applicable law in effect before the operative date of the new law.

42 (3) “Operative date” means the operative date of the new law.

43 (b) This section governs the application of the new law except to the extent otherwise  
44 expressly provided in the new law.

45 (c) Subject to the limitations provided in this section, the new law applies on the  
46 operative date to all matters governed by the new law, regardless of whether an event  
47 occurred or circumstance existed before, on, or after the operative date, including, but not  
48 limited to, commencement of a proceeding, making of an order, or taking of an action.

1 (d) If a document or paper is filed before the operative date, the contents, execution, and  
2 notice of the document or paper are governed by the old law and not by the new law; but  
3 subsequent proceedings taken after the operative date concerning the document or paper,  
4 including an objection or response, a hearing, an order, or other matter relating to the  
5 document or paper is governed by the new law and not by the old law.

6 (e) If an order is made before the operative date, or an action on an order is taken before  
7 the operative date, the validity of the order or action is governed by the old law and not by  
8 the new law. Nothing in this subdivision precludes proceedings after the operative date to  
9 modify an order made, or alter a course of action commenced, before the operative date to  
10 the extent proceedings for modification of an order or alteration of a course of action of that  
11 type are otherwise provided in the new law.

12 (f) No person is liable for an action taken before the operative date that was proper at the  
13 time the action was taken, even though the action would be improper if taken on or after the  
14 operative date, and the person has no duty, as a result of the enactment of the new law, to  
15 take any step to alter the course of action or its consequences.

16 (g) If the new law does not apply to a matter that occurred before the operative date, the  
17 old law continues to govern the matter notwithstanding its repeal or amendment by the new  
18 law.

19 (h) If a party shows, and the court determines, that application of a particular provision  
20 of the new law or of the old law in the manner required by this section or by the new law  
21 would substantially interfere with the effective conduct of the proceedings or the rights of  
22 the parties or other interested persons in connection with an event that occurred or  
23 circumstance that existed before the operative date, the court may, notwithstanding this  
24 section or the new law, apply either the new law or the old law to the extent reasonably  
25 necessary to mitigate the substantial interference.

26 **Comment.** Section 4 is a standard type of provision in the codes. See Fam. Code § 4; Prob.  
27 Code § 3. This section provides general transitional rules applicable to the Environment  
28 Code. This section applies both to the act that enacted the Environment Code and to any later  
29 act that changes the code, whether the change is effectuated by amendment, addition, or  
30 repeal of a provision of the code.

31 The rules stated in this section are general provisions that apply absent a special rule stated  
32 in a new law. Special rules may defer or accelerate application of a new law despite the  
33 general rules stated in this section. See subdivision (b).

34 The general rule prescribed in subdivision (c) is that a new law applies immediately on its  
35 operative date to all matters, including pending proceedings. The general rule is qualified by  
36 the exceptions listed in subdivision (d) (contents, execution, and notice of papers and  
37 documents are governed by the law applicable when the paper or document was filed),  
38 subdivision (e) (orders are governed by the law applicable when the order was made, subject  
39 to any applicable modification procedures), and subdivision (f) (acts are governed by the law  
40 applicable when the act was done).

41 Where a new law fails to address a matter that occurred before its operative date, subdivision  
42 (g) makes clear that old law continues to govern the matter.

43 Because it is impractical to attempt to deal with all the possible transitional problems that  
44 may arise in the application of a new law to various circumstances, subdivision (h) provides a  
45 safety valve that permits the court to vary the application of the new law where there would  
46 otherwise be a substantial impairment of procedure or justice. This provision is intended to  
47 apply only in the extreme and unusual case, and is not intended to excuse compliance with  
48 the basic transitional provisions simply because of minor inconveniences or minor impacts on  
49 expectations or other interests.

1 In addition to governing other substantive provisions, Section 4 also governs itself. It  
2 therefore becomes operative on the date the Environment Code becomes operative and  
3 applies to provisions enacted and operative before, on, or after that date.

#### 4 **§ 5. Effect of headings in code**

---

5 5. Code, division, part, title, chapter, article, and section headings do not in any manner  
6 affect the scope, meaning, or intent of this code.

7 **Comment.** Section 5 is a standard type of provision in the codes. See, e.g., Evid. Code § 5;  
8 Fam. Code § 5; Prob. Code § 4.

9 The reference in this section to “code” headings is new. Location of a provision in this  
10 code, or relocation from another code, is strictly for organizational purposes and does not  
11 imply that the provision should necessarily be construed to give the provision an  
12 “environmental” emphasis.

#### 13 **§ 6. Construction of code**

---

14 6. Unless the provision or context otherwise requires, the general provisions and rules of  
15 construction in this part govern the construction of this code.

16 **Comment.** Section 6 is a standard type of provision in the codes. See, e.g., Evid. Code § 4;  
17 Fam. Code § 6; Prob. Code § 6. See also Section 2 Comment.

#### 18 **§ 7. Reference to statute includes amendments and additions**

---

19 7. Whenever a reference is made to a portion of this code or to another law, the reference  
20 applies to all amendments and additions regardless of when made.

21 **Comment.** Section 7 is a standard type of provision in the codes. See, e.g., Corp. Code § 9;  
22 Evid. Code § 6; Fam. Code § 7. See also Gov’t Code §§ 9604 (construction of restatements  
23 and continuations), 9605 (construction of amended statutory provision).

#### 24 **§ 8. Reference to division, part, chapter, article, section, or part of section**

---

25 8. Unless otherwise expressly stated:

- 26 (a) “Division” means a division of this code.
- 27 (b) “Part” means a part of the division in which that term occurs.
- 28 (c) “Title” means a title of the part in which that term occurs.
- 29 (d) “Chapter” means a chapter of the division or part, as the case may be, in which that  
30 term occurs.
- 31 (e) “Article” means an article of the chapter in which that term occurs.
- 32 (f) “Section” means a section of this code.
- 33 (g) “Subdivision” means a subdivision of the section in which that term occurs.
- 34 (h) “Paragraph” means a paragraph of the subdivision in which that term occurs.
- 35 (i) “Subparagraph” means a subparagraph of the paragraph in which that term occurs.

36 **Comment.** Section 8 is a standard type of provision in the codes. See, e.g., Evid. Code § 7;  
37 Fam. Code § 8; Prob. Code § 8.

#### 38 **§ 9. Construction of tenses**

---

39 9. The present tense includes the past and future tenses, and the future, the present.

40 **Comment.** Section 9 is a standard type of provision in the codes. See, e.g., Fam. Code § 9;  
41 Prob. Code § 9; Veh. Code § 12.



1   **§ 10. Construction of singular and plural**

---

2       10. The singular number includes the plural, and the plural, the singular.

3       **Comment.** Section 10 is a standard type of provision in the codes. See, e.g., Corp. Code §  
4       13; Fam. Code § 10; Prob. Code § 10.

5   **§ 11. Meaning of shall, may, shall not, and may not**

---

6       11. “Shall” is mandatory and “may” is permissive. “Shall not” and “may not” are  
7       prohibitory.

8       **Comment.** The first sentence of Section 11 is a standard type of provision in the codes. See,  
9       e.g., Corp. Code § 15; Fam. Code § 12; Prob. Code § 12.

10       The second sentence is a new provision making clear that “shall not” and “may not” are  
11       equivalent prohibitory expressions. This is not a substantive change. The provision is drawn  
12       from Family Code Section 12.

13   **§ 12. Severability of provisions**

---

14       12. If a provision or clause of this code or its application to any person or circumstances  
15       is held invalid, the invalidity does not affect other provisions or applications of the code  
16       which can be given effect without the invalid provision or application, and to this end the  
17       provisions of this code are severable.

18       **Comment.** Section 12 is a standard type of provision in the codes. See, e.g., Corp. Code §  
19       19; Fam. Code § 13; Prob. Code § 11.

20                                   **PART 2. DEFINITIONS**

21   **§ 50. Application of definitions**

---

22       50. Unless the provision or context otherwise requires, the definitions in this part govern  
23       the construction of this code.

24       **Comment.** Section 50 is a standard type of provision in the codes. See, e.g., Evid. Code §  
25       100; Fam. Code § 50; Prob. Code § 20. See also Section 11 (meaning of “shall,” “may,”  
26       “shall not,” and “may not”). For a comparable provision, see Section 6.

27       This part may be supplemented by definitions applicable only in divisions, parts, chapters,  
28       and articles to which they relate.

29       ☞ **Note.** It is anticipated that definitions applicable throughout the code will be used  
30       sparingly, since most terms defined in environmental statutes are unique to the statutes in  
31       which they occur. Each term defined in this part will be checked against each statute in which  
32       the term is used to make sure the definition is appropriate for that statute.

33   **§ 60. “County”**

---

34       60. “County” includes city and county.

35       **Comment.** Section 60 is a standard type of provision in the codes. See, e.g., Civ. Code § 14;  
36       Fam. Code § 67.

37   **§ 65. “Oath”**

---

38       65. “Oath” includes affirmation.

39       **Comment.** Section 65 is a standard type of provision in the codes. See, e.g., Health &  
40       Safety Code § 17, Water Code § 16.

1    **§ 70. “Person”**

---

2       70. “Person” includes a natural person, firm, association, organization, partnership,  
3 business trust, corporation, or public entity.

4       **Comment.** Section 70 is a standard type of provision in the codes. See, e.g., Evid. Code §  
5 175; Fam. Code § 105; Gov’t Code § 17.

6       ☞ **Note.** To the extent a statute is intended to refer only to a natural person or individual,  
7 the statute should be expressly so limited.

8    **§ 75. “Public agency” or “public entity”**

---

9       75. “Public agency” or “public entity” includes a state agency, board, or commission, a  
10 county, city, regional agency, public district, redevelopment agency, or other political  
11 subdivision.

12       **Comment.** Section 75 is drawn from former Public Resources Code Section 21063  
13 (CEQA). See also Section 60 (“county” includes city and county).

14    **§ 80. “State”**

---

15       80. “State” means the State of California, unless applied to the different parts of the  
16 United States. In the latter case, it includes the District of Columbia and the territories.

17       **Comment.** Section 65 is a standard type of provision in the codes. See, e.g., Health &  
18 Safety Code § 23, Water Code § 18.

19                   **DIVISION 2. GENERAL PROVISIONS**

20           **[PART 1. ENVIRONMENTAL AGENCIES — RESERVED]**

21                   **PART 2. CERTIFICATION OF ENVIRONMENTAL**  
22                   **PROFESSIONALS**

23                   **CHAPTER 1. ENVIRONMENTAL ASSESSORS**

24                           **Article 1. General Provisions**

25    **§ 7000 Short title**

---

26       7000. This chapter shall be known and cited as the “Environmental Quality Assessment  
27 Act of 1986.”

28       **Comment.** Section 7000 continues former Health and Safety Code Section 25570.1  
29 without change.

30    **§ 7001. Legislative findings and declarations**

---

31       7001. (a) The Legislature hereby finds and declares all of the following:

32       (1) The public has a low level of confidence in the ability of government or the private  
33 sector to ensure that manufacturers, users and disposers of hazardous substances comply  
34 fully with legal requirements for the management of these substances.

35       (2) Recent federal studies by Congress and executive agencies document that voluntary  
36 compliance with environmental regulations nationwide is at an all time low of 25 percent.  
37 Such factors as inadequate enforcement and inadequate understanding of complex

requirements result in a level of compliance with environmental requirements which is lower than in the early 1970's.

(3) Another report documents that private sector investment in pollution control equipment has dropped 38 percent nationwide since 1980. Investment levels have dropped at the same time that legal requirements for hazardous substance management are taking effect.

(4) Small businesses which are faced with complex regulations often do not know how to most effectively manage chemicals, or how to comply with these regulations at the least cost to the business.

(b) The Legislature further declares all of the following:

(1) An Environmental Protection Agency policy statement issued in November of 1985 endorses the use of environmental quality assessments, which are also called environmental audits, and recommends that state and local governments initiate programs to encourage the broader use of the assessment process, and while the state should take steps to actively encourage the private sector use of environmental assessments, it is not the intention of the Legislature to require that any person or business utilize environmental assessors.

(2) Environmental assessments can encourage voluntary compliance with both the letter and the spirit of the law as well as encourage cost-effective process improvements. By reducing potential liability, assessments can reduce the long-term costs of hazardous substance management. In addition, the use of assessments can help to build public confidence that hazardous substances are being managed in an increasingly safe manner. The use of independent environmental assessments is an important emerging feature of specific state hazardous substance management programs.

(3) Many of California's major businesses have internal environmental assessment programs. Larger firms often maintain in-house staffs.

(4) The state should provide a list of registered independent third-party assessors for use by small-and medium-sized firms seeking technical assistance to achieve and maintain regulatory compliance.

**Comment.** Section 7001 continues former Health and Safety Code Section 25570 without change.

## Article 2. Definitions

### § 7100. Application of definitions

---

7100. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 7100 restates the introductory clause of former Health and Safety Code Section 25570.2 without substantive change.

### § 7105. "Air board"

---

7105. "Air board" means the State Air Resources Board.

**Comment.** Section 7105 continues former Health and Safety Code Section 25570.2(a) without substantive change.

### § 7107. "Assessor"

---

7107. "Assessor" means an environmental assessor.

**Comment.** Section 7107 is new. It is consistent with former Health and Safety Code Section 25570.2(g). See Section 7120 ("environmental assessor").

1    **§ 7108. “Assessment”**

---

2       7108. “Assessment” means environmental quality assessment.

3       **Comment.** Section 7108 is new. It is consistent with former Health and Safety Code Section  
4       25570.2(f). See Section 7125 (“environmental quality assessment”).

5    **§ 7110. “Cal-OSHA”**

---

6       7110. “Cal-OSHA” means the Division of Occupational Safety and Health in the  
7       Department of Industrial Relations.

8       **Comment.** Section 7110 continues former Health and Safety Code Section 25570.2(b)  
9       without substantive change.

10   **§ 7115. “Director”**

---

11       7115. “Director” means the Director of Environmental Health Hazard Assessment.

12       **Comment.** Section 7115 continues former Health and Safety Code Section 25570.2(d)  
13       without substantive change.

14   **§ 7120. “Environmental assessor”**

---

15       7120. “Environmental assessor” means an individual who, through academic training,  
16       occupational experience, and reputation, is qualified to objectively conduct one or more  
17       aspects of an environmental assessment. Environmental assessors may include, but shall  
18       not be limited to, specialists trained as analytical chemists, professional engineers,  
19       epidemiologists, hydrologists, attorneys with expertise in hazardous substance law,  
20       physicians, industrial hygienists, toxicologists, registered environmental health specialists,  
21       and environmental program managers.

22       **Comment.** Section 7120 continues former Health and Safety Code Section 25570.2(g)  
23       without substantive change.

24   **§ 7125. “Environmental quality assessment”**

---

25       7125. “Environmental quality assessment” means a systematic, documented, periodic,  
26       and objective review of the operations and practices, used by any commercial or industrial  
27       business or individual whose activities are regulated under Chapter 6.5 (commencing with  
28       Section 25100) or Chapter 6.95 (commencing with Section 25500) of the Health and  
29       Safety Code, to achieve, monitor, maintain, and where feasible exceed, compliance with  
30       state environmental, worker health and safety, and public health requirements for the  
31       manufacture and use of hazardous substances and the generation and disposal of hazardous  
32       wastes. A complete environmental assessment includes a number of different components  
33       related to hazardous substance and hazardous waste management and requires the expertise  
34       of a variety of assessors. An environmental assessment includes technical or managerial  
35       recommendations or actions, of a general or specific nature, in one or more of the  
36       following areas:

37       (a) Recommendations or specific actions for complying with, and where feasible,  
38       exceeding legal requirements in areas related to hazardous substance and hazardous waste  
39       management, including, but not limited to, air quality, water quality, emergency  
40       preparedness and response, hazard communications, and occupational safety and health.

41       (b) A qualitative review, or where feasible, a quantitative review, of the risks resulting  
42       from occupational, public or environmental exposure to hazardous substances.

(c) Recommendations or actions for anticipating and minimizing the risks specified in subdivision (b), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

**Comment.** Section 7125 continues former Health and Safety Code Section 25570.2(f) without substantive change.

---

**§ 7130. “Hazardous substance”**

7130. “Hazardous substance” shall have the same meaning as found in Chapter 6.8 (commencing with Section 25300) of the Health and Safety Code.

**Comment.** Section 7130 continues part of the substance of former Health and Safety Code Section 25570.2(h).

---

**§ 7135. “Hazardous waste”**

7135. “Hazardous waste” shall have the same meaning as found in Chapter 6.5 (commencing with Section 25100) of the Health and Safety Code.

**Comment.** Section 7135 continues part of the substance of former Health and Safety Code Section 25570.2(h).

---

**§ 7140. “Office”**

7140. “Office” means the Office of Environmental Health Hazard Assessment.

**Comment.** Section 7140 continues former Health and Safety Code Section 25570.2(c) without substantive change.

---

**§ 7145. “Water board”**

7145. “Water board” means the State Water Resource Control Board.

**Comment.** Section 7145 continues former Health and Safety Code Section 25570.2(e) without substantive change.

## Article 3. Registration

---

**§ 7200. Criteria for voluntary registration of environmental assessors**

7200. The director, in consultation with the Department of Toxic Substances Control, the State Water Resources Control Board, the State Air Resources Board, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the Department of Consumer Affairs shall develop, adopt by regulation, and publicize criteria for, the voluntary registration of environmental assessors who have the experience or qualifications sufficient to conduct environmental assessments. The director shall determine criteria for the establishment of two classes of environmental assessors.

**Comment.** Section 7200 continues former Health and Safety Code Section 25570.3(a) without substantive change.

---

**§ 7201. Criteria for class I**

7201. In establishing criteria for the registration of class I environmental assessors the director shall consider all of the following:

1 (a) The level of experience, including a minimum of two years of experience in  
2 successfully assisting businesses, government agencies, or labor organizations in the  
3 assessor's general field of expertise.

4 (b) Recommendations from clients, colleagues, and professional associations.

5 (c) Skills or expertise that represent an area of specialty within a field, such as  
6 professional engineering or engineering geology, for which the state now offers a  
7 certification, licensing, or registration process.

8 (d) Pertinent specialized certification, licensing, or registration programs offered by  
9 professional associations or other private sector organizations.

10 (e) Specific areas of expertise, including, but not limited to, underground tank checks or  
11 removal, small generator waste reduction, recycling, treatment, and disposal, prevention  
12 and control of air emissions and water releases, assessment of soil or groundwater  
13 contamination, risk assessment and risk reduction recommendations, or occupational safety  
14 and health reviews.

15 **Comment.** Section 7201 continues former Health and Safety Code Section 25570.3(b)  
16 without substantive change.

## 17 **§ 7202. Criteria for class II**

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18 7202. In addition to registration as a class I environmental assessor, an applicant for  
19 registration as a class II environmental assessor shall, in addition to any requirements  
20 specified by regulation, meet both of the following requirements:

21 (a) Possess a bachelor of science degree from an accredited college or university in a  
22 physical or biological science, engineering, or a related field.

23 (b) Have a minimum of eight years of professional-level environmental experience,  
24 acquired within the last 10 years, of which four years shall be professional-level site  
25 mitigation experience acquired within the last six years.

26 **Comment.** Section 7202 continues former Health and Safety Code Section 25570.3(c)  
27 without substantive change.

## 28 **§ 7203. Advisory committee**

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29 7203. The director may appoint an ad hoc advisory committee to assist in developing the  
30 requirements for the registration of class I and class II environmental assessors. The  
31 members of the ad hoc committee shall represent the range of professional skills that may  
32 be possessed by class I and class II environmental assessors, and shall be registered or  
33 certified in their respective professions by the State of California.

34 **Comment.** Section 7203 continues former Health and Safety Code Section 25570.3(d)  
35 without substantive change.

## 36 **§ 7204. Registration fees**

---

37 7204. The director shall require each applicant for registration as a class I or class II  
38 environmental assessor to pay the following fees:

39 (a) For a class I environmental assessor:

40 (1) A nonrefundable application fee of up to fifty dollars (\$50) for each applicant seeking  
41 registration as a class I environmental assessor.

42 (2) An annual fee of up to one hundred dollars (\$100) for registration as a class I  
43 environmental assessor.

44 (b) For a class II environmental assessor:



1 (1) A nonrefundable application fee of up to one hundred twenty-five dollars (\$125) for  
2 each applicant seeking registration as a class II environmental assessor.

3 (2) An annual fee of up to five hundred dollars (\$500) for registration as a class II  
4 environmental assessor.

5 **Comment.** Section 7204 continues former Health and Safety Code Section 25570.3(e)  
6 without substantive change.

#### 7 **§ 7205. Cost recovery**

---

8 7205. The director shall assess the fees specified in subdivisions (a) and (b) of Section  
9 7204 at a level sufficient to meet the costs of application processing, registration, listing  
10 and publication, audits, complaints, investigations, disciplinary proceedings, and other  
11 activities that are reasonably necessary to administer and implement the environmental  
12 assessor registration program.

13 **Comment.** Section 7205 continues former Health and Safety Code Section 25570.3(f)  
14 without substantive change.

#### 15 **§ 7206. Denial**

---

16 7206. Any applicant who is denied registration shall be notified in writing by a letter  
17 signed by the director stating the reasons for the denial. The applicant may respond to the  
18 registration denial by providing additional information for the purpose of clarifying the  
19 application, and may request reconsideration of the denial.

20 **Comment.** Section 7206 continues former Health and Safety Code Section 25570.3(g)  
21 without substantive change.

#### 22 **§ 7207. Registration list**

---

23 7207. (a) On or before March of each year, the director shall, in collaboration with  
24 associations representing small and medium-sized businesses, publish, prepare, and  
25 disseminate a list of registered environmental assessors that are listed by class.

26 (b) The list prepared pursuant to subdivision (a) shall be arranged in accordance with the  
27 types of tasks performed by the registered environmental assessor, and, at a minimum,  
28 shall specify the professional and employment affiliations and the specific area of expertise  
29 of the assessor, and shall indicate whether the assessor is a sales representative, owner, or  
30 part owner of a business that manufactures or distributes technology for hazardous  
31 substances or hazardous waste management. In addition, the list shall provide an  
32 alphabetical listing of firms that provide environmental assessment services and that employ  
33 registered assessors. The registered assessors employed by each firm shall be listed with  
34 the firm's name by class. The director shall include a written disclaimer of liability as part  
35 of the published list of registered assessors.

36 **Comment.** Section 7207 continues former Health and Safety Code Section 25570.3(h)  
37 without substantive change.

#### 38 **§ 7208. Renewal**

---

39 7208. Each environmental assessor shall obtain a renewal of registration every five years  
40 following the date of the initial registration or renewal of registration. The director shall  
41 determine a renewal fee that is sufficient to cover the reasonable costs incurred in  
42 reassessing the qualifications of the applicant for renewal. In considering whether to renew  
43 a registration, the director shall also consider any factual complaints regarding the work of  
44 that assessor.

1     **Comment.** Section 7208 continues former Health and Safety Code Section 25570.3(i)  
2 without substantive change.

### 3     **§ 7209. Immunity**

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4     7209. Notwithstanding any other provision of law, no state agency or employee of a  
5 state agency shall be held liable for any injury or damages resulting from the services  
6 provided by a registered environmental assessor listed pursuant to Section 7207. In any  
7 litigation regarding the registration process or the list of assessors, the Attorney General  
8 shall defend a state employee or state agency involved with the development or  
9 implementation of the program specified in this chapter.

10    **Comment.** Section 7209 continues former Health and Safety Code Section 25570.3(j)  
11 without substantive change.

### 12    **§ 7210. Audit**

---

13    7210. The director may perform periodic audits of work performed and certified by class  
14 II environmental assessors, as necessary, to ensure the desired standard of performance. A  
15 registered class II environmental assessor shall provide an authorized representative of the  
16 director with complete access, at any reasonable hour of the day, to all technical data,  
17 reports, records, environmental samples, photographs, maps, and files used in the  
18 preparation of certified reports, with the exception of proprietary or other confidential  
19 information.

20    **Comment.** Section 7210 continues former Health and Safety Code Section 25570.3(k)  
21 without substantive change.

### 22    **§ 7211. Rescission**

---

23    7211. The director shall rescind a class II environmental assessor's registration when an  
24 assessor's performance falls below the minimum required standards of performance  
25 adopted pursuant to Section 25395.15 of the Health and Safety Code, as determined by an  
26 audit conducted by an authorized representative of the director pursuant to Section 7210 or  
27 by the department pursuant to Section 25395.12 of the Health and Safety Code. In addition  
28 to a failure to meet the minimum standards of performance adopted pursuant to Section  
29 25395.15 of the Health and Safety Code, any one of the following findings shall be  
30 sufficient grounds for the rescission of a registration:

- 31    (a) Gross negligence.
- 32    (b) Inexcusable neglect of duty.
- 33    (c) Intentional misrepresentation of laboratory data or other intentional fraud.
- 34    (d) Charging for services not rendered, or for performing services that are not reasonably  
35 necessary.
- 36    (e) Abandonment of any client, except for instances involving the nonpayment of fees for  
37 services rendered.
- 38    (f) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes,  
39 hazardous substances, or hazardous materials, including, but not limited to, a conviction of  
40 a felony or misdemeanor under Section 25395.13 of the Health and Safety Code.
- 41    (g) Conviction of a felony or misdemeanor involving moral turpitude.
- 42    (h) Knowingly making a false statement regarding a material fact or knowingly fail to  
43 disclose a material fact in connection with an application for registration.

44    **Comment.** Section 7211 continues former Health and Safety Code Section 25570.3(l)  
45 without substantive change.



1   **§ 7212. Appeal of rescission**

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2       7212. The director shall adopt, by regulation, a procedure for the appeal of a rescission  
3 of registration, which shall be adopted on the same date that regulations which implement  
4 this article are adopted.

5       **Comment.** Section 7212 continues former Health and Safety Code Section 25570.3(m)  
6 without substantive change.

7   **§ 7213. Civil, electrical, or mechanical engineering**

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8       7213. Nothing in this chapter shall be construed to authorize a person registered as an  
9 environmental assessor pursuant to this chapter to practice civil, electrical, or mechanical  
10 engineering, or to exempt a registered civil, electrical, or mechanical engineer who is also a  
11 registered environmental assessor from Chapter 7 (commencing with Section 6700) of  
12 Division 3 of the Business and Professions Code.

13       **Comment.** Section 7213 continues former Health and Safety Code Section 25570.4  
14 without substantive change.

15                   **CHAPTER 2. ENVIRONMENTAL HEALTH SPECIALISTS**

16                               **Article 1. General Provisions**

17   **§ 8000. Legislative intent**

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18       8000. (a) It is the intent of the Legislature in adopting this chapter to safeguard the health,  
19 safety, and general welfare of the public by the registration of those environmental health  
20 professionals practicing as environmental health specialists who have completed an  
21 approved environmental health or science curriculum and who are qualified to work, or are  
22 working, within the scope of the field of environmental health as defined by this chapter.

23       (b) In adopting this chapter, it is recognized that the field of environmental health is a  
24 dynamic field that is continually evolving into new and complex areas of concern. This  
25 chapter recognizes the existence of overlapping functions with other professions carrying  
26 out specific activities that may include some aspects of the field of environmental health.

27       (c) The title of a person registered under this chapter shall be environmental health  
28 specialist. Use of the term “sanitarian” or “registered sanitarian” in regulations shall mean  
29 “registered environmental health specialists.”

30       **Comment.** Section 8000 continues former Health and Safety Code Section 106600 without  
31 substantive change. Former Health and Safety Code Section 106600 provided that a valid  
32 sanitarian registration became a valid environmental health specialist registration on January  
33 1, 1989. This provision is obsolete and has been omitted.

34       ☞ **Note.** Former Section 106600 provided that the term “sanitarian” or “registered  
35 sanitarian,” as used in statutes and regulations, means “registered environmental health  
36 specialist.” The Commission has made conforming revisions to eliminate statutory references  
37 to the obsolete terms “sanitarian” and “registered sanitarian.” This renders the statutory  
38 construction element of the preceding provision unnecessary, and it has not been continued.

39   **§ 8001. Application of chapter**

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40       8001. This chapter does not require registration of individuals, such as industrial  
41 hygienists, health physicists, safety engineers, civil engineers, land surveyors, other  
42 registered professional engineers, or others with overlapping functions. This chapter does

not require registration of individuals performing duties described in Section 8145, unless those individuals represent themselves as registered environmental health specialists. It is not the intent of this chapter to require local health departments to employ only registered environmental health specialists, environmental health specialist trainees, or those qualified for registration in jobs involving those overlapping functions. It is the sole purpose of this chapter to safeguard the health, safety, and general welfare of the public from adverse environmental factors, to register those environmental health professionals practicing as environmental health specialists who have completed an approved environmental health or science curriculum, and are qualified to work, or are working, in the public or private sector in the field of environmental health within the scope of practice as defined in this chapter, and to protect the public from individuals performing as environmental health specialists without proper qualifications.

**Comment.** Section 8001 continues former Health and Safety Code Section 106605 without substantive change.

#### **§ 8002. Relation to other law**

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8002. This chapter does not affect or replace any other requirements or qualifications imposed pursuant to state or federal law on persons involved in activities under Section 8145.

**Comment.** Section 8002 continues former Health and Safety Code Section 106730 without substantive change.

#### **§ 8003. Design of fixed works**

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8003. Except for the design of onsite septic systems, nothing in this chapter shall authorize registered environmental health specialists to design any of the fixed works defined in Section 6731 of the Business and Professions Code.

**Comment.** Section 8003 continues former Health and Safety Code Section 106620 without change.


### **Article 2. Definitions**

#### **§ 8100. Application of definitions**

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8100. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 8100 is a new section. It clarifies the meaning of the introductory clause of former Health and Safety Code Section 106615 by stating the application of the definitions provided in that section.

 **Note.** Health & Safety Code Section 106615 provides definitions, but does not state their application. The context implies that the definitions were intended to apply to Article 1 (commencing with Section 106500) of Chapter 4 of Part 1 of Division 104 of the Health & Safety Code, added here as Chapter 1 (commencing with Section 8000) of Part 2 of Division 2 of the Environment Code.

#### **§ 8105. “Approved environmental health training plan”**

---

8105. “Approved environmental health training plan” means a training program in an organization that plans to utilize environmental health specialist trainees and has on file with

the department a copy of its training plan that conforms with the requirements of Sections 8601 to 8604, inclusive, and that has been approved by the committee.

**Comment.** Section 8105 continues former Health and Safety Code Section 106615(h) without substantive change.

#### **§ 8110. “Certificate of registration”**

---

8110. “Certificate of registration” means a signed document issued by the department as evidence of registration and qualification to practice as a registered environmental health specialist under this chapter. The certificate shall bear the designation “registered environmental health specialist” and shall show the name of the person, date of issue, registration number, and seal.

**Comment.** Section 8110 continues former Health and Safety Code Section 106615(f) without substantive change.

#### **§ 8115. “Committee”**

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8115. “Committee” means the Environmental Health Specialist Registration Committee.

**Comment.** Section 8115 continues former Health and Safety Code Section 106615(b) without substantive change.

#### **§ 8120. “Department”**

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8120. “Department” means the State Department of Health Services.

**Comment.** Section 8120 continues former Health and Safety Code Section 106615(a) without substantive change.

#### **§ 8125. “Director”**

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8125. “Director” means the State Director of Health Services.

**Comment.** Section 8125 corrects an error in former Health & Safety Code Section 106615(i), which read: “‘Director’ means the director.” Section 8125 restores the language used in former Health & Safety Code Section 517(i), which was the predecessor to former Health & Safety Code Section 106615(i). See 1988 Cal. Stat. Ch. 773, § 5 (last amended version of former Health & Safety Code § 517); 1995 Cal. Stat. Ch. 415, §§ 6 & 87 (adding Health & Safety Code § 106615 and repealing Health & Safety Code § 517).

#### **§ 8130. “Environmental health specialist trainee”**

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8130. “Environmental health specialist trainee” means a person who possesses (1) a minimum of a bachelor’s degree, including 30 semester units of basic sciences, from a department approved educational institution or an educational institution of collegiate grade listed in the directory of accredited institutions of postsecondary education compiled by the American Council on Education, but who has not completed the specific coursework and experience requirements in the field of environmental health as required by Section 8600 for registration, and (2) who is engaged in an approved environmental health training plan.

**Comment.** Section 8130 continues former Health and Safety Code Section 106615(d) without substantive change.

1    **§ 8135. “Experience requirement”**

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2       8135. “Experience requirement” means on-the-job training and experience, as stated in  
3 this chapter, that all environmental health specialist trainees shall complete prior to  
4 obtaining eligibility for the environmental health specialist examination.

5       **Comment.** Section 8135 continues former Health and Safety Code Section 106615(g)  
6 without substantive change.

7    **§ 8140. “Registered environmental health specialist”**

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8       8140. “Registered environmental health specialist” means an environmental health  
9 professional educated and trained within the field of environmental health who is registered  
10 in accordance with the provisions of this chapter. A registered environmental health  
11 specialist registered under this chapter also meets the requirements for registration as an  
12 environmental assessor pursuant to Chapter 1 (commencing with Section 7000).

13       **Comment.** Section 8140 continues former Health and Safety Code Section 106615(c)  
14 without substantive change.

15       👉 **Note.** Health and Safety Code Section 106615(c) refers to the “requirements for  
16 registration as an environmental assessor pursuant to Section 25570.” Section 25570 does  
17 not state registration requirements. The reference has been generalized to encompass the  
18 registration requirements of proposed Chapter 1 (commencing with Section 7000).

19    **§ 8145. “Scope of practice in environmental health”**

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20       8145. “Scope of practice in environmental health” means the practice of environmental  
21 health by registered environmental health specialists in the public and private sector within  
22 the meaning of this chapter and includes, but is not limited to, organization, management,  
23 education, enforcement, consultation, and emergency response for the purpose of  
24 prevention of environmental health hazards and the promotion and protection of the public  
25 health and the environment in the following areas: food protection; housing; institutional  
26 environmental health; land use; community noise control; recreational swimming areas and  
27 waters; electromagnetic radiation control; solid, liquid, and hazardous materials  
28 management; underground storage tank control; onsite septic systems; vector control;  
29 drinking water quality; water sanitation; emergency preparedness; and milk and dairy  
30 sanitation pursuant to Section 33113 of the Food and Agricultural Code. Activities of  
31 registered environmental health specialists shall be regulated by the department upon the  
32 recommendation of the committee.

33       **Comment.** Section 8145 continues former Health and Safety Code Section 106615(e)  
34 without substantive change.

35                                   Article 3. Effect of Registration

36    **§ 8200. Use of title**

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37       8200. (a) Only a person who has qualified as a registered environmental health specialist  
38 and who holds a valid registration certificate issued in conformance with Section 8400 for  
39 use in this state shall have the right and privilege of using the title “registered environmental  
40 health specialist” and to use the abbreviation “R.E.H.S.” after the person’s name. Only a  
41 person who has qualified as a registered environmental health specialist trainee and has a  
42 letter of acceptance issued by the department shall have the right and privilege of using the  
43 title “registered environmental health specialist trainee.”

(b) Except as permitted in Section 8000 any use of the words “registered sanitarian” or other use of the words “registered environmental health specialist” to denote a working title is prohibited.

(c) A person who violates any provision of this section is guilty of a misdemeanor and may be fined a sum not to exceed one thousand dollars (\$1,000) or imprisoned for not more than 180 days, or both.

**Comment.** Section 8200 continues former Health and Safety Code Section 106735 without substantive change.

#### **§ 8201. Employment of registered specialists and trainees**

---

8201. The governing body of a local health department may employ on a full-time basis one or more registered environmental health specialists, each of whom shall be a registered environmental health specialist as provided for in this chapter for the purpose of the enforcement of statutes related to public health, and the regulations of the department, and any local ordinances of a local health department that relate to activities under Section 8145. However, any person who is known as an environmental health specialist trainee may be employed to work under the supervision of a registered environmental health specialist, until he or she is qualified by examination as provided under Section 8505, for a period which shall not exceed three years. Prior to employment, the trainee shall have a current evaluation letter from the department stating that the education qualifications specified in Section 8600 have been met.

**Comment.** Section 8201 continues former Health and Safety Code Section 106625 without substantive change.

### **Article 4. Application for Registration**

#### **§ 8300. Application for registration**

---

8300. Any person may make an application to the department to be registered as an environmental health specialist. The department shall accept complete applications if accompanied by the required fees.

**Comment.** Section 8300 continues the first paragraph of former Health and Safety Code Section 106630 without change.


#### **§ 8301. Application submission**

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8301. (a) Receipt of an application for a certificate of registration as an environmental health specialist shall be deemed to be the date the application is date stamped by the department.

(b) An application for a certificate of registration as an environmental health specialist is considered complete when a completed application form supplied by the department, proof of successful passage of the registered environmental health specialist examination, as specified in Section 8505, and the initial biennial registration fee are received by the department.

**Comment.** Section 8301 continues paragraphs (1) and (2) of subdivision (a) of former Health and Safety Code Section 106630 without change.

 **Note.** Health & Safety Code § 106630 contains headings as subdivisions within the section. In breaking up this section, the Commission has removed these headings from the substantive law and used them as leadlines to introduce the component sections. This should not affect the substance of the law.

1   **§ 8302. Application review period**

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2       8302. (a) The department shall notify the applicant in writing within 15 working days of  
3 receipt of an application for a certificate of registration as an environmental health specialist  
4 that the application is completed and accepted for filing, or that the application is deficient  
5 and what specific information, documentation, or fee, is required to complete the  
6 application.

7       (b) Written notification by the department to applicants shall be deemed to occur on the  
8 date the notifications are postmarked.

9       **Comment.** Subdivision (a) of Section 8302 continues former Health and Safety Code  
10 Section 106630(b) without substantive change.

11       Subdivision (b) continues paragraph (3) of subdivision (a) of former Health and Safety  
12 Code Section 106630 without change.

13   **§ 8303. Decision**

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14       8303. The department, within three calendar days of filing of a completed application,  
15 shall reach a decision regarding the application for a certificate of registration as an  
16 environmental health specialist.

17       **Comment.** Section 8303 continues former Health and Safety Code Section 106630(c)  
18 without substantive change.

19                                   Article 5. Issuance of Registration

20   **§ 8400. Issuance of registration**

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21       8400. A valid registration as an environmental health specialist under this chapter shall  
22 only be issued to a person who has:

23       (a) Met the applicable education and experience requirements.

24       (b) Successfully passed the examination for registration.

25       (c) Submitted a complete application in accordance with Sections 8300 to 8303,  
26 inclusive.

27       (d) Paid the fees required in Section 8508.

28       (e) Not committed acts specified in Section 8800.

29       **Comment.** Section 8400 continues former Health and Safety Code Section 106710 without  
30 substantive change.

31   **§ 8401. Certificate of registration**

---

32       8401. (a) The department shall issue certificates of registration to qualified applicants.

33       (b) Duplicate certificate/card of registration shall be issued to individuals who hold valid  
34 registration as an environmental health specialist upon payment of ten dollars (\$10) for a  
35 duplicate certificate and five dollars (\$5) for a duplicate registration card.

36       **Comment.** Section 8401 continues former Health and Safety Code Section 106630(d)-(e)  
37 without substantive change.

38   **§ 8402. Out of state certificate holders**

---

39       8402. The department shall, upon application therefor and upon payment of the current  
40 application and biennial renewal fees, as determined by the department upon the  
41 recommendation of the committee by a two-thirds vote, not to exceed one hundred dollars  
42 (\$100), issue a certificate of registration as an environmental health specialist to any person



who holds a certificate of registration as a sanitarian or an environmental health specialist issued by the proper authority of any state or territory, or possession of the United States, if the requirements for the registration of sanitarians or environmental health specialists under which the certificate was issued are consistent with the provisions of this chapter and at the time the certificate was granted were at least as stringent as those specified in Section 8500.

**Comment.** Section 8402 continues former Health and Safety Code Section 106725 without change.

## Article 6. Registration Requirements

### § 8500. Education requirements

8500. (a) The requirements for registration of environmental health specialists shall be a minimum of a bachelor's degree from a department approved educational institution or an educational institution of collegiate grade listed in the directory of accredited institutions of postsecondary education compiled by the American Council on Education, with coursework prescribed as follows:

	Basic Requirements	Experience:	Training:
I.	30 semester or 45 quarter basic science units including each of the following: General Chemistry Lecture and Laboratory General Physics Lecture and Laboratory or Organic Chemistry Lecture and Laboratory General Microbiology Lecture and Laboratory General Biological Science Lecture and Laboratory Calculus or College Algebra	18 months	600 hrs.
II.	45 semester or 68 quarter basic science units including the following: Three of the required science courses shall include a laboratory: General Chemistry Organic Chemistry General Physics General Microbiology General Biological Science Calculus or College Algebra	one year	450 hrs.
III.	30 semester or 45 quarter basic science units including each of the following: General Chemistry Lecture and Laboratory General Physics Lecture and Laboratory or Organic Chemistry Lecture and Laboratory General Microbiology Lecture and Laboratory General Biological Science Lecture and Laboratory Calculus or College Algebra	9 months	300 hrs.

- plus  
Three semester or four quarter unit courses in each of the following:  
Epidemiology  
Statistics  
Public Administration or Environmental Health Administration and;  
10 semester or 15 quarter units in environmental health science, including one or more of the following:  
water quality, waste management, food and consumer protection, housing and institution sanitation, vector control, recreational health, air quality, milk and dairy products, occupational health, electromagnetic radiation, noise control, toxicology, soil science, or land use development.
- IV. 45 semester or 68 quarter basic science units including the following:  
Three of the following required science courses shall include a laboratory:  
General Chemistry  
Organic Chemistry  
General Physics  
General Microbiology  
General Biological Science  
Calculus or College Algebra  
plus  
Three semester or four quarter unit courses in each of the following:  
Epidemiology  
Statistics  
Public Administration or Environmental Health Administration and;  
10 semester or 15 quarter units in Environmental Health Science, including one or more of the following:  
water quality, waste management, food and consumer protection, housing and institution sanitation, vector control, recreational health, air quality, milk and dairy products, occupational health, electromagnetic radiation, noise control, toxicology, soil science, or land use development.
- V. Possess a minimum of a bachelor's degree in environmental health from an institution approved by the committee, which includes:  
One year of lecture and laboratory coursework in each of the following:  
General Chemistry  
General Physics  
General Biological Science, and  
One semester course in:
- |  |               |               |
|--|---------------|---------------|
|  | 6 months      | 200 hrs.      |
|  | None required | None required |



Calculus or College Algebra  
Organic Chemistry  
General Microbiology with Laboratory  
Public Administration or Environmental Health  
Administration  
Epidemiology  
Statistics  
Field Orientation Course in Environmental Health  
Fifteen semester units of environmental health science  
courses selected from:  
water quality, waste management, food and consumer  
protection, housing and institution sanitation, vector  
control, recreational health, air quality, milk and dairy  
products, occupational health, electromagnetic radiation,  
noise control, toxicology, soil science, or land use  
development.

(b) All basic science coursework including mathematics shall be equal to that acceptable in an approved environmental health degree program.

**Comment.** Section 8500 continues former Health and Safety Code Section 106635 without change.

#### **§ 8501. Environmental health degree programs**

---

8501. Educational institutions requesting approval of their environmental health degree program shall first submit their program to the committee for review. If the program meets the prescribed curricula in Section 8500 it shall be submitted to the department for approval.

**Comment.** Section 8501 continues former Health and Safety Code Section 106640 without change.

#### **§ 8502. Continuing education**

---

8502. The department upon recommendation of the committee, may, by regulation, establish the requirement and standards for continuing education for registered environmental health specialists. The standards shall be established in a manner to assure that a variety of forms of continuing education are available to registered environmental health specialists.

**Comment.** Section 8502 continues former Health and Safety Code Section 106705 without change.

#### **§ 8503. Eligibility for examination**

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8503. Those persons who meet the educational, experience, and training requirements of Section 8500 shall be eligible for admission to the examination for registration as an environmental health specialist.

**Comment.** Section 8503 continues former Health and Safety Code Section 106645 without substantive change.

1   **§ 8504. Admission to examination on basis of former requirements**

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2       8504. Any person who has applied for environmental health specialist registration, or  
3       who is enrolled in an approved environmental health science curriculum, or who is certified  
4       by his or her employer as serving as an environmental health specialist trainee in an  
5       approved environmental health program on or before December 31, 1988, shall be admitted  
6       to the written examination on the basis of the requirements existing on December 31, 1988.

7       **Comment.** Section 8504 continues former Health and Safety Code Section 106650 without  
8       change.

9       ☞ **Note.** This transitional provision appears to be obsolete. The Commission would like to  
10      receive input on whether this section has any continued usefulness.

11   **§ 8505. Admission to examination**

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12       8505. (a) Only persons who meet the educational and experience requirements as  
13       established under Section 8500 shall be eligible for admission to examination for  
14       registration as an environmental health specialist.

15       (b) The professional examination shall be prescribed by the department with the  
16       concurrence of the committee, and a passing score on the examination shall be required  
17       prior to registration.

18       (c) An applicant who twice fails to pass the written examination shall not be eligible to be  
19       reexamined a third time until at least one year has elapsed from the date of the second  
20       examination. An applicant who fails the third examination shall not be eligible to take the  
21       examination a fourth time until two years have elapsed from the date of the third  
22       examination. Thereafter, the examination may not be taken more frequently than once in  
23       two years. Reapplication shall be made by submitting a new application with the required  
24       fee.

25       **Comment.** Section 8505 continues former Health and Safety Code Section 106670 without  
26       substantive change. In subdivision (a), the reference to the effective date of the education and  
27       experience requirement (January 1, 1989) is obsolete and has been omitted.

28   **§ 8506. Certified dairy inspectors**

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29       8506. A person who possesses a minimum of a bachelor's degree from a department-  
30       approved educational institution or an educational institution of collegiate grade listed in the  
31       directory of accredited institutions of postsecondary education compiled by the American  
32       Council on Education and has been employed as a certified dairy inspector in the State of  
33       California for at least 24 months immediately prior to applying for admission to the  
34       environmental health specialist registration examination, shall be eligible for admission to  
35       the examination for registration as an environmental health specialist.

36       **Comment.** Section 8506 continues former Health and Safety Code Section 106655 without  
37       change.

38   **§ 8507. Retired biennial registration**

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39       8507. A registered environmental health specialist may maintain registration under a  
40       retired biennial registration provided the following requirements are met:

41       (a) Has been a working registered environmental health specialist in California for at least  
42       10 years in an area covered in Section 8145, unless receiving an on-the-job disability  
43       before the 10 years of service as a registered environmental health specialist has elapsed.

44       (b) Is at least 50 years old or collecting retirement benefits, or both.

(c) Is not working in a job requiring registration as an environmental health specialist. A person who pays a retired biennial fee shall be registered only as an inactive retired registered environmental health specialist.

**Comment.** Section 8507 continues former Health and Safety Code Section 106695 without substantive change.

#### § 8508. Fees

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8508. (a) A nonreturnable fee shall be paid by a person for each application for registration, application for examination, and biennial renewal.

(b) Fees shall not exceed the actual administrative costs of the program. Fees, except retired and penalty fees, shall be subject to Section 100425 of the Health and Safety Code. The actual dollar figure charged shall be rounded to the nearest whole dollar amount. The biennial renewal fee-retired shall be twenty-five dollars (\$25).

(c) The nonreturnable biennial renewal fee, shall be paid by each registered environmental health specialist on or before the first day of January of every second year, or on any other date that is determined by the department. Each registered environmental health specialist registered pursuant to this chapter, shall first pay the biennial fee at the time of initial registration to cover the calendar year in which registration is acquired and the following calendar year. Registrations not maintained as required by this subdivision are suspended and remain invalid during the period of suspension. Suspended registrations become revoked three years after the date of suspension. Notwithstanding the provisions of the Government Code, the executive officer shall revoke suspended registrations after three years from the date of suspension for nonpayment of fees.

(d) An additional penalty fee equal to 50 percent of the biennial renewal fee for each year of delinquency or portion thereof shall be paid by each person who fails to pay the fee required by subdivision (c) within 30 days of the established due date. All accumulated penalty fees shall be paid prior to any revalidation of registration.

(e) The department shall receive and account for all money received pursuant to this chapter and shall deposit it with the Treasurer who shall keep the money in a separate fund to be known as the "Registered Environmental Health Specialist Fund," that fund is hereby created.

(f) Notwithstanding Section 13340 of the Government Code, funds collected pursuant to the provisions of this chapter are continuously appropriated without regard to fiscal year to pay expenses of the department to administer the provisions of this chapter.

(g) The following fees are hereby established and shall be annually adjusted as required by subdivision (b):

(1) Application fee — sixty-nine dollars (\$69).

(2) Examination fee — sixty dollars (\$60).

(3) Biennial renewal fee — active eighty-seven dollars (\$87).

**Comment.** Section 8508 continues former Health and Safety Code Section 106700 without change.

### Article 7. Trainee Program

#### § 8600. Application as trainee

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8600. Any person meeting the educational qualifications pursuant to Section 8500, but who does not meet the experience requirement of that section, may make application to the department on a form prescribed by the department for acceptance as an environmental

1 health specialist trainee. The department shall accept complete applications if accompanied  
2 by the required fees.

3 **Comment.** Section 8600 continues former Health and Safety Code Section 106660 without  
4 change.

5 **§ 8601. Elements of training plan**

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6 8601. An approved environmental health training plan shall include the following  
7 program elements:

8 (a) All environmental health specialist trainees shall complete a basic training period in an  
9 approved program. The training period shall include training in at least six elements, with  
10 three of the elements selected from the following basic elements:

11 (1) Food protection.

12 (2) Solid or liquid waste management, or both.

13 (3) Water supply.

14 (4) Housing and institutions.

15 (5) Bathing places.

16 (6) Vector control.

17 (7) Hazardous materials management or underground tank program, or both.

18 (b) The remaining three elements may include any other basic element or any of the  
19 following elements: air sanitation, safety and accident prevention, land development and  
20 use, disaster sanitation, electromagnetic radiation, milk and dairy products, noise control,  
21 occupational health, and rabies and animal disease control.


22 (c) Training in each of three basic elements shall be not less than 20 percent of the total  
23 required training hours. Time spent in the remaining three elements shall be not less than 40  
24 percent of the total required training hours. The employer shall designate the methods,  
25 elements, and types of training or experience for the remaining part of the time required for  
26 entrance to the registered environmental health specialist examination as specified in Section  
27 8505. The specified training may be cumulative and scheduled at the discretion of the  
28 employing agency over this period.

29 (d) The training may be accomplished by assignments chosen by the employing agency  
30 and under the supervision of a registered environmental health specialist.

31 (e) For those environmental health specialist trainees requiring more than one year of  
32 experience, the additional experience will be in one or more elements of environmental  
33 health listed in this section and may be outside of a local environmental health program.

34 (f) Training and experience gained working for a governmental or a nonprofit entity, or  
35 both, may be counted toward the first-year training experience requirement if the training  
36 and experience is determined by the department to be equivalent to what would be gained in  
37 a local environmental health jurisdiction.

38 **Comment.** Section 8601 continues former Health and Safety Code Section 106665(a)  
39 without substantive change.

40  **Note.** Health & Safety Code § 106665 contains headings as subdivisions within the  
41 section. In breaking up this section, the Commission has removed these headings from the  
42 substantive law and converted them to introductory phrases or used them as leadlines to  
43 introduce the component sections. This should not affect the substance of the law.

1   **§ 8602. Training types**

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2       8602. The training program shall be integrated into the environmental health specialist  
3       trainee's job assignment and shall include items (a) and (b) and may include items (c), (d),  
4       and (e):

5       (a) A minimum of 20 hours per month of field instruction with direct supervision by a  
6       registered environmental health specialist for the first six months of employment. (The total  
7       minimum requirement in this area shall be 150 hours.)

8       (b) Independent time with adequate supervision and guidance.

9       (c) Office training with pretesting and posttesting.

10      (d) Lectures.

11      (e) Adequate office time to review and study.

12      **Comment.** Section 8602 continues former Health and Safety Code Section 106665(b)  
13      without substantive change.

14      ☞ **Note.** Health & Safety Code § 106665 contains headings as subdivisions within the  
15      section. In breaking up this section, the Commission has removed these headings from the  
16      substantive law and converted them to introductory phrases or used them as leadlines to  
17      introduce the component sections. This should not affect the substance of the law.

18   **§ 8603. Certification of training**

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19       8603. Requirements for certification of training are as follows:

20      (a) Environmental health specialist trainees shall receive their training from the  
21      department or agency that has a training plan approved by the committee.

22      (b) A daily log for the certification of the environmental health specialist trainee shall be  
23      maintained by the Director of Environmental Health.

24       (1) A daily log covering elements and hours spent of all training shall be kept by the  
25      environmental health specialist trainees, and verified by the trainer or supervisor on a  
26      weekly basis.

27       (2) Short narrative reports or copies of the monthly schedule of the environmental health  
28      specialist trainee's training and progress shall be submitted by the training coordinator to  
29      the director every month throughout the traineeship.

30       (3) The Director of Environmental Health shall review the trainee's records on a monthly  
31      basis and shall certify on a quarterly basis that the records of training are accurate.

32       (4) The Director of Environmental Health shall notify the department within 30 days of  
33      the date an environmental health specialist trainee is hired or terminated.

34       (5) Copies of the environmental health specialist trainee's log, as well as the narrative  
35      reports or copies of monthly schedules shall be retained in the personnel file of the  
36      environmental health specialist trainee for at least one year after the environmental health  
37      specialist trainee successfully completes the registered environmental health specialist  
38      examination.

39      (c) When an environmental health specialist trainee completes the training program, the  
40      Director of Environmental Health shall forward certification to the department. This  
41      certification shall include the program areas, length of time, dates for the areas of training  
42      and a statement that the environmental health specialist trainee followed the approved  
43      training plan.

44      **Comment.** Section 8603 continues former Health and Safety Code Section 106665(c)  
45      without substantive change.

46      ☞ **Note.** Health & Safety Code § 106665 contains headings as subdivisions within the  
47      section. In breaking up this section, the Commission has removed these headings from the

substantive law and converted them to introductory phrases or used them as leadlines to introduce the component sections. This should not affect the substance of the law.

#### **§ 8604. Training exchanges**

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8604. Those jurisdictions that cannot provide the required training elements within their jurisdictions shall initiate a program of training exchange with another jurisdiction having an approved training program.

**Comment.** Section 8604 continues former Health and Safety Code Section 106665(d) without substantive change.

### **Article 8. Registration Committee**


#### **§ 8700. Registration committee**

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8700. (a) An Environmental Health Specialist Registration Committee shall be appointed to advise and to make recommendations to the department with respect to, and to take other actions as described in this chapter for the establishment of rules and regulations necessary to ensure, the proper administration and enforcement of the registration of environmental health specialists whose duties in public health and environmental health require knowledge and skills in the physical, biological, and environmental health sciences and whose performance of professional duties is necessary for the promotion of life, health, and well being of the public.

(b) The members of the former Sanitarian Registration Certification Committee shall serve as members of the new committee until the expiration of their terms.

**Comment.** Section 8700 continues former Health and Safety Code Section 106675(a) without substantive change.

 **Note.** Subdivision (b) governs the transition from the Sanitarian Registration Certification Committee to the Environmental Health Specialist Registration Committee. This provision is probably obsolete. The Commission would like to receive input on this point.

#### **§ 8701. Composition of committee**

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8701. The committee shall consist of the Chief of the Environmental Planning and Local Health Services Branch, department, or the designee of the chief, who shall serve as executive officer but who shall not vote, and the following 10 members who are residents of the state:

(a) Two members appointed by the director from the California Conference of Directors of Environmental Health who shall be environmental health specialists with at least two years' experience as directors of environmental health in this state.

(b) Three members appointed by the director, each of whom shall be a qualified, practicing environmental health specialist registered in California for a period of five or more years. For purposes of this subdivision:

(1) One member shall be employed in the public sector at the time of appointment.

(2) One member shall be employed in the private sector at the time of appointment.

(3) One member shall be from the California Environmental Health Association.

(c) One member appointed by the director from the California Conference of Local Health Officers.

(d) Two members appointed by the director from the environmental health faculty of those California universities and colleges with approved curricula leading to a degree in environmental health.



(e) Two public members who have not been engaged at any time within five years immediately preceding their appointment in pursuits that lie within the field of environmental health or the profession regulated by the committee of which they are members. The Senate Rules Committee shall appoint one public member and the Speaker of the Assembly shall appoint one public member.


**Comment.** Section 8701 continues former Health and Safety Code Section 106675(b) without substantive change.

#### § 8702. Term of service

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8702. The terms of the members of the committee first appointed shall be determined by lot and shall expire as follows: two members on January 1, 1985; two members on January 1, 1986; three members on January 1, 1987; and three members on January 1, 1988. Thereafter, appointments shall be for a four-year term. Committee members may serve no more than two successive terms. Each member shall serve on the committee until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever occurs first. Vacancies occurring prior to the expiration of the terms shall be filled by appointment for the unexpired term. The director, upon the recommendation of the committee by a two-thirds vote, may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause after due notice and hearing.

**Comment.** Section 8702 continues former Health and Safety Code Section 106680 without change.

 **Note.** This provisions governing the dates of the first terms of committee members may be obsolete. The Commission would like to receive input on whether these starting date provisions have continued usefulness.

#### § 8703. Administration

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8703. (a) The members of the committee shall, annually, in the month of April, elect from their number a chairperson and a secretary.

(b) The committee shall meet at least twice annually and at other times as it may determine to evaluate applications for registration as environmental health specialists, to review and update examinations, to prepare and recommend reports relative to the administration of this chapter, and to transact all other business as may be necessary to carry out the provisions of this chapter.

(c) The committee may hold informal hearings for denial, suspension, refusal to renew, and revocation of registrations for environmental health specialists as provided in Sections 8800 to 8803, inclusive.

(d) The committee may hold informal hearings for the purpose of administrative items, make the necessary determinations in conjunction therewith, and issue recommendations to the department consistent with the findings. The department may designate the committee to appoint one or more of its members to serve as a hearing agent. The agent or representatives shall conduct hearings in the manner provided by law.

(e) Six members of the committee shall constitute a quorum and special meetings of the committee shall be called by the executive officer upon written request by two members of the committee.

(f) The members of the committee shall serve without compensation, but shall receive their actual and necessary expenses incurred in the performance of their duties on the

1 committee. However, no funds shall be disbursed for those purposes without the prior  
2 approval of the department.

3 **Comment.** Section 8703 continues former Health and Safety Code Section 106685 without  
4 substantive change.

#### 5 **§ 8704. Records**

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6 8704. (a) The committee shall keep a record of its proceedings.

7 (b) The department shall maintain a register of all applications for registration and retain  
8 examination papers and records pertaining thereto for a length of time to be determined by  
9 the department.

10 (c) The department shall maintain a current registry of all registered environmental health  
11 specialists and all environmental health specialist trainees in the state.

12 (d) Individuals registered under this chapter are responsible for assuring that the  
13 department has a current mailing address for them.

14 **Comment.** Section 8704 continues former Health and Safety Code Section 106690 without  
15 change.

#### 16 **§ 8705. Regulations**

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17 8705. The department may, upon recommendation of the committee, adopt any  
18 regulations necessary to accomplish the purposes of this chapter.

19 **Comment.** Section 8705 continues former Health and Safety Code Section 106610 without  
20 substantive change.

### 21 **Article 9. Sanctions**

#### 22 **§ 8800. Sanctions**

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23 8800. Notwithstanding any other provisions of this chapter, the department upon the  
24 recommendation of the committee may suspend, deny, refuse to renew, or revoke a  
25 registration certificate issued under this chapter after sufficient notice and an opportunity for  
26 a hearing and upon findings that the registered environmental health specialist has done any  
27 of the following:

28 (a) Knowingly made a false statement of fact required to be revealed in the application for  
29 registration.

30 (b) Been convicted of a crime, if the crime is related to the qualifications, functions, and  
31 duties of an environmental health specialist.

32 (c) Knowingly made a false statement of fact required to be revealed in an application for,  
33 or renewal of, registration.

34 (d) Committed an act of deceit, misrepresentation, violation of contract, fraud,  
35 negligence, professional incompetence, or unethical practice.

36 **Comment.** Section 8800 continues former Health and Safety Code Section 106715(a)  
37 without substantive change.

#### 38 **§ 8801. Sanction procedure**

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39 8801. The procedure to deny, suspend, refuse to renew, or revoke an environmental  
40 health specialist registration certificate pursuant to this chapter shall be as follows:

41 (a) All cases, complaints, or allegations charging a violation of this subdivision shall be  
42 made in writing and submitted to the department.



- (b) The department shall make a preliminary investigation by:
- (1) Obtaining copies of all pertinent written documents (laws, reports, contacts, and correspondence).
  - (2) Interviewing, in person or by telephone, of all individuals involved with the issue.
- (c) The department shall compile the information into a confidential case document that includes the following:
- (1) A description of the complaint.
  - (2) A chronology of events.
  - (3) Results of the interviews.
  - (4) Copies of the written documents.
- (d) The case document shall be submitted to each member of the committee requesting their recommendation whether or not the information warrants further investigation and an informal hearing.
- (e) The department shall review committee recommendations and the preliminary investigation findings and then decide whether to dismiss the complaint or proceed to an informal committee hearing. Dismissal of the charges shall be followed by a letter to both complainant and the registered environmental health specialist involved explaining the department's action.
- (f) If the decision is made to proceed with an informal hearing, the department shall request the committee to appoint one or more hearing officers to hear the case.
- (1) All parties shall be notified of the time and place of the hearing.
  - (2) An investigation of the issue may be made by an independent professional investigator if it is felt warranted by the department and the committee. The investigation results shall be submitted to the department, committee hearing officers, complainant, and respondent prior to the hearing.
  - (3) The informal hearing shall permit the right to be heard (with an attorney, if desired) and the proceedings recorded. The hearing shall be considered an informal level of review and shall be governed by subdivision (g) of Section 100171 of the Health and Safety Code.
- (g) A copy of the recommendation made to the department by the committee shall be transmitted to the respondent within 10 calendar days of its receipt by the department.
- Comment.** Subdivisions (a) through (e) of Section 8801 continue paragraphs (1) through (5) of subdivision (b) of former Health and Safety Code Section 106715 without substantive change.
- Subdivision (f) continues paragraph (6) of subdivision (b) of former Health and Safety Code Section 106715, except for subparagraph (D) which is continued in Section 8802.
- Subdivision (g) continues former Health and Safety Code Section 106715(c) without substantive change.

## § 8802. Penalty ranges

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8802. Upon finding that a violation of Sections 8800 to 8803, inclusive, occurred, the following disciplinary ranges may be recommended to the department by the committee and may be adopted by the department if the respondent does not timely request further review as specified in Section 8803:
- (a) Knowingly made a false statement of fact required to be revealed in the application for registration.
    - (1) Maximum: Revocation.
    - (2) Minimum: Fifteen-day suspension. Range depends on whether or not the registration was falsely approved.

(b) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of a registered environmental health specialist.

(1) Maximum: Deny, refuse to renew, or revocation of registration.

(2) Minimum: Ninety-day actual suspension.

(c) Knowingly made a false statement of fact required to be revealed in an application for, or renewal of, registration.

(1) Maximum: Revocation.

(2) Minimum: Seven-day actual suspension.

(d) Committed an act of deceit, misrepresentation, violation of contract, fraud, negligence, professional incompetence, or unethical practice.

(1) Maximum: Revocation.

(2) Minimum: Ninety-day suspension stayed for three years on the following conditions of probation: Forty-five-day actual suspension. Obey all laws and regulations related to the practice of environmental health.

**Comment.** Section 8802 continues subparagraph (D) of paragraph (6) of subdivision (b) of former Health and Safety Code Section 106715 without substantive change.

#### **§ 8803. Further review**

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8803. The respondent may request further review of the recommendation resulting from the informal level of review by sending a letter so stating to the address specified in the letter transmitting the recommendation. To be timely, the request shall be postmarked no later than 15 calendar days after receipt by the respondent of the recommendation at issue. Upon receiving a timely request for review, the department shall set the matter for hearing pursuant to Section 100171.

**Comment.** Section 8803 continues former Health and Safety Code Section 106715(d) without substantive change.

#### **§ 8804. Rehabilitation**

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8804. The department and the committee may use the following criteria to evaluate the potential for rehabilitation or actual rehabilitation of a person prior to denying, suspending, or revoking registration.

(a) The nature and severity of the act, crime, or violation under consideration as grounds for denial, suspension, or revocation.

(b) The time that has elapsed since commission of the act, crime, or violation.

(c) The extent to which the applicant has complied with any terms of parole, probation, restitution, or other sanctions imposed upon the applicant.

(d) Evidence of rehabilitation or lack of rehabilitation of the applicant.

**Comment.** Section 8804 continues former Health and Safety Code Section 106720 without change.

## **PART 3. ENVIRONMENTAL PERMITS**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **§ 10000. Short title**

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10000. This part shall be known, and may be cited, as the Environmental Protection Permit Reform Act of 1993.

1     **Comment.** Section 10000 continues former Public Resources Code Section 71000 without  
2     change.

3     ☞ **Note.** Public Resources Code Section 71000 refers to “this division,” that is, Division  
4     34 (commencing with Section 71000) of the Public Resources Code. At the time Section  
5     71000 was enacted, only the provisions of what is now Part 1 of Division 34 existed. See 1993  
6     Cal. Stat. ch. 419 § 5. It was in the next legislative session that the division was divided into  
7     two parts and the provisions of Part 2 (commencing with Section 71050) were added. See  
8     1994 Cal. Stat. ch. 1112, §§ 2-4. The Commission believes that the failure to amend the  
9     reference so that it referred to Part 1, rather than to the entirety of Division 34, was  
10    inadvertant. In continuing this section the reference has been so limited.

#### 11    **§ 10001. Purpose of division**

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12    10001. The Legislature hereby finds and declares all of the following:

13    (a) California’s environmental protection programs have established strict standards to  
14    reduce pollution and protect the public health and safety and the environment. The single  
15    purpose programs instituted to achieve these standards have been among the most  
16    successful efforts in the world, and have produced significant gains in protecting  
17    California’s environment in the face of substantial population growth.

18    (b) Continued progress to achieve the environmental standards in the face of continued  
19    population growth will require greater coordination between the single purpose  
20    environmental programs and more efficient operation of these programs overall. Pollution  
21    must be prevented and controlled and not simply transferred to another media or another  
22    place. This goal can only be achieved by maintaining the current environmental protection  
23    standards and by greater integration of the existing programs.

24    (c) As the number of environmental laws and regulations have grown in California, so  
25    have the number of permits required of business and government. This regulatory burden  
26    has significantly added to the cost and time needed to obtain essential operating permits in  
27    California. The increasing number of individual permits and permit authorities has  
28    generated the continuing potential for conflict, overlap, and duplication between the various  
29    state, local, and federal environmental permits.

30    (d) To ensure that local needs and environmental conditions receive the proper attention,  
31    the issuance of environmental permits should continue to be made, to the extent feasible, at  
32    the regional and local levels of the environmental programs. To establish the framework for  
33    coordination among the regional offices of the environmental protection programs,  
34    consistency in regional boundaries should be achieved to the maximum extent practicable.

35    (e) The purpose of this part is to require the Secretary for Environmental Protection to  
36    institute new, efficient procedures which will assist businesses and public agencies in  
37    complying with the environmental quality laws in an expedited fashion, without reducing  
38    protection of public health and safety and the environment.

39    (f) Those procedures need to provide a permit process that promotes effective dialogue  
40    and ensures ease in the transfer and clarification of technical information, while preventing  
41    duplication. It is necessary that the procedures establish a process for preliminary and  
42    ongoing meetings between the applicant, the consolidated permit agency, and the  
43    participating permit agencies, but do not preclude the applicant or participating permit  
44    agencies from individually coordinating with each other.

45    (g) It is necessary, to the maximum extent practicable, that the procedures established in  
46    this part ensure that the consolidated permit agency process and applicable permit  
47    requirements and criteria are integrated and run concurrently, rather than consecutively.

## CHAPTER 2. DEFINITIONS

10100. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

10105. “Consolidated permit” means a permit incorporating the environmental permits granted by environmental agencies for a project and issued in a single permit document by the consolidated permit agency.

10110. “Consolidated permit agency” means the environmental agency that has the greatest overall jurisdiction over a project, as determined pursuant to Sections 11101 and 11102.

(b) The council is hereby created and consists of the following members or their designees:

- Comment.** Section 10115 continues former Public Resources Code Section 71017 without change.

1   **§ 10120. “Environmental agency”**

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2       10120. “Environmental agency” means any of the following:

3       (a) The Department of Toxic Substances Control, the Department of Pesticide  
4       Regulation, the State Air Resources Board, the State Water Resources Control Board, the  
5       California Integrated Waste Management Board, and the Office of Environmental Health  
6       Hazard Assessment.

7       (b) A California regional water quality control board.

8       (c) A district, as defined in Section 30220.

9       (d) An enforcement agency, as defined in Section 40130 of the Public Resources Code.

10       (e) A county agricultural commissioner with respect to his or her administration of  
11       Divisions 6 (commencing with Section 11401) and 7 (commencing with Section 12501) of  
12       the Food and Agricultural Code.

13       (f) The local agency responsible for administering Chapter 6.7 (commencing with  
14       Section 25280) of the Health and Safety Code concerning underground storage tanks and  
15       any underground storage tank ordinance adopted by a city or county.

16       (g) The local agency responsible for the administration of the requirements imposed  
17       pursuant to Section 13370.5 of the Water Code.

18       (h) A certified unified program agency as provided in Chapter 6.11 (commencing with  
19       Section 25404) of Division 20 of the Health and Safety Code.

20       (i) Any other state, regional, or local permit agency for the project that participates at the  
21       request of the permit applicant upon the permit agency’s agreement to be subject to this  
22       division.

23       **Comment.** Section 10120 continues former Public Resources Code Section 71011 without  
24       change.

25   **§ 10125. “Environmental permit”**

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26       10125. “Environmental permit” means any license, certificate, registration, permit, or  
27       other form of authorization required by an environmental agency to engage in a particular  
28       activity. “Environmental permit” includes, but is not limited to, activities subject to Chapter  
29       4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, if  
30       the activities are under the jurisdiction of an environmental agency. “Environmental permit”  
31       does not include any certification or decision pursuant to Division 3 (commencing with  
32       Section 21000).

33       **Comment.** Section 10125 continues former Public Resources Code Section 71012 without  
34       substantive change.

35   **§ 10130. “Participating permit agency”**

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36       10130. “Participating permit agency” means an environmental agency, other than the  
37       consolidated permit agency, that is responsible for the issuance of an environmental permit  
38       for a project.

39       **Comment.** Section 10130 continues former Public Resources Code Section 71016 without  
40       change.

41   **§ 10135. “Project”**

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42       10135. “Project” means an activity, the conduct of which requires an environmental  
43       permit from two or more environmental agencies.

44       **Comment.** Section 10135 continues former Public Resources Code Section 71013 without  
45       change.

1    **§ 10140. “Secretary”**

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2       10140. “Secretary” means the Secretary for Environmental Protection.

3       **Comment.** Section 10140 continues former Public Resources Code Section 71010 without  
4       change.

5                                    CHAPTER 3. CONSOLIDATED PERMITS

6                                    Article 1. General Provisions

7    **§ 11000. Construction of division**

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8       11000. This part shall not be construed to limit or abridge the powers and duties granted  
9       to a participating permit agency pursuant to the law that authorizes or requires the agency to  
10      issue an environmental permit for a project. Each participating permit agency shall retain its  
11      authority to make all decisions on all nonprocedural matters with regard to the respective  
12      component environmental permit that is within the scope of its responsibility, including,  
13      but not limited to, the determination of environmental permit application completeness,  
14      environmental permit approval or approval with conditions, or environmental permit denial.  
15      The consolidated permit agency may not substitute its judgment for that of a participating  
16      permit agency on these nonprocedural matters.

17      **Comment.** Section 11000 continues former Public Resources Code Section 71021(d)  
18      without substantive change.

19      ☞ **Note.** Subdivision (d) of Public Resources Code Section 71021 refers to “this  
20      division,” that is, Division 34 (commencing with Section 71000) of the Public Resources  
21      Code. At the time Section 71021 was enacted, only the provisions of what is now Part 1 of  
22      Division 34 existed. See 1993 Cal. Stat. ch. 419 § 5. It was in the next legislative session that  
23      the division was divided into two parts and the provisions of Part 2 (commencing with Section  
24      71050) were added. See 1994 Cal. Stat. ch. 1112, §§ 2-4. The Commission believes that the  
25      failure to amend the reference so that it referred to Part 1, rather than to the entirety of  
26      Division 34, was inadvertant. In continuing this section the reference has been so limited.

27                                    Article 2. Designation of Consolidated Permit Agency

28    **§ 11100. Request for designation**

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29       11100. (a) A permit applicant for a project may request the secretary to designate a  
30       consolidated permit agency to administer the processing and issuance of a consolidated  
31       permit for the project pursuant to this part. The secretary, in accordance with the guidelines  
32       and procedures adopted pursuant to Sections 11101 and 11102, shall, within 30 days of  
33       the date that the request is received, either designate a consolidated permit agency for the  
34       project or refer the designation to the council.

35       (b) A permit applicant who requests the designation of a consolidated permit agency shall  
36       provide the secretary with a description of the project, a preliminary list of the  
37       environmental permits that the project may require, the identity of any public agency that  
38       has been designated the lead agency for the project pursuant to Chapter 4.5 (commencing  
39       with Section 65920) of Division 1 of Title 7 of the Government Code or Division 3  
40       (commencing with Section 21000), and the identity of the participating permit agencies.  
41       The secretary may request any information from the permit applicant that is necessary to  
42       make the designation under subdivision (a), and may convene a scoping meeting of the



likely consolidated permit agency and participating permit agencies in order to make that designation.

**Comment.** Section 11100 continues former Public Resources Code Section 71021(a)-(b) without substantive change.

#### § 11101. Designation guidelines

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11101. (a) On or before January 1, 1995, the secretary shall establish an administrative process which may be used, at the request of a permit applicant for a project pursuant to Section 11100, for the designation of a consolidated permit agency for the project.

(b) That administrative process shall consist of the establishment of guidelines for designating the consolidated permit agency for the project. The guidelines shall be adopted as regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. In those cases where an environmental agency is the lead agency for purposes of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, or Division 3 (commencing with Section 21000), that environmental agency shall be the consolidated permit agency. In other cases, the guidelines shall require that at least the following factors be considered in determining which environmental agency has the greatest overall jurisdiction over the project:

(1) The types of facilities or activities that make up the project.


(2) The types of public health and safety and environmental concerns that should be considered in issuing environmental permits for the project.

(3) The environmental medium that may be affected by the project, the extent of those potential effects, and the environmental protection measures that may be taken to prevent the occurrence of, or to mitigate, those potential effects.

(4) The regulatory activity that is of greatest importance in preventing or mitigating the effects that the project may have on public health and safety or the environment.

(5) The statutory and regulatory requirements that apply to the project and the complexity of those requirements.

**Comment.** Section 11101 continues former Public Resources Code Section 71020(a)-(b) without change.

 **Note.** Subdivision (a) specifies a deadline for establishment of the designation procedure. This provision may be obsolete. The Commission would like to receive input on two questions: (1) Has the procedure required in subdivision (a) been established? (2) Does the deadline stated in subdivision (a) still serve a useful purpose?

#### § 11102. Referral to council

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11102. The secretary shall establish a procedure for referring projects to the council for the designation of a consolidated permit agency in any of the following circumstances:

(a) Because of the nature of the project, the guidelines adopted pursuant to Section 11101 do not provide clear guidance concerning which environmental agency should be designated the consolidated permit agency.

(b) The consolidated permit agency or a participating permit agency disagrees with the designation of the consolidated permit agency.

(c) The environmental agency designated as the consolidated permit agency under the guidelines declines the designation and participating permit agencies are not willing to accept designation as the consolidated permit agency.

**Comment.** Section 11102 continues former Public Resources Code Section 71020(c) without substantive change.

Article 3. Permit Procedures

**§ 11200. Consolidated permit agency**

11200. The consolidated permit agency shall serve as the main point of contact for the permit applicant with regard to the processing of the consolidated permit for the project and shall manage the procedural aspects of that processing consistent with existing laws governing the consolidated permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with Sections 11201 and 11202. In carrying out these responsibilities, the consolidated permit agency shall ensure that the permit applicant has all the information needed to apply for all the component environmental permits that are incorporated in the consolidated permit for the project, coordinate the review of those environmental permits by the respective participating permit agencies, ensure that timely environmental permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the environmental permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the project.

**Comment.** Section 11200 continues former Public Resources Code Section 71021(c) without substantive change.

**§ 11201. Meeting between consolidated permit agency and applicant**

11201. (a) Within 15 working days of the date that the consolidated permit agency is designated, the consolidated permit agency shall convene a meeting with the permit applicant for the project and the participating permit agencies.

(b) The consolidated permit agency may request any information from the applicant that is necessary to comply with its obligations under this section and Section 11202, consistent with the timelines set pursuant to this section and Section 11202.

(d) A summary of the decisions made pursuant to this section and Section 11202 shall be made available for public review upon the filing of the consolidated environmental permit application or environmental permit applications.

**Comment.** Section 11201 continues former Public Resources Code Section 71022 without substantive change, except that the substance of paragraphs (1) to (6) of subdivision (a) of former Section 71022 are continued in Section 11202.

**§ 11202. Meeting agenda**

11202. The agenda for a meeting pursuant to Section 11201 shall include at least all of the following matters:

(a) A determination of the environmental permits that are required for the project.

(b) A review of the environmental permit application forms and other application requirements of the agencies that are participating in the consolidated permit.

(c) A discussion of the option available to the permit applicant to use the consolidated permit application form that is authorized by subdivision (e) or (f) of Section 15399.56 of the Government Code in lieu of the separate application forms for each component environmental permit that would be provided by the consolidated permit agency and the participating permit agencies.

(d) A determination of the time lines that will be used by the consolidated permit agency and each participating permit agency to make environmental permit decisions, including the time periods required to determine if the environmental permit applications are complete or the consolidated permit application is complete, to review the application or applications,



and to process the component environmental permits, and the timelines that will be used by the consolidated permit agency to aggregate the component environmental permits into, and to issue, the consolidated permit. Notwithstanding Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 3 of Title 2 of the Government Code, and Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, the timelines established pursuant to this paragraph may, with the assent of the consolidated permit agency and each participating permit agency, commit the consolidated permit agency and each participating permit agency to act on the component environmental permit within time periods that are different than those required by Sections 65950 and 65952 of the Government Code, subdivisions (a) and (b) of Section 15376 of the Government Code, or other applicable provisions of law. However, no accelerated time period for the consideration of an environmental permit application may be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline, which require any of the following:

(1) Other agencies, interested persons, or the public to be given adequate notice of the application.

(2) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application.

(3) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application.

(e) The scheduling of any public hearings that are required to issue environmental permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings.

(f) A discussion of fee arrangements for the consolidated permit process, including an estimate of the fee required under Section 11204 and the billing schedule.

**Comment.** Section 11202 continues paragraphs (1) to (6) of subdivision (a) of former Public Resources Code Section 71022 without substantive change.

### § 11203. Coordinate permit decisions

11203. The consolidated permit agency shall ensure that the participating permit agencies make all the environmental permit decisions that are necessary for the incorporation of the environmental permits into the consolidated permit and act on the component environmental permits within the time periods established pursuant to subdivision (d) of Section 11202.

**Comment.** Section 11203 continues former Public Resources Code Section 71024 without substantive change.

### § 11204. Fees

11204. (a) A consolidated permit agency may charge and collect a reasonable fee from any person seeking a consolidated permit to recover the estimated costs incurred by the consolidated permit agency in carrying out the requirements of this division.

(b) The fees charged shall recover only the costs of performing those consolidated permit services and shall be either negotiated with the permit applicant in the meeting required pursuant to Section 11201, or shall be set by the environmental agency in advance of its designation as a consolidated permit agency for the project in a fee schedule adopted by the environmental agency for use in the event that the environmental agency is so designated. In addition, the billing process shall provide for accurate time and cost accounting and a billing cycle that provides for progress payments.

1     **Comment.** Section 11204 continues former Public Resources Code Section 71026 without  
2 substantive change.

3     **§ 11205. Incorporated environmental permits**

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4     11205. Each environmental permit incorporated in the consolidated permit shall have the  
5 legal status and the regulatory effect that is specified in the statute and regulations under  
6 which the environmental permit would be separately issued and shall be administered and  
7 enforced by the environmental agency that would have separately issued it.

8     **Comment.** Section 11205 continues former Public Resources Code Section 71025 without  
9 change.

10    **§ 11206. Tolling of time requirements**

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11    11206. If an applicant fails to provide information required for the processing of the  
12 component environmental permit applications for a consolidated permit or for the  
13 designation of a consolidated permit agency, the time requirements of this division shall be  
14 tolled until the information is provided.

15    **Comment.** Section 11206 continues former Public Resources Code Section 71029 without  
16 change.

17                                   Article 4. Review and Modification of Process

18    **§ 11300. Withdrawal from consolidated permit process**

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19    11300. (a) The permit applicant may withdraw from the consolidated permit process by  
20 submitting to the consolidated permit agency a written request that the process be  
21 terminated. Upon receipt of the request, the consolidated permit agency shall notify the  
22 secretary and each participating permit agency that a consolidated permit is no longer  
23 applicable to the project.

24    (b) The permit applicant may submit a written request to the consolidated permit agency  
25 that the permit applicant wishes a participating permit agency to withdraw from  
26 participation on the basis of a reasonable belief that the issuance of the consolidated permit  
27 would be accelerated if the participating permit agency withdraws. In that event, the  
28 participating permit agency shall withdraw from participation if the consolidated permit  
29 agency approves the request.

30    **Comment.** Section 11300 continues former Public Resources Code Section 71023 without  
31 change.

32    **§ 11301. Petition for review of permit process**

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33    11301. A petition by the permit applicant for review of an environmental agency action in  
34 issuing, denying, or amending an environmental permit, or any portion of a consolidated  
35 permit agency permit, shall be submitted by the permit applicant to the consolidated permit  
36 agency or the participating permit agency having jurisdiction over that portion of the  
37 consolidated permit and shall be processed in accordance with the procedures of that  
38 environmental agency. The environmental agency receiving the petition shall, within 30  
39 days, notify the other environmental agencies participating in the original consolidated  
40 permit.

41    **Comment.** Section 11301 continues former Public Resources Code Section 71027 without  
42 change.

1   **§ 11302. Meeting to consider petition**

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2       11302. If an applicant petitions for a significant amendment or modification to a  
3 consolidated permit application or any of its component environmental permit applications,  
4 the consolidated permit agency shall reconvene a meeting of the participating permit  
5 agencies, conducted in accordance with Sections 11201 and 11202.

6       **Comment.** Section 11302 continues former Public Resources Code Section 71028 without  
7 substantive change.

8                                   CHAPTER 4. TIME LIMIT APPEALS

9   **§ 12000. Appeal of agency delay**

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10       12000. (a) On or before December 31, 1994, the secretary shall adopt regulations  
11 establishing an expedited appeals process by which a petitioner or applicant may appeal any  
12 failure by an environmental agency to take timely action on the issuance or denial of an  
13 environmental permit in accordance with the time limits established pursuant to Sections  
14 11201 and 11202 or Section 25199.6 of the Health and Safety Code.

15       (b) If the secretary finds that the time limits under appeal have been violated without good  
16 cause, the secretary shall establish a date certain by which the environmental agency shall  
17 act on the permit application with adequate provision for the requirements of paragraphs (1)  
18 to (3), inclusive, of subdivision (d) of Section 11202, and provide for the full  
19 reimbursement of any filing or permit processing fees paid by the applicant to the  
20 environmental agency for the permit application under appeal.

21       (c) The determination of the secretary on an appeal shall be based only on procedural  
22 violations, including, but not limited to, the exceeding of time limits, not on any  
23 nonprocedural matter with regard to the environmental permit application or the  
24 environmental permit.

25       (d) In cases of a violation of time limits set pursuant to Sections 11201 and 11202, the  
26 determination of the secretary to order a reimbursement of any application filing fee  
27 pursuant to the regulations adopted pursuant to paragraph (2) of subdivision (b) shall only  
28 be applicable to the consolidated permit agency or to the participating permit agencies that  
29 are in violation of the time limits without showing good cause.

30       (e) Notwithstanding any other provision of this section, an appeal pursuant to  
31 subdivision (a) shall be only for violations of the time limits established pursuant to  
32 Sections 11201 and 11202 for those environmental agencies described in subdivisions (c)  
33 and (h) of Section 10120.

34       (f) For purposes of this section, “good cause” shall have the same meaning as defined in  
35 subdivision (h) of Section 15376 of the Government Code.

36       **Comment.** Section 12000 continues former Public Resources Code Section 71030 without  
37 substantive change. The last sentence of former subdivision (b) has been designated as  
38 subdivision (f).

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

43       **(2)** Subdivision (d) of Public Resources Code Section 71030 erroneously refers to  
44 “regulations adopted pursuant to paragraph (2) of subdivision (b).” The commission would  
45 like to receive input on the intended meaning of this reference.

CHAPTER 5. STANDARDIZED PERMITS

**§ 13000. Precertification of equipment and processes**

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13000. (a) Each state environmental agency, as defined in subdivisions (a) and (b) of Section 10120, in consultation and coordination with all interested parties, may adopt a process to precertify equipment and processes as being in compliance with any laws and regulations applicable to the state environmental agency. The secretary shall ensure that, to the extent one or more state environmental agencies adopt regulations pursuant to this section, the regulations are standardized and coordinated in the most efficient and effective manner feasible.

(b) If a state environmental agency adopts regulations pursuant to subdivision (a), it shall, to the extent feasible and appropriate, adopt standardized permits to incorporate equipment and processes precertified pursuant to subdivision (a). Where applicable, the state environmental agencies shall include, as part of their precertification, a model standardized permit ordinance that local environmental agencies may adopt.

(c) Local environmental agencies, as defined in subdivisions (c) to (h), inclusive, of Section 10120, may adopt standardized permits to incorporate equipment and processes precertified pursuant to subdivision (a). Nothing in this section shall limit the ability of a local environmental agency to adopt additional requirements as part of the standardized permit to meet local health and safety concerns.

(d) For purposes of this section, a “standardized permit” means a permit for pollution sources or activities that are the same or similar in their nature, and which require the submission of the same or similar information for purposes of issuing, monitoring, and enforcing permit requirements.

(e) Nothing in this section shall result in the reduction or elimination of environmental or public health protection or public participation, as provided under all applicable laws, in the issuance of any permit authorized by this section.

(f) Any environmental agency may charge a reasonable fee for costs incurred pursuant to this section, not to exceed estimated reasonable costs. Any fee shall be subject to Section 57001 of the Health and Safety Code.

**Comment.** Section 13000 continues former Public Resources Code Section 71031 without substantive change.

CHAPTER 6. PERMIT CONSOLIDATION ZONE PILOT PROGRAM

Article 1. General Provisions

**§ 14000. Implementation of chapter**

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14000. This chapter shall be implemented by the secretary only to the extent consistent with federal law and any delegation agreements with federal agencies.

**Comment.** Section 14000 continues former Public Resources Code Section 71035.9 without change.

**§ 14001. Duration of chapter**

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14001. This chapter shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends that date.

1     **Comment.** Section 14001 continues former Public Resources Code Section 71035.11  
2 without change.

## 3                                   Article 2. Definitions

### 4     **§ 14100. Application of definitions**

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5         14100. Unless the provision or context otherwise requires, the definitions in this article  
6 govern the construction of this chapter.

7     **Comment.** Section 14100 restates the introductory clause of former Public Resources Code  
8 Section 71035 without substantive change.

9     ☞ **Note.** Health & Safety Code Section 106615 provides definitions, but does not state  
10 their application. The context implies that the definitions were intended to apply to Article 1  
11 (commencing with Section 106500) of Chapter 4 of Part 1 of Division 104 of the Health &  
12 Safety Code, added here as Chapter 1 (commencing with Section 8000) of Part 2 of Division  
13 2 of the Environment Code. Section 14100 codifies this implication.

### 14    **§ 14105. “Certified unified program agency”**

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15         14105. “Certified unified program agency” means a certified unified program agency as  
16 designated under Chapter 6.11 (commencing with Section 25404) of Division 20 of the  
17 Health and Safety Code.

18     **Comment.** Section 14105 continues former Public Resources Code Section 71035(a)  
19 without substantive change.

### 20    **§ 14110. “Environmental agency”**

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21         14110. “Environmental agency” means an environmental agency as defined in  
22 subdivisions (a) to (g), inclusive, of Section 10120.

23     **Comment.** Section 14110 continues former Public Resources Code Section 71035(b)  
24 without substantive change.

### 25    **§ 14115. “Environmental permit”**

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26         14115. “Environmental permit” means any environmental permit issued by an  
27 environmental agency or a certified unified program agency.

28     **Comment.** Section 14115 continues former Public Resources Code Section 71035(c)  
29 without substantive change.

### 30    **§ 14120. “Facility compliance plan”**

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31         14120. “Facility compliance plan” means a plan that does all of the following:

32         (1) Contains information and data for all emissions and discharges from the facility and  
33 the management of solid waste and hazardous waste, including all information relevant to  
34 individual environmental permits that would otherwise be required for the facility.

35         (2) Specifies measures, including, but not limited to, monitoring, reporting, emissions  
36 limits, materials handling, and throughputs, to be taken by the project applicant to ensure  
37 compliance with all environmental permits that would otherwise be required.

38         (3) Meets the requirements of all individual environmental permits that would otherwise  
39 be required.

40         (4) Ensures compliance with all applicable environmental rules, regulations, laws, and  
41 ordinances.

**Comment.** Section 14120 continues former Public Resources Code Section 71035(d) without substantive change.

### Article 3. Pilot Program

#### § 14200. Establishment

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14200. On or before January 1, 1997, the secretary shall adopt regulations establishing the permit consolidation zone pilot program consisting of all of the following:


(a) An application process whereby cities and counties may request that all or part of their jurisdiction be designated a permit consolidation zone.

(b) An administrative process which may be used for new or expanded facilities within a designated permit consolidation zone, at the option of the permit applicant, to substitute a facility compliance plan for any environmental permit. The application process shall contain a means to determine that new or expanded facilities are in compliance with all applicable laws and requirements.

(c) A process to coordinate inspection and enforcement activities among the agencies that would otherwise have issued individual permits for facilities choosing to be permitted through a facility compliance plan.

(d) Procedures pursuant to which applicant cities and counties may amend or terminate the designation.

**Comment.** Section 14200 continues former Public Resources Code Section 71035.1 without change.

 **Note.** This section specifies a deadline for adoption of regulations. This provision may be obsolete. The Commission would like to receive input on two questions: (1) Have the regulations been adopted as required? (2) Does the deadline provision still serve a useful purpose?

#### § 14201. Regulations

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14201. The regulations required by Section 14200 shall be developed by the secretary in coordination with the Secretary for Trade and Commerce, the Secretary of the Resources Agency, and the Secretary for Business, Transportation and Housing, and in consultation with representatives of cities, counties, local environmental agencies, and certified unified program agencies.

**Comment.** Section 14201 continues former Public Resources Code Section 71035.2 without substantive change.

#### § 14202. Application for designation

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14202. The application process required by subdivision (a) of Section 14200 shall provide for all of the following:

(a) A competitive application process which designates not more than 20 cities and counties with a population greater than 5,000 as determined in the 1990 census, or parts thereof, as a permit consolidation zone.

(b) The award of designations by a review panel composed of the secretary and the Secretary for Trade and Commerce.

(c) The award of designations based on the applications submitted. In awarding designations, the review panel shall consider the extent to which the applicant has instituted permit streamlining measures for permits under its authority, whether there is a single certified unified program agency within the boundaries of the area proposed in the



1 application, whether provisions are included to ensure adequate public participation in the  
2 final permit decisions on facilities subject to a facility compliance plan, and the extent of  
3 existing or proposed agreements between the applicant and other local, state, and regional  
4 permitting agencies with jurisdiction within the boundaries of the area proposed in the  
5 application.

6 (d) A requirement that all cities, counties, and local environmental agencies with permit  
7 authority over the projects subject to a facility compliance plan within the proposed permit  
8 consolidation zone agree to the designation.

9 (e) In awarding designations, ensure a diverse range of permit consolidation zones,  
10 including, but not limited to, urban and rural counties, large and small cities, and  
11 communities encompassing military base or reservations reuse.

12 **Comment.** Section 14202 continues former Public Resources Code Section 71035.3  
13 without change.

#### 14 **§ 14203. Termination or amendment of designation**

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15 14203. (a)(1) A designated city or county may terminate its involvement in the pilot  
16 program established pursuant to this chapter following 180 days' written notice to the  
17 secretary. The permit consolidation zone shall be deemed terminated at the end of the 180-  
18 day notice period.

19 (2) Notwithstanding any other provision of law, any facility within the terminated permit  
20 consolidation zone permitted through a facility compliance plan pursuant to Section 14300  
21 shall be deemed to hold valid environmental permits until individual environmental permits  
22 are issued or denied for the facility by the applicable environmental agencies.

23 (b) An application for amendment to a permit consolidation zone designation shall be  
24 submitted by the applicable city or county to the review panel under Section 14202. Any  
25 amendment shall become effective within 90 days after the date of receipt by the review  
26 panel.

27 (c) The procedure for replacing a facility compliance plan in whole or in part with  
28 individual environmental permits, as a result of an amendment or termination of a permit  
29 consolidation zone designation, shall be specified in the applications submitted pursuant to  
30 Section 14202.

31 **Comment.** Section 14203 continues former Public Resources Code Section 71035.4  
32 without substantive change.

#### 33 **§ 14204. Reports**

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34 14204. The secretary and the Secretary for Trade and Commerce shall prepare and  
35 submit an annual report to the Governor and the Legislature by January 31 of each year,  
36 containing the following:

37 (a) A description and location of facilities permitted through a facility compliance plan,  
38 including the number of individual environmental permits that otherwise would have been  
39 required, an estimate of cost savings to the participating facilities and the involved  
40 environmental agencies as a result of the pilot program, and the degree to which compliance  
41 with the applicable environmental laws and regulations has been maintained or increased  
42 through the pilot program.

43 (b) As appropriate, recommendations for modification, expansion, or elimination of the  
44 pilot program established by this chapter.

45 (c) Recommendations for how the pilot program could be expanded to complex facilities  
46 including, but not limited to, whether the 45-day review of facility plan completeness and  
47 adequacy should be expanded.

1     **Comment.** Section 14204 continues former Public Resources Code Section 71035.10  
2 without change.

## 3                             Article 4. Facility Compliance Plan

### 4     **§ 14300. Facility compliance plan**

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5         14300. The facility compliance plan substituted pursuant to subdivision (b) of Section  
6 14200 shall provide for all of the following:

7         (a) Substitution of the plan for all individual state agency and local environmental permits  
8 that would otherwise be required for the proposed project, unless otherwise specified in the  
9 designation application submitted by the applicant city or county.

10        (b) Measures to be taken by the project applicant to ensure compliance with all applicable  
11 rules, regulations, ordinances, and statutes and to ensure that the facility compliance plan is  
12 as enforceable as individual permits.

13        (c) The equivalent opportunity for public notice, hearing, comment, participation,  
14 administrative appeal, and judicial review as provided in the environmental permit process  
15 that would otherwise be applicable.

16        (d) All applicable individual environmental permits for the project to be deemed to have  
17 been issued upon receipt of a complete and adequate facility compliance plan by the  
18 secretary.

19        (e) A filing fee to reflect the reasonable costs of all agencies that would otherwise issue  
20 individual permits for the project covered by the facility compliance plan, and that also  
21 reflects the reduced costs of the applicable agencies through reduced staff review of  
22 individual permits. Any fee shall be subject to Section 57001 of the Health and Safety  
23 Code. The project applicant shall not be liable for any application fees for any individual  
24 permit that is otherwise addressed in the facility compliance plan. Local agencies shall  
25 identify and quantify any local fees in the application submitted pursuant to Section 14202.

26     **Comment.** Section 14300 continues former Public Resources Code Section 71035.5  
27 without substantive change.

### 28     **§ 14301. Adequacy of compliance plan**

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29         14301. (a) Environmental agencies with jurisdiction over portions of the compliance plan  
30 shall determine if a compliance plan is complete and adequate, in accordance with Sections  
31 14301 to 14303, inclusive, as it relates to their particular area of jurisdiction.

32         (b) A determination of completeness and adequacy shall be based solely upon whether  
33 there is compliance with the rules, regulations, ordinances, and statutes governing the  
34 environmental agency. As part of the determination of adequacy, an environmental agency  
35 may require additional conditions necessary, in its judgment, to make the facility  
36 compliance plan consistent with its rules, regulations, ordinances, and statutes.

37         (c) If an environmental agency possessed discretionary authority over a facility prior to  
38 the enactment of this chapter, then the determination of completeness and adequacy shall be  
39 a discretionary action for purposes of the California Environmental Quality Act (Division 3  
40 commencing with Section 21000)). If, subsequent to the enactment of this chapter, an  
41 environmental agency, by regulation, eliminates its discretionary authority over a facility,  
42 then the determination of completeness and adequacy shall not be a discretionary action for  
43 purposes of the California Environmental Quality Act.

44         (d) An environmental agency shall transmit its determination to the secretary within 45  
45 days from the date of receipt of the facility compliance plan.



1     **Comment.** Section 14301 continues former Public Resources Code Section 71035.6(a)-(d)  
2 without substantive change.

3     **§ 14302. Determination of inadequacy**

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4     14302. (a)(1) If an environmental agency determines that a facility compliance plan is not  
5 complete and adequate, the agency shall, within the 45-day period specified in subdivision  
6 (d) of Section 14301, transmit that determination, in writing, to the project applicant. The  
7 agency's determination shall specify those parts of the plan that are incomplete or  
8 inadequate and shall indicate the manner in which they can be made complete and adequate,  
9 including a list and thorough description of the specific information needed to make the  
10 plan complete and adequate. The project applicant shall submit materials to the  
11 environmental agency in response to the list and description.

12     (2) Not later than 30 calendar days after receipt of the submitted materials, the  
13 environmental agency shall determine in writing whether they are complete and adequate  
14 and shall immediately transmit that determination to the applicant. If the written  
15 determination is not made within the 30-day period, the application together with the  
16 submitted materials shall be deemed complete and adequate for purposes of this chapter.

17     (3) If the plan together with the submitted materials are determined not to be complete and  
18 adequate pursuant to paragraph (2), the environmental agency shall provide a process for  
19 the applicant to appeal that decision in writing to the governing body of the agency or, if  
20 there is no governing body, to the director of the agency, as provided by that agency. There  
21 shall be a final written determination by the agency on the appeal not later than 60 calendar  
22 days after receipt of the applicant's written appeal. Notwithstanding a decision pursuant to  
23 paragraph (2) that the application and submitted materials are not complete and adequate, if  
24 the final written determination on the appeal is not made within that 60-day period, the  
25 application with the submitted materials shall be deemed complete and adequate for the  
26 purposes of this chapter.

27     (4) Nothing in Sections 14301 to 14303, inclusive, precludes an applicant and an  
28 environmental agency from mutually agreeing to an extension of any time limit provided by  
29 Sections 14301 to 14303, inclusive.

30     **Comment.** Section 14302 continues former Public Resources Code Section 71035.6(e)  
31 without substantive change.

32     **§ 14303. Effect of facility compliance plan**

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33     14303. All applicable individual environmental permits for the project shall be deemed to  
34 have been issued upon receipt of a complete and adequate facility compliance plan, as  
35 determined by the secretary, after receiving the determinations of completeness and  
36 adequacy from environmental agencies pursuant to subdivision (a) of Section 14301. In  
37 determining completeness and adequacy, the secretary shall not substitute his or her  
38 judgment for that of the applicable environmental agencies.

39     **Comment.** Section 14303 continues former Public Resources Code Section 71035.6(f)  
40 without substantive change.

41     **§ 14304. Secretary; regulatory assistance**

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42     14304. The secretary shall provide regulatory assistance with regard to projects permitted  
43 through a facility compliance plan.

44     **Comment.** Section 14304 continues former Public Resources Code Section 71035.7  
45 without change.

1   **§ 14305. Prohibited projects**

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2       14305. Facility compliance plans may not be applied to projects involving any of the  
3 following:

- 4       (a) The incineration of wastes.  
5       (b) The storage, treatment, transportation, or disposal of radioactive materials.  
6       (c) Other activities that the secretary determines, based on risks to the environment and  
7 the public health and safety, to be appropriately regulated through individual permits.  
8       (d) Other activities within a specific permit consolidation zone as requested by the city or  
9 county in its application submitted pursuant to Section 14202.

10      **Comment.** Section 14305 continues former Public Resources Code Section 71035.8  
11 without change.

12                   **PART 4. ENVIRONMENTAL DATA REPORTING**

13                   **CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS**

14      **§ 15000. Findings and declarations**

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15       15000. The Legislature hereby finds and declares all of the following:

16       (a) Environmental data is currently required by, and submitted to, a variety of public  
17 agencies with jurisdiction at the state, regional, and local levels of government. The same  
18 information is often submitted by the regulated community to different public agencies,  
19 almost always on one or more paper forms. Since a different format is now required for  
20 each report, data items are required to be reformatted one or more additional times at a cost  
21 of time and money that brings no accompanying environmental benefit.

22       (b) The blizzard of incoming paper reports often exceeds the capacity of a public agency  
23 to digest the information. In some cases, the public agency cannot look at or evaluate all of  
24 the data received on paper. That problem of data utility is aggravated further by the current  
25 wasteful and error-laden practice of retyping data from paper forms into the public agency's  
26 computer data base.

27       (c) In many cases, reported data originates in a computer data base maintained by the  
28 company submitting the report. The retyping of data by the public agency could be  
29 completely eliminated if business entities were permitted to submit the data in a single  
30 electronic format which every public agency could then use. That standard approach would  
31 permit both business entities and public agencies to save time and money that is now spent  
32 in reformatting, reentering, and reediting data. The data would also be available more  
33 quickly to any member of the public interested in using the data.

34       (d) Business entities already use common, standardized electronic data formats and  
35 protocols to exchange commercial and technical information on materials to be transported  
36 and used in manufacturing. That application of electronic data interchange is an important  
37 factor in determining the competitiveness of business entities in this state. The imposition  
38 by government of barriers to, or multiple incompatible data format requirements on, those  
39 existing electronic interchanges impairs the competitiveness of business entities without  
40 bringing any accompanying environmental benefit.

41       (e) It is the policy of the state, for environmental and hazardous materials reporting  
42 purposes, to employ nonproprietary electronic data formats and transmission protocols that  
43 already function effectively for ongoing commercial and industrial data exchanges between  
44 business entities and across different computer operating systems instead of expending  
45 public funds to develop public agency-specific formats and protocols.


**Comment.** Section 15000 continues former Public Resources Code Section 71050 without change.

### § 15001. Limitation

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15001. Nothing in this part limits any existing authority of a local agency to require the submission of environmental data.

**Comment.** Section 15001 generalizes subdivision (e) former Public Resources Code Section 71068.

 **Note.** Public Resources Code Section 71068(e) provides that nothing in that section limits the existing authority of local agencies to require the submission of environmental data. The first four subdivisions of that section addressed four different substantive issues. Consequently, these subdivisions have been turned into separate sections in this draft, as follows:

- Subdivision (a) (adoption of electronic standards for use) — proposed section 15205.
- Subdivision (b) (local agency petition for addition to data standards) — proposed section 15203
- Subdivision (c) (effect of use of standards) — proposed section 15501
- Subdivision (d) (use of standards voluntary) — proposed section 15502

It isn't clear which of these subdivisions (now sections) might raise the implication that a local agency's authority is being limited, so it isn't clear how the limitation expressed in subdivision (e) was intended to apply. Rather than referring to each of these sections, proposed Section 15001 generalizes the limitation, making clear that nothing in the part limits the authority of local agencies.


## CHAPTER 2. DEFINITIONS

### § 15100. Application of definitions

---

15100. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

**Comment.** Section 15100 is new.

 **Note.** Chapter 2 (commencing with Section 71053) of Part 2 of Division 34 of the Public Resources Code provides definitions, but does not state their application. The context implies that the definitions are intended to apply to the part. Section 15100 codifies this implication.

### § 15105. “Advisory committee”

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“Advisory committee” means the Environmental Data Management Advisory Committee established pursuant to Section 15400.

**Comment.** Section 15105 continues former Public Resources Code Section 71053 without substantive change.

### § 15110. “Agency”

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15110. “Agency” means the California Environmental Protection Agency.

**Comment.** Section 15110 continues former Public Resources Code Section 71054 without change.

1   **§ 15115. “Secretary”**

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2       15115. “Secretary” means the Secretary for Environmental Protection.

3       **Comment.** Section 15115 continues former Public Resources Code Section 71055 without  
4       change.

5                                   **CHAPTER 3. DATA MANAGEMENT**

6                                   **Article 1. Standards**

7   **§ 15200. Information technology standards**

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8       15200. The secretary shall develop and adopt information technology standards by which  
9       public agencies and regulated business entities and the other members of the regulated  
10      community may use computers and other information technology to specify, request,  
11      report, collect, communicate, process, display, disseminate, or otherwise utilize data for  
12      environmental data reporting requirements that are imposed in the course of granting  
13      permits or other authorizations to operate issued pursuant to specified provisions of state  
14      and federal law and regulations.

15      **Comment.** Section 15200 continues former Public Resources Code Section 71060 without  
16      change.

17   **§ 15201. Standardized format and protocol**

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18      15201. The secretary shall establish a standardized electronic format and protocol for the  
19      exchange of electronic data for the purpose of meeting environmental data reporting or  
20      other usage requirements that are imposed in the course of granting permits or other  
21      authorizations to operate pursuant to all of the following laws and regulations adopted  
22      pursuant to those laws:

23      (a) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with  
24      Section 25280), and Chapter 6.95 (commencing with Section 25500) of Division 20 of the  
25      Health and Safety Code.

26      (b) Chapter 2 (commencing with Section 38750) of Title 7 of Part 4 of Division 4.

27      (c) Division 7 (commencing with Section 13000) of the Water Code.

28      (d) The Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.).

29      (e) The Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec.  
30      11001 et seq.).

31      (f) Any other law relating to environmental protection, including, but not limited to,  
32      hazardous waste, substances, and materials, as determined by the secretary.

33      **Comment.** Section 15201 continues former Public Resources Code Section 71061 without  
34      change.

35   **§ 15202. Format and protocol elements**

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36      15202. The secretary shall identify the environmental data reporting or usage  
37      requirements imposed pursuant to the laws listed in Section 15201 and reflect those  
38      requirements in the elements of the standardized electronic format and protocol, develop a  
39      data dictionary that describes the characteristics of each format element and its relationship  
40      to each environmental data reporting or usage requirement, and develop evaluation criteria  
41      by which the successful use of the standardized electronic format and protocol may be  
42      measured.

**Comment.** Section 15202 continues former Public Resources Code Section 71062 without substantive change.

### **§ 15203. Petition for inclusion of data element**

---

15203. Any local agency requiring the submission of an element of environmental data not found in the data dictionary maintained by the secretary pursuant to Section 15202 may petition the secretary for inclusion of that data element. The secretary shall include an additional data item in the data dictionary only if the local agency demonstrates both of the following:

(a) One of the following applies:

(1) A specific requirement for that item in existing law or regulation.

(2) A principle of mathematics or science that requires the collection of that data item to meet another specific purpose under the applicable law.

(b) There is no other way to meet the local agency's needs using combinations of data elements already incorporated into the data dictionary.

**Comment.** Section 15203 continues former Public Resources Code Section 71068(b) without substantive change.

### **§ 15204. Format and protocol criteria**

---

15204. To the fullest extent practicable to public agencies and business entities, the secretary, in close consultation with the advisory committee, shall ensure that the standardized electronic format and protocol established pursuant to Section 15201 meets all of the following criteria:

(a) The format and protocol conforms with, or is compatible with, data interchange formats and protocols already in use in the regulated community for moving data from computer to computer, so that the format and pilot program may be implemented promptly, without the need for research and development into untried formats and protocols.

(b) The format and protocol works independently of the type of computer hardware, software, operating system, data storage device, and telecommunications equipment employed by prospective senders and receivers.

(c) The format and protocol accommodates the addition of new or revised data element specifications without requiring users to make costly modifications to the hardware or software that they employ to submit electronic data.

**Comment.** Section 15204 continues former Public Resources Code Section 71065 without substantive change.

### **§ 15205. Adoption of standardized format and protocol**

---

15205. Upon the completion of a demonstration of any standardized electronic format and protocol and alternative signature technique pursuant to this part, to the satisfaction of the advisory committee, the secretary shall adopt that electronic format and protocol standard for use as an optional alternative to submitting environmental data on paper to any state or local agency.

**Comment.** Section 15205 continues former Public Resources Code Section 71068(a) without substantive change.

### **§ 15206. Electronic signatures**

---

15206. The secretary shall prescribe one or more techniques by which a report may be signed electronically by a person who would otherwise place a written signature on a paper

1 version of the report. The prescribed electronic signature shall be binding on all persons  
2 and for all purposes under the law as if the signature had been made in ink on the  
3 equivalent paper document. The secretary may also prescribe a paper form for signature  
4 and certification of a report submitted in the prescribed file format on tangible magnetic  
5 media, including, but not limited to, floppy disks or magnetic tape.

6 **Comment.** Section 15206 continues former Public Resources Code Section 71066 without  
7 change.

## 8 Article 2. Pilot Project

### 9 § 15300. Pilot project

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10 15300. (a) The proposed standardized electronic format and protocol required by Section  
11 15201 and the alternative signature techniques required by Section 15206 shall be tested in  
12 the Counties of Santa Clara and San Mateo as a pilot program, for a period determined by  
13 the secretary, and at the initiative of business entity report submitters who have organized  
14 to implement electronic data interchange among themselves for other business purposes and  
15 who wish to employ the same technology for exchanging environmental data. Any of the  
16 participating business entities located within those counties who are required to comply  
17 with the environmental data reporting requirements imposed pursuant to the laws listed in  
18 Section 15201, may comply by submitting the data in the prescribed standardized electronic  
19 format.

20 (b) The secretary shall meet the requirements of Section 15300 using resources  
21 contributed exclusively by business participants. The secretary may accept and use  
22 computer hardware, software, and support services furnished by the industry or business  
23 participants at their own cost in order for the agency to participate in the pilot program. No  
24 public funds shall be encumbered in order to conduct, or pay for, any part of the pilot  
25 program originally undertaken or provided by any business participant. The brands of  
26 products employed shall not be identified in public, nor shall their use be deemed an  
27 endorsement of any particular brand or proprietary approach to electronic data interchange.

28 **Comment.** Section 15300 continues former Public Resources Code Section 71063 without  
29 substantive change.

## 30 Article 3. Environmental Data Management Advisory Committee

### 31 § 15400. Advisory committee

---

32 15400. (a) There is in the agency the Environmental Data Management Advisory  
33 Committee. The advisory committee shall consist of not more than seven members  
34 appointed by the secretary. The secretary shall select members who represent business,  
35 government, and environmental groups, and who have proven expertise and current  
36 knowledge in the field of electronic data exchange.


37 (b) The advisory committee shall advise the secretary on the quickest, most effective, and  
38 least expensive alternative systems of electronic standards for formatting data.

39 (c) On or before July 1, 1996, the advisory committee shall submit a report to the  
40 secretary which describes the pilot program conducted pursuant to Section 15300. This  
41 report shall include, but is not limited to, an analysis of the costs and benefits of the format,  
42 protocol, and signature techniques used in the pilot program, a discussion of the results  
43 obtained by using the evaluation criteria developed pursuant to Section 15202, and a  
44 discussion of the implications for statewide implementation of the program.



(d) The meetings of the advisory committee shall be open to the public and shall provide an opportunity for the public to be heard on matters considered by the advisory committee.

**Comment.** Section 15400 continues former Public Resources Code Section 71064 without substantive change. The reference, in subdivision (b), to the date on which the advisory committee was to begin its work (March 1, 1995) is obsolete and has been omitted.

 **Note.** Subdivision (c) specifies a deadline for submission of the advisory committee's report. This provision may be obsolete. The Commission would like to receive input on two questions: (1) Has the advisory committee completed its report? (2) Does the report requirement continue to serve a useful purpose?

## Article 4. Effect of Standards

### § 15500. Data errors

---

15500. Public agencies shall continue their current data auditing practices, and shall work with data submitters to correct all kinds of data error encountered. The pilot program shall require that each participant maintain an audit trail as part of the evaluation criteria so that inspectors and other evaluators may ensure that the data submitted comport with the data received along the electronic link.

**Comment.** Section 15500 continues former Public Resources Code Section 71067 without change.

### § 15501. Effect of electronic data transfer

---

15501. The electronic submission of environmental data to any state or local agency in accordance with the data standards adopted under this chapter constitutes compliance with the environmental data reporting or other usage requirements imposed pursuant to the laws specified in subdivisions (a) to (f), inclusive, of Section 15201, and has the same force and effect as if the data had been submitted in ink on paper.

**Comment.** Section 15501 continues former Public Resources Code Section 71068(c) without substantive change.

### § 15502. Use of standards voluntary

---

15502. Notwithstanding any other provision of law, no person or state or local agency shall be required to submit or receive environmental data electronically, but every state or local agency that elects to engage in electronic data management with regard to environmental data shall employ the electronic reporting standards adopted by the secretary under this part.

**Comment.** Section 15502 continues former Public Resources Code Section 71068(d) without substantive change.

## DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

### CHAPTER 1. POLICY

### § 21000. Legislative findings and declarations

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21000. The Legislature finds and declares as follows:

1 (a) The maintenance of a quality environment for the people of this state now and in the  
2 future is a matter of statewide concern.

3 (b) It is necessary to provide a high-quality environment that at all times is healthful and  
4 pleasing to the senses and intellect of man.

5 (c) There is a need to understand the relationship between the maintenance of high-quality  
6 ecological systems and the general welfare of the people of the state, including their  
7 enjoyment of the natural resources of the state.

8 (d) The capacity of the environment is limited, and it is the intent of the Legislature that  
9 the government of the state take immediate steps to identify any critical thresholds for the  
10 health and safety of the people of the state and take all coordinated actions necessary to  
11 prevent the thresholds being reached.

12 (e) Every citizen has a responsibility to contribute to the preservation and enhancement of  
13 the environment.

14 (f) The interrelationship of policies and practices in the management of natural resources  
15 and waste disposal requires systematic and concerted efforts by public and private interests  
16 to enhance environmental quality and to control environmental pollution.

17 (g) It is the intent of the Legislature that all agencies of the state government which  
18 regulate activities of private individuals, corporations, and public agencies which are found  
19 to affect the quality of the environment, shall regulate these activities so that major  
20 consideration is given to preventing environmental damage, while providing a decent home  
21 and satisfying living environment for every Californian.

22 **Comment.** Section 21000 continues former Public Resources Code Section 21000 without  
23 change.

#### 24 § 21001. Policy of state

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25 21001. The Legislature further finds and declares that it is the policy of the state to:

26 (a) Develop and maintain a high-quality environment now and in the future, and take all  
27 action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

28 (b) Take all action necessary to provide the people of this state with clean air and water,  
29 enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom  
30 from excessive noise.

31 (c) Prevent the elimination of fish or wildlife species due to man's activities, insure that  
32 fish and wildlife populations do not drop below self-perpetuating levels, and preserve for  
33 future generations representations of all plant and animal communities and examples of the  
34 major periods of California history.

35 (d) Ensure that the long-term protection of the environment, consistent with the provision  
36 of a decent home and suitable living environment for every Californian, shall be the guiding  
37 criterion in public decisions.

38 (e) Create and maintain conditions under which man and nature can exist in productive  
39 harmony to fulfill the social and economic requirements of present and future generations.

40 (f) Require governmental agencies at all levels to develop standards and procedures  
41 necessary to protect environmental quality.

42 (g) Require governmental agencies at all levels to consider qualitative factors as well as  
43 economic and technical factors and long-term benefits and costs, in addition to short-term  
44 benefits and costs and to consider alternatives to proposed actions affecting the  
45 environment.

46 **Comment.** Section 21001 continues former Public Resources Code Section 21001 without  
47 change.



1   **§ 21001.1. Public projects**

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2       21001.1. The Legislature further finds and declares that it is the policy of the state that  
3 projects to be carried out by public agencies be subject to the same level of review and  
4 consideration under this division as that of private projects required to be approved by  
5 public agencies.

6       **Comment.** Section 21001.1 continues former Public Resources Code Section 21001.1  
7 without change.

8   **§ 21002. Feasible alternatives and mitigation measures**

---

9       21002. The Legislature finds and declares that it is the policy of the state that public  
10 agencies should not approve projects as proposed if there are feasible alternatives or  
11 feasible mitigation measures available which would substantially lessen the significant  
12 environmental effects of the projects, and that the procedures required by this division are  
13 intended to assist public agencies in systematically identifying both the significant effects of  
14 proposed projects and the feasible alternatives or feasible mitigation measures which will  
15 avoid or substantially lessen the significant effects. The Legislature further finds and  
16 declares that in the event specific economic, social, or other conditions make infeasible the  
17 project alternatives or mitigation measures, individual projects may be approved in spite of  
18 one or more significant effects thereof.

19       **Comment.** Section 21002 continues former Public Resources Code Section 21002 without  
20 change. Uncodified statutory provisions applicable to former Public Resources Section 21002  
21 now apply to this section. See, e.g., 1976 Cal. Stat. ch. 1312, § 21 (legislative intent).

22   **§ 21002.1. Use of environmental impact reports**

---

23       21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature  
24 hereby finds and declares that the following policy shall apply to the use of environmental  
25 impact reports prepared pursuant to this division:

26       (a) The purpose of an environmental impact report is to identify the significant effects on  
27 the environment of a project, to identify alternatives to the project, and to indicate the  
28 manner in which those significant effects can be mitigated or avoided.

29       (b) Each public agency shall mitigate or avoid the significant effects on the environment  
30 of projects that it carries out or approves whenever it is feasible to do so.

31       (c) If economic, social, or other conditions make it infeasible to mitigate one or more  
32 significant effects on the environment of a project, the project may nonetheless be carried  
33 out or approved at the discretion of a public agency if the project is otherwise permissible  
34 under applicable laws and regulations.

35       (d) In applying the policies of subdivisions (b) and (c) to individual projects, the  
36 responsibility of the lead agency shall differ from that of a responsible agency. The lead  
37 agency shall be responsible for considering the effects, both individual and collective, of all  
38 activities involved in a project. A responsible agency shall be responsible for considering  
39 only the effects of those activities involved in a project which it is required by law to carry  
40 out or approve. This subdivision applies only to decisions by a public agency to carry out  
41 or approve a project and does not otherwise affect the scope of the comments that the public  
42 agency may wish to make pursuant to Section 21104 or 21153.

43       (e) To provide more meaningful public disclosure, reduce the time and cost required to  
44 prepare an environmental impact report, and focus on potentially significant effects on the  
45 environment of a proposed project, lead agencies shall, in accordance with Section 21100,  
46 focus the discussion in the environmental impact report on those potential effects on the

environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

**Comment.** Section 21002.1 continues former Public Resources Code Section 21002.1 without change. Uncodified statutory provisions applicable to former Public Resources Section 21002.1 now apply to this section. See, e.g., 1976 Cal. Stat. ch. 1312, § 21 (legislative intent).

### § 21003. Efficiency considerations

---

21003. The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

**Comment.** Section 21003 continues former Public Resources Code Section 21003 without change.

#### § 21003.1. Public comment

---

21003.1. The Legislature further finds and declares it is the policy of the state that:

(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

**Comment.** Section 21003.1 continues former Public Resources Code Section 21003.1 without change.

1    **§ 21004. Agency powers**

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2       21004. In mitigating or avoiding a significant effect of a project on the environment, a  
3 public agency may exercise only those express or implied powers provided by law other  
4 than this division. However, a public agency may use discretionary powers provided by  
5 that other law for the purpose of mitigating or avoiding a significant effect on the  
6 environment subject to the express or implied constraints or limitations that may be  
7 provided by law.

8       **Comment.** Section 21004 continues former Public Resources Code Section 21004 without  
9 change. Uncodified statutory provisions applicable to former Public Resources Section 21004  
10 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1438, § 4 (legislative findings and  
11 declarations).

12    **§ 21005. Judicial review**

---

13       21005. (a) The Legislature finds and declares that it is the policy of the state that  
14 noncompliance with the information disclosure provisions of this division which precludes  
15 relevant information from being presented to the public agency, or noncompliance with  
16 substantive requirements of this division, may constitute a prejudicial abuse of discretion  
17 within the meaning of Sections 21168 and 21168.5, regardless of whether a different  
18 outcome would have resulted if the public agency had complied with those provisions.

19       (b) It is the intent of the Legislature that, in undertaking judicial review pursuant to  
20 Sections 21168 and 21168.5, courts shall continue to follow the established principle that  
21 there is no presumption that error is prejudicial.

22       (c) It is further the intent of the Legislature that any court, which finds, or, in the process  
23 of reviewing a previous court finding, finds, that a public agency has taken an action  
24 without compliance with this division, shall specifically address each of the alleged  
25 grounds for noncompliance.

26       **Comment.** Section 21005 continues former Public Resources Code Section 21005 without  
27 change.

28                                   CHAPTER 2. SHORT TITLE

29    **§ 21050. California Environmental Quality Act**

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30       21050. This division shall be known and may be cited as the California Environmental  
31 Quality Act.

32       **Comment.** Section 21050 continues former Public Resources Code Section 21050 without  
33 change.

34                                   CHAPTER 3. DEFINITIONS

35    **§ 21060. Application of definitions**

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36       21060. Unless the context otherwise requires, the definitions in this chapter govern the  
37 construction of this division.

38       **Comment.** Section 21060 continues former Public Resources Code Section 21060 without  
39 change. Uncodified statutory provisions applicable to former Public Resources Section 21060  
40 now apply to this section. See, e.g., 1972 Cal. Stat., ch. 1154, § 17 (legislative intent).

41       👉 **Note.** It may be desirable to rearrange these definitions in alphabetical order.

1   **§ 21060.1. Agricultural land**

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2   21060.1. (a) “Agricultural land” means prime farmland, farmland of statewide  
3 importance, or unique farmland, as defined by the United States Department of Agriculture  
4 land inventory and monitoring criteria, as modified for California.

5   (b) In those areas of the state where lands have not been surveyed for the classifications  
6 specified in subdivision (a), “agricultural land” means land that meets the requirements of  
7 “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of  
8 Section 51201 of the Government Code.

9   **Comment.** Section 21060.1 continues former Public Resources Code Section 21060.1  
10 without change.

11   ☞ **Note.** This term appears to be used only in Sections 21061.2 (“land evaluation and  
12 assessment” defined) and 21095 (agricultural land conversions). It may be desirable to  
13 consolidate these three provisions in one place.

14   **§ 21060.3. Emergency**

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15   21060.3. “Emergency” means a sudden, unexpected occurrence, involving a clear and  
16 imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to,  
17 life, health, property, or essential public services. “Emergency” includes such occurrences  
18 as fire, flood, earthquake, or other soil or geologic movements, as well as such  
19 occurrences as riot, accident, or sabotage.

20   **Comment.** Section 21060.3 continues former Public Resources Code Section 21060.3  
21 without change.

22   **§ 21060.5. Environment**

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23   21060.5. “Environment” means the physical conditions which exist within the area  
24 which will be affected by a proposed project, including land, air, water, minerals, flora,  
25 fauna, noise, objects of historic or aesthetic significance.

26   **Comment.** Section 21060.5 continues former Public Resources Code Section 21060.5  
27 without change.

28   **§ 21061. Environmental impact report**

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29   21061. (a) “Environmental impact report” means a detailed statement setting forth the  
30 matters specified in Sections 21100 and 21100.1; provided that information or data which  
31 is relevant to the statement and is a matter of public record or is generally available to the  
32 public need not be repeated in its entirety in the statement, but may be specifically cited as  
33 the source for conclusions stated therein; and provided further that the information or data  
34 shall be briefly described, that its relationship to the environmental impact report shall be  
35 indicated, and that the source thereof shall be reasonably available for inspection at a public  
36 place or public building. An environmental impact report also includes any comments  
37 which are obtained pursuant to Section 21104 or 21153, or which are required to be  
38 obtained pursuant to this division.

39   (b) An environmental impact report is an informational document which, when its  
40 preparation is required by this division, shall be considered by every public agency prior to  
41 its approval or disapproval of a project. The purpose of an environmental impact report is  
42 to provide public agencies and the public in general with detailed information about the  
43 effect which a proposed project is likely to have on the environment; to list ways in which  
44 the significant effects of the project might be minimized; and to indicate alternatives to the  
45 project.

(c) In order to facilitate the use of environmental impact reports, public agencies shall require that the reports contain an index or table of contents and a summary. Failure to include the index, table of contents, or summary shall not constitute a cause of action pursuant to Section 21167.

**Comment.** Section 21061 continues former Public Resources Code Section 21061 without substantive change.

#### **§ 21061.1. Feasible**

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21061.1. “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.


**Comment.** Section 21061.1 continues former Public Resources Code Section 21061.1 without change.

#### **§ 21061.2. Land evaluation and site assessment**

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21061.2. “Land evaluation and site assessment” means a decisionmaking methodology for assessing the potential environmental impact of state and local projects on agricultural land.

**Comment.** Section 21061.2 continues former Public Resources Code Section 21061.2 without change.

 **Note.** This term appears to be used only in Sections 21095 (agricultural land conversions). It may be desirable to consolidate these provisions, along with Section 21060.1 (“agricultural land” defined), in one place.

#### **§ 21062. Local agency**

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21062. “Local agency” means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency and a local agency formation commission are local agencies, and neither is a state agency, board, or commission.

**Comment.** Section 21062 continues former Public Resources Code Section 21062 without change.

#### **§ 21064. Negative declaration**

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21064. “Negative declaration” means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

**Comment.** Section 21064 continues former Public Resources Code Section 21064 without change.

#### **§ 21064.5. Mitigated negative declaration**

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21064.5. “Mitigated negative declaration” means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence

1 in light of the whole record before the public agency that the project, as revised, may have a  
2 significant effect on the environment.

3 **Comment.** Section 21064.5 continues former Public Resources Code Section 21064.5  
4 without change.

### 5 **§ 21065. Project**

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6 21065. “Project” means an activity which may cause either a direct physical change in the  
7 environment, or a reasonably foreseeable indirect physical change in the environment, and  
8 which is any of the following:

9 (a) An activity directly undertaken by any public agency.

10 (b) An activity undertaken by a person which is supported, in whole or in part, through  
11 contracts, grants, subsidies, loans, or other forms of assistance from one or more public  
12 agencies.

13 (c) An activity that involves the issuance to a person of a lease, permit, license,  
14 certificate, or other entitlement for use by one or more public agencies.

15 **Comment.** Section 21065 continues former Public Resources Code Section 21065 without  
16 change. See also Section 75 (“public agency” defined).


17 Uncodified statutory provisions applicable to former Public Resources Section 21065 now  
18 apply to this section. See, e.g., 1994 Cal. Stat. ch. 1230, § 12(b) (legislative intent).

### 19 **§ 21065.5. Geothermal exploratory project**

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20 21065.5. “Geothermal exploratory project” means a project as defined in Section 21065  
21 composed of not more than six wells and associated drilling and testing equipment, whose  
22 chief and original purpose is to evaluate the presence and characteristics of geothermal  
23 resources prior to commencement of a geothermal field development project as defined in  
24 Section 65928.5 of the Government Code. Wells included within a geothermal exploratory  
25 project must be located at least one-half mile from geothermal development wells which are  
26 capable of producing geothermal resources in commercial quantities.

27 **Comment.** Section 21065.5 continues former Public Resources Code Section 21065.5  
28 without change.

29  **Note.** This term appears to be used only in Section 21090.1 (geothermal exploratory  
30 projects). It may be desirable to consolidate these provisions in one place.

### 31 **§ 21067. Lead agency**

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32 21067. “Lead agency” means the public agency which has the principal responsibility for  
33 carrying out or approving a project which may have a significant effect upon the  
34 environment.

35 **Comment.** Section 21067 continues former Public Resources Code Section 21067 without  
36 change.

### 37 **§ 21068. Significant effect on the environment**

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38 21068. “Significant effect on the environment” means a substantial, or potentially  
39 substantial, adverse change in the environment.

40 **Comment.** Section 21068 continues former Public Resources Code Section 21068 without  
41 change.



1    **§ 21068.5. Tiering or tier**

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2       21068.5. “Tiering” or “tier” means the coverage of general matters and environmental  
3 effects in an environmental impact report prepared for a policy, plan, program or ordinance  
4 followed by narrower or site-specific environmental impact reports which incorporate by  
5 reference the discussion in any prior environmental impact report and which concentrate on  
6 the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed  
7 as significant effects on the environment in the prior environmental impact report.

8       **Comment.** Section 21068.5 continues former Public Resources Code Section 21068.5  
9 without change.

10   **§ 21069. Responsible agency**

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11       21069. “Responsible agency” means a public agency, other than the lead agency, which  
12 has responsibility for carrying out or approving a project.

13       **Comment.** Section 21069 continues former Public Resources Code Section 21069 without  
14 change. See also Sections 21067 (“lead agency” defined), 75 (“public agency” defined).

15                                   CHAPTER 4. GENERAL PROVISIONS

16                                   Article 1. Application of Division

17   **§ 21080. Projects covered by division**

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18       21080. (a) Except as otherwise provided in this division, this division shall apply to  
19 discretionary projects proposed to be carried out or approved by public agencies, including,  
20 but not limited to, the enactment and amendment of zoning ordinances, the issuance of  
21 zoning variances, the issuance of conditional use permits, and the approval of tentative  
22 subdivision maps unless the project is exempt from this division.

23       (b) This division does not apply to any of the following activities:

24       (1) Ministerial projects proposed to be carried out or approved by public agencies.

25       (2) Emergency repairs to public service facilities necessary to maintain service.

26       (3) Projects undertaken, carried out, or approved by a public agency to maintain, repair,  
27 restore, demolish, or replace property or facilities damaged or destroyed as a result of a  
28 disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the  
29 Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2  
30 of the Government Code.

31       (4) Specific actions necessary to prevent or mitigate an emergency.

32       (5) Projects which a public agency rejects or disapproves.

33       (6) Actions undertaken by a public agency relating to any thermal powerplant site or  
34 facility, including the expenditure, obligation, or encumbrance of funds by a public agency  
35 for planning, engineering, or design purposes, or for the conditional sale or purchase of  
36 equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if  
37 the powerplant site and related facility will be the subject of an environmental impact report,  
38 negative declaration, or other document, prepared pursuant to a regulatory program  
39 certified pursuant to Section 21080.5, which will be prepared by the State Energy  
40 Resources Conservation and Development Commission, by the Public Utilities  
41 Commission, or by the city or county in which the powerplant and related facility would be  
42 located if the environmental impact report, negative declaration, or document includes the  
43 environmental impact, if any, of the action described in this paragraph.

1 (7) Activities or approvals necessary to the bidding for, hosting or staging of, and  
2 funding or carrying out of, an Olympic games under the authority of the International  
3 Olympic Committee, except for the construction of facilities necessary for the Olympic  
4 games.

5 (8) The establishment, modification, structuring, restructuring, or approval of rates,  
6 tolls, fares, or other charges by public agencies which the public agency finds are for the  
7 purpose of (A) meeting operating expenses, including employee wage rates and fringe  
8 benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial  
9 reserve needs and requirements, (D) obtaining funds for capital projects necessary to  
10 maintain service within existing service areas, or (E) obtaining funds necessary to maintain  
11 those intracity transfers as are authorized by city charter. The public agency shall  
12 incorporate written findings in the record of any proceeding in which an exemption under  
13 this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

14 (9) All classes of projects designated pursuant to Section 21084.

15 (10) A project for the institution or increase of passenger or commuter services on rail or  
16 highway rights-of-way already in use, including modernization of existing stations and  
17 parking facilities.

18 (11) A project for the institution or increase of passenger or commuter service on high-  
19 occupancy vehicle lanes already in use, including the modernization of existing stations and  
20 parking facilities.

21 (12) Facility extensions not to exceed four miles in length which are required for the  
22 transfer of passengers from or to exclusive public mass transit guideway or busway public  
23 transit services.

24 (13) A project for the development of a regional transportation improvement program, the  
25 state transportation improvement program, or a congestion management program prepared  
26 pursuant to Section 65089 of the Government Code.

27 (14) Any project or portion thereof located in another state which will be subject to  
28 environmental impact review pursuant to the National Environmental Policy Act of 1969  
29 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or  
30 discharges that would have a significant effect on the environment in this state are subject to  
31 this division.

32 (15) Projects undertaken by a local agency to implement a rule or regulation imposed by a  
33 state agency, board, or commission under a certified regulatory program pursuant to  
34 Section 21080.5. Any site-specific effect of the project which was not analyzed as a  
35 significant effect on the environment in the plan or other written documentation required by  
36 Section 21080.5 is subject to this division.

37 (c) If a lead agency determines that a proposed project, not otherwise exempt from this  
38 division, would not have a significant effect on the environment, the lead agency shall  
39 adopt a negative declaration to that effect. The negative declaration shall be prepared for the  
40 proposed project in either of the following circumstances:

41 (1) There is no substantial evidence, in light of the whole record before the lead agency,  
42 that the project may have a significant effect on the environment.

43 (2) An initial study identifies potentially significant effects on the environment, but (A)  
44 revisions in the project plans or proposals made by, or agreed to by, the applicant before  
45 the proposed negative declaration and initial study are released for public review would  
46 avoid the effects or mitigate the effects to a point where clearly no significant effect on the  
47 environment would occur, and (B) there is no substantial evidence, in light of the whole  
48 record before the lead agency, that the project, as revised, may have a significant effect on  
49 the environment.



1 (d) If there is substantial evidence, in light of the whole record before the lead agency,  
2 that the project may have a significant effect on the environment, an environmental impact  
3 report shall be prepared.

4 (e)(1) For the purposes of this section and this division, substantial evidence includes  
5 fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

6 (2) Substantial evidence is not argument, speculation, unsubstantiated opinion or  
7 narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic  
8 impacts that do not contribute to, or are not caused by, physical impacts on the  
9 environment.

10 (f) As a result of the public review process for a mitigated negative declaration, including  
11 administrative decisions and public hearings, the lead agency may conclude that certain  
12 mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or  
13 otherwise undesirable. In those circumstances, the lead agency, prior to approving the  
14 project, may delete those mitigation measures and substitute for them other mitigation  
15 measures that the lead agency finds, after holding a public hearing on the matter, are  
16 equivalent or more effective in mitigating significant effects on the environment to a less  
17 than significant level and that do not cause any potentially significant effect on the  
18 environment. If those new mitigation measures are made conditions of project approval or  
19 are otherwise made part of the project approval, the deletion of the former measures and the  
20 substitution of the new mitigation measures shall not constitute an action or circumstance  
21 requiring recirculation of the mitigated negative declaration.

22 (g) Nothing in this section shall preclude a project applicant or any other person from  
23 challenging, in an administrative or judicial proceeding, the legality of a condition of project  
24 approval imposed by the lead agency. If, however, any condition of project approval set  
25 aside by either an administrative body or court was necessary to avoid or lessen the  
26 likelihood of the occurrence of a significant effect on the environment, the lead agency's  
27 approval of the negative declaration and project shall be invalid and a new environmental  
28 review process shall be conducted before the project can be reapproved, unless the lead  
29 agency substitutes a new condition that the lead agency finds, after holding a public hearing  
30 on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects  
31 on the environment and that does not cause any potentially significant effect on the  
32 environment.

33 **Comment.** Section 21080 continues former Public Resources Code Section 21080 without  
34 change.

#### 35 **§ 21080.01. California Men's Colony West Facility**

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36 21080.01. This division shall not apply to any activity or approval necessary for the  
37 reopening and operation of the California Men's Colony West Facility in San Luis Obispo  
38 County.

39 **Comment.** Section 21080.01 continues former Public Resources Code Section 21080.01  
40 without change.

#### 41 **§ 21080.02. Corcoran prison facility**

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42 21080.02. This division shall not apply to any activity or approval necessary for or  
43 incidental to planning, design, site acquisition, construction, operation, or maintenance of  
44 the new prison facility at or in the vicinity of Corcoran in Kings County as authorized by  
45 the act that enacted this section.

1     **Comment.** Section 21080.02 continues former Public Resources Code Section 21080.02  
2 without change.

3     **§ 21080.03. Kings and Amador County prisons**

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4     21080.03. This division shall not apply to any activity or approval necessary for or  
5 incidental to the location, development, construction, operation, or maintenance of the  
6 prison in the County of Kings, authorized by Section 9 of Chapter 958 of the Statutes of  
7 1983, as amended, and of the prison in the County of Amador (Ione), authorized by  
8 Chapter 957 of the Statutes of 1983, as amended.

9     **Comment.** Section 21080.03 continues former Public Resources Code Section 21080.03  
10 without change.

11    **§ 21080.04. Wine Train**

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12     21080.04. (a) Notwithstanding paragraph (10) of subdivision (b) of Section 21080, this  
13 division applies to a project for the institution of passenger rail service on a line paralleling  
14 State Highway 29 and running from Rocktram to Krug in the Napa Valley. With respect to  
15 that project, and for the purposes of this division, the Public Utilities Commission is the  
16 lead agency.

17     (b) It is the intent of the Legislature in enacting this section to abrogate the decision of the  
18 California Supreme Court “that Section 21080, subdivision (b)(11), exempts Wine Train’s  
19 institution of passenger service on the Rocktram-Krug line from the requirements of  
20 CEQA” in *Napa Valley Wine Train, Inc. v. Public Utilities Com.*, 50 Cal. 3d 370.

21     (c) Nothing in this section is intended to affect or apply to, or to confer jurisdiction upon  
22 the Public Utilities Commission with respect to, any other project involving rail service.

23     **Comment.** Section 21080.04 continues former Public Resources Code Section 21080.04  
24 without change.

25    **§ 21080.05. San Francisco Peninsula commute service**

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26     21080.05. This division does not apply to a project by a public agency to lease or  
27 purchase the rail right-of-way used for the San Francisco Peninsula commute service  
28 between San Francisco and San Jose, together with all branch and spur lines, including the  
29 Dumbarton and Vasona lines.

30     **Comment.** Section 21080.05 continues former Public Resources Code Section 21080.05  
31 without change.

32    **§ 21080.07. Riverside and Del Norte Counties prison facilities**

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33     21080.07. This division shall not apply to any activity or approval necessary for or  
34 incidental to planning, design, site acquisition, construction, operation, or maintenance of  
35 the new prison facilities located in any of the following places:

36     (a) The County of Riverside.

37     (b) The County of Del Norte.

38     **Comment.** Section 21080.07 continues former Public Resources Code Section 21080.07  
39 without change.

40    **§ 21080.08. Rural Economic Development Infrastructure Panel**

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41     21080.08. This division shall not apply to any activity or approval necessary for or  
42 incidental to project funding, or the authorization for the expenditure of funds for the

1 project, by the Rural Economic Development Infrastructure Panel pursuant to Article 5  
2 (commencing with Section 15373.6) of Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of  
3 the Government Code.

4 **Comment.** Section 21080.08 continues former Public Resources Code Section 21080.08  
5 without change.

#### 6 **§ 21080.09. Public higher education campus**

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7 21080.09. (a) For purposes of this section, the following definitions apply:

8 (1) “Public higher education” has the same meaning as specified in Section 66010 of the  
9 Education Code.

10 (2) “Long range development plan” means a physical development and land use plan to  
11 meet the academic and institutional objectives for a particular campus or medical center of  
12 public higher education.

13 (b) The selection of a location for a particular campus and the approval of a long range  
14 development plan are subject to this division and require the preparation of an  
15 environmental impact report. Environmental effects relating to changes in enrollment levels  
16 shall be considered for each campus or medical center of public higher education in the  
17 environmental impact report prepared for the long range development plan for the campus  
18 or medical center.

19 (c) The approval of a project on a particular campus or medical center of public higher  
20 education is subject to this division and may be addressed, subject to the other provisions  
21 of this division, in a tiered environmental analysis based upon a long range development  
22 plan environmental impact report.

23 (d) Compliance with this section satisfies the obligations of public higher education  
24 pursuant to this division to consider the environmental impact of academic and enrollment  
25 plans as they affect campuses or medical centers, provided that any such plans shall  
26 become effective for a campus or medical center only after the environmental effects of  
27 those plans have been analyzed as required by this division in a long range development  
28 plan environmental impact report or tiered analysis based upon that environmental impact  
29 report for that campus or medical center, and addressed as required by this division.

30 **Comment.** Section 21080.09 continues former Public Resources Code Section 21080.09  
31 without change.

### 32 **Article 2. Determination Whether Environmental Impact Report Required**

#### 33 **§ 21080.1. Lead agency**

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34 21080.1. (a) The lead agency shall be responsible for determining whether an  
35 environmental impact report, a negative declaration, or a mitigated negative declaration shall  
36 be required for any project which is subject to this division. That determination shall be  
37 final and conclusive on all persons, including responsible agencies, unless challenged as  
38 provided in Section 21167.

39 (b) In the case of a project described in subdivision (c) of Section 21065, the lead agency  
40 shall, upon the request of a potential applicant, provide for consultation prior to the filing of  
41 the application regarding the range of actions, potential alternatives, mitigation measures,  
42 and any potential and significant effects on the environment of the project.

43 **Comment.** Section 21080.1 continues former Public Resources Code Section 21080.1  
44 without change.

1   **§ 21080.2. Time for determination**

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2       21080.2. In the case of a project described in subdivision (c) of Section 21065, the  
3 determination required by Section 21080.1 shall be made within 30 days from the date on  
4 which an application for a project has been received and accepted as complete by the lead  
5 agency. This period may be extended 15 days upon the consent of the lead agency and the  
6 project applicant.

7       **Comment.** Section 21080.2 continues former Public Resources Code Section 21080.2  
8 without change.

9   **§ 21080.3. Consultation**

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10       21080.3. (a) Prior to determining whether a negative declaration or environmental impact  
11 report is required for a project, the lead agency shall consult with all responsible agencies  
12 and with any other public agency which has jurisdiction by law over natural resources  
13 affected by the project which are held in trust for the people of the State of California. Prior  
14 to that required consultation, the lead agency may informally contact these agencies.

15       (b) In order to expedite the requirements of subdivision (a), the Office of Planning and  
16 Research, upon request of a lead agency, shall assist the lead agency in determining the  
17 various responsible agencies for a proposed project. In the case of a project described in  
18 subdivision (c) of Section 21065, the request may also be made by the project applicant.

19       **Comment.** Section 21080.3 continues former Public Resources Code Section 21080.3  
20 without substantive change.

21   **§ 21080.4. Notice of determination**

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22       21080.4. (a) If a lead agency determines that an environmental impact report is required  
23 for a project, the lead agency shall immediately send notice of that determination by  
24 certified mail or an equivalent procedure to each responsible agency and to those public  
25 agencies having jurisdiction by law over natural resources affected by the project that are  
26 held in trust for the people of the State of California. Upon receipt of the notice, each  
27 responsible agency and each public agency having jurisdiction by law over natural  
28 resources affected by the project that are held in trust for the people of the State of  
29 California shall specify to the lead agency the scope and content of the environmental  
30 information that is germane to the statutory responsibilities of that responsible agency or  
31 public agency in connection with the proposed project and which, pursuant to the  
32 requirements of this division, shall be included in the environmental impact report. The  
33 information shall be specified in writing and shall be communicated to the lead agency by  
34 certified mail or equivalent procedure not later than 30 days after the date of receipt of the  
35 notice of the lead agency's determination. The lead agency shall request similar guidance  
36 from appropriate federal agencies.

37       (b) To expedite the requirements of subdivision (a), the lead agency or any responsible  
38 agency or public agency having jurisdiction by law over natural resources affected by the  
39 project that are held in trust for the people of the State of California may request one or  
40 more meetings between representatives of those agencies for the purpose of assisting the  
41 lead agency to determine the scope and content of the environmental information that any of  
42 those responsible agencies or public agencies may require. In the case of a project  
43 described in subdivision (c) of Section 21065, the request may also be made by the project  
44 applicant. The meetings shall be convened by the lead agency as soon as possible, but not  
45 later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant.

(d) If a state agency is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

**Comment.** Section 21080.4 continues former Public Resources Code Section 21080.4 without substantive change.

#### **§ 21080.5. Documentation in lieu of environmental impact report**

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation, containing environmental information and complying with paragraph (3) of subdivision (d), to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof which involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 5 (commencing with Section 21100), Chapter 6 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 7.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and which shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.



1 (B) Include guidelines for the orderly evaluation of proposed activities and the  
2 preparation of the plan or other written documentation in a manner consistent with the  
3 environmental protection purposes of the regulatory program.

4 (C) Require the administering agency to consult with all public agencies which have  
5 jurisdiction, by law, with respect to the proposed activity.

6 (D) Require that final action on the proposed activity include the written responses of the  
7 issuing authority to significant environmental points raised during the evaluation process.

8 (E) Require the filing of a notice of the decision by the administering agency on the  
9 proposed activity with the Secretary of the Resources Agency. Those notices shall be  
10 available for public inspection, and a list of the notices shall be posted on a weekly basis in  
11 the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

12 (F) Require notice of the filing of the plan or other written documentation to be made to  
13 the public and to any person who requests, in writing, notification. The notification shall be  
14 made in a manner that will provide the public or any person requesting notification with  
15 sufficient time to review and comment on the filing.

16 (3) The plan or other written documentation required by the regulatory program does  
17 both of the following:

18 (A) Includes a description of the proposed activity with alternatives to the activity, and  
19 mitigation measures to minimize any significant adverse effect on the environment of the  
20 activity.

21 (B) Is available for a reasonable time for review and comment by other public agencies  
22 and the general public.

23 (e)(1) The Secretary of the Resources Agency shall certify a regulatory program which  
24 the secretary determines meets all the qualifications for certification set forth in this section,  
25 and withdraw certification on determination that the regulatory program has been altered so  
26 that it no longer meets those qualifications. Certification and withdrawal of certification  
27 shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of  
28 Part 1 of Division 3 of Title 2 of the Government Code.

29 (2) In determining whether or not a regulatory program meets the qualifications for  
30 certification set forth in this section, the inquiry of the secretary shall extend only to the  
31 question of whether the regulatory program meets the generic requirements of subdivision  
32 (d). The inquiry shall not extend to individual decisions to be reached under the regulatory  
33 program, including the nature of specific alternatives or mitigation measures which might  
34 be proposed to lessen any significant adverse effect on the environment of the activity.

35 (3) If the secretary determines that the regulatory program submitted for certification does  
36 not meet the qualifications for certification set forth in this section, the secretary shall adopt  
37 findings setting forth the reasons for the determination.

38 (f) After a regulatory program has been certified pursuant to this section, any proposed  
39 change in the program which could affect compliance with the qualifications for  
40 certification specified in subdivision (d) may be submitted to the Secretary of the Resources  
41 Agency for review and comment. The scope of the secretary's review shall extend only to  
42 the question of whether the regulatory program meets the generic requirements of  
43 subdivision (d). The review shall not extend to individual decisions to be reached under the  
44 regulatory program, including specific alternatives or mitigation measures which might be  
45 proposed to lessen any significant adverse effect on the environment of the activity. The  
46 secretary shall have 30 days from the date of receipt of the proposed change to notify the  
47 state agency whether the proposed change will alter the regulatory program so that it no  
48 longer meets the qualification for certification established in this section and will result in a  
49 withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h)(1) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.


(2) In any action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner is a state agency.

(j) For purposes of this section, any air quality management district or air pollution control district is a state agency, except that the approval, if any, by such a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

**Comment.** Section 21080.5 continues former Public Resources Code Section 21080.5 without substantive change.

### Article 3. Exemptions

 **Note.** The following uncodified provisions constitute exceptions to the application of CEQA. The Commission would like to receive input on the usefulness of codifying these provisions:

See 1993 Cal. Stat. ch. 1131, § 1:

(a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term 'net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment' shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of any such exemption by mail to any person who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 42302.1 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light

1 of the whole record before the hearing board that the project may not satisfy one or  
2 more of the criteria established pursuant to subdivision (a), the permit shall be revoked.  
3 If there is no such substantial evidence, the exemption shall be upheld and there shall be  
4 no further compliance with the requirements of Division 13 (commencing with Section  
5 21000) of the Public Resources Code. Any appeal under this subdivision shall be  
6 scheduled for hearing on the calendar of the hearing board within 10 working days of  
7 the appeal being filed. The hearing board shall give the appeal priority on its calendar  
8 and shall render a decision on the appeal within 21 working days of the appeal being  
9 filed. The hearing board may delegate the authority to hear and decide such an appeal  
10 to a subcommittee of the hearing board.

11 (d) On or before December 31, 1995, the Resources Agency shall prepare and submit  
12 to the Legislature and the Governor a study on the exemption established pursuant to  
13 this section in order to determine the advisability of expanding this exemption to  
14 include other industrial facilities. The study shall identify the potential benefits and  
15 adverse impacts on the environment from an expansion of the exemption and shall  
16 determine the potential benefits and adverse impacts on public participation in such an  
17 exemption process.

18 See also 1996 Cal. Stat. ch. 757, § 1:

19 (a) Division 13 (commencing with Section 21000) of the Public Resources Code shall  
20 not apply to the refinancing or defeasance of existing bond indebtedness of the  
21 California Pollution Control Financing Authority Solid Waste Revenue Bonds by the  
22 County of San Diego or any agency within the County of San Diego. This exemption  
23 extends to any and all actions necessary to carry out that refinancing or defeasance,  
24 including, but not limited to, the acquisition of the North County Resource Recovery  
25 Recycling Facility by the County of San Diego.

26 (b) The exemption provided in subdivision (a) does not apply to the transfer of title to  
27 any asset to any entity other than the County of San Diego. The exemption also does  
28 not apply to any change or discontinuance in the operation of the North County  
29 Resource Recovery Recycling Facility, or of the San Marcos Landfill. For purposes of  
30 Division 13 (commencing with Section 21000) of the Public Resources Code, the  
31 refinancing or defeasance of the existing bond indebtedness, together with the  
32 acquisition of the North County Resource Recovery Recycling Facility, shall not be  
33 treated as part of a different or larger project.

34 (c) This act is expressly made retroactive and applies to the actions indicated in this  
35 section taken on or after June 1, 1996.

36 See also 1997 Cal. Stat. ch. 4, § 2:

37 (a) Division 13 (commencing with Section 21000) of the Public Resources Code shall  
38 not apply to the relocation of occupants or uses from real property pursuant to Chapter  
39 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code,  
40 or to the relocation of occupants or uses from real property of the Port of San  
41 Francisco to other real property of the Port of San Francisco, if both of the following  
42 criteria are met:

43 (1) The real property is proposed to be used for an open air ballpark for major league  
44 baseball, and is located in a special zoning district permitting, or conditionally  
45 permitting, that use, which zoning district was established pursuant to a ballot measure  
46 approved by the voters of the city and county in which the property is located.

47 (2) The relocation activities, if considered independently of the proposed ballpark use  
48 of the property, would be exempt from this division.

49 (b) This section shall not affect the application of Division 13 (commencing with  
50 Section 21000) to any discretionary action by a public agency not otherwise exempted  
51 by this section, including the construction of such a ballpark.



(c) Nothing in this section shall be construed to restrict the ability or rights of relocated occupants to challenge or appeal the relocation options offered them by the City and County of San Francisco, the City and County of San Francisco Redevelopment Agency, the Port of San Francisco, or the Department of Transportation pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code, or under proposed mitigation measures, if any, specified pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) This section shall remain in effect for two years after its effective date and as of that date shall become inoperative, and as of January 1, 2000, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

#### **§ 21080.7. Housing or neighborhood commercial facilities in urbanized area**

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21080.7. (a) No environmental impact report or negative declaration is required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:

(1) Finds, after giving notice pursuant to subdivision (c) or (d) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1, all of the following:

(A) The project is consistent with a comprehensive regulatory document which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) For purposes of this section, the plan or program was adopted pursuant to the procedure established by Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code not more than five years prior to the finding made pursuant to this section.

(C) The plan or program has been the subject of an environmental impact report.

(D) The environmental impact report is sufficiently detailed so that the significant effects on the environment of the project and measures necessary to mitigate or avoid those effects can be determined, including any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance that exist in the area covered by the plan or program and measures necessary to mitigate or avoid those effects.

(2) Makes one or more of the findings as required pursuant to Section 21081.

(3) Files a notice of the decision on the proposed activity with the county clerk. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office of the county clerk. Each list shall remain posted for a period of 30 days.

(b) As used in this section:

(1) "Neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of the housing.

(2) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated.

**Comment.** Section 21080.7 continues former Public Resources Code Section 21080.7 without substantive change.

1    **§ 21080.8. Conversion of mobilehome park**

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2       21080.8. This division does not apply to the conversion of an existing rental mobilehome  
3       park to a resident initiated subdivision, cooperative, or condominium for mobilehomes if  
4       the conversion will not result in an expansion of or change in existing use of the property.

5       **Comment.** Section 21080.8 continues former Public Resources Code Section 21080.8  
6       without change.

7    **§ 21080.9. Local coastal program or long-range land use development**

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8       21080.9. This division shall not apply to activities and approvals by any local  
9       government, as defined in Section 30109 of the Public Resources Code, or any state  
10      university or college, as defined in Section 30119 of the Public Resources Code, as  
11      necessary for the preparation and adoption of a local coastal program or long-range land  
12      use development plan pursuant to Division 20 (commencing with Section 30000) of the  
13      Public Resources Code; provided, however, that certification of a local coastal program or  
14      long-range land use development plan by the California Coastal Commission pursuant to  
15      Chapter 6 (commencing with Section 30500) of Division 20 of the Public Resources Code  
16      shall be subject to the requirements of this division. For the purpose of Section 21080.5, a  
17      certified local coastal program or long-range land use development plan constitutes a plan  
18      for use in the California Coastal Commission's regulatory program.

19      **Comment.** Section 21080.9 continues former Public Resources Code Section 21080.9  
20      without substantive change.

21   **§ 21080.10. General plan, low or moderate income or residential or agricultural housing**

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22      21080.10. This division does not apply to any of the following:

23      (a) An extension of time, granted pursuant to Section 65361 of the Government Code,  
24      for the preparation and adoption of one or more elements of a city or county general plan.

25      (b) Actions taken by the Department of Housing and Community Development or the  
26      California Housing Finance Agency to provide financial assistance or insurance for the  
27      development and construction of residential housing for persons and families of low or  
28      moderate income, as defined in Section 50093 of the Health and Safety Code, if the project  
29      which is the subject of the application for financial assistance or insurance will be reviewed  
30      pursuant to this division by another public agency.

31      (c)(1) Any development project which consists of the construction, conversion, or use of  
32      residential housing for agricultural employees, as defined in paragraph (2), that is  
33      affordable to lower-income households, as defined in Section 50079.5 of the Health and  
34      Safety Code, if there is no public financial assistance for the development project and the  
35      developer of the development project provides sufficient legal commitments to the  
36      appropriate local agency to ensure the continued availability and use of the housing units  
37      for lower-income households for a period of at least 15 years, or any development project  
38      that consists of the construction, conversion, or use of residential housing for agricultural  
39      employees, as defined in paragraph (2) that is affordable to low-and moderate-income  
40      households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the  
41      Government Code, if there is public financial assistance for the development project and the  
42      developer of the development project provides sufficient legal commitments to the  
43      appropriate local agency to ensure the continued availability and use of the housing units  
44      for low-and moderate-income households for a period of at least 15 years, if either type of  
45      development project meets all of the following requirements:

(A)(i) If the development project is proposed for an urbanized area, it is located on a project site which is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(ii) If the development project is proposed for a nonurbanized area, it is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural workers if the housing consists of dormitories, barracks, or other group living facilities.

(B) The development project is consistent with the jurisdiction's general plan as it existed on the date that the application was deemed complete.

(C) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(D) The development project site is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(E) The development project site can be adequately served by utilities.

(F) The development project site has no value as a wildlife habitat.

(G) The development project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(H) The development project will not involve the demolition of, or any substantial adverse change, in any structure that is listed, or is determined to be eligible for listing, in the California Register of Historic Resources.

(2) As used in paragraph (1), "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(3) As used in paragraph (1), "urbanized area" means either of the following:

(A) An area with a population density of at least 1,000 persons per square mile.

(B) An area with a population density of less than 1,000 persons per square mile that is identified as an urban area in a general plan adopted by a local government, and was not designated, on the date that the application was deemed complete, as an area reserved for future urban growth.

(4) This division shall apply to any development project described in this subdivision if a public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances, or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

**Comment.** Section 21080.10 continues former Public Resources Code Section 21080.10 without substantive change. Uncodified statutory provisions applicable to former Public Resources Section 21080.10 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 1058, § 2 (legislative intent).

#### § 21080.11. State Lands Commission

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21080.11. This division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.

**Comment.** Section 21080.11 continues former Public Resources Code Section 21080.11 without change.

1   **§ 21080.12. Levee repair**

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2       21080.12. (a) This division does not apply to the repair, reconstruction, restoration, or  
3       rehabilitation of a public facility or private levee damaged or destroyed by the storms and  
4       floods of 1997 in a disaster-stricken area of a county for which the Governor has  
5       proclaimed a state of emergency, so long as the repair, reconstruction, restoration, or  
6       rehabilitation is limited to restoring the condition of the public facility or private levee as it  
7       was immediately prior to the storms and floods of 1997.

8       (b) This section shall remain in effect only until January 1, 1999, and as of that date is  
9       repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or  
10      extends that date.

11      **Comment.** Section 21080.12 continues former Public Resources Code Section 21080.12  
12      without change.

13   **§ 21080.13. Railroad grade separation project**

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14      21080.13. This division shall not apply to any railroad grade separation project which  
15      eliminates an existing grade crossing or which reconstructs an existing grade separation.

16      **Comment.** Section 21080.13 continues former Public Resources Code Section 21080.13  
17      without change.

18   **§ 21080.14. Lower income housing**

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19      21080.14. (a) Except as provided in subdivision (c), this division does not apply to any  
20      development project that consists of the construction, conversion, or use of residential  
21      housing consisting of not more than 100 units in an urbanized area that is affordable to  
22      lower income households, as defined in Section 50079.5 of the Health and Safety Code, if  
23      the developer of the development project provides sufficient legal commitments to the  
24      appropriate local agency to ensure the continued availability and use of the housing units  
25      for lower income households for a period of at least 15 years, or that is affordable to low-  
26      and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section  
27      65589.5 of the Government Code, if the developer of the development project provides  
28      sufficient legal commitments to the appropriate local agency to ensure the continued  
29      availability and use of the housing units for low-and moderate-income households at  
30      monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of  
31      Section 65589.5 of the Government Code, the developer provides sufficient legal  
32      commitments to ensure continued availability of units for the lower income households for  
33      30 years as provided in paragraph (3) of subdivision (h) of Section 65589.5 of the  
34      Government Code, and the development project meets all of the following requirements:

35      (1) The development project is consistent with the jurisdiction's general plan or any  
36      applicable specific plan or local coastal program as it existed on the date that the application  
37      was deemed complete.

38      (2) The development project is consistent with the zoning designation, as specified in the  
39      zoning ordinance as it existed on the date that the application was deemed complete, unless  
40      the zoning is inconsistent with the general plan because the local agency has not rezoned the  
41      property to bring it into conformity with the general plan.

42      (3) The project site is an infill site that has been previously developed for urban uses, or  
43      the immediately contiguous properties surrounding the project site are, or previously have  
44      been, developed for urban uses.

45      (4) The project site is not more than five acres in area.

46      (5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), “urbanized area” means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

**Comment.** Section 21080.14 continues former Public Resources Code Section 21080.14 without change.

Uncodified statutory provisions applicable to former Public Resources Section 21080.14 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 1230, § 13:

(a) The Office of Planning and Research may include in its annual survey questions relating to the impact of the exemption to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of residential housing that is provided pursuant to Section 21080.14 of the Public Resources Code, as added by Section 7 of this act, on lead agencies that are considering the approval of housing development projects that are intended for lower income households or that are affordable to low-and moderate-income households.

(b) It is the intent of the Legislature that the survey questions shall include an analysis of the ability of the lead agency to address potential significant effects on the environment that may result from the proposed development project, including the conversion of agricultural lands to urban uses, to impose conditions on the construction of the proposed development project, and to shorten the amount of time within which the proposed development project may be considered and acted upon.

#### **§ 21080.17. Implementation of Gov’t Code Sections 65852.1 and 65852.2**

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21080.17. This division does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

**Comment.** Section 21080.17 continues former Public Resources Code Section 21080.17 without change.

#### **§ 21080.18. Public school closing**

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21080.18. This division does not apply to the closing of any public school in which kindergarten or any of grades 1 through 12 is maintained or the transfer of students from



1 that public school to another school if the only physical changes involved are categorically  
2 exempt under Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the  
3 California Administrative Code.

4 **Comment.** Section 21080.18 continues former Public Resources Code Section 21080.18  
5 without change.

#### 6 **§ 21080.19. Restriping streets or highways**

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7 21080.19. This division does not apply to a project for restriping of streets or highways  
8 to relieve traffic congestion.

9 **Comment.** Section 21080.19 continues former Public Resources Code Section 21080.19  
10 without change.

#### 11 **§ 21080.21. Pipeline right of way**

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12 21080.21. This division does not apply to any project of less than one mile in length  
13 within a public street or highway or any other public right-of-way for the installation of a  
14 new pipeline or the maintenance, repair, restoration, reconditioning, relocation,  
15 replacement, removal, or demolition of an existing pipeline. For purposes of this section,  
16 “pipeline” includes subsurface facilities but does not include any surface facility related to  
17 the operation of the underground facility.

18 **Comment.** Section 21080.21 continues former Public Resources Code Section 21080.21  
19 without change.

#### 20 **§ 21080.22. General plan amendments**

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21 21080.22. (a) This division does not apply to activities and approvals by a local  
22 government necessary for the preparation of general plan amendments pursuant to Section  
23 29763 of the Public Resources Code, except that the approval of general plan amendments  
24 by the Delta Protection Commission is subject to the requirements of this division.

25 (b) For purposes of Section 21080.5, a general plan amendment is a plan required by the  
26 regulatory program of the Delta Protection Commission.

27 **Comment.** Section 21080.22 continues former Public Resources Code Section 21080.22  
28 without substantive change.

#### 29 **§ 21080.23. Pipelines**

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30 21080.23. (a) This division does not apply to any project which consists of the  
31 inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or  
32 removal of an existing pipeline, as defined in subdivision (a) of Section 51010.5 of the  
33 Government Code, or any valve, flange, meter, or other piece of equipment that is directly  
34 attached to the pipeline, if the project meets all of the following conditions:

35 (1)(A) The project is less than eight miles in length.

36 (B) Notwithstanding subparagraph (A), actual construction and excavation activities  
37 undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation,  
38 replacement, or removal of an existing pipeline are not undertaken over a length of more  
39 than one-half mile at any one time.

40 (2) The project consists of a section of pipeline that is not less than eight miles from any  
41 section of pipeline that has been subject to an exemption pursuant to this section in the past  
42 12 months.

43 (3) The project is not solely for the purpose of excavating soil that is contaminated by  
44 hazardous materials, and, to the extent not otherwise expressly required by law, the party

1 undertaking the project immediately informs the lead agency of the discovery of  
2 contaminated soil.

3 (4) To the extent not otherwise expressly required by law, the person undertaking the  
4 project has, in advance of undertaking the project, prepared a plan that will result in  
5 notification of the appropriate agencies so that they may take action, if determined to be  
6 necessary, to provide for the emergency evacuation of members of the public who may be  
7 located in close proximity to the project.

8 (5) Project activities are undertaken within an existing right-of-way and the right-of-way  
9 is restored to its condition prior to the project.

10 (6) The project applicant agrees to comply with all conditions otherwise authorized by  
11 law, imposed by the city or county planning department as part of any local agency permit  
12 process, that are required to mitigate potential impacts of the proposed project, and to  
13 otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7  
14 (commencing with Section 5810) of Division 5 of the Public Resources Code), the  
15 California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of  
16 Division 3 of the Fish and Game Code), and other applicable state laws, and with all  
17 applicable federal laws.

18 (b) If a project meets all of the requirements of subdivision (a), the person undertaking  
19 the project shall do all of the following:

20 (1) Notify, in writing, any affected public agency, including, but not limited to, any  
21 public agency having permit, land use, environmental, public health protection, or  
22 emergency response authority of the exemption of the project from this division by  
23 subdivision (a).

24 (2) Provide notice to the public in the affected area in a manner consistent with paragraph  
25 (3) of subdivision (b) of Section 21092.

26 (3) In the case of private rights-of-way over private property, receive from the underlying  
27 property owner permission for access to the property.

28 (4) Comply with all conditions otherwise authorized by law, imposed by the city or  
29 county planning department as part of any local agency permit process, that are required to  
30 mitigate potential impacts of the proposed project, and otherwise comply with the Keene-  
31 Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810)  
32 of Division 5 of the Public Resources Code), the California Endangered Species Act  
33 (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code),  
34 and other applicable state laws, and with all applicable federal laws.

35 (c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline Company's  
36 crude oil pipelines designated as Crude Oil Line 1, from Tejon Station south to its  
37 terminus, and Crude Oil Line 90.

38 (d) This section does not apply to either of the following:

39 (1) A project in which the diameter of the pipeline is increased.

40 (2) A project undertaken within the boundaries of an oil refinery.

41 **Comment.** Section 21080.23 continues former Public Resources Code Section 21080.23  
42 without substantive change.

#### 43 **§ 21080.24. Air quality permits**

44 21080.24. (a) This division does not apply to the issuance, modification, amendment, or  
45 renewal of any permit by an air pollution control district or air quality management district  
46 pursuant to Title V, as defined in Section 30455, or pursuant to a district Title V program  
47 established under Sections 39050 to 39052, inclusive, unless the issuance, modification,  
48 amendment, or renewal authorizes a physical or operational change to a source or facility.

(b) Nothing in this section is intended to result in the application of this division to any physical or operational change which, prior to January 1, 1995, was not subject to this division.

**Comment.** Section 21080.24 continues former Public Resources Code Section 21080.24 without substantive change.

#### **§ 21080.26. Compliance with Health & Safety Code Sections 4026.7 and 4026.8**

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21080.26. This division does not apply to minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code or regulations adopted thereunder.

**Comment.** Section 21080.26 continues former Public Resources Code Section 21080.26 without change.

#### **§ 21080.32. Publicly owned transit agencies**

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21080.32. (a) This section shall only apply to publicly owned transit agencies, but shall not apply to any publicly owned transit agency created pursuant to Section 130050.2 of the Public Utilities Code.

(b) Except as provided in subdivision (c), and in accordance with subdivision (d), this division does not apply to actions taken on or after July 1, 1995, by a publicly owned transit agency to implement budget reductions caused by the failure of agency revenues to adequately fund agency programs and facilities.

(c) This section does not apply to any action to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document authorized by this division or the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) or to any state or federal requirement that is imposed for the protection of the environment.

(d)(1) This section applies only to actions taken after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider those actions. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(2) For purposes of this subdivision, “fiscal emergency,” when applied to a publicly owned transit agency, means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers’ compensation reserves, and insurance reserves, shall not be factored into the formula for working capital.

**Comment.** Section 21080.32 continues former Public Resources Code Section 21080.32 without change.



### **§ 21080.33. Emergency highway projects**

21080.33. This division does not apply to any emergency project undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This section does not exempt from this division any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

**Comment.** Section 21080.33 continues former Public Resources Code Section 21080.33 without change.

## Article 4. Findings by Agency

### § 21081. Findings required

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

**Comment.** Section 21081 continues former Public Resources Code Section 21081 without change.

### **§ 21081.5. Findings based on substantial evidence in record**

21081.5. In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

**Comment.** Section 21081.5 continues former Public Resources Code Section 21081.5 without change.

### § 21081.6. Reporting or monitoring program

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

**Comment.** Section 21081.6 continues former Public Resources Code Section 21081.6 without change. Statements of legislative intent applicable to former Public Resources Section 21081.6 now apply to this section. See, e.g., Assembly J. Aug. 29, 1994, p. 9134 (legislative intent).

#### **§ 21081.7. Transportation information**

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21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located when the project has impacts that are of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency shall adopt guidelines for the submittal of those reporting or monitoring programs.

**Comment.** Section 21081.7 continues former Public Resources Code Section 21081.7 without change.

Article 5. Environmental Impact Reports and Negative Declarations

**§ 21082. Agency objectives, criteria, and procedures**

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21082. All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. The objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

**Comment.** Section 21082 continues former Public Resources Code Section 21082 without substantive change.

**§ 21082.1. Agency responsibility for draft**

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21082.1. (a) Any draft environmental impact report, environmental impact report, or negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, or negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents which reflect its independent judgment.

(3) As part of the adoption of a negative declaration or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

**Comment.** Section 21082.1 continues former Public Resources Code Section 21082.1 without change.

Statements of legislative intent and uncodified statutory provisions applicable to former Public Resources Section 21082.1 now apply to this section. See, e.g., 1976 Cal. Stat. ch. 1312, § 21 (legislative declaration); 1981 Cal. Stat. ch. 480, § 4 (legislative findings and declarations); 1991 Cal. Stat. ch. 905, § 3 (application of amendments); Senate J. Aug. 28, 1991 (legislative intent).

**§ 21082.2. Determination of significant effect on environment**

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21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence

1 in light of the whole record before the lead agency that the project may have a significant  
2 effect on the environment.

3 (c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is  
4 clearly inaccurate or erroneous, or evidence of social or economic impacts which do not  
5 contribute to, or are not caused by, physical impacts on the environment, is not substantial  
6 evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon  
7 facts, and expert opinion supported by facts.

8 (d) If there is substantial evidence, in light of the whole record before the lead agency,  
9 that a project may have a significant effect on the environment, an environmental impact  
10 report shall be prepared.

11 (e) Statements in an environmental impact report and comments with respect to an  
12 environmental impact report shall not be deemed determinative of whether the project may  
13 have a significant effect on the environment.

14 **Comment.** Section 21082.2 continues former Public Resources Code Section 21082.2  
15 without change.

## 16 Article 6. CEQA Guidelines

### 17 § 21083. Preparation of guidelines

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18 21083. (a) The Office of Planning and Research shall prepare and develop proposed  
19 guidelines for the implementation of this division by public agencies. The guidelines shall  
20 include objectives and criteria for the orderly evaluation of projects and the preparation of  
21 environmental impact reports and negative declarations in a manner consistent with this  
22 division.

23 The guidelines shall specifically include criteria for public agencies to follow in  
24 determining whether or not a proposed project may have a “significant effect on the  
25 environment.” The criteria shall require a finding that a project may have a “significant  
26 effect on the environment” if any of the following conditions exist:

27 (1) A proposed project has the potential to degrade the quality of the environment, curtail  
28 the range of the environment, or to achieve short-term, to the disadvantage of long-term,  
29 environmental goals.

30 (2) The possible effects of a project are individually limited but cumulatively  
31 considerable. As used in this subdivision, “cumulatively considerable” means that the  
32 incrementaleffects of an individual project are considerable when viewed in connection  
33 with the effects of past projects, the effects of other current projects, and the effects of  
34 probable future projects.

35 (3) The environmental effects of a project will cause substantial adverse effects on human  
36 beings, either directly or indirectly.

37 (b) The guidelines shall also include procedures for determining the lead agency pursuant  
38 to Section 21165.

39 (c) The guidelines shall also include criteria for public agencies to use in determining  
40 when a proposed project is of sufficient statewide, regional, or areawide environmental  
41 significance that it should be submitted to appropriate state agencies for review and  
42 comment prior to completion of an environmental impact report or negative declaration  
43 thereon.

44 (d) The Office of Planning and Research shall develop and prepare the proposed  
45 guidelines as soon as possible and shall transmit them immediately to the Secretary of the  
46 Resources Agency. The Secretary of the Resources Agency shall certify and adopt the  
47 guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

**Comment.** Section 21083 continues former Public Resources Code Section 21083 without substantive change.

#### **§ 21083.1. Limitations on guidelines**

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21083.1. It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.

**Comment.** Section 21083.1 continues former Public Resources Code Section 21083.1 without change.

#### **§ 21084. List of exempt classes of projects; projects damaging scenic resources**

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21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) No project which may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(c) No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall be exempted from this division pursuant to subdivision (a).

(d) The changes made to this section by Chapter 1212 of the Statutes of 1991 apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21097.1, shall be exempted from this division pursuant to subdivision (a).

**Comment.** Section 21084 continues former Public Resources Code Section 21084 without substantive change.

#### **§ 21086. Changes to list of exempt projects**

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21086. (a) A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. The request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.

(b) The Office of Planning and Research shall review each request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of the recommendation, the Secretary of the Resources Agency may



1 add or delete the class of projects to the list of classes of projects designated pursuant to  
2 Section 21084 which are exempt from the requirements of this division.

3 (c) The addition or deletion of a class of projects, as provided in this section, to the list  
4 specified in Section 21084 shall constitute an amendment to the guidelines adopted  
5 pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections  
6 21083, 21084, and 21087.

7 **Comment.** Section 21086 continues former Public Resources Code Section 21086 without  
8 substantive change.

#### 9 **§ 21087. Review of guidelines**

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10 21087. (a) The Office of Planning and Research shall, at least once every two years,  
11 review the guidelines adopted pursuant to Section 21083 and shall recommend proposed  
12 changes or amendments to the Secretary of the Resources Agency. The Secretary of the  
13 Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least  
14 once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1  
15 of Division 3 of Title 2 of the Government Code, which shall become effective upon the  
16 filing thereof. However, guidelines shall not be adopted or amended without compliance  
17 with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

18 (b) Within six months of the enactment of AB 314 of the 1993-94 Regular Session of the  
19 Legislature, the Office of Planning and Research shall recommend proposed changes and  
20 the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines  
21 pursuant to Section 21083 to reflect the changes to this division enacted during the 1993-94  
22 Regular Session of the Legislature.

23 **Comment.** Section 21087 continues former Public Resources Code Section 21087 without  
24 change.

25 ☞ **Note.** Subdivision (b) appears to be obsolete. The Commission would like to receive  
26 input on whether the subdivision serves any useful purpose.

#### 27 **§ 21088. Distribution of guidelines**

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28 21088. The Secretary of the Resources Agency shall provide for the timely distribution to  
29 all public agencies of the guidelines and any amendments or changes thereto. In addition,  
30 the Secretary of the Resources Agency may provide for publication of a bulletin to provide  
31 public notice of the guidelines, or any amendments or changes thereto, and of the  
32 completion of environmental impact reports prepared in compliance with this division.

33 **Comment.** Section 21088 continues former Public Resources Code Section 21088 without  
34 change.

### 35 **Article 7. Fees**

#### 36 **§ 21089. Fees**

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37 21089. (a) A lead agency may charge and collect a reasonable fee from any person  
38 proposing a project subject to this division in order to recover the estimated costs incurred  
39 by the lead agency in preparing a negative declaration or an environmental impact report for  
40 the project and for procedures necessary to comply with this division on the project.  
41 Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this  
42 division under Section 21167 are not recoverable under this section.

43 (b) The Department of Fish and Game may charge and collect filing fees, as provided in  
44 Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding

1 required under Section 21081, or any project approved under a certified regulatory program  
2 authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees  
3 required pursuant to Section 711.4 of the Fish and Game Code are paid.

4 **Comment.** Section 21089 continues former Public Resources Code Section 21089 without  
5 change.

## 6 Article 8. Determination of “Project”

### 7 **§ 21090. Redevelopment plan as single project**

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8 21090. For all purposes of this division, all public and private activities or undertakings  
9 pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single  
10 project. However, further environmental review of any public or private activity or  
11 undertaking pursuant to, or in furtherance of, a redevelopment plan shall be conducted if  
12 any of the events specified in Section 21166 have occurred.

13 **Comment.** Section 21090 continues former Public Resources Code Section 21090 without  
14 change.

### 15 **§ 21090.1. Geothermal exploratory project**

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16 21090.1. For all purposes of this division, a geothermal exploratory project shall be  
17 deemed to be separate and distinct from any subsequent geothermal field development  
18 project as defined in Section 65928.5 of the Government Code.

19 **Comment.** Section 21090.1 continues former Public Resources Code Section 21090.1  
20 without change.

## 21 Article 9. Public Notice and Review

### 22 **§ 21091. Public review period**

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23 21091. (a) The public review period for a draft environmental impact report shall not be  
24 less than 30 days. If the draft environmental impact report is submitted to the State  
25 Clearinghouse for review, the review period shall be at least 45 days.

26 (b) The public review period for a proposed negative declaration shall not be less than 20  
27 days. If the proposed negative declaration is submitted to the State Clearinghouse for  
28 review, the review period shall be at least 30 days.

29 (c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report or a  
30 proposed negative declaration is submitted to the State Clearinghouse for review and the  
31 period of review by the State Clearinghouse is longer than the public review period  
32 established pursuant to subdivision (a) or (b), whichever is applicable, the public review  
33 period shall be at least as long as the period of review by the State Clearinghouse.

34 (d)(1) The lead agency shall consider any comments it receives on a draft environmental  
35 impact report or on a proposed negative declaration, which are received within the public  
36 review period.

37 (2)(A) With respect to the consideration of comments received on a draft environmental  
38 impact report, the lead agency shall evaluate any comments on environmental issues that are  
39 received from persons who have reviewed the draft and shall prepare a written response  
40 pursuant to subparagraph (B). The lead agency may also respond to comments that are  
41 received after the close of the public review period.

42 (B) The written response shall describe the disposition of any significant environmental  
43 issue that is raised by commenters. The responses shall be prepared consistent with Section

1 15088 of Title 14 of the California Code of Regulations, as those regulations existed on  
2 June 1, 1993.

3 (e)(1) Criteria for shorter review periods by the State Clearinghouse for documents  
4 which must be submitted to the State Clearinghouse shall be set forth in the written  
5 guidelines issued by the Office of Planning and Research and made available to the public.

6 (2) Those shortened review periods shall not be less than 30 days for a draft  
7 environmental impact report and 20 days for a negative declaration.

8 (3) Any request for a shortened review period shall only be made in writing by the  
9 decisionmaking body of the lead agency to the Office of Planning and Research. The  
10 decisionmaking body may designate by resolution or ordinance a person authorized to  
11 request a shortened review period. Any designated person shall notify the decisionmaking  
12 body of this request.

13 (4) Any request approved by the State Clearinghouse shall be consistent with the criteria  
14 set forth in the written guidelines of the Office of Planning and Research.

15 (5) A shortened review period shall not be approved by the Office of Planning and  
16 Research for any proposed project of statewide, regional, or areawide environmental  
17 significance as determined pursuant to Section 21083.

18 (6) Any approval of a shortened review period shall be given prior to, and reflected in,  
19 the public notice required pursuant to Section 21092.

20 (f) Prior to carrying out or approving a project for which a negative declaration has been  
21 adopted, the lead agency shall consider the negative declaration together with any  
22 comments that were received and considered pursuant to paragraph (1) of subdivision (d).

23 **Comment.** Section 21091 continues former Public Resources Code Section 21091 without  
24 change.

## 25 § 21092. Public notice

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26 21092. (a) Any lead agency which is preparing an environmental impact report or a  
27 negative declaration or making a determination pursuant to Section 21157 shall provide  
28 public notice of that fact within a reasonable period of time prior to certification of the  
29 environmental impact report or adoption of the negative declaration.

30 (b)(1) The notice shall specify the period during which comments will be received on the  
31 draft environmental report or negative declaration, and shall include the date, time, and  
32 place of any public meetings or hearings on the proposed project, a brief description of the  
33 proposed project and its location, the significant effects on the environment, if any,  
34 anticipated as a result of the project, and the address where copies of the draft  
35 environmental impact report or negative declaration, and all documents referenced in the  
36 draft environmental impact report or negative declaration, are available for review.

37 (2) This section shall not be construed in any manner which results in the invalidation of  
38 an action because of the alleged inadequacy of the notice content, provided that there has  
39 been substantial compliance with the notice content requirements of this section.

40 (3) The notice required by this section shall be given to the last known name and address  
41 of all organizations and individuals who have previously requested notice and shall also be  
42 given by at least one of the following procedures:

43 (A) Publication, no fewer times than required by Section 6061 of the Government Code,  
44 by the public agency in a newspaper of general circulation in the area affected by the  
45 proposed project. If more than one area will be affected, the notice shall be published in the  
46 newspaper of largest circulation from among the newspapers of general circulation in those  
47 areas.



1 (B) Posting of notice by the lead agency on-and off-site in the area where the project is to  
2 be located.

3 (C) Direct mailing to the owners and occupants of contiguous property shown on the  
4 latest equalized assessment roll.

5 (c) For any project involving the burning of municipal wastes, hazardous waste, or  
6 refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of  
7 subdivision (d), notice shall be given to all organizations and individuals who have  
8 previously requested notice and shall also be given by at least the procedures specified in  
9 subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition,  
10 notification shall be given by direct mailing to the owners and occupants of property within  
11 one-fourth of a mile of any parcel or parcels on which is located a project subject to this  
12 subdivision. This subdivision does not apply to any project for which notice has already  
13 been provided as of July 14, 1989, in compliance with this section as it existed prior to  
14 July 14, 1989.

15 (d) The notice requirements of subdivision (c) apply to both of the following:

16 (1) The construction of a new facility.

17 (2) The expansion of an existing facility which burns hazardous waste which would  
18 increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the  
19 amount of expansion of an existing facility shall be calculated by comparing the proposed  
20 facility capacity with whichever of the following is applicable:

21 (A) The facility capacity approved in the facility's hazardous waste facilities permit  
22 pursuant to Section 25200 of the Health and Safety Code or its grant of interim status  
23 pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity  
24 authorized in any state or local agency permit allowing the construction or operation of a  
25 facility for the burning of hazardous waste, granted before January 1, 1990.

26 (B) The facility capacity authorized in the facility's original hazardous waste facilities  
27 permit, grant of interim status, or any state or local agency permit allowing the construction  
28 or operation of a facility for the burning of hazardous waste, granted on or after January 1,  
29 1990.

30 (e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public  
31 agency from providing additional notice by other means if the agency so desires, or from  
32 providing the public notice required by this section at the same time and in the same manner  
33 as public notice otherwise required by law for the project.

34 **Comment.** Section 21092 continues former Public Resources Code Section 21092 without  
35 change. Uncodified statutory provisions applicable to former Public Resources Section 21092  
36 now apply to this section. See, e.g., 1980 Cal. Stat. ch. 131, § 4 (legislative intent).

#### 37 **§ 21092.1. New information**

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38 21092.1. When significant new information is added to an environmental impact report  
39 after notice has been given pursuant to Section 21092 and consultation has occurred  
40 pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall  
41 give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104  
42 and 21153 before certifying the environmental impact report.

43 **Comment.** Section 21092.1 continues former Public Resources Code Section 21092.1  
44 without change.

#### 45 **§ 21092.2. Request for notice**

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46 21092.2. The notices required pursuant to Sections 21080.4, 21092, 21108, and 21152  
47 shall be mailed to any person who has filed a written request for notices with either the

1 clerk of the governing body or, if there is no governing body, the director of the agency.  
2 The request may also be filed with any other person designated by the governing body or  
3 director to receive these requests. The agency may require requests for notices to be  
4 annually renewed. The public agency may charge a fee, except to other public agencies,  
5 which is reasonably related to the costs of providing this service. This section shall not be  
6 construed in any manner which results in the invalidation of an action because of the failure  
7 of a person to receive a requested notice, provided that there has been substantial  
8 compliance with the requirements of this section.

9 **Comment.** Section 21092.2 continues former Public Resources Code Section 21092.2  
10 without change.

### 11 **§ 21092.3. Posting of notice**

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12 21092.3. The notices required pursuant to Sections 21080.4 and 21092 for an  
13 environmental impact report shall be posted in the office of the county clerk of each county  
14 in which the project will be located and shall remain posted for a period of 30 days. The  
15 notice required pursuant to Section 21092 for a negative declaration shall be so posted for a  
16 period of 20 days, unless otherwise required by law to be posted for 30 days. The county  
17 clerk shall post the notices within 24 hours of receipt.

18 **Comment.** Section 21092.3 continues former Public Resources Code Section 21092.3  
19 without change.

## 20 **Article 10. Duties of Lead Agency**

### 21 **§ 21092.4. Projects of statewide, regional, or areawide significance**

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22 21092.4. (a) For a project of statewide, regional, or areawide significance, the lead  
23 agency shall consult with transportation planning agencies and public agencies which have  
24 transportation facilities within their jurisdictions which could be affected by the project.  
25 Consultation shall be conducted in the same manner as for responsible agencies pursuant to  
26 this division, and shall be for the purpose of the lead agency obtaining information  
27 concerning the project's effect on major local arterials, public transit, freeways, highways,  
28 and rail transit service within the jurisdiction of a transportation planning agency or a public  
29 agency which is consulted by the lead agency. A transportation planning agency or public  
30 agency which provides information to the lead agency shall be notified of, and provided  
31 with copies of, environmental documents pertaining to the project.

32 (b) As used in this section, "transportation facilities" includes major local arterials and  
33 public transit within five miles of the project site and freeways, highways, and rail transit  
34 service within 10 miles of the project site.

35 **Comment.** Section 21092.4 continues former Public Resources Code Section 21092.4  
36 without change.

### 37 **§ 21092.5. Response to public agency comments**

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38 21092.5. (a) At least 10 days prior to certifying an environmental impact report, the lead  
39 agency shall provide a written proposed response to a public agency on comments made by  
40 that agency which conform with the requirements of this division. Proposed responses  
41 shall conform with the legal standards established for responses to comments on draft  
42 environmental impact reports. Copies of responses or the environmental document in  
43 which they are contained, prepared in conformance with other requirements of this division

1 and the guidelines adopted pursuant to Section 21083, may be used to meet the  
2 requirements imposed by this section.

3 (b) The lead agency shall notify any public agency which comments on a negative  
4 declaration, of the public hearing or hearings, if any, on the project for which the negative  
5 declaration was prepared. If notice to the commenting public agency is provided pursuant  
6 to Section 21092, the notice shall satisfy the requirement of this subdivision.

7 (c) Nothing in this section requires the lead agency to respond to comments not received  
8 within the comment periods specified in this division, to reopen comment periods, or to  
9 delay acting on a negative declaration or environmental impact report.

10 **Comment.** Section 21092.5 continues former Public Resources Code Section 21092.5  
11 without change. Uncodified statutory provisions applicable to former Public Resources  
12 Section 21092.5 now apply to this section. See, e.g., 1991 Cal. Stat. ch. 905, § 3 (application  
13 of amendments).

#### 14 **§ 21092.6. Sites listed pursuant to Gov't Code Section 65962.5**

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15 21092.6. (a) The lead agency shall consult the lists compiled pursuant to Section  
16 65962.5 of the Government Code to determine whether the project and any alternatives are  
17 located on a site which is included on any list. The lead agency shall indicate whether a site  
18 is on any list not already identified by the applicant. The lead agency shall specify the list  
19 and include the information in the statement required pursuant to subdivision (f) of Section  
20 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a  
21 negative declaration, and a draft environmental impact report. The requirement in this  
22 section to specify any list shall not be construed to limit compliance with this division.

23 (b) If a project or any alternatives are located on a site which is included on any of the  
24 lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency  
25 did not accurately specify or did not specify any list pursuant to subdivision (a), the  
26 California Environmental Protection Agency shall notify the lead agency specifying any list  
27 with the site when it receives notice pursuant to Section 21080.4, a negative declaration,  
28 and a draft environmental impact report. The California Environmental Protection Agency  
29 shall not be liable for failure to notify the lead agency pursuant to this subdivision.

30 (c) This section applies only to projects for which applications have not been deemed  
31 complete pursuant to Section 65943 of the Government Code on or before January 1,  
32 1992.

33 **Comment.** Section 21092.6 continues former Public Resources Code Section 21092.6  
34 without change.

### 35 Article 11. Tiered Reports

#### 36 **§ 21093. Policy to tier environmental impact reports**

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37 21093. (a) The Legislature finds and declares that tiering of environmental impact reports  
38 will promote construction of needed housing and other development projects by (1)  
39 streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues  
40 in successive environmental impact reports, and (3) ensuring that environmental impact  
41 reports prepared for later projects which are consistent with a previously approved policy,  
42 plan, program, or ordinance concentrate upon environmental effects which may be  
43 mitigated or avoided in connection with the decision on each later project. The Legislature  
44 further finds and declares that tiering is appropriate when it helps a public agency to focus  
45 upon the issues ripe for decision at each level of environmental review and in order to

1 exclude duplicative analysis of environmental effects examined in previous environmental  
2 impact reports.

3 (b) To achieve this purpose, environmental impact reports shall be tiered whenever  
4 feasible, as determined by the lead agency.

5 **Comment.** Section 21093 continues former Public Resources Code Section 21093 without  
6 change.

#### 7 **§ 21094. Later projects**

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8 21094. (a) Where a prior environmental impact report has been prepared and certified for  
9 a program, plan, policy, or ordinance, the lead agency for a later project that meets the  
10 requirements of this section shall examine significant effects of the later project upon the  
11 environment by using a tiered environmental impact report, except that the report on the  
12 later project need not examine those effects which the lead agency determines were either  
13 (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a  
14 result of the prior environmental impact report, or (2) examined at a sufficient level of detail  
15 in the prior environmental impact report to enable those effects to be mitigated or avoided  
16 by site specific revisions, the imposition of conditions, or by other means in connection  
17 with the approval of the later project.

18 (b) This section applies only to a later project which the lead agency determines (1) is  
19 consistent with the program, plan, policy, or ordinance for which an environmental impact  
20 report has been prepared and certified, (2) is consistent with applicable local land use plans  
21 and zoning of the city, county, or city and county in which the later project would be  
22 located, and (3) is not subject to Section 21166.

23 (c) For purposes of compliance with this section, an initial study shall be prepared to  
24 assist the lead agency in making the determinations required by this section. The initial  
25 study shall analyze whether the later project may cause significant effects on the  
26 environment that were not examined in the prior environmental impact report.

27 (d) All public agencies which propose to carry out or approve the later project may utilize  
28 the prior environmental impact report and the environmental impact report on the later  
29 project to fulfill the requirements of Section 21081.

30 (e) When tiering is used pursuant to this section, an environmental impact report prepared  
31 for a later project shall refer to the prior environmental impact report and state where a copy  
32 of the prior environmental impact report may be examined.

33 **Comment.** Section 21094 continues former Public Resources Code Section 21094 without  
34 change.

## 35 Article 12. Special Requirements

#### 36 **§ 21095. Agricultural land conversions**

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37 21095. (a) The Resources Agency, in consultation with the Office of Planning and  
38 Research, shall develop an amendment to Appendix G of the state guidelines, for adoption  
39 pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that  
40 significant effects on the environment of agricultural land conversions are quantitatively and  
41 consistently considered in the environmental review process.

42 (b) The Department of Conservation, in consultation with the United States Department  
43 of Agriculture pursuant to Section 658.6 of Title 7 of the Code of Federal Regulations, and  
44 in consultation with the Resources Agency and the Office of Planning and Research, shall  
45 develop a state model land evaluation and site assessment system, contingent upon the

1 availability of funding from non-General Fund sources. The department shall seek funding  
2 for that purpose from non-General Fund sources, including, but not limited to, the United  
3 States Department of Agriculture.

4 (c) In lieu of developing an amendment to Appendix G of the state guidelines pursuant to  
5 subdivision (a), the Resources Agency may adopt the state model land evaluation and site  
6 assessment system developed pursuant to subdivision (b) as that amendment to Appendix  
7 G.

8 **Comment.** Section 21095 continues former Public Resources Code Section 21095 without  
9 change. The term “agricultural land” is defined in Section 21060.1. The term “land  
10 evaluation and site assessment” is defined in Section 21061.2.

11 Uncodified statutory provisions applicable to former Public Resources Section 21095 now  
12 apply to this section. See, e.g., 1993 Cal. Stat. ch. 812, § 1 (findings and declarations).

### 13 **§ 21096. Airport comprehensive land use plan plans**

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14 21096. (a) If a lead agency prepares an environmental impact report for a project situated  
15 within airport comprehensive land use plan boundaries, or, if a comprehensive land use  
16 plan has not been adopted, for a project within two nautical miles of a public airport or  
17 public use airport, the Airport Land Use Planning Handbook published by the Division of  
18 Aeronautics of the Department of Transportation, in compliance with Section 21674.5 of  
19 the Public Utilities Code and other documents, shall be utilized as technical resources to  
20 assist in the preparation of the environmental impact report as the report relates to airport-  
21 related safety hazards and noise problems.

22 (b) A lead agency shall not adopt a negative declaration for a project described in  
23 subdivision (a) unless the lead agency considers whether the project will result in a safety  
24 hazard or noise problem for persons using the airport or for persons residing or working in  
25 the project area.

26 **Comment.** Section 21096 continues former Public Resources Code Section 21096 without  
27 change.

### 28 **§ 21096.2. Archaeological resources**

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29 21096.2. (a) As part of the determination made pursuant to Section 21080.1, the lead  
30 agency shall determine whether the project may have a significant effect on archaeological  
31 resources. If the lead agency determines that the project may have a significant effect on  
32 unique archaeological resources, the environmental impact report shall address the issue of  
33 those resources. An environmental impact report, if otherwise necessary, shall not address  
34 the issue of nonunique archaeological resources. A negative declaration shall be issued with  
35 respect to a project if, but for the issue of nonunique archaeological resources, the negative  
36 declaration would be otherwise issued.

37 (b) If it can be demonstrated that a project will cause damage to a unique archaeological  
38 resource, the lead agency may require reasonable efforts to be made to permit any or all of  
39 these resources to be preserved in place or left in an undisturbed state. Examples of that  
40 treatment, in no order of preference, may include, but are not limited to, any of the  
41 following:

- 42 (1) Planning construction to avoid archaeological sites.
- 43 (2) Deeding archaeological sites into permanent conservation easements.
- 44 (3) Capping or covering archaeological sites with a layer of soil before building on the  
45 sites.
- 46 (4) Planning parks, greenspace, or other open space to incorporate archaeological sites.



(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars (\$200) per unit for any of the next 99 units.

(B) One hundred fifty dollars (\$150) per unit for any of the next 400 units.

(C) One hundred dollars (\$100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

1 (2) Has a special and particular quality such as being the oldest of its type or the best  
2 available example of its type.

3 (3) Is directly associated with a scientifically recognized important prehistoric or historic  
4 event or person.

5 (h) As used in this section, “nonunique archaeological resource” means an archaeological  
6 artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique  
7 archaeological resource need be given no further consideration, other than the simple  
8 recording of its existence by the lead agency if it so elects.

9 (i) As part of the objectives, criteria, and procedures required by Section 21082 or as part  
10 of conditions imposed for mitigation, a lead agency may make provisions for  
11 archaeological sites accidentally discovered during construction. These provisions may  
12 include an immediate evaluation of the find. If the find is determined to be a unique  
13 archaeological resource, contingency funding and a time allotment sufficient to allow  
14 recovering an archaeological sample or to employ one of the avoidance measures may be  
15 required under the provisions set forth in this section. Construction work may continue on  
16 other parts of the building site while archaeological mitigation takes place.

17 (j) This section does not apply to any project described in subdivision (a) or (b) of  
18 Section 21065 if the lead agency elects to comply with all other applicable provisions of  
19 this division. This section does not apply to any project described in subdivision (c) of  
20 Section 21065 if the applicant and the lead agency jointly elect to comply with all other  
21 applicable provisions of this division.

22 (k) Any additional costs to any local agency as a result of complying with this section  
23 with respect to a project of other than a public agency shall be borne by the project  
24 applicant.

25 (l) Nothing in this section is intended to affect or modify the requirements of Section  
26 21084 or 21097.1.

27 **Comment.** Section 21096.2 continues former Public Resources Code Section 21083.2  
28 without substantive change. Uncodified statutory provisions applicable to former Public  
29 Resources Section 21083.2 now apply to this section. See, e.g., 1984 Cal. Stat. ch. 1289, § 7  
30 (construction of act).

### 31 **§ 21096.3. Subdivision maps**

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32 21096.3. (a) If a parcel has been zoned to accommodate a particular density of  
33 development or has been designated in a community plan to accommodate a particular  
34 density of development and an environmental impact report was certified for that zoning or  
35 planning action, the application of this division to the approval of any subdivision map or  
36 other project that is consistent with the zoning or community plan shall be limited to effects  
37 upon the environment which are peculiar to the parcel or to the project and which were not  
38 addressed as significant effects in the prior environmental impact report, or which  
39 substantial new information shows will be more significant than described in the prior  
40 environmental impact report.

41 (b) If a development project is consistent with the general plan of a local agency and an  
42 environmental impact report was certified with respect to that general plan, the application  
43 of this division to the approval of that development project shall be limited to effects on the  
44 environment which are peculiar to the parcel or to the project and which were not addressed  
45 as significant effects in the prior environmental impact report, or which substantial new  
46 information shows will be more significant than described in the prior environmental  
47 impact report.

1 (c) Nothing in this section affects any requirement to analyze potentially significant  
2 offsite impacts and cumulative impacts of the project not discussed in the prior  
3 environmental impact report with respect to the general plan. However, all public agencies  
4 with authority to mitigate the significant effects shall undertake or require the undertaking  
5 of any feasible mitigation measures specified in the prior environmental impact report  
6 relevant to a significant effect which the project will have on the environment or, if not,  
7 then the provisions of this section shall have no application to that effect. The lead agency  
8 shall make a finding, at a public hearing, as to whether those mitigation measures will be  
9 undertaken.

10 (d) An effect of a project upon the environment shall not be considered peculiar to the  
11 parcel or to the project, for purposes of this section, if uniformly applied development  
12 policies or standards have been previously adopted by the city or county, with a finding  
13 based upon substantial evidence, which need not include an environmental impact report,  
14 that the development policies or standards will substantially mitigate that environmental  
15 effect when applied to future projects, unless substantial new information shows that the  
16 policies or standards will not substantially mitigate the environmental effect.

17 (e) Where a community plan is the basis for application of this section, any rezoning  
18 action consistent with the community plan shall be a project subject to exemption from this  
19 division in accordance with this section. As used in this section, “community plan” means a  
20 part of the general plan of a city or county which (1) applies to a defined geographic portion  
21 of the total area included in the general plan, (2) complies with Article 5 (commencing with  
22 Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including  
23 or referencing each of the mandatory elements specified in Section 65302 of the  
24 Government Code, and (3) contains specific development policies adopted for the area  
25 included in the community plan and identifies measures to implement those policies, so that  
26 the policies which will apply to each parcel can be determined.

27 (f) No person shall have standing to bring an action or proceeding to attack, review, set  
28 aside, void, or annul a finding of a public agency made at a public hearing pursuant to  
29 subdivision (a) with respect to the conformity of the project to the mitigation measures  
30 identified in the prior environmental impact report for the zoning or planning action, unless  
31 he or she has participated in that public hearing. However, this subdivision shall not be  
32 applicable if the local agency failed to give public notice of the hearing as required by law.  
33 For purposes of this subdivision, a person has participated in the public hearing if he or she  
34 has either submitted oral or written testimony regarding the proposed determination,  
35 finding, or decision prior to the close of the hearing.

36 (g) Any community plan adopted prior to January 1, 1982, which does not comply with  
37 the definitional criteria specified in subdivision (e) may be amended to comply with that  
38 criteria, in which case the plan shall be deemed a “community plan” within the meaning of  
39 subdivision (e) if (1) an environmental impact report was certified for adoption of the plan,  
40 and (2) at the time of the conforming amendment, the environmental impact report has not  
41 been held inadequate by a court of this state and is not the subject of pending litigation  
42 challenging its adequacy.

43 **Comment.** Section 21096.3 continues former Public Resources Code Section 21083.3  
44 without change.

#### 45 **§ 21096.5. Tahoe Regional Planning Compact**

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46 21096.5. (a) The guidelines prepared and adopted pursuant to Section 21083 shall  
47 provide that, when an environmental impact statement has been, or will be, prepared for the  
48 same project pursuant to the requirements of the National Environmental Policy Act of



1969 (42 U.S.C. Sec. 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.

(b) Notwithstanding subdivision (a), compliance with this division may be achieved for the adoption in a city or county general plan, without any additions or change, of all or any part of the regional plan prepared pursuant to the Tahoe Regional Planning Compact and implementing regulations by reviewing environmental documents prepared by the Tahoe Regional Planning Agency addressing the plan, providing an analysis pursuant to this division of any significant effect on the environment not addressed in the environmental documents, and proceeding in accordance with Section 21081. This subdivision does not exempt a city or county from complying with the public review and notice requirements of this division.

**Comment.** Section 21096.5 continues former Public Resources Code Section 21083.5 without change.

#### **§ 21096.6. Combined environmental impact report and statement**

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21096.6. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), an applicant may request and the lead agency may waive the time limits established pursuant to Section 21100.2 or 21151.5 if it finds that additional time is required to prepare a combined environmental impact report-environmental impact statement and that the time required to prepare the combined document would be shorter than that required to prepare each document separately.

**Comment.** Section 21096.6 continues former Public Resources Code Section 21083.6 without substantive change.

#### **§ 21096.7. Use of environmental impact statement**

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21096.7. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the lead agency shall, whenever possible, use the environmental impact statement as the environmental impact report as provided in Section 21096.5. In order to implement the provisions of this section, each lead agency to which this section is applicable shall consult, as soon as possible, with the agency required to prepare the environmental impact statement.

**Comment.** Section 21096.7 continues former Public Resources Code Section 21083.7 without substantive change.

#### **§ 21096.8. Military base closure and reuse**

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21096.8. (a) For the purposes of this section, the following terms have the following meaning:

(1) “Reuse plan” means an initial plan for the reuse of a military base adopted by a local government or a redevelopment agency in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document.

(2) “Military base” or “base” means any military base or reservation either closed or realigned by, or scheduled for closure or realignment by, the federal government.

(b) If an environmental impact statement on the closure and reuse of a military base has been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the lead agency that is responsible for the preparation of an environmental impact report for a reuse plan for the same base may proceed in the following manner:

(1) A notice of the preparation of an environmental impact report on a reuse plan shall be prepared pursuant to either Section 21080.4 or 21080.6 and shall include a description of the reuse plan and a copy of the environmental impact statement. The notice shall indicate that the lead agency intends to utilize the environmental impact statement as a draft environmental impact report and requests comments on whether, and to what extent, the environmental impact statement provides adequate information to serve as a draft environmental impact report, and what specific additional information, if any, is necessary to comply with this division. The notice shall also indicate the address to which written comments may be sent and the deadline for submitting comments.

(2) Upon the close of the comment period on the notice of preparation, the lead agency may proceed with preparation of the environmental impact report on the reuse plan. The lead agency shall, to the greatest extent feasible, avoid duplication and utilize information in the environmental impact statement consistent with this division. The draft environmental impact report shall consist of all or part of the environmental impact statement and any additional information that is necessary to prepare a draft environmental impact report in compliance with this division.

(3) In all other respects, the environmental impact report for the reuse plan shall be completed in compliance with this division.

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

**Comment.** Section 21096.8 continues former Public Resources Code Section 21083.8 without change. Uncodified statutory provisions applicable to former Public Resources Section 21083.8 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 862, § 1 (legislative intent).

#### **§ 21096.9. Military base reuse plan**

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21096.9. (a)(1) For purposes of this section, “reuse plan” for a military base or reservation has the same meaning as the term as defined in paragraph (1) of subdivision (a) of Section 21096.8, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2) of this section.

(2) The reuse plan shall designate the proposed general distribution and general location of development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and other categories of public and private uses of land.

(b)(1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21096.5, in addition to the procedure authorized pursuant to subdivision (b) of Section 21096.8, the

1 determination of whether the reuse plan may have a significant effect on the environment  
2 may be made in the context of the physical conditions which were present at the time that  
3 the federal decision became final for the closure or realignment of the base or reservation.  
4 The no project alternative analyzed in the environmental impact report shall discuss the  
5 existing conditions on the base, as they exist at the time that the environmental impact  
6 report is prepared, as well as what could be reasonably expected to occur in the foreseeable  
7 future if the reuse plan were not approved, based on current plans and consistent with  
8 available infrastructure and services.

9 (2) For purposes of this division, all public and private activities taken pursuant to, or in  
10 furtherance of, a reuse plan shall be deemed to be a single project. However, further  
11 environmental review of the public or private activity shall be conducted if any of the events  
12 specified in Section 21166 have occurred.

13 (c) Prior to preparing an environmental impact report for which a lead agency chooses to  
14 utilize the provisions of this section, the lead agency shall do all of the following:

15 (A) Hold a public hearing at which is discussed the federal environmental impact  
16 statement prepared for, or in the process of being prepared for, the closure of the military  
17 base or reservation. The discussion shall include the significant effects on the environment  
18 examined in the environmental impact statement, potential methods of mitigating those  
19 effects, including feasible alternatives, and the mitigative effects of federal, state, and local  
20 laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead  
21 agency may specify the baseline conditions for the reuse plan environmental impact report  
22 prepared, or in the process of being prepared, for the closure of the base or reservation.  
23 The lead agency may specify particular physical conditions which it will examine in greater  
24 detail than were examined in the environmental impact statement. Notice of the hearing  
25 shall be given as provided in Section 21092. The hearing may be continued from time to  
26 time.

27 (B) Identify pertinent responsible agencies and trustee agencies and consult with those  
28 agencies prior to the public hearing as to the application of their regulatory policies and  
29 permitting standards to the proposed baseline for environmental analysis, as well as to the  
30 reuse plan and planned future nonmilitary land uses of the base or reservation. The affected  
31 agencies shall have not less than 30 days prior to the public hearing to review the proposed  
32 reuse plan and to submit their comments to the lead agency.

33 (C) At the close of the hearing, the lead agency shall state in writing how the lead agency  
34 intends to integrate the baseline for analysis with the reuse planning and environmental  
35 review process, taking into account the adopted environmental standards of the community,  
36 including, but not limited to, the applicable general plan, specific plan, and redevelopment  
37 plan, and including other applicable provisions of adopted congestion management plans,  
38 habitat conservation or natural communities conservation plans, integrated waste  
39 management plans, and county hazardous waste management plans.

40 (D) At the close of the hearing, the lead agency shall state, in writing, the specific  
41 economic or social reasons, including, but not limited to, new job creation, opportunities  
42 for employment of skilled workers, availability of low and moderate income housing, and  
43 economic continuity, which support the selection of the baseline.

44 (d)(1) Nothing in this section shall in any way limit the scope of a review or  
45 determination of significance of the presence of hazardous or toxic wastes, substances, or  
46 materials including, but not limited to, contaminated soils and groundwater, nor shall the  
47 regulation of hazardous or toxic wastes, substances, or materials be constrained by prior  
48 levels of activity that existed at the time that the federal agency decision to close the military  
49 base or reservation became final.

(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the environmental impact report is completed and certified within five years from the date that the federal record of decision was rendered.

(e) All subsequent development at the military base or reservation site shall be subject to all applicable federal, state, or local laws, including, but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

**Comment.** Section 21096.9 continues former Public Resources Code Section 21083.8.1 without substantive change.

#### **§ 21097. Projects affecting Department of Transportation**

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21097. Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for a proposed project which may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

**Comment.** Section 21097 continues former Public Resources Code Section 21083.9 without change.

#### **§ 21097.1. Change in significance of historical resource**

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21097.1. A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1 of the Public Resources Code, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 of the Public Resources Code, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 of the Public Resources Code shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

**Comment.** Section 21097.1 continues former Public Resources Code Section 21084.1 without substantive change.

1    **§ 21097.2. Medical waste by steam sterilization**

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2       21097.2. The Office of Planning and Research shall, at the next revision of the California  
3    Environmental Quality Act Guidelines (Chapter 3 (commencing with Section 15000) of  
4    Division 6 of Title 14 of the California Code of Regulations) which takes place after  
5    January 1, 1996, pursuant to Section 21087, recommend changes to those guidelines that  
6    would determine if Sections 15301, 15302, and 15304 of Title 14 of the California Code of  
7    Regulations apply to the treatment of medical waste by steam sterilization. If the office  
8    determines that those provisions of the guidelines apply, consistent with existing law, to  
9    that treatment, the office shall recommend clarifying revisions to the guidelines to expressly  
10   state that the treatment is subject to a categorical exemption under those provisions of the  
11   guidelines. If the office determines that those provisions of the guidelines do not  
12   categorically exempt that treatment, and if such an exemption is consistent with existing  
13   law, the office shall recommend a categorical exemption for the treatment in its  
14   recommended revision of the guidelines.

15       **Comment.** Section 21097.2 continues former Public Resources Code Section 21084.2  
16   without change.

17    **§ 21097.3. Reduction of housing units**

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18       21097.3. With respect to a project which includes housing development, a public agency  
19   shall not, pursuant to this division, reduce the proposed number of housing units as a  
20   mitigation measure or project alternative for a particular significant effect on the  
21   environment if it determines that there is another feasible specific mitigation measure or  
22   project alternative that would provide a comparable level of mitigation. This section shall  
23   not affect any other requirement regarding the residential density of that project.

24       **Comment.** Section 21097.3 continues former Public Resources Code Section 21085  
25   without change.

26                    CHAPTER 5. STATE AGENCIES, BOARDS, AND COMMISSIONS

27    **§ 21100. Environmental impact report**

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28       21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and  
29   certify the completion of, an environmental impact report on any project which they  
30   propose to carry out or approve that may have a significant effect on the environment.  
31   Whenever feasible, a standard format shall be used for environmental impact reports.

32       (b) The environmental impact report shall include a detailed statement setting forth all of  
33   the following:

34       (1) All significant effects on the environment of the proposed project.

35       (2) In a separate section:

36       (A) Any significant effect on the environment that cannot be avoided if the project is  
37   implemented.

38       (B) Any significant effect on the environment that would be irreversible if the project is  
39   implemented.

40       (3) Mitigation measures proposed to minimize significant effects on the environment,  
41   including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary  
42   consumption of energy.

43       (4) Alternatives to the proposed project.

44       (5) The growth-inducing impact of the proposed project.



(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

**Comment.** Section 21100 continues former Public Resources Code Section 21100 without change.

#### **§ 21100.1. Limitation on required information**

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21100.1. The information described in subparagraph (B) of paragraph (2) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

**Comment.** Section 21100.1 continues former Public Resources Code Section 21100.1 without substantive change.

#### **§ 21100.2. Time limits**

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21100.2. (a)(1) For projects described in subdivision (c) of Section 21065, each state agency shall establish, by resolution or order, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations.

(4) The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a state agency, the contract shall be executed within 45 days from the date on which the state agency sends a notice of preparation pursuant to Section 21080.4. The state agency may take longer to execute the contract if the project applicant and the state agency mutually agree to an extension of the time limit provided by this subdivision.

**Comment.** Section 21100.2 continues former Public Resources Code Section 21100.2 without change.

1    **§ 21101. Federal projects**

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2       21101. In regard to any proposed federal project in this state which may have a  
3       significant effect on the environment and on which the state officially comments, the state  
4       officials responsible for the comments shall include in their report a detailed statement  
5       setting forth the matters specified in Section 21100 prior to transmitting the comments of  
6       the state to the federal government. No report shall be transmitted to the federal government  
7       unless it includes the detailed statement as to the matters specified in Section 21100.

8       **Comment.** Section 21101 continues former Public Resources Code Section 21101 without  
9       substantive change.

10   **§ 21102. Expenditure of funds**

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11       21102. (a) No state agency, board, or commission shall request funds, nor shall any  
12       state agency, board, or commission which authorizes expenditures of funds, other than  
13       funds appropriated in the Budget Act, authorize funds for expenditure for any project, other  
14       than a project involving only feasibility or planning studies for possible future actions  
15       which the agency, board, or commission has not approved, adopted or funded, which may  
16       have a significant effect on the environment unless the request or authorization is  
17       accompanied by an environmental impact report.

18       (b) Feasibility and planning studies exempted by this section from the preparation of an  
19       environmental impact report shall nevertheless include consideration of environmental  
20       factors.

21       **Comment.** Section 21102 continues former Public Resources Code Section 21102 without  
22       substantive change.

23   **§ 21104. Public agency consultation**

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24       21104. (a) Prior to completing an environmental impact report, the state lead agency shall  
25       consult with, and obtain comments from, each responsible agency, any public agency  
26       which has jurisdiction by law with respect to the project, and any city or county which  
27       borders on a city or county within which the project is located unless otherwise designated  
28       annually by agreement between the state lead agency and the city or county, and may  
29       consult with any person who has special expertise with respect to any environmental impact  
30       involved. In the case of a project described in subdivision (c) of Section 21065, the state  
31       lead agency shall, upon the request of the applicant, provide for early consultation to  
32       identify the range of actions, alternatives, mitigation measures, and significant effects to be  
33       analyzed in depth in the environmental impact report. The state lead agency may consult  
34       with persons identified by the applicant which the applicant believes will be concerned with  
35       the environmental effects of the project and may consult with members of the public who  
36       have made a written request to be consulted on the project. A request by the applicant for  
37       early consultation shall be made not later than 30 days after the determination required by  
38       Section 21080.1 with respect to the project.

39       (b) The state lead agency shall consult with, and obtain comments from, the State Air  
40       Resources Board in preparing an environmental impact report on a highway or freeway  
41       project, as to the air pollution impact of the potential vehicular use of the highway or  
42       freeway.

43       (c) A responsible agency or other public agency shall only make substantive comments  
44       regarding those activities involved in a project which are within an area of expertise of the  
45       agency or which are required to be carried out or approved by the agency. Those comments  
46       shall be supported by specific documentation.

1     **Comment.** Section 21104 continues former Public Resources Code Section 21104 without  
2 change.

3     **§ 21104.2. Endangered or threatened species**

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4     21104.2. The state lead agency shall consult with, and obtain written findings from, the  
5 Department of Fish and Game in preparing an environmental impact report on a project, as  
6 to the impact of the project on the continued existence of any endangered species or  
7 threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of  
8 Division 3 of the Fish and Game Code.

9     **Comment.** Section 21104.2 continues former Public Resources Code Section 21104.2  
10 without change.

11    **§ 21105. Availability of environmental impact report**

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12    21105. The state lead agency shall include the environmental impact report as a part of  
13 the regular project report used in the existing review and budgetary process. It shall be  
14 available to the Legislature. It shall also be available for inspection by any member of the  
15 general public, who may secure a copy thereof by paying for the actual cost of the copy. It  
16 shall be filed by the state lead agency with the appropriate local planning agency of any  
17 city, county, or city and county which will be affected by the project.

18    **Comment.** Section 21105 continues former Public Resources Code Section 21105 without  
19 substantive change.

20    **§ 21106. Budget for environmental protection**

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21    21106. All state agencies, boards, and commissions shall request in their budgets the  
22 funds necessary to protect the environment in relation to problems caused by their  
23 activities.

24    **Comment.** Section 21106 continues former Public Resources Code Section 21106 without  
25 change.

26    **§ 21108. Notification of project**

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27    21108. (a) Whenever a state agency, board, or commission approves or determines to  
28 carry out a project which is subject to this division, it shall file notice of that approval or  
29 that determination with the Office of Planning and Research. The notice shall indicate the  
30 determination of the agency, board, or commission whether the project will, or will not,  
31 have a significant effect on the environment and shall indicate whether an environmental  
32 impact report has been prepared pursuant to this division.

33    (b) Whenever a state agency, board, or commission determines that a project is not  
34 subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section  
35 21097.3 or 21172, and it approves or determines to carry out that project, it, or the person  
36 specified in subdivision (b) or (c) of Section 21065, may file notice of the determination  
37 with the Office of Planning and Research. Any notice filed pursuant to this subdivision by  
38 a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of  
39 determination attached to it issued by the state agency, board, or commission responsible  
40 for making the determination that a project is not subject to the provisions of this division  
41 pursuant to subdivision (b) of Section 21080 or pursuant to Section 21097.3 or 21172.  
42 The certificate of determination may be in the form of a certified copy of an existing  
43 document or record of the state agency, board, or commission.



(c) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days.

**Comment.** Section 21108 continues former Public Resources Code Section 21108 without substantive change.

## CHAPTER 6. LOCAL AGENCIES

### **§ 21150. Allocation of funds for local projects**

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21150. State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

**Comment.** Section 21150 continues former Public Resources Code Section 21150 without change.

### **§ 21151. Environmental impact report by local agency**

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21151. (a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) When an environmental impact report is certified by a local lead agency's decisionmaking body which is not elected, that certification may be appealed to the agency's elected decisionmaking body, if any.

**Comment.** Section 21151 continues former Public Resources Code Section 21151 without change.

#### **§ 21151.1. Hazardous waste facilities and base reuse plans**

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21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1)(A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

1 (B) This paragraph does not apply to any project exclusively burning hazardous waste,  
2 for which a final determination under Section 21080.1 has been made prior to July 14,  
3 1989.

4 (2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as  
5 defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

6 (3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200  
7 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to  
8 subdivision (d) of Section 25205.1 of the Health and Safety Code.

9 (4) A base reuse plan as defined in Section 21096.8 or 21096.9. The Legislature hereby  
10 finds that no reimbursement is required pursuant to Section 6 of Article XIII B of the  
11 California Constitution for an environmental impact report for a base reuse plan if an  
12 environmental impact report is otherwise required for that base reuse plan pursuant to any  
13 other provision of this division.

14 (b) For purposes of clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a),  
15 the amount of expansion of an existing facility shall be calculated by comparing the  
16 proposed facility capacity with whichever of the following is applicable:

17 (1) The facility capacity authorized in the facility's hazardous waste facilities permit  
18 pursuant to Section 25200 of the Health and Safety Code or its grant of interim status  
19 pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity  
20 authorized in any state or local agency permit allowing the construction or operation of a  
21 facility for the burning of hazardous waste, granted before January 1, 1990.

22 (2) The facility capacity authorized in the facility's original hazardous waste facilities  
23 permit, grant of interim status, or any state or local agency permit allowing the construction  
24 or operation of a facility for the burning of hazardous waste, granted on or after January 1,  
25 1990.

26 (c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a  
27 hazardous waste facilities permit does not include the issuance of a closure or postclosure  
28 permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the  
29 Health and Safety Code.

30 (d) Paragraph (1) of subdivision (a) does not apply to any project that does any of the  
31 following:

32 (1) Exclusively burns digester gas produced from manure or any other solid or semisolid  
33 animal waste.

34 (2) Exclusively burns methane gas produced from a disposal site, as defined in Section  
35 40122 of the Public Resources Code, that is used only for the disposal of solid waste, as  
36 defined in Section 40191 of the Public Resources Code.

37 (3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

38 (4) Exclusively burns hazardous waste in an incineration unit that is transportable and  
39 that is either at a site for not longer than three years or is part of a remedial or removal  
40 action. For purposes of this paragraph, "transportable" means any equipment that performs  
41 a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations,  
42 and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California  
43 Code of Regulations.

44 (5) Exclusively burns refinery waste in a flare on the site of generation.

45 (6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment  
46 plant.

47 (7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a  
48 supplemental fuel, as part of a research, development, or demonstration project that,  
49 consistent with federal regulations implementing the Resource Conservation and Recovery

Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

(f) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt any project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

**Comment.** Section 21151.1 continues former Public Resources Code Section 21151.1 without substantive change.

## **§ 21151.2. School sites**

21151.2. (a) To promote the safety of pupils and comprehensive community planning the governing board of each school district before acquiring title to property for a new school

1 site or for an addition to a present school site, shall give the planning commission having  
2 jurisdiction notice in writing of the proposed acquisition. The planning commission shall  
3 investigate the proposed site and within 30 days after receipt of the notice shall submit to  
4 the governing board a written report of the investigation and its recommendations  
5 concerning acquisition of the site.

6 (b) The governing board shall not acquire title to the property until the report of the  
7 planning commission has been received. If the report does not favor the acquisition of the  
8 property for a school site, or for an addition to a present school site, the governing board of  
9 the school district shall not acquire title to the property until 30 days after the commission's  
10 report is received.

11 **Comment.** Section 21151.2 continues former Public Resources Code Section 21151.2  
12 without substantive change.

#### 13 **§ 21151.4. Facility in vicinity of school**

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14 21151.4. No environmental impact report or negative declaration shall be approved for  
15 any project involving the construction or alteration of a facility within 1/4 of a mile of a  
16 school which might reasonably be anticipated to emit hazardous or acutely hazardous air  
17 emission, or which would handle acutely hazardous material or a mixture containing  
18 acutely hazardous material in a quantity equal to or greater than the quantity specified in  
19 subdivision (a) of Section 25536 of the Health and Safety Code, which may pose a health  
20 or safety hazard to persons who would attend or would be employed at the school, unless  
21 both of the following occur:

22 (a) The lead agency preparing the environmental impact report or negative declaration has  
23 consulted with the school district having jurisdiction regarding the potential impact of the  
24 project on the school.

25 (b) The school district has been given written notification of the project not less than 30  
26 days prior to the proposed approval of the environmental impact report or negative  
27 declaration.

28 **Comment.** Section 21151.4 continues former Public Resources Code Section 21151.4  
29 without change.

#### 30 **§ 21151.5. Time limits**

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31 21151.5. (a)(1) For projects described in subdivision (c) of Section 21065, each local  
32 agency shall establish, by ordinance or resolution, time limits that do not exceed the  
33 following:

34 (A) One year for completing and certifying environmental impact reports.

35 (B) One hundred eighty days for completing and adopting negative declarations.

36 (2) The time limits specified in paragraph (1) shall apply only to those circumstances in  
37 which the local agency is the lead agency for a project. These ordinances or resolutions  
38 may establish different time limits for different types or classes of projects and different  
39 types of environmental impact reports, but all limits shall be measured from the date on  
40 which an application requesting approval of the project is received and accepted as complete  
41 by the local agency.

42 (3) No application for a project may be deemed incomplete for lack of a waiver of time  
43 periods prescribed by local ordinance or resolution.

44 (4) The ordinances or resolutions required by this section may provide for a reasonable  
45 extension of the time period in the event that compelling circumstances justify additional  
46 time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a local agency, the contract shall be executed within 45 days from the date on which the local agency sends a notice of preparation pursuant to Section 21080.4. The local agency may take longer to execute the contract if the project applicant and the local agency mutually agree to an extension of the time limit provided by this subdivision.

**Comment.** Section 21151.5 continues former Public Resources Code Section 21151.5 without change.

#### **§ 21151.7. Open mining pit operations**

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21151.7. Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) of the Public Resources Code and utilizes a cyanide heap-leaching process for the purpose of producing gold or other precious metals.

**Comment.** Section 21151.7 continues former Public Resources Code Section 21151.7 without substantive change.

#### **§ 21151.8. Schoolsite purchase or construction**

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21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:



(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.

(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which 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 from any substances identified in subdivisions (a) to (f), inclusive, of Section 45101.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

**Comment.** Section 21151.8 continues former Public Resources Code Section 21151.8 without substantive change.

#### § 21151.9. Water projects

21151.9. Whenever a city or county determines that an environmental impact report is required in connection with a project, as defined in Section 10913, and described in Section 10910, of the Water Code, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

**Comment.** Section 21151.9 continues former Public Resources Code Section 21151.9 without change.

1    **§ 21152. Public notice**

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2       21152. (a) Whenever a local agency approves or determines to carry out a project which  
3 is subject to this division, it shall file notice of the approval or the determination within five  
4 working days after the approval or determination becomes final, with the county clerk of  
5 each county in which the project will be located. The notice shall indicate the determination  
6 of the local agency whether the project will, or will not, have a significant effect on the  
7 environment and shall indicate whether an environmental impact report has been prepared  
8 pursuant to this division. The notice shall also include certification that the final  
9 environmental impact report, if one was prepared, together with comments and responses,  
10 is available to the general public.

11       (b) Whenever a local agency determines that a project is not subject to this division  
12 pursuant to subdivision (b) of Section 21080 or pursuant to Section 21097.3 or 21172, and  
13 it approves or determines to carry out the project, it, or the person specified in subdivision  
14 (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of  
15 each county in which the project will be located. Any notice filed pursuant to this  
16 subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a  
17 certificate of determination attached to it issued by the local agency responsible for making  
18 the determination that the project is not subject to this division pursuant to subdivision (b)  
19 of Section 21080 or pursuant to Section 21097.3 or 21172. The certificate of determination  
20 may be in the form of a certified copy of an existing document or record of the local  
21 agency.

22       (c) All notices filed pursuant to this section shall be available for public inspection, and  
23 shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall  
24 remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the  
25 local agency with a notation of the period it was posted. The local agency shall retain the  
26 notice for not less than nine months.

27       **Comment.** Section 21152 continues former Public Resources Code Section 21152 without  
28 substantive change.

29    **§ 21153. Consultation by local lead agency**

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30       21153. (a) Prior to completing an environmental impact report, every local lead agency  
31 shall consult with, and obtain comments from, each responsible agency, any public agency  
32 that has jurisdiction by law with respect to the project, and any city or county that borders  
33 on a city or county within which the project is located unless otherwise designated annually  
34 by agreement between the local lead agency and the city or county, and may consult with  
35 any person who has special expertise with respect to any environmental impact involved. In  
36 the case of a project described in subdivision (c) of Section 21065, the local lead agency  
37 shall, upon the request of the project applicant, provide for early consultation to identify the  
38 range of actions, alternatives, mitigation measures, and significant effects to be analyzed in  
39 depth in the environmental impact report. The local lead agency may consult with persons  
40 identified by the project applicant that the applicant believes will be concerned with the  
41 environmental effects of the project and may consult with members of the public who have  
42 made written request to be consulted on the project. A request by the project applicant for  
43 early consultation shall be made not later than 30 days after the date that the determination  
44 required by Section 21080.1 was made with respect to the project. The local lead agency  
45 may charge and collect a fee from the project applicant in an amount that does not exceed  
46 the actual costs of the consultations.

47       (b) In the case of a project described in subdivision (a) of Section 21065, the lead agency  
48 may provide for early consultation to identify the range of actions, alternatives, mitigation



measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

**Comment.** Section 21153 continues former Public Resources Code Section 21153 without change.

#### **§ 21154. Order of state agency**

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21154. Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with the order.

**Comment.** Section 21154 continues former Public Resources Code Section 21154 without substantive change.

### **CHAPTER 7. STREAMLINED ENVIRONMENTAL REVIEW**

#### **Article 1. Findings**

#### **§ 21156. Legislative intent**

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21156. It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

**Comment.** Section 21156 continues former Public Resources Code Section 21156 without change. Uncodified statutory provisions applicable to former Public Resources Section 21156 now apply to this section. See, e.g., 1993 Cal. Stat. ch. 1130, § 1 (title of act).

#### **Article 2. Master Environmental Impact Report**

#### **§ 21157. Coverage and contents**

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21157. (a) A master environmental impact report may be prepared for any one of the following projects:

- (1) A general plan, element, general plan amendment, or specific plan.
- (2) A project that consists of smaller individual projects which will be carried out in phases.
- (3) A rule or regulation which will be implemented by subsequent projects.
- (4) Projects which will be carried out or approved pursuant to a development agreement.

1 (5) Public or private projects which will be carried out or approved pursuant to, or in  
2 furtherance of, a redevelopment plan.

3 (6) A state highway project or mass transit project which will be subject to multiple  
4 stages of review or approval.

5 (7) A regional transportation plan or congestion management plan.

6 (8) A plan proposed by a local agency for the reuse of a federal military base or  
7 reservation that has been closed or that is proposed for closure.

8 (9) Regulations adopted by the Fish and Game Commission for the regulation of hunting  
9 and fishing.

10 (b) When a lead agency prepares a master environmental impact report, the document  
11 shall include all of the following:

12 (1) A detailed statement as required by Section 21100.

13 (2) A description of anticipated subsequent projects that would be within the scope of the  
14 master environmental impact report, that contains sufficient information with regard to the  
15 kind, size, intensity, and location of the subsequent projects, including, but not limited to,  
16 all of the following:

17 (A) The specific type of project anticipated to be undertaken.

18 (B) The maximum and minimum intensity of any anticipated subsequent project, such as  
19 the number of residences in a residential development, and, with regard to a public works  
20 facility, its anticipated capacity and service area.

21 (C) The anticipated location and alternative locations for any development projects.

22 (D) A capital outlay or capital improvement program, or other scheduling or  
23 implementing device that governs the submission and approval of subsequent projects.

24 (3) A description of potential impacts of anticipated subsequent projects for which there  
25 is not sufficient information reasonably available to support a full assessment of potential  
26 impacts in the master environmental impact report. This description shall not be construed  
27 as a limitation on the impacts which may be considered in a focused environmental impact  
28 report.

29 (c) Lead agencies may develop and implement a fee program in accordance with  
30 applicable provisions of law to generate the revenue necessary to prepare a master  
31 environmental impact report.

32 **Comment.** Section 21157 continues former Public Resources Code Section 21157 without  
33 change.

#### 34 § 21157.1. Limited review

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35 21157.1. The preparation and certification of a master environmental impact report, if  
36 prepared and certified consistent with this division, may allow for the limited review of  
37 subsequent projects that were described in the master environmental impact report as being  
38 within the scope of the report, in accordance with the following requirements:

39 (a) The lead agency for a subsequent project shall be the lead agency or any responsible  
40 agency identified in the master environmental impact report.

41 (b) The lead agency shall prepare an initial study on any proposed subsequent project.  
42 This initial study shall analyze whether the subsequent project may cause any significant  
43 effect on the environment that was not examined in the master environmental impact report  
44 and whether the subsequent project was described in the master environmental impact  
45 report as being within the scope of the report.

46 (c) If the lead agency, based on the initial study, determines that a proposed subsequent  
47 project will have no additional significant effect on the environment, as defined in  
48 subdivision (d) of Section 21158, that was not identified in the master environmental

1 impact report and that no new or additional mitigation measures or alternatives may be  
2 required, the lead agency shall make a written finding based upon the information contained  
3 in the initial study that the subsequent project is within the scope of the project covered by  
4 the master environmental impact report. No new environmental document nor findings  
5 pursuant to Section 21081 shall be required by this division. Prior to approving or carrying  
6 out the proposed subsequent project, the lead agency shall provide notice of this fact  
7 pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible  
8 alternatives set forth in the master environmental impact report which are appropriate to the  
9 project. Whenever a lead agency approves or determines to carry out any subsequent  
10 project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

11 (d) Where a lead agency cannot make the findings required in subdivision (c), the lead  
12 agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration  
13 or environmental impact report.

14 **Comment.** Section 21157.1 continues former Public Resources Code Section 21157.1  
15 without change.

#### 16 **§ 21157.5. Mitigated negative declaration**

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17 21157.5. (a) A proposed mitigated negative declaration shall be prepared for any  
18 proposed subsequent project if both of the following occur:

19 (1) An initial study has identified potentially new or additional significant effects on the  
20 environment that were not analyzed in the master environmental impact report.

21 (2) Feasible mitigation measures or alternatives will be incorporated to revise the  
22 proposed subsequent project, before the negative declaration is released for public review,  
23 in order to avoid the effects or mitigate the effects to a point where clearly no significant  
24 effect on the environment will occur.

25 (b) If there is substantial evidence in light of the whole record before the lead agency that  
26 the proposed subsequent project may have a significant effect on the environment and a  
27 mitigated negative declaration is not prepared, the lead agency shall prepare an  
28 environmental impact report or a focused environmental impact report pursuant to Section  
29 21158.

30 **Comment.** Section 21157.5 continues former Public Resources Code Section 21157.5  
31 without change.

#### 32 **§ 21157.6. Limitations on use of master environmental impact report**

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33 21157.6. The master environmental impact report shall not be used for the purposes of  
34 this chapter if (1) the certification of the report occurred more than five years prior to the  
35 filing of an application for the subsequent project, or (2) if the approval of a project that  
36 was not described in the report may affect the adequacy of the environmental review in the  
37 report for any subsequent project, unless the lead agency reviews the adequacy of the  
38 master environmental impact report and does either of the following:

39 (a) Finds that no substantial changes have occurred with respect to the circumstances  
40 under which the master environmental impact report was certified or that no new  
41 information, which was not known and could not have been known at the time that the  
42 master environmental impact report was certified as complete, has become available.

43 (b) Certifies a subsequent or supplemental environmental impact report which has been  
44 either incorporated into the previously certified master environmental impact report or  
45 references any deletions, additions, or any other modifications to the previously certified  
46 master environmental impact report.

1     **Comment.** Section 21157.6 continues former Public Resources Code Section 21157.6  
2 without change.

### 3                     Article 3. Focused Environmental Impact Report

#### 4     **§ 21158. Use of focused environmental impact report**

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5         21158. (a) A focused environmental impact report is an environmental impact report on a  
6 subsequent project identified in a master environmental impact report. A focused  
7 environmental impact report may be utilized only if the lead agency finds that the analysis in  
8 the master environmental impact report of cumulative impacts, growth inducing impacts,  
9 and irreversible significant effects on the environment is adequate for the subsequent  
10 project. The focused environmental impact report shall incorporate, by reference, the  
11 master environmental impact report and analyze only the subsequent project's additional  
12 significant effects on the environment, as defined in subdivision (d), and any new or  
13 additional mitigation measures or alternatives that were not identified and analyzed by the  
14 master environmental impact report.

15         (b) The focused environmental impact report need not examine those effects which the  
16 lead agency finds were one of the following:

17             (1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as  
18 a result of mitigation measures identified in the master environmental impact report which  
19 will be required as part of the approval of the subsequent project.

20             (2) Examined at a sufficient level of detail in the master environmental impact report to  
21 enable those significant environmental effects to be mitigated or avoided by specific  
22 revisions to the project, the imposition of conditions, or by other means in connection with  
23 the approval of the subsequent project.

24             (3) Subject to a finding pursuant to paragraph (2) of subdivision (a) of Section 21081.

25         (c) A focused environmental impact report on any subsequent project shall analyze any  
26 significant effects on the environment where substantial new or additional information  
27 shows that the adverse environmental impact may be more significant than was described in  
28 the master environmental impact report. The substantial new or additional information may  
29 also show that mitigation measures or alternatives identified in the master environmental  
30 impact report, which were previously determined to be infeasible, are feasible and will  
31 avoid or reduce the significant effects on the environment of the subsequent project to a  
32 level of insignificance.

33         (d) For purposes of this chapter, "additional significant effects on the environment" are  
34 those project specific effects on the environment which were not addressed as significant  
35 effects on the environment in the master environmental impact report.

36         (e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to  
37 focus upon the issues that are ripe for decision at each level of environmental review, or to  
38 exclude duplicative analysis of environmental effects examined in previous environmental  
39 impact reports pursuant to Section 21093.

40     **Comment.** Section 21158 continues former Public Resources Code Section 21158 without  
41 change.

#### 42     **§ 21158.1. Application of 21080.5**

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43         21158.1. When a lead agency is required to prepare an environmental impact report  
44 pursuant to subdivision (d) of Section 21157.1 or is authorized to prepare a focused  
45 environmental impact report pursuant to Section 21158, the lead agency may not rely on

subdivision (a) of Section 21080.5 for that purpose even though the lead agency's regulatory program is otherwise certified in accordance with Section 21080.5.

**Comment.** Section 21158.1 continues former Public Resources Code Section 21158.1 without change.

#### **§ 21158.5. Real property developments**

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21158.5. (a) Where a project consists of multiple-family residential development of not more than 100 units or a residential and commercial or retail mixed-use development of not more than 100,000 square feet which complies with all of the following, a focused environmental impact report shall be prepared, notwithstanding that the project was not identified in a master environmental impact report:

(1) Is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an environmental impact report was prepared within five years of the certification of the focused environmental impact report.

(2) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(3) Meets one or more of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed has been previously developed with urban uses.

(C) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

**Comment.** Section 21158.5 continues former Public Resources Code Section 21158.5 without change.

### **Article 4. Expedited Environmental Review for Environmentally Mandated Projects**

#### **§ 21159. Environmental analysis**

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21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include, all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.



(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

(d) Nothing in this section shall require the agency to conduct a project level analysis.

(e) For purposes of this article, the term “performance standard” includes process or raw material changes or product reformulation.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

**Comment.** Section 21159 continues former Public Resources Code Section 21159 without change.

#### **§ 21159.1. Eligibility for focused environmental impact report**

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21159.1. (a) A focused environmental impact report may be utilized if a project meets all of the following requirements:

(1) The project consists solely of the installation of pollution control equipment required by a rule or regulation of an agency listed in Section 21159.4 and other components necessary to complete the installation of that equipment.

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project which were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. No discussion of growth-inducing impacts or cumulative impacts shall be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

**Comment.** Section 21159.1 continues former Public Resources Code Section 21159.1 without change.

#### **§ 21159.2. Use of environmental analysis**

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21159.2. (a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, utilize the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division. The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

**Comment.** Section 21159.2 continues former Public Resources Code Section 21159.2 without change.

#### **§ 21159.3. Time limitations**

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21159.3. In the preparation of any environmental impact report pursuant to Section 21159.1 or 21159.2, the following deadlines shall apply:

(a) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(b) If the environmental impact report will be prepared under contract to the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the environmental impact report as soon as it has enough information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

**Comment.** Section 21159.3 continues former Public Resources Code Section 21159.3 without change.

#### **§ 21159.4. Agencies covered**

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21159.4. This article applies to the following agencies:

(a) The State Air Resources Board.

(b) Any district as defined in Section 30220.

(c) The State Water Resources Control Board.

(d) A California regional water quality control board.

(e) The Department of Toxic Substances Control.

(f) The California Integrated Waste Management Board.

**Comment.** Section 21159.4 continues former Public Resources Code Section 21159.4 without substantive change.

### **Article 5. Public Assistance Program**

#### **§ 21159.9. Implementation by Office of Planning and Research**

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21159.9. On or before March 1, 1994, the Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do both of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish a data base to assist in the preparation of environmental documents.

**Comment.** Section 21159.9 continues former Public Resources Code Section 21159.9 without change.



1 CHAPTER 8. SUBMISSION OF INFORMATION

2 **§ 21160. Submission of necessary data and information**

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3 21160. (a) Whenever any person applies to any public agency for a lease, permit,  
4 license, certificate, or other entitlement for use, the public agency may require that person  
5 to submit data and information which may be necessary to enable the public agency to  
6 determine whether the proposed project may have a significant effect on the environment or  
7 to prepare an environmental impact report.

8 (b) If any or all of the information so submitted is a “trade secret” as defined in Section  
9 6254.7 of the Government Code by those submitting that information, it shall not be  
10 included in the impact report or otherwise disclosed by any public agency. This section  
11 shall not be construed to prohibit the exchange of properly designated trade secrets between  
12 public agencies who have lawful jurisdiction over the preparation of the impact report.

13 **Comment.** Section 21160 continues former Public Resources Code Section 21160 without  
14 substantive change.

15 **§ 21161. Notice of completion**

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16 21161. Whenever a public agency has completed an environmental impact report, it shall  
17 cause a notice of completion of that report to be filed with the Office of Planning and  
18 Research. The notice of completion shall briefly identify the project and shall indicate that  
19 an environmental impact report has been prepared. Failure to file the notice required by this  
20 section shall not affect the validity of a project.

21 **Comment.** Section 21161 continues former Public Resources Code Section 21161 without  
22 change.

23 **§ 21162. Information to legislators**

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24 21162. A copy of the notice of completion of an environmental impact report on a project  
25 shall be provided, by the State Clearinghouse, to any legislator in whose district the project  
26 has an environmental impact, if the legislator requests the notice and the State  
27 Clearinghouse has received it.

28 **Comment.** Section 21162 continues former Public Resources Code Section 21162 without  
29 change.

30 CHAPTER 9. LIMITATIONS AND JUDICIAL REVIEW

31 **§ 21165. Lead agency**

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32 21165. When a project is to be carried out or approved by two or more public agencies,  
33 the determination of whether the project may have a significant effect on the environment  
34 shall be made by the lead agency; and that agency shall prepare, or cause to be prepared by  
35 contract, the environmental impact report for the project, if the report is required by this  
36 division. In the event that a dispute arises as to which is the lead agency, any public  
37 agency, or in the case of a project described in subdivision (c) of Section 21065 the  
38 applicant for the project, may submit the question to the Office of Planning and Research,  
39 and the Office of Planning and Research shall designate, within 21 days of receiving the  
40 request, the lead agency, giving due consideration to the capacity of the agency to  
41 adequately fulfill the requirements of this division.

1     **Comment.** Section 21165 continues former Public Resources Code Section 21165 without  
2 substantive change.

3     **§ 21166. Subsequent or supplemental impact report**

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4     21166. When an environmental impact report has been prepared for a project pursuant to  
5 this division, no subsequent or supplemental environmental impact report shall be required  
6 by the lead agency or by any responsible agency, unless one or more of the following  
7 events occurs:

8     (a) Substantial changes are proposed in the project which will require major revisions of  
9 the environmental impact report.

10    (b) Substantial changes occur with respect to the circumstances under which the project is  
11 being undertaken which will require major revisions in the environmental impact report.

12    (c) New information, which was not known and could not have been known at the time  
13 the environmental impact report was certified as complete, becomes available.

14     **Comment.** Section 21166 continues former Public Resources Code Section 21166 without  
15 change.

16     **§ 21166.1. Report for geographical area or group of projects**

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17     21166.1. The decision of a lead agency to prepare an environmental impact report with  
18 respect to environmental impacts within a geographic area or for a group of projects shall  
19 not be a basis for determining that an environmental document prepared for an individual  
20 project within that area or group is inadequate.

21     **Comment.** Section 21166.1 continues former Public Resources Code Section 21166.1  
22 without change.

23     **§ 21167. Time for commencement of proceedings**

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24     21167. Any action or proceeding to attack, review, set aside, void, or annul the  
25 following acts or decisions of a public agency on the grounds of noncompliance with this  
26 division shall be commenced as follows:

27     (a) An action or proceeding alleging that a public agency is carrying out or has approved  
28 a project which may have a significant effect on the environment without having determined  
29 whether the project may have a significant effect on the environment shall be commenced  
30 within 180 days from the date of the public agency's decision to carry out or approve the  
31 project, or, if a project is undertaken without a formal decision by the public agency, within  
32 180 days from the date of commencement of the project.

33     (b) Any action or proceeding alleging that a public agency has improperly determined  
34 whether a project may have a significant effect on the environment shall be commenced  
35 within 30 days from the date of the filing of the notice required by subdivision (a) of  
36 Section 21108 or subdivision (a) of Section 21152.

37     (c) Any action or proceeding alleging that an environmental impact report does not  
38 comply with this division shall be commenced within 30 days from the date of the filing of  
39 the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152  
40 by the lead agency.

41     (d) Any action or proceeding alleging that a public agency has improperly determined that  
42 a project is not subject to this division pursuant to subdivision (b) of Section 21080 or  
43 pursuant to Section 21097.3 or 21172 shall be commenced within 35 days from the date of  
44 the filing by the public agency, or person specified in subdivision (b) or (c) of Section  
45 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of

1 Section 21152. If the notice has not been filed, the action or proceeding shall be  
2 commenced within 180 days from the date of the public agency's decision to carry out or  
3 approve the project, or, if a project is undertaken without a formal decision by the public  
4 agency, within 180 days from the date of commencement of the project.

5 (e) Any action or proceeding alleging that any other act or omission of a public agency  
6 does not comply with this division shall be commenced within 30 days from the date of the  
7 filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of  
8 Section 21152.

9 (f) If a person has made a written request to the public agency for a copy of the notice  
10 specified in Section 21108 or 21152 prior to the date on which the agency approves or  
11 determines to carry out the project, then not later than five days from the date of the  
12 agency's action, the public agency shall deposit a written copy of the notice addressed to  
13 that person in the United States mail, first-class postage prepaid. The date upon which this  
14 notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and  
15 (e).

16 **Comment.** Section 21167 continues former Public Resources Code Section 21167 without  
17 substantive change.

#### 18 **§ 21167.1. Trial preference**

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19 21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168,  
20 and 21168.5, including the hearing of an action or proceeding on appeal from a decision of  
21 a lower court, all courts in which the action or proceeding is pending shall give the action  
22 or proceeding preference over all other civil actions, in the matter of setting the action or  
23 proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the  
24 action or proceeding shall be quickly heard and determined. The court shall regulate the  
25 briefing schedule so that, to the extent feasible, the court shall commence hearings on an  
26 appeal within one year of the date of the filing of the appeal.

27 (b) To ensure that actions or proceedings brought pursuant to Sections 21167, 21168,  
28 and 21168.5 may be quickly heard and determined in the lower courts, the superior courts  
29 in all counties with a population of more than 200,000 shall designate one or more judges  
30 to develop expertise in this division and related land use and environmental laws, so that  
31 those judges will be available to hear, and quickly resolve, actions or proceedings brought  
32 pursuant to Sections 21167, 21168, and 21168.5.

33 (c) In any action or proceeding filed pursuant to this chapter that is joined with any other  
34 cause of action, the court, upon a motion by any party, may grant severance of the actions.  
35 In determining whether to grant severance, the court shall consider such matters as judicial  
36 economy, administrative economy, and prejudice to any party.

37 **Comment.** Section 21167.1 continues former Public Resources Code Section 21167.1  
38 without substantive change.

#### 39 **§ 21167.2. Failure to timely commence proceedings**

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40 21167.2. If no action or proceeding alleging that an environmental impact report does not  
41 comply with the provisions of this division is commenced during the period prescribed in  
42 subdivision (c) of Section 21167, the environmental impact report shall be conclusively  
43 presumed to comply with the provisions of this division for purposes of its use by  
44 responsible agencies, unless the provisions of Section 21166 are applicable.

45 **Comment.** Section 21167.2 continues former Public Resources Code Section 21167.2  
46 without change.

1   **§ 21167.3. Presumption of compliance**

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2       21167.3. (a) If an action or proceeding alleging that an environmental impact report or a  
3 negative declaration does not comply with the provisions of this division is commenced  
4 during the period described in subdivision (b) or (c) of Section 21167, and if an injunction  
5 or stay is issued prohibiting the project from being carried out or approved pending final  
6 determination of the issue of compliance, responsible agencies shall assume that the  
7 environmental impact report or the negative declaration for the project does comply with the  
8 provisions of this division and shall issue a conditional approval or disapproval of such  
9 project according to the timetable for agency action in Article 5 (commencing with Section  
10 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional  
11 approval shall constitute permission to proceed with a project when and only when such  
12 action or proceeding results in a final determination that the environmental impact report or  
13 negative declaration does comply with the provisions of this division.

14       (b) In the event that an action or proceeding is commenced as described in subdivision (a)  
15 but no injunction or similar relief is sought and granted, responsible agencies shall assume  
16 that the environmental impact report or negative declaration for the project does comply  
17 with the provisions of this division and shall approve or disapprove the project according to  
18 the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter  
19 4.5 of Division 1 of Title 7 of the Government Code. Such approval shall constitute  
20 permission to proceed with the project at the applicant's risk pending final determination of  
21 such action or proceeding.

22       **Comment.** Section 21167.3 continues former Public Resources Code Section 21167.3  
23 without substantive change.

24   **§ 21167.4. Time for hearing**

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25       21167.4. (a) In any action or proceeding alleging noncompliance with this division, the  
26 petitioner shall request a hearing within 90 days from the date of filing the petition or shall  
27 be subject to dismissal on the court's own motion or on the motion of any party interested  
28 in the action or proceeding.

29       (b) The petitioner shall serve a notice of the request for a hearing on all parties at the time  
30 that the petitioner files the request for a hearing.

31       (c) Upon the filing of a request by the petitioner for a hearing and upon application by  
32 any party, the court shall establish a briefing schedule and a hearing date. In the absence of  
33 good cause, briefing shall be completed within 90 days from the date that the request for a  
34 hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days  
35 thereafter. Good cause may include, but shall not be limited to, the conduct of discovery,  
36 determination of the completeness of the record of proceedings, the complexity of the  
37 issues, and the length of the record of proceedings and the timeliness of its production. The  
38 parties may stipulate to a briefing schedule or hearing date that differs from the schedule set  
39 forth in this subdivision if the stipulation is approved by the court.

40       **Comment.** Section 21167.4 continues former Public Resources Code Section 21167.4  
41 without change.

42   **§ 21167.5. Proof of service**

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43       21167.5. Proof of prior service by mail upon the public agency carrying out or  
44 approving the project of a written notice of the commencement of any action or proceeding  
45 described in Section 21167 identifying the project shall be filed concurrently with the initial  
46 pleading in the action or proceeding.

1     **Comment.** Section 21167.5 continues former Public Resources Code Section 21167.5  
2 without substantive change.

3     **§ 21167.6. Record for judicial review**

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4     21167.6. Notwithstanding any other provision of law, in all actions or proceedings  
5 brought pursuant to Section 21167, except those involving the Public Utilities  
6 Commission, all of the following shall apply:

7     (a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a  
8 request that the respondent public agency prepare the record of proceedings relating to the  
9 subject of the action or proceeding. The request, together with the complaint or petition,  
10 shall be served upon the public agency not later than 10 business days from the date that the  
11 action or proceeding was filed.

12     (b)(1) The public agency shall prepare and certify the record of proceedings not later than  
13 60 days from the date that the request specified in subdivision (a) was served upon the  
14 public agency. Upon certification, the public agency shall lodge a copy of the record of  
15 proceedings with the court and shall serve on the parties notice that the record of  
16 proceedings has been certified and lodged with the court. The parties shall pay any costs or  
17 fees imposed for the preparation of the record of proceedings in conformance with any law  
18 or rule of court.

19     (2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties  
20 may agree to an alternative method of preparation of the record of proceedings, subject to  
21 certification of its accuracy by the public agency, within the time limit specified in this  
22 subdivision.

23     (c) The time limit established by subdivision (b) may be extended only upon the  
24 stipulation of all parties who have been properly served in the action or proceeding or upon  
25 order of the court. Extensions shall be liberally granted by the court when the size of the  
26 record of proceedings renders infeasible compliance with that time limit. There is no limit  
27 on the number of extensions which may be granted by the court, but no single extension  
28 shall exceed 60 days unless the court determines that a longer extension is in the public  
29 interest.

30     (d) If the public agency fails to prepare and certify the record within the time limit  
31 established in subdivision (b), or any continuances of that time limit, the plaintiff or  
32 petitioner may move for sanctions, and the court may, upon that motion, grant appropriate  
33 sanctions.

34     (e) The record of proceedings shall include, but is not limited to, all of the following  
35 items:

36     (1) All project application materials.

37     (2) All staff reports and related documents prepared by the respondent public agency with  
38 respect to its compliance with the substantive and procedural requirements of this division  
39 and with respect to the action on the project.

40     (3) All staff reports and related documents prepared by the respondent public agency and  
41 written testimony or documents submitted by any person relevant to any findings or  
42 statement of overriding considerations adopted by the respondent agency pursuant to this  
43 division.

44     (4) Any transcript or minutes of the proceedings at which the decisionmaking body of the  
45 respondent public agency heard testimony on, or considered any environmental document  
46 on, the project, and any transcript or minutes of proceedings before any advisory body to  
47 the respondent public agency which were presented to the decisionmaking body prior to  
48 action on the environmental documents or on the project.



1 (5) All notices issued by the respondent public agency to comply with this division or  
2 with any other law governing the processing and approval of the project.

3 (6) All written comments received in response to, or in connection with, environmental  
4 documents prepared for the project, including responses to the notice of preparation.

5 (7) All written evidence or correspondence submitted to, or transferred from, the  
6 respondent public agency with respect to compliance with this division or with respect to  
7 the project.

8 (8) Any proposed decisions or findings submitted to the decisionmaking body of the  
9 respondent public agency by its staff, or the project proponent, project opponents, or other  
10 persons.

11 (9) The documentation of the final public agency decision, including the final  
12 environmental impact report, mitigated negative declaration, or negative declaration, and all  
13 documents, in addition to those referenced in paragraph (3), cited or relied on in the  
14 findings or in a statement of overriding considerations adopted pursuant to this division.

15 (10) Any other written materials relevant to the respondent public agency's compliance  
16 with this division or to its decision on the merits of the project, including the initial study,  
17 any drafts of any environmental document, or portions thereof, which have been released  
18 for public review, and copies of studies or other documents relied upon in any  
19 environmental document prepared for the project and either made available to the public  
20 during the public review period or included in the respondent public agency's files on the  
21 project, and all internal agency communications, including staff notes and memoranda  
22 related to the project or to compliance with this division.

23 (11) The full written record before any inferior administrative decisionmaking body  
24 whose decision was appealed to a superior administrative decisionmaking body prior to the  
25 filing of litigation.

26 (f) In preparing the record of proceedings, the party preparing the record shall strive to  
27 do so at reasonable cost in light of the scope of the record.

28 (g) The clerk of the superior court shall prepare and certify the clerk's transcript on  
29 appeal not later than 60 days from the date that the notice designating the papers or records  
30 to be included in the clerk's transcript was filed with the superior court, if the party or  
31 parties pay any costs or fees for the preparation of the clerk's transcript imposed in  
32 conformance with any law or rules of court. Nothing in this subdivision precludes an  
33 election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

34 (h) Extensions of the period for the filing of any brief on appeal may be allowed only by  
35 stipulation of the parties or by order of the court for good cause shown. Extensions for the  
36 filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an  
37 opening brief, and one 30-day extension for the preparation of a responding brief, except  
38 that the court may grant a longer extension or additional extensions if it determines that  
39 there is a substantial likelihood of settlement that would avoid the necessity of completing  
40 the appeal.

41 (i) At the completion of the filing of briefs on appeal, the appellant shall notify the court  
42 of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall  
43 set the appeal for hearing on the first available calendar date.

44 **Comment.** Section 21167.6 continues former Public Resources Code Section 21167.6  
45 without change.

46 **§ 21167.7. Attorney general**

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47 21167.7. Every person who brings an action pursuant to Section 21167 shall comply  
48 with the requirements of Section 389.6 of the Code of Civil Procedure. That person shall

1 also furnish pursuant to Section 389.6 of the Code of Civil Procedure a copy of any  
2 amended or supplemental pleading filed by the person in the action to the Attorney General.  
3 No relief, temporary or permanent, shall be granted until a copy of the pleading has been  
4 furnished to the Attorney General in accordance with these requirements.

5 **Comment.** Section 21167.7 continues former Public Resources Code Section 21167.7  
6 without substantive change.

#### 7 **§ 21167.8. Settlement**

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8 21167.8. (a) Not later than 20 days from the date of service upon a public agency of a  
9 petition or complaint brought pursuant to Section 21167, the public agency shall file with  
10 the court a notice setting forth the time and place at which all parties shall meet and attempt  
11 to settle the litigation. The meeting shall be scheduled and held not later than 45 days from  
12 the date of service of the petition or complaint upon the public agency. The notice of the  
13 settlement meeting shall be served by mail upon the counsel for each party. If the public  
14 agency does not know the identity of counsel for any party, the notice shall be served by  
15 mail upon the party for whom counsel is not known.

16 (b) At the time and place specified in the notice filed with the court, the parties shall meet  
17 and confer regarding anticipated issues to be raised in the litigation and shall attempt in  
18 good faith to settle the litigation and the dispute which forms the basis of the litigation. The  
19 settlement meeting discussions shall be comprehensive in nature and shall focus on the  
20 legal issues raised by the parties concerning the project that is the subject of the litigation.

21 (c) The settlement meeting may be continued from time to time without postponing or  
22 otherwise delaying other applicable time limits in the litigation. The settlement meeting is  
23 intended to be conducted concurrently with any judicial proceedings.

24 (d) If the litigation is not settled, the court, in its discretion, may, or at the request of any  
25 party, shall, schedule a further settlement conference before a judge of the superior court. If  
26 the petition or complaint is later heard on its merits, the judge hearing the matter shall not be  
27 the same judge conducting the settlement conference, except in counties that have only one  
28 judge of the superior court.

29 (e) The failure of any party, who was notified pursuant to subdivision (a), to participate  
30 in the litigation settlement process, without good cause, may result in an imposition of  
31 sanctions by the court.

32 (f) Not later than 30 days from the date that notice of certification of the record of  
33 proceedings was filed and served in accordance with Section 21167.6, the petitioner or  
34 plaintiff shall file and serve on all other parties a statement of issues which the petitioner or  
35 plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from  
36 the date on which the respondent or real party in interest has been served with the statement  
37 of issues from the petitioner or plaintiff, each respondent and real party in interest shall file  
38 and serve on all other parties a statement of issues which that party intends to raise in any  
39 brief or at any hearing or trial.

40 **Comment.** Section 21167.8 continues former Public Resources Code Section 21167.8  
41 without change.

#### 42 **§ 21167.9. Exhaustion of administrative remedies**

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43 21167.9. (a) No action or proceeding may be brought pursuant to Section 21167 unless  
44 the alleged grounds for noncompliance with this division were presented to the public  
45 agency orally or in writing by any person during the public comment period provided by  
46 this division or prior to the close of the public hearing on the project before the issuance of  
47 the notice of determination.



(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

**Comment.** Section 21167.9 continues former Public Resources Code Section 21177 without change.

#### **§ 21168. Administrative mandamus**

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21168. (a) Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

(b) In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

**Comment.** Section 21168 continues former Public Resources Code Section 21168 without substantive change.

#### **§ 21168.5. Standard of review**

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21168.5. In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

**Comment.** Section 21168.5 continues former Public Resources Code Section 21168.5 without change.

#### **§ 21168.6. Public Utilities Commission**

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21168.6. In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to that commission.

**Comment.** Section 21168.6 continues former Public Resources Code Section 21168.6 without substantive change.

1    **§ 21168.7. Provisions declaratory of existing law**

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2       21168.7. Sections 21168 and 21168.5 are declaratory of existing law with respect to the  
3   judicial review of determinations or decisions of public agencies made pursuant to this  
4   division.

5       **Comment.** Section 21168.7 continues former Public Resources Code Section 21168.7  
6   without change.

7    **§ 21168.9. Remedies**

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8       21168.9. (a) If a court finds, as a result of a trial, hearing, or remand from an appellate  
9   court, that any determination, finding, or decision of a public agency has been made  
10  without compliance with this division, the court shall enter an order that includes one or  
11  more of the following:

12       (1) A mandate that the determination, finding, or decision be voided by the public  
13   agency, in whole or in part.

14       (2) If the court finds that a specific project activity or activities will prejudice the  
15   consideration or implementation of particular mitigation measures or alternatives to the  
16   project, a mandate that the public agency and any real parties in interest suspend any or all  
17   specific project activity or activities, pursuant to the determination, finding, or decision,  
18   that could result in an adverse change or alteration to the physical environment, until the  
19   public agency has taken any actions that may be necessary to bring the determination,  
20   finding, or decision into compliance with this division.

21       (3) A mandate that the public agency take specific action as may be necessary to bring the  
22   determination, finding, or decision into compliance with this division.

23       (b) Any order pursuant to subdivision (a) shall include only those mandates which are  
24   necessary to achieve compliance with this division and only those specific project activities  
25   in noncompliance with this division. The order shall be made by the issuance of a  
26   peremptory writ of mandate specifying what action by the public agency is necessary to  
27   comply with this division. However, the order shall be limited to that portion of a  
28   determination, finding, or decision or the specific project activity or activities found to be in  
29   noncompliance only if a court finds that (1) the portion or specific project activity or  
30   activities are severable, (2) severance will not prejudice complete and full compliance with  
31   this division, and (3) the court has not found the remainder of the project to be in  
32   noncompliance with this division. The trial court shall retain jurisdiction over the public  
33   agency's proceedings by way of a return to the peremptory writ until the court has  
34   determined that the public agency has complied with this division.

35       (c) Nothing in this section authorizes a court to direct any public agency to exercise its  
36   discretion in any particular way. Except as expressly provided in this section, nothing in  
37   this section is intended to limit the equitable powers of the court.

38       **Comment.** Section 21168.9 continues former Public Resources Code Section 21168.9  
39   without change.

40    **CHAPTER 10. TRANSITIONAL PROVISIONS AND RELATION TO OTHER LAW**

41    **§ 21169. Prospective application**

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42       21169. Any project defined in subdivision (c) of Section 21065 undertaken, carried out  
43   or approved on or before December 5, 1972, and the issuance by any public agency of any  
44   lease, permit, license, certificate or other entitlement for use executed or issued on or before  
45   December 5, 1972, notwithstanding a failure to comply with this division, if otherwise

1 legal and valid, is hereby confirmed, validated and declared legally effective. Any project  
2 undertaken by a person which was supported in whole or part through contracts with one  
3 or more public agencies on or before December 5, 1972, notwithstanding a failure to  
4 comply with this division, if otherwise legal and valid, is hereby confirmed, validated and  
5 declared legally effective.

6 **Comment.** Section 21169 continues former Public Resources Code Section 21169 without  
7 substantive change.

#### 8 **§ 21170. Pending proceedings**

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9 21170. (a) Section 21169 shall not operate to confirm, validate or give legal effect to any  
10 project the legality of which was being contested in a judicial proceeding in which  
11 proceeding the pleadings, prior to December 5, 1972, alleged facts constituting a cause of  
12 action for, or raised the issue of, a violation of this division and which was pending and  
13 undetermined on December 5, 1972; provided, however, that Section 21169 shall operate  
14 to confirm, validate or give legal effect to any project to which this subdivision applies if,  
15 prior to the commencement of judicial proceedings and in good faith and in reliance upon  
16 the issuance by a public agency of any lease, permit, license, certificate or other entitlement  
17 for use, substantial construction has been performed and substantial liabilities for  
18 construction and necessary materials have been incurred.

19 (b) Section 21169 shall not operate to confirm, validate or give legal effect to any project  
20 which had been determined in any judicial proceeding, on or before December 5, 1972, to  
21 be illegal, void or ineffective because of noncompliance with this division.

22 **Comment.** Section 21170 continues former Public Resources Code Section 21170 without  
23 substantive change.

#### 24 **§ 21171. Phase-in period**

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25 21171. (a) This division, except for Section 21169, shall not apply to the issuance of any  
26 lease, permit, license, certificate or other entitlement for use for any project defined in  
27 subdivision (c) of Section 21065 or to any project undertaken by a person which is  
28 supported in whole or in part through contracts with one or more public agencies until the  
29 121st day after December 5, 1972. This section shall not apply to any project to which  
30 Section 21170 is applicable or to any successor project which is the same as, or  
31 substantially identical to, such a project.

32 (b) This section shall not prohibit or prevent a public agency, prior to the 121st day after  
33 December 5, 1972, from considering environmental factors in connection with the approval  
34 or disapproval of a project and from imposing reasonable fees in connection therewith.

35 **Comment.** Section 21171 continues former Public Resources Code Section 21171 without  
36 substantive change.

#### 37 **§ 21172. Application during state of emergency**

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38 21172. This division shall not apply to any project undertaken, carried out, or approved  
39 by a public agency to maintain, repair, restore, demolish or replace property or facilities  
40 damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of  
41 emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with  
42 Section 8550) of Division 1, Title 2 of the Government Code.

43 **Comment.** Section 21172 continues former Public Resources Code Section 21172 without  
44 change.

1    **§ 21172.5. Aspects of phase-in**

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2       21172.5. (a) Until April 5, 1973, any objectives, criteria and procedures adopted by  
3 public agencies in compliance with this division shall govern the evaluation of projects  
4 defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental  
5 impact reports on those projects when required by this division.

6       (b) Any environmental impact report which has been completed or on which substantial  
7 work has been performed on or before April 5, 1973, if otherwise legally sufficient, shall,  
8 when completed, be deemed to be in compliance with this division and no further  
9 environmental impact report shall be required except as provided in Section 21166.

10      **Comment.** Section 21172.5 continues former Public Resources Code Section 21172.5  
11 without substantive change.

12      ☞ **Note.** Public Resources Code Section 21172.5 refers to “the 121st day after December  
13 5, 1972.” This has been replaced with a reference to the 121st day after December 5, 1972  
14 — April 5, 1973.

15    **§ 21174. Effect on other law**

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16       21174. No provision of this division is a limitation or restriction on the power or  
17 authority of any public agency in the enforcement or administration of any provision of law  
18 which it is specifically permitted or required to enforce or administer, including, but not  
19 limited to, the powers and authority granted to the California Coastal Commission pursuant  
20 to Division 20 (commencing with Section 30000) of the Public Resources Code. To the  
21 extent of any inconsistency or conflict between the provisions of the California Coastal Act  
22 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) and  
23 the provisions of this division, the provisions of Division 20 (commencing with Section  
24 30000) of the Public Resources Code shall control.

25      **Comment.** Section 21174 continues former Public Resources Code Section 21174 without  
26 substantive change.

27    **§ 21175. Effect on project approved by local agency formation commission**

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28       21175. In the event that a local agency formation commission, acting pursuant to the  
29 provisions of Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of  
30 Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the  
31 Government Code, has approved a project without complying with this division, that  
32 approval is hereby confirmed, validated, and declared legally effective notwithstanding the  
33 failure to comply with this division; provided, that such approval shall have occurred prior  
34 to February 7, 1975.

35      **Comment.** Section 21175 continues former Public Resources Code Section 21175 without  
36 substantive change.

37    **§ 21176. Effect of § 21175**

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38       21176. (a) Section 21175 shall not operate to confirm, validate, or give legal effect to any  
39 project, the legality of which was being contested in a judicial proceeding in which  
40 proceeding the pleadings, prior to February 7, 1975, alleged facts constituting a cause of  
41 action for, or raised the issue of, a violation of this division, and which was pending and  
42 undetermined on February 7, 1975.

43       (b) Section 21175 shall not operate to confirm, validate, or give legal effect to any project  
44 which had been determined in any judicial proceeding, on or before July 5, 1975, to be  
45 illegal, void, or ineffective because of noncompliance with this division.

1     **Comment.** Section 21176 continues former Public Resources Code Section 21176 without  
2 change.

## 3                                   DIVISION 4. AIR RESOURCES

### 4                   PART 1. GENERAL PROVISIONS AND DEFINITIONS

#### 5                                   CHAPTER 1. GENERAL PROVISIONS

##### 6     **§ 30000. Legislative findings and declaration**

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7         30000. The Legislature finds and declares that the people of the State of California have a  
8 primary interest in the quality of the physical environment in which they live, and that this  
9 physical environment is being degraded by the waste and refuse of civilization polluting the  
10 atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare,  
11 and sense of well-being of the people of California.

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

##### 14    **§ 30001. Legislative declaration**

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15         30001. The Legislature, therefore, declares that this public interest shall be safeguarded  
16 by an intensive, coordinated state, regional, and local effort to protect and enhance the  
17 ambient air quality of the state. Since air pollution knows no political boundaries, the  
18 Legislature declares that a regional approach to the problem should be encouraged  
19 whenever possible and, to this end, the state is divided into air basins. The state should  
20 provide incentives for regional strategies, respecting, when necessary, existing political  
21 boundaries.

22     **Comment.** Section 30001 continues former Health and Safety Code Section 39001 without  
23 substantive change.

##### 24    **§ 30002. Control of air pollution from nonvehicular and vehicular sources**

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25         30002. Local and regional authorities have the primary responsibility for control of air  
26 pollution from all sources other than vehicular sources. The control of vehicular sources,  
27 except as otherwise provided in this division, shall be the responsibility of the State Air  
28 Resources Board. Except as otherwise provided in this division, including, but not limited  
29 to, Sections 37959, 37902, and 38304, local and regional authorities may establish stricter  
30 standards than those set by law or by the state board for nonvehicular sources. However,  
31 the state board shall, after holding public hearings as required in this division, undertake  
32 control activities in any area wherein it determines that the local or regional authority has  
33 failed to meet the responsibilities given to it by this division or by any other provision of  
34 law.

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


##### 37    **§ 30003. Responsible agency**

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38         30003. The State Air Resources Board is the state agency charged with coordinating  
39 efforts to attain and maintain ambient air quality standards, to conduct research into the  
40 causes of and solution to air pollution, and to systematically attack the serious problem

caused by motor vehicles, which is the major source of air pollution in many areas of the state.

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

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

#### **§ 30004. Punishment of violations**

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

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

**Comment.** Section 30004 codifies Section 11 of Chapter 1252 of the Statutes of 1992, which is repealed by the act that enacted this code.

## **CHAPTER 2. DEFINITIONS**

#### **§ 30100. Application of definitions**

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30100. Unless the context requires otherwise, a definition set forth in this chapter shall govern the construction of this division, unless and until rules and regulations are adopted by the state board pursuant to Section 30902 which revise the definition.

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

#### **§ 30105. “Acid deposition”**

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

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

#### **§ 30110. “Acid deposition precursor”**

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

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

#### **§ 30115. “Agricultural burning”**

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30115. (a) “Agricultural burning” means open outdoor fires used in agricultural operations in the growing of crops or raising of fowl or animals, or open outdoor fires used in forest management, range improvement, or the improvement of land for wildlife and game habitat, or disease or pest prevention.



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

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

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

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#### § 30120. “Air basin”

30120. “Air basin” means an area of the state designated by the state board pursuant to subdivision (a) of Section 30950.

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

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#### § 30125. “Air contaminant”

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

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

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#### § 30130. “Air pollutant”

30130. “Air pollutant” means air contaminant.

**Comment.** Section 30130 is new. It is consistent with former Health and Safety Code Section 39013. See Section 30125 (“air contaminant”).

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#### § 30135. “Ambient air quality standards”

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

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

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#### § 30140. “Bay district”

30140. “Bay district” means the Bay Area Air Quality Management District continued in existence pursuant to Chapter 2 (commencing with Section 34700) of Title 4 of Part 3.

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



1    **§ 30145. “Bay district board”**

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2       30145. “Bay district board” means the governing body of the bay district.

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

5    **§ 30150. “Bureau”**

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6       30150. “Bureau” means the Bureau of Automotive Repair in the Department of  
7       Consumer Affairs.

8       **Comment.** Section 30150 is new. It is drawn from former Health and Safety Code Section  
9       39016.5.

10      ☞ **Note.** Health and Safety Code Section 39016.5 never became operative and has not  
11      been continued. The section is subject to an operation contingency that was not satisfied. See  
12      1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection  
13      Agency, California Air Pollution Control Laws 4 (1998).

14      However, the definition of “bureau” provided by that section is useful — the term is used  
15      repeatedly throughout this division, without elaboration on its meaning. In order to clarify the  
16      meaning of the term, the substance of Health and Safety Code Section 39016.5 has been  
17      continued in this new section. The Commission would like to receive input on whether this  
18      section establishes an appropriate definition of “bureau.”

19    **§ 30155. “Bus”**

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20       30155. “Bus” has the same meaning as defined in Section 233 of the Vehicle Code.

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

23    **§ 30160. “Certification”**

---

24       30160. “Certification” means a finding by the state board that a motor vehicle, motor  
25       vehicle engine, or motor vehicle pollution control device has satisfied the criteria adopted  
26       by the state board for the control of specified air contaminants from vehicular sources.

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

29    **§ 30165. “Certified device”**

---

30       30165. “Certified device” means a motor vehicle pollution control device with a  
31       certification, and includes a motor vehicle pollution control device previously accredited or  
32       approved by the state board or by the Motor Vehicle Pollution Control Board.

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

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

37    **§ 30170. “Cogeneration technology”**

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38       30170. “Cogeneration technology” has the same meaning as defined in Section 25134 of  
39       the Public Resources Code.

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

1   **§ 30175. “Cogeneration technology project”**

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2       30175. “Cogeneration technology project” shall not include existing equipment owned or  
3       operated by the applicant or host industry which is not modified as a result of utilizing  
4       cogeneration technology.

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

7   **§ 30180. “Combustible or flammable solid waste”**

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8       30180. “Combustible or flammable solid waste” means any garbage, rubbish, trash,  
9       rags, paper, boxes, crates, excelsior, ashes, offal, carcass of a dead animal, or any other  
10      combustible or flammable refuse matter which is in a solid form.

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

13   **§ 30185. “Commercial vehicle”**

---

14      30185. “Commercial vehicle” has the same meaning as defined in Section 260 of the  
15      Vehicle Code.

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

18   **§ 30190. “Components of emissions control systems”**

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19      30190. “Components of emissions control systems” are those parts included in the state  
20      board’s “Emissions Warranty Parts List,” dated December 14, 1978, referenced in  
21      subdivision (c) of Section 2036 of Title 13 of the California Administrative Code.

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

24   **§ 30195. “County district”**

---

25      30195. “County district” means a district continued in existence pursuant to Chapter 1  
26      (commencing with Section 33600) of Title 3 of Part 3.

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

29   **§ 30200. “County district board”**

---

30      30200. “County district board” means the governing body of a county district.

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

33   **§ 30205. “Crankcase emissions”**

---

34      30205. “Crankcase emissions” means substances emitted directly to the atmosphere from  
35      any opening leading to the crankcase of a motor vehicle engine. Crankcase gases which are  
36      conducted to the engine intake or exhaust systems are not included in the definition of  
37      crankcase emissions, but are defined as exhaust emissions.

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

1   **§ 30210. “Department”**

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2       30210. “Department” means the Department of Consumer Affairs.

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

5   **§ 30215. “Direct import vehicle”**

---

6       30215. “Direct import vehicle” means any light-duty motor vehicle manufactured outside  
7 of the United States which was not intended by the manufacturer for sale in the United  
8 States and which was not certified by the state board pursuant to Chapter 3 (commencing  
9 with Section 41500) of Title 4 of Part 5.

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

12   **§ 30220. “District”**

---

13       30220. “District” means an air pollution control district or an air quality management  
14 district created or continued in existence pursuant to provisions of Part 3 (commencing with  
15 Section 32000).

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

18   **§ 30225. “District board”**

---

19       30225. “District board” means the governing body of a district.

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

22   **§ 30230. “Elderly low-income person”**

---

23       30230. “Elderly low-income person” means an individual over 62 years of age who  
24 resides in a household wherein the combined adjusted gross income, as defined in Section  
25 17072 of the Revenue and Taxation Code, of all members of the household, including the  
26 individual over 62 years of age, was less than seven thousand five hundred dollars  
27 (\$7,500) for the previous calendar year.

28       **Comment.** Section 30230 continues former Health and Safety Code Section 39026.5  
29 without substantive change.

30   **§ 30235. “Emissions-capped trading program”**

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31       30235. “Emission-capped trading program” means a trading program with capped  
32 emissions.

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

35   **§ 30240. “Emission standards”**

---

36       30240. “Emission standards” means specified limitations on the discharge of air  
37 contaminants into the atmosphere.

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

1     ☞ **Note.** Health and Safety Code Section 39027.5 never became operative and has not  
2     been continued. The section is subject to an operation contingency that was not satisfied. See  
3     1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection  
4     Agency, California Air Pollution Control Laws 7 (1998).

5     **§ 30250. “Exhaust device”**

---

6     30250. “Exhaust device” means a motor vehicle pollution control device to reduce  
7     exhaust emissions.

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

10    **§ 30255. “Exhaust emissions”**

---

11    30255. “Exhaust emissions” means substances emitted to the atmosphere from any  
12    opening downstream from the exhaust port of a motor vehicle engine.

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

15    **§ 30260. “Flue”**

---

16    30260. “Flue” means any duct or passage for air, gases, or the like, such as a stack or  
17    chimney.

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

20    **§ 30265. “Fuel evaporative loss emissions”**

---

21    30265. “Fuel evaporative loss emissions” means vaporized fuel emitted into the  
22    atmosphere from the fuel system of a motor vehicle.

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

25    **§ 30270. “Fuel systems”**

---

26    30270. “Fuel system” means the combination of fuel tank, fuel lines and carburetor, or  
27    fuel injector, and includes all vents and fuel evaporative emission control systems or  
28    devices.

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

31    **§ 30275. “Gross polluter”**

---

32    30275. “Gross polluter” means a vehicle with excess hydrocarbon, carbon monoxide, or  
33    oxides of nitrogen emissions as established by the department in consultation with the state  
34    board.

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

37    **§ 30280. “Heavy-duty”**

---

38    30280. “Heavy-duty” means having a manufacturer’s maximum gross vehicle weight  
39    rating of 6,001 or more pounds.

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

3     **§ 30285. “Implement of husbandry”**

---

4     30285. “Implement of husbandry” has the same meaning as defined in Chapter 1  
5 (commencing with Section 36000), Division 16 of the Vehicle Code.

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

8     **§ 30290. “Light-duty”**

---

9     30290. “Light-duty” means having a manufacturer’s maximum gross vehicle weight  
10 rating of under 6,001 pounds.

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

13     **§ 30295. “Local or regional authority”**

---

14     30295. “Local or regional authority” means the governing body of any city, county, or  
15 district.

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

18     **§ 30300. “Low-emission motor vehicle”**

---

19     30300. “Low-emission motor vehicle” means a motor vehicle which has been certified by  
20 the state board to meet all applicable emission standards and which meets at least one of the  
21 following additional requirements:

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

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

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

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

33     **§ 30305. “Marine vessel”**

---

34     30305. “Marine vessel” means any tugboat, tanker, freighter, passenger ship, barge, or  
35 other boat, ship, or watercraft, except those used primarily for recreation.

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

38     **§ 30310. “Medium duty”**

---

39     30310. “Medium duty” means a heavy-duty vehicle having a manufacturer’s gross  
40 vehicle weight rating under a limit established by the state board.

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

3     **§ 30315. “Model year”**

---

4     30315. “Model year” means the manufacturer’s annual production period which includes  
5 January 1 of a calendar year or, if the manufacturer has no annual production period, the  
6 calendar year.

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

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

11    **§ 30320. “Mojave Desert district”**

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12    30320. “Mojave Desert district” means the Mojave Desert Air Quality Management  
13 District created pursuant to Chapter 3 (commencing with Section 41200) of Title 4 of Part  
14 3.

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

17    **§ 30325. “Mojave Desert district board”**

---

18    30325. “Mojave Desert district board” means the governing board of the Mojave Desert  
19 district.

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

22    **§ 30330. “Motor vehicle”**

---

23    30330. “Motor vehicle” has the same meaning as defined in Section 415 of the Vehicle  
24 Code.

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

27    **§ 30335. “Motor vehicle pollution control device”**

---

28    30335. “Motor vehicle pollution control device” means equipment designed for  
29 installation on a motor vehicle for the purpose of reducing the air contaminants emitted  
30 from the vehicle, or a system or engine modification on a motor vehicle which causes a  
31 reduction of air contaminants emitted from the vehicle.

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

34    **§ 30340. “Motorcycle”**

---

35    30340. “Motorcycle” has the same meaning as defined in Section 400 of the Vehicle  
36 Code.

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

1    **§ 30345. “New motor vehicle”**

---

2       30345. “New motor vehicle” means a motor vehicle, the equitable or legal title to which  
3       has never been transferred to an ultimate purchaser.

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

6    **§ 30350. “New motor vehicle engine”**

---

7       30350. “New motor vehicle engine” means a new engine in a motor vehicle.

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

10   **§ 30355. “Nonvehicular sources”**

---

11       30355. “Nonvehicular sources” means all sources of air contaminants, including the  
12       loading of fuels into vehicles, except vehicular sources.

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

15   **§ 30360. “Obscurant”**

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16       30360. “Obscurant” means fog oil released into the atmosphere during military exercises  
17       which produces a smoke screen designed to eliminate the detection of persons or objects by  
18       visual or electronic means of observation within a localized area.

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

21   **§ 30365. “Open outdoor fire”**

---

22       30365. “Open outdoor fire” means any combustion of combustible material of any type  
23       outdoors in the open, not in any enclosure, where the products of combustion are not  
24       directed through a flue.

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

27   **§ 30370. “Orchard or citrus grove heater”**

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28       30370. “Orchard or citrus grove heater” means any article, machine, equipment, or other  
29       contrivance, burning any type of fuel or material capable of emitting air contaminants,  
30       used, or capable of being used, for the purpose of giving protection from frost damage.

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

33   **§ 30375. “Passenger vehicle”**

---

34       30375. “Passenger vehicle” has the same meaning as defined in Section 465 of the  
35       Vehicle Code.

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

38   **§ 30380. “Person”**

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39       30380. “Person” includes all of the following:



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

3 (b) Any state or local governmental agency or public district, or any officer or employee  
4 thereof. However, no state or local governmental agency or public district, or any officer or  
5 employee thereof, shall be criminally liable or responsible under the provisions of Part 4  
6 (commencing with Section 37000) for any acts done by the governmental agency, or public  
7 district, in the performance of its functions or by the officers or employees in the  
8 performance of their duties.

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

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

#### 12 **§ 30385. “Qualifying facility”**

---

13 30385. “Qualifying facility” means a qualifying small power production facility as  
14 defined in Section 228.5 of the Public Utilities Code.

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

#### 17 **§ 30390. “Racing vehicle”**

---

18 30390. “Racing vehicle” means a competition vehicle not used on public highways.

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

#### 21 **§ 30395. “Regional district”**

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22 30395. “Regional district” means a district created pursuant to Chapter 3 (commencing  
23 with Section 34000) of Title 3 of Part 3.

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

#### 26 **§ 30400. “Regional district board”**

---

27 30400. “Regional district board” means the governing body of a regional district.

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

#### 30 **§ 30405. “Resource recovery project”**

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31 30405. “Resource recovery project” means a project which converts municipal wastes,  
32 agricultural wastes, forest wastes, landfill gas, or digester gas in a manner so as to produce  
33 energy as a byproduct in the air basin in which they are produced.

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

#### 36 **§ 30410. “Sacramento district”**

---

37 30410. “Sacramento district” means the Sacramento Metropolitan Air Quality  
38 Management District created pursuant to Chapter 4 (commencing with Section 35400) of  
39 Title 4 of Part 3.

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

1   **§ 30415. “Sacramento district board”**

---

2       30415. “Sacramento district board” means the governing body of the Sacramento district.

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

5   **§ 30420. “Schedule of increments of progress”**

---

6       30420. “Schedule of increments of progress” means a statement of dates when various  
7 steps are to be taken to bring a source of air contaminants into compliance with emission  
8 standards and shall include, to the extent feasible, the following:

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

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

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

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

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

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

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

23   **§ 30425. “Schoolbus”**

---

24       30425. “Schoolbus” means a heavy-duty motor vehicle exclusively designed and built  
25 for the transportation of any school, college, or university student to or from educational  
26 facilities or activities.

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

29       👉 **Note.** Health and Safety Code Section 39051.7 never became operative and has not  
30 been continued. The section is subject to an operation contingency that was not satisfied. See  
31 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection  
32 Agency, California Air Pollution Control Laws 12 (1998).

33   **§ 30435. “Solid waste dump”**

---

34       30435. “Solid waste dump” means any accumulation for the purpose of disposal of any  
35 solid waste.

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

38   **§ 30440. “South coast district”**

---

39       30440. “South coast district” means the South Coast Air Quality Management District  
40 created pursuant to Chapter 5 (commencing with Section 35800) of Title 4 of Part 3.

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

1   **§ 30445. “South coast district board”**

---

2       30445. “South coast district board” means the governing body of the south coast district.

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

5   **§ 30450. “State Board”**

---

6       30450. “State Board” means the State Air Resources Board.

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

9   **§ 30455. “Title V”**

---

10       30455. “Title V” means Title V of the federal Clean Air Act (42 U.S.C. Sec. 7661 et  
11 seq.).

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

14   **§ 30460. “Title V source”**

---

15       30460. “Title V source” means only a stationary source required by federal law to be  
16 included in an operating permit program established pursuant to Title V of the federal Clean  
17 Air Act (42 U.S.C. Secs. 7661 to 7661f, inclusive) and the federal regulations adopted  
18 pursuant to Title V.

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

21   **§ 30465. “Trading program with capped emissions”**

---

22       30465. “Trading program with capped emissions” means a market-based incentive  
23 trading program adopted pursuant to Section 31151 that allows sources to comply with an  
24 emission cap or limit by acquiring marketable emission credits.

25       **Comment.** Section 30465 continues the definition of “trading program with capped  
26 emissions” provided in former Health and Safety Code Section 39053.6 without substantive  
27 change. The definition of “emissions capped trading program” is continued in Section  
28 30235.

29   **§ 30470. “Truck”**

---

30       30470. “Truck” means a motor truck as defined in Section 410 of the Vehicle Code.

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

33   **§ 30475. “Truck tractor”**

---

34       30475. “Truck tractor” has the same meaning as defined in Section 655 of the Vehicle  
35 Code.

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

1    **§ 30480. “Ultimate purchaser”**

---

2       30480. “Ultimate purchaser” means, with respect to any new motor vehicle or new motor  
3       vehicle engine, the first person who in good faith purchases a new motor vehicle or new  
4       motor vehicle engine for purposes other than resale.

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

7    **§ 30485. “Unified district”**

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8       30485. “Unified district” means a district created or continued in existence pursuant to  
9       Chapter 2 (commencing with Section 33800) of Title 3 of Part 3.

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

12   **§ 30490. “Unified district board”**

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13      30490. “Unified district board” means the governing body of a unified district.

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

16   **§ 30495. “Used motor vehicle”**

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17      30495. “Used motor vehicle” means any motor vehicle which is not a new motor vehicle.

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

20   **§ 30500. “Vehicle”**

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21      30500. “Vehicle” has the same meaning as defined in Section 670 of the Vehicle Code.

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

24   **§ 30505. “Vehicular sources”**

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25      30505. “Vehicular sources” means those sources of air contaminants emitted from motor  
26      vehicles.

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

29                                    CHAPTER 3. MINOR VIOLATIONS

30                                    Article 1. General Provisions

31   **§ 30600. Findings, declarations, and intent**

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32      30600. (a) The Legislature hereby finds and declares that the purpose of this chapter is to  
33      establish an enforcement policy for violations of this division that the enforcement agency  
34      finds are minor when the danger they pose to, or the potential that they have for  
35      endangering, human health, safety, or welfare or the environment are taken into account.

36      (b) It is the intent of the Legislature in enacting this chapter to provide a more resource-  
37      efficient enforcement mechanism, faster compliance times, and the creation of a productive  
38      and cooperative working relationship between the state board, the districts, and the

1 regulated community while maintaining protection of human health and safety and the  
2 environment.

3 **Comment.** Section 30600 continues former Health and Safety Code Section 39150(a)-(b)  
4 without change.

### 5 **§ 30601. Report**

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6 30601. On or before January 1, 2000, the state board shall report to the Legislature on  
7 actions taken by the state board and the districts to implement this chapter and the results of  
8 that implementation. Each district shall provide the state board with the information that the  
9 state board requests to determine the degree to which the purposes described in subdivision  
10 (a) of Section 30600 have been achieved.

11 **Comment.** Section 30601 continues former Health and Safety Code Section 39153(a)  
12 without substantive change.

### 13 **§ 30602. Duration of chapter**

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14 30602. This chapter shall remain in effect only until January 1, 2001, and as of that date  
15 is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001,  
16 deletes or extends that date.

17 **Comment.** Section 30602 continues former Health and Safety Code Section 39153(b)  
18 without substantive change.

## 19 **Article 2. Classification and Exclusions**

### 20 **§ 30650. Classification of minor violations**

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21 30650. The state board and each district shall, for their respective jurisdictions,  
22 implement this chapter by adopting a regulation or a rule that classifies the types of  
23 violations of this division, or of the regulations, rules, standards, orders, permit  
24 conditions, or other requirements adopted pursuant to this division, that the state board or  
25 the district finds are minor violations in accordance with Section 30651.

26 **Comment.** Section 30650 continues former Health and Safety Code Section 39150(c)  
27 without substantive change.

### 28 **§ 30651. Classification criteria**

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29 30651. In classifying the types of violations that are minor violations, the state board or  
30 the district shall consider all of the following factors:

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

40 **Comment.** Section 30651 continues former Health and Safety Code Section 39150(d)  
41 without substantive change.

### § 30652. Classification criteria

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

- (1) Any knowing, willful, or intentional violation of this division.
  - (2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
  - (3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- (b) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (a), the state board or district or an authorized or designated officer shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

**Comment.** Section 30652 continues former Health and Safety Code Section 39150(e)-(f) without substantive change.

### Article 3. Notice to Comply

### **§ 30700. “Notice to comply”**

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

- (a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or district or an authorized or designated officer. If testing is required by the state board or district or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the representative of the state board or the district or an authorized or designated officer shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or district or an authorized or designated officer determines that the issuance of a notice to comply is warranted, the representative or officer shall immediately notify the facility owner or operator in writing.
- (b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the notice to comply may be mailed to the owner or operator of the facility.
- (c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the state board's or district's representative or an authorized or designated officer may be achieved, and a time limit in which to comply, which shall not exceed 30 days.
- (d) The notice to comply shall contain the information specified in subdivision (a) of Section 30704 with regard to the possible reinspection of the facility.

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

### **§ 30701. Issuance of notice to comply**

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



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

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

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

#### **§ 30702. Principal means of enforcement**

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

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

#### **§ 30703. Required compliance**

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30703. A person who receives a notice to comply pursuant to subdivision (a) of Section 30701 shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply and return it to the state board's or district's representative or an authorized or designated officer, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to Section 39553 or 39603.

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

#### **§ 30704. Proof of compliance**

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

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

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

#### **§ 30705. Appeal**

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30705. If a person who receives a notice to comply pursuant to subdivision (a) of Section 30701 disagrees with one or more of the alleged violations cited in the notice to



1 comply, the person shall give written notice of appeal to the state board or district, which  
2 shall develop a process for reviewing and determining the disposition of the appeal.

3 **Comment.** Section 30705 continues former Health and Safety Code Section 39152(f)  
4 without substantive change.

## 5 Article 4. Enforcement Alternatives

### 6 **§ 30750. Immediate enforcement to prevent harm**

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7 30750. Notwithstanding any other provision of this chapter, if a person fails to comply  
8 with a notice to comply within the prescribed period, or if the state board or district or an  
9 authorized or designated officer determines that the circumstances surrounding a particular  
10 minor violation are such that immediate enforcement is warranted to prevent harm to the  
11 public health or safety or to the environment, the state board or district or an authorized or  
12 designated officer may take any needed enforcement action authorized by this division.

13 **Comment.** Section 30750 continues former Health and Safety Code Section 39152(g)  
14 without substantive change.

### 15 **§ 30751. Civil penalties**

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16 30751. Notwithstanding any other provision of this chapter, if the state board or district  
17 or an authorized or designated officer determines that the circumstances surrounding a  
18 particular minor violation are such that the assessment of a civil penalty pursuant to this  
19 division is warranted or required by federal law, in addition to issuance of a notice to  
20 comply, the state board or district or an authorized or designated officer shall assess a civil  
21 penalty in accordance with this division, if the state board or district or an authorized or  
22 designated officer makes written findings that set forth the basis for the determination of the  
23 state board or district.

24 **Comment.** Section 30751 continues former Health and Safety Code Section 39152(k)  
25 without substantive change.

### 26 **§ 30752. Enforcement by other entities**

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27 30752. Nothing in this chapter restricts the power of a city attorney, district attorney,  
28 county counsel, or the Attorney General to bring, in the name of the people of California,  
29 any criminal proceeding otherwise authorized by law. Furthermore, nothing in this chapter  
30 prevents the state board or district, or any representative of the state board or district, from  
31 cooperating with, or participating in, such a proceeding.

32 **Comment.** Section 30752 continues former Health and Safety Code Section 39152(j)  
33 without substantive change.

## 34 PART 2. STATE AIR RESOURCES BOARD

### 35 CHAPTER 1. GENERAL PROVISIONS

#### 36 **§ 30800. Legislative intent**

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37 30800. It is the intent of the Legislature that the State Air Resources Board shall have the  
38 responsibility, except as otherwise provided in this division, for control of emissions from  
39 motor vehicles and shall coordinate, encourage, and review the efforts of all levels of  
40 government as they affect air quality.

1     **Comment.** Section 30800 continues former Health and Safety Code Section 39500 without  
2 change.

## 3                                   CHAPTER 2. ADMINISTRATION

### 4     **§ 30850. Composition of Board**

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5         30850. (a) The State Air Resources Board is continued in existence in the California  
6 Environmental Protection Agency. The state board shall consist of 11 members.

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

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

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

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

17         (4) Two members shall be public members.

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

20         (c) Five members shall be board members from districts who shall reflect the qualitative  
21 requirements of subdivision (b) to the extent practicable. Of these five members, one shall  
22 be a board member from the south coast district, one shall be a board member from the bay  
23 district, one shall be a board member from the San Joaquin Valley Unified Air Pollution  
24 Control District or, if the unified district is abolished, from the San Joaquin Valley Air  
25 Quality Management District if created pursuant to Section 5 of Chapter 915 of the Statutes  
26 of 1994, one shall be a board member from the San Diego County Air Pollution Control  
27 District, and one shall be a board member of any other district.

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

32     **Comment.** Section 30850 continues former Health and Safety Code Section 39510(a)-(d)  
33 without substantive change. Former subdivision (f), providing that former Section 39510  
34 became operative on January 1, 1994, is obsolete and has not been continued.

35     The obsolete reference to former Health and Safety Code Section 41101 is replaced with a  
36 reference to Section 5 of Chapter 915 of the Statutes of 1994, which provides for the creation  
37 of the San Joaquin Valley Air Quality Management District if the San Joaquin Valley Unified  
38 Air Pollution Control District ceases to exist.

39     ☞ **Note.** Section 41101 was repealed in 1994. See 1994 Cal. Stat. ch. 915, § 4. The act  
40 that repealed Section 41101 provides for the creation of the San Joaquin Valley Air Quality  
41 Management District if the San Joaquin Valley Unified Air Pollution Control District ever  
42 ceases to exist. See *id.*, § 5. Substituting a reference to 1994 Cal. Stat. ch 915, § 5 seems to  
43 continue the substance of Section 40162 without substantive change.

### 44     **§ 30851. Independent judgment**

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45         30851. While serving on the state board, all members shall exercise their independent  
46 judgment as officers of the state on behalf of the interests of the entire state in furthering the

1 purposes of this division. No member of the state board shall be precluded from voting or  
2 otherwise acting upon any matter solely because that member has voted or acted upon the  
3 matter in his or her capacity as a member of a district board, except that no member of the  
4 state board who is also a member of a district board shall participate in any action regarding  
5 his or her district taken by the state board pursuant to Sections 37150 to 37201, inclusive.

6 **Comment.** Section 30851 continues former Health and Safety Code Section 39510(e)  
7 without substantive change. Former subdivision (f), providing that former Section 39510  
8 became operative on January 1, 1994, is obsolete and has not been continued.

#### 9 **§ 30852. Chairperson**

---

10 30852. (a) The Governor shall appoint the chairperson, who shall serve at the pleasure of  
11 the Governor, from among the members of the state board. The chairperson shall serve as  
12 the Governor's chief air quality policy spokesperson.

13 (b) The chairperson shall serve full time.

14 **Comment.** Section 30852 continues former Health and Safety Code Section 39511 without  
15 change. Enactment of this section codifies Section 131 of the Governor's Reorganization  
16 Plan No. 1 of 1991, effective July 17, 1991.

#### 17 **§ 30853. Salary**

---

18 30853. Each member of the state board shall receive the salary provided for by Chapter 6  
19 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government  
20 Code.

21 **Comment.** Section 30853 continues former Health and Safety Code Section 39512 without  
22 change.

#### 23 **§ 30854. Reimbursement for expenses**

---


24 30854. (a) With respect to the members appointed pursuant to subdivision (c) of Section  
25 30850, those members shall serve without compensation but shall be reimbursed for actual  
26 and necessary expenses incurred in the performance of their duties to the extent that  
27 reimbursement for expenses is not otherwise provided or payable by another public agency  
28 or agencies. Each elected public official member of the state board shall receive one  
29 hundred dollars (\$100) for each day, or portion thereof, but not to exceed one thousand  
30 dollars (\$1,000) in any month, attending meetings of the state board or committees thereof,  
31 or upon authorization of the state board while on official business of the state board.

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

33 (1) A member appointed from a named district, pursuant to subdivision (c) of Section  
34 30850, shall be reimbursed by the district from which the person qualified for membership.

35 (2) The member appointed as a board member of any district, pursuant to subdivision (c)  
36 of Section 30850, shall be reimbursed by the state board.

37 **Comment.** Section 30854 continues former Health and Safety Code Section 39512.5  
38 without substantive change.

39  **Note.** Subdivision (b) of Health and Safety Code Section 39512.5 contains an obsolete  
40 cross-reference to paragraph (2) of subdivision (c) of Section 39510. This section no longer  
41 exists. Subdivision (b) of proposed Section 30854 has been rewritten to continue the original  
42 effect of the cross-reference — to make clear that the state board reimburses the “at large”  
43 member chosen from the districts.

1   **§ 30855. Meetings**

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2       30855. The state board shall hold regular meetings at least twice a month. Special  
3 meetings may be called by the chairman or upon the request of a majority of the members.  
4 Each member of the state board shall receive that member's actual necessary traveling  
5 expenses incurred in the performance of official duties.

6       **Comment.** Section 30855 continues former Health and Safety Code Section 39513 without  
7 substantive change. Note that the last sentence of former Health and Safety Code Section  
8 39513, referring to an obsolete provision conditioning the salary of board members on the  
9 number of hours worked, has not been continued.

10   **§ 30856. State department**

---

11       30856. The provisions of Chapter 2 (commencing with Section 11150), Part 1, Division  
12 3, Title 2 of the Government Code apply to the state board, and the state board is the head  
13 of a department within the meaning of the chapter.

14       **Comment.** Section 30856 continues former Health and Safety Code Section 39514 without  
15 change.

16   **§ 30857. Executive officer**

---

17       30857. (a) The state board shall appoint an executive officer who shall serve at the  
18 pleasure of the state board and, except as provided in subdivision (d), may delegate any  
19 duty to the executive officer which the state board deems appropriate.

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

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

27           (1) Making any order pursuant to Section 37202.

28           (2) Taking action pursuant to Section 37500, 37501, 37502, or 37503.

29       (d) Any action taken by the executive officer pursuant to Section 36112 or Sections  
30 37150 to 37201, inclusive, shall be subject to the provisions of Chapter 3.5 (commencing  
31 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

32       **Comment.** Section 30857 continues former Health and Safety Code Section 39515 without  
33 substantive change. The obsolete reference to former Health and Safety Code Section 41602  
34 and 41603 have not been continued. Those sections are repealed. See 1988 Cal. Stat. ch.  
35 1568, §§ 22-24.

36   **§ 30858. Delegation of duties by board**

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37       30858. (a) Any power, duty, purpose, function, or jurisdiction which the state board  
38 may lawfully delegate shall be conclusively presumed to have been delegated to the  
39 executive officer unless it is shown that the state board, by affirmative vote recorded in the  
40 minutes of the state board, specifically has reserved the same for the state board's own  
41 action.

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

1     **Comment.** Section 30858 continues former Health and Safety Code Section 39516 without  
2 substantive change.

3     **§ 30859. Notice**

---

4     30859. The district shall be given notice and the opportunity to act before any rule or  
5 regulation is adopted by the state board for the district pursuant to Section 31402.

6     **Comment.** Section 30859 continues former Health and Safety Code Section 39517 without  
7 substantive change.

8                                   **CHAPTER 3. POWERS AND DUTIES**

9                                   **Article 1. General Powers and Duties**

10    **§ 30900. Necessary acts**

---

11    30900. The state board shall do acts necessary for the proper execution of the powers  
12 and duties granted to, and imposed upon, the state board by this division and by any other  
13 provision of law.

14    **Comment.** Section 30900 continues former Health and Safety Code Section 39600 without  
15 substantive change.

16    **§ 30901. Powers of State Board**

---

17    30901. To carry out the purposes of this division, the state board may:  
18    (a) Provide any assistance to any district.  
19    (b) Require any district to provide requested information utilized in the normal operation  
20 of the district or required by a state or federal statute or regulation.  
21    (c) Hold public hearings.  
22    (d) May accept assistance, financial and otherwise, from any public entity.

23    **Comment.** Section 30901 continues former Health and Safety Code Section 39605 without  
24 change.

25    **§ 30902. Regulations**

---

26    30902. (a) The state board shall adopt standards, rules, and regulations in accordance  
27 with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
28 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and  
29 duties granted to, and imposed upon, the state board by this division and by any other  
30 provision of law.

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

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

38    **Comment.** Section 30902 continues former Health and Safety Code Section 39601 without  
39 change.

1    **§ 30903. Federal law**

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2       30903. (a) The state board is designated the air pollution control agency for all purposes  
3       set forth in federal law.

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

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

10      **Comment.** Section 30903 continues former Health and Safety Code Section 39602 without  
11      substantive change.

12    **§ 30904. Contracts and appointments**

---

13       30904. (a) The state board may do both of the following:

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

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

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

31      **Comment.** Section 30904 continues former Health and Safety Code Section 39603 without  
32      change.

33    **§ 30905. Report**

---

34       30905. (a) The state board shall submit to the Governor and the Legislature a biennial  
35       report on air quality conditions and trends statewide and on the status and effectiveness of  
36       state and local air quality programs.

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

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

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

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



(4) A summary of the results of research projects concluded during the previous two years, the status of current research projects, and the conduct of the research program pursuant to Section 31653.

(5) A summary of any actions taken by the state board to assume the powers of districts under Section 31801.

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

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

(8) A summary of the state board's actions in the previous two calendar years to control toxic air pollutants pursuant to Chapter 4 (commencing with Section 31300).

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

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

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

**Comment.** Section 30905 continues former Health and Safety Code Section 39604 without substantive change.

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

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

#### **§ 30906. Issuance of permits**

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30906. (a) The state board shall implement a program to assist districts to improve efficiencies in the issuance of permits pursuant to this division. The program shall be consistent with the requirements of Title V.

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

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

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

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



1 local regulatory agencies with jurisdiction over other environmental media, including land  
2 and water.

3 **Comment.** Section 30906 continues former Health and Safety Code Section 39620 without  
4 change.

## 5 Article 2. Air Basin Identification and Classification

### 6 § 30950. Air basins

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7 30950. The state board shall:

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

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

17 **Comment.** Section 30950 continues former Health and Safety Code Section 39606 without  
18 change. Enactment of this section codifies Section 132 of the Governor's Reorganization  
19 Plan No. 1 of 1991, effective July 17, 1991.

### 20 § 30951. Mojave Desert Air Basin

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21 30951. (a) On or before January 1, 1997, the state board shall adopt regulations to  
22 designate, and determine the boundaries of, an air basin known as the Mojave Desert Air  
23 Basin. The air basin shall have a territory that is based upon similar meteorological and  
24 geographical conditions and consideration for political boundary lines. The air basin shall  
25 consist of at least all of the following:

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

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

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

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

36 (b) Areas that, immediately prior to the date of the adoption of the regulations, were  
37 within the Southeast Desert Air Basin and are not included in the Mojave Desert Air Basin  
38 shall remain in the Southeast Desert Air Basin, subject to Section 30950.

39 **Comment.** Section 30951 continues former Health and Safety Code Section 39606.1  
40 without substantive change.

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

1    **§ 30952. Attainment and nonattainment designations**

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2       30952. (a) The state board, in consultation with the districts, shall identify, pursuant to  
3       subdivision (e) of Section 31000, and classify each air basin which is in attainment and  
4       each air basin which is in nonattainment for any state ambient air quality standard. This  
5       identification and classification shall be made on a pollutant-by-pollutant basis. Where the  
6       state board finds that data is not sufficient to determine the attainment or nonattainment  
7       status for an air basin, the state board shall identify the air basin as unclassified.

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

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

14      **Comment.** Section 30952 continues former Health and Safety Code Section 39608 without  
15      substantive change.

16                                   Article 3. Data Collection and Evaluation

17    **§ 31000. Evaluating air quality**

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18      31000. The state board shall:

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

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

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

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


30      (e) Establish and periodically review criteria for designating an air basin attainment or  
31      nonattainment for any state ambient air quality standard set forth in Section 70200 of Title  
32      17 of the California Code of Regulations. In developing and reviewing these criteria, the  
33      state board shall consider instances where there is poor or limited ambient air quality data,  
34      and shall consider highly irregular or infrequent violations. The state board shall provide an  
35      opportunity for public comment on the proposed criteria, and shall adopt the criteria after a  
36      public hearing.

37      (f) Evaluate, in consultation with the districts and other interested parties, air quality-  
38      related indicators which may be used to measure or estimate progress in the attainment of  
39      state standards and establish a list of approved indicators. On or before July 1, 1993, the  
40      state board shall identify one or more air quality indicators to be used by districts in  
41      assessing progress as required by subdivision (b) of Section 33452. The state board shall  
42      continue to evaluate the prospective application of air quality indicators and, upon a finding  
43      that adequate air quality modeling capability exists, shall identify one or more indicators  
44      which may be used by districts in lieu of the annual emission reductions mandated by  
45      subdivision (a) of Section 33251. In no case shall any indicator be less stringent or less

1 protective, on the basis of overall health protection, than the annual emission reduction  
2 requirement in subdivision (a) of Section 33251.

3 (g) Establish, not later than July 1, 1996, a uniform methodology which may be used by  
4 districts in assessing population exposure, including, but not limited to, reduction in  
5 exposure of districtwide subpopulations such as children, the elderly, and persons with  
6 respiratory disease, to ambient air pollutants at levels above the state ambient air quality  
7 standards, for estimating reductions in population exposure for the purposes of Sections  
8 33250, 33452, and 37150, and for the establishment of the means by which reductions in  
9 population exposures may be achieved. The methodology adopted pursuant to this  
10 subdivision shall be consistent with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and  
11 with this division, including, but not limited to, Section 31003.

12 **Comment.** Section 31000 continues former Health and Safety Code Section 39607 without  
13 substantive change. Uncodified provisions that applied to former Health and Safety Code  
14 Section 39607 now apply to this section See, e.g., 1988 Cal. Stat. ch. 1568, § 1, 1992 Cal. St.  
15 ch. 945, § 18.

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

## 20 **§ 31001. Emission inventory updates**

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21 31001. (a) The state board shall, triennially, following a public hearing, approve an  
22 update to the emission inventory required by subdivision (b) of Section 31000.

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

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

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

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

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

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

42 **Comment.** Section 31001 continues former Health and Safety Code Section 39607.3  
43 without substantive change. The reference, in subdivision (a), to the date on which the  
44 triennial update requirement began (January 1, 1998), is obsolete and has not been  
45 continued.

1   **§ 31002. Feasibility of analytic techniques**

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2       31002. At least every three years, the state board shall complete a study on the feasibility  
3 of employing air quality models and other analytical techniques to distinguish between  
4 emission control measures on the basis of their relative ambient air quality impact. As part  
5 of this study, the state board shall determine whether adequate modeling capability exists to  
6 support the use of air quality indicators or alternative measures of progress as specified in  
7 subdivision (f) of Section 31000 and Section 33251. The state board shall consult with  
8 districts and affected groups in conducting this study, and, after a public hearing, shall  
9 prepare and transmit its findings to each district for its use in developing plans pursuant to  
10 Chapter 3 (commencing with Section 33200) of Title 2 of Part 3.

11       **Comment.** Section 31002 continues former Health and Safety Code Section 39609 without  
12 substantive change. The reference to the date on which the requirement to study the  
13 feasibility of analytic techniques began (on or before December 31, 1989), is obsolete and  
14 has not been continued.

15   **§ 31003. Transported pollutants**

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16       31003. (a) Not later than December 31, 1989, the state board shall identify each air  
17 basin, or subregion thereof, in which transported air pollutants from upwind areas outside  
18 the air basin, or subregion thereof, cause or contribute to a violation of the state ambient air  
19 quality standard for ozone, and shall identify the district of origin of the transported air  
20 pollutants based upon the preponderance of available evidence. The state board shall  
21 identify and determine the priorities of information and studies needed to make a more  
22 accurate determination, including, but not limited to, emission inventories, pollutant  
23 characterization, ambient air monitoring, and air quality models.

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

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

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

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

40       **Comment.** Section 31003 continues former Health and Safety Code Section 39610 without  
41 change.

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

Article 4. Emission Reduction Credits


**§ 31050. Emission reduction credits**

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31050. (a) The state board shall develop, and adopt in a public hearing, not later than June 30, 1997, a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

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

**Comment.** Section 31050 continues former Health and Safety Code Section 39607.5(a) and (c) without substantive change.

 **Note.** Subdivision (a) specifies a deadline for satisfying the requirements of that subdivision. This deadline provision may be obsolete. The Commission 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?

**§ 31051. Methodology requirements**

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31051. In developing the methodology required under Section 31050, the state board shall do all of the following:

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

(b) Allow those credits to be used in a market-based incentive program adopted pursuant to Article 6 (commencing with Section 31150) that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

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

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

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

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

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

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

(f) Ensure that any credits derived from a market-based incentive program adopted pursuant to Article 6 (commencing with Section 31150) are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with subdivision (b).

(g) Consider all of the following factors:

(1) How long credits should be valid.

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

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



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

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

**Comment.** Section 31051 continues former Health and Safety Code Section 39607.5(b) without substantive change.

## Article 5. Permit Fees on Nonvehicular Sources

### § 31100. Imposition of fees

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31100. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

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

**Comment.** Section 31100 continues former Health and Safety Code Section 39612(a) and (c) without substantive change. The reference, in subdivision (a), to the date on which the board acquired the power to compel districts to impose additional fees (July 1, 1989), is obsolete and has not been continued.

### § 31101. Allocation of fee revenues

---

31101. The permit fees imposed pursuant to this article shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this article shall be given to all of the following activities:

(a) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 31000.

(b) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 31000.

(c) Updating the emission inventory pursuant to Section 31001, including emissions that cause or contribute to the nonattainment of federal ambient air standards.

(d) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 31003.

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

**Comment.** Section 31101 continues former Health and Safety Code Section 39612(b) without substantive change.

### § 31102. Air Pollution Control Fund

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31102. The permit fees collected by a district pursuant to this article, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

1     **Comment.** Section 31102 continues former Health and Safety Code Section 39612(d)  
2 without substantive change.

3     **§ 31103. Maximum fees collected**

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4     31103. The total amount of funds collected by fees imposed pursuant to this article,  
5 exclusive of district administrative costs, shall not exceed three million dollars  
6 (\$3,000,000) in any fiscal year.

7     **Comment.** Section 31103 continues former Health and Safety Code Section 39612(e)  
8 without substantive change.

9     **§ 31104. Report**

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10    31104. On or before January 1 of each year, the state board shall report to the Governor  
11 and the Legislature on the expenditure of permit fees collected pursuant to this article. The  
12 report shall include all of the following:

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

16    (b) A report on the status of implementation of the programs prioritized for funding  
17 pursuant to Section 31101.

18     **Comment.** Section 31104 continues former Health and Safety Code Section 39612(f)  
19 without substantive change.

20    **§ 31105. Operation of article**

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21    31105. This article shall become inoperative on July 1, 1999, and, as of January 1,  
22 2000, is repealed, unless a later enacted statute, which becomes effective on or before  
23 January 1, 2000, deletes or extends the dates on which it becomes inoperative and is  
24 repealed.

25     **Comment.** Section 31105 continues former Health and Safety Code Section 39612(g)  
26 without substantive change.

27                   Article 6. Market-based Incentive Programs

28    **§ 31150. Legislative findings and declarations**

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29    31150. The Legislature hereby finds and declares all of the following:

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

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

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

40     **Comment.** Section 31150 continues former Health and Safety Code Section 39616(a)  
41 without substantive change.



1    **§ 31151. Market-based incentive program**

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2       31151. (a) A district board may adopt a market-based incentive program as an element of  
3       the district's plan for attainment of the state or federal ambient air quality standards.

4       (b) A market-based incentive program that satisfies the conditions in this article may  
5       substitute for current command and control regulations and future air quality measures that  
6       would otherwise have been adopted as part of the district's plan for attainment, and may be  
7       implemented in lieu of some or all of the control measures adopted by the district pursuant  
8       to Chapter 3 (commencing with Section 33200) of Title 2 of Part 3.

9       **Comment.** Section 31151 continues former Health and Safety Code Section 39616(b)  
10      without substantive change.

11    **§ 31152. Required findings**

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12      31152. In adopting rules and regulations to implement a market-based incentive program,  
13      a district board shall, at the time that the rules and regulations are adopted, make express  
14      findings, and shall, at the time that the rules and regulations are submitted to the state  
15      board, submit appropriate information, to substantiate the basis for making the findings that  
16      each of the following conditions is met on an overall districtwide basis:

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

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

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

28      (d) The program will not result in a greater loss of jobs or more significant shifts from  
29      higher to lower skilled jobs, on an overall districtwide basis, than that which would exist  
30      under command and control air quality measures that would otherwise have been adopted  
31      as part of the district's plan for attainment. A finding of compliance with this requirement  
32      may be made in the same manner as the analyses made by the district to meet the  
33      requirements of Sections 32400 to 32402, inclusive.

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

38      (f) The program will not in any manner delay, postpone, or otherwise hinder district  
39      compliance with Chapter 3 (commencing with Section 33200) of Title 2 of Part 3.

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

43      **Comment.** Section 31152 continues former Health and Safety Code Section 39616(c)  
44      without substantive change.

1   **§ 31153. Plan requirements**

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2       31153. (a) A district's plan for attainment or plan revision submitted to the state board  
3 prior to January 1, 1993, shall be designed to achieve equivalent emission reductions and  
4 reduced cost and job impacts compared to current command and control regulations and  
5 future air quality measures that would otherwise have been adopted as part of the district's  
6 plan for attainment. A district shall not implement a market-based incentive program unless  
7 the state board has determined that the plan or plan revision complies with this subdivision.

8       (b) A plan or plan revision submitted on or after January 1, 1993, shall be designed to  
9 meet the provisions of Sections 31152 and 36300 if applicable. The state board shall  
10 approve the plan or plan revision prior to program implementation, and shall make its  
11 determination not later than 90 days from the date of submittal of the plan or plan revision.

12       (c) Upon the adoption of rules and regulations to implement the program in accordance  
13 with Section 31152, the district shall submit the rules and regulations to the state board.  
14 The state board shall, within 90 days from the date of submittal, determine whether the  
15 rules and regulations meet the requirements of this article and Section 36300, if applicable.  
16 This subdivision does not prohibit the district from implementing the program upon the  
17 approval of the plan or plan revision and prior to submittal of the rules and regulations.

18       **Comment.** Section 31153 continues former Health and Safety Code Section 39616(d)  
19 without substantive change.

20       ☞ **Note.** Subdivision (a) provides a requirement applicable to plans submitted before  
21 January 1, 1993. Subdivision (b) provides a requirement applicable on or after January 1,  
22 1993. This distinction may be obsolete. The Commission would like to receive input on this  
23 point.

24   **§ 31154. Reassessment**

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25       31154. Within five years from the date of adoption of a market-based incentive program,  
26 the district board shall commence public hearings to reassess the program and shall, not  
27 later than seven years from the date of the district's initial adoption of the program, ratify  
28 the findings required pursuant to subdivisions (a), (b), (e), and (f) of Section 31152 and  
29 the district's compliance with Section 36300, if applicable, with the concurrence of the state  
30 board. If the district board fails to ratify the findings within the seven-year period, the  
31 district board shall make appropriate revisions to the district's plan for attainment.

32       **Comment.** Section 31154 continues former Health and Safety Code Section 39616(e)  
33 without substantive change.

34   **§ 31155. Market price review**

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35       31155. The district board shall reassess a market-based incentive program if the market  
36 price of emission trading units exceeds a predetermined level set by the district board. The  
37 district board may take action to revise the program. A predetermined market price review  
38 level shall be set in a public hearing in consideration of the costs of command and control  
39 air quality measures that would otherwise have been adopted as part of the district's plan  
40 for attainment, costs and factors submitted by interested parties, and any other factors  
41 considered appropriate by the district board. The district board may revise the market price  
42 review level for emission trading units every three years during attainment plan updates  
43 required under Section 33453. In revising the market price review level, the district board  
44 shall consider the factors used in setting the initial market price review level as well as other  
45 economic impacts, including the overall impact of the program on job loss, rate of business  
46 formation, and rate of business closure.

1     **Comment.** Section 31155 continues former Health and Safety Code Section 39616(f)  
2 without substantive change.

3     **§ 31156. Application of article**

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4     31156. (a) For sources not included in market-based incentive programs, this article does  
5 not apply to, and shall in no way limit, existing district authority to facilitate compliance  
6 with particular emission control measures by imposing or authorizing sourcewide emission  
7 caps, alternative emission control plans, stationary for mobile source emission trades,  
8 mobile for mobile source emission trades, and similar measures, whether imposed or  
9 authorized by rule or permit condition.

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

12     **Comment.** Section 31156 continues of former Health and Safety Code Section 39616(g)-  
13 (h) without substantive change.

14                                   Article 7. Mobile Sources

15     **§ 31200. Mobile source emission reduction credits**

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16     31200. Any rule, regulation, or control measure adopted pursuant to this division which  
17 allows for the use of mobile source emission reduction credits through the acceleration of  
18 the retirement of in-use motor vehicles, the repair or retirement of gross-polluting and other  
19 high-emitting vehicles, or other similar methods of reducing air pollution shall allow the  
20 person using the method to calculate the emission reductions by any of the following  
21 methods:

22    (a) The measurement of actual air emissions from those motor vehicles repaired or retired  
23 as a result of the rule, regulation, or control measure, pursuant to the methodology and  
24 criteria established pursuant to Sections 31050 and 31051, or, prior to adoption of the  
25 methodology by the state board, by any alternate methodology approved by the agency  
26 which has adopted the rule, regulation, or control measure, if that methodology is  
27 consistent with federal law and with Section 31051.

28    (b) The use of a statistically representative sample of the motor vehicles repaired or  
29 retired as a result of the rule, regulation, or control measure, utilizing the methodology and  
30 criteria established pursuant to Section 31050 and 31051, or, prior to adoption of the  
31 methodology by the state board, by any alternate methodology approved by the agency  
32 which has adopted the rule, regulation, or control measure, if that methodology is  
33 consistent with federal law and with Section 31051.

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

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

37     **Comment.** Section 31200 continues former Health and Safety Code Section 39617 without  
38 substantive change.

39     **§ 31201. Refrigerated trailers**

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40     31201. Refrigerated trailers shall be classified as mobile sources and shall be regulated  
41 by the state board on a statewide basis to prevent confusion concerning whether the trailers  
42 are stationary sources when not being driven and to prevent inconsistent regulation by  
43 districts of vehicles that are operated in more than one district. The state board shall develop

1 regulations, on or before January 1, 2000, to achieve reductions in emissions attributable to  
2 the refrigerated trailers.

3 **Comment.** Section 31201 continues former Health and Safety Code Section 39618 without  
4 change.

## 5 Article 8. Airborne Fine Particles

### 6 § 31250. Airborne fine particles

---

7 31250. The Legislature hereby finds and declares all of the following:

8 (a) Recent scientific studies have documented significant adverse public health effects  
9 associated with exposure to airborne fine particles that are smaller than 2.5 microns (PM  
10 2.5).

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

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

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

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

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

26 **Comment.** Section 31250 continues former Health and Safety Code Section 39619 without  
27 change.

### 28 § 31251. Monitoring program

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29 31251. (a) The state board shall develop and conduct an expanded and revised program  
30 of monitoring of airborne fine particles smaller than 2.5 microns in diameter (PM 2.5). The  
31 program shall be designed to accomplish all of the following:

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

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

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

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

44 (5) During the initial two years of expanded monitoring, PM 2.5 monitoring shall be  
45 done at one or more of the highest level PM 10 sites in any region that violates the federal

1 ambient air quality standard for PM 10, to enable a determination of the correlation between  
2 levels of PM 10 and PM 2.5.

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

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

7 **Comment.** Section 31251 continues former Health and Safety Code Section 39619.5  
8 without change.

## 9 CHAPTER 4. TOXIC AIR CONTAMINANTS

### 10 Article 1. General Provisions

#### 11 § 31300. Legislative findings and declarations

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12 31300. The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 31300 continues former Health and Safety Code Section 39650 without change.

## Article 2. Definitions

### § 31350. Application of definitions

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31350. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 31350 continues the introductory clause of former Health and Safety Code Section 39655 without substantive change.

### § 31355. “Airborne toxic control measure”

---

31355. “Airborne toxic control measure” means either of the following:

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

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

**Comment.** Section 31355 continues former Health and Safety Code Section 39655(b) without substantive change.

### § 31360. “Federal act”

---

31360. “Federal act” means the Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549), and as the federal act may be further amended.

**Comment.** Section 31360 continues former Health and Safety Code Section 39655(d) without substantive change.

### § 31365. “Office”

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31365. “Office” means the Office of Environmental Health Hazard Assessment.

**Comment.** Section 31365 continues former Health and Safety Code Section 39655(e) without substantive change.



1   **§ 31370. “Pesticide”**

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2       31370. “Pesticide” means any economic poison as defined in Section 12753 of the Food  
3   and Agricultural Code.

4       **Comment.** Section 31370 continues former Health and Safety Code Section 39655(c)  
5   without substantive change.

6   **§ 31375. “Toxic air contaminant”**

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7       31375. “Toxic air contaminant” means an air pollutant which may cause or contribute to  
8   an increase in mortality or in serious illness, or which may pose a present or potential  
9   hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to  
10   subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) is a toxic air  
11   contaminant. A toxic air contaminant which is a pesticide shall be regulated in its pesticidal  
12   use by the Department of Pesticide Regulation pursuant to Article 1.5 (commencing with  
13   Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

14       **Comment.** Section 31375 continues former Health and Safety Code Section 39655(a)  
15   without substantive change.

16                                   Article 3. Coordination with Federal Act

17   **§ 31400. Legislative intent**

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18       31400. It is the intent of the Legislature that the state board and the districts implement a  
19   program to regulate toxic air contaminants that will enable the state to receive approval to  
20   implement and enforce emission standards and other requirements for air pollutants subject  
21   to Section 112 of the federal act (42 U.S.C. Sec. 7412). The state board and the districts  
22   may establish a program that is consistent with the requirements for state programs set forth  
23   in subsection (l) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs.  
24   7412(l) and 7661a). Nothing in this chapter requires that the program be identical to the  
25   federal program for hazardous air pollutants as set forth in the federal act.

26       **Comment.** Section 31400 continues former Health and Safety Code Section 39656 change.

27   **§ 31401. Identification of toxic air contaminants**

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28       31401. (a) Except as provided in subdivision (b), the state board shall identify toxic air  
29   contaminants which are emitted into the ambient air of the state using the procedures and  
30   following the requirements prescribed by Article 4 (commencing with Section 31450).

31       (b) The state board shall, by regulation, designate any substance that is listed as a  
32   hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42  
33   U.S.C. Sec. 7412(b)) as a toxic air contaminant. A regulation that designates a hazardous  
34   air pollutant as a toxic air contaminant shall be deemed to be a regulation mandated by  
35   federal law and is not subject to Sections 11346.2 and 11346.9 of the Government Code,  
36   Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title  
37   2 of the Government Code, or Article 4 (commencing with Section 31450).

38       **Comment.** Section 31401 continues former Health and Safety Code Section 39657 without  
39   substantive change.

40   **§ 31402. Airborne toxic control measures**

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41       31402. The state board shall establish airborne toxic control measures for toxic air  
42   contaminants in accordance with all of the following:



1 (a) If a substance is identified as a toxic air contaminant pursuant to Article 4  
2 (commencing with Section 31450), the airborne toxic control measure applicable to the  
3 toxic air contaminant shall be adopted following the procedures and meeting the  
4 requirements of Article 5 (commencing with Section 31500).

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

9 (1) If an emission standard applicable to the hazardous air pollutant has been adopted by  
10 the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C.  
11 Sec. 7412), except as provided in paragraphs (2), (3), and (4), that emission standard  
12 adopted pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) for the hazardous  
13 air pollutant is also the airborne toxic control measure for the toxic air contaminant. The  
14 state board shall implement the relevant emission standard and it shall be the airborne toxic  
15 control measure for purposes of this chapter. The implementation of the emission standard  
16 is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
17 Title 2 of the Government Code or Article 5 (commencing with Section 31500).

18 (2) If an emission standard applicable to the hazardous air pollutant has been adopted by  
19 the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C.  
20 Sec. 7412) and the state board finds that the emission standard does not achieve the  
21 purposes set forth in subdivision (a) or (b), as applicable, of Section 31502, the state board  
22 shall adopt an airborne toxic control measure for the toxic air contaminant that it finds will  
23 achieve those purposes. The state board shall, when it adopts an airborne toxic control  
24 measure pursuant to this paragraph, follow the procedures and meet the requirements of  
25 Article 5 (commencing with Section 31500).

26 (3) If the state board implements an airborne toxic control measure applicable to the  
27 substance pursuant to paragraph (1) and later finds that the purposes set forth in  
28 subdivision (a) or (b), as applicable, of Section 31502 are not achieved by the airborne  
29 toxic control measure, the state board may revise the airborne toxic control measure to  
30 achieve those purposes. The state board shall, when it revises an airborne toxic control  
31 measure pursuant to this paragraph, follow the procedures and meet the requirements of  
32 Article 5 (commencing with Section 31500). The state board may revise an airborne toxic  
33 control measure pursuant to this paragraph only if it first finds that the reduction in risk to  
34 the public health that will be achieved by the revision justifies the burden that will be  
35 imposed on persons who are in compliance with the airborne toxic control measure  
36 previously implemented pursuant to paragraph (1).

37 (4) If an emission standard applicable to the hazardous air pollutant has not been adopted  
38 by the Environmental Protection Agency pursuant to Section 112 of the federal act (42  
39 U.S.C. Sec. 7412), the state board may adopt an airborne toxic control measure applicable  
40 to the toxic air contaminant pursuant to Article 5 (commencing with Section 31500).

41 **Comment.** Section 31402 continues former Health and Safety Code Section 39658 without  
42 substantive change.

### 43 § 31403. Regulations

44 31403. (a) The state board and the districts may adopt regulations which do both of the  
45 following:

46 (1) Impose monitoring requirements, establish procedures for issuing, reissuing, and  
47 enforcing permits, and take any other action that may be necessary to establish, implement,

1 and enforce programs for the regulation of hazardous air pollutants which have been listed  
2 as toxic air contaminants pursuant to subdivision (b) of Section 31401.

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

6 (b) In adopting regulations pursuant to subdivision (a), the state board and the districts  
7 shall, to the extent necessary to ensure that the requirements of the federal act are met, use  
8 the definitions contained in subsection (a) of Section 112 of the federal act (42 U.S.C. Sec.  
9 7412(a)).

10 **Comment.** Section 31403 continues former Health and Safety Code Section 39659 without  
11 substantive change.

## 12 Article 4. Identification of Toxic Air Contaminants

### 13 § 31450. Evaluation of health effects

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14 31450. (a) Upon the request of the state board, the office, in consultation with and with  
15 the participation of the state board, shall evaluate the health effects of and prepare  
16 recommendations regarding substances, other than pesticides in their pesticidal use, which  
17 may be or are emitted into the ambient air of California and which may be determined to be  
18 toxic air contaminants. The request shall be in accordance with an agreement that ensures  
19 that the office's workload in implementing this chapter is not increased over that budgeted  
20 for the 1991-92 fiscal year. The agreement shall be revised and the office's workload  
21 increased if additional budgetary resources are appropriated to the office.

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

33 **Comment.** Section 31450 continues former Health and Safety Code Section 39660(a) and  
34 (d) without substantive change.

### 35 § 31451. Evaluation requirements

---

36 31451. (a) In conducting the evaluation required pursuant to Section 31450, the office  
37 shall consider all available scientific data, including, but not limited to, relevant data  
38 provided by the state board, the State Department of Health Services, the Occupational  
39 Safety and Health Division of the Department of Industrial Relations, the Department of  
40 Pesticide Regulation, international and federal health agencies, private industry, academic  
41 researchers, and public health and environmental organizations.

42 (b) The evaluation required pursuant to Section 31450 shall assess the availability and  
43 quality of data on health effects, including potency, mode of action, and other relevant  
44 biological factors, of the substance.

1 (c) The evaluation required pursuant to Section 31450 shall also contain an estimate of  
2 the levels of exposure which may cause or contribute to adverse health effects. Where it can  
3 be established that a threshold of adverse health effects exists, the estimate shall include  
4 both of the following factors:

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

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

13 **Comment.** Section 31451 continues former Health and Safety Code Section 39660(b) and  
14 (c) without substantive change.

### 15 **§ 31452. Information collection**

---

16 31452. (a) The state board or a district may request, and any person shall provide,  
17 information on any substance which is or may be under evaluation and which is  
18 manufactured, distributed, emitted, or used by the person of whom the request is made, in  
19 order to carry out its responsibilities pursuant to this chapter. To the extent practical, the  
20 state board or a district may collect the information in aggregate form or in any other  
21 manner designed to protect trade secrets.

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

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

44 **Comment.** Section 31452 continues former Health and Safety Code Section 39660(e)  
45 without substantive change.

1   **§ 31453. Priority**

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2       31453. The office and the state board shall give priority to the evaluation and regulation  
3 of substances based on factors related to the risk of harm to public health, amount or  
4 potential amount of emissions, manner of, and exposure to, usage of the substance in  
5 California, persistence in the atmosphere, and ambient concentrations in the community. In  
6 determining the importance of these factors, the office and the state board shall consider all  
7 of the following information, to the extent that it is available:

8       (a) Research and monitoring data collected by the state board and the districts pursuant to  
9 Sections 31000, 31651, 33500, and 33501, and by the Environmental Protection Agency  
10 pursuant to paragraph (2) of subsection (k) of Section 112 of the federal act (42 U.S.C.  
11 Sec. 7412(k)(2)).

12       (b) Emissions inventory data reported for substances subject to Part 6 (commencing with  
13 Section 45000) and the risk assessments prepared for those substances.

14       (c) Toxic chemical release data reported to the state emergency response commission  
15 pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act  
16 of 1986 (42 U.S.C. Sec. 11023) and Section 6607 of the Pollution Prevention Act of 1990  
17 (42 U.S.C. Sec. 13106).

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

21       **Comment.** Section 31453 continues former Health and Safety Code Section 39660(f)  
22 without substantive change.

23   **§ 31454. Assessment of indoor air contaminants**

---

24       31454. (a) In evaluating the level of potential human exposure to toxic air contaminants,  
25 the state board shall assess that exposure in indoor environments as well as in ambient air  
26 conditions.

27       (b) The state board shall consult with the State Department of Health Services, pursuant  
28 to the program on indoor environmental quality established under Chapter 1 (commencing  
29 with Section 47000) of Part 9, concerning what potential toxic air contaminants may be  
30 found in the indoor environment and on the best methodology for measuring exposure to  
31 these contaminants.

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

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

42       **Comment.** Section 31454 continues former Health and Safety Code Section 39660.5  
43 without substantive change.

44   **§ 31455. Report**

---

45       31455. (a)(1) Upon receipt of the evaluation and recommendations prepared pursuant to  
46 Sections 31450 to 31453, inclusive, the state board, in consultation with, and with the

1 participation of, the office, shall prepare a report in a form which may serve as the basis for  
2 regulatory action regarding a particular substance pursuant to Section 31451.

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

5 (b) The report, together with the scientific data on which the report is based, shall, with  
6 the exception of trade secrets, be made available to the public and shall be formally  
7 reviewed by the scientific review panel established pursuant to Sections 31550 to 31557,  
8 inclusive. The panel shall review the scientific procedures and methods used to support the  
9 data, the data itself, and the conclusions and assessments on which the report is based. Any  
10 person may submit any information for consideration by the panel, which may, at its  
11 discretion, receive oral testimony. The panel shall submit its written findings to the state  
12 board within 45 days after receiving the report. The panel may, however, petition the state  
13 board for an extension of the deadline, which may not exceed 15 working days.

14 (c) If the scientific review panel determines that the health effects report is not based upon  
15 sound scientific knowledge, methods, or practices, the report shall be returned to the state  
16 board, and the state board, in consultation with, and with the participation of, the office,  
17 shall prepare revisions to the report which shall be resubmitted, within 30 days following  
18 receipt of the panel's determination, to the scientific review panel which shall review the  
19 report in conformance with subdivision (b) prior to a formal proposal by the state board  
20 pursuant to Section 31456.

21 **Comment.** Section 31455 continues former Health and Safety Code Section 39661 without  
22 substantive change.

#### 23 **§ 31456. Determinations and regulations**

---

24 31456. (a) Within 10 working days following receipt of the findings of the scientific  
25 review panel pursuant to subdivision (c) of Section 31455, the state board shall prepare a  
26 hearing notice and a proposed regulation which shall include the proposed determination as  
27 to whether a substance is a toxic air contaminant.

28 (b) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section  
29 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state board shall list,  
30 by regulation, substances determined to be toxic air contaminants.

31 (c) If a substance is determined to be a toxic air contaminant, the regulation shall specify  
32 a threshold exposure level, if any, below which no significant adverse health effects are  
33 anticipated, and an ample margin of safety which accounts for the factors described in  
34 subdivisions (b) and (c) of Section 31451.

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

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

42 **Comment.** Section 31456 continues former Health and Safety Code Section 39662 without  
43 substantive change.

#### 44 **§ 31457. Landfill gases**

---

45 31457. (a) For purposes of this section "landfill" means a solid waste landfill, as defined  
46 in subdivision (a) of Section 40195.1 of the Public Resources Code.

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



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

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

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

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

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

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

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

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

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

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

37 **Comment.** Section 31457 continues former Health and Safety Code Section 39663 without  
38 change.

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

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

1   **§ 31458. Aerial application of pesticides in urban areas**

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2       31458. The State Department of Health Services shall conduct an epidemiological study,  
3 over a period of up to 10 years, of possible long-term health effects related to the aerial  
4 application of pesticides in urban areas, including, but not limited to, cancer, birth defects,  
5 and respiratory illnesses.

6       **Comment.** Section 31458 continues former Health and Safety Code Section 39664 without  
7 change.

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

12                                   Article 5. Control of Toxic Air Contaminants

13   **§ 31500. Report**

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14       31500. (a) Following adoption of the determinations pursuant to Section 31456, the  
15 executive officer of the state board shall, with the participation of the districts, and in  
16 consultation with affected sources and the interested public, prepare a report on the need  
17 and appropriate degree of regulation for each substance which the state board has  
18 determined to be a toxic air contaminant.

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

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

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

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

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

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

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

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

40       (8) The basis for the finding required by paragraph (3) of subdivision (b) of Section  
41 31402, if applicable.

42       (c) The staff report, and relevant comments received during consultation with the  
43 districts, affected sources, and the public, shall be made available for public review and  
44 comment at least 45 days prior to the public hearing required by Section 31501.

45       **Comment.** Section 31500 continues former Health and Safety Code Section 39665 without  
46 substantive change.



1   **§ 31501. Adoption of airborne toxic control measures**

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2       31501. Following a noticed public hearing, the state board shall adopt airborne toxic  
3       control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

4       **Comment.** Section 31501 continues former Health and Safety Code Section 39666(a)  
5       without substantive change.

6   **§ 31502. Standards**

---

7       31502. (a) For toxic air contaminants for which the state board has determined, pursuant  
8       to Section 31456, that there is a threshold exposure level below which no significant  
9       adverse health effects are anticipated, the airborne toxic control measure shall be designed,  
10      in consideration of the factors specified in subdivision (b) of Section 31500, to reduce  
11      emissions sufficiently so that the source will not result in, or contribute to, ambient levels at  
12      or in excess of the level which may cause or contribute to adverse health effects as that level  
13      is estimated pursuant to subdivisions (b) and (c) of Section 31451.

14      (b) For toxic air contaminants for which the state board has not specified a threshold  
15      exposure level pursuant to Section 31456, the airborne toxic control measure shall be  
16      designed, in consideration of the factors specified in subdivision (b) of Section 31500, to  
17      reduce emissions to the lowest level achievable through application of best available control  
18      technology or a more effective control method, unless the state board or a district board  
19      determines, based on an assessment of risk, that an alternative level of emission reduction  
20      is adequate or necessary to prevent an endangerment of public health.

21      **Comment.** Section 31502 continues former Health and Safety Code Section 39666(b) and  
22      (c) without substantive change.

23   **§ 31503. Enforcement**

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24      31503. Not later than 120 days after the adoption or implementation by the state board of  
25      an airborne toxic control measure pursuant to this article or Section 31402, the districts  
26      shall implement and enforce the airborne toxic control measure or shall propose regulations  
27      enacting airborne toxic control measures on nonvehicular sources within their jurisdiction  
28      which meet the requirements of Sections 31502 and 31504, except that a district may, at its  
29      option, and after considering the factors specified in subdivision (b) of Section 31500,  
30      adopt and enforce equally effective or more stringent airborne toxic control measures than  
31      the airborne toxic control measures adopted by the state board. A district shall adopt rules  
32      and regulations implementing airborne toxic control measures on nonvehicular sources  
33      within its jurisdiction in conformance with Sections 31502 and 31504, not later than six  
34      months following the adoption of airborne toxic control measures by the state board.

35      **Comment.** Section 31503 continues former Health and Safety Code Section 39666(d)  
36      without substantive change.

37   **§ 31504. New or modified sources**

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38      31504. District new source review rules and regulations shall require new or modified  
39      sources to control emissions of toxic air contaminants consistent with Sections 31502 and  
40      31503 and Article 3 (commencing with Section 31400).

41      **Comment.** Section 31504 continues former Health and Safety Code Section 39666(e)  
42      without substantive change.

1    **§ 31505. Alternative methods**

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2       31505. Where an airborne toxic control measure requires the use of a specified method or  
3 methods to reduce, avoid, or eliminate the emissions of a toxic air contaminant, a source  
4 may submit to the district an alternative method or methods that will achieve an equal or  
5 greater amount of reduction in emissions of, and risk associated with, that toxic air  
6 contaminant. The district shall approve the proposed alternative method or methods if the  
7 operator of the source demonstrates that the method is, or the methods are, enforceable,  
8 that equal or greater amounts of reduction in emissions and risk will be achieved, and that  
9 the reductions will be achieved within the time period required by the applicable airborne  
10 toxic control measure. The district shall revoke approval of the alternative method or  
11 methods if the source fails to adequately implement the approved alternative method or  
12 methods or if subsequent monitoring demonstrates that the alternative method or methods  
13 do not reduce emissions and risk as required. The district shall notify the state board of any  
14 action it proposes to take pursuant to this section. This section is operative only to the  
15 extent it is consistent with the federal act.

16       **Comment.** Section 31505 continues former Health and Safety Code Section 39666(f)  
17 without substantive change.

18    **§ 31506. Vehicular emission standards**

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19       31506. Based on its determinations pursuant to Section 31456, the state board shall  
20 consider the adoption of revisions in the emission standards for vehicular sources and  
21 regulations specifying the content of motor vehicle fuel, to achieve the maximum possible  
22 reduction in public exposure to toxic air contaminants. Except for regulations affecting new  
23 motor vehicles which shall be based upon the most advanced technology feasible for the  
24 model year, regulations developed pursuant to this section shall be based on the utilization  
25 of the best available control technologies or more effective control methods, unless the state  
26 board determines, based on an assessment of risk, that an alternative level of emission  
27 reduction is adequate or necessary to prevent an endangerment of public health. Those  
28 regulations may include, but are not limited to, the modification, removal, or substitution of  
29 vehicle fuel, vehicle fuel components, or fuel additives, or the required installation of  
30 vehicular control measures on new motor vehicles.

31       **Comment.** Section 31506 continues former Health and Safety Code Section 39667 without  
32 substantive change.

33    **§ 31507. Monitoring options report**

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34       31507. The state board shall, on or before January 1, 1989, prepare a written report on  
35 the availability and effectiveness of toxic air contaminant monitoring options in consultation  
36 with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Department  
37 of Pesticide Regulation, and the Office of Environmental Health Hazard Assessment. In  
38 preparing the report, the state board shall conduct at least one public workshop. The report  
39 shall include, but not be limited to, all of the following:

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

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

1 is appropriate and feasible to facilitate the identification and control of toxic air  
2 contaminants.

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

6 (d) An analysis of the feasibility and costs of establishing an indoor toxic air contaminant  
7 monitoring program to facilitate the implementation of Section 31454.

8 **Comment.** Section 31507 continues former Health and Safety Code Section 39668(a)  
9 without substantive change. Enactment of this section codifies Section 135 of the Governor's  
10 Reorganization Plan No. 1 of 1991, effective July 17, 1991.

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

#### 14 § 31508. Monitoring options report

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15 31508. Based on the findings in the report prepared pursuant to Section 31507, the state  
16 board shall develop, by July 1, 1989, in conjunction with the districts, guidelines for  
17 establishing supplemental toxic air contaminant monitoring networks to be implemented by  
18 the districts. The state board shall develop the guidelines only to the extent that it  
19 determines, pursuant to subdivision (b) of Section 31507, that establishing additional  
20 monitoring capacity is appropriate and feasible.

21 **Comment.** Section 31508 continues former Health and Safety Code Section 39668(b)  
22 without substantive change.

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

#### 26 § 31509. Monitoring networks

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27 31509. The guidelines established pursuant to Section 31508 shall include a priority list  
28 for establishing and implementing the supplemental toxic air contaminant monitoring  
29 networks. The state board shall give priority to that supplemental monitoring capacity it  
30 determines to be most needed to identify and control toxic air contaminants. The state board  
31 shall allocate to districts, in the priority order included in the guidelines, state funds  
32 provided in subdivision (b) of Section 3 of Chapter 1219 of the Statutes of 1987 and in  
33 subsequent Budget Acts for establishing and implementing the supplemental toxic air  
34 contaminant monitoring networks. The state board shall allocate state funds to the districts,  
35 upon appropriation by the Legislature, on a 50 percent matching basis, and shall not  
36 provide state funds for the supplemental toxic air contaminant monitoring program  
37 established by Section 33500 to any district in excess of district funds allocated by the  
38 district in establishing and implementing the supplemental monitoring networks created  
39 pursuant to Section 33500.

40 **Comment.** Section 31509 continues former Health and Safety Code Section 39668(c)  
41 without substantive change.

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

1   **§ 31510. Matching funds**

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2       31510. The state board shall request in its annual budget sufficient state funds, in  
3       addition to those provided in subdivision (b) of Section 3 of Chapter 1219 of the Statutes  
4       of 1987, to match, on a 50 percent basis, those district funds allocated by the districts for  
5       establishing and implementing the supplemental monitoring program specified in the  
6       guidelines adopted pursuant to subdivision (b).

7       **Comment.** Section 31510 continues former Health and Safety Code Section 39668(d)  
8       without substantive change.

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

12   **§ 31511. Application of chapter**

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13      31511. Nothing in this chapter is a limitation on the authority of the state board or a  
14      district to implement and enforce an airborne toxic control measure adopted prior to January  
15      1, 1993.

16      **Comment.** Section 31511 continues former Health and Safety Code Section 39669 without  
17      change.

18                                   Article 6. Scientific Review Panel

19   **§ 31550. Appointment of panel**

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20      31550. A nine-member Scientific Review Panel on Toxic Air Contaminants shall be  
21      appointed to advise the state board and the Department of Pesticide Regulation in their  
22      evaluation of the health effects toxicity of substances pursuant to Article 4 (commencing  
23      with Section 31450) of this chapter and Article 1.5 (commencing with Section 14021) of  
24      Chapter 3 of Division 7 of the Food and Agricultural Code.

25      **Comment.** Section 31550 continues former Health and Safety Code Section 39670(a)  
26      without substantive change.

27   **§ 31551. “Panel”**

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28      31551. For the purposes of this article, “panel” means the Scientific Review Panel on  
29      Toxic Air Contaminants.

30      **Comment.** Section 31551 is new. It is added for drafting convenience.

31   **§ 31552. Composition of panel**

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32      31552. The members of the panel shall be highly qualified and professionally active or  
33      engaged in the conduct of scientific research, and shall be appointed as follows, subject to  
34      Section 31558, for a term of three years:

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

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

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

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

9 **Comment.** Section 31552 continues former Health and Safety Code Section 39670(b)  
10 without substantive change.

#### 11 **§ 31553. Chairperson**

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12 31553. The Secretary for Environmental Protection shall appoint a member of the panel  
13 to serve as chairperson.

14 **Comment.** Section 31553 continues former Health and Safety Code Section 39670(c)  
15 without substantive change.

#### 16 **§ 31554. Consultants and committees**

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17 31554. The panel may utilize special consultants or establish ad hoc committees, which  
18 may include other scientists, to assist it in performing its functions.

19 **Comment.** Section 31554 continues former Health and Safety Code Section 39670(d)  
20 without substantive change.

#### 21 **§ 31555. Financial disclosure statements**

---

22 31555. Members of the panel, and any ad hoc committee established by the panel, shall  
23 submit annually a financial disclosure statement that includes a listing of income received  
24 within the preceding three years, including investments, grants, and consulting fees derived  
25 from individuals or businesses which might be affected by regulatory actions undertaken  
26 by the state board or districts pursuant to this chapter. The financial disclosure statements  
27 submitted pursuant to this section are public information. Members of the panel shall be  
28 subject to the disqualification requirements of Section 87100 of the Government Code.

29 **Comment.** Section 31555 continues former Health and Safety Code Section 39670(e)  
30 without substantive change.

#### 31 **§ 31556. Compensation and reimbursement**

---

32 31556. Members of the panel shall receive one hundred dollars (\$100) per day for  
33 attending panel meetings and meetings of the state board, or upon authorization of the  
34 chairperson of the state board while on official business of the panel, and shall be  
35 reimbursed for actual and necessary travel expenses incurred in the performance of their  
36 duties.

37 **Comment.** Section 31556 continues former Health and Safety Code Section 39670(f)  
38 without substantive change.

#### 39 **§ 31557. Responsibility for support of panel**

---

40 31557. The state board and the office, and, in the case of economic poisons, the  
41 Department of Pesticide Regulation, shall provide sufficient resources for support of the  
42 panel, including technical, administrative, and clerical support, which shall include, but not



be limited to, office facilities and staff sufficient for the maintenance of files, scheduling of meetings, arrangement of travel accommodations, and preparation of panel findings, as required by subdivision (b) of Section 31455.

**Comment.** Section 31557 continues former Health and Safety Code Section 39670(g) without substantive change.

#### § 31558. Terms

---

31558. (a) The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to Section 31552 shall be staggered so that the terms of three members expire each year. To accomplish this, the terms of six members are extended in the following manner:


(1) The term of one member appointed pursuant to subdivision (a) of Section 31552 is extended until January 1, 1988, and the terms of three members appointed pursuant to that paragraph are extended until January 1, 1989, as designated by the Secretary of Environmental Affairs.

(2) The term of one member appointed pursuant to subdivision (b) of Section 31552 is extended until January 1, 1988, as designated by the Senate Committee on Rules.

(3) The term of one member appointed pursuant to subdivision (c) of Section 31552 is extended until January 1, 1988, as designated by the Speaker of the Assembly.

(4) The terms of the three remaining members shall expire January 1, 1987. Thereafter, each appointment shall be for a term of three years, as provided in Section 31552.

**Comment.** Section 31558 continues former Health and Safety Code Section 39671 without substantive change.

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

### Article 7. Penalties

#### § 31600. Civil penalties

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31600. (a) Except as otherwise provided in subdivision (b), any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 31402 or Article 5 (commencing with Section 31500) or which is implemented and enforced as authorized by subdivision (b) of Section 31402 is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b)(1) Any person who violates any rule or regulation, emission limitation, permit condition, order fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(l)) or the regulations adopted pursuant thereto, adopted pursuant to Section 31402 or Article 5 (commencing with Section 31500) or which is implemented and enforced as authorized by subdivision (b) of Section 31402 is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under paragraph (1) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act

1 which was not the result of intentional or negligent conduct. In a district in which a Title V  
2 permit program has been fully approved, this paragraph shall not apply to a violation of  
3 federally enforceable requirements that occur at a Title V source.

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

10 **Comment.** Section 31600 continues former Health and Safety Code Section 39674 without  
11 substantive change.

## 12 **§ 31601. Preclusion of criminal prosecution**

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13 31601. Sections 39501, 39502, 39550 to 39555, inclusive, and 39603, apply to  
14 violations of regulations or orders adopted pursuant to Section 31402 or Article 5  
15 (commencing with Section 31500) or which are implemented and enforced as authorized by  
16 subdivision (b) of Section 31402. The recovery of civil penalties pursuant to Section 31600  
17 or Section 39603 precludes criminal prosecution pursuant to Section 39552 or 39553 for  
18 the same offense. When a district refers a violation to a prosecuting agency, the filing of a  
19 criminal complaint is grounds requiring the dismissal of any civil action brought pursuant  
20 to this division.

21 **Comment.** Section 31601 continues former Health and Safety Code Section 39675(a)  
22 without substantive change. Former Health and Safety Code Section 39675(b), which made  
23 clear that the adoption of former Health and Safety Code Section 39675 was intended to  
24 codify then existing law, is obsolete and has not been continued.

25 ☞ **Note.** Subdivision (b) of Section 39675 provides: “The adoption of this section does  
26 not constitute a change in, but is declaratory of, existing law.” The Commission believes that  
27 this provision is obsolete, because it relates to the intent when the law was first adopted, in  
28 1990. Reenactment of this language may cause confusion as to the status of changes in the  
29 law that have occurred since enactment of Section 39675.

## 30 **CHAPTER 5. RESEARCH**

### 31 **§ 31650. Legislative declaration**

---

32 31650. The Legislature hereby declares that an effective research program is an integral  
33 part of any broad-based statewide effort to combat air pollution.

34 **Comment.** Section 31650 continues former Health and Safety Code Section 39700 without  
35 change.

### 36 **§ 31651. Coordination and collection of data**

---

37 31651. The state board shall coordinate and collect research data on air pollution,  
38 including, but not limited to, all of the following:

- 39 (a) Research relating to specific problems in the following areas:  
40 (1) Motor vehicle emissions control, including alternative propulsion systems, cleaner  
41 burning fuels, and improved motor vehicle pollution control devices.  
42 (2) Control of nonvehicular emissions.  
43 (3) Control of specific contaminants to meet ambient air quality standards.  
44 (4) Atmospheric chemistry and physics.



(5) Effects of air pollution on human health and comfort, plants and animals, and reduction in visibility.

(6) Instrumentation development.

(7) Economic and ecological analysis.

(8) Mathematical model development.

(9) Trends in atmospheric quality throughout the state.

(10) Alternatives to agricultural burning.

(b) The consequences of various alternative solutions to specific air pollution problems.

(c) The identification of knowledge gaps.

**Comment.** Section 31651 continues former Health and Safety Code Section 39701 without change.

#### **§ 31652. Report to legislature**

---

31652. The state board shall report to the Legislature whenever it deems necessary to provide information on problems relating to air quality management.

**Comment.** Section 31652 continues former Health and Safety Code Section 39702 without change.

#### **§ 31653. Administration and coordination**

---

31653. The state board shall administer and coordinate all air pollution research funded, in whole or in part, with state funds. In discharging its responsibilities, the state board has all of the following duties and powers:

(a) Establish applied research objectives.

(b) Receive and review all air pollution research proposals.

(c) Recommend the initiation of specific air pollution research projects.

(d) Award contracts for air pollution research projects.

(e) Establish the administrative and review procedures necessary to carry out this section.

(f) Collect, validate, and disseminate educational information relating to air pollution.

**Comment.** Section 31653 continues former Health and Safety Code Section 39703 without change.

#### **§ 31654. Contracts**

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31654. In awarding contracts for the conduct of air pollution research, the state board shall consider the capability of the University of California to mount a comprehensive program of research to seek solutions to air pollution problems and the ability of the university, through its several campuses, to mobilize a comprehensive research program for this purpose.

**Comment.** Section 31654 continues former Health and Safety Code Section 39704 without change.

#### **§ 31655. Screening committee**

---

31655. (a) The state board shall appoint a screening committee of not to exceed nine persons, the membership of which may be rotated as determined by the state board.

(b) The committee shall consist of physicians, scientists, biologists, chemists, engineers, meteorologists, and other persons who are knowledgeable, technically qualified, and experienced in air pollution problems for which projects are being reviewed. The committee shall review, and give its advice and recommendations with respect to, all air pollution

1 research projects funded by the state, including both those conducted by the state board and  
2 those conducted under contract with the state board.

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

7 **Comment.** Section 31655 continues former Health and Safety Code Section 39705 without  
8 substantive change.

#### 9 **§ 31656. Cotton gin trash incinerator heat exchanger**

---

10 31656. The fees deposited in the Air Pollution Control Fund pursuant to Section 38103  
11 are hereby continuously appropriated to the state board for research and development of a  
12 cotton gin trash incinerator heat exchanger or other device for the disposal of solid waste  
13 which is produced from the ginning of cotton, consistent with emission standards set by a  
14 district board or the state board. The state board shall consult with the Solid Waste  
15 Management Board prior to awarding a contract for, or conducting, the research and  
16 development. If the state board determines that such a device is available or that further  
17 expenditures for such purposes would not contribute meaningfully to their development,  
18 the fees shall be utilized in accordance with the provisions of Section 41304.

19 **Comment.** Section 31656 continues former Health and Safety Code Section 39706 without  
20 substantive change.

#### 21 **§ 31657. Legislative findings and declarations**

---

22 31657. The Legislature hereby finds and declares that the Connelly-Areias-ChandlerRice  
23 Straw Burning Reduction Act was enacted in 1991 to phase down rice straw burning and  
24 improve the air quality for the citizens of the state. This creates an additional significant cost  
25 to rice growers, with potential adverse impacts on the farming communities, including lost  
26 farm production; lost state, local, and federal tax revenues; lost jobs; and reduction of  
27 wildlife habitat in the rice fields. The commercial technologies that could utilize straw,  
28 making it a commodity rather than a waste disposal problem, have not developed in the rice  
29 growing areas because of the lack of marketplace risk capital to take technologies from the  
30 laboratory stage to demonstration projects. To retain the public benefits from having a  
31 viable rice growing industry in California and to improve air quality, there is a need to  
32 provide cost-sharing grants for the development of demonstration projects for new rice  
33 straw technologies in the marketplace.

34 **Comment.** Section 31657 continues former Health and Safety Code Section 39750 without  
35 change.

#### 36 **§ 31658. Rice Straw Demonstration Project Fund**

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37 31658. The Rice Straw Demonstration Project Fund is hereby created in the State  
38 Treasury. The fund shall be administered by the state board for the purpose of developing  
39 demonstration projects for new rice straw technologies in the rice straw growing regions of  
40 California.

41 **Comment.** Section 31658 continues former Health and Safety Code Section 39751 without  
42 change.

1   **§ 31659. Cost-sharing grants**

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2   31659. The state board shall provide cost-sharing grants for the development of  
3 demonstration projects for new rice straw technologies according to criteria developed by  
4 the state board, in consultation with the University of California, the Trade and Commerce  
5 Agency, and the Department of Food and Agriculture, and adopted at a noticed public  
6 hearing held by the state board. The criteria shall include, but shall not be limited to, all of  
7 the following:

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

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

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

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

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

21     (f) Projects should demonstrate technical and economic feasibility.

22     **Comment.** Section 31659 continues former Health and Safety Code Section 39752 without  
23 change.

24   **§ 31660. Necessary funding**

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25   31660. It is the intent of the Legislature that funding for purposes of this chapter be  
26 provided in the annual Budget Act. The state board may use not more than 10 percent of the  
27 rice straw technology demonstration cost-sharing funds for administrative and project  
28 review costs in carrying out the grant program.

29     **Comment.** Section 31660 continues former Health and Safety Code Section 39753 without  
30 change.

31                   **CHAPTER 6. AIR POLLUTION CONTROL SUBVENTION PROGRAM**

32                                   **Article 1. General Provisions**

33   **§ 31700. Administration by state board**

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34   31700. The state board shall administer, pursuant to this chapter, funds appropriated to it  
35 for the purposes of this chapter.

36     **Comment.** Section 31700 continues former Health and Safety Code Section 39801 without  
37 substantive change.

38   **§ 31701. “Dollars budgeted”**

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39   31701. As used in this chapter, “dollars budgeted” means moneys derived from revenue  
40 sources within a district for use in its air pollution control programs.

41     **Comment.** Section 31701 continues former Health and Safety Code Section 39800 without  
42 change.

## § 31702. Funds for administration

31702. The state board may allocate to itself sufficient moneys to administer the subvention program under this chapter and to conduct reviews authorized by Section 31801.

**Comment.** Section 31702 continues former Health and Safety Code Section 39809 without substantive change.

### **§ 31703. Unallocated funds**

31703. Any moneys appropriated to the state board for expenditure under this chapter not allocated during the fiscal year shall revert to the General Fund.

**Comment.** Section 31703 continues former Health and Safety Code Section 39811 without change.

## Article 2. Subventions

### **§ 31750. Use and allocation of funds**

31750. The state board may subvene up to one dollar (\$1) for every dollar budgeted for use by any of the following:

- (a) A district whose boundaries include an entire air basin.
- (b) Districts whose boundaries together include an entire air basin and which are parties to one joint powers agreement or other enforceable agreement which provides for all of the following:
  - (1) Uniform rules and regulations among all districts, excluding administrative rules and regulations.
  - (2) At least four meetings per year of the basinwide air pollution control council formed under Section 34500, or an equivalent procedure for basinwide consideration of policy matters.
  - (3) Suitable sharing of qualified air pollution personnel and equipment.

**Comment.** Section 31750 continues former Health and Safety Code Section 39802(a) without substantive change.

### § 31751. Minimum and maximum amounts

31751. (a) Subventions under Section 31750 shall not exceed twenty-three cents (\$0.23) per capita, but shall not be less than eighteen thousand dollars (\$18,000) for any district, if the district provides the required matching funds, except as specified in subdivision (b).

(b) If a district is a rural district, as defined by the state board, the minimum subvention shall be that specified in Section 31752 if the district provides the required matching funds and does one of the following:

- (1) Has a fee system that fully recovers the district's cost of issuing and renewing permits, performing source inspections, determining compliance status, and processing variances for stationary sources which emit 25 or more tons annually of any regulated pollutant.
- (2) Provides its matching funds, for any funds authorized by Section 31752 in excess of the dollar amount subvended to the district pursuant to this chapter in fiscal year 1986-87, from an increase in moneys budgeted over the level of funding budgeted for the 1986-87 fiscal year.

1     **Comment.** Section 31751 continues former Health and Safety Code Section 39802(b)  
2 without substantive change.

3     **§ 31752. Minimum amounts**

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4     31752. Minimum subventions for purposes of subdivision (b) of Section 31751 shall be  
5 determined as follows:

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

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

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

19     (2) Any portion of the amount appropriated in the Budget Act for district subventions  
20 which is more than seven million eleven thousand dollars (\$7,011,000), but less than  
21 seven million five hundred eleven thousand dollars (\$7,511,000), and which is not  
22 awarded in accordance with the determination of minimum subventions pursuant to  
23 paragraph (1) shall be subvended pursuant to Section 31757 only to rural districts, as  
24 defined by the state board.

25     **Comment.** Section 31752 continues former Health and Safety Code Section 39802.5  
26 without substantive change.

27     **§ 31753. Subventions in other air basins**

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28     31753. In air basins where funds are not subvended pursuant to Sections 31750, 31751,  
29 and 31755, the state board may subvene up to two dollars (\$2) for every three dollars (\$3)  
30 budgeted by a district. Subventions under this section shall not exceed eighteen and four-  
31 tenths cents (\$0.184) per capita, but shall not be less than twelve thousand dollars  
32 (\$12,000) for any district, if the district provides the required matching funds. Any county  
33 district which merged after January 1, 1980, into a unified district or regional district  
34 pursuant to this division shall have its minimum subvention under this section transferred  
35 to the unified district or regional district if the unified district or regional district provides  
36 the required matching funds. A unified district or regional district which has a county  
37 district minimum subvention transferred to it under this section may not also receive  
38 subventions under the per capita provisions of this section.

39     **Comment.** Section 31753 continues former Health and Safety Code Section 39803 without  
40 substantive change.

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

1   **§ 31754. Air basins of 98,000 or fewer**

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2       31754. In air basins having a population of less than 98,000, the state board may  
3       subvene more than the specified amount allowed under Sections 31750, 31751, and  
4       31755, if the subvention does not exceed forty-five thousand dollars (\$45,000) per air  
5       basin and each district affected adopts a budget equal to or exceeding twenty-three cents  
6       (\$0.23) per capita.

7       **Comment.** Section 31754 continues former Health and Safety Code Section 39804 without  
8       substantive change.

9   **§ 31755. Unified and regional districts**

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10      31755. The merger into a unified or regional district pursuant to this division by any  
11      county district shall cause the minimum subvention of the county district to be transferred  
12      to the unified district or regional district if the unified district or regional district provides  
13      the required matching funds. If portions of a county district are merged into unified or  
14      regional districts pursuant to this division, the state board shall apportion, according to  
15      population within each portion of the county, the minimum subvention of the county  
16      district to the unified districts or regional districts into which the portions of the county  
17      district are merged. A unified district or a regional district which has all or a portion of a  
18      county district minimum subvention transferred to it under this section may not also receive  
19      subventions under the per capita provisions of Sections 31750 and 31751. A subvention  
20      made pursuant to Section 31753 shall preclude subvention under this section and Sections  
21      31750 and 31751.

22      **Comment.** Section 31755 continues former Health and Safety Code Section 39802(c)  
23      without substantive change.

24   **§ 31756. Increase due to inflation**

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25      31756. The per capita limits in Sections 31751 and 31753 and the forty-five thousand  
26      dollars (\$45,000) limit in Section 31754 may be increased by the state board to reflect the  
27      effects of inflation on the moneys needed to carry out air pollution control programs. No  
28      increase shall be made without the prior written approval of the Director of Finance.

29      **Comment.** Section 31756 continues former Health and Safety Code Section 39805 without  
30      substantive change.

31   **§ 31757. Supplemental subventions**

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32      31757. Any moneys not otherwise subvented or allocated by the state board pursuant to  
33      this chapter may be used for supplemental subventions, upon application, up to a one-to-  
34      one matching basis or, in the state board's discretion, for any other purpose related to the  
35      control of nonvehicular sources. Matching supplemental subventions having unusual merit  
36      shall be given preference over expenditures for other purposes. In making supplemental  
37      subventions, the state board may consider federal grants received by the applicant and by  
38      other districts.

39      **Comment.** Section 31757 continues former Health and Safety Code Section 39810 without  
40      change.



### **§ 31758. Federal aid**

31758. The subvention otherwise due a district may be reduced by the state board up to an amount equal to the funds which are granted to the district by the federal government. In so reducing a subvention, the state board shall take into account all the following factors:

- (a) The purpose for which the federal funds were granted.
- (b) The needs of the district in relationship to the needs of other districts.
- (c) Any special and worthy programs conducted by the district not required by the plan or program approved by the state board pursuant to Sections 37100.
- (d) The severity of air pollution within the district.
- (e) Any other factors which the state board reasonably determines should be considered.

**Comment.** Section 31758 continues former Health and Safety Code Section 39807 without substantive change. The reference in former Health and Safety Code Section 39807 to former Health and Safety Code Section 41603 is obsolete and has not been continued. Former Health and Safety Code Section 41603 is repealed. See 1988 Cal. Stat. ch 1568, §§ 22 to 24.

### Article 3. Review of Subventions

### § 31800. Program requirement

31800. (a) Money shall be subvended pursuant to this chapter to districts engaged in the reduction of air contaminants pursuant to the basinwide air pollution control plan and related implementation programs.

(b) When the state board finds, pursuant to a resolution from the district board, or upon completion of proceedings conducted by the state board pursuant to Sections 31802 and 37100, that the district is not so engaged in the reduction of air contaminants, the subvention, or a portion thereof, which would have been allocated to the district pursuant to Section 31750, 31751, 31753, 31754, or 31755, plus any additional sum as may be necessary, if moneys are available from appropriations for the purposes of this chapter, shall be allocated to the state board itself to carry out the approved plan or program.

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

(e) If the state board acts under this section pursuant to a resolution of the district board, it may do so without proceeding under Sections 31802 and 37100.

**Comment.** Section 31800 continues former Health and Safety Code Section 39806 without substantive change.

### § 31801. Review of programs and expenditures

31801. The state board may review, as it deems necessary, the programs and expenditures by each district receiving a subvention under this chapter to ascertain that the funds budgeted from nonstate sources are in fact being expended substantially in accordance with the budget on which the subvention was based. Where the state board finds that the funds are not being so expended, the state board may, after a public hearing held pursuant to Section 31802 do any of the following:

- (a) Cease any further payments under the subvention.
- (b) Withhold future subventions.



1 (c) Bring an action against the district, or the counties or cities supporting the district, to  
2 recover the subvention paid that fiscal year.

3 (d) Assume the powers of the district after it has held a public hearing upon a 45-day  
4 written notice given to the basinwide air pollution control council, if there is such a council,  
5 and to the affected districts.

6 **Comment.** Section 31801 continues former Health and Safety Code Section 39808 without  
7 substantive change.

## 8 **§ 31802. Review procedure**

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9 31802. (a) Before taking any action pursuant to Sections 31800 and 31801, the state  
10 board shall hold a public hearing within the air basin affected, upon a 45-day written notice  
11 given to the basinwide air pollution control council, if any, the affected districts, the  
12 affected air quality planning agencies, and the public.

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

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

27 (d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state  
28 board acting pursuant to Section 30857, or to the executive officer's delegates acting  
29 pursuant to Section 30858, with respect to any action taken pursuant to any section  
30 enumerated in subdivision (a).

31 **Comment.** Section 31802 continues former Health and Safety Code Section 39806.5  
32 without substantive change.

## 33 **CHAPTER 7. ACID DEPOSITION**

### 34 **§ 31900. Short title**

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35 31900. This chapter shall be known and may be cited as the Atmospheric Acidity  
36 Protection Act of 1988.

37 **Comment.** Section 31900 continues former Health and Safety Code Section 39900 without  
38 change.

### 39 **§ 31901. Legislative findings and declarations**

---

40 31901. The Legislature finds and declares that the deposition of atmospheric acidity  
41 resulting from other than natural sources is occurring in various regions of California, and  
42 that the continued deposition of this acidity, alone or in combination with other man-made  
43 pollutants and naturally occurring phenomena, could have potentially significant adverse  
44 effects on public health, the environment, and the economy.

1     **Comment.** Section 31901 continues former Health and Safety Code Section 39901 without  
2 change.

3     **§ 31902. Further findings and declarations**

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4     31902. The Legislature further finds and declares that the State Air Resources Board has  
5 recently completed a multiyear acid deposition research and monitoring program under the  
6 Kapiloff Acid Deposition Act and that the research findings of the state board support the  
7 following conclusions with respect to the nature of the problem of deposition of acidity  
8 from the atmosphere in California:

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

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

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

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

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

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

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

37     **Comment.** Section 31902 continues former Health and Safety Code Section 39902 without  
38 change.

39     **§ 31903. Purpose of program**

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40     31903. The Legislature declares that it is the purpose of the program established by this  
41 chapter to do all of the following:

42     (a) Determine the extent to which atmospheric acidity, alone or in combination with other  
43 pollutants, adversely affects public health, and the levels and duration of exposure at which  
44 those effects may be expected to occur.

45     (b) Document the long-term trends of all forms of atmospheric acidity deposited in  
46 California, the trends in lake and stream chemistry of sensitive watersheds, the quantity and

1 chemical composition of acidic deposition, and the cumulative potential for damage to  
2 aquatic and terrestrial ecosystems.

3 (c) Develop techniques for the early detection of changes in aquatic and terrestrial  
4 ecosystems, including the chemistry of soils, which could be expected to precede  
5 ecosystem damage due to the deposition of atmospheric acidity, based on the latest  
6 scientific research, both in the United States as well as in other countries where the  
7 deposition of acidity has caused environmental damage.

8 (d) Determine the relationship between ambient concentrations of acidity and particles,  
9 and variations in atmospheric deposition rates; the relationship between sources of acidic  
10 pollutants and the deposition of atmospheric acidity at receptor areas; and the extent of  
11 transport and deposition of acid pollutants to mountainous areas and high-elevation  
12 watersheds.

13 (e) Estimate potential economic losses which may be expected to result from the long-  
14 term effects of atmospheric acidity, including, but not limited to, impacts on health, worker  
15 productivity, materials, fisheries, forests, recreation, and agriculture.

16 (f) Develop and adopt standards, to the extent supportable by scientific data, at levels  
17 which are necessary and appropriate to protect public health and sensitive ecosystems from  
18 adverse effects resulting from atmospheric acidity.

19 **Comment.** Section 31903 continues former Health and Safety Code Section 39903 without  
20 change.

#### 21 **§ 31904. Atmospheric Acidity Protection Program**

---

22 31904. (a) The state board shall adopt and implement an Atmospheric Acidity Protection  
23 Program (AAPP), to determine the nature and extent of potential damage to public health  
24 and the state's ecosystem which may be expected to result from atmospheric acidity, and to  
25 develop measures which may be needed for the protection of public health and sensitive  
26 ecosystems within the state.

27 (b) The program shall commence upon the final compilation of information obtained  
28 pursuant to the former Kafiloff Acid Deposition Act shall incorporate the research results  
29 and assessments undertaken pursuant to that act, and shall endeavor to acquire the latest  
30 available information on the chemical and biological processes in sensitive ecosystems  
31 which preceded the acidification of lakes and streams in other parts of the world.

32 (c) The Scientific Advisory Committee on Acid Deposition, appointed pursuant to the  
33 Kafiloff Acid Deposition Act is continued in existence, and shall actively assist the state  
34 board in the development and implementation of the Atmospheric Acidity Protection  
35 Program.

36 **Comment.** Section 31904 continues former Health and Safety Code Section 39904 without  
37 change.

#### 38 **§ 31905. Studies and assessments**

---

39 31905. In developing the health and ecosystem protection program the state board shall,  
40 at a minimum:

41 (a) Determine the effects of acidic atmospheres on sensitive populations, and the health  
42 consequences of prolonged exposure to acidic atmospheres.

43 (b) Conduct clinical and epidemiological studies to assess the effects on human health of  
44 acidic aerosols and fogs in combination with other pollutants.

45 (c) Analyze data from ongoing acid deposition monitoring programs operated by the state  
46 board and the local air pollution control districts, and relate the data to monitored changes in

the chemistry of sensitive soils and bodies of water, and results from field exposure studies of economically significant materials.

(d) Characterize major source-receptor links for the deposition of atmospheric acidity using the best available scientific analysis and techniques, and the potential effects on long-term acid deposition trends of current and future air pollution control measures within the state.

(e) Conduct other studies or assessments as needed to carry out the purposes of this chapter.

**Comment.** Section 31905 continues former Health and Safety Code Section 39905 without change.

## PART 3. AIR POLLUTION CONTROL DISTRICTS

### TITLE 1. DISTRICTS GENERALLY

#### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. General Powers and Responsibilities

##### **§ 32000. Legislative findings and declaration**

---

32000. The Legislature finds and declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board.

**Comment.** Section 32000 continues former Health and Safety Code Section 40000 without change.

##### **§ 32001. Enumeration of powers**

---

32001. A district shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, to hold, use, and enjoy, and to lease or dispose of any real or personal property within or without the district necessary to the full exercise of its powers.

(e) To lease, sell, or dispose of any property, or any interest therein, whenever, in the judgment of the district board, that property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

(f) To cooperate and contract with any federal, state, or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of this division.

(g) To require any owner or operator of any air pollution emission source, except a noncommercial vehicular source, to provide (1) a description of the source, and (2) disclosure of the data necessary to estimate the emissions of pollutants for which ambient

1 air quality standards have been adopted, or their precursor pollutants, so that the full  
2 spectrum of emission sources can be addressed equitably pursuant to Section 33200.

3 **Comment.** Section 32001 continues former Health and Safety Code Section 40701 without  
4 substantive change.

#### 5 **§ 32002. Necessary acts**

---

6 32002. A district shall adopt rules and regulations and do acts that are necessary or  
7 proper to execute the powers and duties granted to, and imposed upon, the district by this  
8 division and other statutory provisions.

9 **Comment.** Section 32002 continues the first paragraph of former Health and Safety Code  
10 Section 40702 without substantive change.

#### 11 **§ 32003. Railroad locomotives**

---

12 32003. No order, rule, or regulation of any district shall specify the design of equipment,  
13 type of construction, or particular method to be used in reducing the release of air  
14 contaminants from railroad locomotives.

15 **Comment.** Section 32003 continues the second paragraph of former Health and Safety  
16 Code Section 40702 without substantive change.

#### 17 **§ 32004. Rules and regulations**

---

18 32004. (a) Subject to the powers and duties of the state board, the districts shall adopt  
19 and enforce rules and regulations to achieve and maintain the state and federal ambient air  
20 quality standards in all areas affected by emission sources under their jurisdiction, and shall  
21 enforce all applicable provisions of state and federal law.

22 (b) The district rules and regulations may, and at the request of the state board shall,  
23 provide for the prevention and abatement of air pollution episodes which, at intervals,  
24 cause discomfort or health risks to, or damage to the property of, a significant number of  
25 persons or class of persons.

26 (c)(1) The district rules and regulations shall include a process to approve alternative  
27 methods of complying with emission control requirements that provide equivalent emission  
28 reductions, emissions monitoring, or recordkeeping.

29 (2) A district shall allow the implementation of alternative methods of emission reduction,  
30 emissions monitoring, or recordkeeping if a facility demonstrates to the satisfaction of the  
31 district that those alternative methods will provide equivalent performance. Any alternative  
32 method of emission reduction, emissions monitoring, or recordkeeping proposed by the  
33 facility shall not violate other provisions of law.

34 (3) If a district rule specifies an emission limit for a facility or system, the district shall  
35 not set operational or effectiveness requirements for any specific emission control  
36 equipment operating on a facility or system under that limit. Any alternative method of  
37 emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall  
38 include the necessary operational and effectiveness measurement elements that can be  
39 included as permit conditions by the district to ensure compliance with, and enforcement  
40 of, the equivalent performance requirements of paragraphs (1) and (2). Nothing in this  
41 subdivision limits the district's authority to inspect a facility's equipment or records to  
42 ensure operational compliance. This paragraph shall apply to existing rules and facilities  
43 operating under those rules.

44 **Comment.** Section 32004 continues former Health and Safety Code Section 40001(a), (b),  
45 and (d) without change.

1    **§ 32005. Regulations**

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2       32005. (a) In carrying out its responsibilities pursuant to this division with respect to the  
3 attainment of state ambient air quality standards, a district may adopt and implement  
4 regulations to accomplish both of the following:

5       (1) Reduce or mitigate emissions from indirect and areawide sources of air pollution.

6       (2) Encourage or require the use of measures which reduce the number or length of  
7 vehicle trips.

8       (b) Nothing in this section constitutes an infringement on the existing authority of  
9 counties and cities to plan or control land use, and nothing in this section provides or  
10 transfers new authority over land use to a district.

11       **Comment.** Section 32005 continues former Health and Safety Code Section 40716 without  
12 substantive change.

13    **§ 32006. Regulation compliance programs**

---

14       32006. (a) A district may establish programs to assist the public, government agencies,  
15 and businesses in complying with district regulations.

16       (b) For the purposes of a program established pursuant to subdivision (a), a district may  
17 provide to any person any factual nonconfidential information regarding any product or  
18 service that is in compliance with district regulations, and regarding the air emissions  
19 associated with a particular use of that product or service. The provision of that  
20 information, upon request or otherwise, shall not include any recommendation to any  
21 person with respect to any product or service.

22       **Comment.** Section 32006 continues former Health and Safety Code Section 40730 without  
23 change.

24                                   Article 2. General Administration

25    **§ 32050. Nature of district**

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26       32050. A district is a body corporate and politic and a public agency of the state.

27       **Comment.** Section 32050 continues former Health and Safety Code Section 40700 without  
28 change.

29    **§ 32051. Funding**

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30       32051. (a) Funding for a district may be provided by, but is not limited to, any one or  
31 any combination of the following sources:

32       (1) Grants.

33       (2) Subventions.

34       (3) Permit fees.

35       (4) Penalties.

36       (5) A surcharge or fee pursuant to Section 35602 or 40601 on motor vehicles registered  
37 in the district.

38       (b) Expenses of a district that are not met by the funding sources identified in subdivision  
39 (a), shall be provided by an annual per capita assessment on those cities which have agreed  
40 to have a member on the district board for purposes of Sections 33650, 33850 to 33852,  
41 inclusive, 34053 to 34055, inclusive, 34400 to 34402, inclusive, or 35500 and on the  
42 county or counties included within the district. Any annual per capita assessment imposed  
43 by the district on those cities and counties included within the district shall be imposed on  
44 an equitable per capita basis.



(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

**Comment.** Section 32051 continues former Health and Safety Code Section 40701.5 without substantive change. The San Joaquin Valley Air Quality Management District will be created if the San Joaquin Valley Unified Air Pollution Control District ceases to exist. See 1994 Cal. Stat. ch. 915, § 5(d).

#### **§ 32052. Personnel**

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32052. The district board shall provide for the number of personnel to be employed by the district air pollution control officer and for their duties and the times at which they shall be appointed.

**Comment.** Section 32052 continues former Health and Safety Code Section 40705 without change.

#### **§ 32053. Compensation**

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32053. The district board shall determine the compensation of, and shall pay from district funds, the air pollution control officer, all other officers and employees, and members of the hearing board, of the district.

**Comment.** Section 32053 continues former Health and Safety Code Section 40706 without change.

#### **§ 32054. Claims**

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32054. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

**Comment.** Section 32054 continues former Health and Safety Code Section 40707 without change.

#### **§ 32055. Local Government Reorganization Act**

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32055. The Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, shall not be applicable to the districts.

**Comment.** Section 32055 continues former Health and Safety Code Section 40708 without change.

#### **§ 32056. Inclusion of county in districts**

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32056. A county may be in two or more districts, but not in two or more county districts.

**Comment.** Section 32056 continues former Health and Safety Code Section 40003 without change.

### **Article 3. Air Pollution Control Officer**

#### **§ 32100. Appointment by district board**

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32100. Each district board shall appoint an air pollution control officer for the district.



**Comment.** Section 32100 continues former Health and Safety Code Section 40750 without change.

#### **§ 32101. Appointment of personnel**

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32101. Subject to the direction of the district board, the air pollution control officer shall appoint district personnel.

**Comment.** Section 32101 continues former Health and Safety Code Section 40751 without change.

#### **§ 32102. Observation and enforcement**

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32102. The air pollution control officer shall observe and enforce all of the following:

(a) This part and Part 4 (commencing with Section 37000).

(b) All orders, regulations, and rules prescribed by the district board.

(c) All variances and standards which the district hearing board has prescribed.

(d) All permit conditions imposed pursuant to Sections 38753 and 39050.

**Comment.** Section 32102 continues former Health and Safety Code Section 40752 without substantive change.

#### **§ 32103. Vehicle Code enforcement**

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32103. (a) The air pollution control officer may observe and enforce all provisions of Division 12 (commencing with Section 24000) of the Vehicle Code relating to the emission or control of air contaminants, except Sections 27157, 27157.5, 27158, and 27158.5.

(b) In observing and enforcing those provisions of the Vehicle Code, the air pollution control officer may stop, detain, and inspect any vehicle on a public highway. Any person who interferes with this action, or who refuses to stop a vehicle under the person's control upon the order of the air pollution control officer is guilty of a misdemeanor.

**Comment.** Section 32103 continues former Health and Safety Code Section 40753 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

### **Article 4. Budget Process**

#### **§ 32150. Budget process**

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32150. The budget process of any district having an annual budget of fifty million dollars (\$50,000,000) or more as of January 1, 1994, shall be governed by this article. Except as otherwise provided in this article, no such district shall expend any funds during a fiscal year except in accordance with an operating budget submitted to the Legislature and the state board pursuant to this article. This article does not apply to appropriations or other authorizations made to carry out a labor contract entered into by the district board.

**Comment.** Section 32150 continues former Health and Safety Code Section 40720(a) without substantive change.

#### **§ 32151. Budget contents**

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32151. Each operating budget submitted to the Legislature shall include, but shall not be limited to, a comprehensive plan of financial operations for the fiscal year detailing all of the following:

(a) All anticipated expenditures.

- 1 (b) All anticipated sources of income.  
2 (c) An estimate of proposed revenue changes needed to meet anticipated changes in  
3 expenditures.  
4 (d) Provisions for reserves for the fiscal year.

5 **Comment.** Section 32151 continues former Health and Safety Code Section 40720(b)  
6 without substantive change.

#### 7 **§ 32152. Preliminary budget**

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8 32152. (a) The district shall publish, and mail to any person upon request, a budget  
9 summary and shall make available for inspection the complete text, and any supporting  
10 documents, of the district's preliminary budget, together with schedules of fees proposed  
11 to be adopted for the ensuing fiscal year.

12 (b) The preliminary budget and fee schedules shall be completed as soon as an accurate  
13 revenue projection for the ensuing fiscal year can be prepared, but in no event later than  
14 April 1 of each year.

15 (c) Notice of the availability of the budget summary, preliminary budget, and fee  
16 schedules shall be published in each county in the applicable district in accordance with  
17 Section 6061 of the Government Code and a copy shall be mailed to every person who  
18 filed a written request with the district.

19 (d) The district shall conduct at least one public workshop on the preliminary budget and  
20 fee schedules.

21 **Comment.** Section 32152 continues former Health and Safety Code Section 40720(c)  
22 without change, except that the former subdivision has been divided into subdivisions.

#### 23 **§ 32153. Final proposed budget**

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24 32153. Prior to May 15 of each year, the district board shall meet to consider and adopt a  
25 final proposed operating budget. At the meeting, prior to May 15, the preliminary budget  
26 may be revised to reflect any changed circumstances occurring after completion of the  
27 preliminary budget, but the total expenditure level for any single, major object of  
28 expenditure authorized in the final proposed operating budget as adopted shall not be  
29 increased by more than 10 percent of the total expenditure level proposed in the preliminary  
30 budget. At the meeting prior to May 15, the final fee schedules shall be adopted by the  
31 district board by rule or regulation.

32 **Comment.** Section 32153 continues former Health and Safety Code Section 40720(d)  
33 without substantive change.

#### 34 **§ 32154. Submission**

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35 32154. The district shall submit its final proposed operating budget to the Legislature and  
36 the state board annually by May 15.

37 **Comment.** Section 32154 continues former Health and Safety Code Section 40720(e)  
38 without substantive change.

#### 39 **§ 32155. Legislative review**

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40 32155. The appropriate policy and fiscal committees of the Legislature may hold  
41 informational hearings on the final proposed operating budget submitted by the district  
42 pursuant to Section 32154, and on any comments and recommendations made by the state  
43 board pursuant to Section 32156, and may make comments and formal recommendations to  
44 the district for revision of the budget.

1     **Comment.** Section 32155 continues former Health and Safety Code Section 40720(f)  
2 without substantive change.

3     **§ 32156. State board review**

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4     32156. The state board shall review the final proposed operating budget submitted by the  
5 district pursuant to Section 32154 and may make comments and formal recommendations  
6 to the district for revision of the budget. The state board shall also transmit the comments or  
7 recommendations to the Legislature.

8     **Comment.** Section 32156 continues former Health and Safety Code Section 40720(g)  
9 without substantive change.

10    **§ 32157. Changes**

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11    32157. If any formal recommendation of the state board or a committee of the Legislature  
12 proposes a budgetary change, the district may, in adopting a final district budget, take any  
13 action, within the district's statutory authority, that may be required to effect the  
14 recommended change, including reducing any applicable fee or directing any excess funds  
15 to a reserve account within the district budget. The funds in the reserve account may be  
16 expended as determined by the district board. Any state board or legislative committee  
17 recommendation that proposes a budgetary change may be incorporated into the district  
18 budget only if statutory changes to authorize the change, if any are necessary, have been  
19 enacted.

20    **Comment.** Section 32157 continues former Health and Safety Code Section 40720(h)  
21 without substantive change.

22    **§ 32158. Operative**

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23    32158. The final proposed operating budget submitted by the district pursuant to Section  
24 32154 shall become operative on July 1 unless, prior to July 1, the Legislature enacts an  
25 urgency statute amending or supplementing the proposed district budget, or the district  
26 adopts a revised final budget pursuant to Section 32156.

27    **Comment.** Section 32158 continues former Health and Safety Code Section 40720(i)  
28 without substantive change.

29    **§ 32159. Budget supplement**

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30    32159. During the course of the fiscal year, the final district budget may be further  
31 revised by the district by the adoption of one or more supplements to the budget. Notice of  
32 a proposal to adopt a supplement to the district budget shall be given by the district not less  
33 than 30 days prior to the meeting of the district board at which the supplement will be  
34 considered and shall be published in each county in the district as applicable in accordance  
35 with Section 6061 of the Government Code. The period of notice shall commence on the  
36 first day of publication. The district shall make available to the public the complete text of  
37 the supplement and any supporting documents.

38    **Comment.** Section 32159 continues former Health and Safety Code Section 40720(j)  
39 without substantive change.

### § 32160. Repeal of article

32160. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

**Comment.** Section 32160 continues former Health and Safety Code Section 40720(k) without substantive change.

## Article 5. Budget Forecast

**§ 32200. “Three-year budget forecast”**

32200. As used in this article, “three-year budget forecast” means a district’s forecast of budget and staff changes proposed for the following fiscal year, and projected for the next two fiscal years.

**Comment.** Section 32200 continues former Health and Safety Code Section 40721(a) without substantive change.

### § 32201. Three-year budget forecast

32201. Not later than February 1 of each year, each district described in Section 32150 shall prepare and submit to the state board a three-year budget forecast which shall include the preliminary budget for the following fiscal year. The budget forecast shall be based upon a work program which shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. Budget and staff resources shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to any other section may be used to comply with this article.

**Comment.** Section 32201 continues former Health and Safety Code Section 40721(b) without substantive change.

### § 32202. Review of forecast

32202. (a) The state board, in consultation with the California Environmental Protection Agency, shall review each three-year budget forecast submitted and recommend any modification or revision to the three-year budget forecast that the state board determines to be appropriate.

(b) Following its review, but not later than March 1, the state board shall submit all of the three-year budget forecasts, together with its comments and recommendations, to the districts and to the appropriate policy and fiscal committees of the Legislature, and shall also submit its comments and recommendations to the Governor and to the California Environmental Protection Agency.

(c) The appropriate policy and fiscal committees of the Legislature may hold informational hearings on the three-year budget forecasts submitted by the state board pursuant to subdivision (b). Those legislative committees may make comments and recommendations on modifications or revisions to the three-year budget forecast. The legislative committees shall submit the comments and recommendations to the district and the state board.

**Comment.** Section 32202 continues former Health and Safety Code Section 40721(c) without substantive change.

### **§ 32203. Public hearing**

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32203. The district may incorporate the recommendations of the state board and the legislative committees into the three-year budget forecast, which the district shall present at a public hearing or workshop held at least 20 days prior to the date of adoption of the work program.

**Comment.** Section 32203 continues former Health and Safety Code Section 40721(d) without substantive change.

### **§ 32204. Reports**

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32204. On or before April 1 of each year, the south coast district, as part of the summary required by subdivision (a) of Section 36502, shall report, and any other district that is subject to this article shall report, to the appropriate policy and fiscal committees of the Legislature and to the state board on any actions taken by the district to adopt, amend, or reject comments or recommendations made by the legislative committees and the state board relating to the district's three-year budget forecast and budget.

**Comment.** Section 32204 continues former Health and Safety Code Section 40721(e) without substantive change.

### **§ 32205. Repeal of article**

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32205. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

**Comment.** Section 32205 continues former Health and Safety Code Section 40721(f) without substantive change.

## **CHAPTER 2. RULEMAKING**

### **Article 1. General Procedure**

#### **§ 32300. Purpose**

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32300. Prior to adopting any rule or regulation to reduce criteria pollutants, a district shall determine that there is a problem that the proposed rule or regulation will alleviate and that the rule or regulation will promote the attainment or maintenance of state or federal ambient air quality standards.

**Comment.** Section 32300 continues former Health and Safety Code Section 40001(c) without substantive change.

#### **§ 32301. Cost-effectiveness**

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32301. In adopting any regulation, the district shall consider, pursuant to Section 33253, and make public, its findings related to the cost-effectiveness of a control measure. A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals.

1     **Comment.** Section 32301 continues former Health and Safety Code Section 40703 without  
2 substantive change.

3     **§ 32302. Filing rules and regulations with state board**

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4     32302. A district board shall file with the state board, within 30 days, any rule or  
5 regulation the district board adopts, amends, or repeals.

6     **Comment.** Section 32302 continues former Health and Safety Code Section 40704 without  
7 change.

8     **§ 32303. Public hearing**

---

9     32303. (a) A district board shall not adopt, amend, or repeal any rule or regulation  
10 without first holding a public hearing thereon.

11     (b) Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or  
12 regulation shall be given not less than 30 days prior thereto to the state board, which notice  
13 shall include a copy of the rule or regulation proposed to be adopted, amended, or repealed,  
14 as the case may be, and a summary description of the effect of the proposal, and by  
15 publication in the district pursuant to Section 6061 of the Government Code. In addition, in  
16 the case of a district which includes portions of more than one county, the notice shall be  
17 published in each county not less than 30 days prior to the date of the hearings.

18     (c) Notice published pursuant to subdivision (b) shall invite written public comment and  
19 indicate the name, address, and telephone number of the district officer to whom these  
20 comments are to be addressed, and the date by which comments are to be received.

21     **Comment.** Section 32303 continues former Health and Safety Code Section 40725 without  
22 change.

23     **§ 32304. Public hearing**

---

24     32304. (a) The public hearing held pursuant to Section 32303 shall provide for the  
25 submission of statements, arguments, or contentions, either oral, written, or both. A  
26 district board may continue or postpone the hearing from time to time, to a time and place  
27 as it shall determine.

28     (b) Following consideration of all relevant matter presented, a district board may adopt,  
29 amend, or repeal a rule or regulation, unless the board makes changes in the text originally  
30 made available to the public that are so substantial as to significantly affect the meaning of  
31 the proposed rule or regulation.

32     (c) The board shall not take action on a changed text before its next regular meeting, and  
33 shall allow further statements, arguments, and contentions, either written, oral, or both, to  
34 be made and considered prior to taking final action.

35     **Comment.** Section 32304 continues former Health and Safety Code Section 40726 without  
36 substantive change.

37     **§ 32305. Findings**

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38     32305. (a) Before adopting, amending, or repealing a rule or regulation, the district  
39 board shall make findings of necessity, authority, clarity, consistency, nonduplication, and  
40 reference, as defined in this section, based upon information developed pursuant to  
41 Sections 32350 to 32357, inclusive, information in the rulemaking record maintained  
42 pursuant to Section 32306, and relevant information presented at the hearing.

43     (b) As used in this section, the following terms have the following meaning:



(1) “Necessity” means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.

(2) “Authority” means that a provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.

(3) “Clarity” means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

(4) “Consistency” means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

(5) “Nonduplication” means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.

(6) “Reference” means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

**Comment.** Section 32305 continues former Health and Safety Code Section 40727 without substantive change.

#### § 32306. Record for rulemaking procedure

---

32306. Every district shall maintain a file of each regulation which shall be deemed to be the record for that rulemaking proceeding. The file shall include all of the following:

(a) Copies of any petitions received by the district from interested persons proposing the adoption, amendment, or repeal of the regulation.

(b) Copies of published notices of proposed adoption, amendment, or repeal of the regulation.

(c) All data and other factual information, any studies or reports, and written comments submitted to the district in connection with the adoption, amendment, or repeal of the regulation.

(d) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(e) The text of regulations as originally proposed, and the modified text of regulations, if any, that were made available to the public prior to the adoption.

**Comment.** Section 32306 continues former Health and Safety Code Section 40728 without change.

## Article 2. Required Analysis

#### § 32350. Written analysis

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32350. (a) In complying with Section 32305, the district shall prepare a written analysis as required by this article. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district’s existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b). The analysis



1 shall be in a format that minimizes paperwork and, at the option of the district, may be in  
2 matrix form.

3 (b) Within 60 days from the date of a district's publication, pursuant to Section 33451, of  
4 the list of regulatory measures proposed for adoption in the following year, any person  
5 may inform the district of any existing federal or state air pollution control requirement or  
6 guideline or proposed or existing district air pollution control requirement or guideline that  
7 applies to the same type of source or equipment in that district as any proposed new or  
8 amended district rule or regulation on that district's list of regulatory measures. If any  
9 person informs the district of any requirement or guideline that does not apply to the same  
10 type of source or equipment, the district shall notify the person to that effect and shall not  
11 be required to review that requirement or guideline.

12 **Comment.** Section 32350 continues former Health and Safety Code Section 40727.2(a)-  
13 (b) without substantive change.

#### 14 **§ 32351. Review of elements**

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15 32351. (a) The analysis prepared pursuant to subdivision (a) of Section 32350 shall  
16 compare the elements of each of the identified air pollution control requirements to the  
17 corresponding element or elements of the district's proposed new or amended rule or  
18 regulation.

19 (b) Air pollution control requirement elements to be reviewed pursuant to subdivision (a)  
20 are all of the following:

21 (1) Averaging provisions, units, and any other pertinent provisions associated with  
22 emission limits.

23 (2) Operating parameters and work practice requirements.

24 (3) Monitoring, reporting, and recordkeeping requirements, including test methods,  
25 format, content, and frequency.

26 (4) Any other element that the district determines warrants review.

27 **Comment.** Section 32351 continues former Health and Safety Code Section 40727.2(c)-  
28 (d) without substantive change.

#### 29 **§ 32352. Identification of differences**

---

30 32352. If one or more elements of a district's proposed new or amended rule or  
31 regulation differs from corresponding elements of any existing air pollution control  
32 requirement or guideline applicable to the same equipment or source type, the analysis  
33 prepared pursuant to subdivision (a) of Section 32350 shall note the difference or  
34 differences.

35 **Comment.** Section 32352 continues former Health and Safety Code Section 40727.2(e)  
36 without substantive change.

#### 37 **§ 32353. Availability of analysis**

---

38 32353. The public hearing notice given to the state board pursuant to subdivision (b) of  
39 Section 32303, and any notice mailed to interested persons, shall include a statement  
40 indicating that the analysis required by this article has been prepared, and shall provide the  
41 name, address, and telephone number of a district officer from whom copies may be  
42 requested. The analysis required by this article shall be provided to the public upon request.

43 **Comment.** Section 32353 continues former Health and Safety Code Section 40727.2(f)  
44 without substantive change.

1    **§ 32354. Alternative analysis**

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2       32354. If a district's proposed new or amended rule or regulation does not impose a new  
3       emission limit or standard, make an existing emission limit or standard more stringent, or  
4       impose new or more stringent monitoring, reporting, or recordkeeping requirements, or if  
5       the proposed new or amended rule or regulation is a verbatim adoption or incorporation by  
6       reference of a federal New Source Performance Standard adopted pursuant to Section 111  
7       of the Clean Air Act (42 U.S.C. 7411) or an airborne toxic control measure adopted by the  
8       state board pursuant to Sections 31501 to 31505, inclusive, a district may elect to comply  
9       with section 32350 by preparing an alternative analysis demonstrating that the proposed  
10      new or amended rule or regulation falls within one or more of the categories specified in  
11      this section.

12      **Comment.** Section 32354 continues former Health and Safety Code Section 40727.2(g)  
13      without substantive change.

14    **§ 32355. Effect of analysis**

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15      32355. Nothing in this article limits the existing authority of districts to determine the  
16      form, content, and stringency of their rules and regulations. In implementing this article, it  
17      is the intent of the Legislature that the districts retain their existing authority and flexibility  
18      to tailor their air pollution emission control requirements to local circumstances.

19      **Comment.** Section 32355 continues former Health and Safety Code Section 40727.2(h)  
20      without substantive change.

21    **§ 32356. "Proposed"**

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22      32356. For purposes of this article, a district rule or regulation shall be considered  
23      "proposed" if the rule or regulation has been made available to the general public in  
24      connection with a request for comments.

25      **Comment.** Section 32356 continues former Health and Safety Code Section 40727.2(i)  
26      without substantive change.

27    **§ 32357. Cost recovery**

---

28      32357. To the extent that the district board determines that there are additional costs  
29      imposed by this article, the district board shall recover those additional costs through the  
30      imposition of fees on regulated entities.

31      **Comment.** Section 32357 continues former Health and Safety Code Section 40727.2(j)  
32      without substantive change.

33            Article 3. Regulation Affecting Air Quality or Emissions Limitations

34    **§ 32400. Socioeconomic impact analysis**

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35      32400. Whenever a district intends to propose the adoption, amendment, or repeal of a  
36      rule or regulation that will significantly affect air quality or emissions limitations, that  
37      agency shall, to the extent data are available, perform an assessment of the socioeconomic  
38      impacts of the adoption, amendment, or repeal of the rule or regulation. The district board  
39      shall actively consider the socioeconomic impact of regulations and make a good faith effort  
40      to minimize adverse socioeconomic impacts, as defined below.

41      **Comment.** Section 32400 continues the first two sentences of former Health and Safety  
42      Code Section 40728.5(a) without substantive change.

1    **§ 32401. “Socioeconomic impact”**

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2       32401. For purposes of this article, “socioeconomic impact” means the following:

3       (a) The type of industries or business, including small business, affected by the rule or  
4 regulation.

5       (b) The impact of the rule or regulation on employment and the economy of the region  
6 affected by the adoption of the rule or regulation.

7       (c) The range of probable costs, including costs to industry or business, including small  
8 business, of the rule or regulation.

9       (d) The availability and cost-effectiveness of alternatives to the rule or regulation being  
10 proposed or amended.

11       (e) The emission reduction potential of the rule or regulation.

12       (f) The necessity of adopting, amending, or repealing the rule or regulation to attain state  
13 and federal ambient air standards pursuant to Chapter 3 (commencing with Section 33200)  
14 of Title 2.

15       **Comment.** Section 32401 continues former Health and Safety Code Section 40728.5(b)  
16 without substantive change.

17    **§ 32402. Application of article**

---

18       32402. (a) This article does not apply to the adoption, amendment, or repeal of any rule  
19 or regulation that results in any less restrictive emissions limit if the action does not  
20 interfere with the district’s adopted plan to attain ambient air quality standards, or does not  
21 result in any significant increase in emissions.

22       (b) This article does not apply to any district with a population of less than 500,000  
23 persons.

24       (c) Upon the approval by a majority vote of the district board, a county district is not  
25 required to include the analysis specified in subdivisions (b) and (d) of Section 32401 in  
26 any assessment of socioeconomic impacts for any rule or regulation that only adopts a  
27 requirement that is substantially similar to, or is required by, a state or federal statute,  
28 regulation, or applicable formal guidance document. Examples of state or federal formal  
29 guidance documents include, but are not limited to, federal Control Techniques Guidelines,  
30 state and federal reasonably available control technology determinations, state best available  
31 retrofit control technology determinations, and state air toxic control measures.

32       **Comment.** Subdivision (a) of Section 32402 continues the last sentence of former Health  
33 and Safety Code Section 40728.5(a) without substantive change. Subdivisions (b) and (c)  
34 continue former Health and Safety Code Section 40728.5(c)-(d) without substantive change.

35                                   **CHAPTER 3. HEARING BOARDS**

36                                   **Article 1. General Provisions**

37    **§ 32500. Hearing board**

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38       32500. (a) There is continued in existence and shall be, in each district, one or more  
39 hearing boards consisting of five members each, as specified in Section 32502, appointed  
40 by the district board.

41       (b) The district board may also appoint one alternate for each member. The alternate shall  
42 have the same qualifications, specified in Section 32502, as the member for whom the  
43 person is the alternate. The alternate may serve only in the absence of the member, and for  
44 the same term as the member.

(c) An alternate shall not hold any of the single member hearings authorized by subdivision (c) of Section 32554, subdivision (c) of Section 32555, Section 39305, or Section 39306.

**Comment.** Section 32500 continues former Health and Safety Code Section 40800 without substantive change.

#### **§ 32501. District hearing panel**

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32501. Any district board may designate the hearing board appointed by it as the “district hearing panel.” Every provision of every statute and every regulation that relates to hearing boards appointed pursuant to this chapter shall be fully applicable to any district hearing panel that is so designated pursuant to this section.

**Comment.** Section 32501 continues former Health and Safety Code Section 40800.5 without change.

#### **§ 32502. Composition**

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32502. A hearing board shall consist of:

(a) One member admitted to the practice of law in this state.

(b) One member who is a professional engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) One member from the medical profession whose specialized skills, training, or interests are in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine.

(d) Two public members.

**Comment.** Section 32502 continues former Health and Safety Code Section 40801 without substantive change.

#### **§ 32503. District population less than 750,000**

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32503. If the district board, in the case of a district with a population of less than 750,000, is unable to appoint a person with the qualifications specified in Section 32502 who is willing and able to serve, and for that reason a vacancy exists on the hearing board, the county district board may, in order to fill that vacancy, appoint any person to the hearing board.

**Comment.** Section 32503 continues former Health and Safety Code Section 40802 without substantive change.

#### **§ 32504. Disqualification as member**

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32504. No officer or employee of the district, or of the county in the case of a county district, shall be a member of the district hearing board.

**Comment.** Section 32504 continues former Health and Safety Code Section 40803 without change.

#### **§ 32505. Terms**

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32505. (a) The terms of the members of a hearing board shall be three years.

(b) In the case of the initial members of a hearing board, two shall serve for a term of one year, two for a term of two years, and one for a term of three years.

**Comment.** Section 32505 continues former Health and Safety Code Section 40804 without substantive change. The reference in the second paragraph to the date after which the initial terms of hearing board members are staggered (January 1, 1974) is obsolete and has not been continued. The former undesignated paragraphs have been designated as subdivisions.

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**§ 32506. Appointment in regional district**

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32506. Within 30 days after a regional district begins to function and exercise its powers, the regional district board shall appoint a hearing board.

**Comment.** Section 32506 continues former Health and Safety Code Section 40805 without change.

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**§ 32507. Chairman**

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32507. A hearing board shall select a chairman from its members.

**Comment.** Section 32507 continues former Health and Safety Code Section 40806 without change.

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**§ 32508. Conduct of hearings**

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32508. (a) A hearing board may adopt rules for the conduct of its hearings. The rules shall be consistent with this division and, so far as practicable, shall conform to the rules for administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

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

**Comment.** Section 32508 continues former Health and Safety Code Section 40807 without substantive change.

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**§ 32509. Hearing required**

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Except as provided for in Section 39302, no abatement order, permit, or variance may be issued, modified, or revoked by a hearing board, unless a public hearing thereon has been held by the hearing board pursuant to this chapter.

**Comment.** Section 32509 continues former Health and Safety Code Section 40808 without change.

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**§ 32510. Representation by county counsel**

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32510. (a) The office of the county counsel may represent both the district and the hearing board on a matter relating to a hearing before the hearing board as long as the same individual attorney does not represent both the district and the hearing board.

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

**Comment.** Section 32510 continues former Health and Safety Code Section 40809 without change.

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Article 2. Procedure

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**§ 32550. Quorum**

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32550. Except as provided in Sections 36154 to 36158, inclusive, subdivision (c) of Section 32554, subdivision (c) of Section 32555, Section 39305 and Section 39306, three members of the hearing board shall constitute a quorum, and no action shall be taken by the

1 hearing board except in the presence of a quorum and upon the affirmative vote of a  
2 majority of the members of the hearing board.

3 **Comment.** Section 32550 continues former Health and Safety Code Section 40820 without  
4 substantive change.

#### 5 **§ 32551. Rehearing**

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6 32551. A hearing board, with not fewer than four members present, may, in its  
7 discretion, within 30 days of the effective date of the decision, rehear any matter.

8 **Comment.** Section 32551 continues former Health and Safety Code Section 40821 without  
9 change.

#### 10 **§ 32552. Location of hearing**

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11 32552. Any hearing conducted by a hearing board shall be held in a location readily  
12 accessible to the public.

13 **Comment.** Section 32552 continues former Health and Safety Code Section 40822 without  
14 change.

#### 15 **§ 32553. Notice of hearing**

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16 32553. (a) Except as otherwise provided in Sections 32554, 32555, and 32556, a  
17 hearing board shall serve a notice of the time and place of a hearing upon the district air  
18 pollution control officer, and upon the applicant or permittee affected, not less than 10 days  
19 prior to the hearing.

20 (b) Except as otherwise provided in Sections 32554, 32555, and 32556, the hearing  
21 board shall also send notice of the hearing to every person who requests such notice and  
22 obtain publication of the notice in at least one daily newspaper of general circulation within  
23 the district. The notice shall state the time and place of the hearing and any other  
24 information that may be necessary to reasonably apprise the people within the district of the  
25 nature and purpose of the meeting.

26 **Comment.** Section 32553 continues former Health and Safety Code Section 40823 without  
27 substantive change.

#### 28 **§ 32554. Interim variance**

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29 32554. In case of a hearing to consider an application for an interim variance, as  
30 authorized under Section 39304:

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

33 (b) Subdivision (b) of Section 32553 shall not apply.



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

6 **Comment.** Section 32554 continues former Health and Safety Code Section 40824 without  
7 substantive change.

#### 8 **§ 32555. 90-day variance or modification of schedule of increments of progress**

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9 32555. In case of a hearing to consider an application for a variance, or a series of  
10 variances, to be in effect for a period of not more than 90 days, or an application for  
11 modification of a schedule of increments of progress:

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

16 (b) Subdivision (b) of Section 32553 shall not apply.

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

22 **Comment.** Section 32555 continues former Health and Safety Code Section 40825 without  
23 substantive change.

#### 24 **§ 32556. Other variances or modification of final compliance date**

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25 32556. In case of a hearing to consider an application for a variance, other than an  
26 interim variance or a 90-day variance, or an application for a modification of a final  
27 compliance date in a variance previously granted, the notice requirements for the hearing  
28 shall be as follows:

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

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

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

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



1     **Comment.** Section 32556 continues former Health and Safety Code Section 40826 without  
2 change.

3     **§ 32557. Service of notice**

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4     32557. A hearing board shall serve a notice of the time and place of a hearing either by  
5 personal service or by first-class mail, postage prepaid. If either the identity or address of  
6 any person entitled to notice is unknown, the hearing board shall serve that person by  
7 publication of notice in the district pursuant to Section 6061 of the Government Code.

8     **Comment.** Section 32557 continues former Health and Safety Code Section 40827 without  
9 substantive change.

10    **§ 32558. Testimony and record**

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11    32558. (a) A hearing board shall allow interested members of the public a reasonable  
12 opportunity to testify with regards to the matter under consideration, and shall consider the  
13 testimony in making its decision.

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

18    **Comment.** Section 32558 continues former Health and Safety Code Section 40828 without  
19 substantive change.

20    **§ 32559. Administration of oaths**

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21    32559. Any member of a hearing board may administer oaths in any hearing in which the  
22 member participates as a member of the hearing board.

23    **Comment.** Section 32559 continues former Health and Safety Code Section 40829 without  
24 substantive change.

25    **§ 32560. Swearing witnesses**

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26    32560. At any hearing, a hearing board shall require any witness to be sworn before  
27 testifying.

28    **Comment.** Section 32560 continues former Health and Safety Code Section 40830 without  
29 change.

30                                   Article 3. Subpoenas

31    **§ 32600. Issuance of subpoena**

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32    32600. Whenever the members of a hearing board conducting any hearing deem it  
33 necessary to examine any person as a witness at the hearing, the chairman of the hearing  
34 board shall issue a subpoena, in proper form, commanding the person to appear before it at  
35 a time and place specified to be examined as a witness. The subpoena may require the  
36 person to produce all books, papers, and documents in the person's possession, or under  
37 the person's control, material to the hearing.

38    **Comment.** Section 32600 continues former Health and Safety Code Section 40840 without  
39 substantive change.

## § 32601. Service

32601. A subpoena to appear before a hearing board shall be served in the same manner as a subpoena in a civil action.

**Comment.** Section 32601 continues former Health and Safety Code Section 40841 without change.

## § 32602. Contempt

32602. Whenever any person duly subpoenaed to appear and give evidence, or to produce any books and papers, before a hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, the person shall be deemed in contempt, and the hearing board shall report the fact to the superior court of the county in which the hearing is held.

**Comment.** Section 32602 continues former Health and Safety Code Section 40842 without substantive change.

**§ 32603. Order to show cause**

32603. Upon receipt of a report submitted pursuant to Section 32602, the superior court shall proceed as specified in Section 11455.20 of the Government Code.

**Comment.** Section 32603 continues former Health and Safety Code Section 40843 without substantive change.

## § 32604. Jurisdiction

32604. On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

**Comment.** Section 32604 continues former Health and Safety Code Section 40844 without change.

## Article 4. Decisions

### § 32650. Announcement of decision

32650. A hearing board shall announce its decision in writing. Copies of the decision shall immediately be filed with its clerk and mailed to all of the parties or their attorneys.

**Comment.** Section 32650 continues former Health and Safety Code Section 40860 without change.

### § 32651. Rehearing

32651. A hearing board may rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to him.

**Comment.** Section 32651 continues former Health and Safety Code Section 40861 without change.

1   **§ 32652. Reasons for decision**

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2       32652. The decision of a hearing board shall include the reasons for the decision.

3       **Comment.** Section 32652 continues former Health and Safety Code Section 40862 without  
4       change.

5   **§ 32653. Effective date**

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6       32653. The decision shall become effective upon filing, unless the hearing board orders  
7       otherwise.

8       **Comment.** Section 32653 continues former Health and Safety Code Section 40863 without  
9       change.

10   **§ 32654. Judicial review**

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11       32654. (a) Judicial review may be had of a decision of a hearing board by filing a petition  
12       for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.  
13       Except as otherwise provided in this section, the petition shall be filed within 30 days after  
14       the decision has been mailed pursuant to Section 32650. The right to petition shall not be  
15       affected by the failure to seek a rehearing before the hearing board.

16       (b) The complete record of the proceedings, or any parts thereof that are designated by  
17       the petitioner, shall be prepared by the hearing board and shall be delivered to the petitioner  
18       within 30 days after a request therefor by him, upon payment of the fee specified in Section  
19       69950 of the Government Code for the transcript, the cost of preparation of other portions  
20       of the record, and for certification thereof.

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

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

30       **Comment.** Section 32654 continues former Health and Safety Code Section 40864 without  
31       substantive change.

32   **§ 32655. Evidence**

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33       32655. In any proceeding pursuant to Section 32654, the court shall receive in evidence  
34       any order, rule, or regulation of the district board, any transcript of the proceedings before  
35       the hearing board, and any further evidence as the court, in its discretion, deems proper.

36       **Comment.** Section 32655 continues former Health and Safety Code Section 40865 without  
37       substantive change.

## TITLE 2. SPECIFIC POWERS AND RESPONSIBILITIES

### CHAPTER 1. EMISSION REDUCTIONS

#### Article 1. General Provisions

##### **§ 32700. Establishment of system**

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32700. (a) Every district board shall establish by regulation a system by which all reductions in the emission of air contaminants which are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions. The system shall provide that only those reductions in the emission of air contaminants which are not otherwise required by any federal, state, or district law, rule, order, permit, or regulation shall be registered, certified, or otherwise approved by the district air pollution control officer before they may be banked and used to offset future increases in the emission of air contaminants. The system shall be subject to disapproval by the state board pursuant to Title 2 (commencing with Section 37100) of Part 4 within 60 days after adoption by the district.

(b) The system is not intended to recognize any preexisting right to emit air contaminants, but to provide a mechanism for districts to recognize the existence of reductions of air contaminants that can be used as offsets, and to provide greater certainty that the offsets shall be available for emitting industries.

(c) Notwithstanding subdivision (a), emissions reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, if those reductions satisfy all criteria established by regulation pursuant to subdivision (a).

**Comment.** Section 32700 continues former Health and Safety Code Section 40709 without substantive change.

##### **§ 32701. Certificate**

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32701. Upon receipt of approval and pursuant to Section 32700, a certificate evidencing all approved reductions in the emissions of air contaminants shall be issued to the owner or owners of the emissions source, and the reductions shall continue to be banked until they have been used according to district regulations. The owner or owners of the approved reductions have the exclusive right to use them and to authorize their use. Certificates evidencing ownership of approved reductions issued by a district shall not constitute instruments, securities, or any other form of property.

**Comment.** Section 32701 continues former Health and Safety Code Section 40710 without substantive change.

##### **§ 32702. Registration**

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32702. A banking system established pursuant to Section 32700 shall provide for registration of all interests in approved emission reductions. The registry shall be maintained by the district and open to public inspection. Upon payment of any required filing fee, and receipt of the documents required in Section 32703, the district shall promptly register all interests in approved emission reductions and issue a certificate evidencing ownership. The district may adopt by rule or regulation a schedule of fees for

the issuance of certificates to cover the cost of confirming emission reductions and operating an emission reduction registry.

**Comment.** Section 32702 continues former Health and Safety Code Section 40711(a) without substantive change.

### § 32703. Transfers

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32703. Approved emission reductions may be transferred in whole or in part by written conveyance or by operation of law from one person to another. A sale, option, pledge, or other voluntary transfer of approved emission reductions shall be enforceable against third parties provided a copy of the written conveyance or a memorandum describing the transaction, signed by the transferor, is filed with the district. An involuntary transfer of approved emission reductions shall be enforceable against third parties provided the transferee files with the district a certified copy of the document effecting the transfer or a memorandum describing the nature of the transfer. Notwithstanding any other provision of law, conflicting interests in approved emission reductions shall rank in priority according to the time of filing with the district.

**Comment.** Section 32703 continues former Health and Safety Code Section 40711(b) without substantive change.

### § 32704. Title

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32704. If there is more than one owner of the source of the approved reductions in emission of air contaminants, initial title to the approved reductions shall be deemed held by the co-owners in the same manner as they hold title to the source of the reductions at the time the reductions are approved by the district air pollution control officer.

**Comment.** Section 32704 continues former Health and Safety Code Section 40712 without substantive change.

### § 32705. Approval procedure

---

32705. Any system established pursuant to Section 32700 shall contain procedures for the approval of reductions in emissions of air contaminants comparable to district permit procedures established pursuant to Section 38750, including, without limitation, procedures for public comment within 30 days after notice of any proposed approval. In the event the district air pollution control officer refuses to register, certify, or otherwise approve an application for a reduction in the emission of air contaminants pursuant to Section 32700, the applicant may, within 30 days after receipt of the notice of refusal, request the hearing board of the district to hold a hearing on whether the application was properly refused.

**Comment.** Section 32705 continues former Health and Safety Code Section 40713 without substantive change.

## Article 2. Special Provisions

### § 32750. Nonattainment areas

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32750. Any district which has established a system pursuant to Section 32700 by which reductions in emissions may be banked or otherwise credited to offset future increases in the emissions of air contaminants, or which utilize a calculation method which enables internal emission reductions to be credited against increases in emissions, and as of January

1, 1988, is within a federally designated nonattainment area for one or more air pollutants, shall develop and implement a program which, at a minimum, provides for all of the following:

(a) Identification and tracking of sources possessing emission credit balances accruing from the elimination or replacement of older, higher emitting equipment.


(b) Periodic analysis of the increases or decreases in emissions which occur when credits are used to bring new or modified emission sources into operation.

(c) Procedures for verifying the emission reductions credited to the bank or accruing to internal accounts, and for adjusting of credited emissions based on current district requirements.

(d) Periodic evaluation of the extent to which the system has contributed or detracted from the goal of allowing economic growth and modification of existing facilities, and has contributed to or detracted from the district's progress toward attainment of ambient air quality standards.

(e) Annual publication of the costs, in dollars per ton, of emission offsets purchased for new or modified emission sources, excluding information on the identity of any party involved in the offset transactions. This publication shall specify, for each offset purchase transaction, the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased. Each application to use emissions reductions banked in a system established pursuant to Section 32700 shall provide sufficient information, as determined by the district, to perform the cost analysis. The information shall be a public record.

**Comment.** Section 32750 continues former Health and Safety Code Section 40709.5 without substantive change.

 **Note.** The first paragraph conditions application of the section on whether a district is within a federally designated nonattainment area as of January 1, 1988. The starting date of this condition may be obsolete. The Commission would like to receive input on whether reference to this date still serves a useful purpose.

#### § 32751. Interdistrict offsets

32751. (a) Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:

(1) The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 3 (commencing with Section 33200).

(2) The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section 31003.

(b) The district, in which the stationary source to which emission reductions are credited is located, shall determine the type and quantity of the emission reductions to be credited.

(c) The district, in which the stationary source at which there are emission increases to be offset is located, shall do both of the following:

(1) Determine the impact of those emission reductions in mitigation of the emission increases in the same manner and to the same extent as the district would do so for fully credited emission reductions from sources located within its boundaries.



(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source in the other district. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

(d) Any offset credited pursuant to subdivision (a) shall be approved by a resolution adopted by the governing board of the upwind district and the governing board of the downwind district, after taking into consideration the impact of the offset on air quality, public health, and the regional economy. Each district governing board may delegate to its air pollution control officer the board's authority to approve offsets credited pursuant to subdivision (a).

**Comment.** Section 32751 continues former Health and Safety Code Section 40709.6 without substantive change.

### Article 3. Emission Reduction Credits

#### § 32800. Exempt sources

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32800. The Legislature hereby finds and declares all of the following:

(a) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(b) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(c) An increased supply of emission reduction credits is beneficial to local economies.

(d) The purpose of this article is to provide an incentive to generate additional and fully valued emission reduction credits by encouraging emission reductions from these sources without subjecting them to a district permitting process.

**Comment.** Section 32800 continues former Health and Safety Code Section 40714.5(a) without substantive change.

#### § 32801. Exempt sources

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32801. (a) With respect to any emission reduction that occurs on or after January 1, 1991, at a source that was and remains exempt from district rules and regulations, the district shall grant emission reduction credits or marketable trading credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. Emission reduction credits or marketable trading credits issued by the district for those exempt sources may be reduced only when applied to the permitting of other stationary sources as a result of new source review, or in accordance with any applicable requirement of a marketable trading credit program.

(b) Any credits issued by a district pursuant to this section shall meet all of the requirements of state and federal law, including, but not limited to, all of the following requirements:

(1) The credits shall not result in the crediting of air emissions which are already contemporaneously required by an emission control measure in a plan necessary to achieve state and federal ambient air standards.


(2) The credits shall not provide for an additional discount of credits solely as a result of emission reduction credits trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources.

(3) The credits shall not, in any manner, result in double-counting of emission reductions.

(4) The credits shall be permanent, enforceable, quantifiable, and surplus.



**Comment.** Section 32801 continues paragraphs (1) and (2) of subdivision (b) of former Health and Safety Code Section 40714.5 without substantive change.

 **Note.** The first subdivision refers to a date after which emission reductions at exempt sources are eligible for emission reduction credits (January 1, 1991). The Commission would like to receive input on whether reference to this date still serves a useful purpose.

#### **§ 32802. Application of article**

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32802. This article shall apply statewide.

**Comment.** Section 32802 continues subparagraph (D) of paragraph (3) of subdivision (b) of former Health and Safety Code Section 40714.5 without substantive change. The date after which that section has statewide application (January 1, 1999) is obsolete and has not been continued. Subparagraphs (A) to (C) of paragraph (3) of subdivision (b) of former Health and Safety Code Section 40714.5, providing for incremental increases to the scope of that section's application, on specified dates, are obsolete and are not continued.

### Article 4. Military Bases

#### **§ 32850. Definitions**

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32850. For the purposes of this article, the following terms have the following meanings:

(a) "Base reuse authority" means the authority recognized pursuant to Section 65050 of the Government Code.

(b) "Military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

**Comment.** Subdivision (a) of Section 32850 continues former Health and Safety Code Section 40709.7(b) without substantive change. Note, however, that the definition of "base reuse authority" in Health and Safety Code Section 40709.7 was contingent on whether Government Code Section 65050, listing base reuse entities, was enacted. This section was enacted as specified in the contingency. See, 1994 Cal. Stat. ch. 1261, § 6. Consequently, the alternative definition, that would have applied if the contingency had failed, is obsolete and has not been continued.


Section 32850(b) continues former Health and Safety Code Section 40709.7(a) without substantive change.

#### **§ 32851. Application for emission reduction**

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32851. An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base within 180 days of the reduction in emissions if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

**Comment.** Section 32851 continues former Health and Safety Code Section 40709.7(c) without substantive change. The reference to applications made on or before June 1, 1995, is obsolete and has not been continued.

 **Note.** This section's effect is contingent in part on whether the federal government meets certain eligibility requirements on December 31, 1994. It isn't clear whether the reference to this date has continuing relevance. The Commission would like to receive input on this point.

1    **§ 32852. Records**

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2       32852. Six months from the date that the base closure or realignment decision becomes  
3 final the district shall request and attempt to obtain all records maintained by a military base  
4 that are necessary to quantify emission reductions, including, but not limited to, records on  
5 the operation of any equipment which emits air contaminants, provided that the district  
6 either waives the payment of direct costs to obtain the records or enters into an agreement  
7 with the appropriate entity of the federal government or the base reuse authority for the  
8 payment of the direct costs to obtain the records. The district shall maintain these records.

9       **Comment.** Section 32852 continues former Health and Safety Code Section 40709.7(d)  
10 without substantive change. The reference to a July 1, 1995 deadline is obsolete and has not  
11 been continued.

12    **§ 32853. Application for emission reduction**

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13       32853. (a) A base reuse authority may apply to a district, under the emission reductions  
14 banking system established pursuant to Section 32700, for any reductions in emissions  
15 related to the termination or reduction of operations at the military base under its  
16 jurisdiction.

17       (b) The district shall quantify and bank the emission reductions for a closing or realigning  
18 military base within 180 days of a request by a base reuse authority and payment of any  
19 applicable fees, if one of the following events has occurred:

20       (1) The federal government agrees in writing to allow the base reuse authority to apply  
21 for and receive the emission reduction credits.

22       (2) The time period for the federal government to apply for emission reduction credits  
23 pursuant to Section 32851 has expired and the federal government has not applied for the  
24 credits.

25       (3) The base reuse authority has, pursuant to other legal means, obtained the authority to  
26 acquire the emission reduction credits.

27       **Comment.** Section 32853 continues former Health and Safety Code Section 40709.7(e)  
28 without substantive change.

29    **§ 32854. Partial retirement of credits**

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30       32854. The district shall permanently retire the emission reduction credits obtained  
31 pursuant to this article by 5 percent to improve air quality.

32       **Comment.** Section 32854 continues former Health and Safety Code Section 40709.7(f)  
33 without substantive change.

34    **§ 32855. Applicable time periods**

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35       32855. The baseline for quantifying emission reductions shall be the date that the base  
36 closure or realignment decision becomes final. The two-year period ending on the date that  
37 the base closure or realignment decision was made shall be used to determine average  
38 emissions from the military base unless this two-year period is not representative of normal  
39 operations, in which case an alternative, consecutive, two-year period which is within the  
40 five years prior to the baseline date may be used, as determined by the district.

41       **Comment.** Section 32855 continues former Health and Safety Code Section 40709.7(g)  
42 without substantive change.

1    **§ 32856. Ownership**

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2       32856. After registration, certification, or other approval of the emission reductions by a  
3       district air pollution control officer pursuant to subdivision (a) of Section 32700 and this  
4       article, the base reuse authority shall be deemed the owner of the emissions source for  
5       purposes of the issuance of a certificate pursuant to Section 32701. Upon receipt of the  
6       certificate, or other approval, the base reuse authority may use, sell, or otherwise dispose  
7       of the emission reduction credits as determined by the base reuse authority, provided that  
8       the credits may only be used for base reuse within the jurisdiction of the district.

9       **Comment.** Section 32856 continues former Health and Safety Code Section 40709.7(h)  
10      without substantive change.

11                   **CHAPTER 2. TRANSPORTATION CONTROL MEASURES**

12                               **Article 1. Transportation Control Plan**

13    **§ 32900. Transportation control responsibility**

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14       32900. A district shall adopt, implement, and enforce transportation control measures for  
15       the attainment of state or federal ambient air quality standards to the extent necessary to  
16       comply with Section 33303, 33304, or 33305.

17       **Comment.** Section 32900 continues former Health and Safety Code Section 40717(a)  
18      without substantive change.

19    **§ 32901. Plan requirements**

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20       32901. A district which has entered into an agreement with a council of governments or a  
21       regional agency to jointly develop a plan for transportation control measures shall develop  
22       the plan in accordance with all of the following:

23       (a) The district shall establish the quantity of emission reductions from transportation  
24       sources necessary to attain state and federal ambient air standards.

25       (b) The council of governments or regional agency, in cooperation with the district and  
26       any other person or entity authorized by the council of governments or regional agency,  
27       shall develop and adopt a plan to control emissions from transportation sources which will  
28       achieve the emission reductions established under subdivision (a). The plan shall include,  
29       at a minimum, a schedule for implementing transportation control measures, identification  
30       of potential implementing agencies and any agreements entered into by agencies to  
31       implement portions of the plan, and procedures for monitoring the effectiveness of and  
32       compliance with the measures in the plan. The council of governments or regional agency  
33       shall submit the plan to the district for its adoption according to a reasonable schedule  
34       developed by the district in consultation with the council of governments or regional  
35       agency.

36       (c) Upon receipt of the plan submitted by the council of governments or regional agency,  
37       the district shall review and approve or disapprove the plan in the following manner:

38       (1) The district shall review, adopt, and enforce the plan if it meets the criteria established  
39       by the district pursuant to subdivision (a) and has been submitted pursuant to the schedule  
40       established under subdivision (b).

41       (2) If the district determines that the plan does not meet the criteria established pursuant to  
42       subdivision (a), the district shall return the plan to the council of governments or regional  
43       agency with comments which identify the reasons the plan does not meet the criteria  
44       established pursuant to subdivision (a). Within 45 days, the council of governments or

1 regional agency shall review the district's comments, revise the plan to meet the criteria  
2 established under subdivision (a), and resubmit the plan to the district. The district shall  
3 review and approve the revised plan if it meets the criteria established by the district  
4 pursuant to subdivision (a) and has been resubmitted to the district within 45 days.

5 (3) If the plan is not submitted pursuant to the schedule established under subdivision  
6 (b), or if a plan revised by a council of governments or regional agency and resubmitted to  
7 a district pursuant to this paragraph does not meet the criteria established under subdivision  
8 (a), the district shall develop, adopt, and enforce an alternative plan for transportation  
9 control measures.

10 (d) Whenever the district revises its establishment of the quantity of emission reductions  
11 from transportation sources necessary to attain state and federal ambient air standards, the  
12 plan shall be revised, adopted, and enforced in accordance with subdivision (a), (b), and  
13 (c).

14 **Comment.** Section 32901 continues former Health and Safety Code Section 40717(b)  
15 without substantive change.

#### 16 **§ 32902. Sacramento district**

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17 32902. Section 32901 shall not apply to the Sacramento district. Chapter 4 (commencing  
18 with Section 35400) of Title 4 shall govern preparation and enforcement of that plan for  
19 transportation control measures for the Sacramento district.

20 **Comment.** Section 32902 continues former Health and Safety Code Section 40717(c)  
21 without substantive change.

#### 22 **§ 32903. Counties of the third class**

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23 32903. Notwithstanding Section 32901, a district located in a county of the third class  
24 shall develop a plan for transportation control measures as follows:

25 (a) The district, in consultation with the council of governments, shall develop, approve,  
26 and adopt criteria under which the plan shall be developed.

27 (b) The council of governments shall develop and adopt a plan for transportation control  
28 measures which meets the criteria established by the district, and shall submit the plan to  
29 the district for its review and adoption according to a reasonable schedule developed by the  
30 district in consultation with the council of governments.

31 (c) Upon receipt of the plan submitted by the council of governments, the district shall  
32 review and approve the plan if it meets the criteria established by the district pursuant to  
33 subdivision (a) and has been submitted pursuant to the schedule established under  
34 subdivision (b). If the district determines that the plan does not meet the criteria established  
35 pursuant to subdivision (a) or if the plan is not submitted pursuant to the schedule  
36 established under subdivision (b), the district shall develop and adopt an alternative plan for  
37 transportation control measures.

38 **Comment.** Section 32903 continues former Health and Safety Code Section 40717(d)  
39 without substantive change.

#### 40 **§ 32904. Delegation**

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41 32904. A district may delegate any function with respect to the implementation of  
42 transportation control measures to any local agency, if all of the following conditions are  
43 met:

44 (a) The local agency submits to the district an implementation plan that provides adequate  
45 resources to adopt and enforce the measures, and the district approves the plan.

(b) The local agency adopts and implements measures at least as stringent as those in the district plan.

(c) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(d) Multiple site employers with more than one regulated worksite in the district have the option of complying with the district rule and reporting directly to the district. Employers that exercise this option shall be exempt from the local agency trip reduction measure.

**Comment.** Section 32904 continues former Health and Safety Code Section 40717(e) without substantive change.

#### **§ 32905. Revocation of authority**

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32905. A district may revoke an authority granted under this article if it determines that the performance of the local agency is in violation of this article or otherwise inadequate to implement the district plan.

**Comment.** Section 32905 continues former Health and Safety Code Section 40717(f) without substantive change.

#### **§ 32906. “Transportation control measures”**

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32906. For purposes of this article, “transportation control measures” means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing motor vehicle emissions.

**Comment.** Section 32906 continues former Health and Safety Code Section 40717(g) without substantive change.

#### **§ 32907. Effect of article**

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32907. Nothing in this article shall preclude a local agency from implementing a transportation control measure that exceeds the requirements imposed by an air pollution control district or an air quality management district if otherwise authorized by law.

**Comment.** Section 32907 continues former Health and Safety Code Section 40717(h) without substantive change.

### **Article 2. Indirect Sources**

#### **§ 32950. Indirect sources**

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32950. Any district which proposes to adopt or amend a rule or regulation pursuant to Section 32005 or Sections 32900 to 32907, inclusive, which imposes any requirement on an indirect source to reduce vehicle trips or vehicle miles traveled, including, but not limited to, any rule or regulation affecting ridesharing or alternative transportation mode strategies, shall, prior to the adoption or amendment of the rule or regulation, do all of the following:

(a) Ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies which are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur. In complying with this subdivision, a district shall make reasonable and feasible efforts to assign responsibility for existing and new vehicle trips in a manner which equitably distributes responsibility among indirect sources.

(b) Ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips which are required to be reduced by other rules or regulations adopted for the same purpose.

(c) Take into account the feasibility of implementing the proposed rule or regulation.

(d) Pursuant to Section 33253, consider the cost effectiveness of the proposed rule or regulation.

(e) Determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources which would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Section 32005 or Sections 32900 to 32907, inclusive.

**Comment.** Section 32950 continues former Health and Safety Code Section 40717.5(a) without substantive change.

### § 32951. Delegation

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32951. A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to Section 32950. However, if an indirect source subject to the rule or regulation has sites located both within and outside of the jurisdiction of a city or county to which that responsibility has been delegated, the indirect source may elect to be subject to the implementation of that rule or regulation only by the district. Notwithstanding Section 36408, an indirect source which elects to be regulated only by a district pursuant to this section may also elect to include sites under district regulation that would not otherwise be subject to district regulation, and, in that event, shall not be subject to the implementation by a city or county of any requirement contained in that rule or regulation.

**Comment.** Section 32951 continues former Health and Safety Code Section 40717.5(b) without substantive change. The reference to former Health and Safety Code Section 40927(b) is obsolete and has not been continued. Section 40927 was repealed by its own terms on January 1, 1997. See 1993 Cal. Stat. ch. 563, § 2.

### § 32952. Effect of article

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32952. (a) Nothing in this article constitutes an infringement on the existing authority of counties and cities to plan, control, or condition land use, or on the ability of a city, county, or other public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

(b) Nothing in this article provides or transfers new authority over land use to a district.

**Comment.** Section 32952 continues former Health and Safety Code Section 40717.5(c) without substantive change.

## Article 3. Private Entities

### § 33000. Private entities

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33000. No district or other local or regional agency shall impose any requirement on any private entity, including any requirement in any congestion management program adopted pursuant to Section 65089 of the Government Code, except as specifically provided in Section 65089.1 of the Government Code, to reduce shopping trips or to require the imposition of parking charges or the elimination of existing parking spaces at retail facilities.

**Comment.** Section 33000 continues former Health and Safety Code Section 40717.6(a) without substantive change.



### § 33001. Effect of article

33001. (a) Notwithstanding Section 33000, nothing in this article shall be construed to prevent a city or county from doing any of the following:

(1) Requiring retailers to make available to customers information concerning alternative transportation systems serving the retail site.

(2) Imposing requirements on new development as a condition of development for the purpose of mitigation pursuant to the California Environmental Quality Act (Division 3 (commencing with Section 21000)).

(3) Enacting requirements on retailers as a result of a voter imposed growth management initiative.

(b) Nothing in this article shall be construed as a limitation on the land use authority of cities and counties.

**Comment.** Section 33001 continues former Health and Safety Code Section 40717.6(b)-(c) without substantive change.

## Article 4. Intermittent Controls

### § 33050. Intermittent transportation controls

33050. (a) Except as provided in Section 33051, every district board which has adopted an emergency episode plan for ozone or oxidant may conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called.

(b) The district board, in cooperation with representatives of industry, transportation, and local governments in the district, shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls. The district board shall prepare and submit to the Legislature within one year a report on the findings from the hearings.

(c) The district board shall incorporate its findings and determinations into the district air quality management plan.

**Comment.** Section 33050 continues former Health and Safety Code Section 40719(a)-(c) without substantive change.

### § 33051. Exception

33051. Notwithstanding Section 33050, in that portion of the bay district which is subject to the jurisdiction of the Metropolitan Transportation Commission, the commission, at the request of the bay district, shall undertake those duties and responsibilities set forth in Section 33050 that relate to the conduct of hearings and the adoption and implementation of intermittent transportation controls and that relate to making recommended findings and determinations for the bay district for incorporation into the bay district's air quality management plan.

**Comment.** Section 33051 continues former Health and Safety Code Section 40719(d) without substantive change.



## Article 5. Event Centers


### § 33100. Definitions

33100. For purposes of this article, the following terms have the following meaning:

(a) “Event center” means a community center, activity center, auditorium, convention center, stadium, coliseum, arena, sports facility, racetrack, pavilion, amphitheater, theme park, amusement park, fairgrounds, or other building, collection of buildings, or facility which is used exclusively or primarily for the holding of sporting events, athletic contests, contests of skill, exhibitions, conventions, meetings, spectacles, concerts, or shows, or for providing public amusement or entertainment.

(b) “Average vehicle ridership” means the total number of attendees arriving in vehicles parking in areas controlled by the event center, divided by the total number of those vehicles parking in areas controlled by the event center.

**Comment.** Section 33100 continues former Health and Safety Code Section 40928(a) without substantive change.

 **Note.** Health and Safety Code Section 40928 was originally added to Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code ) (District Plans to Attain State Ambient Air Quality Standards). As a provision governing transportation control measures, it seems more appropriate to locate the section in this chapter. The Commission would like to receive input on whether there is any reason not to relocate this section to this chapter.

### § 33101. Event centers


33101. (a) Notwithstanding Sections 32900 to 32907, inclusive, or any provision of this article, or of Chapter 3 (commencing with Section 33200), and to the extent consistent with federal law, no district, or regional or local agency to which a district has delegated the authority to implement transportation control measures pursuant to Sections 32900 to 32907, inclusive, and which is acting pursuant to that delegated authority, shall do either of the following:

(1) Require an event center which achieves an average vehicle ridership greater than 2.20 to implement any transportation control requirements that are intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(2) Require an event center which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement additional transportation control requirements that are also intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(b) A district, or regional or local agency, may require event centers which achieve an average vehicle ridership greater than 2.20, or which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement approved alternative strategies which will achieve emission reductions that are equivalent to those that would be achieved by the imposition of transportation control requirements intended to reduce vehicle trips or vehicle miles traveled by event center attendees, including, but not limited to, those strategies specified in Section 33102.

**Comment.** Section 33101 continues former Health and Safety Code Section 40928(b) without substantive change.

 **Note.** See Note to Section 33100.

1    **§ 33102. Alternative strategies**

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2       33102. A district or regional or local agency may impose requirements on any event  
3 center, without permitting that event center to implement alternative strategies to achieve  
4 equivalent emissions reductions, for any of the following purposes:

5       (a) Traffic management before and after events.

6       (b) Parking management and vehicle flow within parking areas controlled by the event  
7 center.

8       (c) Reducing the amount of vehicle idling before and after events.

9       (d) Implementing marketing or education programs designed to educate attendees on  
10 mass transit or other alternative transportation methods for transit to and from the event  
11 center.

12       (e) Achieving a designated average vehicle ridership for vehicles which carry persons  
13 who are traveling to or from their employment at an event center.

14       (f) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle  
15 miles traveled by event center attendees.

16       **Comment.** Section 33102 continues former Health and Safety Code Section 40928(c)  
17 without substantive change.

18       ☞ **Note.** See Note to Section 33100.

19                                   Article 6. Federal Law as Prerequisite

20    **§ 33150. General prohibition**

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21       33150. Notwithstanding Sections 36408, 32900 to 32907, inclusive, 32950 to 32952,  
22 inclusive, or any other provision of law, a district, congestion management agency, as  
23 defined in subdivision (b) of Section 65088.1 of the Government Code, or any other public  
24 agency shall not require an employer to implement an employee trip reduction program  
25 unless the program is expressly required by federal law and the elimination of the program  
26 will result in the imposition of federal sanctions, including, but not limited to, the loss of  
27 federal funds for transportation purposes.

28       **Comment.** Section 33150 continues former Health and Safety Code Section 40929(a)  
29 without substantive change. References to former Health and Safety Code Sections 40457 and  
30 40717.1 are obsolete and have not been continued. See 1996 Cal. Stat. ch. 777, §§ 1, 3.

31       ☞ **Note.** Health and Safety Code Section 40929 was originally added to Chapter 10  
32 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code )  
33 (District Plans to Attain State Ambient Air Quality Standards). As a provision governing  
34 transportation control measures, it seems more appropriate to locate the section in this  
35 chapter. The Commission would like to receive input on whether there is any reason not to  
36 relocate this section to this chapter.

37    **§ 33151. Exception**

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38       33151. Nothing in this article shall preclude a public agency from regulating indirect  
39 sources in any manner that is not specifically prohibited by this article, where otherwise  
40 authorized by law.

41       **Comment.** Section 33151 continues former Health and Safety Code Section 40929(b)  
42 without substantive change.

43       ☞ **Note.** See Note to Section 33150.

CHAPTER 3. DISTRICT PLANS TO ATTAIN STATE  
AMBIENT AIR QUALITY STANDARDS

Article 1. General Provisions

**§ 33200. Legislative intent**

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33200. It is the intent of the Legislature in enacting this chapter that districts shall endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. In developing attainment plans and regulations to achieve this objective, districts shall consider the full spectrum of emission sources and focus particular attention on reducing the emissions from transportation and areawide emission sources. Districts shall also consider the cost effectiveness of their air quality programs, rules, regulations, and enforcement practices in addition to other relevant factors, and shall strive to achieve the most efficient methods of air pollution control. However, priority shall be placed upon expeditious progress toward the goal of healthful air.

**Comment.** Section 33200 continues former Health and Safety Code Section 40910 without change. Note that uncodified statutory provisions applicable to former Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code now apply to this chapter. See, e.g., 1994 Cal. Stat. ch. 189, § 1 (report by State Air Resources Board regarding implementation of this chapter).


**§ 33201. Time limitation for submission of plan**

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33201. (a) Except as provided in subdivision (b), each district which has been designated a nonattainment area for state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide shall prepare and submit a plan for attaining and maintaining the standards to the state board not later than December 31, 1990.

(b) Notwithstanding subdivision (a), any district which is a receptor or contributor of transported air pollutants, as determined by the state board pursuant to subdivision (a) of Section 31003, shall prepare and submit its plan to the state board not later than June 30, 1991.

**Comment.** Section 33201 continues former Health and Safety Code Section 40911 without substantive change.

 **Note.** Subdivisions (a) and (b) specify deadlines for the preparation of plans. These deadline provisions may be obsolete. The Commission would like to receive input on two questions: (1) Have these deadlines been met? (2) Do the deadlines still serve a useful purpose?

**§ 33202. Technical assistance from state board**

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33202. (a) The state board shall make technical assistance available to a district, at the district's request, to support attainment planning and air pollutant transport planning and associated analyses. If the state board lacks sufficient resources to make technical assistance available to each district that requests assistance, the state board shall give priority to those districts that have limited financial or technical capabilities.

(b) The state board shall develop guidelines for use by the districts to prepare emission inventories, develop monitoring networks, and develop methods for the validation of air quality models.

(c) The state board shall develop and periodically update guidelines for use by the districts to establish equivalent emission reductions for mobile source emission control strategies and transportation control measures.

**Comment.** Section 33202 continues former Health and Safety Code Section 40916 without change.

#### **§ 33203. Inter-district cooperation**

---

33203. Two or more districts within the same air basin shall cooperate to the extent reasonable and appropriate in developing plan elements of mutual concern. These elements may include, but are not limited to, emission inventories, air quality models, and growth projections.

**Comment.** Section 33203 continues former Health and Safety Code Section 40917 without change.

#### **§ 33204. Effect of chapter**

---

33204. Nothing in this chapter restricts the authority of the state board or a district to adopt regulations to control suspended particulate matter, visibility reducing particles, lead, hydrogen sulfide, or sulfates, or their precursors.

**Comment.** Section 33204 continues former Health and Safety Code Section 40926 without change.

### **Article 2. General Content Requirements**

#### **§ 33250. State standards**

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33250. (a) Each district plan shall be designed to achieve and maintain the state standards by the earliest practicable date, as determined by the district and subject to the approval of the state board, and in consideration of all relevant factors, including, but not limited to, the following:

- (1) Present and projected maximum ambient pollutant concentration.
- (2) Distribution and frequency of violations.
- (3) Transport contributions.
- (4) Projected emission increases based on industrial, vehicular, or population growth.
- (5) Emission inventory characteristics.
- (6) Anticipated effectiveness of available and potential control measures.
- (7) Emission reductions occurring in, or expected to occur in, the district.
- (8) In districts where military bases have closed or are scheduled for closure, the reuse plans for the closing base.

(b) Each district plan shall be based upon a determination by the district board that the plan is a cost-effective strategy to achieve attainment of the state standards by the earliest practicable date.

**Comment.** Section 33250 continues former Health and Safety Code Section 40913 without change.

#### **§ 33251. Reduction in emissions**

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33251. (a) Each district plan shall be designed to achieve a reduction in districtwide emissions of 5 percent or more per year for each nonattainment pollutant or its precursors,

1 averaged every consecutive three-year period, unless an alternative measure of progress is  
2 approved pursuant to Section 31000.

3 (b) A district may use an alternative emission reduction strategy which achieves less than  
4 an average of 5 percent per year reduction in districtwide emissions if the district  
5 demonstrates to the state board, and the state board concurs in, either of the following:

6 (1) That the alternative emission reduction strategy is equal to or more effective than  
7 districtwide emission reductions in improving air quality.

8 (2) That despite the inclusion of every feasible measure in the plan, and an expeditious  
9 adoption schedule, the district is unable to achieve at least a 5 percent annual reduction in  
10 districtwide emissions.

11 (c) For purposes of this section and Section 37151, reductions in emissions shall be  
12 calculated with respect to the actual level of emissions which exist in each district during  
13 1990, as determined by the state board. All reductions in emissions occurring after  
14 December 31, 1990, including, but not limited to, reductions in emissions resulting from  
15 measures adopted prior to December 31, 1990, shall be included in this calculation.

16 **Comment.** Section 33251 continues former Health and Safety Code Section 40914 without  
17 substantive change.

#### 18 **§ 33252. Contingency measures**

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19 33252. Each district plan shall contain contingency measures to be implemented upon a  
20 finding by the state board, pursuant to Section 37151, that the district is failing to achieve  
21 interim goals or maintain adequate progress toward attainment. Any regulations necessary  
22 to implement the contingency measures shall be adopted by the district within 180 days  
23 following the state board's determination of inadequate progress.

24 **Comment.** Section 33252 continues former Health and Safety Code Section 40915 without  
25 substantive change.

#### 26 **§ 33253. Control measures**

---

27 33253. (a) Each plan prepared pursuant to this chapter shall include an assessment of the  
28 cost effectiveness of available and proposed control measures and shall contain a list which  
29 ranks the control measures from the least cost-effective to the most cost-effective.

30 (b) In developing an adoption and implementation schedule for a specific control  
31 measure, the district shall consider the relative cost effectiveness of the measure, as  
32 determined under subdivision (a), as well as other factors including, but not limited to,  
33 technological feasibility, total emission reduction potential, the rate of reduction, public  
34 acceptability, and enforceability.

35 **Comment.** Section 33253 continues former Health and Safety Code Section 40922 without  
36 change.

### 37 **Article 3. Special Content Requirements**

#### 38 **§ 33300. Upwind and downwind districts**

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39 33300. The plans for districts responsible for or affected by air pollutant transport shall  
40 provide for attainment and maintenance of the state and federal standards in both the  
41 upwind and downwind district. Each upwind district's plan shall contain, at a minimum, all  
42 mitigation requirements established by the state board pursuant to subdivision (b) of  
43 Section 31003. Each downwind district's plan shall contain sufficient measures to reduce

emissions originating in the district below the level at which violations of state ambient air quality standards would occur in the absence of the transport contribution.

**Comment.** Section 33300 continues former Health and Safety Code Section 40912 without substantive change.

#### **§ 33301. Designation of district pollution level**

---

33301. For the purposes of Sections 33303, 33304, 33305, and 33306, the designation of a district's air pollution as "moderate," "serious," "severe," or "extreme" for an area which is a receptor of transported air pollutants shall be based on violations of state ambient air quality standards which would occur without regard to the transport contribution.

**Comment.** Section 33301 continues former Health and Safety Code Section 40921 without substantive change.

#### **§ 33302. Pollution level definitions**

---

33302. (a) For purposes of classifying ozone nonattainment areas pursuant to Sections 33303, 33304, 33305, and 33306, the terms moderate, serious, severe, and extreme shall be defined as follows:

- (1) Moderate .....greater than 0.09 to not more than 0.12 parts per million, inclusive.
- (2) Serious .....0.13 to 0.15 parts per million, inclusive.
- (3) Severe .....0.16 to 0.20 parts per million, inclusive.
- (4) Extreme.....greater than 0.20 parts per million.

(b) For the purposes of classifying carbon monoxide nonattainment areas under Sections 33303 and 33304, the terms moderate and serious shall be defined as follows:

- (1) Moderate .....greater than 9.0 to 12.7 parts per million, inclusive.
- (2) Serious .....greater than 12.7 parts per million.

(c) The state board shall determine the ambient concentration of each nonattainment area consistent with the designation criteria established pursuant to subdivision (e) of Section 31000. Classifications for ozone shall be based upon the calendar years 1989 to 1991, inclusive. Classifications for carbon monoxide shall be based upon the 1989-90 and 1990-91 winter seasons.

**Comment.** Section 33302 continues former Health and Safety Code Section 40921.5 without substantive change.

#### **§ 33303. Moderate air pollution district**

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33303. (a) Each district with moderate air pollution shall, to the extent necessary to meet the requirements of the plan developed pursuant to Section 33250, include the following measures in its attainment plan:



(1) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from new or modified stationary sources which emit or have the potential to emit 25 tons per year or more of nonattainment pollutants or their precursors. The program shall require the use of best available control technology for any new or modified stationary source which has the potential to emit 25 pounds per day or more of any nonattainment pollutant or its precursors.

(2) The use of reasonably available control technology for all existing stationary sources, except that stationary sources permitted to emit five tons or more per day or 250 tons or more per year shall be equipped with the best available retrofit control technology.

(3) Reasonably available transportation control measures sufficient to substantially reduce the rate of increase in passenger vehicle trips and miles traveled per trip if the district contains an urbanized area with a population of 50,000 or more.

(4) Provisions to develop areawide source and indirect source control programs.

(5) Provisions to develop and maintain an emissions inventory system to enable analysis and progress reporting and a commitment to develop other analytical techniques to carry out its responsibilities pursuant to subdivision (b) of Section 33452.

(6) Provisions for public education programs to promote actions to reduce emissions from transportation and areawide sources.

(b) Any district with moderate air pollution that is not below the pollutant concentrations for a moderate classification pursuant to Sections 33301 and 33302 by December 31, 1997, shall comply with Section 33304 if the state board demonstrates that the additional requirements of Section 33304 will substantially expedite the district's attainment of the state ambient air quality standards. Any actions taken by the state board pursuant to this subdivision are subject to Section 37154

**Comment.** Section 33303 continues former Health and Safety Code Section 40918 without substantive change.

#### **§ 33304. Serious air pollution district**

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33304. (a) Each district with serious air pollution shall, to the extent necessary to meet the requirements of the plan adopted pursuant to Section 33250, include the following measures in its attainment plan:

(1) All measures required for moderate nonattainment areas, as specified in Section 33303.

(2) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all new or modified stationary sources which emit, or have the potential to emit, 15 tons or more per year. The program shall require the use of best available control technology for any new or modified stationary source which has the potential to emit 10 pounds per day or more of any nonattainment pollutant or its precursors.

(3) The use of the best available retrofit control technology, as defined in Section 35860, for all existing permitted stationary sources.

(4) Measures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.

(b) Any district with serious air pollution that has not met the criteria for a moderate classification by December 31, 1997, shall comply with Section 33305 if the state board demonstrates that the additional requirements of Section 33305 will substantially expedite the district's attainment of the state ambient air quality standards. Any actions taken by the state board pursuant to this subdivision are subject to Section 37154.



1     **Comment.** Section 33304 continues former Health and Safety Code Section 40919 without  
2 substantive change.

3     **§ 33305. Severe air pollution district**

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4     33305. Each district with severe air pollution shall, to the extent necessary to meet the  
5 requirements of Section 33250, include the following measures in its attainment plan:

6     (a) All measures required for moderate and serious nonattainment areas, as specified in  
7 Sections 33303 and 33304.

8     (b) A stationary source control program designed to achieve no net increase in emissions  
9 of nonattainment pollutants or their precursors from all new or modified stationary sources  
10 which emit, or have the potential to emit, 10 tons or more per year.

11     (c) Measures sufficient to reduce overall population exposure to ambient pollutant levels  
12 in excess of the standard by at least 25 percent by December 31, 1994, 40 percent by  
13 December 31, 1997, and 50 percent by December 31, 2000, based on average per capita  
14 exposure and the severity of the exposure, so as to minimize health impacts, using the  
15 average level of exposure experienced during 1986 through 1988 as the baseline.

16     **Comment.** Section 33305 continues former Health and Safety Code Section 40920 without  
17 substantive change.

18     **§ 33306. Extreme air pollution district**

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19     33306. Each district with extreme air pollution shall, to the extent necessary to meet the  
20 requirements of the plan developed pursuant to Section 33250, include the following  
21 measures in its attainment plan:

22     (a) All measures required for moderate, serious, and severe areas.

23     (b) A stationary source control program designed to achieve no net increase in emissions  
24 from new or modified stationary sources of nonattainment pollutants or their precursors.

25     (c) Any other feasible controls that can be implemented, or for which implementation can  
26 begin, within 10 years of the adoption date of the most recent air quality plan.

27     **Comment.** Section 33306 continues former Health and Safety Code Section 40920.5  
28 without substantive change.

29                     Article 4. No-net-increase Program Exclusion

30     **§ 33350. No-net-increase program excluded**

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31     33350. (a) Notwithstanding Sections 33303, 33304, and 33305, a district that does not  
32 have extreme air pollution may elect to not include a no-net-increase permitting program in  
33 its attainment plan if all of the following actions are taken:

34     (1) The governing board of the district finds, at a public hearing, that the no-net-increase  
35 permitting program is not necessary to achieve and maintain the state ambient air quality  
36 standards by the earliest practicable date.

37     (2) Prior to making the finding specified in paragraph (1), the governing board does both  
38 of the following:

39     (A) Reviews an estimate of the growth in emissions, if any, that is likely to occur as a  
40 result of the elimination of a no-net-increase permitting program.

41     (B) Complies with Section 33251 either by having adopted, or having scheduled for  
42 adoption, all feasible measures to achieve and maintain state ambient air quality standards,  
43 or by the use of an alternative emission reduction strategy.

(3) The governing board of the district submits its finding to the state board, and, within 60 days from the date of the submittal of the finding, the state board makes a determination based on quantifiable and substantial evidence that a no-net-increase permitting program is not necessary to comply with the mitigation requirements established pursuant to Section 31003 and that the no-net-increase permitting program is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date. If the state board does not make any determination within that 60-day period, and the district does not agree to an extension of that time period, the district may make the election authorized by this subdivision.

(b) Nothing in this section shall relieve a district from the obligation to require the use of the best available control technology pursuant to Section 33303, 33304, or 33305.

**Comment.** Section 33350 continues former Health and Safety Code Section 40918.5 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.5 now apply to this section. See, e.g., 1996 Cal. Stat. ch. 1092, § 1 (legislative intent).

#### **§ 33351. Exclusion of no-net-increase program**

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33351. Following the implementation of Section 33350, both of the following shall occur:

(a) The district governing board's finding pursuant to paragraph (1) of subdivision (a) of Section 33350 shall, by operation of law, become part of the district's attainment plan.

(b) The state board shall, during any subsequent review of the district's attainment plan pursuant to subdivision (a) of Section 37100, determine based on quantifiable and substantial evidence whether or not a no-net-increase permitting program is necessary to comply with mitigation requirements established pursuant to Section 31003 or to achieve and maintain state ambient air quality standards by the earliest practicable date. If the state board determines that a no-net-increase permitting program is necessary to comply with those requirements, the district shall then adopt and implement a no-net-increase permitting program pursuant to Section 33303, 33304, or 33305.

**Comment.** Section 33351 continues former Health and Safety Code Section 40918.6 without substantive change. The former paragraphs, which were designated as paragraphs, have been redesignated as subdivisions.

Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.6 now apply to this section. See, e.g., 1996 Cal. Stat. ch. 1092, § 1 (legislative intent).

#### **§ 33352. Emission reduction offset credits**

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33352. (a) Emission reduction offset credits created pursuant to Section 38251 shall be approved for use by a stationary source in another district if all of the following conditions are met:

(1) The district containing the source providing the offset credits does not have a no-net-increase permitting program in its attainment plan.

(2) The district where the offset credits are to be used is designated as having moderate air pollution.

(3) The district where the offset credits are to be used is located within the same air basin as, or within an air basin that is contiguous to, the air basin in which the district containing the source providing the offsets is located.

(4) The site where the offset credits will be used is located within 200 linear air miles from the source providing the offset credits.

(b) If all of the conditions specified in subdivision (a) are met, the district receiving the offset credit shall do both of the following:

(1) Determine the type and quantity of the emission reductions to be credited.

(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

**Comment.** Section 33352 continues former Health and Safety Code Section 40918.7 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.7 now apply to this section. See, e.g., 1996 Cal. Stat. ch. 1092, § 1 (legislative intent).

## Article 5. Best Available Retrofit Control Technology

### § 33400. Precondition to adoption of rules

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33400. Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 33303, 33304, 33305, and 33306, or for a feasible measure pursuant to Section 33251, districts shall, in addition to other requirements of this division, do all of the following:

(a) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.

(b) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this subdivision, “cost-effectiveness” means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.

(c) Calculate the incremental cost-effectiveness for the potential control options identified in subdivision (a). To determine the incremental cost-effectiveness under this subdivision, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.

(d) Consider, and review in a public meeting, all of the following:

(1) The effectiveness of the proposed control option in meeting the requirements of this chapter and the requirements adopted by the state board pursuant to subdivision (b) of Section 31003.

(2) The cost-effectiveness of each potential control option as assessed pursuant to subdivision (b).

(3) The incremental cost-effectiveness between the potential control options as calculated pursuant to subdivision (c).

(e) Make findings at the public hearing at which the regulation is adopted stating the reasons for the district’s adoption of the proposed control option or options.

**Comment.** Section 33400 continues former Health and Safety Code Section 40920.6(a) without substantive change.

### § 33401. Best available retrofit control technology requirements

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33401. A district may establish its own best available retrofit control technology requirement based upon consideration of the factors specified in Section 33400 and Section 35860 if the requirement complies with subdivision (c) of Section 32004 and is consistent with this chapter, other state law, and federal law, including, but not limited to, the applicable state implementation plan.

1     **Comment.** Section 33401 continues former Health and Safety Code Section 40920.6(b)  
2 without substantive change.

3     **§ 33402. Retirement of marketable emission reduction credits**

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4     33402. A district shall allow the retirement of marketable emission reduction credits  
5 under a program which complies with all of the requirements of Sections 31150 to 31156,  
6 inclusive, or emission reduction credits which meet all of the requirements of state and  
7 federal law, including, but not limited to, the requirements that those emission reduction  
8 credits be permanent, enforceable, quantifiable, and surplus, in lieu of any requirement for  
9 best available retrofit control technology, if the credit also complies with all district rules  
10 and regulations affecting those credits.

11     **Comment.** Section 33402 continues former Health and Safety Code Section 40920.6(c)  
12 without substantive change.

13     **§ 33403. Alternatives**

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14     33403. After a district has established the cost-effectiveness, in a dollar amount, for any  
15 rule or regulation adopted pursuant to this article or Section 32301, 33251, 33253, 33303,  
16 33304, 33305, 33400 to 33403, inclusive, or 35860, the district, consistent with  
17 subdivision (c) of Section 32004, shall allow alternative means of producing equivalent  
18 emission reductions at an equal or lesser dollar amount per ton reduced, including the use  
19 of emission reduction credits, for any stationary source that has a demonstrated compliance  
20 cost exceeding that established dollar amount.

21     **Comment.** Section 33403 continues former Health and Safety Code Section 40920.6(d)  
22 without substantive change.

23                     Article 6. Review and Reporting Requirements

24     **§ 33450. Violation report**

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25     33450. (a) Each district that has adopted a plan pursuant to this chapter shall, on or  
26 before January 31 of each year, prepare and submit to the state board a report identifying  
27 the number of days during the preceding calendar year that air quality in the district violated  
28 each state ambient air quality standard for which the district's status is nonattainment.

29     (b) For any pollutant for which the report indicates that the applicable state ambient air  
30 quality standard was not violated during more than three days during the calendar year at  
31 any one or more monitoring locations within the district, the district shall not adopt any  
32 new or more stringent control measure until after preparation, and approval by the district  
33 board, of an analysis that does all of the following:

34         (1) Assesses the costs and benefits of all additional district, state, and federal regulatory  
35 actions that would be necessary to achieve attainment of the applicable state ambient air  
36 quality standard, taking into account only the additional costs and benefits attributable to  
37 achieving the state standard for the remaining three or fewer days each year.

38         (2) Includes consideration of all of the socioeconomic impacts specified in Sections  
39 32400 to 32404, inclusive.

40         (3) Identifies, if the district is an upwind district, the benefits of the additional regulatory  
41 actions in the district on the air quality in any downwind district, and identifies the costs  
42 attributable to those regulatory actions.

43     (c) The state board shall review the district analyses prepared pursuant to subdivision (b)  
44 to ensure expeditious progress towards attainment in both the district that prepared the

1 analysis and any downwind district and to ensure that any resulting action of the district  
2 that prepared the analysis does not adversely affect any downwind district.

3 **Comment.** Section 33450 continues former Health and Safety Code Section 40930 without  
4 change.

#### 5 **§ 33451. Schedule of regulatory measures**

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6 33451. (a) Upon the state board's approval of a district's attainment plan, and each  
7 January 1 thereafter, the district shall publish a list of regulatory measures scheduled or  
8 tentatively scheduled for consideration during the following year. The district shall not  
9 propose a regulatory measure for consideration during any year that is not contained in the  
10 district's most recently published list of proposed regulatory measures unless earlier  
11 consideration is necessary to satisfy federal requirements, to abate a substantial  
12 endangerment to public health or welfare, or to comply with Sections 31501 to 31505,  
13 inclusive, or Section 33252.

14 (b) Subdivision (a) does not apply to any modification of existing rules that the district  
15 finds and determines is necessary to do either of the following:

16 (1) Preserve the original intent of the rules, as stated upon their adoption.

17 (2) Increase opportunities for alternative compliance methodology pursuant to  
18 subdivision (c) of Section 32004.

19 **Comment.** Section 33451 continues former Health and Safety Code Section 40923 without  
20 substantive change.

#### 21 **§ 33452. Progress report**

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22 33452. (a) On or before December 31 of each year following the state board's approval  
23 of a district's attainment plan, the district shall prepare and submit a report to the state board  
24 summarizing its progress in meeting the schedules for developing, adopting, and  
25 implementing the air pollution control measures contained in the district's plan. Those  
26 annual reports shall contain, at a minimum, the proposed and actual dates for the adoption  
27 and implementation of each measure.

28 (b) Once every three years, the district shall assess its progress toward attainment of the  
29 state ambient air quality standards. Each triennial assessment shall be incorporated into the  
30 district's triennial plan revision prepared pursuant to Section 33453. Each triennial  
31 assessment shall contain, at a minimum, both of the following:

32 (1) The extent of air quality improvement achieved during the preceding three years,  
33 based upon ambient pollutant measurements, best available modeling techniques, and air  
34 quality indicators identified by the state board for that purpose under subdivision (f) of  
35 Section 31000.

36 (2) The expected and revised emission reductions for each measure scheduled for  
37 adoption in the preceding three-year period.

38 **Comment.** Section 33452 continues former Health and Safety Code Section 40924 without  
39 substantive change. The reference in subdivision (b) to the date on which the triennial update  
40 requirement began (December 31, 1994) is obsolete and has not been continued.

#### 41 **§ 33453. Review of attainment plan**

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42 33453. (a) At least once every three years, every district shall review and revise its  
43 attainment plan to correct for deficiencies in meeting the interim measures of progress  
44 incorporated into the plan pursuant to Section 33251, and to incorporate new data or  
45 projections into the plan, including, but not limited to, the quantity of emission reductions



1 actually achieved in the preceding three-year period and the rates of population-related,  
2 industry-related, and vehicle-related emissions growth actually experienced in the district  
3 and projected for the future. Upon adoption of each triennial plan revision at a public  
4 hearing, the district board shall submit the revision to the state board.

5 (b) A district may modify the emission reduction strategy or alternative measure of  
6 progress for subsequent years based on this assessment if the district demonstrates to the  
7 state board, and the state board finds, that the modified strategy is at least as effective in  
8 improving air quality as the strategy which is being replaced.

9 (c) Each district which cannot demonstrate attainment by December 31, 1999, shall  
10 prepare and submit a comprehensive update of its plan to the state board not later than  
11 December 31, 1997, unless the state board determines, by not later than February 1, 1997,  
12 that a comprehensive plan update is unnecessary. The revised plan shall include an interim  
13 air quality improvement goal or an equivalent emission reduction strategy, subject to review  
14 and approval by the state board, to be achieved in the subsequent five-year period.

15 **Comment.** Section 33453 continues former Health and Safety Code Section 40925 without  
16 substantive change. The reference in subdivision (a) to the date on which the triennial review  
17 requirement began (December 31, 1994) is obsolete and has not been continued.

#### 18 **§ 33454. Nonattainment-transitional district**

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19 33454. (a) A district which is nonattainment for the state ozone standard shall be  
20 designated “nonattainment-transitional” by operation of law if, during a single calendar  
21 year, the state standard is not exceeded more than three times at any monitoring location  
22 within the district.

23 (b) Any district which is designated nonattainment-transitional under subdivision (a) shall  
24 review its plan for attaining the state ozone standard and shall determine whether the  
25 stationary source control measures scheduled for adoption or implementation within the  
26 next three years by the district are needed to accomplish expeditious attainment or to  
27 maintain the state standard following the projected attainment date. In making that  
28 determination, the district shall consider air quality trends, the effect of the state’s adopted  
29 and proposed motor vehicle and area source control programs, turnover of the vehicle fleet,  
30 the impact of measures previously adopted by the district, the state board, and the  
31 Environmental Protection Agency which are in the process of being implemented, and other  
32 significant factors influencing emissions trends.

33 (c) If a nonattainment-transitional district determines that one or more of the stationary  
34 source control measures scheduled for adoption or implementation within the next three  
35 years are no longer necessary to accomplish expeditious attainment or to maintain the state  
36 standard, the district shall shift those measures to the contingency category.

37 (d) If a nonattainment-transitional district determines that delaying one or more stationary  
38 source control measures will not retard the achievement of the state ozone standard, it may  
39 delay that measure.

40 (e) Subdivisions (c) and (d) shall not apply to any stationary source control measures  
41 required by Section 31003. In addition, subdivisions (c) and (d) shall be suspended at any  
42 time that the district ceases to qualify for a nonattainment-transitional designation under  
43 subdivision (a).

44 (f) Actions of any district pursuant to this section are effective immediately. The state  
45 board may disapprove any action of the district pursuant to this section within 90 days of  
46 the action. The state board shall not disapprove district actions pursuant to this section  
47 unless it finds that the actions will delay expeditious attainment of the state ozone standard.  
48 Actions taken by the state board pursuant to this subdivision are subject to Section 37154.

(g) Actions of any district pursuant to subdivisions (c) or (d) shall be reviewed by the district in connection with its next review and revision of its attainment plan pursuant to Section 33453.

**Comment.** Section 33454 continues former Health and Safety Code Section 40925.5 without substantive change.

## CHAPTER 4. OTHER RESPONSIBILITIES

### Article 1. Monitoring Networks

#### § 33500. Monitoring network program

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33500. Every district shall establish and implement supplemental toxic air contaminant monitoring networks to supplement the existing monitoring capacity of the board and the districts as specified in the guidelines developed by the state board pursuant to Section 31507 to 31510, inclusive. The district may establish a schedule of fees to be paid to the district by sources of toxic air contaminants within the district which shall not exceed 50 percent of the costs of establishing and implementing these monitoring networks. Funds for the remaining 50 percent of the costs of establishing and implementing the supplemental toxic air contaminant monitoring networks shall be provided by the state board pursuant to Section 31509. Districts shall not be required to expend any district funds to establish and implement the supplemental toxic air contaminant monitoring program, as determined by Sections 31507 to 31510, inclusive, that are in excess of the amount of state funds provided by the state board for that purpose.

**Comment.** Section 33500 continues former Health and Safety Code Section 40715(a) without substantive change.

#### § 33501. Legislative intent

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33501. It is the intent of the Legislature that the district supplemental toxic air contaminant monitoring program shall supplement existing laws and regulations to protect human health and safety from the adverse effects of toxic air contaminants and shall not limit the existing authority of any state or local agency to identify or control toxic air contaminants.

**Comment.** Section 33501 continues former Health and Safety Code Section 40715(b) without substantive change.

### Article 2. Violation Maps

#### § 33550. Responsibility to prepare maps

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33550. (a) Not later than January 1, 1990, the state board shall publish maps identifying those cities, counties, or portions thereof which have measured one or more violations of any state or federal ambient air quality standard. The state board shall produce at least one separate map for each pollutant.

(b) A district may prepare the maps required under subdivision (a) for the area within its jurisdiction. If a district chooses to prepare maps, the district shall provide the maps to the state board for review not less than four months prior to the date when the state board is required to publish the maps, and pursuant to a schedule established by the state board for any subsequent maps.



**Comment.** Section 33550 continues former Health and Safety Code Section 40718(a)-(b) without change.

☞ **Note.** Subdivision (a) specifies a deadline for the preparation of maps. Subdivision (b) specifies a deadline for submission of district-prepared maps to the state board. These deadline provisions may be obsolete. The Commission would like to receive input on two questions: (1) Have the maps been prepared as required? (2) Do the deadlines still serve a useful purpose?

#### § 33551. Requirements

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33551. The maps produced pursuant to subdivision (a) of Section 33550 shall be based upon the most recent monitoring results, using the best technological capabilities and the best scientific judgment. The maps produced pursuant to subdivision (a) of Section 33550 shall clearly identify portions of each district which have or have not measured one or more violations of any state or federal ambient air quality standard. The maps shall be representative of the actual air quality in each portion of the district.

**Comment.** Section 33551 continues former Health and Safety Code Section 40718(c) without substantive change.

#### § 33552. Criteria

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33552. The state board shall publish its criteria for preparing the maps pursuant to this article not later than January 31, 1989. To the extent applicable, the state board shall identify any criteria relating to meteorological impact on monitored air quality data; reliability of monitored data; magnitude, frequency, and duration of periods when ambient air quality standards are exceeded; and the area within the district in which the standards are exceeded.

**Comment.** Section 33552 continues former Health and Safety Code Section 40718(d) without substantive change.

☞ **Note.** This section specifies a deadline for the publication of map preparation criteria. This deadline provision may be obsolete. The Commission would like to receive input on two questions: (1) Have the requirements of this section been met? (2) Does the section still serve a useful purpose?

#### § 33553. Hearing

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33553. (a) Any person may petition the state board to hold a public hearing on any proposed, adopted, amended, or revised map. If the petition is granted by the state board, the public hearing may be held at a regularly scheduled public hearing in Sacramento. Notice of the time and place of any hearing shall be given not less than 30 days prior to the hearing by publication in the district pursuant to Section 6061 of the Government Code. If a district includes portions of more than one county, the notice shall be published in each county not less than 30 days prior to the date of the hearing.

(b) The notice shall include a description of the map proposed to be adopted, amended, or repealed and a summary description of the effect of the proposal.

**Comment.** Section 33553 continues former Health and Safety Code Section 40718(e) without substantive change.

#### § 33554. Annual review

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33554. The state board shall review annually, and as appropriate revise, the maps required by this article, using the criteria developed pursuant to Section 33551.

**Comment.** Section 33554 continues former Health and Safety Code Section 40718(f) without substantive change.

**§ 33555. Effect of article**

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33555. Nothing in this article is intended to prevent a district board from enacting and enforcing rules or regulations designed to prevent interference with or maintenance of state and federal air quality standards, or to prevent significant deterioration of air quality in any area of the district.

**Comment.** Section 33555 continues former Health and Safety Code Section 40718(g) without substantive change.

**TITLE 3. TYPES OF DISTRICTS AND COUNCILS**

**CHAPTER 1. COUNTY AIR POLLUTION CONTROL DISTRICTS**

**Article 1. General Provisions**

**§ 33600. County districts**

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33600. (a) There is continued in existence and shall be, in every county, a county district, unless the entire county is included within the bay district, the Mojave Desert district, the south coast district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district.

(b) If only a part of the county is included within the bay district, the south coast district, the Mojave Desert district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district, there is in that part of the county not included within any of those districts a county district, for which different air quality rules and regulations may be required.

**Comment.** Section 33600 continues former Health and Safety Code Section 40002 without change. The San Joaquin Valley Air Quality Management District will be created if the San Joaquin Valley Unified Air Pollution Control District ceases to exist. See, 1994 Cal. Stat. ch. 915, § 5(d).

**§ 33601. Appropriation of funds**

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33601. (a) The board of supervisors of a county in which a county district is functioning may appropriate funds to the county district, which funds shall be deposited in the treasury of the county district.

(b) All such appropriations are legal charges against the county.

**Comment.** Section 33601 continues former Health and Safety Code Section 40101(a) without substantive change.

**§ 33602. Contract with county**

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33602. A county district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with the county in which the county district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those facilities and services that the county provided to the county district prior to July 1, 1994.

**Comment.** Section 33602 continues former Health and Safety Code Section 40101(b) without substantive change.

### **§ 33603. Inclusion in other district**

---

33603. A county district which is included entirely within another district created by special law, or pursuant to Chapter 3 (commencing with Section 34000), shall cease to function and exercise its powers upon the date the other district commences to function and exercise its powers.

**Comment.** Section 33603 continues former Health and Safety Code Section 40102 without substantive change.

### **§ 33604. Funds, property, and obligations**

---

33604. (a) When a county district ceases to function and exercise its powers because it is included entirely within a regional district created pursuant to Chapter 3 (commencing with Section 34000), the regional district shall succeed to all the funds, property, and obligations of the county district.

(b) Where the county district is included within two or more regional districts, the funds, property, and obligations of the county district shall be apportioned to the regional districts as agreed upon by the regional districts and county district.

**Comment.** Section 33604 continues former Health and Safety Code Section 40103 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

### **§ 33605. Delegation of authority**

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33605. Notwithstanding any other provision of law, a county may delegate air pollution rulemaking and enforcement duties to a duly created joint powers authority established for air pollution control purposes of which the county is a member.

**Comment.** Section 33605 continues former Health and Safety Code Section 40104 without change.

## **Article 2. Governing Board**

### **§ 33650. District board**

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33650. Except as provided in Sections 33651 to 33653, inclusive, a county board of supervisors shall be ex officio the county district board of the county.

**Comment.** Section 33650 continues former Health and Safety Code Section 40100 without substantive change.

### **§ 33651. Membership**

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33651. (a) The membership of the governing board of each county district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. The members of the governing board who are county supervisors shall be selected by the county.

**Comment.** Section 33651 continues former Health and Safety Code Section 40100.5(a)-(d) without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

#### **§ 33652. Alternative membership**

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33652. If a district fails to comply with subdivisions (a) and (b) of Section 33651, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(c) The number of those members shall be determined as provided in subdivision (b) of Section 33651 and the members shall be selected pursuant to subdivision (d) of Section 33651.

(d) For purposes of subdivisions (a) and (b), if any number which is not a whole number results from the application of the term “one-third,” “one-half,” or “two-thirds,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 33652 continues former Health and Safety Code Section 40100.5(f) without substantive change.

#### **§ 33653. Application of Sections 33651 and 33652 by population**

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33653. Sections 33651 and 33652 do not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

**Comment.** Section 33653 continues former Health and Safety Code Section 40100.5(e) without substantive change.

#### **§ 33654. Application of Sections 33651 and 33652 by city consent**

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33654. (a) Sections 33651 and 33652 shall not apply to a county district if each city in the county consents, by the adoption of an ordinance or resolution, to the exclusion of the county district from the requirements of Sections 33651 and 33652.

(b) Within 60 days from the date of the adoption of an ordinance or resolution by all cities in the county to exclude the county district from the requirements of Sections 33651 and 33652, if requested by a majority of the cities in the county, the county district shall establish an advisory committee consisting of a mayor, or a city council member, from each city in the county. The members shall be selected by the city selection committee.

(c) Subdivision (a) shall become inapplicable, and Sections 33651 and 33652 shall apply, if, at any time after the condition prescribed in subdivision (a) has been met, a

majority of the cities which contain a majority of the population in the incorporated areas of the county, as established by the most recent census data, have adopted resolutions requesting the application of Sections 33651 and 33652.

**Comment.** Section 33654 continues former Health and Safety Code Section 40100.7 without substantive change.

### Article 3. Officers and Employees

#### **§ 33700. Ex officio officers and employees of district**

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33700. (a) All county officers and employees shall be ex officio officers and employees, respectively, of the county district in the county by which they are employed.

(b) Except as otherwise provided in this division, they shall perform, without additional compensation, for the county district any duties that they perform for the county.

**Comment.** Section 33700 continues former Health and Safety Code Section 40120 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 33701. Civil service compensation**

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33701. (a) In fixing compensation to be paid to a person subject to the civil service provisions of this article, the county district board shall provide a salary or wage equal to the salary or wage paid to a county employee for the same quality of service.

(b) This section shall be operative only in a county which is operating under a freeholders' charter which requires that, in the fixing of salaries or wages for persons employed by the county subject to the civil service system of the county, the board of supervisors shall provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered by private persons under similar employment in case the prevailing salary or wage can be ascertained.

**Comment.** Section 33701 continues former Health and Safety Code Section 40121 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 33702. Retirement benefits**

---

33702. (a) All officers and employees of a county district are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3 of the Government Code) to the same extent as employees of the county.

(b) A county district is a district as defined in Section 31468 of the Government Code.

**Comment.** Section 33702 continues former Health and Safety Code Section 40122 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 33703. Credit for prior service**

---

33703. If any person is employed by a county district after certification without examination by the civil service commission or similar body because of the person's employment in a position of similar duties by the county or by a city within the county district, the time the person was employed in such county or city position shall be considered as time the person was employed by the county district in determining the person's retirement benefits and salary.

1     **Comment.** Section 33703 continues former Health and Safety Code Section 40123 without  
2 substantive change.

3     **§ 33704. Appointment powers**

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4     33704. In any county having a system of civil service, the county district board shall,  
5 nevertheless, appoint the members of the county district hearing board and the air pollution  
6 control officer, and the air pollution control officer shall appoint all other officers and  
7 employees of the county district pursuant to that system, except as provided in Section  
8 33706.

9     **Comment.** Section 33704 continues former Health and Safety Code Section 40124 without  
10 substantive change.

11    **§ 33705. Promotional examinations**

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12    33705. Any person entitled to participate in promotional examinations for positions in the  
13 county classified civil service shall similarly be entitled to participate in promotional  
14 examinations for positions in the classified civil service of the county district, pursuant to  
15 the county civil service commission rules in effect at the time, and to be certified for such  
16 county positions by the county civil service commission, or other body performing the  
17 functions thereof, and to be appointed to such county district positions.

18    **Comment.** Section 33705 continues former Health and Safety Code Section 40125 without  
19 change.

20    **§ 33706. Certification of eligibility without examination**

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21    33706. If the civil service commission, or body performing the functions thereof, in the  
22 county finds that any person has been employed by the county, or by any city within a  
23 county district, in a position the duties of which, and the qualifications for which, are  
24 substantially the same as, or are greater than and include qualifications which are  
25 substantially the same as, those of any position in the county district, the civil service  
26 commission or such other body, at the request of the air pollution control officer, may  
27 certify, without examination, the person as eligible to hold the county district position.

28    **Comment.** Section 33706 continues former Health and Safety Code Section 40126 without  
29 substantive change.

30                                   Article 4. District Budget Adoption

31    **§ 33750. Legislative findings**

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32    33750. The Legislature hereby finds and declares as follows:

33    (a) It is in the public interest to ensure that districts adopt their budgets in an open process  
34 in order to educate the public of the costs and benefits of air quality improvement.

35    (b) The process required by this article shall be separate from other budget processes to  
36 ensure full opportunity for the public to participate in, and comment upon, a district's  
37 budget prior to adoption.

38    (c) This process also shall provide accountability to district boards and to districts in their  
39 budget processes.

40    **Comment.** Section 33750 continues former Health and Safety Code Section 40130 without  
41 change.



1    **§ 33751. Budget adoption requirements**

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2       33751. (a) Each district shall adopt its annual budget in accordance with the following  
3 requirements:

4       (1) The district shall prepare, and make available to the public at least 30 days prior to  
5 public hearing, a summary of its budget and any supporting documents, including, but not  
6 limited to, a schedule of fees to be imposed by the district to fund its programs.

7       (2) The district shall notify each person who was subject to fees imposed by the district  
8 in the preceding year of the availability of the information described in paragraph (1).

9       (3) The district shall notice and hold a public hearing for the exclusive purpose of  
10 reviewing its budget and of providing the public with the opportunity to comment upon the  
11 proposed district budget. The public hearing required to be held pursuant to this section  
12 shall be separate from the hearing at which the district adopts its budget.

13       (b) This article shall not apply to the south coast district, which shall be governed by  
14 Article 5 (commencing with Section 36000) of Chapter 5 of Title 4.

15       **Comment.** Section 33751 continues former Health and Safety Code Section 40131 without  
16 substantive change.

17                   **CHAPTER 2. UNIFIED AIR POLLUTION CONTROL DISTRICTS**

18                               **Article 1. General Provisions**

19       **§ 33800. Merger of contiguous districts**

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20       33800. Two or more contiguous counties, all or part of which are county districts, may  
21 merge those county districts into one unified district pursuant to this chapter.

22       **Comment.** Section 33800 continues former Health and Safety Code Section 40150 without  
23 change.

24       **§ 33801. Agreement to form district**

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25       33801. The board of supervisors of any county may, by a vote of its members, appoint  
26 two of its members to meet with an equal number appointed in a like manner from other  
27 counties and agree to form a unified district, which agreement, upon ratification by the  
28 boards of supervisors, shall create a unified district out of the county districts under their  
29 jurisdiction.

30       **Comment.** Section 33801 continues former Health and Safety Code Section 40151 without  
31 change.

32       **§ 33802. Boundaries**

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33       33802. The boundaries of a unified district shall be the same as the boundaries of the  
34 counties of which it is comprised, or the balance of a county not included in another  
35 district, or that portion of a county as may be agreed upon.

36       **Comment.** Section 33802 continues former Health and Safety Code Section 40155 without  
37 substantive change.

38       **§ 33803. Zones**

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39       33803. The unified district board may designate zones within the unified district.

40       **Comment.** Section 33803 continues former Health and Safety Code Section 40156 without  
41 change.



1   **§ 33804. Appropriation of funds**

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2       33804. The board of supervisors of each county included, in whole or in part, within the  
3 unified district shall appropriate the funds necessary to carry out the purposes of the unified  
4 district, as determined by the unified district board, in accordance with the funding  
5 provisions specified in the agreement which created the unified district under Section  
6 33801.

7       **Comment.** Section 33804 continues former Health and Safety Code Section 40158(a)  
8 without substantive change.

9   **§ 33805. Contracting authority**

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10       33805. A unified district may contract, by a memorandum of understanding, joint  
11 powers agreement, or other agreement, with a county or counties in which the unified  
12 district is functioning, to provide facilities and administrative, legal, health coverage, risk  
13 management, clerical, and other support services, including, but not limited to, those  
14 facilities and services that the county or counties provided to the unified district prior to  
15 July 1, 1994.

16       **Comment.** Section 33805 continues former Health and Safety Code Section 40158(b)  
17 without substantive change.

18   **§ 33806. Appropriations**

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19       33806. (a) All appropriations made pursuant to Section 33804 are legal charges against  
20 the county in which the board of supervisors voted the appropriation.

21       (b) The treasurer of the county shall pay the amount so appropriated into the treasury of  
22 the unified district.

23       **Comment.** Section 33806 continues former Health and Safety Code Section 40159 without  
24 substantive change.

25   **§ 33807. Effect of inclusion in regional district**

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26       33807. (a) When a unified district ceases to function and exercise its powers because it is  
27 included entirely within a regional district created pursuant to Chapter 3 (commencing with  
28 Section 34000), the regional district shall succeed to all the funds, property, and  
29 obligations of the unified district.

30       (b) Where the unified district is included within two or more regional districts, the funds,  
31 property, and obligations of the unified district shall be apportioned to the regional districts  
32 as agreed upon by the regional districts and unified district.


33       **Comment.** Section 33807 continues former Health and Safety Code Section 40161 without  
34 substantive change. The former undesignated paragraphs have been designated as  
35 subdivisions.

36   **§ 33808. San Joaquin Valley district**

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37       33808. Funding of the San Joaquin Valley Unified Air Pollution Control District, or, if  
38 the unified district ceases to exist, of the San Joaquin Valley Air Quality Management  
39 District if created pursuant to Section 5 of Chapter 915 of the Statutes of 1994, may be  
40 provided by, but is not limited to, grants, subventions, permit fees, penalties, and vehicle  
41 license fees. Notwithstanding any other provision of law, no funding contribution shall be  
42 required from the counties or cities included in the unified district or valley district.

**Comment.** Section 33808 continues former Health and Safety Code Section 40162 without substantive change. The obsolete reference to former Health and Safety Code Section 41101 is replaced with a reference to Section 5 of Chapter 915 of the Statutes of 1994, which provides for the creation of the San Joaquin Valley Air Quality Management District if the San Joaquin Valley Unified Air Pollution Control District ceases to exist.

 **Note.** Section 41101 was repealed in 1994. See 1994 Cal. Stat. ch. 915, § 4. The act that repealed Section 41101 provides for the creation of the San Joaquin Valley Air Quality Management District if the San Joaquin Valley Unified Air Pollution Control District ever ceases to exist. See *id.*, § 5. Substituting a reference to 1994 Cal. Stat. ch 915, § 5 seems to continue the substance of Section 40162 without substantive change.

## Article 2. Governing Board

### § 33850. Composition of board

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33850. (a) The membership of the governing board of each unified district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by a majority of the cities in the district. The members of the governing board who are county supervisors shall be selected by a majority of the counties in the district.

**Comment.** Section 33850 continues former Health and Safety Code Section 40152(a)-(d) without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

### § 33851. Alternative composition

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33851. If a district fails to comply with subdivisions (a) and (b) of Section 33850, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total district population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 33850 and the members shall be selected pursuant to subdivision (d) of Section 33850.

(e) For purposes of subdivisions (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,”

1 “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the  
2 nearest integer, and the number of mayors or city council members decreased to the nearest  
3 integer.

4 **Comment.** Section 33851 continues former Health and Safety Code Section 40152(e)  
5 without substantive change.

6 **§ 33852. Application of Sections 33850 and 33851 by inclusion of governing bodies**

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7 33852. Sections 33850 and 33851 do not apply to a district if the membership of the  
8 governing board of the district includes both county supervisors and mayors or city council  
9 members on June 30, 1994.

10 **Comment.** Section 33852 continues former Health and Safety Code Section 40152(f)  
11 without substantive change.

12 **§ 33853. Application of Sections 33850 and 33851 by city consent**

---

13 33853. (a) Sections 33850 and 33851 do not apply to a unified district if each city in the  
14 district consents, by the adoption of an ordinance or resolution, to the exclusion of the  
15 district from the requirements of Sections 33850 and 33851.

16 (b) Within 60 days from the date of the adoption of an ordinance or resolution by all  
17 cities in the district to exclude the district from the requirements of Sections 33850 and  
18 33851, if requested by a majority of the cities in the district, the district shall establish an  
19 advisory committee consisting of a mayor, or a city council member, from each city in the  
20 district. Each city shall select its representative to the advisory committee.

21 (c) Subdivision (a) shall become inapplicable, and Sections 33850 and 33851 shall  
22 apply, if, at any time after the condition prescribed in subdivision (a) has been met, a  
23 majority of the cities which contain a majority of the population in the incorporated areas of  
24 the district, as established by the most recent census data, have adopted resolutions  
25 requesting the application of Sections 33850 and 33851.

26 **Comment.** Section 33853 continues former Health and Safety Code Section 40152.5  
27 without substantive change. The reference in subdivision (a) to the date on which that  
28 provision took effect (July 1, 1994) is obsolete and has not been continued.

29 **§ 33854. Compensation**

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30 33854. Each member of the unified district board shall, upon the adoption of a resolution  
31 by the unified district board, receive the actual and necessary expenses incurred in the  
32 performance of his or her duties, plus a compensation of one hundred dollars (\$100) for  
33 each day attending the meetings of the unified district board or any committee of the unified  
34 district board or, upon authorization by the unified district board, while engaged in official  
35 business of the unified district, but that compensation shall not exceed three thousand six  
36 hundred dollars (\$3,600) in any one year.

37 **Comment.** Section 33854 continues former Health and Safety Code Section 40154 without  
38 change.

39 **Article 3. Officers and Employees**

40 **§ 33900. Ex officio officers and employees**

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41 33900. All county officers and employees of the counties entirely within the unified  
42 district, and all other county employees of the zones within the unified district where the

1 county is not entirely therein, shall be ex officio officers and employees of the unified  
2 district only within the county in which they are employed.

3 **Comment.** Section 33900 continues former Health and Safety Code Section 40157 without  
4 change.

#### 5 **§ 33901. Treasurer**

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6 33901. By the agreement ratified pursuant to Section 33801 or by resolution, a county  
7 treasurer of a member county shall be designated and shall act as the unified district  
8 treasurer.

9 **Comment.** Section 33901 continues former Health and Safety Code Section 40160 without  
10 substantive change.

### 11 **CHAPTER 3. REGIONAL AIR POLLUTION CONTROL DISTRICTS**

#### 12 **Article 1. Creation of Regional Districts**

#### 13 **§ 34000. Public hearing**

---

14 34000. (a) The boards of supervisors of two or more counties within an air basin may  
15 hold a public hearing to determine whether the counties under their jurisdiction should  
16 become part of a regional district.

17 (b) The boards of supervisors shall hold a public hearing to resolve the question, if a  
18 petition is submitted to each board of supervisors. A petition submitted to a board of  
19 supervisors shall be signed by not less than 10 percent of the qualified electors of the  
20 county under its jurisdiction.

21 **Comment.** Section 34000 continues former Health and Safety Code Section 40300 without  
22 substantive change.

#### 23 **§ 34001. Notice of hearing**

---

24 34001. Prior to the public hearing, the board of supervisors shall give, not less than 15  
25 days nor more than 45 days before the hearing, notice of the time and place of the hearing  
26 by publication pursuant to Section 6061 of the Government Code.

27 **Comment.** Section 34001 continues former Health and Safety Code Section 40301 without  
28 change.

#### 29 **§ 34002. Resolution**

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30 34002. Upon conclusion of the public hearing, the board of supervisors may adopt a  
31 resolution declaring that there is need for a regional district to function in the county, or  
32 portion thereof, if, from the evidence received at the hearing, it finds that it is in the best  
33 interests of the county that a regional district function therein.

34 **Comment.** Section 34002 continues former Health and Safety Code Section 40302 without  
35 substantive change.

#### 36 **§ 34003. Filing of resolution**

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37 34003. Upon adoption of a resolution pursuant to Section 34002, the board of  
38 supervisors shall file a certified copy of the resolution with the state board.

1     **Comment.** Section 34003 continues former Health and Safety Code Section 40303 without  
2 substantive change.

3     **§ 34004. Commencement of operations**

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4     34004. From and after the date of the filing of certified copies of resolutions from two or  
5 more boards of supervisors desiring to create a regional district, the regional district shall  
6 begin to function and may exercise its powers.

7     **Comment.** Section 34004 continues former Health and Safety Code Section 40304 without  
8 change.

9   Article 2. Governing Board

10    **§ 34050. District board**

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11    34050. A regional district board is the governing body of the regional district and shall  
12 exercise all the powers of the regional district.

13    **Comment.** Section 34050 continues former Health and Safety Code Section 40320 without  
14 change.

15    **§ 34051. Agreement on composition of board**

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16    34051. A group consisting of one member of the board of supervisors and one member  
17 of the city selection committee, appointed by their respective bodies, from each county  
18 included, in whole or in part, within the regional district shall enter into an agreement on  
19 the composition of the regional district board.

20    **Comment.** Section 34051 continues former Health and Safety Code Section 40321 without  
21 change.

22    **§ 34052. Nature of agreement**

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23    34052. (a) The agreement entered into, pursuant to Section 34051, shall provide one of  
24 the following alternatives:

25       (1) The number of supervisors, and the number of members of the city selection  
26 committee, appointed by their respective bodies, from each county included, in whole or in  
27 part, within the regional district to be members of the regional district board.

28       (2) The weight of vote of each member of the regional district board if each board of  
29 supervisors and city selection committee of the counties are represented on the regional  
30 district board by the same number of members thereof.

31       (3) A combination of paragraphs (1) and (2).

32       (b) The agreement shall also provide a procedure for its modification or termination.

33    **Comment.** Section 34052 continues former Health and Safety Code Section 40322 without  
34 substantive change. The former undesignated paragraphs have been designated as  
35 subdivisions, and the former subordinate subdivisions designated as paragraphs.

36    **§ 34053. Composition of board**

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37    34053. (a) Notwithstanding any other provision of this chapter, the membership of the  
38 governing board of each regional district, including any district formed on or after that date,  
39 shall include (1) one or more members who are mayors, city council members, or both,  
40 and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by a majority of the cities in the district. The members of the governing board who are county supervisors shall be selected by a majority of the counties in the district.

**Comment.** Section 34053 continues former Health and Safety Code Section 40322.5(a)-(d) without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

#### § 34054. Alternative composition

---

34054. If a district fails to comply with subdivisions (a) and (b) of Section 34053, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population of the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population of the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 34053 and the members shall be selected pursuant to subdivision (d) of Section 34053.

(e) For purposes of subdivisions (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 34054 continues former Health and Safety Code Section 40322.5(e) without substantive change.

#### § 34055. Application of Sections 34053 and 34054

---

34055. Sections 34053 and 34054 do not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

**Comment.** Section 34055 continues former Health and Safety Code Section 40322.5(f) without substantive change.

#### § 34056. Terms

---

34056. (a) Members of a newly created regional district board shall serve terms which shall expire on the first day of June of the third year following the year in which they are appointed.



(b) Thereafter, each member appointed by the board of supervisors shall hold office for four years and until the appointment and qualification of the member's successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of the member's successor.

**Comment.** Section 34056 continues former Health and Safety Code Section 40323 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### § 34057. Vacancy

---

34057. Any vacancy on a regional district board shall be filled by appointment in the same manner as the vacating member was appointed.

**Comment.** Section 34057 continues the first paragraph of former Health and Safety Code Section 40324 without substantive change.

#### § 34058. Removal

---

34058. Any member of a regional district board may be removed at any time in the same manner as the member was appointed. If four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of that county, the city selection committee of that county shall meet within 20 days to consider the removal of that member.

**Comment.** Section 34058 continues the second paragraph of former Health and Safety Code Section 40324 without substantive change.

#### § 34059. Recall

---

34059. If any member of a regional district board is recalled from his or her office as a supervisor, mayor, or city council member, pursuant to Division 11 (commencing with Section 11000) of the Elections Code, his or her office as member of the regional district board shall be vacant.

**Comment.** Section 34059 continues former Health and Safety Code Section 40325 without change.

#### § 34060. Effect of loss of local office

---

34060. No supervisor, mayor, or city councilman shall hold office on a regional district board for a period of more than three months after ceasing to hold the office of supervisor, mayor, or city councilman, respectively, and that person's membership on the regional district board shall thereafter be considered vacant, except that any mayor who continues to hold office as a city councilman, or any city councilman who continues to hold office as a mayor, shall not be considered to have ceased to hold office under this section.

**Comment.** Section 34060 continues former Health and Safety Code Section 40326 without substantive change.

#### § 34061. Quorum

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34061. A majority of the members, or the members with a majority of the voting weight, of a regional district board constitutes a quorum for the transaction of business and may act for the regional district board.

**Comment.** Section 34061 continues former Health and Safety Code Section 40327 without change.



1    **§ 34062. Compensation**

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2       34062. Each member of a regional district board shall receive the actual and necessary  
3       expenses incurred by the member in the performance of the member's duties, plus a  
4       compensation of twenty-five dollars (\$25) for each day attending the meetings of the  
5       regional district board, but that compensation shall not exceed six hundred dollars (\$600) in  
6       any one year.

7       **Comment.** Section 34062 continues former Health and Safety Code Section 40328 without  
8       substantive change.

9                                   Article 3. Officers and Employees

10   **§ 34100. Executive secretary**

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11       34100. A regional district board may appoint an executive secretary to perform any duties  
12       assigned to the executive secretary by the regional district board.

13       **Comment.** Section 34100 continues former Health and Safety Code Section 40329 without  
14       substantive change.

15   **§ 34101. Civil service**

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16       34101. A regional district board may, by ordinance, adopt a civil service system for any  
17       or all employees of the regional district, except that the executive secretary and the air  
18       pollution control officer shall be exempt from the system and shall serve at the pleasure of  
19       the regional district board.

20       **Comment.** Section 34101 continues former Health and Safety Code Section 40330 without  
21       substantive change.

22                                   Article 4. City Selection Committee

23   **§ 34150. Appointments to board**

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24       34150. The city selection committee organized in each county within a regional district  
25       pursuant to Article 11 (commencing with Section 50270), Chapter 1, Part 1, Division 1,  
26       Title 5 of the Government Code shall make the appointments to the regional district board  
27       as prescribed in Section 34052.

28       **Comment.** Section 34150 continues former Health and Safety Code Section 40310 without  
29       substantive change.

30   **§ 34151. Composition of committee**

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31       34151. Where a regional district may transact business and exercise its powers only in a  
32       portion of a county, the membership of the city selection committee of that county, for  
33       purposes of this chapter, shall consist only of the representatives from those cities within  
34       that portion of the county.

35       **Comment.** Section 34151 continues former Health and Safety Code Section 40311 without  
36       substantive change.

37   **§ 34152. Meetings**

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38       34152. The city selection committee for each county shall meet within 90 days after the  
39       adoption of the resolution by the board of supervisors to create a regional district. The

1 committee shall thereafter meet on the second Monday in May of each even-numbered year  
2 for the purpose of making succeeding appointments to the regional district board pursuant  
3 to Section 34052.

4 **Comment.** Section 34152 continues former Health and Safety Code Section 40312 without  
5 substantive change.

#### 6 **§ 34153. Notice of appointments**

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7 34153. The clerk of the board of supervisors shall notify, in writing, the board of  
8 supervisors and the clerk of the regional district board of the appointment made by the city  
9 selection committee within 10 days after the appointment has been made.

10 **Comment.** Section 34153 continues former Health and Safety Code Section 40313 without  
11 substantive change.

#### 12 **§ 34154. Expenses**

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13 34154. Members of a city selection committee may be allowed their actual expenses  
14 incurred in the discharge of their duties pursuant to this article.

15 **Comment.** Section 34154 continues former Health and Safety Code Section 40314 without  
16 change.

### 17 **Article 5. Advisory Council**

#### 18 **§ 34200. “Council”**

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19 34200. As used in this article, “council” means an air pollution control advisory council  
20 appointed pursuant to Section 34201.

21 **Comment.** Section 34200 continues former Health and Safety Code Section 40360 without  
22 substantive change.

#### 23 **§ 34201. Appointment by board**

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24 34201. A regional district board may appoint an air pollution control advisory council to  
25 advise and consult with the regional district board and regional district air pollution control  
26 officer in effectuating the purposes of this division.

27 **Comment.** Section 34201 continues former Health and Safety Code Section 40361 without  
28 change.

#### 29 **§ 34202. Composition of council**

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30 34202. The council shall consist of the chairman of the regional district board, who shall  
31 serve as an ex officio member, and members who preferably are skilled and experienced in  
32 the field of air pollution and a representative from each of the following groups within the  
33 regional district: the academic community, health agencies, agriculture, industry,  
34 community planning, transportation, registered professional engineers, general contractors,  
35 architects, and organized labor.

36 **Comment.** Section 34202 continues former Health and Safety Code Section 40362 without  
37 change.

1   **§ 34203. Compensation**

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2       34203. Council members shall serve without compensation, but may be allowed actual  
3       expenses incurred in the discharge of their duties.

4       **Comment.** Section 34203 continues former Health and Safety Code Section 40363 without  
5       change.

6   **§ 34204. Officers**

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7       34204. The council shall select a chairman and vice chairman and any other officers that  
8       it deems necessary.

9       **Comment.** Section 34204 continues former Health and Safety Code Section 40364 without  
10      substantive change.

11   **§ 34205. Meetings**

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12      34205. The council shall meet as frequently as the regional district board or the council  
13      deem necessary.

14      **Comment.** Section 34205 continues former Health and Safety Code Section 40365 without  
15      change.

16                                   Article 6. Financial Provisions

17   **§ 34250. Authority to borrow**

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18      34250. A regional district may borrow money and incur indebtedness in anticipation of  
19      the revenue for the current year in which the indebtedness is incurred or for the ensuing  
20      year. That indebtedness shall not exceed the total amount of the estimate of the tax income  
21      for either the current year or the ensuing year.

22      **Comment.** Section 34250 continues former Health and Safety Code Section 40370 without  
23      substantive change.

24   **§ 34251. Financial requirements**

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25      34251. (a) Before the 15th day of June of each year, the regional district board shall  
26      estimate and determine the amount of money required by the regional district for its  
27      purposes during the ensuing fiscal year and shall apportion this amount to the counties  
28      included within the regional district, one-half according to the relative value of the real  
29      property of each county, or that portion thereof, within the regional district as determined  
30      by the regional district board and one-half in the proportion that the population of each  
31      county, or that portion thereof, within the regional district bears to the total population of  
32      the regional district.

33      (b) For the purposes of this section, the regional district board shall base its  
34      determination of the population on the latest official information available to it.

35      **Comment.** Section 34251 continues former Health and Safety Code Section 40371 without  
36      substantive change. The former undesignated paragraphs have been designated as  
37      subdivisions.

38   **§ 34252. County apportionment**

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39      34252. (a) On or before the 15th day of June of each year, the regional district board  
40      shall inform the board of supervisors of each county of the amount apportioned to the  
41      county.

(b) Each board of supervisors shall levy an ad valorem tax on the taxable property, but not including intangible personal property, within the county, or that portion thereof, included within the regional district sufficient to secure the amount so apportioned to it. Those taxes shall be levied and collected together with, and not separately from, the taxes for county purposes and shall be paid to the treasurer of each of the counties to the credit of the regional district.

**Comment.** Section 34252 continues former Health and Safety Code Section 40372 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 34253. Tax lien**

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34253. Taxes levied by a board of supervisors for the benefit of a regional district shall be a lien upon all property within the county, or that portion thereof, lying within the regional district and shall have the same force and effect as other liens for taxes. Their collection may be enforced in the same manner as liens for county taxes are enforced.

**Comment.** Section 34253 continues former Health and Safety Code Section 40373 without substantive change.

#### **§ 34254. Loans by county to district**

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34254. (a) At any time prior to the first receipt by a regional district of revenues from taxation, the counties within the regional district may loan any available money to the regional district for purposes of organization and operation, and those expenditures shall constitute a proper expenditure of county funds.

(b) The regional district board shall add the sums of money so borrowed from the counties to the first amount apportioned by the regional district board pursuant to Section 34251, and shall repay the counties for all money borrowed from the first revenues received from taxation.

**Comment.** Section 34254 continues former Health and Safety Code Section 40374(a) without substantive change.

#### **§ 34255. County facilities and services**

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34255. A regional district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with a county or counties in which the regional district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those services that the county or counties provided to the regional district prior to July 1, 1994.

**Comment.** Section 34255 continues former Health and Safety Code Section 40374(b) without substantive change.

#### **§ 34256. Payments into district treasury**

---

34256. The treasurers of the counties included, in whole or in part, within a regional district shall pay into the regional district treasury all funds held by them to the credit of the regional district.

**Comment.** Section 34256 continues former Health and Safety Code Section 40375 without change.

1    **§ 34257. District treasurer**

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2       34257. A regional district treasury shall be in the custody of the county treasurer of a  
3 county in the regional district designated by the regional district board, and the treasurer  
4 shall be the regional district treasurer.

5       **Comment.** Section 34257 continues former Health and Safety Code Section 40376 without  
6 substantive change.

7    **§ 34258. Compliance with budget and tax levy law**

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8       34258. A regional district board shall, in carrying out the provisions of this article,  
9 comply as nearly as possible with the provisions of Chapter 1 (commencing with Section  
10 29000), Division 3, Title 3 of the Government Code.

11       **Comment.** Section 34258 continues former Health and Safety Code Section 40377 without  
12 change.

13                   Article 7. Withdrawal of County From Regional District

14    **§ 34300. Resolution to withdraw**

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15       34300. (a) The board of supervisors of a county within a regional district may withdraw  
16 the county, or portion thereof, from the regional district to form a county district or to join  
17 the county, or portion thereof, with a unified district, the bay district, or another regional  
18 district upon the adoption of a resolution stating its intention to take that action.

19       (b) The resolution so adopted shall be communicated to the clerks of the boards of  
20 supervisors of all counties comprising the regional district from which the county, or  
21 portion thereof, is to be withdrawn, that regional district board, and the state board.

22       **Comment.** Section 34300 continues former Health and Safety Code Section 40390 without  
23 substantive change. The former undesignated paragraphs have been designated as  
24 subdivisions.

25    **§ 34301. Effect of withdrawal**

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26       34301. (a) The withdrawal of a county, or portion thereof, shall not affect the  
27 functioning of other counties within the regional district, and the withdrawal shall not  
28 constitute a dissolution of the regional district.

29       (b) The regional district shall continue to function in a manner not inconsistent with the  
30 provisions of this division.

31       **Comment.** Section 34301 continues former Health and Safety Code Section 40391 without  
32 substantive change. The former undesignated paragraphs have been designated as  
33 subdivisions.

34    **§ 34302. Notice of intent to withdraw**

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35       34302. A board of supervisors shall give at least two months' notice to the regional  
36 district board of its intention to withdraw the county, or portion thereof, from the regional  
37 district. A county, or portion thereof, shall not be withdrawn from a regional district during  
38 any fiscal year after the expiration of the first four months of the fiscal year.

39       **Comment.** Section 34302 continues former Health and Safety Code Section 40392 without  
40 change.

CHAPTER 4. AIR QUALITY MANAGEMENT DISTRICTS

**§ 34400. Composition of board**

34400. (a) Notwithstanding any other provision of law, the membership of the governing board of an air quality management district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

**Comment.** Section 34400 continues former Health and Safety Code Section 40704.5(a)-(d) without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

**§ 34401. Alternate composition**

34401. If a district fails to comply with subdivisions (a) and (b) of Section 34400, the composition of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 34400 and the members shall be selected pursuant to subdivision (d) of Section 34400.

(e) For purposes of subdivision (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 34401 continues former Health and Safety Code Section 40704.5(e) without substantive change.



1   **§ 34402. Application of Sections 34400 and 34401**

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2       34402. Sections 34400 and 34401 do not apply to a district if the membership of the  
3 governing board of the district includes both county supervisors and mayors or city council  
4 members on June 30, 1994.

5       **Comment.** Section 34402 continues former Health and Safety Code Section 40704.5(f)  
6 without substantive change.

7                   **CHAPTER 5. BASINWIDE AIR POLLUTION CONTROL COUNCILS**

8   **§ 34500. Existence and composition**

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9       34500. (a) There is continued in existence and shall be, in each air basin which is  
10 comprised of all or part of two or more districts, a basinwide air pollution control council.

11       (b) The council shall consist of an elected official of, and designated by, the district board  
12 of each district which is included, in whole or in part, within the air basin.

13       (c) Any officer or employee of a district within the air basin may act in an advisory  
14 capacity for and on behalf of the basinwide air pollution control council.

15       **Comment.** Section 34500 continues former Health and Safety Code Section 40900 without  
16 substantive change. The former undesignated paragraphs have been designated as  
17 subdivisions.

18                   **TITLE 4. SPECIFIC DISTRICTS**

19                   **CHAPTER 1. ANTELOPE VALLEY AIR POLLUTION CONTROL DISTRICT**

20   **§ 34600. Antelope Valley air pollution control district**

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21       34600. (a) Notwithstanding Section 35804 or any other provision of this part, that  
22 portion of the Antelope Valley which is located in northern Los Angeles County shall not  
23 be within the south coast district. That territory shall constitute the territory of the Antelope  
24 Valley Air Pollution Control District, which is hereby created.

25       (b) The territory of the Antelope Valley Air Pollution Control District has the following  
26 boundaries: The San Bernardino County line to the east, the Kern County line to the north,  
27 the San Gabriel Mountains to the south, and the Sierra Nevada Mountains to the west. The  
28 south and west boundaries shall coincide with the boundaries of the Southeast Desert Air  
29 Basin, as determined in regulations of the state board.

30       (c) The Antelope Valley Air Pollution Control District shall be governed by a district  
31 board consisting of seven members, as follows:

32       (1) Two members of the City Council of the City of Lancaster appointed by the city  
33 council.

34       (2) Two members of the City Council of the City of Palmdale appointed by the city  
35 council.

36       (3) Two persons appointed by the member of the Board of Supervisors of the County of  
37 Los Angeles who represents a majority of the population of the Antelope Valley Air  
38 Pollution Control District, one of whom may be that supervisor.

39       (4) A public member who shall be appointed by the members who have been appointed  
40 pursuant to paragraphs (1) to (3), inclusive.

41       (d) Except as otherwise provided in this section, the Antelope Valley Air Pollution  
42 Control District is a county district.

(e) The rules and regulations of the south coast district shall remain in effect in the Antelope Valley Air Pollution Control District until the Antelope Valley Air Pollution Control District board adopts new rules and regulations which supersede them.

(f) This section shall become operative on July 1, 1997.

**Comment.** Section 34600 continues former Health and Safety Code Section 40106 without substantive change. The reference in subdivision (e) to the date after which the rules and regulations of the south coast district apply to the Antelope Valley Air Pollution Control District unless superseded (July 1, 1997) is obsolete and has not been continued.

**Note.** Apparently, the Antelope Valley Air Pollution Control District lies entirely within Los Angeles County and is not part of a regional, unified, or air quality management district. Therefore, pursuant to Health and Safety Code Section 40002(b) (proposed Section 33600(b), the Antelope Valley District is a county district. This explains the placement of this section in this chapter. It is currently in Chapter 2 (commencing with Section 40100) of Part 3 of Division 26 of the Health and Safety Code (containing provisions that are generally applicable to county districts).

## CHAPTER 2. BAY AREA AIR QUALITY MANAGEMENT DISTRICT

### Article 1. General Provisions

#### **§ 34700. Bay Area Air Quality Management District**

34700. A district, which is called the Bay Area Air Quality Management District, which was formerly known as the Bay Area Air Pollution Control District, is hereby continued in existence within the boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara and those portions of the Counties of Solano and Sonoma within the boundaries of the Bay Area Air Pollution Control District as it existed on January 1, 1976. Any reference to the Bay Area Air Pollution Control District shall be deemed to be a reference to the Bay Area Air Quality Management District.

**Comment.** Section 34700 continues former Health and Safety Code Section 40200 without change.

#### **§ 34701. Authority to continue business and exercise powers**

34701. The bay district shall continue to transact business and exercise its powers under this division in the counties, and portions of counties, specified in Section 34700.

**Comment.** Section 34701 continues former Health and Safety Code Section 40201 without substantive change.

#### **§ 34702. Special regulation zones**

34702. The bay district board may establish, within the bay district, zones wherein special regulations are warranted. In establishing the zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry.

**Comment.** Section 34702 continues former Health and Safety Code Section 40230 without substantive change.

### § 34703. Tax formula zones

34703. The bay district board may establish, within the bay district, zones wherein differing tax formulas may be applied. In establishing the zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry.

**Comment.** Section 34703 continues former Health and Safety Code Section 40231 without substantive change.

### **§ 34704. Compliance with Section 32301**

34704. In adopting any regulation, the bay district board shall comply with Section 32301.

**Comment.** Section 34704 continues former Health and Safety Code Section 40234 without change.

## Article 2. Governing Body

**§ 34750. Bay district board**

34750. The bay district board is the governing body of the bay district and shall exercise all the powers of the bay district.

**Comment.** Section 34750 continues former Health and Safety Code Section 40220 without change.

### **§ 34751. Board of directors**

34751. The bay district board shall be a board of directors consisting of members appointed pursuant to Section 34753 from each county included, in whole or in part, within the district on the basis of the population of that portion of the county, as determined by the latest estimate prepared by the Population Research Unit of the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code, included within the district.

**Comment.** Section 34751 continues former Health and Safety Code Section 40220.5 without substantive change.

### **§ 34752. Appointments by counties**

34752. A county with a population of 300,000 or less shall appoint one member of the bay district board; a county with a population of 750,000 or less, but more than 300,000, shall appoint two members of the bay district board; a county with a population of 1,000,000 or less, but more than 750,000, shall appoint three members of the bay district board; and a county with a population of more than 1,000,000 shall appoint four members of the bay district board.

**Comment.** Section 34752 continues former Health and Safety Code Section 40221 without change.

### § 34753. Composition

34753. (a) The members of the bay district board shall be appointed as follows:

(1) For a county entitled to appoint one member of the bay district board, the board of supervisors shall appoint either a member of the board of supervisors or a person from a list submitted to the board of supervisors by the city selection committee of that county.

(2) For a county entitled to appoint two members of the bay district board, the city selection committee of that county shall appoint one member and the board of supervisors shall appoint the other member, which member may either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee.

(3) For a county entitled to appoint three members of the bay district board, two members shall be appointed as provided in paragraph (2) and the third member shall be appointed by the board of supervisors and shall either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee of that county.

(4) For a county entitled to appoint four members of the bay district board, the city selection committee of that county shall appoint two members and the board of supervisors shall appoint the other two members, either one or both of whom may be members of the board of supervisors or persons on the list submitted to the board of supervisors by the city selection committee.

(b) Any member of the bay district board appointed, and any person named on the list submitted to the board of supervisors, by the city selection committee shall be either a mayor or a city councilman of a city in that portion of the county included within the district.

**Comment.** Section 34753 continues former Health and Safety Code Section 40221.5 without change.

#### **§ 34754. Terms**

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34754. Each member appointed by the board of supervisors shall hold office for a term of four years and until the appointment and qualification of the member's successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of the member's successor.

**Comment.** Section 34754 continues former Health and Safety Code Section 40222 without substantive change.

#### **§ 34755. Vacancy**

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34755. Any vacancy on the bay district board shall be filled by appointment in the same manner as the vacating member was appointed.

**Comment.** Section 34755 continues the first paragraph of former Health and Safety Code Section 40223 without substantive change.

#### **§ 34756. Removal**

---

34756. Any member of the bay district board may be removed at any time in the same manner as the member was appointed. If four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of that county, the city selection committee of that county shall meet within 20 days to consider the removal of that member.

**Comment.** Section 34756 continues the second paragraph of former Health and Safety Code Section 40223 without substantive change.

#### **§ 34757. Recall from local office**

---

34757. If any member of the bay district board is recalled from his or her office as a supervisor, mayor, or city council member, pursuant to Division 11 (commencing with

1 Section 11000) of the Elections Code, his or her office as member of the bay district board  
2 shall be vacant.

3 **Comment.** Section 34757 continues former Health and Safety Code Section 40224 without  
4 change.

#### 5 **§ 34758. Loss of local office**

---

6 34758. No supervisor, mayor, or city councilman shall hold office on the bay district  
7 board for a period of more than three months after ceasing to hold the office of supervisor,  
8 mayor, or city councilman, respectively, and that person's membership on the bay district  
9 board shall thereafter be considered vacant, except that any mayor who continues to hold  
10 office as a city councilman, or any city councilman who continues to hold office as a  
11 mayor, shall not be considered to have ceased to hold office under this section.

12 **Comment.** Section 34758 continues former Health and Safety Code Section 40225 without  
13 change.

#### 14 **§ 34759. Quorum**

---

15 34759. A majority of the members of the bay district board constitutes a quorum for the  
16 transaction of business and may act for the bay district board.

17 **Comment.** Section 34759 continues former Health and Safety Code Section 40226 without  
18 change.

#### 19 **§ 34760. Compensation**

---

20 34760. Each member of the bay district board shall receive actual and necessary expenses  
21 incurred in the performance of board duties, and may receive compensation, to be  
22 determined by the bay district board, not to exceed one hundred dollars (\$100) for each day  
23 attending the meetings of the bay district board and committee meetings thereof, or, upon  
24 authorization of the bay district board, while on official business of the bay district, but the  
25 compensation shall not exceed six thousand dollars (\$6,000) in any one year.  
26 Compensation pursuant to this section shall be fixed by ordinance.

27 **Comment.** Section 34760 continues former Health and Safety Code Section 40227 without  
28 change.

### 29 **Article 3. Officers and Employees**

#### 30 **§ 34800. Executive secretary**

---

31 34800. The bay district board may appoint an executive secretary to perform any duties  
32 that may be assigned to the executive secretary by the bay district board.

33 **Comment.** Section 34800 continues former Health and Safety Code Section 40228 without  
34 substantive change.

#### 35 **§ 34801. Civil service**

---

36 34801. The bay district board may, by ordinance, adopt a civil service system for any or  
37 all employees of the bay district, except that the executive secretary and the air pollution  
38 control officer shall be exempt from the system and shall serve at the pleasure of the bay  
39 district board.

40 **Comment.** Section 34801 continues former Health and Safety Code Section 40229 without  
41 substantive change.

Article 5. City Selection Committee

**§ 34850. Appointments to board**

---

34850. The city selection committee organized in each county within the bay district pursuant to Article 11 (commencing with Section 50270), Chapter 1, Part 1, Division 1, Title 5 of the Government Code shall make the appointments to, and submit recommendations for appointments to, the bay district board as prescribed in Section 34753.

**Comment.** Section 34850 continues former Health and Safety Code Section 40210 without substantive change.

**§ 34851. Composition of committee**

---

34851. Where the bay district may transact business and exercise its powers only in a portion of a county, the membership of the city selection committee of that county, for purposes of this chapter, shall consist only of the representatives from those cities within that portion of the county.

**Comment.** Section 34851 continues former Health and Safety Code Section 40211 without substantive change.

**§ 34852. Appointments by mayor**

---

34852. With regard to the city selection committee appointment to the bay district board for the City and County of San Francisco, the mayor shall make the appointment.

**Comment.** Section 34852 continues former Health and Safety Code Section 40212 without change.

**§ 34853. Compliance with Section 32301**

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34853. In adopting any regulation, the bay district board shall comply with Section 32301.

**Comment.** Section 34853 continues former Health and Safety Code Section 40234 without substantive change.

Article 4. Advisory Council

**§ 34900. “Council”**

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34900. As used in this article, “council” means the Bay Area Air Quality Management Advisory Council.

**Comment.** Section 34900 continues former Health and Safety Code Section 40260 without change.

**§ 34901. Existence continued**

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34901. There is continued in existence the Bay Area Air Quality Management Council, which was formerly known as the Bay Area Air Pollution Control Advisory Council, which council is appointed by the bay district board, to advise and consult with the bay district board and the bay district air pollution control officer in effectuating the purposes of this division. Any reference to the Bay Area Air Pollution Control Advisory Council shall be deemed to be a reference to the Bay Area Air Quality Management Council.



1     **Comment.** Section 34901 continues former Health and Safety Code Section 40261 without  
2     change.

### 3     **§ 34902. Membership**

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4     34902. (a) The council shall consist of the chairman of the bay district board, who shall  
5     serve as an ex officio member, and 20 members who preferably are skilled and experienced  
6     in the field of air pollution, including at least three representatives of public health agencies,  
7     at least four representatives of private organizations active in conservation or protection of  
8     the environment within the bay district, and at least one representative of colleges or  
9     universities in the state and at least one representative of each of the following groups  
10    within the bay district: regional park district, park and recreation commissions or equivalent  
11    agencies of any city, public mass transportation system, agriculture, industry, community  
12    planning, transportation, registered professional engineers, general contractors, architects,  
13    and organized labor.

14    (b) To the extent that suitable persons cannot be found for each of the specified  
15    categories, council members may be appointed from the general public.

16    **Comment.** Section 34902 continues former Health and Safety Code Section 40262 without  
17    substantive change. The former undesignated paragraphs have been designated as  
18    subdivisions.

### 19    **§ 34903. Term**

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20    34903. Each council member shall hold office for a term of two years and until the  
21    appointment and qualification of the council member's successor.

22    **Comment.** Section 34903 continues former Health and Safety Code Section 40263 without  
23    change.

### 24    **§ 34904. Removal**

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25    34904. Any member of the council may be removed at any time by the majority vote of  
26    the bay district board.

27    **Comment.** Section 34904 continues former Health and Safety Code Section 40264 without  
28    change.

### 29    **§ 34905. Vacancy**

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30    34905. Any vacancy on the council shall be filled by appointment in the same manner as  
31    the vacating member was appointed, except that the member appointed to fill the vacancy  
32    shall only serve the unexpired term of the vacating member.

33    **Comment.** Section 34905 continues former Health and Safety Code Section 40265 without  
34    change.

### 35    **§ 34906. Expenses**

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36    34906. Council members shall serve without compensation, but may be allowed actual  
37    expenses incurred in the discharge of their duties.

38    **Comment.** Section 34906 continues former Health and Safety Code Section 40266 without  
39    change.

1   **§ 34907. Chairman and vice chairman**

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2       34907. The council shall select a chairman and vice chairman and any other officers that  
3 it deems necessary.

4       **Comment.** Section 34907 continues former Health and Safety Code Section 40267 without  
5 substantive change.

6   **§ 34908. Meetings**

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7       34908. The council shall meet as frequently as the bay district board or the council deem  
8 necessary, but not less than four times a year.

9       **Comment.** Section 34908 continues former Health and Safety Code Section 40268 without  
10 change.

11                                   Article 6. Financial Provisions

12   **§ 34950. Authority to borrow**

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13       34950. The bay district may borrow money and incur indebtedness in anticipation of the  
14 revenue for the current year in which the indebtedness is incurred or for the ensuing year.  
15 That indebtedness shall not exceed the total amount of the estimate of the tax income for  
16 either the current year or the ensuing year.

17       **Comment.** Section 34950 continues former Health and Safety Code Section 40270 without  
18 substantive change.

19   **§ 34951. Financial requirements**

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20       34951. (a) Before the first day of September of each year, the bay district board shall  
21 estimate and determine the amount of money required by the bay district for its purposes  
22 during the fiscal year and shall apportion this amount to the counties included within the  
23 bay district, one-half according to the relative assessed value of property on the secured roll  
24 of each county, or that portion thereof, within the bay district as determined by the bay  
25 district board and one-half in the proportion that the population of each county, or that  
26 portion thereof, within the bay district bears to the total population of the bay district.

27       (b) For the purposes of this section, the bay district board shall base its determination of  
28 the population on the latest official information available to it.

29       (c) The total amount of money required by the bay district to be apportioned to the  
30 counties, or that portion thereof, included within the bay district for its purposes shall not  
31 exceed two cents (\$0.02) on each one hundred dollars (\$100) of the assessed value of all  
32 the property included within the bay district.

33       **Comment.** Section 34951 continues former Health and Safety Code Section 40271 without  
34 substantive change. The former undesignated paragraphs have been designated as  
35 subdivisions.

36   **§ 34952. Tax levy**

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37       34952. (a) On or before the first day of September of each year, the bay district board  
38 shall certify to the auditor of each county the total amount apportioned to the county.

39       (b) Each board of supervisors shall levy an ad valorem tax on the taxable property, but  
40 not including intangible personal property, within the county, or that portion thereof,  
41 included within the bay district sufficient to secure the amount so apportioned to it. The  
42 taxes shall be levied and collected together with, and not separately from, the taxes for

1 county purposes and shall be paid to the treasurer of each of the counties to the credit of the  
2 bay district.

3 **Comment.** Section 34952 continues former Health and Safety Code Section 40272 without  
4 substantive change. The former undesignated paragraphs have been designated as  
5 subdivisions.

#### 6 **§ 34953. Tax lien**

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7 34953. Taxes levied by the board of supervisors for the benefit of the bay district shall be  
8 a lien upon all property within the county, or portion thereof, lying within the bay district,  
9 and shall have the same force and effect as other liens for taxes. Their collection may be  
10 enforced in the same manner as liens for county taxes are enforced.

11 **Comment.** Section 34953 continues former Health and Safety Code Section 40273 without  
12 substantive change.

#### 13 **§ 34954. Payments into district treasury**

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14 34954. The treasurers of the counties included, in whole or in part, within the bay district  
15 shall pay into the bay district treasury all funds held by them to the credit of the bay district.

16 **Comment.** Section 34954 continues former Health and Safety Code Section 40274 without  
17 change.

#### 18 **§ 34955. District treasurer**

---

19 34955. The bay district treasury shall be in the custody of the county treasurer of a  
20 county within the bay district designated by the bay district board, and that treasurer shall  
21 be the bay district treasurer.

22 **Comment.** Section 34955 continues former Health and Safety Code Section 40275 without  
23 change.

#### 24 **§ 34956. Compliance with budget and tax levy law**

---

25 34956. The bay district board shall, in carrying out the provisions of this article, comply  
26 as nearly as possible with the provisions of Chapter 1 (commencing with Section 29000),  
27 Division 3, Title 3 of the Government Code.

28 **Comment.** Section 34956 continues former Health and Safety Code Section 40276 without  
29 change.

### 30 **Article 7. Transportation Control Measures**

#### 31 **§ 35000. Adoption procedure**

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32 35000. Notwithstanding any other provision of law, the bay district shall adopt,  
33 implement, and enforce transportation control measures for the attainment of state or federal  
34 ambient air quality standards, in accordance with all of the following procedures:

35 (a) The bay district shall estimate, by June 30, 1989, the quantity of emission reductions  
36 from transportation sources necessary to attain and maintain state and federal ambient air  
37 standards.

38 (b) The Metropolitan Transportation Commission, in cooperation with the bay district,  
39 the Association of Bay Area Governments, local entities, and employers, shall develop and  
40 adopt a plan to control emissions from transportation sources which will achieve the  
41 emission reductions established pursuant to subdivision (a). The plan shall include, at a

1 minimum, a schedule for implementing transportation control measures, identification of  
2 potential implementing agencies and any agreements entered into by agencies to implement  
3 portions of the plan, and a procedure for monitoring the effectiveness of and compliance  
4 with the measures. The commission shall submit the plan to the bay district for its adoption  
5 according to a reasonable schedule developed by the bay district in consultation with the  
6 commission, but not later than June 30, 1990.

7 (c) Upon receipt of the plan submitted by the commission, the bay district shall review  
8 the plan to determine if it will achieve the emission reductions specified in subdivision (a).  
9 If the bay district determines that the plan will achieve those reductions, the bay district  
10 shall adopt the plan and implement it immediately. If the bay district determines that the  
11 plan will not achieve the emission reductions specified in subdivision (a), it shall notify the  
12 commission of the specific deficiencies in the plan and return the plan to the commission  
13 for revision. Within 60 days after receipt of the plan, the commission shall revise it and  
14 return it to the bay district. If the bay district determines that the revised plan will achieve  
15 necessary emission reductions, the bay district shall adopt the plan and implement it  
16 immediately. If the bay district determines that the revised plan still will not achieve the  
17 emission reductions specified in subdivision (a), or if the plan is not submitted pursuant to  
18 the schedule established under subdivision (b), the bay district shall develop and adopt a  
19 plan to control emissions from transportation sources.

20 (d) As the bay district periodically revises its estimates of the emission reductions from  
21 transportation sources necessary to attain state and federal ambient air standards specified in  
22 subdivision (a), the plan for transportation control measures shall also be revised, adopted,  
23 and enforced according to the procedure established pursuant to subdivisions (a), (b), and  
24 (c).

25 **Comment.** Section 35000 continues former Health and Safety Code Section 40233(a)  
26 without substantive change.

27 ☞ **Note.** Subdivisions (a) and (b) specify deadlines for the preparation of certain  
28 materials. These deadline provisions may be obsolete. The Commission would like to receive  
29 input on two questions: (1) Have these deadlines been met? (2) Do the deadline provisions  
30 still serve a useful purpose?

### 31 **§ 35001. Delegation of functions**

---

32 35001. (a) The bay district may delegate any function with respect to transportation  
33 control measures to any local agency, if all of the following conditions are met:

34 (1) The local agency submits to the bay district an implementation plan which provides  
35 adequate resources to adopt and enforce the measures, and the bay district approves the  
36 plan.

37 (2) The local agency agrees to adopt and implement measures at least as stringent as those  
38 in the district air quality management plan to attain state standards.

39 (3) The bay district adopts procedures to review the performance of the local agency in  
40 implementing the measures to ensure compliance with the district air quality management  
41 plan to attain state standards.

42 (b) The bay district may revoke a delegation under this article if it determines that the  
43 performance of the local agency is in violation of this article or is otherwise inadequate to  
44 implement the district air quality management plan.

45 **Comment.** Section 35001 continues former Health and Safety Code Section 40233(b)-(c)  
46 without substantive change.

**§ 35002. “Transportation control measures”**

35002. For purposes of this article, “transportation control measures” means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for purposes of reducing motor vehicle emissions.

**Comment.** Section 35002 continues former Health and Safety Code Section 40233(d) without substantive change.

### § 35003. Effectiveness report

35003. The bay district and the commission shall report, not later than June 30, 1991, to the Legislature on the effectiveness of this article.

**Comment.** Section 35003 continues former Health and Safety Code Section 40233(e) without substantive change.

👉 **Note.** This section specifies a deadline for submission of a report. This deadline provision may be obsolete. The Commission would like to receive input on two questions: (1) Have the requirements of the section been satisfied? (2) Does the deadline provision still serve a useful purpose?

## Article 8. Other Responsibilities

### § 35050. Odor-causing substances

35050. Except as provided in Section 37601, the bay district board shall establish standards for the emission of identifiable odor-causing substances. Exceptions or variances may be granted from those standards in a manner provided by the bay district board. No person shall discharge from any source any contaminant which violates those standards.

**Comment.** Section 35050 continues former Health and Safety Code Section 40232 without substantive change.

## CHAPTER 3. MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT

## Article 1. General Provisions

### **§ 35100. Legislative findings and declarations**

35100. The Legislature finds and declares as follows:

(a) The Mojave Desert region has serious air pollution problems caused by the transport of air pollution from upwind districts and by the operation of growing numbers of motor vehicles and numerous stationary sources, and atmospheric and meteorological conditions which are conducive to the formation of a variety of air pollutants.

(b) To effectively control air pollution within the region pursuant to the requirements of state and federal law, it is necessary to establish an institutional structure which reflects the demographic and political makeup of the region.

(c) To successfully achieve required improvements in air quality and the protection of existing levels of air quality within the region, there is a need for greater coordination between air quality management decisions and the land use and transportation decisions of local governments in the region.

(d) To successfully develop and implement a comprehensive program for the attainment and maintenance of state and federal ambient air quality standards, local governments in the region must be delegated additional authority and responsibility from the state, particularly

1 with respect to reducing motor vehicle emissions and expanding the use of cleaner burning  
2 alternative fuels.

3 **Comment.** Section 35100 continues former Health and Safety Code Section 41200 without  
4 change.

#### 5 **§ 35101. Creation**

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6 35101. (a) There is hereby created the Mojave Desert Air Quality Management District.

7 (b) The boundaries of the Mojave Desert district shall include all of the County of San  
8 Bernardino and the County of Riverside that is not included within the boundaries of the  
9 south coast district, and any other area included pursuant to subdivision (c).

10 (c) The Mojave Desert district board may, by resolution, include in the Mojave Desert  
11 district any other area upon receipt of a resolution from the district that currently includes  
12 the area requesting inclusion and specifying the area to be included. All territory included  
13 within the Mojave Desert district shall be contiguous.

14 **Comment.** Section 35101 continues former Health and Safety Code Section 41210 without  
15 change.

#### 16 **§ 35102. Responsibilities**

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17 35102. The Mojave Desert district is the local agency with the primary responsibility for  
18 the development, implementation, monitoring, and enforcement of air pollution control  
19 strategies and motor vehicle use reduction measures, and shall represent the citizens of the  
20 Mojave Desert district in influencing the decisions of other public and private agencies  
21 whose actions may have an adverse impact on air quality within the Mojave Desert district.

22 **Comment.** Section 35102 continues former Health and Safety Code Section 41211 without  
23 change.

#### 24 **§ 35103. Commencement of operations**

---

25 35103. The Mojave Desert district shall commence operations on July 1, 1993, and on  
26 that date shall assume the authority, duties, and employees of the San Bernardino County  
27 Air Pollution Control District which shall cease to exist as of that date.

28 **Comment.** Section 35103 continues former Health and Safety Code Section 41212 without  
29 change.

30 ☞ **Note.** This section provides the date on which the district commenced operations. This  
31 provision may be obsolete. The Commission would like to receive input on whether the  
32 section continues to serve a useful purpose.

## 33 **Article 2. Governing Body**

#### 34 **§ 35150. Composition of board**

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35 35150. (a) The Mojave Desert district shall be governed by a district board composed of  
36 the following members:

37 (1) The members of the San Bernardino County Board of Supervisors who represent the  
38 first and third supervisorial districts of the county, or who, after reapportionment affecting  
39 the county supervisorial districts, represent any supervisorial district of the county that lies  
40 in whole or in part within the Mojave Desert district.

41 (2) One member of the city council of each incorporated city within the Mojave Desert  
42 district, who shall be appointed by the city council.



(3) One public member who shall be appointed by a majority of the Mojave Desert district governing board for a term of two years and who shall be a resident of an incorporated city or a supervisorial district that lies in whole or in part within the Mojave Desert district.

(4) Upon the incorporation of any new city within the boundaries of the Mojave Desert district, the city council of that city shall appoint one member of the city council to the Mojave Desert district board.

(5) If a district submits a resolution of inclusion pursuant to subdivision (c) of Section 35101, one or more members of the county board of supervisors or of a city council from the area to be included shall be appointed to the Mojave Desert district board, pursuant to agreement between the county board of supervisors or the city council, or both, and the Mojave Desert district board.

(6) At the time of the appointment of a member of the city council of a newly incorporated city to the Mojave Desert district board, as specified in paragraph (4), or upon making an agreement to appoint a member from an area included in the Mojave Desert district pursuant to paragraph (5), the Mojave Desert district board may revise the remaining membership of the Mojave Desert district board, as previously constituted, by adding or removing one or more members of the board of supervisors of a county having territory in the district, adding or removing one or more members of the city councils of previously incorporated cities within the district, or both.

(b) The city council or a board of supervisors appointing a member may appoint an alternate who shall be an elected official and who shall be a resident of an incorporated city or a supervisorial district that lies in whole or in part within the Mojave Desert district.

(c) As used in this section, “city” means any city, town, or municipal corporation incorporated under the laws of this state.

**Comment.** Section 35150 continues former Health and Safety Code Section 41220 without substantive change.

#### **§ 35151. Chairperson**

---

35151. The Mojave Desert district board shall elect a chairperson every year from its membership. No member shall serve more than two consecutive terms as chairperson.

**Comment.** Section 35151 continues former Health and Safety Code Section 41221 without change.

#### **§ 35152. Voting**

---

35152. Voting by the Mojave Desert district board on the adoption of all items on its agenda shall be by rollcall. Unless any board member objects, a substitute rollcall may be used on any agenda item. For purposes of this requirement, any consent calendar is a single item.

**Comment.** Section 35152 continues former Health and Safety Code Section 41222 without change.

### **Article 3. Officers and Employees**

#### **§ 35200. Staff**

---

35200. (a) The Mojave Desert district board shall employ the necessary staff to carry out its powers and duties.

(b) The Mojave Desert district board shall appoint an air pollution control officer (APCO) to direct the staff, subject to the direction and policy of the Mojave Desert district board.

1     **Comment.** Section 35200 continues former Health and Safety Code Section 41260 without  
2     change.

3     **§ 35201. Transfer of employees from former district**

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4     35201. On July 1, 1993, the APCO, designated deputies, and other exempt employees of  
5     the San Bernardino County Air Pollution Control District shall be employed by the Mojave  
6     Desert district and shall serve in the same capacity for the Mojave Desert district. The  
7     APCO and designated deputies shall serve at the pleasure of the Mojave Desert district  
8     board, and shall receive the compensation that is determined by the Mojave Desert district  
9     board.

10    **Comment.** Section 35201 continues former Health and Safety Code Section 41261 without  
11    change.

12    ☞ **Note.** The first sentence of this section governs a transition that has already occurred  
13    and therefore may be obsolete. The Commission would like to receive input on whether this  
14    sentence has any continued usefulness.

15    **§ 35202. Transfer of employees from former district**

---

16    35202. In the appointment of persons to the Mojave Desert district staff, the Mojave  
17    Desert district board shall employ the personnel of the San Bernardino County Air  
18    Pollution Control District. On July 1, 1993, all employees of the San Bernardino County  
19    Air Pollution District shall be employed by the Mojave Desert district and shall be entitled to  
20    similar positions and duties on the Mojave Desert district staff. Except as otherwise  
21    provided in this article, they shall have permanent merit system employee status. A period  
22    of time as specified by the San Bernardino County Board of Supervisors shall be allowed  
23    to employees of the San Bernardino County Air Pollution Control District to transfer to  
24    other appropriate county employment before July 1, 1993.

25    **Comment.** Section 35202 continues former Health and Safety Code Section 41263 without  
26    change.

27    ☞ **Note.** This section governs a transition that has already occurred and therefore may be  
28    obsolete. The Commission would like to receive input on whether this section has any  
29    continued usefulness.

30    **§ 35203. Status and benefits of transferred employees retained**

---

31    35203. For the purpose of, but not limited to, retirement benefits, salary rates, seniority,  
32    and all fringe benefits, all time of employment with the San Bernardino County Air  
33    Pollution Control District immediately prior to employment with the Mojave Desert district,  
34    and any time of employment immediately prior thereto with the county, a county district, or  
35    both, whose authority, functions, and responsibilities have been assumed by the San  
36    Bernardino County Air Pollution Control District, shall be considered time of employment  
37    with the Mojave Desert district. Upon transfer to the Mojave Desert district, employees  
38    shall retain all their accumulated sick leave, vacation, and retirement benefits.

39    **Comment.** Section 35203 continues former Health and Safety Code Section 41265 without  
40    change.


41    **§ 35204. Status of transferred employees**

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42    35204. If the civil service commission, or body performing the functions thereof, in the  
43    Mojave Desert district finds that any person has been employed by the San Bernardino

County Air Pollution Control District, in a position with duties and qualifications which are substantially the same as, or are greater than those of any position in the Mojave Desert district, the civil service commission or other body, at the request of the APCO, may certify, without examination, that person as eligible to hold that Mojave Desert district position.

**Comment.** Section 35204 continues former Health and Safety Code Section 41266 without change.

 **Note.** This section governs a transition that has already occurred and therefore may be obsolete. The Commission would like to receive input on whether this section has any continued usefulness.

#### **§ 35205. County retirement benefits**

---

35205. All officers and employees of the Mojave Desert district, other than members of the Mojave Desert district board, are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

**Comment.** Section 35205 continues former Health and Safety Code Section 41264 without change.

#### **§ 35206. Legal counsel**

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35206. The Mojave Desert district shall appoint a legal counsel who is admitted to the practice of law in this state.

**Comment.** Section 35206 continues former Health and Safety Code Section 41262 without change.

#### **§ 35207. Professional assistance**

---

35207. The Mojave Desert district may contract for any professional assistance that may be necessary or convenient for the exercise of its powers and duties.

**Comment.** Section 35207 continues former Health and Safety Code Section 41267 without change.

### **Article 4. Financial Provisions**

#### **§ 35250. Schedule of fees**

---

35250. The Mojave Desert district may adopt a schedule of fees, levied on permitted and other sources of air pollution to recover its costs of implementing this chapter, pursuant to Sections 38850 to 38855, inclusive, and Chapter 2 (commencing with Section 40600) of Title 2 of Part 5.

**Comment.** Section 35250 continues former Health and Safety Code Section 41240 without substantive change.

#### **§ 35251. Financial assistance programs**

---

35251. Pursuant to Section 35302, the district may undertake programs which may include, but are not limited to, financial assistance to fleet operators for the purchase, conversion, or operation of low-emission motor vehicles, financial or other assistance to encourage the sale and distribution of cleaner burning fuels, and financial assistance or other incentives for the purchase and operation of ridesharing vehicles.

1     **Comment.** Section 35251 continues former Health and Safety Code Section 41241 without  
2 substantive change.

3     **§ 35252. Transfer from former district**

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4     35252. On July 1, 1993, the Mojave Desert district shall succeed to all funds, property,  
5 and obligations of the San Bernardino County Air Pollution Control District.

6     **Comment.** Section 35252 continues former Health and Safety Code Section 41242 without  
7 change.

8     ☞ **Note.** This section governs a transition that has already occurred and therefore may be  
9 obsolete. The Commission would like to receive input on whether this section has any  
10 continued usefulness.

11    **§ 35253. Borrowing and indebtedness**

---

12    35253. The Mojave Desert district board may borrow money and incur indebtedness in  
13 anticipation of the revenue for the current year in which the indebtedness is incurred or for  
14 the ensuing year. That indebtedness shall not exceed the total amount of the estimated  
15 revenue for either the current year or the ensuing year.

16    **Comment.** Section 35253 continues former Health and Safety Code Section 41243 without  
17 change.

18    **§ 35254. Issuance of warrants**

---

19    35254. Upon adoption of a resolution by the Mojave Desert district board to implement  
20 the procedure to issue warrants pursuant to Sections 35255 to 35266, inclusive, the  
21 procedure shall be implemented on the first day of the second month following the date of  
22 adoption of the resolution. If, at any time, the Mojave Desert district board determines that  
23 the accounting controls of the Mojave Desert district have become inadequate, it may  
24 revoke its authorization effective at the beginning of the next fiscal year.

25    **Comment.** Section 35254 continues former Health and Safety Code Section 41244 without  
26 substantive change.

27    **§ 35255. Treasurer**

---

28    35255. The Mojave Desert district board shall appoint a treasurer, who may be a county  
29 treasurer, who shall be the custodian of funds of the Mojave Desert district and who shall  
30 make payments only upon warrants duly and regularly signed by the person authorized by  
31 the Mojave Desert district board. The treasurer shall keep an account of all receipts and  
32 disbursements.

33    **Comment.** Section 35255 continues former Health and Safety Code Section 41245 without  
34 change.

35    **§ 35256. Controller**

---

36    35256. The Mojave Desert district shall appoint a controller, who may be a county  
37 auditor, who shall be the accounting officer for the Mojave Desert district and who shall  
38 exercise general supervision over the accounting forms and methods of keeping the  
39 accounts of the Mojave Desert district.

40    **Comment.** Section 35256 continues former Health and Safety Code Section 41246 without  
41 change.

1    **§ 35257. Warrants for payment of salaries and expenses**

---

2       35257. The Mojave Desert district board may, by resolution, cause to be drawn all  
3 warrants on the treasurer against all funds, except funds for debt service, of the Mojave  
4 Desert district in the treasury for the payment of salaries and expenses of the Mojave Desert  
5 district.

6       **Comment.** Section 35257 continues former Health and Safety Code Section 41247 without  
7 change.

8    **§ 35258. Separate payroll warrants**

---

9       35258. The Mojave Desert district board may authorize, in writing, the controller to draw  
10 separate payroll warrants in the names of the individual Mojave Desert district employees  
11 for the respective amounts due each employee so that each employee may be furnished with  
12 a statement of the amount earned and an itemization of the amounts withheld.

13       **Comment.** Section 35258 continues former Health and Safety Code Section 41248 without  
14 change.

15   **§ 35259. Warrants for payment of claims**

---

16       35259. The Mojave Desert district board may authorize, in writing, the controller to issue  
17 warrants in favor of the persons entitled to payment of all claims chargeable against the  
18 Mojave Desert district which have been legally examined, allowed, and ordered paid by the  
19 Mojave Desert district board. The controller shall issue warrants on the treasurer for all  
20 those claims against the Mojave Desert district.

21       **Comment.** Section 35259 continues former Health and Safety Code Section 41249 without  
22 change.

23   **§ 35260. Form of warrants**

---

24       35260. The form of the warrants shall be prescribed by the Mojave Desert district board  
25 and approved by the treasurer.

26       **Comment.** Section 35260 continues former Health and Safety Code Section 41250 without  
27 change.

28   **§ 35261. Financial reports**

---

29       35261. Except as specified in this article, no county officer shall be responsible for  
30 producing reports, statements, and other data relating to or based upon payments of salaries  
31 or claims of the Mojave Desert district pursuant to this article.

32       **Comment.** Section 35261 continues former Health and Safety Code Section 41251 without  
33 change.

34   **§ 35262. Retirement data to county**

---

35       35262. The Mojave Desert district shall provide the officials of the San Bernardino  
36 County Employees Retirement Association, in the form prescribed by them, the data  
37 necessary to make retirement reports and maintain records required by law.

38       **Comment.** Section 35262 continues former Health and Safety Code Section 41252 without  
39 change.

1    **§ 35263. Document retention**

---

2       35263. All warrants, vouchers, and supporting documents shall be kept by the Mojave  
3   Desert district.

4       **Comment.** Section 35263 continues former Health and Safety Code Section 41253 without  
5   change.

6    **§ 35264. Payment of warrants**

---

7       35264. Notwithstanding Section 27005 of the Government Code, or any other section  
8   requiring warrants or orders for warrants to be signed by the county auditor, if the Mojave  
9   Desert district treasurer is a county treasurer, the county treasurer shall pay the warrant if  
10   money is available and a person authorized to sign the warrant has signed it. The county  
11   treasurer may charge the Mojave Desert district for the cost of fiscal services he or she  
12   renders.

13       **Comment.** Section 35264 continues former Health and Safety Code Section 41254 without  
14   change.

15   **§ 35265. Official bond of officers**

---

16       35265. The controller shall execute an official bond in an amount fixed by the Mojave  
17   Desert district board conditioned upon the faithful performance of his or her duties. A  
18   county auditor shall not be liable under the terms of his or her bond or otherwise for a  
19   warrant issued pursuant to this article. This section shall not be applied so as to impair the  
20   obligation of any contract in the bond of the officers in effect on July 1, 1993.

21       **Comment.** Section 35265 continues former Health and Safety Code Section 41255 without  
22   change.

23   **§ 35266. Financial data to county auditor**

---

24       35266. If the auditor of the Mojave Desert district is a county auditor, he or she shall be  
25   provided, upon his or her request, a monthly listing of the warrants issued under this  
26   section reporting the warrant number, the date and amount of the warrant, the name of the  
27   payee, the name of the fund on which the warrant is drawn, and a statement showing for  
28   the current fiscal year to date, for each required expenditure classification, the amount  
29   budgeted, actual expenditures, encumbrances, and unencumbered balances. The form of  
30   the listing and statement shall be as prescribed by the Mojave Desert district board and  
31   approved by the county auditor.

32       **Comment.** Section 35266 continues former Health and Safety Code Section 41256 without  
33   change.

34                                   Article 5. General Powers and Duties

35   **§ 35300. Rules and regulations**

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36       35300. (a) The Mojave Desert district board shall adopt rules and regulations that are not  
37   in conflict with state and federal laws, rules, and regulations and that reflect the best  
38   available technological and administrative practices.

39       (b) The rules and regulations shall require the level of control necessary to achieve the  
40   emission reduction requirements of the California Clean Air Act of 1988 (Chapter 1568 of  
41   the Statutes of 1988), pursuant to Sections 33250, 33251, and 33252.



(c) The rules, regulations, and resolutions of the San Bernardino County Air Pollution Control District shall remain in effect and shall be enforced by the Mojave Desert district, until superseded or amended by the Mojave Desert district board.

**Comment.** Section 35300 continues former Health and Safety Code Section 41230 without substantive change.

#### **§ 35301. Public hearing regarding regulations**

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35301. Notice of the time and place of a public hearing of the Mojave Desert district board to adopt, amend, or repeal any rule or regulation relating to an air quality objective shall be given not less than 30 days prior to the hearing and shall be published in each county in the Mojave Desert district in accordance with Section 6066 of the Government Code. The period of notice shall commence on the first day of publication.

**Comment.** Section 35301 continues former Health and Safety Code Section 41223 without change.

#### **§ 35302. Motor vehicle fleets**

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35302. (a) After a public hearing, the Mojave Desert district may adopt regulations to require operators of public and commercial fleet vehicles, when adding vehicles to, or replacing vehicles in, an existing fleet or when purchasing vehicles to form a new fleet, to purchase low-emission motor vehicles, and to require, to the maximum extent feasible or appropriate, that those vehicles be operated on a cleaner burning alternative fuel.

(b) For purposes of this section, “motor vehicle fleet” means 10 or more vehicles under common ownership or operation.

**Comment.** Section 35302 continues former Health and Safety Code Section 41231 without change.

#### **§ 35303. Public education, marketing, and related programs on transportation control**

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35303. The Mojave Desert district shall conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation control measures.

**Comment.** Section 35303 continues former Health and Safety Code Section 41232 without change.

#### **§ 35304. Regulation of indirect and areawide sources**

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35304. The Mojave Desert district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources pursuant to Section 32005.

**Comment.** Section 35304 continues former Health and Safety Code Section 41233 without substantive change.

## **CHAPTER 4. SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT**

### **Article 1. General Provisions**

#### **§ 35400. Legislative findings and declarations**

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35400. The Legislature finds and declares as follows:

1 (a) The Sacramento metropolitan region is a geographical and meteorological entity not  
2 reflected by political boundaries.

3 (b) The region has serious air pollution problems caused by the operation of more than  
4 1,000,000 vehicles in the region, numerous stationary sources of air pollution, and  
5 atmospheric and meteorological conditions which are conducive to the formation of a  
6 variety of air pollutants.

7 (c) Despite the implementation of improved emission controls on motor vehicles and  
8 stationary sources, rapid population growth and increases in vehicle miles traveled in the  
9 region are likely to result in worsening air pollution in future years.

10 (d) The state and federal governments have adopted ambient air quality standards in order  
11 to protect public health, and it is in the public interest that those standards be attained as  
12 expeditiously as possible.

13 (e) In order to achieve and maintain air quality standards and protect public health, a  
14 metropolitan air quality improvement strategy is required to be implemented in order to  
15 provide the maximum achievable reduction in emissions from existing sources and to  
16 provide for the maximum feasible reduction or mitigation of emissions resulting from  
17 population growth, increased vehicle mileage, and other new sources of emissions.

18 (f) In order to successfully achieve improvements in air quality throughout the region,  
19 there is a need for greater coordination between land use and transportation planning  
20 decisions and the achievement of air quality goals.

21 (g) In order to successfully develop and implement a comprehensive program for the  
22 attainment and maintenance of state and federal ambient air quality standards in the region,  
23 the air quality management district in the region must be delegated additional authority and  
24 responsibility from the state, particularly with respect to reducing motor vehicle emissions  
25 and expanding the use of cleaner burning fuels.

26 (h) In order to successfully implement a coordinated air quality plan for the region, the  
27 responsibilities of local and regional authorities with respect to the implementation of air  
28 pollution control strategies, clean fuels programs, and motor vehicle use reduction  
29 measures should be fully integrated into an agency with countywide or regional authority,  
30 as determined by representatives of the affected county and city governments.

31 **Comment.** Section 35400 continues former Health and Safety Code Section 40950 without  
32 change.

### 33 **§ 35401. Creation of district**

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34 35401. (a) There is hereby created the Sacramento Metropolitan Air Quality Management  
35 District.

36 (b) The boundaries of the Sacramento district shall include all of the County of  
37 Sacramento and, pursuant to Section 35404, if the board of supervisors of the County of  
38 Placer requests to become part of the Sacramento district, shall also include all or a portion  
39 of that county, as specified in the resolution of the board of supervisors requesting  
40 inclusion in the Sacramento district.

41 **Comment.** Section 35401 continues former Health and Safety Code Section 40960 without  
42 substantive change. The former undesignated paragraphs have been designated as  
43 subdivisions.

### 44 **§ 35402. Primary responsibility for air quality**

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45 35402. The Sacramento district is the local agency within the boundaries of the  
46 Sacramento district with the primary responsibility for the development, implementation,  
47 monitoring, and enforcement of air pollution control strategies, clean fuels programs, and

motor vehicle use reduction measures, and shall represent the citizens of the Sacramento district in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality within the Sacramento district.


**Comment.** Section 35402 continues former Health and Safety Code Section 40961 without change.

#### **§ 35403. Commencement of operations**

---

35403. The Sacramento district shall commence operation on July 1, 1989, and on that date shall assume the authority, functions, employees, and responsibilities of the Sacramento County Air Pollution Control District.

**Comment.** Section 35403 continues former Health and Safety Code Section 40962 without change.

 **Note.** This section governs a transition that has already occurred and therefore may be obsolete. The Commission would like to receive input on whether this section has any continued usefulness.

#### **§ 35404. Inclusion of other counties**

---

35404. (a) The Sacramento district board may, by resolution, include all or a portion of the County of Placer within the Sacramento district, upon receipt of a resolution from the board of supervisors of the county requesting inclusion and specifying the portion of the county to be included in the Sacramento district. All territory included within the Sacramento district shall be contiguous.

(b) The inclusion of any county, or portion thereof, in the Sacramento district shall become effective on the July 1 immediately following the adoption of the resolution of inclusion by the Sacramento district board.

(c) A copy of the resolution of inclusion shall be transmitted by the Sacramento district board to the board of supervisors and to the state board.

**Comment.** Section 35404 continues former Health and Safety Code Section 40963 without change.

#### **§ 35405. Effect of chapter on local land use authority**

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35405. This chapter does not constitute an infringement on the existing authority of local governments to plan or control land use, and nothing in this chapter provides or transfers new authority over land use to the Sacramento district.

**Comment.** Section 35405 continues former Health and Safety Code Section 41015 without substantive change.

#### **§ 35406. Effect of chapter on City of Sacramento**

---

35406. This chapter does not limit or restrict any authority of the City of Sacramento to adopt and implement any transportation system improvement program or air quality improvement program. The Sacramento district and the City of Sacramento may enter into a contract to implement any such program.

**Comment.** Section 35406 continues former Health and Safety Code Section 41016 without change.

## Article 2. Definitions

### § 35450. Application of definitions

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35450. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 35450 restates the substance of the introductory clauses of former Health and Safety Code Sections 40951-40953.

### § 35455. “Best available control technology”

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35455. “Best available control technology” has the meaning provided in Section 35855.

**Comment.** Section 35455 continues former Health and Safety Code Section 40951 without substantive change.

### § 35460. “Best available retrofit control technology”

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35460. “Best available retrofit control technology” has the meaning provided in Section 35860.

**Comment.** Section 35460 continues former Health and Safety Code Section 40952 without substantive change.

### § 35465. “Strategy”

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35465. “Strategy” means the Sacramento district air quality improvement strategy.

**Comment.** Section 35465 continues former Health and Safety Code Section 40953 without substantive change.

## Article 3. Governing Body

### § 35500. Composition of board

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35500. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 35404, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

(c)(1) The membership of the Sacramento district board shall include (A) one or more members who are mayors or city council members, or both, and (B) one or more members who are county supervisors.

(2) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(d) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(e) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the

1 county if the district only contains one county or a majority of counties within the district if  
2 the district contains more than one county.

3 (f)(1) If the district fails to comply with subdivision (c), one-third of the members of the  
4 governing board shall be mayors or city council members, and two-thirds shall be county  
5 supervisors. The number of those members shall be determined as provided in paragraph  
6 (2) of subdivision (c) and the members shall be selected pursuant to subdivision (e).

7 (2) For purposes of paragraph (1), if any number which is not a whole number results  
8 from the application of the term “one-third” or “two-thirds,” the number of county  
9 supervisors shall be increased to the nearest integer, and the number of mayors or city  
10 council members decreased to the nearest integer.

11 **Comment.** Section 35500 continues former Health and Safety Code Section 40980 without  
12 substantive change. The reference in paragraph (1) of subdivision (c) to the date on which the  
13 membership requirement began (July 1, 1994) is obsolete and has not been continued.

#### 14 **§ 35501. Chairperson**

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15 35501. The Sacramento district board shall elect a chairperson every two years from its  
16 membership. No member shall serve more than two consecutive terms as chairperson.

17 **Comment.** Section 35501 continues former Health and Safety Code Section 40981 without  
18 change.

### 19 Article 4. Sacramento Metropolitan Air Quality Coordinating Council

#### 20 **§ 35550. Establishment of council**

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21 35550. The Sacramento district may, pursuant to agreement with one or more local  
22 agencies within the district, establish the Sacramento Metropolitan Air Quality Coordinating  
23 Council to provide for coordinated air quality planning within the Sacramento district.

24 **Comment.** Section 35550 continues former Health and Safety Code Section 41040 without  
25 change.

### 26 Article 5. Financial Provisions

#### 27 **§ 35600. Fees on air pollution sources**

---

28 35600. The Sacramento district may adopt a schedule of fees, levied on permitted and  
29 other sources of air pollution, subject to regulation by the Sacramento district, to recover its  
30 costs of implementing this chapter.

31 **Comment.** Section 35600 continues former Health and Safety Code Section 41080(a)  
32 without substantive change.

#### 33 **§ 35601. Contracts for county facilities and services**

---

34 35601. The Sacramento district may contract with a county or counties, in which the  
35 Sacramento district is functioning, to provide facilities and administrative, legal, health  
36 coverage, risk management, clerical, and other support services, including, but not limited  
37 to, those facilities and services that the county or counties provided to the Sacramento  
38 district prior to July 1, 1994.

39 **Comment.** Section 35601 continues former Health and Safety Code Section 41080(b)  
40 without substantive change.

1   **§ 35602. Surcharge on motor vehicle registration fees**

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2       35602. (a) Subject to Article 3.7 (commencing with Section 53720) of Chapter 4 of Part  
3       1 of Division 2 of Title 5 of the Government Code, or with the approval of the board of  
4       supervisors of each county included, in whole or in part, within the Sacramento district, the  
5       Sacramento district board may adopt a surcharge on the motor vehicle registration fees  
6       applicable to all motor vehicles registered in those counties within the Sacramento district  
7       whose boards of supervisors have adopted a resolution approving the surcharge. The  
8       surcharge shall be collected by the Department of Motor Vehicles and, after deducting the  
9       department's administrative costs, the remaining funds shall be transferred to the  
10      Sacramento district. Prior to the adoption of any surcharge pursuant to this subdivision, the  
11      district board shall make a finding that any funds allocated to the district as a result of the  
12      adoption of a county transportation sales and use tax are insufficient to carry out the  
13      purposes of this chapter.

14      (b) The surcharge shall not exceed four dollars (\$4).

15      (c) After consulting with the Department of Motor Vehicles on the feasibility thereof, the  
16      Sacramento district board may provide, in the surcharge adopted pursuant to subdivision  
17      (a), to exempt from all or part of the surcharge any category of low-emission motor  
18      vehicle.

19      (d) Funds received by the Sacramento district pursuant to this section shall be used to  
20      implement the strategy with respect to the reduction in emissions from vehicular sources,  
21      including, but not limited to, a clean fuels program and motor vehicle use reduction  
22      measures. Not more than 5 percent of the funds collected pursuant to this section shall be  
23      used by the district for administrative expenses.

24      **Comment.** Section 35602 continues former Health and Safety Code Section 41081 without  
25      substantive change. The provisions, in subdivision (b), governing surcharges before  
26      December 31, 1990, are obsolete and have not been continued.

27   **§ 35603. Financial incentive programs**

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28       35603. Pursuant to Section 35602, the district may undertake programs which may  
29       include, but are not limited to, financial assistance to fleet operators for the purchase,  
30       conversion, or operation of low-emission motor vehicles, financial assistance or other  
31       incentives to encourage the sale and distribution of cleaner burning fuels, and financial  
32       assistance or other incentives for the purchase and operation of ridesharing vehicles.

33      **Comment.** Section 35603 continues former Health and Safety Code Section 41082 without  
34      substantive change.

35                                   Article 6. General Powers and Duties

36   **§ 35650. Rules and regulations**

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37       35650. (a) The Sacramento district board shall adopt rules and regulations that are not in  
38       conflict with state and federal laws and rules and regulations that reflect the best available  
39       technological and administrative practices. Upon adoption and approval of the air quality  
40       improvement strategy, the rules and regulations shall be amended, if necessary, to conform  
41       to the strategy.

42      (b) The rules and regulations adopted pursuant to subdivision (a) shall require the use of  
43      best available control technology for new and modified sources and the use of best  
44      available retrofit control technology for existing sources.



1 (c) The rules and regulations of the Sacramento County Air Pollution Control District  
2 shall remain in effect and shall be enforced by the Sacramento district, until superseded or  
3 amended by the Sacramento district board.

4 (d) In adopting any regulation, the Sacramento district board shall comply with Section  
5 32301.

6 **Comment.** Section 35650 continues former Health and Safety Code Section 41010 without  
7 substantive change.

#### 8 **§ 35651. Motor vehicle fleets**

---

9 35651. (a) After a public hearing, the Sacramento district may adopt regulations to  
10 require owners or operators of public or commercial motor vehicle fleets, or both,  
11 including those operated by the state, to periodically submit information to the Sacramento  
12 district on the number and type of vehicles operated within the Sacramento district,  
13 including, but not limited to, the amount and type of fuel used, for use by the Sacramento  
14 district in ascertaining the contribution of these vehicles to air pollution emissions within  
15 the Sacramento district.

16 (b) After a public hearing, the Sacramento district may adopt regulations to require  
17 operators of public and commercial fleet vehicles, when adding vehicles to, or replacing  
18 vehicles in, an existing fleet or when purchasing vehicles to form a new fleet, to purchase  
19 low-emission motor vehicles and to require, to the maximum extent feasible or appropriate,  
20 that those vehicles be operated on a cleaner burning alternative fuel. Rules and regulations  
21 adopted under this section shall be applicable to vehicles operated by the state only when  
22 funds necessary to pay the costs to the state to comply with those rules and regulations  
23 have been appropriated for that purpose.

24 (c) For purposes of this section, “motor vehicle fleet” means 15 or more vehicles under  
25 common ownership or operation.

26 **Comment.** Section 35651 continues former Health and Safety Code Section 41011 without  
27 change.

#### 28 **§ 35652. Commute alternatives**

---

29 35652. In consultation with the Department of Transportation and other appropriate state  
30 and local public agencies, after a public hearing, the Sacramento district may adopt  
31 regulations to encourage ridesharing, van pooling, peak shifting, or flexible work hours, in  
32 order to improve air quality within the Sacramento district.

33 **Comment.** Section 35652 continues former Health and Safety Code Section 41012 without  
34 change.

#### 35 **§ 35653. Indirect sources**

---

36 35653. The Sacramento district may adopt regulations to limit or mitigate the impact on  
37 air quality of indirect or areawide sources.

38 **Comment.** Section 35653 continues former Health and Safety Code Section 41013 without  
39 change.

#### 40 **§ 35654. Transportation emission control measures**

---

41 35654. The Sacramento district may conduct public education, marketing,  
42 demonstration, monitoring, research, and evaluation programs or projects with respect to  
43 transportation emission control measures.

1     **Comment.** Section 35654 continues former Health and Safety Code Section 41014 without  
2 change.

## 3                     Article 7. Air Quality Improvement Strategy

### 4     **§ 35700. Adoption of strategy**

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5         35700. Not later than January 1, 1990, the Sacramento district shall adopt an air quality  
6 improvement strategy to reduce public exposure to air pollution and toxic air contaminants  
7 and to achieve and maintain state and federal ambient air quality standards by the earliest  
8 practicable date.

9     **Comment.** Section 35700 continues former Health and Safety Code Section 41060 without  
10 change.

11     ☞ **Note.** This section specifies a deadline for adoption of a strategy. This deadline  
12 provision may be obsolete. The Commission would like to receive input on two questions: (1)  
13 Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

### 14     **§ 35701. Enforcement**

---

15         35701. The strategy shall provide for the enforcement of regulations adopted pursuant to  
16 Section 35651 or 35653 and shall provide for the implementation and enforcement of the  
17 transportation control measures included in the state implementation plan, as required by  
18 state and federal law.

19     **Comment.** Section 35701 continues former Health and Safety Code Section 41061 without  
20 substantive change.

### 21     **§ 35702. Cleaner fuels**

---

22         35702. (a) The strategy shall include a clean fuels program to provide, to the extent  
23 feasible and necessary to carry out the purposes of this chapter, a schedule for the  
24 introduction of cleaner burning alternative fuels and low-emission motor vehicles or control  
25 measures providing equivalent emission reductions within the district, a program to  
26 encourage the establishment of the necessary infrastructure to support the introduction of  
27 cleaner burning fuels, and demonstration programs and incentives to encourage the  
28 purchase of clean fueled vehicles and the use of cleaner burning fuels.

29         (b) In developing the clean fuels program, the district shall consider projects utilizing  
30 methanol fuel; fuel cells; liquid petroleum gas; natural gas, including compressed natural  
31 gas; combination fuels; synthetic fuels; electricity, including electric vehicles; ethanol; and  
32 other cleaner burning fuels.

33         (c) Nothing in this section authorizes the Sacramento district to require the sale or supply  
34 of any specific motor vehicle fuel.

35     **Comment.** Section 35702 continues former Health and Safety Code Section 41062 without  
36 change.

### 37     **§ 35703. Transportation system management**

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38         35703. The strategy shall provide for the implementation of all feasible measures to  
39 improve transportation system management and reduce or mitigate increases in motor  
40 vehicle use within the Sacramento Valley region.

41     **Comment.** Section 35703 continues former Health and Safety Code Section 41063 without  
42 change.

1   **§ 35704. Contracts for analyses**

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2       35704. In preparing, evaluating, and amending the strategy, the district may contract  
3 with the Sacramento Area Council of Governments or with any private organization or  
4 consultant for the preparation of analyses of the availability and effectiveness of  
5 transportation controls and motor vehicle use reduction measures.

6       **Comment.** Section 35704 continues former Health and Safety Code Section 41064 without  
7 change.

8   **§ 35705. Public education**

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9       35705. The strategy shall include a public education program designed to achieve  
10 effective implementation of all feasible transportation system management measures.

11       **Comment.** Section 35705 continues former Health and Safety Code Section 41065 without  
12 change.

13   **§ 35706. Nonattainment area plans**

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14       35706. The strategy shall be consistent with any nonattainment area plan required by  
15 state or federal law, or any requirement imposed on a local agency with respect to the  
16 preparation or administration of a plan.

17       **Comment.** Section 35706 continues former Health and Safety Code Section 41066 without  
18 change.

19                   **CHAPTER 5. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

20                                   **Article 1. General Provisions**

21   **§ 35800. Short title**

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22       35800. This chapter shall be known and may be cited as the “Lewis-Presley Air Quality  
23 Management Act.”

24       **Comment.** Section 35800 continues former Health and Safety Code Section 40400 without  
25 change.

26   **§ 35801. Legislative findings and declaration**

---

27       35801. The Legislature finds and declares all of the following:

28       (a) That the South Coast Air Basin is a geographical entity not reflected by political  
29 boundaries.

30       (b) That the basin is acknowledged to have critical air pollution problems caused by the  
31 operation of millions of motor vehicles in the basin, stationary sources of pollution,  
32 frequent atmospheric inversions that trap aerial contaminants, and the large amount of  
33 sunshine that transforms vehicular and nonvehicular emissions into a variety of deleterious  
34 chemicals.

35       (c) That these critical air pollution problems are most acute in the foothill communities of  
36 the San Gabriel/Pomona Valleys and the Riverside/San Bernardino areas, where pollutants  
37 which originate in other parts of the basin are trapped by geographical and meteorological  
38 conditions characteristic of these areas.

39       (d) That the state and federal governments have promulgated ambient air quality  
40 standards for the protection of public health, and it is in the public interest that those  
41 standards not be exceeded.

(e) That, in order to achieve and maintain air quality within the ambient air quality standards, a comprehensive basinwide air quality management plan must be developed and implemented to provide for the rapid abatement of existing emission levels to levels which will result in the achievement and maintenance of the state and federal ambient air quality standards and to ensure that new sources of emissions are planned and operated so as to be consistent with the basin's air quality goals.

(f) That, in recognition of the fact that some regions within the basin face more critical air pollution problems than others, it is necessary for the basinwide air quality management plan to consider the specific air pollution problems of regions within the air basin in planning for facilities which create new sources of emissions.

(g) That, in order to successfully develop and implement a meaningful strategy for achieving and maintaining ambient air quality standards, local governments in the South Coast Air Basin must be delegated additional authority from the state in the control of vehicular sources and must retain existing authority to set stringent emission standards for nonvehicular sources.

(h) That, in order to successfully implement a comprehensive program for the achievement and maintenance of state and federal ambient air quality standards in the South Coast Air Basin, the responsibilities of local and regional authorities with respect to air pollution control and air quality management plan adoption must be fully integrated into an agency with basinwide authority, largely to be governed by representatives of county and city governments.

**Comment.** Section 35801 continues former Health and Safety Code Section 40402 without change.

#### **§ 35802. Further legislative findings and declarations**

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35802. The Legislature further finds and declares that the south coast district shall take a leadership role to sponsor, coordinate, and promote projects which increase the use of clean-burning fuels in the transportation and stationary source sectors, and that it is the intent of the Legislature that the district establish voluntary programs to accelerate the utilization of clean-burning fuels within the South Coast Air Basin.

**Comment.** Section 35802 continues former Health and Safety Code Section 40404 without change.

#### **§ 35803. Further legislative findings and declarations**

---

35803. The Legislature further finds and declares that the south coast district, in fulfilling its directive to require the use of best available control technology for new sources, and in consideration of the state policy to promote and encourage the use of solar energy systems, shall make reasonable efforts to incorporate solar energy technology into its air quality management plan in applications where it can be shown to be cost-effective.

**Comment.** Section 35803 continues former Health and Safety Code Section 40404.5 without change.

#### **§ 35804. Creation**

---

35804. There is hereby created the South Coast Air Quality Management District in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended.

1     **Comment.** Section 35804 continues former Health and Safety Code Section 40410 without  
2 change.

3     **§ 35805. Commencement of district operation**

---

4     35805. The south coast district shall commence operation on February 1, 1977, and on  
5 that date shall assume the authority, functions, and responsibilities of the Southern  
6 California Air Pollution Control District.

7     **Comment.** Section 35805 continues former Health and Safety Code Section 40416 without  
8 change.

9     ☞ **Note.** This section provides the date on which the district commenced operations. This  
10 provision may be obsolete. The Commission would like to receive input on whether the  
11 section continues to serve a useful purpose.

12    **§ 35806. Sensitive zone**

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13    35806. (a) There is hereby established within the south coast district a sensitive zone,  
14 which shall include the general forecast areas known as the San Gabriel/Pomona Valleys  
15 and the Riverside/San Bernardino areas.

16    (b) In addition to every other requirement for the issuance of a permit, the following  
17 requirements shall be applicable to the issuance of a permit by the south coast district for  
18 the construction or operation of any stationary source within the sensitive zone:

19    (1) When emission offsets are required to mitigate the air quality impacts of a stationary  
20 source, the offsets shall be secured by the applicant so as to bring about ambient air quality  
21 improvements within the sensitive zone. The applicant shall be required to demonstrate, to  
22 the satisfaction of the south coast district, that any emissions reductions acquired from  
23 stationary sources operating within the South Coast Air Basin will result in a demonstrable  
24 net ambient air quality improvement within the sensitive zone.

25    (2) In considering an application for a permit to construct or operate a stationary source,  
26 the south coast district board shall, in addition to making a finding and determination that  
27 the impacts of the stationary source will be mitigated so as to result in a net improvement in  
28 ambient air quality within the South Coast Air Basin, also make a finding and determination  
29 that the impacts of the stationary source can be mitigated so as to result in a net  
30 improvement in ambient air quality within the sensitive zone.

31    (c) The south coast district board shall adopt rules and regulations to implement this  
32 section by January 1, 1991.

33    (d) The south coast district shall report to the Legislature by January 1, 1992, on the  
34 implementation of subdivision (b). This report shall include a description of the impact of  
35 the requirements of subdivision (b) on the issuance of permits for the construction or  
36 operation of stationary sources within the sensitive zone, and upon air quality within the  
37 sensitive zone.

38    **Comment.** Section 35806 continues former Health and Safety Code Section 40410.5  
39 without change.

40    ☞ **Note.** Subdivision (c) specifies a deadline for adoption of regulations. Subdivision (d)  
41 specifies a deadline for the submission of a report to the Legislature. These deadlines may be  
42 obsolete. The Commission would like to receive input on two questions: (1) Were the  
43 requirements met? (2) Do the deadline provisions still serve a useful purpose?

1    **§ 35807. Inclusion of Santa Barbara or Ventura Counties**

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2       35807. (a) The south coast district board may, by resolution, include all or part of the  
3 County of Santa Barbara or the County of Ventura within the south coast district, upon  
4 receipt of a resolution from the appropriate board of supervisors requesting inclusion.

5       (b) The inclusion of the county, or portion thereof, as the case may be, shall take effect at  
6 the commencement of the first quarter commencing at least 60 days after the adoption of the  
7 resolution.

8       (c) A copy of the resolution of approval shall be sent by the south coast district board to  
9 the board of supervisors and the state board.

10      **Comment.** Section 35807 continues former Health and Safety Code Section 40411 without  
11 change.

12    **§ 35808. District as exclusive local agency**

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13       35808. The south coast district shall be the sole and exclusive local agency within the  
14 South Coast Air Basin with the responsibility for comprehensive air pollution control, and  
15 it shall have the duty to represent the citizens of the basin in influencing the decisions of  
16 other public and private agencies whose actions might have an adverse impact on air quality  
17 in the basin.

18      **Comment.** Section 35808 continues former Health and Safety Code Section 40412 without  
19 change.

20    **§ 35809. Request for inclusion in district**

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21       35809. The board of supervisors of a county that is only included in part within the south  
22 coast district may, by resolution, request the south coast district board to have that area of  
23 the county not included within the South Coast Air Basin included in the south coast  
24 district, or the board of supervisors may request to contract with the south coast district to  
25 perform air pollution control functions in that area of the respective county not within the  
26 South Coast Air Basin. The south coast district board may, by resolution, agree to (1) have  
27 that area of the county not included within the South Coast Air Basin included in the south  
28 coast district, or (2) perform air pollution control functions for that area of the county not  
29 included within the South Coast Air Basin, or both (1) and (2).

30      **Comment.** Section 35809 continues former Health and Safety Code Section 40413 without  
31 change.

32    **§ 35810. Effect of chapter on local land use authority**

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33       35810. No provision of this chapter shall constitute an infringement on the existing  
34 authority of counties and cities to plan or control land use, and no provision of this chapter  
35 shall be interpreted as providing or transferring new authority over land use to either the  
36 south coast district, the Southern California Association of Governments, or the state  
37 board.

38      **Comment.** Section 35810 continues former Health and Safety Code Section 40414 without  
39 substantive change.

40    **§ 35811. Power of local agency to adopt stricter controls**

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41       35811. (a) No provision of this chapter is a limitation on the power of any city or county  
42 included, in whole or in part, within the south coast district to adopt any ordinance with  
43 respect to air pollution control which is stricter than the rules and regulations adopted by the



1 south coast district board and not in conflict therewith. The south coast district board shall  
2 enforce any such ordinance.

3 (b) At the request of the governing body of any city or county included, in whole or in  
4 part, within the south coast district, the south coast district board may make available, on a  
5 temporary basis, the necessary personnel, equipment, and services to assist in adopting any  
6 ordinance stricter than the rules and regulations adopted by the south coast district.

7 **Comment.** Section 35811 continues former Health and Safety Code Section 40449 without  
8 change.

#### 9 **§ 35812. Authority of county**

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10 35812. Except as provided in Section 35811 regarding the adoption of stricter orders,  
11 rules, and regulations than those of the south coast district board, the board of supervisors  
12 of any county included, in whole or in part, within the south coast district shall have no  
13 authority with respect to the control of air pollution in that part of the county included  
14 within the south coast district.

15 **Comment.** Section 35812 continues former Health and Safety Code Section 40450 without  
16 substantive change. The reference to the date after which an included county loses air  
17 pollution control authority (February 1, 1977), is obsolete and has not been continued.

### 18 **Article 2. Definitions**

#### 19 **§ 35850. Application of definitions**

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20 35850. Unless the provision or context otherwise requires, the definitions in this article  
21 govern the construction of this chapter.

22 **Comment.** Section 35850 restates the substance of the introductory clauses of former  
23 Health and Safety Code Sections 40405-40408.

#### 24 **§ 35855. “Best available control technology”**

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25 35855. (a) “Best available control technology” means an emission limitation that will  
26 achieve the lowest achievable emission rate for the source to which it is applied. Subject to  
27 subdivision (b), “lowest achievable emission rate,” as used in this section, means the more  
28 stringent of the following:

29 (1) The most stringent emission limitation that is contained in the state implementation  
30 plan for the particular class or category of source, unless the owner or operator of the  
31 source demonstrates that the limitation is not achievable.

32 (2) The most stringent emission limitation that is achieved in practice by that class or  
33 category or source.

34 (b) “Lowest achievable emission rate” shall not be construed to authorize the permitting  
35 of a proposed new source or a modified source that will emit any pollutant in excess of the  
36 amount allowable under the applicable new source standards of performance.

37 **Comment.** Section 35855 continues former Health and Safety Code Section 40405 without  
38 change.

39 ☞ **Note.** It isn’t clear whether subdivision (b) is intended as an elaboration on the meaning  
40 of “lowest achievable emission rate” as used in this section, or is intended as a more  
41 generally applicable rule of construction. The only other uses of the term in this chapter  
42 occur in subdivisions (a) and (d) of Health and Safety Code Section 40440.11, where the  
43 term is qualified as follows: “the lowest achievable emission rate pursuant to federal law.”

1 This suggests that federal law controls the definition of the term as used in that section. The  
2 Commission would appreciate input on this issue.

3 **§ 35860. “Best available retrofit control technology”**

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4 35860. “Best available retrofit control technology” means an emission limitation that is  
5 based on the maximum degree of reduction achievable, taking into account environmental,  
6 energy, and economic impacts by each class or category of source.

7 **Comment.** Section 35860 continues former Health and Safety Code Section 40406 without  
8 change.

9 **§ 35865. “Electric plant”**

---

10 35865. “Electric plant” means an electric plant as defined in Section 217 of the Public  
11 Utilities Code, whether publicly or privately owned or operated.

12 **Comment.** Section 35865 continues former Health and Safety Code Section 40407 without  
13 change.

14 **§ 35870. “Electronic or computer data storage”**

---

15 35870. “Electronic or computer data storage” means paperless record retention utilizing  
16 optical, electronic, magnetic, micrographic, or photographic media or other similar  
17 technology capable of accurately producing or reproducing data in accordance with  
18 minimum standards or guidelines for the preservation and reproduction of the medium  
19 adopted by the American National Standards Institute or the Association for Information  
20 and Image Management.

21 **Comment.** Section 35870 continues former Health and Safety Code Section 40407.5  
22 without change.

23 **§ 35875. “Plan”**

---

24 35875. “Plan” means the south coast district air quality management plan.

25 **Comment.** Section 35875 continues former Health and Safety Code Section 40408 without  
26 change.

27 **Article 3. Governing Body**

28 **§ 35900. Composition of Board**

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29 35900. The south coast district shall be governed by a district board consisting of 12  
30 members appointed as follows:

31 (a) One member appointed by the Governor, with the advice and consent of the Senate.

32 (b) One member appointed by the Senate Committee on Rules.

33 (c) One member appointed by the Speaker of the Assembly.

34 (d) Four members appointed by the boards of supervisors of the counties in the south  
35 coast district. Each board of supervisors shall appoint one of these members, who shall be  
36 one of the following:

37 (1) A member of the board of supervisors of the county making the appointment.

38 (2) A mayor or member of a city council from a city in the portion of the county making  
39 the appointment that is included in the south coast district.

40 (e) Three members appointed by cities in the south coast district. The city selection  
41 committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of

1 these members, who shall be either a mayor or a member of the city council of a city in the  
2 portion of the county included in the south coast district.

3 (f) A member appointed by the cities of the western region of Los Angeles County,  
4 consisting of the Cities of Agoura Hills, Avalon, Beverly Hills, Carson, Compton, Culver  
5 City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Hidden Hills, Inglewood,  
6 Lawndale, Lomita, Los Angeles, Manhattan Beach, Palos Verdes Estates, Rancho Palos  
7 Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Santa Monica, Torrance,  
8 West Hollywood, and Westlake Village. These cities shall organize as a city selection  
9 committee for the purposes of subdivision (b) of Section 35902. The member appointed  
10 shall be either a mayor or a member of the city council of a city in the western region.

11 (g) A member appointed by the cities of the eastern region of Los Angeles County,  
12 consisting of the cities in Los Angeles County that are not listed in subdivision (f). These  
13 cities shall organize as a city selection committee for the purposes of subdivision (b) of  
14 Section 35902. The member appointed shall be either a mayor or a member of the city  
15 council of a city in the eastern region.

16 **Comment.** Section 35900 continues former Health and Safety Code Section 40420(a)  
17 without substantive change.

#### 18 **§ 35901. Qualifications of members**

---

19 35901. (a) All members shall be appointed on the basis of their demonstrated interest and  
20 proven ability in the field of air pollution control and their understanding of the needs of the  
21 general public in connection with air pollution problems of the South Coast Air Basin.

22 (b) The member appointed by the Governor shall be either a physician who has training  
23 and experience in the health effects of air pollution, an environmental engineer, a chemist, a  
24 meteorologist, or a specialist in air pollution control.

25 (c) Each member shall be appointed on the basis of his or her ability to attend  
26 substantially all meetings of the south coast district board, to discharge all duties and  
27 responsibilities of a member of the south coast district board on a regular basis, and to  
28 participate actively in the affairs of the south coast district. No member may designate an  
29 alternate for any purpose or otherwise be represented by another in his or her capacity as a  
30 member of the south coast district board.

31 (d) The members appointed by the Senate Committee on Rules and the Speaker of the  
32 Assembly shall have one or more of the qualifications specified in subdivision (b) or shall  
33 be a public member. No such member appointed may be a locally elected official.

34 (e) All members shall be residents of the district.

35 **Comment.** Section 35901 continues former Health and Safety Code Section 40420(b)-(d),  
36 (g)-(h) without substantive change.

#### 37 **§ 35902. Appointments**

---

38 35902. (a) Each appointment by a board of supervisors shall be considered and acted on  
39 at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall  
40 provide an opportunity for testimony on the qualifications of the candidates for  
41 appointment.

42 (b) The appointments by cities in the south coast district shall be considered and acted on  
43 at a duly noticed meeting of the city selection committee, which shall meet in a government  
44 building and provide an opportunity for testimony on the qualifications of the candidates  
45 for appointment. Each appointment shall be made by not less than a majority of all the cities  
46 in the portion of the county included in the south coast district having not less than a  
47 majority of the population of all the cities in the portion of the county included in the south

1 coast district. Population shall be determined on the basis of the most recent verifiable  
2 census data developed by the Department of Finance. Persons residing in unincorporated  
3 areas or areas of a county outside the south coast district shall not be considered for the  
4 purposes of this subdivision.

5 **Comment.** Section 35902 continues former Health and Safety Code Section 40420(e)-(f)  
6 without substantive change.

#### 7 **§ 35903. Mayors' designated representatives**

---

8 35903. For the purpose of complying with Section 50271 of the Government Code, each  
9 mayor shall designate a member of the city's legislative body to attend and vote in his or  
10 her place and as his or her representative if the mayor is unable to attend any meeting of the  
11 city selection committee to be held pursuant to this article. If a mayor does not make this  
12 designation within 10 days preceding a meeting of the city selection committee, the  
13 legislative body shall designate one of its own members to represent the city.

14 **Comment.** Section 35903 continues former Health and Safety Code Section 40421.5  
15 without change.

#### 16 **§ 35904. Terms**

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17 35904. (a) The term of each member of the south coast district board shall be four years  
18 and until his or her successor is appointed. Upon the expiration of his or her term, a  
19 member who is a mayor from the County of Orange or a member of a city council from the  
20 County of Orange may be reappointed, in accordance with subdivision (b) of Section  
21 35902, within 60 days, and the office shall become vacant if the member is not so  
22 reappointed within 60 days. Any vacancy on the south coast district board shall be filled  
23 within 60 days of its occurrence by its appointing authority.

24 (b) The members first appointed to the board shall classify themselves by lot so that the  
25 terms of four members expire January 15, 1990, the terms of four members expire January  
26 15, 1991, and the terms of three members expire January 15, 1992.

27 **Comment.** Section 35904 continues former Health and Safety Code Section 40422(a)-(b)  
28 without substantive change. Uncodified statutory provisions applicable to former Health and  
29 Safety Code Section 40422 now apply to this section. See, e.g., 1988 Cal. Stat. ch. 741, § 5:

30 For the purposes of allocating terms, pursuant to subdivision (b) of Section 40422 of  
31 the Health and Safety Code, resulting from the addition of a 12th seat to the governing  
32 board of the South Coast Air Quality Management District by the amendment to  
33 Section 40420 of the Health and Safety Code by this act, the members appointed  
34 pursuant to paragraphs (6) and (7) of subdivision (a) of Section 40420 shall classify  
35 themselves by lot so that the term of one expires January 15, 1990, and the term of the  
36 other expires January 15, 1992.

37 ☞ **Note.** Subdivision (b) governs a transition that has already occurred and therefore may  
38 be obsolete. The Commission would like to receive input on whether this subdivision has any  
39 continued usefulness.

#### 40 **§ 35905. Loss of local office**

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41 35905. Notwithstanding subdivision (a) of Section 35904, no member of a board of  
42 supervisors, mayor, or member of a city council shall hold office on the south coast district  
43 board for more than 60 days after ceasing to be supervisor, mayor, or member of the city  
44 council, respectively, and the membership on the board held by that person terminates upon  
45 the expiration of that 60-day period. However, any mayor who immediately resumes the

1 office of member of the city council, and any member of a city council who becomes  
2 mayor, has not ceased to hold office for the purposes of this section.

3 **Comment.** Section 35905 continues former Health and Safety Code Section 40422(c)  
4 without substantive change.

#### 5 **§ 35906. Removal**

---

6 35906. Any member who does not attend three consecutive meetings of the south coast  
7 district board without good and sufficient cause therefor, shall be removed by the  
8 appointing authority. Any member who does not attend three consecutive meetings of the  
9 south coast district board, without good and sufficient cause therefor, and is not thereupon  
10 removed by the appointing authority, may be removed by the affirmative vote of at least  
11 eight members of the south coast district board.

12 **Comment.** Section 35906 continues former Health and Safety Code Section 40422(d)  
13 without substantive change.

#### 14 **§ 35907. Meetings**

---

15 35907. The south coast district board shall provide for the frequency and location of its  
16 meetings, except that no meeting of the south coast district board shall take place without  
17 public notice given at least seven days in advance of the scheduled date of the meeting or,  
18 as to special and emergency meetings, without complying with the requirements of Section  
19 54956 or 54956.5, respectively, of the Government Code.

20 **Comment.** Section 35907 continues former Health and Safety Code Section 40423 without  
21 change.

#### 22 **§ 35908. Quorum**

---

23 35908. (a) Except as provided in subdivision (b), seven members of the south coast  
24 district board shall constitute a quorum, and no official action shall be taken by the south  
25 coast district board except in the presence of a quorum and upon the affirmative votes of a  
26 majority of the members of the south coast district board.

27 (b) Notwithstanding subdivision (a), whenever there are two or more vacancies on the  
28 south coast district board, six members shall constitute a quorum, and the two vacant  
29 positions shall not be counted toward the majority required for official action by the south  
30 coast district board. Thereafter, whenever at least one of those vacancies is filled, the  
31 quorum and voting requirements of subdivision (a) shall apply.

32 **Comment.** Section 35908 continues former Health and Safety Code Section 40424 without  
33 change.

#### 34 **§ 35909. Voting**

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35 35909. Voting by the south coast district board on the adoption of all items on its agenda  
36 shall be by rollcall. Unless any board member objects, a substitute rollcall may be used on  
37 any agenda item. A substitute rollcall shall consist of a unanimous voice vote of the south  
38 coast district board members in attendance and shall be recorded by the clerk of the board  
39 as an “aye” vote for all members present. For purposes of this section, any consent  
40 calendar is a single item.

41 **Comment.** Section 35909 continues former Health and Safety Code Section 40424.5  
42 without change.



1    **§ 35910. Chairman**

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2       35910. The south coast district board shall elect a chairman every two years from its  
3       membership. No member shall serve more than two consecutive terms as chairman.

4       **Comment.** Section 35910 continues former Health and Safety Code Section 40425 without  
5       change.

6    **§ 35911. Compensation**

---

7       35911. Each member of the south coast district board shall receive compensation of one  
8       hundred dollars (\$100) for each day, or portion thereof, but not to exceed one thousand  
9       dollars (\$1,000) per month, while attending meetings of the south coast district board or  
10      any committee thereof or, upon authorization of the south coast district board, while on  
11      official business of the south coast district, and the actual and necessary expenses incurred  
12      in performing the member's official duties.

13      **Comment.** Section 35911 continues former Health and Safety Code Section 40426 without  
14      change.

15   **§ 35912. Political Reform Act**

---

16      35912. (a) Upon the request of any person, or on his or her own initiative, the Attorney  
17      General may file a complaint in the superior court for the county in which the south coast  
18      district board has its principal office alleging that a member of the south coast district board  
19      knowingly or willfully violated any provision of Title 9 (commencing with Section 81000)  
20      of the Government Code, setting forth the facts upon which the allegation is based, and  
21      asking that the member be removed from office. Further proceedings shall be in accordance  
22      as near as may be with rules governing civil actions. If, after trial, the court finds that the  
23      member of the south coast district board knowingly violated this section, it shall issue an  
24      order removing the member from office.

25      (b) The remedy provided in this section is in addition to, and not to the exclusion of, any  
26      other remedy, sanction, or penalty available pursuant to law.

27      **Comment.** Section 35912 continues former Health and Safety Code Section 40426.5  
28      without change.

29   **§ 35913. Conflict of interest**

---

30      35913. (a) No retired, dismissed, or separated employee or officer of the south coast  
31      district, or member of the south coast district board, shall participate in any contract of the  
32      district in which he or she engaged in any of the negotiations, transactions, planning,  
33      arrangements, or any part of the decisionmaking process relevant to the contract while  
34      acting in the capacity of employee or officer of the south coast district, or member of the  
35      south coast district board, during the 24-month period commencing on the date the person  
36      became retired, dismissed, or separated from service with the south coast district or ceased  
37      being a member of the south coast district board.

38      (b) For a period of 12 months following retirement, dismissal, or separation from service  
39      with the south coast district, no former employee or officer of the south coast district, or  
40      member of the south coast district board, shall enter into a contract with the south coast  
41      district if that person had been with the south coast district in a position involving making  
42      any decision, giving or withholding any approval, making any recommendation, rendering  
43      any advice, or conducting any investigation concerning the general subject of the proposed  
44      contract within 12 months prior to retirement, dismissal, or separation from service with  
45      the south coast district. Notwithstanding the prohibitions in this subdivision, the south



1 coast district board may, by a two-thirds vote, enter into a contract with a retired employee  
2 of the south coast district or an employee who separated under conditions satisfactory to the  
3 south coast district if the south coast district board finds and determines that, at the time of  
4 the retirement or separation, the employee was working on one or more programs that are  
5 of great importance to the south coast district, that the services of the employee are  
6 necessary to assure the continued effectiveness of the program or programs, that the  
7 contract is only for that period of time necessary to complete the employee's work on the  
8 program or programs, and that the employee is the most qualified person to provide the  
9 needed services.

10 (c) No former employee or officer of the south coast district previously holding a  
11 position designated in the conflict-of-interest code of the south coast district, and no  
12 member of the south coast district board, who was, at any time while in the service of the  
13 south coast district, involved in making any decision, giving or withholding any approval,  
14 making any recommendation, rendering any advice, or conducting any investigation  
15 involving a particular person shall, with respect to any of these matters that the former  
16 employee, officer, or member of the south coast district board was involved in, do any of  
17 the following:

18 (1) Act as an agent or attorney, or otherwise represent, that person in an appearance  
19 before the south coast district board or the hearing board.

20 (2) Make a communication on behalf of that person with the intent to influence the south  
21 coast district board or its officers or employees or the hearing board.

22 (3) Represent, aid, counsel, advise, consult with, or otherwise assist that person in  
23 connection with any of these matters in any capacity.

24 (4) Knowingly enter into a contract or accept employment for any purpose specified in  
25 this subdivision.

26 (d) Any violation of this section is a misdemeanor.

27 (e) This section shall become operative on July 1, 1988.

28 **Comment.** Section 35913 continues former Health and Safety Code Section 40426.7  
29 without substantive change. Former subdivision (e) provided that the section only applies to  
30 persons who are employees or board members with the south coast district on or after July 1,  
31 1988. This provision is obsolete and has not been continued.

## 32 § 35914. Offices

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33 35914. The south coast district board shall determine the location of its headquarters and  
34 may establish branch offices in each of the counties included, in whole or in part, within  
35 the south coast district, and in any other parts of the south coast district that it deems  
36 necessary.

37 **Comment.** Section 35914 continues former Health and Safety Code Section 40427 without  
38 substantive change.

## 39 § 35915. Advisory council

---

40 35915. There is continued in existence the South Coast Air Quality Management District  
41 Advisory Council, which is appointed by the south coast district board, to advise and  
42 consult with the south coast district board in effectuating the purpose of this division.

43 The membership and rules of the advisory council shall be as established by resolution of  
44 the south coast district board.

45 **Comment.** Section 35915 continues former Health and Safety Code Section 40428 without  
46 change.

Article 4. Officers and Employees

**§ 35950. Staff**

---

35950. (a) The south coast district board shall employ the necessary staff to carry out its program throughout the south coast district.

(b) The south coast district board shall appoint an executive officer to direct the staff, subject to the direction and policy of the south coast district board.

(c) The staff shall also be available to serve those portions of a county not included within the south coast district where the county is only partly included within the south coast district.

**Comment.** Section 35950 continues former Health and Safety Code Section 40480(a)-(c) without substantive change.

**§ 35951. Executive officer**

---

35951. The executive officer shall be appointed solely on the basis of the executive officer's administrative and executive abilities and qualifications. The executive officer and designated deputies shall serve at the pleasure of the south coast district board, and shall receive compensation as determined by the south coast district board.

**Comment.** Section 35951 continues former Health and Safety Code Section 40481 without substantive change.

**§ 35952. Delegation of duties to executive officer**

---

35952. (a) The south coast district board may delegate duties to the executive officer as it deems appropriate. The executive officer shall perform and discharge, under the direction and control of the south coast district board, the powers, duties, purposes, functions, and jurisdiction vested in the south coast district board and delegated pursuant to this section.

(b) Any power, duty, purpose, function, or jurisdiction which the south coast district board may lawfully delegate is conclusively presumed to have been delegated to the executive officer unless it is shown that the south coast district board, by affirmative vote recorded in its minutes, specifically has reserved the particular power, duty, purpose, function, or jurisdiction for its own action.

**Comment.** Section 35952 continues former Health and Safety Code Section 40482 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

**§ 35953. Legal counsel**

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35953. The south coast district shall appoint a legal counsel who is admitted to the practice of law in this state.

**Comment.** Section 35953 continues former Health and Safety Code Section 40483 without change.

**§ 35954. Personnel of Southern California Air Pollution Control District**


---

35954. (a) In the appointment of persons to the south coast district staff, the south coast district board shall employ the personnel of the Southern California Air Pollution Control District.

(b) On February 1, 1977, all employees of the Southern California Air Pollution Control District shall be employed by the south coast district and shall be entitled to similar

positions on the south coast district staff. Except as otherwise provided in this article, they shall have permanent merit system employee status and shall perform the similar duties for the south coast district as for the Southern California Air Pollution Control District.

**Comment.** Section 35954 continues former Health and Safety Code Section 40484 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

 **Note.** This section governs a transition that has already occurred and therefore may be obsolete. The Commission would like to receive input on whether this section has any continued usefulness.

#### **§ 35955. Retirement**

---

35955. All officers and employees of the south coast district, other than members of the south coast district board, are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3 of the Government Code).

**Comment.** Section 35955 continues former Health and Safety Code Section 40485 without change.

#### **§ 35956. Status of former Southern California Air Pollution Control District employees**

---

35956. (a) When any person is employed by the south coast district, whose immediate prior employer was the Southern California Air Pollution Control District, for the purpose of, but not limited to, retirement benefits, salary rates, seniority, and all fringe benefits, all the person's time of employment with that district, and the person's time of employment, if any, with the county, a county district, or both, whose authority, functions, and responsibilities have been assumed by that district if that employment was immediately prior to employment with the Southern California Air Pollution Control District, shall be considered as time of employment with the south coast district.

(b) Upon transfer to the south coast district, employees shall retain all their accumulated sick leave, vacation, and retirement benefits.

**Comment.** Section 35956 continues former Health and Safety Code Section 40486 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 35957. Professional assistance**

---

35957. The south coast district may contract for any professional assistance that may be necessary or convenient for the exercise of duties imposed on the south coast district.

**Comment.** Section 35957 continues former Health and Safety Code Section 40489 without substantive change.

#### **§ 35958. Contracts with cities or counties**

---

35958. The south coast district may enter into a contract with any city or county included, in whole or in part, within the south coast district to perform air pollution control functions for the south coast district, and the city or county may perform those functions for the south coast district pursuant to the contract.

**Comment.** Section 35958 continues former Health and Safety Code Section 40480(d) without substantive change.

Article 5. Financial Provisions

**§ 36000. Apportionment to counties**

---

36000. (a) Upon adoption of its budget for the next fiscal year, the south coast district board shall apportion the amount that each county included within the south coast district shall pay to finance the operation of the south coast district in that fiscal year.

(b) The apportionment to a county shall, as determined by the south coast district board, be that proportion of the amount that the population of the portion of the county included within the south coast district bears to the total population of the south coast district, either as determined from the latest federal decennial census or as determined from the latest annual population estimate by the Department of Finance made pursuant to subdivision (g) of Section 13073.5 of the Government Code.

**Comment.** Section 36000 continues former Health and Safety Code Section 40520 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

**§ 36001. Increase in apportionment**

---

36001. (a) Excluding any increase in apportionments due to increases in the salaries or wages and fringe benefits to the south coast district employees, the apportionment levied on a county, for the 1977-78 fiscal year, by the south coast district board shall not exceed by more than 15 percent the apportionment levied on that county by the Southern California Air Pollution Control District for the 1976-77 fiscal year.

(b) For the 1978-79 fiscal year, and each fiscal year thereafter, the percentage increase in the county apportionments may not exceed the percentage increase in the California Consumer Price Index as specified in Section 2212 of the Revenue and Taxation Code, or the percentage increase in the total county property tax revenues for the counties included, in whole or in part, within the south coast district, whichever is greater.

(c) The limitations specified in subdivisions (a) and (b) shall not apply to increases in apportionments resulting from the termination of federal or state allocations to the south coast district, if the south coast district board votes to continue the programs financed with those funds.

**Comment.** Section 36001 continues former Health and Safety Code Section 40521 without substantive change. The reference in subdivision (a) to former Health and Safety Code Section 40488 is obsolete and has not been continued. Former Section 40488 was repealed in 1980. See 1980 Cal. Stat. ch. 521, § 1.

☞ **Note.** Subdivision (a) and the first clause of the first sentence of subdivision (b) appear to be obsolete. The Commission would like to receive input on whether these provisions have any continued usefulness. If subdivision (a) is to be preserved, the obsolete reference to former Health and Safety Code Section 40488 will need to be studied more carefully to determine whether elimination of the reference to that section disturbs the meaning of subdivision (a).

**§ 36002. Fee schedule for approval of air contaminant emission control plans**

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36002. The south coast district board may adopt a fee schedule for the approval of plans for the control of emissions of air contaminants, if the plans are required by a district rule or regulation, to cover the costs of review, planning, inspection, and monitoring related thereto. To the extent that provisions of the plans are enforceable against the person required to submit the plan, an annual fee may be charged to cover the costs of annual

review, inspection, and monitoring related thereto. Every person required to submit a plan, including, notwithstanding Section 6103 of the Government Code, a person that is a publicly owned public utility, shall pay the fees required by the schedule. The fees may not exceed the estimated reasonable cost of planning, monitoring, and enforcing the plans for which the fee is charged. A noticed public workshop shall be held at least 30 days prior to any meeting of the south coast district board at which the levying or revision of the fees is scheduled for hearing. Supporting data on the actual or estimated costs required to provide the service for which the fee is charged shall be made available at the workshop.

**Comment.** Section 36002 continues former Health and Safety Code Section 40522 without change.

### **§ 36003. Fee schedule for areawide or indirect sources of emissions**

---

36003. (a) In addition to any other fees authorized by this article, the south coast district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the south coast district to recover the costs of district programs related to these sources.

(b) The south coast district shall not, however, impose any fee under this section for either of the following:

(1) Wildland vegetative management burning, as described in subdivision (c) of Section 30115.

(2) Emergency incident training necessary for the protection of the community and public safety personnel.

**Comment.** Section 36003 continues former Health and Safety Code Section 40522.5 without substantive change.

### **§ 36004. Fee limitation**

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36004. The total amount of fees collected by the south coast district in any fiscal year shall not exceed the amount of fees collected by the district in the 1993-94 fiscal year, except that the amount may be adjusted annually in the 1994-95 fiscal year and subsequent fiscal years to reflect any increase in the California Consumer Price Index for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations. This limitation shall not affect or limit the fees which may be imposed and collected pursuant to a state or a federal mandate imposed on or after January 1, 1994.


**Comment.** Section 36004 continues former Health and Safety Code Section 40523 without change.

### **§ 36005. Succession to real property**

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36005. All interests in real property held in the name of the Southern California Air Pollution Control District shall become the property of the south coast district on February 1, 1977, and the south coast district shall succeed as of that date to the interest and liability of that district in any leases.

**Comment.** Section 36005 continues former Health and Safety Code Section 40524 without change.

 **Note.** This section governs a transition that has already occurred and therefore may be obsolete. The Commission would like to receive input on whether this section has any continued usefulness.

1    **§ 36006. Indebtedness**

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2       36006. The south coast district board may borrow money and incur indebtedness in  
3       anticipation of the revenue for the current year in which the indebtedness is incurred or for  
4       the ensuing year. That indebtedness shall not exceed the total amount of the estimated  
5       revenue for either the current year or the ensuing year.

6       **Comment.** Section 36006 continues former Health and Safety Code Section 40526 without  
7       substantive change.

8    **§ 36007. Treasurer**

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9       36007. (a) The south coast district board shall appoint a treasurer, who shall be the  
10       custodian of funds of the south coast district and who shall make payments only upon  
11       warrants duly and regularly signed by the person authorized by the south coast district  
12       board.

13       (b) The treasurer shall keep an account of all receipts and disbursements.

14       **Comment.** Section 36007 continues former Health and Safety Code Section 40527 without  
15       substantive change. The former undesignated paragraphs have been designated as  
16       subdivisions.

17   **§ 36008. Controller**

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18       36008. The south coast district shall appoint a controller who shall be the accounting  
19       officer for the south coast district and who shall exercise general supervision over the  
20       accounting forms and methods of keeping the accounts of the south coast district.

21       **Comment.** Section 36008 continues former Health and Safety Code Section 40528 without  
22       change.

23   **§ 36009. Payment of salaries and expenses**

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24       36009. The south coast district board may, by resolution, cause to be drawn all warrants  
25       on the treasurer or checks on a bank against all funds, except funds for debt service, of the  
26       south coast district in the treasury or bank for the payment of salaries and expenses of the  
27       south coast district.

28       **Comment.** Section 36009 continues former Health and Safety Code Section 40529 without  
29       change.

30       ☞ **Note.** This section is difficult to understand. The Commission believes that the  
31       following language captures its meaning:

32       (a) By resolution, the south coast district board may pay the salaries and expenses of the  
33       district by either or both of the following means:

34       (1) Warrants drawn on the treasurer.

35       (2) Checks drawn on a bank.

36       (b) Warrants or checks drawn pursuant to subdivision (a) shall be drawn against all  
37       south coast district funds in the treasury or bank, except funds for debt service.

38       The Commission would like to receive input on whether the above language does capture  
39       the meaning of Section 40529, without altering its substance. If so, the Commission proposes  
40       replacing the text of Section 40529 with the above language.

41   **§ 36010. Separate payroll warrants or checks**

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42       36010. The south coast district board may authorize, in writing, the controller to draw  
43       separate payroll warrants or checks in the names of the individual south coast district



1 employees for the respective amounts due each employee so each employee may be  
2 furnished with a statement of the amount earned and an itemization of the amounts  
3 withheld.

4 **Comment.** Section 36010 continues former Health and Safety Code Section 40530 without  
5 change.

#### 6 **§ 36011. Payroll procedure**

---

7 36011. (a) Each payroll warrant or check shall show the closing date of the pay period  
8 for which it is issued, the date of issue, and a statement that it is drawn by order of the  
9 south coast district board. The payroll warrants or checks shall bear the signature of the  
10 controller.

11 (b) The payroll procedure authorized by the south coast district board shall specify the  
12 ending date of the pay period and the date of issue for payroll warrants or checks, except  
13 that the issue date shall be on or before the 10th calendar day following the end of the pay  
14 period. The payroll procedure may provide for salary payments, including salary advances,  
15 more frequently than once a month. The payroll procedure may provide for payroll orders  
16 authorizing salary payments to individual employees on a continuing basis until the time a  
17 notification of changes or adjustments is made.

18 **Comment.** Section 36011 continues former Health and Safety Code Section 40531 without  
19 change.

#### 20 **§ 36012. Payment of claims**

---

21 36012. The south coast district board may authorize, in writing, the controller to issue  
22 warrants or checks in favor of the persons entitled to payment of all claims chargeable  
23 against the south coast district which have been legally examined, allowed, and ordered  
24 paid by the south coast district board. The controller shall issue warrants or checks for all  
25 those claims against the south coast district.

26 **Comment.** Section 36012 continues former Health and Safety Code Section 40532 without  
27 change.

#### 28 **§ 36013. Form of warrants**

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29 36013. The form of the warrants shall be prescribed by the south coast district board and  
30 approved by the treasurer.

31 **Comment.** Section 36013 continues former Health and Safety Code Section 40533 without  
32 change.

#### 33 **§ 36014. Production of reports**

---

34 36014. Except as specified in Section 36007, no county officer shall be responsible for  
35 producing reports, statements, and other data relating to or based upon payments of salaries  
36 or claims of the south coast district pursuant to the procedure authorized in this article.

37 **Comment.** Section 36014 continues former Health and Safety Code Section 40534 without  
38 substantive change.

#### 39 **§ 36015. Retirement data**

---

40 36015. The south coast district shall provide the officials of the Los Angeles County  
41 Employees Retirement Association and the San Bernardino County Employees Retirement

1 Association, in the form prescribed by them, the data necessary to make retirement reports  
2 and maintain records required by law.

3 **Comment.** Section 36015 continues former Health and Safety Code Section 40535 without  
4 change.

#### 5 **§ 36016. Retention of documents**

---

6 36016. All warrants, checks, vouchers, and supporting documents shall be kept by the  
7 south coast district if the procedure authorized under this article is implemented.

8 **Comment.** Section 36016 continues former Health and Safety Code Section 40536 without  
9 change.

#### 10 **§ 36017. County treasurer as district treasurer**

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11 36017. Notwithstanding Section 27005 of the Government Code, or any other section  
12 requiring warrants or orders for warrants to be signed by the county auditor, if the south  
13 coast district treasurer is a county treasurer, the county treasurer shall pay the warrant if  
14 money is available and a person authorized to sign the warrant has signed it. The county  
15 treasurer may charge the south coast district for the cost of fiscal services he or she renders.

16 **Comment.** Section 36017 continues former Health and Safety Code Section 40537 without  
17 change.

#### 18 **§ 36018. Bonds**

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19 36018. (a) The controller shall execute an official bond in an amount fixed by the south  
20 coast district board conditioned upon the faithful performances of his or her duties.

21 (b) A county auditor shall not be liable under the terms of his or her bond or otherwise  
22 for a warrant issued pursuant to this article.

23 (c) This section shall not be applied so as to impair the obligation of any contract in the  
24 bond of the officers in effect on the effective date of this section.

25 **Comment.** Section 36018 continues former Health and Safety Code Section 40538 without  
26 substantive change. The former undesignated paragraphs have been designated as  
27 subdivisions.

#### 28 **§ 36019. County auditor as district auditor**

---

29 36019. (a) If the auditor of the south coast district is a county auditor, the auditor shall be  
30 provided, upon the auditor's request, a monthly listing of the warrants issued under this  
31 section reporting the warrant number, the date and amount of the warrant, the name of the  
32 payee and the fund on which the warrant is drawn and a statement showing for the current  
33 fiscal year to date, for each required expenditure classification, the amount budgeted, actual  
34 expenditures, encumbrances, and unencumbered balances.

35 (b) The form of the listing and statement shall be as prescribed by the south coast district  
36 board and approved by the county auditor.

37 **Comment.** Section 36019 continues former Health and Safety Code Section 40539 without  
38 substantive change. The former undesignated paragraphs have been designated as  
39 subdivisions.

#### 40 **§ 36020. Authority to issue warrants**

---

41 36020. Upon adoption of a resolution by the south coast district board to implement the  
42 procedure to issue warrants pursuant to this article, the procedure shall be implemented on

the first day of the second month following the date of adoption of the resolution. If, at any time, the south coast district board determines that the accounting controls of the south coast district have become inadequate, it may revoke its authorization effective at the beginning of the next fiscal year.

**Comment.** Section 36020 continues former Health and Safety Code Section 40540 without change.

## Article 6. Rulemaking Procedures

### § 36050. Public workshop required

---

36050. Whenever the south coast district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, the south coast district shall conduct one or more public workshops.

**Comment.** Section 36050 continues former Health and Safety Code Section 40440.7(a) without substantive change.

### § 36051. Notice of public workshop

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36051. (a) Notice of the time and place of the first workshop shall be given not less than 75 days prior to the meeting at which the south coast district board will consider the proposed rule or regulation by publication in each county in the south coast district pursuant to Section 6061 of the Government Code and by mail to every person who filed a written request for notice of proposed regulatory action with the south coast district and any person the south coast district believes to be interested in attending the workshop.

(b) The notice shall include at least the following:

(1) A description of the air quality objective to be discussed.

(2) A statement that the workshop is being held for the purposes of soliciting information and suggestions from the public on achieving the air quality objective.

(3) A request for submittal of any documents, studies, and reports that may be relevant to the subject of the workshop, and the name, address, and telephone number of the district officer or employee to whom they should be sent.

(4) A list of supporting information and documents, including a preliminary staff report, prepared by the south coast district or at its direction, and other materials relevant to the subject of the workshop that are available, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

**Comment.** Section 36051 continues former Health and Safety Code Section 40440.7(b)-(c) without change.

### § 36052. Comments received at public workshop

---

36052. If the south coast district thereafter proposes the adoption, amendment, or repeal of a rule or regulation that was the subject of a workshop, the south coast district shall respond to all written comments submitted during the workshop in preparing the environmental assessment on the proposed rule or regulation.

**Comment.** Section 36052 continues former Health and Safety Code Section 40440.7(d) without substantive change.

1   **§ 36053. Time and place of public workshop**

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2       36053. The time and place for a workshop shall be selected on the basis of affording an  
3       opportunity to participate to the greatest number of persons expected to be interested in the  
4       workshop.

5       **Comment.** Section 36053 continues former Health and Safety Code Section 40440.7(e)  
6       without substantive change.

7   **§ 36054. Relation to Section 33451**

---

8       36054. A workshop or other meeting shall not constitute consideration of a “regulatory  
9       measure” within the meaning of Section 33451.

10      **Comment.** Section 36054 continues former Health and Safety Code Section 40440.7(g)  
11      without substantive change.

12   **§ 36055. Effect of Sections 36050-36054**

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13      36055. (a) The requirements of Sections 36050 to 36054, inclusive, are not intended to  
14      restrict the south coast district in conducting other public workshops and other meetings for  
15      the exchange of information under circumstances not specifically addressed in this section.

16      (b) Sections 36050 to 36054, inclusive, are not intended to change, and shall not be  
17      construed as changing, any entitlement or protection conferred by the California Public  
18      Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the  
19      Government Code).

20      **Comment.** Section 36055 continues former Health and Safety Code Section 40440.7(f)  
21      and (h) without substantive change.

22   **§ 36056. Assessment of socioeconomic impact**

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23      36056. (a) Whenever the south coast district intends to propose the adoption,  
24      amendment, or repeal of a rule or regulation that will significantly affect air quality or  
25      emissions limitations, the district shall, to the extent data are available from the district’s  
26      regional economic model or other sources, perform an assessment of the socioeconomic  
27      impacts of the adoption, amendment, or repeal of the rule or regulation.

28      (b) For the purposes of this section, “socioeconomic impact” means only the following:

29      (1) The type of industries affected by the rule or regulation.

30      (2) The impact of the rule or regulation on employment and the economy in the south  
31      coast basin attributable to the adoption of the rule or regulation.

32      (3) The range of probable costs, including costs to industry, of the rule or regulation.

33      (4) The availability and cost effectiveness of alternatives to the rule or regulation, as  
34      determined pursuant to Section 33253.

35      (5) The emission reduction potential of the rule or regulation.

36      (6) The necessity of adopting, amending, or repealing the rule or regulation in order to  
37      attain state and federal ambient air standards pursuant to Chapter 3 (commencing with  
38      Section 33200) of Title 2.

39      **Comment.** Section 36056 continues former Health and Safety Code Section 40440.8(a)-  
40      (b) without substantive change.

41   **§ 36057. Review of methodology**

---


42      36057. (a) On or before April 1, 1991, the south coast district shall enter into a contract  
43      with an independent firm to perform a review and analysis of the methods by which the

1 district assesses socioeconomic impacts of district rules and regulations. The analysis shall  
2 include an evaluation of any statistical models and other relevant data used by the district,  
3 the proficiency by which the data are applied, and recommendations for any improvements  
4 needed to ensure the accuracy and reliability of the assessments. The analysis shall evaluate  
5 the expertise of the district in performing the assessments and shall evaluate whether the  
6 quality and accuracy of these assessments would be substantially improved if they were  
7 performed by an independent contractor. The analysis shall compare the relative costs of  
8 contracting independently versus having the district perform the assessments. The contract  
9 with the independent firm shall be overseen by the district in consultation with the  
10 Legislative Analyst.

11 (b) Prior to entering into a contract pursuant to subdivision (a), the district shall draft a  
12 request for proposal to be issued to qualified independent firms which shall be reviewed by  
13 the Legislative Analyst prior to issuance. In drafting the request for proposal, the district  
14 shall consult with interested parties, including, but not limited to, representatives of  
15 industry and commerce, to ensure that their comments are considered.

16 (c) On or before July 1, 1992, the analysis by the independent firm shall be completed,  
17 submitted to the Legislative Analyst for review and comment, and submitted to the  
18 Legislature and the Governor. The Legislative Analyst shall review the report and submit  
19 any comments to the Legislature and the Governor on or before November 1, 1992.

20 **Comment.** Section 36057 continues former Health and Safety Code Section 40440.8(c)  
21 without substantive change.

22  **Note.** This section specifies a deadline for satisfying the requirements of that  
23 subdivision. This deadline provision may be obsolete. The Commission would like to receive  
24 input on two questions: (1) Have the requirements of the section been satisfied? (2) Does the  
25 section still serve a useful purpose?

## 26 **§ 36058. Notice of public hearing**

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27 36058. (a) Notice of the time and place of a public hearing of the south coast district  
28 board to adopt, amend, or repeal any rule or regulation relating to an air quality objective  
29 shall be given not less than 30 days prior thereto and, notwithstanding subdivision (b) of  
30 Section 32303, shall be published in each county in the south coast district in accordance  
31 with the requirements of Section 6061 of the Government Code. The period of notice shall  
32 commence on the first day of publication.

33 (b) In addition to the requirements of subdivision (b) of Section 32303, notice shall be  
34 mailed to every person who filed a written request for notice of proposed regulatory action  
35 with the south coast district, every person who requested notice for, or registered at, the  
36 workshop, if any, held in connection with the development of the proposed rule or  
37 regulation, and any person the south coast district believes to be interested in the proposed  
38 rule or regulation. The inadvertent failure to mail notice to any particular person as provided  
39 in this subdivision shall not invalidate any action taken by the south coast district board.

40 **Comment.** Section 36058 continues former Health and Safety Code Section 40440.5(a)-  
41 (b) without substantive change.

## 42 **§ 36059. Contents of notice of public hearing**

---

43 36059. In addition to the summary description of the effect of the proposal, as required  
44 by subdivision (b) of Section 32303, the notice shall include the following:

45 (a) A description of the air quality objective that the proposed rule or regulation is  
46 intended to achieve and the reason or reasons for the proposed rule or regulation.

(b) A list of supporting information, documents, and other materials relevant to the proposed rule or regulation, prepared by the south coast district or at its direction, any environmental assessment, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

(c) A statement that a staff report on the proposed rule or regulation has been prepared, and the name, address, and telephone number of the district officer or employee from whom a copy of the report may be obtained. Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulation, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule or regulation, an environmental assessment, exhibits, and draft findings for consideration by the south coast district board pursuant to Section 32303. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

**Comment.** Section 36059 continues former Health and Safety Code Section 40440.5(c) without substantive change.

#### **§ 36060. Supplemental workshops**

---

36060. Regardless of whether a workshop was previously conducted on the subject of the proposed rule or regulation, the south coast district may conduct one or more supplemental workshops prior to the public hearing on the proposed rule or regulation.

**Comment.** Section 36060 continues former Health and Safety Code Section 40440.5(d) without substantive change.

#### **§ 36061. Changes in text of proposed rule or regulation**

---

36061. If the south coast district board makes changes in the text of the proposed rule or regulation that was the subject of notice given pursuant to Sections 36058 and 36059, further consideration of the rule or regulation shall be governed by Section 32304.

**Comment.** Section 36061 continues former Health and Safety Code Section 40440.5(e) without substantive change.

#### **§ 36062. Effect of Sections 36058-36061**

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36062. Sections 36058 to 36062, inclusive are not intended to change, and shall not be construed as changing, any entitlement or protection conferred by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

**Comment.** Section 36062 continues former Health and Safety Code Section 40440.5(f) without substantive change.

### **Article 7. Plan**

#### **§ 36100. Adoption and revision**


---

36100. No later than January 31, 1979, the south coast district board shall adopt a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin. The plan shall be revised and adopted by the south coast district board by January 31, 1982, according to a schedule consistent with subdivision (a) of Section 36108. The plan revisions shall be compiled by the south coast district board, with the cooperation of the state board and the Department of Transportation, and the active



1 participation of the Southern California Association of Governments and the counties and  
2 cities within the South Coast Air Basin.

3 **Comment.** Section 36100 continues former Health and Safety Code Section 40460(a)  
4 without substantive change.

5  **Note. (1)** The Commission is assuming that the plan referred to in this article is the  
6 “plan” as defined in Health and Safety Code Section 40408 (see proposed Section 35875),  
7 the “south coast district air quality management plan.” If this is not correct then the  
8 unqualified use of the term “plan” in this article is problematic.

9 **(2)** This section specifies a deadline for adoption of a plan. This deadline provision may be  
10 obsolete. The staff would like to receive input on two questions: (1) Was the requirement met?  
11 (2) Does the deadline provision still serve a useful purpose?

## 12 **§ 36101. Responsibility of Southern California Association of Governments**

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13 36101. With the assistance of counties and cities, the Southern California Association of  
14 Governments shall have responsibility for preparing and approving the portions of the plan  
15 relating to regional demographic projections and integrated regional land use, housing,  
16 employment, and transportation programs, measures, and strategies. The Southern  
17 California Association of Governments shall analyze and provide emissions data related to  
18 its planning responsibilities.

19 **Comment.** Section 36101 continues former Health and Safety Code Section 40460(b)  
20 without substantive change.

## 21 **§ 36102. Local agency coordination**

---

22 36102. The Southern California Association of Governments shall coordinate the efforts  
23 of the counties and cities in the process of developing and reviewing plan elements which  
24 meet the requirements of the plan, state and federal law, and local needs relating to  
25 transportation, land use, demographic projections, employment, housing, and other matters  
26 of local concern.

27 **Comment.** Section 36102 continues former Health and Safety Code Section 40464 without  
28 change.

## 29 **§ 36103. Southern California Association of Governments**

---

30 36103. The Southern California Association of Governments shall submit its plan  
31 elements to the south coast district board by June 1 of each odd-numbered year, except in  
32 the case of a delayed submittal as provided in subdivision (a) of Section 36108, for  
33 incorporation into the air quality management plan. The district shall combine the  
34 association’s plan elements with the south coast district elements as specified in Section  
35 36100. Each agency shall prepare and submit all necessary documentation, including that  
36 of public and intergovernmental involvement.

37 **Comment.** Section 36103 continues former Health and Safety Code Section 40465 without  
38 substantive change.

## 39 **§ 36104. Responsibility of south coast district**

---

40 36104. (a) The south coast district shall have the responsibility for preparing and  
41 analyzing the portions of the plan elements relating to existing air quality, emissions data,  
42 results of air quality modeling, and stationary source control measures. The south coast  
43 district shall combine its portion of the plan with those prepared by the Southern California  
44 Association of Governments.

(b) In consultation with the south coast district board, the Southern California Association of Governments, and other appropriate local agencies, the state board shall provide the emissions reductions attributed to technological vehicular source control strategies included in the plan.

**Comment.** Section 36104 continues former Health and Safety Code Section 40460(c) without substantive change. The second paragraph of the subdivision has been designated as a subdivision.

#### **§ 36105. Effect of plan adoption**

---

36105. Upon adoption by the state board, the plan and future revisions shall be the air quality management plan and, as submitted to the Environmental Protection Agency, the federally required state implementation plan for the South Coast Air Basin. Notwithstanding any other provision of this division, the state implementation plan for the air basin shall only include those provisions necessary to meet the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

**Comment.** Section 36105 continues former Health and Safety Code Section 40460(d) without substantive change.

#### **§ 36106. Basinwide air pollution control plan**

---

36106. The plan, as adopted and revised by the south coast district board, shall be in lieu of the basinwide air pollution control plan required pursuant to Title 4 (commencing with Section 37400) of Part 4.

**Comment.** Section 36106 continues former Health and Safety Code Section 40461 without substantive change.

#### **§ 36107. Primary ambient air quality standards**

---

36107. (a) The plan and subsequent revisions shall contain deadlines for compliance with the federally mandated attainment of primary ambient air quality standards. The plan and subsequent revisions shall contain deadlines and schedules to achieve the state ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies, including, but not limited to, the best available control technology, indirect source controls, and transportation control measures, and the use of cleaner burning alternative fuels. The plan and subsequent revisions shall contain deadlines and schedules to achieve the federal secondary ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies.

(b) The plan and subsequent revisions shall ensure that future growth and development in the South Coast Air Basin and within the sensitive zone established pursuant to subdivision (a) of Section 35806 are, to the maximum extent feasible, consistent with the goal of achieving and maintaining those air quality standards. The revisions to the plan shall identify the resources necessary to carry out its provisions, including enforcement costs and the effect of its provisions on energy resources.

**Comment.** Section 36107 continues former Health and Safety Code Section 40462 without substantive change.

#### **§ 36108. Biennial review of plan**

---

36108. (a) The plan shall be formally reviewed every two years by the agencies responsible for preparing plan revisions. In the event of revisions, the compliance

1 schedules and emission limitations shall be amended to reflect advances in technology,  
2 control strategies, and administrative practices. The south coast district board may delay  
3 submittal of revisions up to two years if necessary to synchronize with the dates of  
4 submittal required under the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

5 (b) With the active participation of the Southern California Association of Governments,  
6 a South Coast Air Basin emission carrying capacity for each state and federal ambient air  
7 quality standard shall be established by the south coast district board for each formal review  
8 of the plan consistent with subdivision (a) and shall be updated to reflect new data and  
9 modeling results. A carrying capacity is the maximum level of emissions which would  
10 enable the attainment and maintenance of an ambient air quality standard for a pollutant.  
11 Emission carrying capacity for state standards shall not be a part of the state implementation  
12 plan requirements of the Clean Air Act for the South Coast Air Basin.

13 (c) The state board shall review and comment, within 60 days of submittal by the south  
14 coast district, on the emission carrying capacity, air quality model selection, and all other  
15 data required by this section. The south coast district board and the Southern California  
16 Association of Governments Executive Committee shall consider the comments of the state  
17 board and shall either accept the state board's recommendations regarding carrying capacity  
18 or shall advise the state board that the recommendations are not accepted.

19 (d) If the state board receives notification that its recommendations are not accepted, the  
20 state board shall convene a conflict resolution committee within 30 days to attempt to  
21 resolve the differences. The committee shall be composed of two members each of the state  
22 board, the Executive Committee of the Southern California Association of Governments,  
23 and the south coast district board appointed by the entity they represent. The committee  
24 shall make a recommendation to the three governing boards.

25 **Comment.** Section 36108 continues former Health and Safety Code Section 40463 without  
26 substantive change. The reference in subdivision (a) to the date on which the biennial review  
27 requirement began (1992) is obsolete and has not been continued.

## 28 **§ 36109. Public hearings**

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29 36109. (a) The south coast district board shall adopt plan revisions, pursuant to  
30 subdivision (a) of Section 36108, after holding public hearings throughout the south coast  
31 district. The south coast district board shall submit the adopted plan revisions to the state  
32 board and to the Legislature.

33 (b) Notice of the times and places of the public hearings shall be given not less than 45  
34 days prior to the first hearing and shall be published in each county in the south coast  
35 district in accordance with the requirements of Section 6061 of the Government Code. The  
36 period of notice shall commence on the first day of publication. Notice shall be mailed to  
37 every person who filed a written request for notice concerning the plan with the south coast  
38 district and any person the south coast district believes to be interested in the plan. The  
39 notice shall include a list of supporting information, documents, and other materials  
40 relevant to the plan revision prepared by the south coast district or at its direction, any  
41 environmental assessment, and the name, address, and telephone number of the district  
42 officer and employee from whom these materials, and a copy of the draft plan, may be  
43 obtained.

44 **Comment.** Section 36109 continues former Health and Safety Code Section 40466 without  
45 substantive change.

1    **§ 36110. Presubmission discussion**

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2       36110. Prior to formal submittal of this plan to the state board by the south coast district  
3 board, and during the time period specified in subdivision (a) of Section 36108, the south  
4 coast district board and the state board shall meet to identify and agree on the portions of  
5 the plan which are of prime importance to subsequent state board approval of the plan. The  
6 south coast district board and the state board shall work together to resolve any differences  
7 concerning these key sections prior to formal submission of the plan to the state board. The  
8 south coast district board and the state board shall jointly adopt the procedures by which  
9 these plan differences shall be resolved.

10     **Comment.** Section 36110 continues former Health and Safety Code Section 40467 without  
11 substantive change.

12    **§ 36111. Limitation of state board requirements**

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13       36111. The state board shall not require as a condition of approval of the plan or  
14 subsequent revisions, any indirect source review program or other land use control  
15 measures.

16     **Comment.** Section 36111 continues former Health and Safety Code Section 40468 without  
17 change.

18    **§ 36112. State board review**

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19       36112. (a) Following submittal by the south coast district, the state board shall review  
20 the plan to determine its adequacy to meet federally mandated primary ambient air quality  
21 standards and all other requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et  
22 seq.) and its adequacy to meet the requirements of the California Clean Air Act of 1988  
23 (Chapter 1568, Statutes of 1988) and to attain state ambient air quality standards through  
24 application of the best available control technology, indirect source controls, transportation  
25 control measures, and the use of cleaner burning alternative fuels. If the state board  
26 determines that portions of the plan meet the requirements of the state and federal acts and  
27 are adequate to attain state ambient air quality standards, it shall adopt those portions and  
28 submit to the Environmental Protection Agency the portions of the plan required by the  
29 federal act within 120 days after receipt of the plan from the south coast district.

30       (b) If the state board determines that the plan does not meet all the requirements of the  
31 state and federal acts, or does not include a deadline for the attainment of the state ambient  
32 air quality standards by application of the best available control technology, indirect source  
33 controls, transportation control measures, and the use of cleaner burning alternative fuels,  
34 the state board shall, prior to amending the plan, convene a committee comprised of two  
35 members each of the state board, the Executive Committee of the Southern California  
36 Association of Governments, and the south coast district board appointed by the entity they  
37 represent to attempt to resolve the differences. If it is necessary to amend the plan, the state  
38 board shall do so at a public hearing held pursuant to Section 37503 and shall submit to the  
39 Environmental Protection Agency the portions of the plan required by the federal act within  
40 120 days after receipt of the plan from the south coast district. In submitting the plan to the  
41 Environmental Protection Agency, the state board shall indicate what changes have been  
42 made to the plan.

43       (c) Within 30 days after the receipt of the plan from the south coast district, the state  
44 board shall determine if, with respect to any part of the plan concerning the control of a  
45 source of emissions that is within the state board's responsibility under law, it has  
46 sufficient information to determine whether the plan, or any part of the plan, meets the

1 applicable requirements of the state and federal acts and is adequate to attain state ambient  
2 air quality standards. The state board shall thereupon notify the south coast district, in  
3 writing, of the additional information needed to make the determination, and the south coast  
4 district shall promptly furnish the information.

5 **Comment.** Section 36112 continues former Health and Safety Code Section 40469 without  
6 substantive change.

#### 7 **§ 36113. Assistance of state board**

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8 36113. Following the adoption of those portions of the plan that comply with the  
9 California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) and the federal Clean  
10 Air Act (42 U.S.C. Sec. 7401 et seq.) and are adequate to attain state ambient air quality  
11 standards, the state board shall make all reasonable efforts to assist the south coast district  
12 by providing any additional information required to achieve an approvable state  
13 implementation plan, including convening joint public workshops on air quality  
14 monitoring, modeling, control technologies, and other matters coming within the state  
15 board's responsibility under law, and assisting the south coast district in researching and  
16 testing transportation control measures.

17 **Comment.** Section 36113 continues former Health and Safety Code Section 40469.5  
18 without change.

#### 19 **§ 36114. Role of Southern California Association of Governments**

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20 36114. The Southern California Association of Governments shall participate in the joint  
21 agency review and conflict resolution processes established by Sections 36108, 36110, and  
22 36112 insofar as the processes relate to plan elements for which the Southern California  
23 Association of Governments has plan development responsibility.


24 **Comment.** Section 36114 continues former Health and Safety Code Section 40470 without  
25 change.

#### 26 **§ 36115. Failure to adopt or approve plan**

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27 36115. If the plan is not adopted or approved in compliance with the schedule set forth in  
28 Section 36108, the powers and duties of the south coast district board with respect to air  
29 quality control shall not be diminished or otherwise affected by the failure to adopt or  
30 approve the plan.

31 **Comment.** Section 36115 continues former Health and Safety Code Section 40442 without  
32 substantive change.

33  **Note.** The decision to move this section to this article is based on the Commission's  
34 assumption that the "plan" referred to in this article is the "plan" as defined in Health and  
35 Safety Code Section 40408 (see proposed Section 35875), i.e. the "south coast district air  
36 quality management plan."

### 37 **Article 8. Variances**

#### 38 **§ 36150. Rules and regulations**

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39 36150. (a) In accordance with the purposes of this chapter as set forth in Section 35801,  
40 the south coast district board shall establish rules and regulations for the granting of  
41 variances by the hearing board from Section 37602 or from any standards for the discharge  
42 of air contaminants that the south coast district may adopt. The south coast district board



1 shall not limit the opportunity for any person to petition for a variance or for the hearing  
2 board to hear and grant variances beyond the limitations expressly stated in Section 39350.

3 (b) The rules and regulations shall include a schedule of fees, which shall be based upon  
4 the number of sources to which the variances apply and the extent that the amount of  
5 emissions from the sources exceeds the required standards, for the filing of applications for  
6 variances. All applicants shall pay the fees required by the rules and regulations, including,  
7 notwithstanding Section 6103 of the Government Code, an applicant that is a publicly  
8 owned public utility. A variance may be granted by the hearing board after a public hearing  
9 and upon filing, with appropriate fees, of a variance petition with the hearing board.

10 **Comment.** Section 36150 continues former Health and Safety Code Section 40500 without  
11 substantive change.

#### 12 **§ 36151. Limitation on fees**

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13 36151. (a) Except as required to comply with the Clean Air Act (42 U.S.C. Sec. 7401 et  
14 seq.), fees assessed on stationary sources in the south coast district pursuant to Sections  
15 36150 and 36206 shall not exceed, for any fiscal year, the actual costs of district programs  
16 pursuant to this article for the immediately preceding fiscal year with an adjustment not  
17 greater than the change in the California Consumer Price Index, for the preceding calendar  
18 year, from January 1 of the prior year to January 1 of the current year, as determined by the  
19 Department of Industrial Relations.

20 (b) Unless specifically authorized by statute, the total amount of all of the fees collected  
21 by the south coast district from stationary sources of emissions in the 1995-96 fiscal year,  
22 and in each subsequent fiscal year, shall not exceed the level of expenditure in the 1993-94  
23 fiscal year, except that the total fee amount may be adjusted annually by not more than the  
24 percentage increase in the California Consumer Price Index, as specified in subdivision (a).

25 (c) Any new state or federal mandate which is applicable to the south coast district on and  
26 after January 1, 1994, shall not be subject to this section.

27 **Comment.** Section 36151 continues former Health and Safety Code Section 40500.1  
28 without substantive change. The reference in Health and Safety Code Section 40500.1(c) to  
29 the annual report prepared pursuant to Health and Safety Code Section 42311.1 is obsolete  
30 and has not been continued. Health and Safety Code Section 42311.1 was repealed by its own  
31 terms.

#### 32 **§ 36152. Limitation on granting of variances**

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33 36152. (a) Notwithstanding Section 36150, the south coast district board may prohibit  
34 the granting of variances by the hearing board from the provisions of a market-based  
35 incentive program adopted pursuant to Sections 31150 to 31156, inclusive that establish  
36 procedures for assessing emissions during periods when monitoring or reporting systems  
37 are not operating as required.

38 (b) The south coast district board may prohibit the granting of variances by the hearing  
39 board from the minimum federal requirements for new source performance standards, or  
40 for national emissions standards for hazardous air pollutants, under Sections 7411 and  
41 7412 of Title 42 of the United States Code, unless the district rule at issue is more stringent  
42 than the federal requirement. The south coast district board shall not prohibit the granting of  
43 such a variance if the petitioner for the variance has obtained a waiver from the  
44 Environmental Protection Agency of the federal requirement at issue and the variance  
45 would be consistent with the waiver.

46 **Comment.** Section 36152 continues former Health and Safety Code Section 40500.5  
47 without substantive change.



1   **§ 36153. Hearing board**

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2   36153. (a) The south coast district board shall appoint a hearing board, or may authorize  
3 the board of supervisors of each county included, in whole or in part, within the south  
4 coast district to appoint a hearing board in accordance with Article 1 (commencing with  
5 Section 32500) of Chapter 3 of Title 1. The hearing board shall have the powers and duties  
6 vested in the hearing board of a county district, except as modified in this article. In  
7 addition, the hearing board has the same powers and duties with respect to plans for the  
8 control of emissions of air contaminants required by a district rule or regulation as it has for  
9 permits for authority to construct or operate any article, machine, equipment, or other  
10 contrivance required by the south coast district board.

11   (b) The granting of variances shall be processed by the hearing board in the county in  
12 which the variance is applicable unless the applicant and the hearing board agree otherwise,  
13 and shall be granted in conformance with the rules and regulations of the south coast  
14 district, and, except as modified by this article, with Chapter 5 (commencing with Section  
15 39300) of Title 7 of Part 4, with respect to the granting of variances or the appeal of  
16 decisions.

17   **Comment.** Section 36153 continues former Health and Safety Code Section 40501 without  
18 substantive change.

19   **§ 36154. Composition of hearing board**

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20   36154. The south coast district board shall appoint a hearing board with the following  
21 membership and qualifications:

22   (a) One member admitted to the practice of law in this state, with two or more years of  
23 practice, preferably with litigation experience.

24   (b) One member who is an engineer with a bachelor's degree from an accredited college  
25 in chemical, mechanical, environmental, metallurgical, or petroleum engineering, with two  
26 or more years of practical experience, and preferably who is a professional engineer  
27 registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section  
28 6700) of Division 3 of the Business and Professions Code).

29   (c) One member who is a licensed physician, with two or more years of practical  
30 experience, preferably in the fields of epidemiology, physiology, toxicology, or related  
31 fields.

32   (d) Two public members.

33   **Comment.** Section 36154 continues former Health and Safety Code Section 40501.1(a)  
34 without substantive change. The introductory paragraph of former Health and Safety Code  
35 Section 40501.1 provided for the retirement of the sitting hearing board and appointment of  
36 a new board, by July 1, 1992. This provision is obsolete and has not been continued.

37   **§ 36155. Appointments to hearing board**

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38   36155. In recruiting the hearing board members, the district board shall engage in  
39 positive outreach throughout the south coast district. In making these appointments, the  
40 district board shall receive recommendations of an advisory committee whose responsibility  
41 shall be to review and make recommendations to the appropriate district board committee,  
42 which in turn shall finalize recommendations on which the district board shall act in making  
43 appointments to the hearing board. The advisory committee shall be composed of one  
44 representative appointed by each of the Counties of Los Angeles, Orange, Riverside, and  
45 San Bernardino, and the City of Los Angeles. Members of the advisory committee shall be

1 appointed for one-year terms. Recommendations of the advisory committee shall not be  
2 binding on the district board.


3 **Comment.** Section 36155 continues former Health and Safety Code Section 40501.1(b)  
4 without substantive change.

#### 5 **§ 36156. Terms**

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6 36156. When the south coast district board first appoints the new hearing board, the  
7 attorney and engineer members shall serve terms of two years each and the medical and  
8 public members shall serve terms of three years each. Thereafter, each member's term shall  
9 be three years.

10 **Comment.** Section 36156 continues former Health and Safety Code Section 40501.1(c)  
11 without substantive change.

12  **Note.** The first sentence of this section governs a transition that has already occurred  
13 and appears to be obsolete. The Commission would like to receive input on whether this  
14 sentence has any continued usefulness.

#### 15 **§ 36157. Temporary board members**

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16 36157. In the temporary absence of a member and that person's alternate, the hearing  
17 board chair, or the chair's designee, may appoint a qualified alternate or any former hearing  
18 board member to serve for a period of up to three months plus that period of additional time  
19 required to conclude proceedings on which the temporary member deliberated.

20 **Comment.** Section 36157 continues former Health and Safety Code Section 40501.1(d)  
21 without substantive change.

#### 22 **§ 36158. Hearing board funding**

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23 36158. The district budget shall have a line item to provide necessary staff and other  
24 support dedicated to the hearing board. The services provided by that staff shall include  
25 assistance to the public and small business as set forth in subdivision (b) of Section 36450.

26 **Comment.** Section 36158 continues former Health and Safety Code Section 40501.1(e)  
27 without substantive change.

#### 28 **§ 36159. Single-member hearings**

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29 36159. (a) Notwithstanding any other provision of this division, the south coast district  
30 board may authorize, by resolution, the holding of single-member hearings by the chairman  
31 of the hearing board and any other member or alternate designated by the hearing board,  
32 under the conditions specified in this section.

33 (b) Single-member hearings shall be authorized, when stipulated to by the executive  
34 officer and the petitioner, only for the purpose of hearing petitions for emergency variances  
35 pursuant to Section 39306, interim variances pursuant to Section 39304, short variances  
36 and modifications of a schedule of increments of progress of a duration not to exceed 60  
37 days pursuant to Section 32555, interim authorizations pursuant to Section 39305, and  
38 modifications of variances pursuant to Section 39400 which do not modify the final  
39 compliance date.

40 (c) The procedure for conducting single-member hearings shall be the same as for  
41 hearings before the full board and all legal requirements, including notice requirements,  
42 findings, and conditions, shall apply, except that the single member may take action on any  
43 matter properly before the member.

(d) A single-member hearing decision may be contested by any of the following persons:  
(1) Any person who, in person or through a representative, appeared at the single-member hearing

(2) Any person who informed the air pollution control officer of the nature of the person's concern prior to the hearing

(3) Any person who for good cause was unable to do either (1) or (2).

(e) If a decision is contested under subdivision (d), the matter shall be reheard by the full board within 10 days of the decision. The clerk of the hearing board shall notify the petitioner, the executive officer, and all members of the public who appeared at the hearing of any contest of a decision. The notice shall be in writing and sent by first-class mail, postage prepaid, to the address supplied by the person who appeared, unless the right to the notice is affirmatively waived on the record.

**Comment.** Section 36159 continues former Health and Safety Code Section 40501.3 without substantive change. The numbered list, in former subdivision (d), of persons who may contest a hearing, has been tabulated as paragraphs. The second sentence of former subdivision (d) is continued without substantive change in subdivision (e).

#### **§ 36160. Fee revenues**

---

36160. The revenues from the schedule of fees adopted by the south coast district board for the filing of applications for variances shall be collected by the hearing board at the time that the application is filed. Each county hearing board appointed pursuant to subdivision (a) of Section 36153 shall be reimbursed from these fees for its cost in administering the rules and regulations for the issuance of variances established by the south coast district board. The revenues from these fees shall be transmitted by the hearing board to the south coast district board at a time that the south coast district board may prescribe.

**Comment.** Section 36160 continues former Health and Safety Code Section 40502 without substantive change.

#### **§ 36161. Factors relevant to grant of variance**

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36161. The south coast district hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in Section 39351, shall consider, in addition to any other relevant factors, both of the following:

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

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

**Comment.** Section 36161 continues former Health and Safety Code Section 40503(a) without substantive change.

☞ **Note.** The first sentence in Health and Safety Code Section 40503 erroneously refers to the finding specified in subdivision (b) of Section 42352. The reference should have been to subdivision (a).

1   **§ 36162. Petitioner a small business**

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2   36162. (a) As used in this section, “small business” means a business that is  
3 independently owned and operated and meets all of the following criteria:

4     (1) The number of employees is 10 or less.

5     (2) The total gross annual receipts are five hundred thousand dollars (\$500,000) or less.

6     (3) Emits not more than four tons per year of any nonattainment air contaminant or its  
7 precursor.

8     (b) If the petitioner is a small business, the hearing board shall consider the factors  
9 specified in Section 36161 in the following manner:

10     (1) In determining whether or not the petitioner took timely actions to comply or seek a  
11 variance, the hearing board shall make specific inquiries into the reasons for any claimed  
12 ignorance of the requirement from which a variance is sought.

13     (2) In determining whether or not the petitioner took reasonable actions to comply, the  
14 hearing board shall make specific inquiries into the petitioner’s financial and other  
15 capabilities to comply.

16     (3) In determining whether or not the burden of requiring immediate compliance would  
17 be unreasonable, the hearing board shall make specific inquiries into, and shall balance, the  
18 impact to the petitioner’s business and the benefit to the environment which would result if  
19 the petitioner is required to immediately comply.

20     **Comment.** Section 36162 continues former Health and Safety Code Section 40503(b)  
21 without substantive change.

22   **§ 36163. Petitioner a public entity**

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23   36163. Where the petitioner is a governmental agency, public district, or any other  
24 governmental or public entity, in determining whether or not an unreasonable burden  
25 would be imposed, the hearing board shall consider any effects of requiring immediate  
26 compliance on the availability of essential public services.

27     **Comment.** Section 36163 continues former Health and Safety Code Section 40503(c)  
28 without substantive change.

29   **§ 36164. Reduction of emissions by persons granted variances**

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30   36164. The south coast district shall work with those persons granted variances to reduce  
31 emissions of air contaminants from their operations.

32     **Comment.** Section 36164 continues former Health and Safety Code Section 40504 without  
33 change.

34   **§ 36165. Assistance to small businesses**

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35   36165. Any form developed by the south coast district for use in filing an application for  
36 variance shall contain a notice to small businesses of the availability of assistance in filling  
37 out the form, developing compliance schedules, and obtaining low-cost financing for air  
38 pollution control equipment to meet its regulations.

39     **Comment.** Section 36165 continues former Health and Safety Code Section 40505 without  
40 change.

Article 9. Permits

**§ 36200. Rules and regulations**

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36200. (a) In accordance with the purposes of this chapter as set forth in Section 35801, the south coast district board shall adopt rules and regulations for the issuance by the south coast district board of permits authorizing the construction, alteration, replacement, operation, or use of any article, machine, equipment, or other contrivance for which a permit may be required by the south coast district board.

(b) The rules and regulations shall include a schedule of fees for the filing of applications for permits and for the modification, revocation, extension, or annual renewal of permits. All applicants, including, notwithstanding Section 6103 of the Government Code, an applicant that is a publicly owned public utility, shall pay the fees required by the rules and regulations.

**Comment.** Section 36200 continues former Health and Safety Code Section 40506 without substantive change.

**§ 36201. Consolidated permits**

---

36201. (a) The south coast district shall establish a consolidated permit that serves as (1) an authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) an authority to operate or use that article, machine, equipment, or contrivance.

(b) The district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, operated, or used in the manner required by the consolidated permits.

**Comment.** Section 36201 continues former Health and Safety Code Section 40506.1 without substantive change.

**§ 36202. Certification program**

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36202. The south coast district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by district rules as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) Full district review of a sample of permit applications prepared by certified private environmental professionals to determine whether or not district requirements for preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application where the person has a financial conflict of interest as defined in guidelines to be adopted by the district.

**Comment.** Section 36202 continues former Health and Safety Code Section 40506.2 without change.

#### **§ 36203. Order granting permit**

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36203. The south coast district board, in making any order granting a permit, may specify the time during which the order shall be effective and may require the payment of fees established by the south coast district board.

**Comment.** Section 36203 continues former Health and Safety Code Section 40507 without change.

#### **§ 36204. Petition for hearing**

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36204. Any person may petition the south coast district board to hold a public hearing on any application to issue or renew a permit.

**Comment.** Section 36204 continues former Health and Safety Code Section 40509 without change.

#### **§ 36205. Fee revenue**

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36205. The revenues from the schedule of fees for the filing of applications for permits shall be collected by the south coast district board at the time that the application is filed.

**Comment.** Section 36205 continues former Health and Safety Code Section 40508 without change.

#### **§ 36206. Fees**

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36206. (a) The Legislature finds and declares as follows:

(1) Total fees collected by the south coast district must continue to be capped in order to prevent the imposition of undue financial burdens upon regulated sources.

(2) There is a need to provide for greater flexibility in establishing and amending fees within the total fee cap to ensure a fair apportionment of fee payment responsibilities.

(3) Fees based solely on the quantity of emissions created by a source should not be indexed to the emission potential, or to a percentage of emissions trading units, as that term is used in Sections 31150 to 31156, inclusive, and Section 36300, held by that source so as to prevent payments of those fees from decreasing if emissions decline.

(4) Before making any individual fee increase in excess of the percentage increase of the California Consumer Price Index for the preceding calendar year, findings of fact should be made, supported by relevant information in the public record, that the fee increase is necessary and will provide an equitable apportionment of fee payment responsibilities, and the increase should be phased in to avoid sudden adverse impacts on regulated sources.

(b) The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto. Every person applying for a variance or a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule.

(c)(1) The fees may be varied in accordance with the quantity of emissions and the effect of those emissions on the ambient air quality within the south coast district.



(2) The fees shall not be indexed to the potential emissions from, or to a percentage of the emissions trading units, as that term is used in Sections 31150 to 31156, inclusive, and Section 36300, held by, any source.

(d) Subject to the limits established by this section and Sections 36151 and 36004 and the requirements of Section 36207, this section shall not prevent the district from establishing or amending an individual permit renewal or operating permit fee applicable to a class of sources to recover the reasonable district costs of permitting, planning, enforcement, and monitoring which that class will cause to district programs. In establishing the fee applicable to a class of sources, the district may consider the impact on air quality of the emissions from that class.

**Comment.** Section 36206 continues former Health and Safety Code Section 40510 without substantive change.

### **§ 36207. Fee increases**

---

36207. In addition to the limits on total fee collections established by Sections 36151 and 36004, the south coast district board shall not increase any existing permit fee by a percentage greater than any percentage increase in the California Consumer Price Index for the preceding calendar year, unless the board complies with both of the following requirements:

(a) The district board shall make a finding, based upon relevant information in a rulemaking record, that the fee increase is necessary and will result in an apportionment of fees that is equitable. This finding shall include an explanation of why the fee increase meets the requirements of this section and Section 36206.

(b) The fee increase shall be phased in over a period of at least two years.

**Comment.** Section 36207 continues former Health and Safety Code Section 40510.5 without change.

### **§ 36208. Charges for notice**

---

36208. The south coast district board may establish an annual charge, in an amount not to exceed the annual estimated cost of sending notices required by this division, and individual charges, in amounts not to exceed the cost of sending notice on a one-time basis and the cost of duplicating and mailing any document furnished pursuant to this chapter.

**Comment.** Section 36208 continues former Health and Safety Code Section 40510.7 without change.

### **§ 36209. CPI limit on fee increases**

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36209. The south coast district board may increase its fee schedule to generate sufficient revenues to pay for any district costs associated with the implementation of Section 66796.53 of the Government Code or Section 38000 to 38008, inclusive.

**Comment.** Section 36209 continues former Health and Safety Code Section 40511 without substantive change.

### **§ 36210. Surcharge fees**

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36210. (a) The south coast district board may impose a fee surcharge based on a formula associated with quantity of emissions and the effect of these emissions on ambient air quality within the south coast district to generate sufficient revenues to pay for any of its costs associated with the development and implementation of Section 36406.

(b) The total amount of funds collected from these surcharge fees shall not exceed five hundred thousand dollars (\$500,000) in each of the first two fiscal years of the development or implementation of Section 36406. All surcharge fees received by the south coast district pursuant to this section shall be deposited in a clean fuels and transportation control measures account which shall be established and maintained by the south coast district.

(c) In subsequent fiscal years, the total amount of funds collected from these surcharge fees shall not exceed 25 percent of the amount of fees received the previous fiscal year from registered motor vehicle owners pursuant to Section 9250.11 of the Vehicle Code. The surcharge fees received by the south coast district pursuant to this section shall be used to pay for the initial costs incurred by the Department of Motor Vehicles to implement the motor vehicle fee program established by Section 9250.11 of the Vehicle Code.

(d) All fees received by the south coast district pursuant to Section 9250.11 of the Vehicle Code shall be deposited in the clean fuels and transportation control measures account and shall be used solely for transportation and vehicular-related program activities within the program established by this section. Not more than 2 1/2 percent of the funds in the account shall be used for the south coast district administrative costs.

**Comment.** Section 36210 continues former Health and Safety Code Section 40512 without substantive change.

#### **§ 36211. Water treatment facility**


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36211. (a) Any public utility owned by a municipal corporation within the south coast district shall provide public notice, pursuant to subdivision (b), before submitting to the board of the south coast district any application for a permit to construct or operate any facility, machine, or contrivance which would be used for water treatment and would emit toxic air contaminants.

(b) A public utility specified in subdivision (a) shall mail, post, deliver, or use any other practical method to notify all residents and persons who own property within 330 feet of the property containing the proposed facility, machine, or contrivance. The notice shall include a description of the proposed facility, machine, or contrivance and an explanation of the right to petition the south coast district board to hold a hearing pursuant to Section 36204.

(c) This section only applies to any facility, machine, or contrivance on which construction began subsequent to May 24, 1985.

**Comment.** Section 36211 continues former Health and Safety Code Section 40515 without substantive change.

 **Note.** Subdivision (c) is probably obsolete. However, the Commission recognizes the possibility that some construction projects may have begun before 1985 but still be incomplete. In such a case, this section would not apply. The Commission would appreciate any input on the likelihood that any projects still fall within the exception provided in subdivision (c).

#### **§ 36212. Expedited permit review for clean fuel technology projects**

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36212. The south coast district shall establish expedited permit review and project assistance mechanisms for facilities or projects which are directly related to research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies.

1     **Comment.** Section 36212 continues former Health and Safety Code Section 40516(a)  
2 without substantive change.

3     **§ 36213. Mechanisms of expedited review**

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4     36213. The mechanisms established pursuant to Section 36212 shall include all of the  
5 following:

6     (a) The issuance of consolidated permits, serving the purpose of both the permit to  
7 construct and the permit to operate, to expedite the permitting process.

8     (b) The review and processing of permits on a facility or project basis rather than on an  
9 equipment basis to ensure a single point of contact for the applicant and to allow entire  
10 projects to be reviewed and evaluated on a single, consolidated schedule.

11     (c) The establishment of a “fast track” permitting procedure to approve permits in an  
12 average of 30 days from receipt of all information requested by the district, except for any  
13 of the following facilities:

14         (1) Facilities that may emit significant amounts of toxic air contaminants.

15         (2) Facilities that require public notice.

16         (3) Facilities that require additional review to meet the requirements of the federal Clean  
17 Air Act (42 U.S.C. Sec. 7401 et seq.) or the California Clean Air Act of 1988 (Chapter  
18 1568 of the Statutes of 1988).

19     (d) The development and implementation of postconstruction enforcement procedures to  
20 ensure that new and modified sources are constructed according to permit requirements.

21     (e) The establishment of a liaison program in the office of public adviser to assist  
22 facilities participating in research and development, demonstration, or commercialization of  
23 electric and other clean fuel vehicle technologies with preparing permit applications,  
24 complying with other district administrative procedures, and identifying and applying for  
25 state, federal, district, or other available funds set aside for electric and other clean fuel  
26 vehicle-related projects.

27     **Comment.** Section 36213 continues former Health and Safety Code Section 40516(b)  
28 without substantive change.

29     **§ 36214. “Clean fuel”**

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30     36214. For the purposes of Sections 36212 and 36213, “clean fuels” are fuels designated  
31 by the state board for use in low, ultralow, or zero emission vehicles and include, but are  
32 not limited to, electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, natural  
33 gas, and reformulated gasoline.

34     **Comment.** Section 36214 continues former Health and Safety Code Section 40516(c)  
35 without substantive change.

36                     Article 10. Implementation of Plans

37     **§ 36250. Rules and regulations**

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38     36250. (a) The south coast district board shall adopt rules and regulations that carry out  
39 the plan and are not in conflict with state law and federal laws and rules and regulations.  
40 Upon adoption and approval of subsequent revisions of the plan, these rules and  
41 regulations shall be amended, if necessary, to conform to the plan.

42     (b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the  
43 following:

1 (1) Require the use of best available control technology for new and modified sources  
2 and the use of best available retrofit control technology for existing sources.

3 (2) Promote cleaner burning alternative fuels.

4 (3) Consistent with Section 35810, provide for indirect source controls in those areas of  
5 the south coast district in which there are high-level, localized concentrations of pollutants  
6 or with respect to any new source that will have a significant effect on air quality in the  
7 South Coast Air Basin.

8 (4) Provide for transportation control measures, as listed in the plan.

9 (c) The south coast district board shall adopt rules and regulations that will assure that all  
10 its administrative practices and the carrying out of its programs are efficient and cost-  
11 effective, consistent with the goals of achieving and maintaining federal and state ambient  
12 air quality standards and achieving the purposes of this chapter.

13 (d) The south coast district board shall determine what is the best available retrofit control  
14 technology for existing electric plants, and shall adopt rules and regulations requiring the  
15 use of the best available retrofit control technology in existing electric plants, if the board  
16 finds and determines that to do so is necessary to carry out the plan.

17 (e) In adopting any regulation, the south coast district board shall comply with Section  
18 32301.

19 **Comment.** Section 36250 continues former Health and Safety Code Section 40440 without  
20 substantive change.

#### 21 **§ 36251. Nonvehicular source emission limitations**

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22 36251. The south coast district board shall adopt revised and updated nonvehicular  
23 source emission limitations for inclusion in the state's implementation plan.

24 **Comment.** Section 36251 continues former Health and Safety Code Section 40443 without  
25 change.

#### 26 **§ 36252. Air pollution emergency plan**

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27 36252. The south coast district board shall adopt the necessary rules and regulations to  
28 implement the Air Pollution Emergency Plan developed by the state board.

29 **Comment.** Section 36252 continues former Health and Safety Code Section 40444 without  
30 change.

#### 31 **§ 36253. Cooperation of other public entities**

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32 36253. (a) After adoption of the plan, the south coast district shall have the responsibility  
33 for securing the cooperation of other public entities in the implementation of the plan,  
34 including all programs, plans, and projects relating to or affecting air quality within the  
35 south coast district.

36 (b) The south coast district board may adopt any rules and regulations that do not conflict  
37 with state and federal laws for the coordination of local, state, and federal programs  
38 affecting air quality.

39 **Comment.** Section 36253 continues former Health and Safety Code Section 40441 without  
40 substantive change. The former undesignated paragraphs have been designated as  
41 subdivisions.

Article 11. Market-based Incentive Program

**§ 36300. Market-based incentive program**

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36300. (a) A market-based incentive program adopted pursuant to Sections 31150 to 31156, inclusive, in the south coast district shall achieve emission reductions across a spectrum of sources by allowing for trading of emissions trading units for quantifiable reductions in emissions from a significant number of different sources, including mobile, area, and stationary, which are within the district's jurisdiction or which the district is authorized to include in a market-based emissions trading program.

(b) The program may be, but is not required to be, initiated with only a limited number of sources, but, as soon as practical after adoption of the initial program, the district shall amend the program to allow the trading of reductions among the sources initially included in the program and mobile, area, and other stationary sources.

(c) The intent of this section is to allow, not to require, the trading of reductions among a variety of sources. Nothing in this section confers any new authority on the district to regulate mobile, indirect, or areawide sources or to require those sources to participate in a market-based incentive program.

**Comment.** Section 36300 continues former Health and Safety Code Section 40440.1 without substantive change.

**§ 36301. Implementation of Sections 36302-36306**

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36301. In addition to, and notwithstanding the requirements of, Sections 31150 to 31156, inclusive, the requirements of Sections 36302 to 36305, inclusive, shall be implemented as part of the south coast district's market-based incentive program, the Regional Clean Air Incentives Market, also known as RECLAIM.

**Comment.** Section 36301 continues the introductory clause of former Health and Safety Code Section 40440.2(a) without substantive change.

**§ 36302. Progress report**

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36302. (a) On or before July 1, 1998, the south coast district staff shall provide to the south coast district board a progress report based on the annual audits specified in Section 36304. The progress report shall meet all of the following requirements:

(1) The data in the report for the nitrogen oxides RECLAIM program shall be aggregated by three-digit SIC code and facility emission rate to the extent feasible. The categories of emission rates shall be under 4, 4 to 10, inclusive, 11 to 100, inclusive, and over 100 tons per year.

(2) The data in the report for the sulfur oxides RECLAIM program shall be aggregated by three-digit SIC code only to the extent feasible.

(3) In preparing the report, the south coast district shall publish in an appendix all final data and model outputs, except that it shall keep confidential any facility-specific information that is obtained by either the south coast district, or any independent contractor retained by the south coast district, in the course of preparing the report.


(4) Any publication of the data obtained from facilities by the south coast district shall be in aggregate form only, as specified in Sections 36301 to 36305, inclusive. The south coast district board shall make the raw data available to the public.

(b) The south coast district board shall receive public comment on the progress report.

(c) The south coast district shall not lower the emission threshold for mandatory participation in the RECLAIM program for nitrogen oxides and sulfur oxides from the

threshold that was established on October 15, 1993, until the progress report is completed and a public hearing on the report has been held, unless the south coast district board finds, after a public hearing, that there will be no adverse environmental or economic effects resulting from a lowered emission threshold.

**Comment.** Section 36302 continues paragraph (a)(1) of former Health and Safety Code Section 40440.2 without substantive change.

 **Note.** This section specifies a deadline for submission of a progress report. This deadline provision may be obsolete. The Commission would like to receive input on two questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

### **§ 36303. Advisory committee**

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36303. On or before July 1, 1997, an advisory committee shall be selected by the south coast district board. The advisory committee shall serve for a maximum of one year, or until the report required by Section 36305 is made to the south coast district board, whichever is later. The advisory committee shall be composed of the following members:

- (a) One representative from each of the following:
  - (1) A facility that participates in one or both of the market-based incentive programs and emits more than 100 tons of nitrogen oxides or sulfur oxides annually.
  - (2) A facility that emits from 11 to 100 tons, inclusive, of nitrogen oxides or sulfur oxides annually.
  - (3) A facility that emits less than 10 tons of nitrogen oxides or sulfur oxides annually.
- (b) One representative from the south coast district staff, one representative from the state board, and one representative from the Environmental Protection Agency.
- (c) One representative from a financial institution.
- (d) One representative from an academic institution.
- (e) One representative from a market commodities or securities trading institution.
- (f) One representative from an economic analysis research institution.
- (g) Two representatives from environmental organizations.
- (h) One representative from each of the investor-owned energy utilities serving the south coast district, and one representative from a municipal energy utility representing the City of Los Angeles.
- (i) One representative from a technical contractor specializing in installation and certification of emissions monitoring equipment.
- (j) One representative from an oil company.
- (k) One representative from the aerospace industry.

**Comment.** Section 36303 continues paragraph (a)(2) of former Health and Safety Code Section 40440.2 without substantive change.

### **§ 36304. Assessment of audit findings**

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36304. In addition to any other information required by Section 31154, the south coast district shall annually perform a detailed assessment of the program audit findings specified in paragraph (1) of subdivision (b) of south coast district Rule 2015, as adopted October 15, 1993.

**Comment.** Section 36304 continues paragraph (a)(3) of former Health and Safety Code Section 40440.2 without substantive change.



1    **§ 36305 Peer review**

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2       36305 The advisory committee shall conduct a peer review of the progress report to the  
3 south coast district board required pursuant to Section 36302. The advisory committee shall  
4 present its peer review conclusions to the south coast district board as an independent  
5 report concurrently with the staff progress report. The advisory committee may request  
6 staff support from the south coast district in conducting its peer review and preparing the  
7 report.

8       **Comment.** Section 36305 continues paragraph (a)(4) of former Health and Safety Code  
9 Section 40440.2 without substantive change.

10                                   Article 12. Best Available Control Technology

11    **§ 36350. Public hearing required**

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12       36350. The south coast district board, prior to approving any proposed revision to the  
13 best available control technology guidelines developed by the south coast district that  
14 amends any policy or implementation procedure for determining the best available control  
15 technology, shall hold a public hearing on the proposed revision.

16       **Comment.** Section 36350 continues former Health and Safety Code Section 40440.10  
17 without change.

18    **§ 36351. More stringent federal requirement**

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19       36351. In establishing the best available control technology that is more stringent than the  
20 lowest achievable emission rate pursuant to federal law for a proposed new or modified  
21 source, the south coast district shall consider only control options or emission limits to be  
22 applied to the basic production or process equipment existing in that source category or a  
23 similar source category.

24       **Comment.** Section 36351 continues former Health and Safety Code Section 40440.11(a)  
25 without substantive change.

26    **§ 36352. Effect on other pollutants**

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27       36352. In establishing the best available control technology for a source category or  
28 determining the best available control technology for a particular new or modified source,  
29 when a particular control alternative for one pollutant will increase emissions of one or  
30 more other pollutants, the south coast district's cost-effectiveness calculation for that  
31 particular control alternative shall include the cost of eliminating or reducing the increases in  
32 emissions of the other pollutants as required by the south coast district.

33       **Comment.** Section 36352 continues former Health and Safety Code Section 40440.11(b)  
34 without substantive change.

35    **§ 36353. More stringent than existing guideline**

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36       36353. Prior to revising the best available control technology guideline for a source  
37 category to establish an emission limit that is more stringent than the existing best available  
38 control technology guideline for that source category, the south coast district shall do all of  
39 the following:

40       (a) Identify one or more potential control alternatives that may constitute the best available  
41 control technology, as defined in Section 35855.

(b) Determine that the proposed emission limitation has been met by production equipment, control equipment, or a process that is commercially available for sale, and has achieved the best available control technology in practice on a comparable commercial operation for at least one year, or a period longer than one year if a longer period is reasonably necessary to demonstrate the operating and maintenance reliability, and costs, for an operating cycle of the production or control equipment or process.

(c) Review the information developed to assess the cost-effectiveness of each potential control alternative. For purposes of this subdivision, “cost-effectiveness” means the annual cost, in dollars, of the control alternative, divided by the annual emission reduction potential, in tons, of the control alternative.

(d) Calculate the incremental cost-effectiveness for each potential control option. To determine the incremental cost-effectiveness under this subdivision, the district shall calculate the difference in the annual dollar costs, divided by the difference in the annual emission reduction between each progressively more stringent control alternative, as compared either to the next less expensive control alternative, or to the current best available control technology, whichever is applicable.

(e) Place the best available control technology revision for a source category proposed under this section on the calendar of a regular meeting agenda of the south coast district board, for its acceptance or further action, as the board determines.

**Comment.** Section 36353 continues former Health and Safety Code Section 40440.11(c) without substantive change.

#### **§ 36354. More stringent than federal requirement**

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36354. If the proposed control option is more stringent than the lowest achievable emission rate for a source category pursuant to federal law, the south coast district shall not establish an emission limit for best available control technology that is conditioned on the use of a particular control option unless the incremental cost-effectiveness value of that option is less than the district’s established incremental cost-effectiveness value for each pollutant. Notwithstanding any other provision of law, the south coast district shall have the discretion to revise incremental cost-effectiveness value for each pollutant, provided it holds a public hearing pursuant to Section 36350 prior to revising the value.

**Comment.** Section 36354 continues former Health and Safety Code Section 40440.11(d) without substantive change.

#### **§ 36355. Limitation on subsequent changes**

---

36355. After the south coast district determines what is the best available control technology for a source, it shall not change that determination for that application for a period of at least one year from the date that an application for authority to construct was determined to be complete by the district. For major capital projects in excess of ten million dollars (\$10,000,000), after the applicant has met and conferred with the south coast district in a preapplication meeting, the south coast district executive officer may approve existing best available control technology for the project, for a longer time period as long as the final design is consistent with the initial, preliminary project design presented in the preapplication meeting.

**Comment.** Section 36355 continues former Health and Safety Code Section 40440.11(e) without substantive change.

Article 13. Transportation Controls

**§ 36400. Emergency limitation**

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36400. Pursuant to its authority under Section 36252 to implement the Air Pollution Emergency Plan of the state board, the south coast district board may adopt rules and regulations to limit the operation of motor vehicles within the south coast district during the period when an air pollution emergency has been called as defined by that plan. Those rules and regulations shall not apply to the operation of authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, or repair vehicles of a public utility.

**Comment.** Section 36400 continues former Health and Safety Code Section 40445 without substantive change.

**§ 36401. Intermittent transportation controls**

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36401. (a) The south coast district board shall conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the south coast district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called pursuant to the authority of the south coast district under Section 36252 to implement that plan.

(b) The south coast district board shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls in cooperation with representatives of industry, transportation, and local governments in the south coast district.

(c) The south coast district board shall incorporate its findings and determinations into the south coast district air quality management plan.

**Comment.** Section 36401 continues former Health and Safety Code Section 40445.5 without substantive change.

**§ 36402. Motor vehicle inspection**

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36402. If requested by the state board, the south coast district board may assist in the administration and enforcement of any state statute establishing an inspection program for motor vehicles with respect to their air pollution emissions and their air pollution control devices or systems and any rules and regulations adopted pursuant to such a statute.

**Comment.** Section 36402 continues former Health and Safety Code Section 40446 without change.

**§ 36403. Motor vehicle pollution control devices**

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36403. The south coast district board may request the state board to investigate the emission reduction capabilities of any motor vehicle pollution control devices which have not been previously tested by the state board.

**Comment.** Section 36403 continues former Health and Safety Code Section 40447 without change.

**§ 36404. Authority to regulate transportation**

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36404. Notwithstanding any other provision of law, the south coast district board may adopt regulations that do all of the following:

1 (a) Require operators of public and commercial fleet vehicles, consisting of 15 or more  
2 vehicles under a single owner or lessee and operating substantially in the south coast  
3 district, when adding vehicles to or replacing vehicles in an existing fleet or purchasing  
4 vehicles to form a new fleet, to purchase vehicles which are capable of operating on  
5 methanol or other equivalently clean burning alternative fuel and to require that these  
6 vehicles be operated, to the maximum extent feasible, on the alternative fuel when operating  
7 in the south coast district. Notwithstanding Section 30185, as used in this subdivision, the  
8 term “commercial fleet vehicles” is not limited to vehicles that are operated for hire,  
9 compensation, or profit. No regulation adopted pursuant to this subdivision shall apply to  
10 emergency vehicles operated by local law enforcement agencies, fire departments, or to  
11 paramedic and rescue vehicles until the south coast district board finds and determines that  
12 the alternative fuel is available at sufficient locations so that the emergency response  
13 capabilities of those vehicles is not impaired.

14 (b) Encourage and facilitate ridesharing for commuter trips into, out of, and within the  
15 south coast district.

16 (c) Prohibit or restrict the operation of heavy-duty trucks during hours of heaviest  
17 commuter traffic on freeways and other high traffic volume highways. In adopting  
18 regulations pursuant to this subdivision, the south coast district shall consult with the  
19 Department of Transportation and the Department of the California Highway Patrol and the  
20 transportation commission of each county in the south coast district. No regulation adopted  
21 pursuant to this subdivision shall, however, prohibit or restrict the operation of any heavy-  
22 duty truck engaged in hauling solid or hazardous waste or a toxic substance if that truck is  
23 required to be operated at certain times of day pursuant to an ordinance adopted for the  
24 protection of public health or safety by a city or county or any heavy-duty truck required to  
25 be operated at certain times of the day pursuant to Section 25633 of the Business and  
26 Professions Code.

27 **Comment.** Section 36404 continues former Health and Safety Code Section 40447.5  
28 without substantive change. Note that subdivisions (a) and (c) of former Health and Safety  
29 Code Section 40447.5 erroneously refer to those subdivisions as paragraphs. These  
30 references have been corrected.

### 31 **§ 36405. Authority to regulate diesel fuel composition**

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32 36405. (a) Notwithstanding any other provision of law, the south coast district board  
33 may, subject to the approval of the state board, adopt regulations that specify the  
34 composition of diesel fuel manufactured for sale in the south coast district. These  
35 regulations shall impose requirements at least as stringent as those of the state board. No  
36 regulation shall be adopted pursuant to this section until the south coast district has  
37 evaluated the safety of any fuel of a particular composition proposed to be required by the  
38 regulations. This section shall become operative January 1, 1989.

39 (b) In adopting regulations pursuant to this section, the south coast district board shall  
40 consider the effect of the regulation on emissions, public health, ambient air quality, and  
41 visibility in the south coast air basin; the technological feasibility and economic costs and  
42 benefits of the regulation compared to other available measures; and the availability of low  
43 emission and alternative fueled vehicles and alternative fuels.

44 **Comment.** Section 36405 continues former Health and Safety Code Section 40447.6  
45 without change.

1   **§ 36406. Clean-burning fuels program**

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2       36406. (a) The south coast district shall establish a program to encourage voluntary  
3 participation in projects to increase the utilization of clean-burning fuels. The south coast  
4 district shall coordinate its program with the state board, the State Energy Resources  
5 Conservation and Development Commission, and other appropriate state and federal  
6 agencies and private organizations that are conducting activities to promote the use of clean-  
7 burning fuels.

8       (b) After holding at least two public hearings to solicit public comment on a clean-  
9 burning fuels program, the south coast district shall adopt a program of activities for  
10 increasing the use of clean-burning fuels in the transportation and stationary source sectors.

11       (c) The program shall include an identification of potential funding sources, including,  
12 but not limited to, state and federal funds; private-sector funds; revenues from district  
13 permit, variance, and emission fees; proceeds from district penalty settlements and  
14 judgments; and funds from other sources under the jurisdiction of the south coast district.

15       (d) In developing its program, the south coast district shall consider promoting projects  
16 in the transportation and stationary source sectors utilizing methanol fuel, fuel cells, liquid  
17 petroleum gas, natural gas, including compressed natural gas, combination fuels, synthetic  
18 fuels, electricity, including electric vehicles, and other clean-burning fuels.

19       (e) When considering which clean fuels projects to promote, the south coast district shall  
20 consider, among other factors, the current and projected economic costs and availability of  
21 fuels, the cost-effectiveness of emission reductions associated with clean fuels compared  
22 with other pollution control alternatives, the use of new pollution control technologies in  
23 conjunction with traditional fuels as an alternative means of reducing emissions, potential  
24 effects on public health, ambient air quality, visibility within the region, and other factors  
25 determined to be relevant by the south coast district.

26       (f) When implementing clean fuels projects, the south coast district shall consider limiting  
27 the use of clean fuels to specific seasons, time of day, and locations if those limitations are  
28 found by the district to further the goals of the program.

29       (g) The south coast district shall coordinate the clean-burning fuels program with  
30 transportation control measures adopted pursuant to paragraph (4) of subdivision (b) of  
31 Section 36250 to reduce traffic congestion, air pollution, and motor vehicle fuel  
32 consumption.

33       **Comment.** Section 36406 continues former Health and Safety Code Section 40448.5  
34 without substantive change.

35   **§ 36407. Requirements for adoption of program**

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36       36407. (a) Prior to adopting the program specified in subdivision (b) of Section 36406  
37 and prior to expending any funds for any research, development, or demonstration  
38 program or project relating to vehicles or vehicle fuels, the south coast district shall do both  
39 of the following:

40       (1) Adopt and include in the program specified in subdivision (b) of Section 36406 a plan  
41 describing any proposed expenditure that sets forth the expected costs and qualitative as  
42 well as quantitative benefits of the proposed program or project.

43       (2) Find that the proposed program and projects funded as part of the program will not  
44 duplicate any other past or present program or project funded by the state board, the State  
45 Energy Resources Conservation and Development Commission, an air quality management  
46 district or air pollution control district, a public transit district or authority within the  
47 geographic jurisdiction of the south coast district, the San Diego Transit Corporation, the  
48 North County Transit District, the Sacramento Regional Transit District, the Alameda-



1 Contra Costa Transit District, the San Francisco Bay Area Rapid Transit District, the Santa  
2 Barbara Metropolitan Transit District, the Los Angeles Department of Water and Power, the  
3 Sacramento Municipal Utility District, the Pacific Gas and Electric Company, the Southern  
4 California Gas Company, the Southern California Edison Company, the San Diego Gas  
5 and Electric Company, or the Office of Mobile Sources within the Environmental  
6 Protection Agency. This paragraph is not intended to prevent funding for programs or  
7 projects jointly funded with another public or private agency where there is no duplication.

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

13 (c) Notwithstanding any other provision of law, the south coast district may recover the  
14 costs of implementing this section from the revenues it receives for alternative fuel  
15 research, development, and demonstration pursuant to Section 9250.11 of the Vehicle  
16 Code.

17 **Comment.** Section 36407 continues former Health and Safety Code Section 40448.5.1  
18 without substantive change. Uncodified statutory provisions applicable to former Health and  
19 Safety Code Section 40448.5.1 now apply to this section. See, e.g., 1995 Cal. Stat. ch. 609, §  
20 1 (legislative findings and declarations).

#### 21 **§ 36408. Trip reduction plans prohibited**

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22 36408. (a) Notwithstanding Section 32005, Sections 32900 to 32907, inclusive, or  
23 Section 32952, the south coast district shall not adopt or enforce any rule or regulation that  
24 would require any employer to submit a trip reduction plan.

25 (b) The south coast district may require employers with 100 or more employees at a  
26 single worksite to provide ride-matching information and transit information to employees  
27 at that worksite.

28 **Comment.** Section 36408 continues former Health and Safety Code Section 40454 without  
29 substantive change. The reference in former Health and Safety Code Section 40454 is  
30 obsolete and has not been continued. Section 40457 was repealed in 1996. See 1996 Cal.  
31 Stat. ch. 777, § 1.

#### 32 **§ 36409. Effect of Section 40454 on local agencies**

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33 36409. Notwithstanding Section 32904, the south coast district shall not require any  
34 local agency to implement any transportation control measure that the district itself is  
35 prohibited from enacting pursuant to Section 36408, unless required by the federal Clean  
36 Air Act.

37 **Comment.** Section 36409 continues former Health and Safety Code Section 40455 without  
38 substantive change.

#### 39 **§ 36410. Parking charges to employees**

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40 36410. Except as provided in Section 42200, the south coast district shall not require any  
41 employer to charge its employees for parking.

42 **Comment.** Section 36410 continues former Health and Safety Code Section 40456 without  
43 substantive change.



1   **§ 36411. Ridesharing**

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2       36411. (a) Rules 1501 and 1501.1 adopted by the south coast district are void.

3       (b) Rule 2202 adopted by the south coast district shall be amended in the following  
4 manner:

5       (1) The worksite employee threshold shall be raised to 250. On January 1, 1998, the  
6 south coast district and the Southern California Association of Governments shall report to  
7 the state board on the effectiveness of voluntary rideshare and any other replacement  
8 measures instituted in achieving the same level of emissions as the exempted employers in  
9 the original rule. If there is a disagreement between the district and the Southern California  
10 Association of Governments regarding the emissions reduced by the replacement measures,  
11 then, on or before June 1, 1998, the state board shall determine if the replacement measures  
12 have fully achieved the emission reductions that would have been achieved by the exempted  
13 employers under the original rule. If the emission levels are not met, the south coast district  
14 shall restore the 100 employee threshold not later than June 1, 1998. If the emission  
15 reductions have been met, the worksite employee threshold shall be raised to 500 on or  
16 before June 1, 1998. Prior to raising the threshold, the state board, after a public hearing,  
17 shall determine that sufficient funds are available to achieve a reasonable likelihood of  
18 success in accomplishing equivalent emission reductions for employers from 250 to 500.

19       (2) If the worksite threshold is increased to 500 pursuant to paragraph (1), then on June  
20 1, 1999, the south coast district and the Southern California Association of Governments  
21 shall report to the state board on the effectiveness of voluntary rideshare and any other  
22 replacement measures instituted in achieving the same level of emissions as the exempted  
23 employers in the original rule. If there is a disagreement between the district and the  
24 Southern California Association of Governments regarding the emissions reduced by the  
25 replacement measures, then, on or before January 1, 2000, the state board shall determine  
26 if the replacement measures have fully achieved the emission reductions that would have  
27 been achieved by the exempted employers under the original rule. If the emission levels are  
28 not met, the south coast district shall restore the 250 employee threshold not later than  
29 January 1, 2000. If the emission reductions are not sufficient to replace the emission  
30 reductions that would have been achieved by employers exempted pursuant to paragraph  
31 (1), the district may restore the 100 employee threshold. If the emission reductions have  
32 been met, Rule 2202 shall be suspended.

33       (3) If Rule 2202 is suspended pursuant to paragraph (2), on January 1, 2001, the south  
34 coast district and the Southern California Association of Governments shall report to the  
35 state board on the effectiveness of voluntary rideshare and any other replacement measures  
36 instituted in achieving the same level of emissions as the exempted employers in the  
37 original rule. If there is a disagreement between the district and the Southern California  
38 Association of Governments regarding the emissions reduced by the replacement measures,  
39 then, on or before June 1, 2001, the state board shall determine if the replacement measures  
40 have fully achieved the emission reductions that would have been achieved by the exempted  
41 employers under the original rule. If the emission levels are not met, the south coast district  
42 shall restore the 500 employee threshold not later than June 1, 2001. If the emission  
43 reductions are not sufficient to replace the emission reductions that would have been  
44 achieved by employers exempted pursuant to paragraph (2), the district may restore the 250  
45 employee threshold. If the emission reductions are not sufficient to replace the emission  
46 reductions that would have been achieved by employers exempted pursuant to paragraph  
47 (1), the district may restore the 100 employee threshold. If the emission reductions have  
48 been met, Rule 2202 shall be repealed and adopted as a backup measure to the alternative  
49 measures not later than June 1, 2001.

(4) If Rule 2202 is repealed pursuant to paragraph (3), the Southern California Association of Governments shall annually report to the south coast district on the effectiveness of voluntary rideshare efforts. The south coast district shall, using the data provided by the Southern California Association of Governments, and other sources, determine if the alternative measures are achieving equivalent emission reductions. If there is a shortfall in emission reductions, the south coast district may implement, only to the extent needed to make up the shortfall, the backup Rule 2202.

(5) Nothing in this section is intended to prevent an early replacement and repeal of Rule 2202. The south coast district shall replace Rule 2202 as soon as possible with alternative direct light-duty mobile source emission reduction measures, other than new vehicle emission standards or reformulated fuel standards.

**Comment.** Section 36411 continues former Health and Safety Code Section 40458 without change.

## Article 14. Aid to Small Businesses

### § 36450. Office of public advisor and small business assistance

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36450. (a) The south coast district shall maintain an office of public advisor and small business assistance to provide administrative and technical services and information to small businesses and the public. The executive officer shall appoint the public advisor.

(b) The office shall facilitate and encourage compliance by small businesses with the rules and regulations of the south coast district, assist small businesses in applying for permits and variances, and facilitate the participation of small businesses in the development of rules and regulations and in other proceedings of the south coast district. The office shall provide information on the economic impact of the rules and regulations of the south coast district on small businesses in the south coast district. The office shall make available to small businesses information regarding alternative processes, cleaner fuels and solvents, and low-cost financing for air pollution control equipment. Upon receiving findings and recommendations from the public advisor, the south coast district board shall endeavor to coordinate compliance schedules with the availability to small businesses of financing for pollution control equipment and other measures to reduce emissions.

(c) The office shall assure effective communication with interested groups and the public through means such as maintaining a staffing level adequate to respond to requests for its services and providing toll-free telephone lines. The office shall facilitate effective participation by all interested groups and the public in the development of rules and regulations and the plan and in the discharge of other responsibilities of the south coast district by assuring that, consistent with the express requirements of this chapter, Sections 32303 to 32402, inclusive, Chapter 3 (commencing with Section 32500) of Title 1, and Chapter 3 (commencing with Section 33200) of Title 2, timely and complete notice of all proceedings of the south coast district board and the hearing board is disseminated to all interested groups and the public. Upon request, the office shall advise interested groups and the public as to effective ways of participating in these proceedings, provide more extensive information on any item on an agenda, and make referrals to sources of expert advice and assistance on the district staff and elsewhere. Upon request, the office shall obtain and make available the public record of any aspect of, or particular action taken at, these proceedings. The office shall recommend to the south coast district board and the hearing board additional measures to assure open consideration and public participation in all proceedings.

(d) As used in this section:

(1) “Public” has the same meaning as “person,” as defined in Section 30380.

(2) “Proceedings” means any hearing, workshop, conference, or meeting which is held or conducted by the south coast district board, the hearing board, any committee of either board, or district staff, at which attendance by the public is allowed or required.

**Comment.** Section 36450 continues former Health and Safety Code Section 40448 without substantive change.

#### **§ 36451. Legislative finding and declaration**

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36451. The Legislature hereby finds and declares all of the following:

(a) It is necessary to increase the availability of financial assistance to small businesses which are subject to the rules and regulations of the south coast district, in order to minimize economic dislocation and adverse socioeconomic impacts.

(b) It is in the public interest that a portion of the funds collected by the south coast district from violators of air pollution regulations be allocated for the purpose of guaranteeing or otherwise reducing the financial risks of providing financial assistance to small businesses which face increased borrowing requirements in order to comply with air pollution control requirements.

(c) Public agencies and private lenders have a variety of methods available for providing financing assistance to small businesses and other employers, including taxable bonds, composite or pooled financing instruments, loan guarantees, and credit insurance, which could be utilized in combination with the penalties collected by the south coast district to expand the availability and reduce the cost of financing assistance.

(d) The California Pollution Control Financing Authority has funds set aside from previous bond issues, which could be used to guarantee the issuance of bonds or other financing for small businesses for the purchase and installation of pollution control equipment.

(e) The Office of Small Business in the Trade and Commerce Agency, through the regional small business development corporations, has the ability to provide state loan guarantees and technical assistance to small businesses needing financial assistance.

(f) The Job Training Partnership Division of the Employment Development Department makes funds available for job training programs, including funds for dislocated workers, through the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(g) It is the policy of the state that the Job Training Partnership Division of the Employment Development Department, in cooperation with the districts and the state board, are encouraged to provide job training programs for workers who, as determined by the department or the local private industry council, have been laid off or dislocated as a result of actions resulting from air quality regulations.

(h) It is the policy of the state that the California Pollution Control Financing Authority, the Office of Small Business in the Trade and Commerce Agency, and other state agencies implementing small business assistance programs, in cooperation with the districts and the state board, are encouraged to provide technical and financial assistance to small businesses to facilitate compliance with air quality regulations.

**Comment.** Section 36451 continues former Health and Safety Code Section 40448.6 without change.

#### **§ 36452. Financial assistance**

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36452. (a)(1) The south coast district shall annually allocate to the fund established pursuant to subdivision (b) not less than one million dollars (\$1,000,000) of the funds received from civil and criminal penalties, out-of-court settlements, or other sources, for

1 the purpose of guaranteeing or otherwise participating in the provision of financing  
2 assistance for lending programs of other public agencies or private lenders to small  
3 businesses for the purpose of complying with the south coast district regulations.

4 (2) If the balance in the fund established pursuant to subdivision (b) equals or exceeds  
5 four million dollars (\$4,000,000), the south coast district shall not make that annual  
6 allocation to that fund.

7 (b) In carrying out this section, the south coast district shall establish a special small  
8 business assistance fund known as the Air Quality Assistance Fund for the purpose of  
9 setting aside funds to be used in underwriting, guaranteeing, or otherwise participating in  
10 the provision of financing assistance by other public agencies or private lenders. Moneys in  
11 the fund shall be invested and reinvested in the same manner as other surplus government  
12 funds and the proceeds deposited in the fund.

13 (c) In carrying out this section, and its responsibilities for the mitigation of  
14 socioeconomic impacts, the south coast district shall utilize, to the maximum extent, the  
15 financing instruments and administrative capacity of other public agencies and private  
16 lenders with respect to providing financing assistance, and shall endeavor to obtain the  
17 maximum leverage of its funds through guarantees and other forms of risk sharing with  
18 other public agencies and private lenders, in order to increase the availability of financing  
19 assistance to small businesses. The south coast district shall consider, and shall make  
20 available to public agencies and private lenders, relevant information contained in  
21 environmental and socioeconomic impact assessments conducted by the south coast  
22 district.

23 (d) Notwithstanding any other provision of law, the findings of any environmental audit  
24 or assessment conducted by or for a small business pursuant to this section shall remain the  
25 property of the business.

26 (e) "Small business," for the purposes of this section, has the same meaning as defined  
27 by the federal Small Business Administration.

28 (f) Not later than January 1, 1993, the south coast district shall submit to the Legislature  
29 and the Governor a report which assesses the effectiveness of this section in increasing the  
30 availability of financial assistance to small businesses subject to the rules and regulations of  
31 the district.

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

35 **Comment.** Section 36452 continues former Health and Safety Code Section 40448.7  
36 without change.

### 37 **§ 36453. Small business technical and compliance assistance**

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38 36453. (a) As used in this section, "small business" has the same meaning as defined by  
39 the federal Small Business Administration, except that no stationary source which is a  
40 major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C.  
41 Sec. 7661(2)), is a small business.

42 (b) The south coast district shall establish a small business technical and compliance  
43 assistance program. The program shall include all of the following components:

44 (1) Mechanisms for developing, collecting, and coordinating information concerning air  
45 quality compliance methods and technologies for small businesses.

46 (2) A program which assists small businesses in determining applicable requirements,  
47 applying for permits, and petitioning for variances.

(3) Mechanisms to refer small businesses to qualified compliance auditors, or, at the option of the district, to provide compliance audits of the operations of those businesses.

(4) Mechanisms to assist small businesses with air pollution control and air pollution prevention by providing information concerning alternative technologies, process changes, products, and methods of operation that reduce air pollution.

(5) Mechanisms to provide small businesses with information regarding financing for air pollution control equipment.

(6) Procedures to consider requests of small businesses for modification, as authorized by district regulations, of any work practice or technological method of compliance.

(7) Programs to encourage lawful cooperation among small businesses and other persons to further compliance with air quality regulations.

(8) Mechanisms to assure that small businesses receive notice of the assistance available pursuant to this section.

**Comment.** Section 36453 continues former Health and Safety Code Section 40448.8 without change.

## Article 15. Monitoring and Reporting Requirements

### **§ 36500. Monitoring requirements**

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36500. For the purpose of complying with emissions monitoring requirements, the south coast district shall allow sources the option of using an electronic or computer data storage system. The district may require the electronic or computer data storage system to have the same degree of signal path security as with existing strip chart recorder systems.

**Comment.** Section 36500 continues former Health and Safety Code Section 40440.3 without change.

### **§ 36501. Reporting and forecasting**

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36501. (a) The south coast district shall use the Pollutant Standards Index developed by the Environmental Protection Agency and shall report and forecast pollutant levels daily for dissemination in the print and electronic media.

(b) Using existing communication facilities available to it, the south coast district shall notify all schools in the South Coast Air Basin whenever any federal primary ambient air quality standard is predicted to be exceeded.

(c) Whenever it becomes available, the south coast district shall disseminate to schools, amateur adult and youth athletic organizations, and all public agencies operating parks and recreational facilities in the south coast district the latest scientific information and evidence regarding the need to restrict exercise and other outdoor activities during periods when federal primary air quality standards are exceeded.

(d) Once every two months and annually, the south coast district shall report on the number of days and locations that federal and state ambient air quality standards were exceeded and the number of days and locations of these occurrences.

**Comment.** Section 36501 continues former Health and Safety Code Section 40451 without change.

### **§ 36502. Report on regulatory activities**

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36502. The south coast district shall submit an annual report to the state board and the Legislature summarizing its regulatory activities for the preceding calendar year. The report shall include:



(a) A summary of each major rule and rule amendment adopted by the south coast district board. The summary shall include emission reductions to be accomplished by each rule or regulation; the cost per ton of emission reduction to be achieved from each rule or regulation; other alternatives that were considered through the environmental assessment process; the cost per ton of comparable emission reductions that could have been achieved from each alternative; a statement of the reason why a given alternative was chosen; the conclusions and recommendations of the district's socioeconomic analysis, including any evaluations of employment impacts; and the source of funding for the rule or regulation. For the purposes of this subdivision, a major rule or rule amendment is one that is intended to significantly affect air quality or which imposes emission limitations.

(b) The number of permits to operate or to construct, by type of industry, that are issued and denied, and the number of permits to operate that are not renewed.

(c) Data on emission offset transactions and applications, by pollutant, during the previous fiscal year, including an accounting of the number of applications for permits for new or modified sources that were denied because of the unavailability of emission offsets.

(d) The district's forecast of budget and staff increases proposed for the following fiscal year, and projected for the next two fiscal years. Budget and staff increases shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years.

(e) An identification of the source of all revenues collected that are used, or proposed to be used, to finance activities related to either stationary or nonstationary sources.

(f) A response to audit recommendations pursuant to Section 36503. The response shall include proposed statutory changes needed to implement the recommendations.

(g) The results of the clean fuels program as specified in Section 36406. This element of the report shall be submitted biennially.

**Comment.** Section 36502 continues former Health and Safety Code Section 40452 without substantive change. The reference in the introductory paragraph to the date on which the annual reporting requirement began (April 1, 1991) is obsolete and has not been continued. References in Health and Safety Code Section 40452(d) and (e) to Health and Safety Code Section 42311.1 are obsolete. Section 42311.1 was repealed by its own terms.

### § 36503. Performance audit

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36503. (a) Every three years, the south coast district board shall contract with an independent auditor to conduct a performance audit that will assess all of the following:

(1) Whether the objectives of proposed, new, or ongoing programs established by the Legislature or another authorizing body, are being, or will be, achieved.

(2) The effectiveness of the individual programs and activities of the south coast district.

(3) Whether the south coast district has complied with the laws, rules, and regulations applicable to the program.

(4) Whether there exist alternatives for carrying out the south coast district program that might yield desired results more effectively and efficiently, albeit at lower or higher cost.

(b) The performance audit shall include an assessment of policies, procedures, and productivity, as feasible, and shall make recommendations for changes that would enable the south coast district to meet its statutory mandates in a cost-effective manner.



(c) Prior to entering into a contract pursuant to subdivision (a), the district shall draft a request for proposals to be issued to qualified independent firms, which shall be reviewed by the Legislative Analyst prior to issuance.

**Comment.** Section 36503 continues former Health and Safety Code Section 40453 without substantive change. The reference in subdivision (a) to the date on which the performance audit requirement began (July 1, 1991) is obsolete and has not been continued.

## PART 4. NONVEHICULAR AIR POLLUTION CONTROL

### TITLE 1. GENERAL PROVISIONS

#### **§ 37000. Assistance to small businesses**

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37000. (a) The Legislature finds and declares that the California Pollution Control Financing Authority and the Department of Commerce, working with the south coast district, have established successful programs to assist small businesses in complying with district rules and financing the purchase of pollution control equipment.

(b) The Treasurer, the California Pollution Control Financing Authority, and the Department of Commerce shall work with, and provide all feasible assistance to, districts to increase opportunities for small businesses to comply with the rules and regulations of the district. That assistance may include loans, loan guarantees, and other forms of financial assistance.

**Comment.** Section 37000 continues former Health and Safety Code Section 41503.6 without change.

#### **§ 37001. Stricter local standards**

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37001. Except as otherwise specifically provided in this division, including, but not limited to, Sections 37902, 37959, and 38304, any local or regional authority may establish additional, stricter standards than those set forth by law or by the state board for nonvehicular sources.

**Comment.** Section 37001 continues former Health and Safety Code Section 41508 without substantive change.

#### **§ 37002. Action required to determine amount of emission**

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37002. For the purpose of carrying out the duties imposed upon the state board or any district, the state board or the district, as the case may be, may adopt rules and regulations to require the owner or the operator of any air pollution emission source to take the action determined by the state board or the district to be reasonable for the determination of the amount of the emission from that source.

**Comment.** Section 37002 continues former Health and Safety Code Section 41511 without substantive change.

#### **§ 37003. Application of division, rules, and regulations to vehicles**

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37003. Notwithstanding any other provision of law, no provision of this division, and no rule or regulation of the state board or of a district adopted pursuant to this division, imposing any requirement pertaining to the control of nonvehicular emissions shall apply to any equipment carried by, or affixed to, any motor vehicle described in Section 27156.3 of the Vehicle Code.

1     **Comment.** Section 37003 continues former Health and Safety Code Section 41514 without  
2 change.

3     **§ 37004. Findings required for regulation of powerplant emissions**

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4     37004. (a) Prior to adopting rules or regulations which would affect the operation of  
5 existing powerplants, the state board or any district shall consider and adopt written  
6 findings that specify the supporting information relied upon with regard to all of the  
7 following:

8         (1) The need for the emission reductions expected to be achieved from the  
9 implementation of the proposed rule or regulation, and the extent to which the rule or  
10 regulation is necessary solely for the attainment of a state ambient air quality standard.

11         (2) The relative cost of achieving the emission reductions from the proposed rule or  
12 regulation compared to the cost of feasible reductions from sources other than powerplants.

13         (3) The availability and technological feasibility of control technologies required by the  
14 proposed rule or regulation.

15         (b) Rules and regulations affecting the operation of existing powerplants adopted by the  
16 state board or any district shall take into consideration the findings under subdivision (a).

17     **Comment.** Section 37004 continues former Health and Safety Code Section 41514.8  
18 without substantive change. The reference in subdivision (b) to the date after which certain  
19 findings must be considered in adopting certain rules and regulations (January 1, 1982), is  
20 obsolete and has not been continued.

21     **§ 37005. Application of part to construction equipment used on temporary basis**

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22     37005. Nothing contained in this part shall be construed to include or restrict the use of  
23 construction equipment such as portable sandblasting equipment or portable spraying or  
24 spray painting equipment, or any similar equipment, used on a temporary basis in  
25 connection with new construction, or on maintenance or repairs of existing structures,  
26 machinery, or equipment; provided, the equipment is operated in accordance with the  
27 requirements of this division and applicable district and state board rules and regulations.

28     **Comment.** Section 37005 continues former Health and Safety Code Section 41512(b)  
29 without substantive change.

30     **§ 37006. Independent testing**

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31     37006. Where testing to demonstrate compliance with permit conditions or with any state  
32 or local law, order, rule, or regulation relating to air pollution is required by the state board,  
33 the state board, not later than April 1, 1981, shall establish procedures under which the  
34 operator may request that the testing be performed by an independent testing service. The  
35 state board may, for good cause, reject the request.

36     **Comment.** Section 37006 continues former Health and Safety Code Section 41512(c)  
37 without substantive change.

38     👉 **Note.** This section specifies a deadline for the establishment of certain procedures. This  
39 deadline provision may be obsolete. The Commission would like to receive input on two  
40 questions: (1) Were the procedures established as required? (2) Does the deadline provision  
41 still serve a useful purpose?

## TITLE 2. STATE BOARD OVERSIGHT

### CHAPTER 1. GENERAL PROVISIONS

#### **§ 37100. Powers and responsibilities of state board**

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37100. To coordinate air pollution control activities throughout the state, and to ensure that the entire state is, or will be, in compliance with the standards adopted pursuant to Section 30950, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 33201, and the revised plans submitted pursuant to Section 33453, to determine whether the plans will achieve and maintain the state's ambient air quality standards by the earliest practicable date.

(b) Review the rules and regulations and programs submitted by the districts pursuant to Section 32302 to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards.

(c) Review the enforcement practices of the districts and local agencies delegated authority by districts pursuant to Sections 32900 to 32907, inclusive to determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

**Comment.** Section 37100 continues former Health and Safety Code Section 41500 without substantive change. The reference to Section 40717.2 in former subdivision (c) is erroneous and has not been continued.

**Note.** Subdivision (c) refers to Health and Safety Code Section 40717.2. That section does not appear to exist. The Commission would like to receive information on the intended effect of this erroneous reference.

#### **§ 37101. Application of environmental management plan requirements**

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37101. Notwithstanding any other provision of law, any plan required by the provisions of this division shall be subject to the provisions of Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

**Comment.** Section 37101 continues former Health and Safety Code Section 41500.5 without substantive change. The reference in former Section 41500.5 to "this title" was erroneous and has been replaced with a reference to "this division."

**Note.** This section refers to "the provisions of this title." The Health and Safety Code does not use titles, so it is not clear what this reference is intended to mean. This part does not appear to require the preparation of plans, but other parts in the division do. Probably, the reference to the title should be replaced with a reference to the division.

#### **§ 37102. Public hearing requirements**

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37102. (a) Before taking any action pursuant to Section 37150, 37200, 37201, or 37503, the state board shall hold a public hearing within the air basin affected, upon a 45-day written notice given to the basinwide air pollution control council, if any, the affected districts, the affected air quality planning agencies, and the public. However, except with respect to action taken pursuant to Section 37503, upon receipt of evidence that a concentration of air contaminants in any place is presenting an imminent and substantial endangerment to the health of persons, and that the districts affected are not taking reasonable action to abate the concentration of air contaminants, the state board shall give, orally if necessary, as much notice as possible, but not less than 24 hours. The state board

1 shall, in the action taken, include a statement of the facts which prevented the state board  
2 from giving a 45-day written notice.

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

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

17 (d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state  
18 board acting pursuant to Section 30857, or to his delegates acting pursuant to Section  
19 30858, with respect to any action taken pursuant to any section enumerated in subdivision  
20 (a).

21 **Comment.** Section 37102 continues former Health and Safety Code Section 41502 without  
22 substantive change.

## 23 CHAPTER 2. DISTRICT ATTAINMENT PLANS

### 24 § 37150. Sufficiency of plan

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25 37150. (a) Within 12 months of receiving each district's attainment plan developed  
26 pursuant to Section 33201, the state board shall determine whether the attainment date  
27 specified in the plan represents the earliest practicable date and whether the measures  
28 contained in the plan are sufficient to achieve and maintain state ambient air quality  
29 standards.

30 (b) The state board shall conduct its review to include the plans of every district in the air  
31 basin, and shall determine whether the combination of measures in all the plans is sufficient  
32 to achieve and maintain state ambient air quality standards throughout the air basin. The  
33 state board shall hold at least one public hearing in each affected air basin prior to reaching  
34 a final determination of the sufficiency of the plans. The state board shall require control  
35 measures for the same emission sources to be uniform throughout the air basin to the  
36 maximum extent feasible, unless a district demonstrates to the satisfaction of the state board  
37 that adoption of the measure within its jurisdiction is not necessary to achieve or maintain  
38 the state ambient air quality standard.

39 (c) Where air pollutant transport is a factor, the state board shall determine whether the  
40 attainment plan is sufficient to satisfy the requirements of Section 33300.

41 (d) If a district is unable to specify an attainment date and the state board concurs that  
42 projecting an attainment date is not feasible, the state board shall determine whether the plan  
43 contains every feasible control strategy or measure to ensure progress toward attainment is  
44 maintained.

45 (e) In making determinations under subdivisions (a), (b), (c), and (d), the state board  
46 shall consider any emission reductions occurring in, or expected to occur in, the district or  
47 air basin.

1     **Comment.** Section 37150 continues former Health and Safety Code Section 41503 without  
2 substantive change.

3     **§ 37151. Approval of plan with lower emissions reductions**

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4     37151. The state board may approve an attainment plan which achieves less emission  
5 reductions than 5 percent per year, or less than 15 percent every three years, as specified in  
6 Section 33251, if the state board determines that the district is unable to meet these  
7 requirements, despite the expeditious adoption of all feasible controls, or if the state board  
8 determines that the equivalent air quality improvement will be achieved through an alternate  
9 level of emissions reduction.

10    **Comment.** Section 37151 continues former Health and Safety Code Section 41503.1  
11 without substantive change.

12    **§ 37152. Deficiencies in plan**

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13     37152. (a) If the state board concludes that a district's plan does not meet the  
14 requirements of Section 37150, the state board shall notify the district of all deficiencies in  
15 writing. The district shall correct the deficiencies identified by the state board, and shall  
16 submit its revised plan to the state board for approval.

17     (b) If the district does not concur with the state board's findings and determinations of  
18 deficiency, or the state board determines that the district's plan revisions are inadequate to  
19 remedy identified deficiencies, the state board and the district shall attempt to resolve the  
20 differences within three months of the board's disapproval. The state board and the districts  
21 shall develop a uniform conflict resolution procedure, for purposes of this subdivision,  
22 prior to any district's submittal of its attainment plan to the state board.

23     (c) If a conflict between the state board and district cannot be resolved, the state board  
24 shall take all of the following actions:

25       (1) Conduct a public hearing in the air basin containing the affected district for purposes  
26 of hearing testimony on the plan and the deficiencies identified by the state board pursuant  
27 to subdivision (a).

28       (2) Prior to conducting the hearing, provide a 45-day written notice to the affected district  
29 and to the public of the date, time, location, and subject of the hearing.

30       (3) After conducting the public hearing on the plan and the deficiencies identified by the  
31 state board, revise the district's plan as it finds and determines necessary.

32    **Comment.** Section 37152 continues former Health and Safety Code Section 41503.2  
33 without substantive change.

34    **§ 37153. Triennial progress report and plan revisions**

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35     37153. Upon receipt of a district's triennial progress report and plan revisions prepared  
36 pursuant to subdivision (b) of Section 33452, the state board shall determine whether the  
37 district has achieved the minimum rate of progress under Section 33251 or as adjusted by  
38 the board pursuant to Section 37151. The state board shall require the adoption of one or  
39 more contingency measures when the minimum rate of progress has not been achieved,  
40 unless the district demonstrates to the satisfaction of the state board that the discrepancy  
41 will be corrected and the deficiency restored during the next reporting period.

42    **Comment.** Section 37153 continues former Health and Safety Code Section 41503.3  
43 without substantive change.

1    **§ 37154. Public hearing requirement**

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2       37154. All actions of the state board to approve, revise and approve, or disapprove a  
3       district's attainment plan or plan revision shall be taken at a noticed public hearing.

4       **Comment.** Section 37154 continues former Health and Safety Code Section 41503.4  
5       without change.

6    **§ 37155. Satisfaction of applicable standards**

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7       37155. The state board shall ensure that a district's attainment plan and plan revisions  
8       meet the requirements of this part and of Part 3 (commencing with Section 32000), and that  
9       every reasonable action is taken to achieve the state ambient air quality standards for ozone,  
10      carbon monoxide, nitrogen dioxide, and sulfur dioxide at the earliest practicable date.

11      **Comment.** Section 37155 continues former Health and Safety Code Section 41503.5  
12      without substantive change.

13                    CHAPTER 3. ACHIEVEMENT OF AMBIENT AIR QUALITY STANDARDS

14   **§ 37200. Failure to achieve ambient air quality standards**

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15      37200. (a) If, after a public hearing, the state board finds that the program or the rules  
16      and regulations of a district will not likely achieve and maintain the state's ambient air  
17      quality standards, the state board may establish a program, or portion thereof, or rules and  
18      regulations it deems necessary to enable the district to achieve and maintain the ambient air  
19      quality standards.

20      (b) Any program, or portion thereof, or rule or regulation established by the state board  
21      for the district shall have the same force and effect as a program, rule, or regulation adopted  
22      by the district and shall be enforced by the district.

23      **Comment.** Section 37200 continues former Health and Safety Code Section 41504 without  
24      substantive change.

25   **§ 37201. Exercise of district powers by board**

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26      37201. If, after a public hearing, the state board finds that a district is not taking  
27      reasonable action to enforce the statutory provisions, rules, and regulations relating to air  
28      quality in a manner that will likely achieve and maintain the state's ambient air quality  
29      standards, the state board may exercise any of the powers of that district to achieve and  
30      maintain the ambient air quality standards.

31      **Comment.** Section 37201 continues former Health and Safety Code Section 41505 without  
32      substantive change.

33      ☞ **Note.** Section 41507 appears to be obsolete and is not continued in this draft. The  
34      section governs the state board's review of basinwide air pollution control plans pursuant to  
35      authority granted under Section 41602. Section 41602 was repealed in 1988. See 1999 Cal.  
36      St. ch. 1568, § 23.

37                    TITLE 3. FEE SCHEDULES

38   **§ 37300. Fee schedule relating to sampling**

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39      37300. The state board or a district board may adopt, by regulation, after a public  
40      hearing, a schedule of fees not exceeding the estimated cost of planning, preliminary  
41      evaluation, sampling, sample analysis, calculations, and report preparation with respect to



1 samples of emissions secured from air pollution emission sources. However, the fees may  
2 be imposed or assessed only when the samples are required to determine compliance with  
3 permit conditions or with any state or local law, order, rule, or regulation relating to air  
4 pollution. The fees shall not include charges for the reasonable time exclusively spent by  
5 the owner or operator of the source constructing testing facilities or preparing for the  
6 testing. The failure to pay a fee in a timely manner shall constitute grounds for the  
7 revocation or suspension, and may be made a condition for the issuance, of any permit.  
8 The revocation or suspension shall be in accordance with the procedures set forth in  
9 Sections 38807 to 38812, inclusive.

10 **Comment.** Section 37300 continues former Health and Safety Code Section 41512(a)  
11 without substantive change.

#### 12 **§ 37301. Fee schedule relating to emission sources not included in permit system**

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13 37301. (a) A district board may adopt a schedule of fees applicable to emission sources  
14 not included within a permit system adopted pursuant to Section 38750 to cover the  
15 estimated reasonable costs of evaluating plans required by law or by district rule or  
16 regulation, including, but not limited to, review, inspection, and monitoring related thereto.  
17 The fees shall not exceed the estimated costs of reviewing, monitoring, and enforcing the  
18 plan for which the fees are charged.

19 (b) The district board shall hold a public hearing at least 30 days prior to the meeting of  
20 the district board at which the adoption or revision of the fee schedule is to be considered,  
21 and supporting data on the actual or estimated costs required to provide the service for  
22 which the fee is proposed to be charged shall be made available at that public hearing.

23 **Comment.** Section 37301 continues former Health and Safety Code Section 41512.5  
24 without substantive change. The former undesignated paragraphs have been designated as  
25 subdivisions.

#### 26 **§ 37302. Limitation on fee increases**

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27 37302. (a) No district with an annual budget of less than one million dollars  
28 (\$1,000,000) shall increase any existing fees for authority-to-construct permits or permits  
29 to operate by more than 30 percent in any calendar year, unless required to comply with the  
30 minimum fee requirements of Title V.

31 (b) No district with an annual budget of one million dollars (\$1,000,000) or more shall  
32 increase any existing fees for authority-to-construct permits or permits to operate by more  
33 than 15 percent in any calendar year.

34 (c) Notwithstanding subdivision (b), this section shall not apply to the south coast  
35 district.

36 **Comment.** Section 37302 continues former Health and Safety Code Section 41512.7(a)-(c)  
37 without substantive change.

#### 38 **§ 37303. Permit fees of San Diego County Air Pollution Control District**

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39 37303. (a) Notwithstanding Section 37302, effective January 1, 1998, any of the San  
40 Diego County Air Pollution Control District's individual fees for authority-to-construct  
41 permits and permits to operate may reflect the district's actual costs, as determined by the  
42 district's fee-for-service calculations.

43 (b) Notwithstanding subdivision (a) or subdivision (b) of Section 37302, on and after  
44 January 1, 1999, the San Diego County Air Pollution Control District may increase any  
45 individual fees for authority-to-construct permits and permits to operate by more than 15

percent in any fiscal year only if the total, aggregate increase in existing fees for authority-to-construct permits and permits to operate does not exceed 15 percent in that fiscal year.

(c) This section shall remain operative so long as the San Diego County Air Pollution Control District continues to determine fees for authority-to-construct permits and permits to operate pursuant to a cost-based fee system in which all of the following requirements are met:

(1) Fees for authority-to-construct permits and permits to operate are specified for a minimum of 120 separate equipment and process categories.

(2) Labor expended to issue authority-to-construct permits and permits to operate is tracked in increments of 0.5 hours or less for each of those categories.

(3) The fees for authority-to-construct permits and permits to operate are determined from the costs of labor tracked in increments of 0.5 hours or less and other actual and projected costs related to permitted stationary sources.

(d) This section shall become inoperative if, and at the time that, the San Diego district ceases to determine fees for authority-to-construct permits and permits to operate as specified in subdivision (c).

**Comment.** Section 37303 continues former Health and Safety Code Section 41512.7(d) without substantive change.

## TITLE 4. COGENERATION TECHNOLOGY AND RESOURCE RECOVERY PROJECTS

### CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS

#### § 37400. Legislative findings and declarations

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37400. The Legislature finds and declares the following:

(a) Present methods of generating and using energy in California result in substantial waste of energy through the loss of exhaust steam and heat which is not recovered or otherwise put to use, and that this waste of energy results in adverse environmental and economic impacts and accelerates the need for new powerplant construction, and increases dependence upon imported oil.

(b) The use of cogeneration technology can substantially increase the efficiency of energy use in California and can also result in environmental and economic benefits for the people of the state.

(c) The expanded use of cogeneration technology is specifically encouraged as a matter of national energy policy through the tax and regulatory incentives provided in the National Energy Act, and through state legislation which encourages the expeditious approval of cogeneration projects.

(d) The construction and operation of cogeneration facilities will result in an incremental air quality emissions benefit to the extent they reduce demand on existing utility combustion generation facilities in the same air basin and that this benefit should be recognized in determining requirements for new cogeneration projects.

**Comment.** Section 37400 continues former Health and Safety Code Section 41515 without substantive change.

#### § 37401. Further legislature findings and declarations

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37401. The Legislature further finds and declares the following:

(a) The disposal of liquid and solid waste poses serious environmental and economic problems for local governments in California.

(b) Resource recovery technology presently exists which can convert municipal waste to energy while also recovering substantial quantities of raw materials.

(c) The construction of resource recovery projects can help alleviate the environmental and economic problems associated with municipal waste disposal, while at the same time producing additional supplies of energy and raw materials.

(d) Resource recovery projects should therefore be encouraged as a matter of state policy.


**Comment.** Section 37401 continues former Health and Safety Code Section 41516 without substantive change.

#### **§ 37402. Further legislature findings and declarations**

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37402. The Legislature further finds and declares that the 1977 amendments to the federal Clean Air Act specifically authorize local governments to provide for the mitigation of the air quality impact of projects with communitywide benefits, such as cogeneration technology and resource recovery projects, by providing regional growth increments in the state implementation plan.

**Comment.** Section 37402 continues former Health and Safety Code Section 41517 without change.

 **Note.** Health and Safety Code Sections 41518-41520 require the state board to inventory potential cogeneration technology and resource recovery projects that could be constructed before 1987. These inventories were to be prepared by 1980. These sections appear to be obsolete and have not been continued.

## **CHAPTER 2. BASINWIDE MITIGATION FOR COGENERATION AND RESOURCE RECOVERY PROJECTS**

#### **§ 37450. Growth allowances**

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37450. (a) The districts shall provide for, and shall periodically revise as appropriate, the growth allowances necessary to accommodate the net air quality impact, if any, of cogeneration technology projects and resource recovery projects expected to be permitted by January 1, 1987, and subsequent periods thereafter, pursuant to Section 39154, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board, for inclusion in the next state implementation plan revisions, the necessary control measures for the growth allowances for federally approved nonattainment pollutants and precursors required by subdivision (a).

(c) Any district which lacks a federally approved demonstration of attainment with the national ambient air quality standard for ozone or nitrogen dioxide is not required to provide a growth allowance for any pollutant under this section until two years after the district makes both demonstrations. Federal approval shall be determined, based on regulations adopted by the Environmental Protection Agency, after public notice and opportunity for comment. After a district demonstrates attainment, the district may establish a growth allowance by allocating an air quality increment within the ambient air quality standard or through adoption of further control measures.

**Comment.** Section 37450 continues former Health and Safety Code Section 41600 without substantive change.

1     ☞ **Note.** Subdivision (a) requires analysis of the air quality impact of “cogeneration  
2     technology projects and resource recovery projects expected to be permitted by January 1,  
3     1987, and subsequent periods thereafter, pursuant to Section 42314....” The Commission  
4     would like to receive input on whether the quoted language could be replaced with the  
5     following language: “permitted cogeneration technology projects and resource recovery  
6     projects....”

7     **§ 37451. Utility displacement credits**

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8     37451. (a) The districts, in cooperation with the state board, shall develop, adopt, and  
9     update, as necessary, a procedure to determine the magnitude of the emissions from the  
10    existing electric generating system in the air basin which would be displaced if cogeneration  
11    technology projects and qualifying facilities were constructed. The procedure shall be used  
12    once each year to determine the utility displacement credits which shall be used in  
13    reviewing the permit applications for new cogeneration technology projects and qualifying  
14    facilities during the following year, and shall ensure that the credits are real, permanent,  
15    quantifiable, enforceable, and surplus.

16    (b) A district may reduce the emission offset requirement for a cogeneration technology  
17    project or qualifying facility by the utility displacement credits determined pursuant to  
18    subdivision (a). In all cases in which a cogeneration technology project or qualifying  
19    facility satisfies subdivision (c), a district shall reduce the offset requirement for the project  
20    or facility by the utility displacement credits determined pursuant to subdivision (a). A  
21    district shall allocate at least 90 percent of the pounds of emissions available in the form of  
22    utility displacement credits to projects and facilities which satisfy the requirements of  
23    subdivision (c).

24    (c) Utility displacement credits shall be granted to cogeneration technology projects and  
25    qualifying facilities for those pollutants for which net project or facility emissions, after  
26    offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 39154,  
27    are lower, on a pounds of pollutant per unit of energy produced basis, than the emissions  
28    which would be generated by the fossil-fuel fired existing electric generating system in the  
29    air basin in the absence of the project or facility.

30    (d) Utility displacement credits shall be credited to a project or facility only to the extent  
31    necessary to satisfy district offset requirements, and only after credit has been granted for  
32    offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 39154.

33    (e) The cogeneration technology project or qualifying facility proponent, and the owner  
34    or operator of the purchasing utility, shall provide to the state board or the district, as the  
35    case may be, the information not publicly available from state or local agencies which is  
36    necessary to make the determinations required by this section. The information shall  
37    include, but is not limited to, all of the following:

- 38    (1) Emission source test data.
- 39    (2) Chronological fuel use data.
- 40    (3) Chronological electric load data.

41    (f) In providing the utility displacement credits required by this section, and for purposes  
42    of this section only, the utility, if not an applicant, shall not be required to furnish emission  
43    offsets on a case-by-case basis for the project. This section does not permit a district on a  
44    case-by-case basis to limit the ability of the utility to operate its existing hydrocarbon  
45    combustion facilities in accordance with the requirements of the Public Utilities  
46    Commission or the governing body of a public utility owned by a municipality or other  
47    political subdivision of the state.

**Comment.** Section 37451 continues former Health and Safety Code Section 41605 without substantive change.

### **§ 37452. Offset requirement for organic waste facilities**

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37452. (a) In considering the offset requirement for a project facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler), to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall include the incremental emissions benefit that occurs because those wastes are not disposed of by open field burning or by forest land burning if the biomass fuel would ordinarily or otherwise be burned in that manner in the same air basin. The emissions credit shall be offset at a ratio of 1.2 to 1 for nonattainment pollutants if within 15 miles, and at a ratio of 2 to 1 if further than 15 miles within the same air basin.

(b) At least once every two years, the districts and the state board shall, in cooperation, reevaluate a procedure to determine the availability and magnitude of the offsets resulting from the incremental emissions benefits, including an accounting of the quantity of biomass material credits calculated for purposes of Section 39157 as necessary to ensure that state and federal ambient air quality standards may be achieved and maintained, or that reasonable further progress be made toward attainment.

(c) The applicant shall provide the state board or a district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, the following:

(1) The quality of fuel or waste to be burned or used in the facility.

(2) The type of fuel or waste to be burned or used in the facility.

(3) The source of the fuel or waste to be burned or used in the facility.

**Comment.** Section 37452 continues former Health and Safety Code Section 41605.5 without substantive change. The reference in subdivision (b) to the date on which the biennial reevaluation requirement began (July 1, 1998) is obsolete and has not been continued.

## **TITLE 5. NONATTAINMENT AREA PLANS**

### **§ 37500. Adoption by state board**

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37500. The state board shall adopt the nonattainment area plan approved by a designated air quality planning agency as part of the state implementation plan, unless the state board finds, after a public hearing, that the nonattainment area plan will not meet the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

**Comment.** Section 37500 continues former Health and Safety Code Section 41650(a) without substantive change.

### **§ 37501. Determination of availability of control measure**

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37501. The primary responsibility for determining whether a control measure is reasonably available shall be vested in the public agency which has the primary responsibility for implementation of that control measure. The determination of reasonably available control measure by the public agency responsible for implementation shall be conclusive, unless the state board finds after public hearing that the determination will not meet the requirements of the Clean Air Act.



**Comment.** Section 37501 continues former Health and Safety Code Section 41650(b) without substantive change.

**§ 37502. Evidence and testimony relating to nonattainment area plan**

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37502. (a) In addition to any other statutory requirements, at the public hearing held pursuant to Section 37500, the districts included, in whole or in part, within the nonattainment area, the designated air quality planning agency, and members of the public shall have the opportunity to present oral and written evidence.

(b) In addition, the districts and the agency shall have the right to question and solicit testimony of qualified representatives of the state board staff on the matter being considered. The state board may, by an affirmative vote of four members, place reasonable limits on the right to question and solicit testimony of qualified representatives of the state board staff.

**Comment.** Section 37502 continues former Health and Safety Code Section 41651 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

**§ 37503. Revisions by state board**

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37503. If, after the public hearing, the state board finds that the nonattainment area plan approved by the designated air quality planning agencies does not comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the state board may adopt any revisions that are necessary to comply with the requirements, except as otherwise provided in Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

**Comment.** Section 37503 continues former Health and Safety Code Section 41652 without substantive change.

**TITLE 6. EMISSION LIMITATIONS**

**CHAPTER 1. GENERAL PROVISIONS**

**§ 37600. Prohibition of discharge causing injury, detriment, nuisance, or annoyance**

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37600. Except as otherwise provided in Section 37601, no person shall discharge from any source whatsoever sufficient quantities of air contaminants or other material to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or to endanger the comfort, repose, health, or safety of these persons or the public, or to cause, or have a natural tendency to cause, injury or damage to business or property.

**Comment.** Section 37600 continues former Health and Safety Code Section 41700 without substantive change.

**§ 37601. Exception to application of Section 37600**

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37601. (a) Section 37600 shall not apply to odors emanating from any of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, provided that the odors emanate directly from the compost facility or operations.



(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 37600 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on the date that is four years from the effective date of Chapter 788 of the Statutes of 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it is inoperative and is repealed.

**Comment.** Section 37601 continues former Health and Safety Code Section 41705 without substantive change.

#### **§ 37601. Exception to application of Section 37600**

---

37601. (a) Section 37600 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on the date that is four years from the effective date of Chapter 788 of the Statutes of 1997.

**Comment.** Section 37601 continues former Health and Safety Code Section 41705 without substantive change.

#### **§ 37602. Prohibited discharge of air contaminants**

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37602. Except as otherwise provided in Section 37603, or Chapter 4 (commencing with Section 37900) of this title other than Section 37960, or Chapter 5 (commencing with Section 39300) of Title 7, no person shall discharge into the atmosphere from any source whatsoever any air contaminant, other than uncombined water vapor, for a period or periods aggregating more than three minutes in any one hour which is:

(a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a).

**Comment.** Section 37602 continues former Health and Safety Code Section 41701 without substantive change.

#### **§ 37603. Exceptions to application of Section 37602**

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37603. Section 37602 does not apply to any of the following:

(a) Fires set pursuant to Section 37950.

(b) Agricultural burning for which a permit has been granted pursuant to Chapter 5 (commencing with Section 38050) of Title 6.

(c) Fires set or permitted by any public officer in the performance of his or her official duty for the improvement of watershed, range, or pasture.

(d) Use of any aircraft to distribute seed, fertilizer, insecticides, or other agricultural aids over lands devoted to the growing of crops or raising of fowl or animals.

1 (e) Open outdoor fires used only for cooking of food for human beings or for  
2 recreational purposes.

3 (f) The use of orchard and citrus grove heaters which are in compliance with the  
4 requirements set forth in Section 38105.

5 (g) Agricultural operations necessary for the growing of crops or raising of fowl or  
6 animals.

7 (h) The use of other equipment in agricultural operations necessary for the growing of  
8 crops or raising of fowl or animals.

9 (i) Fugitive dust emissions from rock crushing facilities within the Southeast Desert Air  
10 Basin, where the facilities were in existence prior to January 1, 1970, at a location where  
11 the population density is less than 10 persons per square mile in each square mile within a  
12 seven-mile radius of the facilities; provided, however, that under no circumstances shall the  
13 emissions cause a measurable degradation of the ambient air quality or create a nuisance.  
14 This subdivision does not apply to any rock crushing facilities which (1) process in excess  
15 of 100 tons of rock in any 24-hour period, averaged over any period of 30 consecutive  
16 days, (2) have 25 or more employees, (3) fail to operate and maintain in good working  
17 order any emission control equipment installed prior to January 1, 1978, or (4) undergo a  
18 change of ownership after January 1, 1977.

19 (j) Emissions from vessels using steam boilers during emergency boiler shutdowns for  
20 safety reasons, safety and operational tests required by governmental agencies, and where  
21 maneuvering is required to avoid hazards.

22 (k) Emissions from vessels during a breakdown condition, as long as the discharge is  
23 reported in accordance with district requirements.

24 (l) The use of visible emission generating equipment in training sessions conducted by  
25 governmental agencies necessary for certifying persons to evaluate visible emissions for  
26 compliance with Section 37602 or applicable district rules and regulations. Any local or  
27 regional authority rule or regulation relating to visible emissions are not applicable to the  
28 equipment.

29 (m) Smoke emissions from teepee burners operating in compliance with Section 4438 of  
30 the Public Resources Code during the disposal of forestry and agricultural residues or  
31 forestry and agricultural residues with supplementary fossil fuels when the emissions result  
32 from the startup or shutdown of the combustion process or from the malfunction of  
33 emission control equipment. This subdivision does not apply to emissions which exceed a  
34 period or periods of time aggregating more than 30 minutes in any 24-hour period. This  
35 subdivision does not apply to emissions which result from the failure to operate and  
36 maintain in good working order any emission control equipment.

37 (n) Smoke emissions from burners used to produce energy and fired by forestry and  
38 agricultural residues with supplementary fossil fuels when the emissions result from startup  
39 or shutdown of the combustion process or from the malfunction of emission control  
40 equipment. This subdivision does not apply to emissions which exceed a period or periods  
41 of time aggregating more than 30 minutes in any 24-hour period, or which result from the  
42 failure to operate and maintain in good working order any emission control equipment.

43 (o) Emissions from methanol fuel manufacturing plants which manufacture not more than  
44 2,000,000 gallons of methanol fuel per day from wood, agricultural waste, natural gas, or  
45 coke (exclusive of petroleum coke). As used in this subdivision, "manufacturing plant"  
46 includes all necessary support systems, including field operations equipment that provide  
47 feed stock. However, this subdivision shall apply to not more than one methanol fuel  
48 manufacturing plant in each air basin and each plant shall be located in an area designated as  
49 an "attainment area" pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and shall

1 meet all applicable standards required by the district board. This subdivision shall remain in  
2 effect with respect to a plant until five years after construction of the plant and shall have no  
3 force and effect with respect to the plant on and after that date.

4 (p) The use of an obscurant for the purpose of training military personnel and the testing  
5 of military equipment by the United States Department of Defense on any military  
6 reservation.

7 **Comment.** Section 37603 continues former Health and Safety Code Section 41704 without  
8 substantive change.

#### 9 **§ 37604. Experimental burning**

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10 37604. Notwithstanding the provisions of this title restricting burning, the state board,  
11 after consultation with the district in which the burning is to take place, may issue permits  
12 for experimental burning designed to develop new or improved techniques of burning to  
13 reduce emissions, except that no experimental burning may create a nuisance.

14 **Comment.** Section 37604 continues former Health and Safety Code Section 41707 without  
15 substantive change.

#### 16 **§ 37605. Schedule of increments of progress**

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17 37605. (a) If a district board adopts a rule or regulation of emission standards to take  
18 effect as of a future date, the rule or regulation shall also require any person who owns or  
19 operates a source of air contaminants whose emissions exceed the standards to submit to  
20 the hearing board, for a public hearing, after notice pursuant to Section 32556, a schedule  
21 of increments of progress by which the source emissions will be brought into compliance  
22 by the time the standards take effect.

23 (b) If the rule or regulation itself includes a schedule of increments of progress, the  
24 person shall apply for a modification in accordance with Section 39401 in the event the  
25 person cannot comply with the schedule in the rule or regulation, except that an application  
26 for a change in the final compliance date shall be subject to the requirements for a variance,  
27 as provided in Section 39351.

28 **Comment.** Section 37605 continues former Health and Safety Code Section 41703 without  
29 substantive change. The former undesignated paragraphs have been designated as  
30 subdivisions.

## 31 **CHAPTER 2. VOLATILE ORGANIC COMPOUNDS IN CONSUMER GOODS**

### 32 **Article 1. Definitions**

#### 33 **§ 37650. Application of definitions**

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34 37650. Unless the provision or context otherwise requires, the definitions in this article  
35 govern the construction of this chapter.

36 **Comment.** Section 37650 generalizes the introductory clause of former Health and Safety  
37 Code Section 41712(a).

#### 38 **§ 37655. “Consumer product”**

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39 37655. “Consumer product” means a chemically formulated product used by household  
40 and institutional consumers, including, but not limited to, detergents; cleaning compounds;  
41 polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden

1 products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but  
2 does not include other paint products, furniture coatings, or architectural coatings.

3 **Comment.** Section 37655 continues former Health and Safety Code Section 41712(a)(1)  
4 without substantive change.

#### 5 **§ 37660. “Health benefit product”**

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6 37660. “Health benefit product” means an antimicrobial product registered with the  
7 Environmental Protection Agency.

8 **Comment.** Section 37660 continues former Health and Safety Code Section 41712(a)(2)  
9 without substantive change.

#### 10 **§ 37665. “Maximum feasible reduction in volatile organic compounds emitted”**

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11 37665. “Maximum feasible reduction in volatile organic compounds emitted” means at  
12 least a 60-percent reduction in the emissions of volatile organic compounds resulting from  
13 the use of aerosol paints, calculated with respect to the 1989 baseline year, including  
14 acetone in that baseline year.

15 **Comment.** Section 37665 continues former Health and Safety Code Section 41712(a)(3)  
16 without substantive change.

#### 17 **§ 37670. “Medical expert”**

---

18 37670. “Medical expert” means a physician, including a pediatrician, a microbiologist, or  
19 a scientist involved in research related to infectious disease and infection control.

20 **Comment.** Section 37670 continues former Health and Safety Code Section 41712(a)(4)  
21 without substantive change.

## 22 **Article 2. State Board Regulations**

### 23 **§ 37700. Adoption of regulations**

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24 37700. The state board shall adopt regulations to achieve the maximum feasible reduction  
25 in volatile organic compounds emitted by consumer products, if the state board determines  
26 that adequate data exists to establish both of the following:

- 27 (a) The regulations are necessary to attain state and federal ambient air quality standards.  
28 (b) The regulations are commercially and technologically feasible and necessary.

29 **Comment.** Section 37700 continues former Health and Safety Code Section 41712(b)  
30 without substantive change.

### 31 **§ 37701. Limitations on adoption of regulations**

---

32 37701. (a) A regulation shall not be adopted which requires the elimination of a product  
33 form.

34 (b) The state board shall not adopt regulations pursuant to Section 37700 unless the  
35 regulations are technologically and commercially feasible, and necessary to carry out this  
36 division. The state board shall consider the effect that the regulations proposed for health  
37 benefit products will have on the efficacy of those products in killing or inactivating agents  
38 of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations  
39 will have on the availability of health benefit products to California consumers.

1 (c)(1) Prior to adopting regulations pursuant to this chapter governing health benefit  
2 products, the state board shall consider any recommendations received from federal, state,  
3 or local public health agencies and medical experts in the field of public health.

4 (2) Within 30 days from the date of the adoption of any regulation pursuant to this  
5 chapter governing health benefit products, the state board shall prepare and submit to the  
6 Legislature and the Governor a report that summarizes any recommendations received  
7 pursuant to paragraph (1) and any conclusions made by the state board concerning the  
8 recommendations.

9 (d) A district shall adopt no regulation pertaining to disinfectants, nor any regulation  
10 pertaining to a consumer product that is different than any regulation adopted by the state  
11 board for that purpose.

12 (e) The state board shall not adopt a regulation pertaining to disinfectants any sooner than  
13 December 1, 2003.

14 **Comment.** Subdivisions (a) to (d) of Section 37701 continues former Health and Safety  
15 Code Section 41712(c)-(f) without substantive change. Subdivision (e) continues former  
16 Health and Safety Code Section 41712(j) without substantive change.

#### 17 **§ 37702. Aerosol adhesives**

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18 37702. (a) It is the intent of the Legislature that, prior to January 1, 2000, air pollution  
19 control standards affecting the formulation of aerosol adhesives and limiting emissions of  
20 reactive organic compounds resulting from the use of aerosol adhesives be set solely by the  
21 state board to ensure uniform standards applicable on a statewide basis.

22 (b) The Legislature recognizes that the current state board volatile organic compound  
23 (VOC) limit for aerosol adhesives is 75 percent by weight. Effective January 1, 1997, the  
24 state board's 75-percent standard shall apply to all uses of aerosol adhesives, including  
25 consumer, industrial, and commercial uses, and any district regulations limiting the VOC  
26 content of, or emissions from, aerosol adhesives, are null and void. After that date, a  
27 district may adopt and enforce the state board's 75-percent standard for aerosol adhesives,  
28 or a subsequently adopted state board standard, in the same manner as a district regulation  
29 limiting the issuance of air contaminants.

30 (c) On or before July 1, 2000, the state board shall prepare a study and conduct a public  
31 hearing on the need for, and the feasibility of, establishing a more stringent standard or  
32 standards for aerosol adhesives. If the state board finds that more stringent limits for  
33 aerosol adhesives are expected to become feasible, the state board shall, at that time, adopt  
34 a standard or standards to implement more stringent VOC limits. At a minimum, the state  
35 board shall establish standards pursuant to this subdivision that constitute best available  
36 retrofit control technology, as defined in Section 35860, and implement all plans adopted  
37 pursuant to Chapter 3 (commencing with Section 33200) of Title 2 of Part 3 unless the state  
38 board determines that those measures are not achievable.

39 (d) Notwithstanding any other provision of this chapter, on and after January 1, 2000, a  
40 district may adopt and enforce a regulation setting an emission standard or standards for  
41 VOC emissions for the use of aerosol adhesives that is more stringent than the standards  
42 adopted by the state board.

43 **Comment.** Section 37702 continues former Health and Safety Code Section 41712(h)  
44 without substantive change.

#### 45 **§ 37703. Aerosol paints**

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46 37703. (a) It is the intent of the Legislature that air pollution control standards affecting  
47 the formulation of aerosol paints and limiting the emissions of volatile organic compounds



1 resulting from the use of aerosol paints be set solely by the state board to ensure uniform  
2 standards applicable on a statewide basis. A district shall not adopt or enforce any  
3 regulation regarding the volatile organic compound content of, or emissions from, aerosol  
4 paints until the state board has adopted a regulation regarding those paints, and any district  
5 regulation shall not be different than the state board regulation. A district may observe and  
6 enforce a state board regulation regarding aerosol paints in the same manner as a district  
7 regulation limiting the issuance of air contaminants. This section shall not apply to any  
8 district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of  
9 a federal court, until the federal court has authorized the district to observe and enforce the  
10 state board regulation in lieu of the district regulation.

11 (b) On or before January 1, 1995, the state board shall adopt regulations requiring the  
12 maximum feasible reduction in volatile organic compounds emitted from the use of aerosol  
13 paints. The regulations shall establish final limits and require full compliance not later than  
14 December 31, 1999, and shall establish interim limits prior to that date resulting in  
15 reductions in reactive organic compounds.

16 (c) On or before December 31, 1998, the state board shall conduct a public hearing on the  
17 technological or commercial feasibility of achieving full compliance with the final limits by  
18 December 31, 1999. If the state board determines that a 60-percent reduction in emissions  
19 of reactive organic compounds from the use of aerosol paints is not technologically or  
20 commercially feasible by December 31, 1999, the state board may grant an extension of  
21 time not to exceed five years. During the extension of time, the most stringent interim limits  
22 shall be applicable. Any regulation adopted by the state board shall include a provision  
23 authorizing the time extension and requiring a public hearing on technological or  
24 commercial feasibility consistent with this section. The state board shall seek to ensure that  
25 the final limits for aerosol paints established pursuant to this section do not become  
26 federally enforceable prior to the effective date established by the state board for these  
27 limits, including any extension granted under this section.

28 (d) Reductions required for aerosol paints under this section are not intended to apply to  
29 any other consumer product.

30 **Comment.** Section 37703 continues former Health and Safety Code Section 41712(i)  
31 without substantive change.

#### 32 **§ 37704. Products manufactured before applicable regulation effective**

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33 37704. A consumer product manufactured prior to each effective date specified in  
34 regulations adopted by the state board pursuant to this chapter that applies to that consumer  
35 product may be sold, supplied, or offered for sale for a period of three years from the  
36 specified effective date if the date of manufacture or a representative date code is clearly  
37 displayed on the product at the point of sale. An explanation of the date code shall be filed  
38 with the state board.

39 **Comment.** Section 37704 continues former Health and Safety Code Section 41712(g)  
40 without substantive change.

#### 41 **§ 37705. Requirements of 1994 State Implementation Plan**

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42 37705. The state board shall comply with its volatile organic compound emission  
43 reduction obligations under the 1994 State Implementation Plan, or any amendments  
44 thereto, and shall ensure that there is no loss of emission reductions as a result of its  
45 compliance with subdivision (e) of Section 37701.



1     **Comment.** Section 37705 continues former Health and Safety Code Section 41712(k)  
2 without substantive change.

### 3                               CHAPTER 3. PORTABLE EQUIPMENT

#### 4                               Article 1. Legislative Findings and Declarations

##### 5     **§ 37750. Legislative findings and declaration**

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6       37750. The Legislature hereby finds and declares all of the following:

7       (a) Existing law authorizes each district to impose separate and sometimes inconsistent  
8 emission control requirements for, and to require separate permits to operate, portable  
9 equipment that are used at various sites throughout the state.

10       (b) That multiplicity of permits and regulatory requirements imposes a complex and  
11 costly burden on California businesses that use, hire, provide, and manufacture that  
12 equipment.

13       (c) A uniform, voluntary system of statewide registration and regulation of portable  
14 equipment, consistent with current state and federal air quality law, is necessary to ensure  
15 consistent and reasonable regulation of that equipment without undue burden on their  
16 owners, operators, and manufacturers.

17       (d) Portable equipment has attributes of both mobile sources and stationary sources of air  
18 pollution. A separate registration and emission control program is needed to reflect the  
19 unique operating characteristics of that equipment while providing authority for a statewide  
20 program of emission reduction measures to be applied to existing in-state, out-of-state, and  
21 newly manufactured portable equipment.

22     **Comment.** Section 37750 continues former Health and Safety Code Section 41750 without  
23 change.

#### 24                               Article 2. Definitions

##### 25     **§ 37800. Application of definitions**

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26       37800. Unless the provision or context otherwise requires, the definitions in this article  
27 govern the construction of this chapter.

28     **Comment.** Section 37800 generalizes the introductory clause of former Health and Safety  
29 Code Section 41751(a).

##### 30     **§ 37805. “Portable equipment”**

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31       37805. As used in this chapter, “portable equipment” includes any portable internal  
32 combustion engine and equipment that is associated with, and driven by, any portable  
33 internal combustion engine.

34     **Comment.** Section 37805 continues former Health and Safety Code Section 41751(a)(1)  
35 without substantive change.

##### 36     **§ 37810. Examples of portable equipment**

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37       37810. Portable equipment includes, but is not limited to, any of the following:

38       (a) Confined and unconfined abrasive blasting equipment.

39       (b) Portland concrete batch plants.

(c) Sand and gravel screening, rock crushing, unheated pavement crushing, and recycling operations equipment.

(d) Consistent with federal law, portable internal combustion engines used in conjunction with, but not limited to, the following types of operations or equipment:

(1) Well drilling, including service equipment and work over rigs.

(2) Power generation, excluding cogeneration.

(3) Pumps.

(4) Compressors.

(5) Pile drivers.

(6) Welding.

(7) Cranes.

(8) Wood chippers.

(e) Equipment necessary for the operation of portable equipment.

**Comment.** Section 37810 continues former Health and Safety Code Section 41751(c) without substantive change.

#### **§ 37815. “Portable internal combustion engine”**

---

37815. (a)(1) As used in this chapter, and except as provided in subdivision (b), a “portable internal combustion engine” is any internal combustion engine that, by itself, or contained within or attached to a piece of equipment, is portable or transportable.

(2) As used in this subdivision, “portable or transportable” means designed to be, and capable of being, carried or moved from one location to another. Indicia of portability or transportability include, but are not limited to, wheels, skids, carrying handles, or a dolly, trailer, or platform.

(b) Any engine otherwise included in this article is not a portable internal combustion engine if either of the following applies:

(1) The engine remains, or will remain, at a fixed location for more than 12 consecutive months. For purposes of this paragraph, a “fixed location” is any single site at a building, structure, facility, or installation.

(2) The engine is used to propel nonroad equipment or a motor vehicle of any kind, including, but not limited to, a heavy-duty vehicle.

**Comment.** Section 37815 continues former Health and Safety Code Section 41751(a)(2) & (b) without substantive change.

### **Article 3. Statewide Regulation**

#### **§ 37850. State board responsibilities**

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37850. (a) At the earliest feasible date, but not later than July 1, 1997, the state board shall do all of the following:

(1) Evaluate the emissions from the operation of portable equipment and identify emission reduction technologies that may be applied to portable equipment.

(2) After holding at least one public hearing, establish, by regulation, emission limits and emission control requirements, consistent with Sections 37852 and 37853, and an optional registration program for portable equipment that is, or may be, used in more than a single district.

(b) The registration program shall take effect on the date specified by the state board in the regulation, but not later than 180 days from the date that the state board adopts the regulation.

1 (c) The program shall provide for the voluntary registration of portable equipment, and  
2 may provide for the renewal of a registration not more than once every three years.

3 (d)(1) The state board may establish a schedule of fees for purposes of this chapter to be  
4 assessed on persons seeking to register, or to renew the registration of, portable  
5 equipment. The state board may establish separate fees for the initial registration and for the  
6 renewal of a registration. The fees charged, in the aggregate, shall not exceed the  
7 reasonable cost to the state board of administering the registration program, and adopting  
8 the regulations specified in Sections 37852 and 37853.

9 (2) The state board shall, in adopting the regulations specified in Sections 37852 and  
10 37853, include a uniform statewide district fee schedule for the recovery of the reasonable  
11 costs of enforcement pursuant to Section 37854.

12 (e) Notwithstanding Sections 37852 and 37853, the state board may periodically revise  
13 and update the regulations adopted pursuant to this section, including, but not limited to,  
14 revising and updating a determination of best available control technology (BACT) for  
15 portable internal combustion engines.

16 **Comment.** Section 37850 continues former Health and Safety Code Section 41752 without  
17 substantive change.

#### 18 **§ 37851. Statewide registration program**

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19 37851. (a)(1) It is the intent of the Legislature that the registration of, and the regulation  
20 of emissions from, portable equipment that is operated in more than one district and that is  
21 subject to the registration program be done on a uniform, statewide basis by the state board  
22 and that the permitting, registration, and regulation of portable equipment by the districts be  
23 preempted.

24 (2) Notwithstanding paragraph (1), if the owner or operator of portable equipment elects  
25 not to register under the statewide registration program, the unregistered portable  
26 equipment shall be subject to district permitting requirements pursuant to district  
27 regulations.

28 (b) On and after the effective date of the statewide registration program established by the  
29 state board pursuant to subdivision (a) of Section 37850 and upon the registration of  
30 portable equipment by the portable equipment owner or operator, a district shall not, with  
31 respect to the affected portable equipment, do any of the following:

32 (1) Require a permit for the construction or operation of the portable equipment.

33 (2) Assess any fee related to the construction or operation of the portable equipment,  
34 other than that specified in paragraph (2) of subdivision (d) of Section 37850.

35 (3) Adopt any emission limit or emission control requirement applicable to the portable  
36 equipment.

37 (4) Except as provided in Section 37854, enforce any emission limit or emission control  
38 requirement applicable to the portable equipment.

39 (c) The state board, in consultation with affected districts, shall amend the state  
40 implementation plan as necessary to include the statewide registration program and conform  
41 the state implementation plan to its requirements.

42 **Comment.** Section 37851 continues former Health and Safety Code Section 41753 without  
43 substantive change.

#### 44 **§ 37852. Regulatory provisions**

---

45 37852. The regulations adopted by the state board, on or before July 1, 1997, shall  
46 include, but need not be limited to, provisions that ensure all of the following:

1 (a) That emissions from portable equipment subject to the statewide registration program  
2 will not, in the aggregate, interfere with the attainment or maintenance of state or federal  
3 ambient air quality standards and the emissions from any one portable equipment engine,  
4 exclusive of background concentration, shall not cause an exceedance of any ambient air  
5 quality standard. This subdivision shall not be construed as requiring portable equipment  
6 operators to provide emission offsets for portable equipment registered under the program.

7 (b)(1) That, to the extent not in conflict with federal law, the registration program  
8 preserves the most stringent requirements adopted by a district which require the use of  
9 best available control technology (BACT) for each class or category of portable equipment  
10 determined appropriate by the state board, and which requirements were in effect on  
11 January 1, 1995. In determining the appropriate emission limits or emission control  
12 technology requirements for classes and categories of portable equipment, the state board  
13 may set different requirements for portable equipment that is defined by the state board as  
14 California resident portable equipment.

15 (2) Notwithstanding paragraph (1) and, to the extent not in conflict with federal law, the  
16 state board may consider technical and economic feasibility in establishing emission limits  
17 or control equipment requirements for any category or class of existing California resident  
18 portable equipment, if all portable equipment in that category or class is required to be  
19 modified or replaced to meet BACT or the more stringent of a state or federal emission  
20 standard, at a date determined by the state board.

21 (c) That any registered portable equipment, including any turbine, used by the  
22 Department of Defense or the National Guard exclusively for military technical support or  
23 other federal emergency purposes, as specified in the regulations adopted by the state  
24 board, is not subject to any statewide or district emission control or emission limit.

25 **Comment.** Section 37852 continues former Health and Safety Code Section 41754(a)  
26 without substantive change.

### 27 **§ 37853. Limitations on regulatory provisions**

---

28 37853. (a) No emission limit or emission control requirement shall be established for any  
29 portable equipment defined by the state board as California resident portable equipment  
30 unless the state board determines that the emission limit or emission control requirement is  
31 technologically and economically feasible and is necessary to carry out the express terms of  
32 this division, including, but not limited to, Sections 40200 to 40205, inclusive, or to attain  
33 or maintain state or federal ambient air quality standards.

34 (b) Prior to adopting any emission limit or emission control requirement, the state board  
35 shall consider the magnitude of the resultant air quality benefits and the potential effects of  
36 the regulation on the costs to businesses that use the portable equipment.

37 (d) The emission limits established for any portable equipment or class of portable  
38 equipment shall reflect the effectiveness of all control equipment installed and operated on  
39 the portable equipment or particular class of portable equipment.

40 (d) No emission limits other than those established by the state board for any portable  
41 equipment or class of portable equipment shall be used by a district for purposes of  
42 calculating and reporting emissions from portable equipment subject to this chapter.

43 (e) Any recordkeeping and reporting requirements prescribed by the state board for the  
44 purpose of tracking portable equipment utilization and movement shall be the minimum that  
45 is necessary to provide sufficient emission inventory data and allow adequate enforcement  
46 of the registration program.

47 (f) Source testing of portable equipment emissions for registration purposes shall not be  
48 required if there is no emission standard applicable to portable equipment, or if acceptable

emissions data is available. For purposes of this subdivision, “acceptable emissions data” means emissions data representative of current portable equipment operations that is either reliable emissions data from the portable equipment manufacturer or a source test performed within three years prior to the date that the emissions data is requested.

**Comment.** Section 37853 continues former Health and Safety Code Section 41754(b)-(g) without substantive change.

#### **§ 37854. Enforcement by districts**

---

37854. (a) Districts shall enforce the statewide registration program, emission limitations, and emission control requirements established by the state board pursuant to this chapter in the same manner as a district rule or regulation.

(b)(1) Source testing of engines for compliance purposes shall not be required more frequently than once every three years, except where evidence of engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect emissions from the engine are identified.

(2) A district may conduct source testing to determine compliance with mass emission limits where there is an indication of noncompliance.

(3) Except as required for purposes of paragraph (2), source testing of engine emissions for compliance purposes shall not be required of engines for which there is no applicable emission limit.

**Comment.** Section 37854 continues former Health and Safety Code Section 41755 without substantive change.

## **CHAPTER 4. NONAGRICULTURAL BURNING**

### **Article 1. General Provisions**

#### **§ 37900. General prohibition**

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37900. Except as otherwise provided in this title, no person shall use open outdoor fires for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste; or for metal salvage or burning of motor vehicle bodies.

**Comment.** Section 37900 continues former Health and Safety Code Section 41800 without substantive change.

#### **§ 37901. Relation of chapter to district rules and regulations**

---

37901. The provisions of this chapter shall not supersede any rule or regulation of any district, which rule or regulation was in effect for five or more years prior to September 19, 1970.

**Comment.** Section 37901 continues former Health and Safety Code Section 41811 without substantive change.

#### **§ 37902. Off-shore islands**

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37902. For islands located 15 or more miles from the mainland coast:

(a) The provisions of Section 37602 shall not apply to smoke from fires set thereon.

(b) No district shall adopt any rule or regulation stricter than those provided by law with respect to open outdoor fires.

1     **Comment.** Section 37902 continues former Health and Safety Code Section 41810 without  
2 substantive change.

## 3                     Article 2. Exceptions to General Prohibition

### 4     **§ 37950. Authority to set or permit fires**

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5         37950. Nothing in this chapter shall be construed as limiting the authority granted under  
6 other provisions of law to any public officer to set or permit a fire when the fire is, in his or  
7 her opinion, necessary for any of the following purposes:

- 8         (a) The prevention of a fire hazard which cannot be abated by any other means.
- 9         (b) The instruction of public employees in the methods of fighting fire.
- 10        (c) The instruction of employees in methods of fighting fire, when the fire is set,  
11 pursuant to permit, on property used for industrial purposes.
- 12        (d) The setting of backfires necessary to save life or valuable property pursuant to  
13 Section 4426 of the Public Resources Code.
- 14        (e) The abatement of fire hazards pursuant to Section 13055 of the Health and Safety  
15 Code.
- 16        (f) Disease or pest prevention, where there is an immediate need for and no reasonable  
17 alternative to burning.
- 18        (g) The remediation of an oil spill pursuant to Section 8670.7 of the Government Code.

19     **Comment.** Section 37950 continues former Health and Safety Code Section 41801 without  
20 substantive change.

### 21     **§ 37951. Wood waste disposal**

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22         37951. Notwithstanding Section 37900, with respect to wood waste from trees, vines,  
23 or bushes on property being developed for commercial or residential purposes, or with  
24 respect to the disposal of brush cuttings on the property where the brush was grown when  
25 the cuttings resulted from brush clearance done in compliance with local ordinances to  
26 reduce fire hazard, a district board may, upon its own motion or the request of any person,  
27 authorize the disposal, by open outdoor fires, of the waste, on the property where it was  
28 grown, under the conditions specified in Section 37952.

29     **Comment.** Section 37951 continues former Health and Safety Code Section 41802 without  
30 substantive change.

### 31     **§ 37952. Authorization for burning of wood waste**

---

32         37952. (a) Burning may be authorized under Section 37951 only if:  
33         (1) The district board finds that it is more desirable to dispose of the waste by burning  
34 than to dispose of it by other available means, such as, but not limited to, by removing it to  
35 sanitary fills.

36         (2) The district has developed criteria for the disposal, which shall include provisions to  
37 improve the combustibility of the waste to reduce its smoke level.

38         (3) The state board has approved the criteria developed pursuant to subdivision (b).

39         (b) The authorization, if granted, shall be in the form of a permit issued by the district air  
40 pollution control officer, and the permit shall allow burning only on days during which  
41 agricultural burning is not prohibited by the state board pursuant to Section 38151.

42         (c) The district board may adopt rules and regulations to authorize any burning authorized  
43 under Section 37951, to review each proposed burn prior to authorizing its air pollution  
44 control officer to issue a permit for the burn, or to delegate to its air pollution control officer



the authority to approve or disapprove each proposed burn after consideration of the amount of waste to be burned, the season of the year, the ambient air quality, the proximity of the waste to developed areas, or other or additional criteria as the district board may establish.

**Comment.** Section 37952 continues former Health and Safety Code Section 41804 without substantive change. The introductory clause of former Health and Safety Code Section 41804 has been designated as a subdivision, and former subdivisions (a) and (b) have been redesignated as paragraphs.

#### **§ 37953. Burning nonindustrial wood waste by city or county**

---

37953. (a) Notwithstanding Section 37900, a district board may authorize, subject to the limitations in Section 37954 and this section, the use of open outdoor fires by a city or county to dispose of nonindustrial wood waste from trees, vines, and brush at disposal sites located above 1,500 feet elevation mean sea level anywhere in the state, or at any elevation in the area designated as the North Coast Air Basin by the state board pursuant to Section 30950.

(b) Authorization for the burning, if granted, shall be in the form of permits issued by the district and by the fire protection agency having jurisdiction over the area in which the disposal site is located. The permits shall allow burning only on days during which agricultural burning is not prohibited by the state board pursuant to Section 38151.

(c) No permit shall be issued until there is filed with the district a written statement by the owner of the land on which the disposal site is located, or his agent, or if some other person is lawfully in possession of the land, by that person, approving the burning on the land by the city or county.

(d) Prior to issuing a permit, the district may inspect the wood waste to be burned to verify that it is exclusively nonindustrial wood waste from trees, vines, and brush.

(e) The state board shall approve the use of open outdoor fires at a designated disposal site to dispose of the wood waste if the operation of the disposal site will not prevent the achievement and maintenance of ambient air quality standards. The approval shall be granted for a minimum of one year.

(f) In seeking approval from the state board to use open outdoor fires at disposal sites throughout the county to dispose of the wood waste, a county may submit its plan for the disposal of the wood waste in the county by the use of open outdoor fires at the disposal sites.

**Comment.** Section 37953 continues former Health and Safety Code Section 41804.5 without substantive change.

#### **§ 37954. Alternatives to burning of wood waste**

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37954. No authorization, however, under Section 37951 or 37953 shall be granted after a date determined by state board, based upon a finding that an alternative method of disposal has been developed which is technologically and economically feasible.

**Comment.** Section 37954 continues former Health and Safety Code Section 41803 without substantive change.

#### **§ 37955. State board study of alternatives to burning of wood waste**

---

37955. (a) The Legislature hereby finds and declares that, because sanitary landfill sites are very difficult to obtain, these valuable sites should be reserved for high-priority waste such as garbage and low-volume rubbish, and that the disposal, by open outdoor fires of

high-volume wood waste will help prolong the life of landfill sites. However, it is the intent of the Legislature that the disposal, by open outdoor fires, of waste be reasonably regulated so as to not create a nuisance or significantly reduce the quality of the ambient air.

(b) Therefore, the state board shall conduct studies of alternative methods of disposing of wood waste from trees, vines, or bushes, other than by open outdoor fires.

**Comment.** Section 37955 continues former Health and Safety Code Section 41805 without substantive change.

#### **§ 37956. Combustible or flammable solid waste**

---

37956. Nothing in this chapter shall be construed as prohibiting any of the following:

(a) Burning for the disposal of the combustible or flammable solid waste of a single-or two-family dwelling on its premises.

(b) Open outdoor fires used only for cooking food for human beings or for recreational purposes.

(c) The burning, in a respectful and dignified manner, of an unserviceable American flag that is no longer fit for display.

**Comment.** Section 37956 continues former Health and Safety Code Section 41806 without substantive change.

#### **§ 37957. Right of way clearance**

---

37957. Nothing in this chapter shall be construed to prohibit burning for right-of-way clearing by a public entity or utility or for levee, reservoir, and ditch maintenance. No material may be burned pursuant to this section unless (a) agricultural burning is not prohibited on the day pursuant to Section 38151, and (b) the material has been prepared by stacking, drying, or other methods to promote combustion as specified by the air pollution control officer having jurisdiction.

**Comment.** Section 37957 continues former Health and Safety Code Section 41807 without substantive change.

#### **§ 37958. Solid waste dump operated by city or county**

---

37958. The state board shall permit a city or county to use open outdoor fires, for a limited time only, in its operation of a solid waste dump, upon the finding that, because of sparse population in the geographical area and economic and technical difficulties, the solid waste dump should be so operated.

**Comment.** Section 37958 continues former Health and Safety Code Section 41808 without change.

#### **§ 37959. Russian thistle (*Salsola kali*)**

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37959. Notwithstanding Sections 37001 and 37900, open outdoor fires may be used to dispose of Russian thistle (*Salsola kali*) when authorized by a chief of a fire department or fire protection agency of a city, county, or fire protection district, the Director of Forestry and Fire Protection or his or her duly authorized representative, a county agricultural commissioner, or an air pollution control officer.

**Comment.** Section 37959 continues former Health and Safety Code Section 41809 without substantive change.

1   **§ 37960. Mechanized burners**

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2       37960. (a) The air pollution control officer of any district in a county with a population of  
3       6,000,000 or less, upon authorization of the district board, may authorize, by permit, open  
4       outdoor fires for the purpose of disposing of agricultural wastes, or wood waste from  
5       trees, vines, bushes, or other wood debris free of nonwood materials, in a mechanized  
6       burner such that no air contaminant is discharged into the atmosphere for a period or  
7       periods aggregating more than 30 minutes in any eight-hour period which is:

8       (1) As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as  
9       published by the United States Bureau of Mines, or

10      (2) Of such opacity as to obscure an observer's view to a degree equal to or greater than  
11      does smoke described in subdivision (a).

12      (b) In authorizing the operation of a mechanized burner, the air pollution control officer  
13      may make the permit subject to whatever conditions the air pollution control officer  
14      determines are reasonably necessary to assure conformance with the standards prescribed  
15      in this section.

16      **Comment.** Section 37960 continues former Health and Safety Code Section 41812 without  
17      substantive change. The former undesignated paragraphs have been designated as  
18      subdivisions and the former subdivisions have been redesignated as paragraphs..

19   **§ 37961. Air curtain destructor**

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20       37961. (a) Notwithstanding any other provision of this division, in the San Bernardino  
21       County Air Pollution Control District, Group 2 solid waste, as defined in Section 2521 of  
22       Title 23 of the California Administrative Code, for a period not to exceed six months from  
23       the effective date of this section, may be disposed of by means of an air curtain destructor.  
24       The authority provided by this section applies only to an existing solid waste disposal site  
25       in the upper desert area which receives less than 50 tons of solid waste for disposal per  
26       day. The use of the air curtain destructor shall be monitored by the San Bernardino County  
27       Air Pollution Control District and the state board. Within nine months after the effective  
28       date of this section, the district shall file a report with the County of San Bernardino and the  
29       state board regarding the extent to which the air curtain destructor meets the emission rules,  
30       regulations, and orders of the district and the state board.

31      (b) At the end of the six-month experimental period, the air curtain destructor may  
32      continue to be used if the state board makes a finding that the public health and safety will  
33      not be adversely affected by continued use. The state board, in cooperation with San  
34      Bernardino County, shall establish a list of toxic materials that will be removed from the  
35      solid waste prior to use of the air curtain destructor.

36      (c) There shall be no liability on the part of the state board for any injury occurring as a  
37      result of the use of the air curtain destructor under the provisions of this section.

38      **Comment.** Section 37961 continues former Health and Safety Code Section 41813 without  
39      substantive change. The former undesignated paragraphs have been designated as  
40      subdivisions.

41   **§ 37962. Waste water treatment facilities**

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42       37962. Notwithstanding any local ordinance adopted pursuant to Section 37100 of the  
43       Government Code or by charter provision to prohibit the burning of waste materials, the  
44       burning of the gaseous byproducts of the recycling of water by a waste water treatment  
45       facility as part of an energy conservation and cost reduction program to generate power to

operate the facility shall be permitted if the burning operation complies with all regulations of the district having jurisdiction and any other applicable provisions of state law.

**Comment.** Section 37962 continues former Health and Safety Code Section 41815 without change.

### Article 3. Solid Waste Air Quality Assessment Test Report

#### § 38000. Definitions

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38000. For the purposes of Sections 38000 to 38008, inclusive, the following definitions apply:

(a) “Inactive solid waste disposal site” means a solid waste disposal site which has not received any solid waste for disposal after January 1, 1984.

(b) “Landfill gas” means any untreated, raw gas derived through a natural process from the decomposition of organic waste deposited in a solid waste disposal site or from the evolution of volatile species in the waste.

(c) “Operator” means the person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the district, to comply with the requirements of Sections 38000 to 38008, inclusive, “operator” means any person who owns or who has owned the solid waste disposal site.

(d) “Perimeter” means the outer boundary of the entire solid waste disposal site property.

(e) “Solid waste disposal site” means a place, location, tract of land, area, or premises in use, or which has been used, for the landfill disposal of solid waste, as defined in Section 66719 of the Government Code, or hazardous waste, as defined in Section 66714.8 of the Government Code, or both.

(f) “Specified air contaminants” means substances determined to be air contaminants by the state board in coordination with the districts. The state board and the districts shall consider determining the following compounds to be air contaminants for purposes of this subdivision: benzene, chloroethene, 1,2-dibromoethane, 1,2-dichloroethane benzyl chloride, chlorobenzene, dichlorobenzene, 1,1-dichloroethene, dichloromethane, formaldehyde, hydrogen sulfide, tetrachloroethylene, tetrachloromethane, toluene, 1,1,1-trichloroethane, trichloroethylene, trichloromethane, xylene, and any other substance deemed appropriate by the state board or a district.

**Comment.** Section 38000 continues former Health and Safety Code Section 41805.5(i) without substantive change.

#### § 38001. Solid waste air quality assessment test report

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38001. (a) Except as provided in Sections 38002 and 38003, the operator of a solid waste disposal site shall submit to the district on or before July 1, 1987, a solid waste air quality assessment test report that contains all of the following:


(1) Test results to determine if there is any underground landfill gas migration beyond the solid waste disposal site’s perimeter.

(2) Analyses for specified air contaminants in the ambient air adjacent to the solid waste disposal site to determine the effect of the site on air quality.

(3) Chemical characterization test results to determine the composition of gas streams immediately above the solid waste disposal site, or immediately above the solid waste disposal site and within the solid waste disposal site, as appropriate, as determined by the district.

(4) Any other information which the district board may require, by emergency regulation.  
(b) The solid waste air quality assessment test report shall be prepared in accordance with the guidelines developed by the state board pursuant to Section 38004.

**Comment.** Section 38001 continues former Health and Safety Code Section 41805.5(a) without substantive change. The last, undesignated, paragraph of former Section 41805.5(a) has been designated as a subdivision.


 **Note.** This section requires the submission of a specified report on or before a date in 1987. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section. In light of this, the Commission would like to receive input on whether this section has continued relevance.

#### § 38002. Inactive solid waste disposal site

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38002. The operator of an inactive solid waste disposal site shall complete and submit the screening questionnaire, developed pursuant to Section 38005, to the district on or before November 1, 1986, unless the operator is required to submit a report containing the same information specified in Section 38001 pursuant to a federal, state, or district order, or unless exempted pursuant to Section 38003. The district shall evaluate the submitted screening questionnaires in accordance with the guidelines developed pursuant to Section 38005 and shall determine whether the operator of the site be required to submit all, or a portion of, the information required to be reported in a solid waste air quality assessment test report. The district shall notify the operator in writing on or before January 1, 1987, of the information identified in Section 38001 to be submitted for the site. After receiving this notification, the operator of the inactive solid waste disposal site shall submit a solid waste air quality assessment test report containing the required information on or before January 1, 1988, to the district.

**Comment.** Section 38002 continues former Health and Safety Code Section 41805.5(b) without substantive change.


 **Note.** This section requires the submission of a specified report on or before a date in 1986. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section. In light of this, the Commission would like to receive input on whether this section has continued relevance.

#### § 38003. Site containing only inert or nondecomposable solids

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38003. A district may exempt from Sections 38001 and 38002 a solid waste disposal site or inactive solid waste disposal site which has accepted or now contains only inert and nondecomposable solids. To receive an exemption, the operator of the site shall submit, on or before November 1, 1986, a copy of all permits, all waste discharge requirements pertinent to the site, and any other data necessary for the district to determine whether an exemption should be granted to the site.

**Comment.** Section 38003 continues former Health and Safety Code Section 41805.5(c) without substantive change.

 **Note.** This section requires the submission of a specified report on or before a date in 1986. This requirement appears to be obsolete. However, proposed Section 38008 would authorize a district to require new or revised reports of the type required in this section. In light of this, the Commission would like to receive input on whether this section has continued relevance.



1   **§ 38004. Test guidelines**

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2       38004. On or before February 1, 1987, the state board, in coordination with the districts,  
3 shall develop and publish test guidelines for the solid waste air quality assessment report  
4 specifying the air contaminants to be tested for and identifying acceptable testing,  
5 analytical, and reporting methods to be employed in completing the report.

6       **Comment.** Section 38004 continues former Health and Safety Code Section 41805.5(d)  
7 without substantive change.

8       ☞ **Note.** This section specifies a deadline for the development of guidelines. This deadline  
9 provision may be obsolete. The Commission would like to receive input on two questions: (1)  
10 Have the requirements of the section been satisfied? (2) Does the deadline provision still serve  
11 a useful purpose?

12   **§ 38005. Screening questionnaire**

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13       38005. On or before October 1, 1986, the state board, in coordination with the districts,  
14 shall develop and publish a screening questionnaire for inactive solid waste disposal sites  
15 and guidelines for evaluating the questionnaire by the districts pursuant to Section 38002.  
16 The screening questionnaire and guidelines shall require an inactive solid waste disposal  
17 site to be evaluated based on the nature and age of materials in the site, the quantity of  
18 materials in the site, the size of the site, and other appropriate factors. The guidelines for  
19 evaluating the screening questionnaire shall require a district to weigh heavily the proximity  
20 of the site to residences, schools, and other sensitive areas, and to pay particular attention  
21 to potential adverse impacts on facilities such as hospitals and schools, and on residential  
22 areas, within one mile of the site's perimeter.

23       **Comment.** Section 38005 continues former Health and Safety Code Section 41805.5(e)  
24 without substantive change.

25       ☞ **Note.** This section specifies a deadline for the development of a questionnaire. This  
26 deadline provision may be obsolete. The Commission would like to receive input on two  
27 questions: (1) Have the requirements of the section been satisfied? (2) Does the deadline  
28 provision still serve a useful purpose?

29   **§ 38006. District evaluation of report**

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30       38006. A district shall evaluate any solid waste air quality assessment test reports  
31 submitted pursuant to Sections 38001, 38002, and 38008, and determine if the report's  
32 testing, analytical and reporting methods comply with the guidelines developed pursuant to  
33 Section 38004. If the district determines that the solid waste air quality assessment test  
34 report complies with the guidelines, it shall evaluate the data. If the district determines, after  
35 evaluation of the report and consultation with the State Department of Health Services and  
36 the California Waste Management Board, that levels of one or more specified air  
37 contaminants pose a health risk to human beings or a threat to the environment, the district  
38 shall take appropriate remedial action.

39       **Comment.** Section 38006 continues former Health and Safety Code Section 41805.5(g)  
40 without substantive change.

41       ☞ **Note.** Health and Safety Code Section 41805.5(g) uses the term "state department,"  
42 which is defined in Health and Safety Code Section 20 to mean "State Department of Health  
43 Services." Section 20 will not apply to this section after it has been moved to the  
44 Environment Code, so the term has been changed to "State Department of Health Services."  
45 Note that use of the full term rather than the defined term is consistent with all other sections  
46 in Parts 1-3 & 5 of this division that use the term.



1   **§ 38007. Solid waste air quality assessment test report**

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2       38007. If a district determines that a solid waste air quality assessment test report does  
3       not comply with the guidelines developed pursuant to Section 38004, the district shall  
4       provide the operator of the site with a written notice specifying the inadequacies of the  
5       report and shall require the operator to correct the deficiencies and resubmit the report by a  
6       date determined by the district.

7       **Comment.** Section 38007 continues former Health and Safety Code Section 41805.5(h)  
8       without substantive change.

9   **§ 38008. Reevaluation by district**

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10      38008. A district may reevaluate the status of a solid waste disposal site, including sites  
11      exempted pursuant to Section 38003, and require the operator to submit or revise a solid  
12      waste air quality assessment test report. The district shall give written notification to the  
13      operator of the solid waste disposal site that a solid waste air quality assessment test report  
14      is to be submitted, or that the existing report is to be revised, and the date by which the  
15      report is to be submitted.

16      **Comment.** Section 38008 continues former Health and Safety Code Section 41805.5(f)  
17      without substantive change. The reference to the date after which a district may require  
18      additional or revised reports (January 1, 1987) is obsolete and has not been continued.

19   **§ 38009. Exemption for small cities in Kings County**

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20      38009. (a) Notwithstanding Sections 38000 to 38008, inclusive, a small city which  
21      operates a Class III solid waste disposal site is not required to submit a screening  
22      questionnaire or a solid waste air quality assessment test report pursuant to Sections 38000  
23      to 38008, inclusive, if the city has a population of less than 20,000 persons, the solid  
24      waste disposal site receives less than 20,000 tons of waste per year, the water table of the  
25      highest aquifer under the disposal site is 250 or more feet below the base of the disposal  
26      site and the water in the highest aquifer is not potable, and the site receives less than an  
27      average of 12 inches of rainfall per year.

28      (b) This section applies only if the disposal site is operational and has been granted all  
29      required permits as of January 1, 1991, and if the site is located in Kings County.

30      **Comment.** Section 38009 continues former Health and Safety Code Section 41805.6  
31      without substantive change. The former undesignated paragraphs have been designated as  
32      subdivisions.

33                                   **CHAPTER 5. AGRICULTURAL BURNING**

34                                   **Article 1. General Provisions**

35   **§ 38050. Legislative intent**

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36      38050. It is the intent of the Legislature, by the enactment of this chapter, that agricultural  
37      burning be reasonably regulated and not be prohibited. The state board and the districts  
38      shall take into consideration, in adopting rules and regulations for purposes of this chapter,  
39      various factors, including, but not limited to, the population in an area, the geographical  
40      characteristics, the meteorological conditions, the economic and technical impact of the  
41      rules and regulations, and the importance of a viable agricultural economy in the state.

1     **Comment.** Section 38050 continues former Health and Safety Code Section 41850 without  
2 substantive change.

3     **§ 38051. Application of Section 37900**

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4     38051. Section 37900 shall not apply to burning regulated pursuant to this chapter.

5     **Comment.** Section 38051 continues former Health and Safety Code Section 41851 without  
6 substantive change.

7     **§ 38052. Relation of chapter to district rules and regulations**

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8     38052. The provisions of this chapter shall not supersede any rule or regulation of any  
9 district, which rule or regulation was in effect for five or more years prior to September 19,  
10 1970.

11     **Comment.** Section 38052 continues former Health and Safety Code Section 41864 without  
12 substantive change.

13   Article 2. Permits

14     **§ 38100. Necessity of permit**

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15     38100. No person knowingly shall set or permit agricultural burning unless the person  
16 has a valid permit from the agency designated by the state board to issue those permits in  
17 the area where the agricultural burning is to take place.

18     **Comment.** Section 38100 continues former Health and Safety Code Section 41852 without  
19 substantive change.

20     **§ 38101. Exemption from permit requirements**

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21     38101. The state board may, after holding a public hearing, authorize an exemption from  
22 the permit requirement of Section 38100 for a district, or a portion of a district, where  
23 agricultural burning does not significantly affect air quality.

24     **Comment.** Section 38101 continues former Health and Safety Code Section 41852.5  
25 without substantive change.

26     **§ 38102. Designation of agencies for issuance of permits**

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27     38102. The state board shall designate public fire protection agencies or other equivalent  
28 agencies to issue permits under subdivision (a) of Section 38100, and shall adopt rules and  
29 regulations to provide a procedure for the issuance of the permits. Each agency so  
30 designated by the state board shall issue permits subject to the rules and regulations of the  
31 state board.

32     **Comment.** Section 38102 continues former Health and Safety Code Section 41853 without  
33 change.

34     **§ 38103. Cotton ginning**

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35     38103. (a) No permit shall be issued pursuant to Section 38102 to a person for the  
36 burning of solid waste which is produced from the ginning of cotton, unless the person  
37 pays to the issuing agency a fee of fifteen cents (\$0.15) for each bale of cotton ginned that  
38 will produce the solid waste that is to be burned.

39     (b) Except as provided in subdivision (c), the issuing agency shall deposit monthly the  
40 collected fees in the Air Pollution Control Fund.

(c) To pay for administrative costs of issuing the permits, the issuing agency may retain from the fees collected pursuant to this section an amount equal to either the estimated cost of issuing the permits, or 4 percent of the total fees collected, whichever is less. The state board may make an annual audit of the issuing agency to determine the amount of fees retained by an issuing agency.

**Comment.** Section 38103 continues former Health and Safety Code Section 41853.5 without substantive change.

#### **§ 38104. Sacramento Valley Air Basin**

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38104. The Sacramento Valley Basinwide Air Pollution Control Council may impose, and may require that districts within the Sacramento Valley Air Basin collect, a fee not to exceed five dollars (\$5) per permit, per year on each permit issued by a district within the Sacramento Valley Air Basin, for the purpose of administering all basinwide air pollution control efforts, and may adopt a budget to expend those funds at any noticed regularly scheduled meeting, allowing for public comment.

**Comment.** Section 38104 continues former Health and Safety Code Section 41866 without change.

#### **§ 38105. Orchard and citrus grove heaters**

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38105. (a) The state board shall adopt and publish a list of orchard and citrus grove heaters which it finds produce no more than one gram per minute of unconsumed solid carbonaceous material. No new orchard or citrus grove heater produced or manufactured shall be sold for use against frost damage unless it has been approved by the state board.

(b) No person shall use any orchard or citrus grove heater unless it has been approved by the state board or does not produce more than one gram per minute of unconsumed solid carbonaceous material.

(c) In addition to the penalties specified in Sections 39550 and 39551, the cost of putting out the fire caused by a violation of this section may be imposed on any person who violates this section.

**Comment.** Section 38105 continues former Health and Safety Code Section 41860 without substantive change. The former undesignated paragraphs have been designated as subdivisions. The reference in subdivision (b) to the date on which the prohibition stated in that subdivision took effect (January 1, 1975) is obsolete and has not been continued.

#### **§ 38106. Wildlife or game habitats**

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38106. No burning shall be conducted for the improvement of land for wildlife or game habitat until the person desiring to conduct the burning obtains from the Department of Fish and Game a written statement certifying that the burning is desirable and proper for the improvement of land for wildlife or game habitat and the statement is filed with the air pollution control officer having jurisdiction in the area in which the burning is to take place. As to burning conducted by the Department of Fish and Game, the department shall, on its own behalf, issue and file these statements.

**Comment.** Section 38106 continues former Health and Safety Code Section 41861 without substantive change.

Article 3. Days on Which Burning is Prohibited

**§ 38150. Validity of permit on days burning prohibited**

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38150. (a) No permit issued pursuant to Section 38102 shall be valid for any day during which agricultural burning is prohibited by the state board pursuant to Section 38151 or by a district board pursuant to Section 37001.

(b) Each permit shall bear a statement of warning containing the following words or words of like or similar import:

“This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board pursuant to Section 38151 of the Environment Code.”

**Comment.** Section 38150 continues former Health and Safety Code Section 41854 without substantive change.

**§ 38151. Days burning prohibited**

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38151. The state board shall determine and designate from meteorological data the days when agricultural burning shall be prohibited within each air basin.

**Comment.** Section 38151 continues former Health and Safety Code Section 41855 without change.

**§ 38152. Permits for nonburning days**

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38152. (a) A district may issue a permit to authorize agricultural burning on days designated by the state board pursuant to Section 38151 as nonburning days when denial of a permit would threaten imminent and substantial economic loss.

(b) The state board shall require the districts to transmit regular reports of permits issued authorizing agricultural burning on nonburning days. The report shall include the number of permits issued, the date of issuance of each permit, the person to whom each permit was issued, and any other information requested by the state board.

**Comment.** Section 38152 continues former Health and Safety Code Section 41862 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

Article 4. Regulation of Agricultural Burning

**§ 38200. Guidelines for each basin**

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38200. The state board shall promulgate guidelines for the regulation and control of agricultural burning for each of the air basins established by the state board.

**Comment.** Section 38200 continues former Health and Safety Code Section 41856 without change.

**§ 38201. Basis for guidelines**

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38201. The guidelines promulgated by the state board shall be based on meteorological data, the nature and volume of materials to be burned, and the probable effect of the burning on the ambient air quality within the air basins affected.

**Comment.** Section 38201 continues former Health and Safety Code Section 41857 without substantive change.

1    **§ 38202. Economic and technical feasibility**

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2       38202. In adopting guidelines, the state board shall consider their economic and technical  
3 feasibility, including their probable effect on agricultural production in the air basin  
4 affected.

5       **Comment.** Section 38202 continues former Health and Safety Code Section 41858 without  
6 substantive change.

7    **§ 38203. Review of guidelines**

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8       38203. The state board shall continuously review the guidelines promulgated under this  
9 chapter, and may modify, repeal, or alter the guidelines if scientific and technological data  
10 indicates that changes are warranted. Before adopting any changes, the state board shall  
11 hold a public hearing and shall consider the criteria set forth in Section 38201.

12       **Comment.** Section 38203 continues former Health and Safety Code Section 41859 without  
13 substantive change.

14   **§ 38204. Inclusion in council and district plans and programs**

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15       38204. Each basinwide coordinating council and district shall, as part of the  
16 implementation plans and programs prepared pursuant to Chapter 2 (commencing with  
17 Section 37450) of Title 4, include a component for the regulation and control of agricultural  
18 burning pursuant to guidelines adopted by the state board therefor.

19       **Comment.** Section 38204 continues former Health and Safety Code Section 41863 without  
20 substantive change.

21                                   Article 5. Rice Straw Burning Reduction Act

22   **§ 38250. Short title**

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23       38250. This article shall be known, and may be cited, as the Connelly-Areias-Chandler  
24 Rice Straw Burning Reduction Act of 1991.

25       **Comment.** Section 38250 continues former Health and Safety Code Section 41865(a)  
26 without substantive change.

27   **§ 38251. Legislative findings and declarations**

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28       38251. The Legislature hereby finds and declares as follows:

29       (a) Because of the requirements imposed by this article, rice straw that was previously  
30 burned may present, as solid waste, a new disposal problem.

31       (b) The state should assist local governments and growers in diverting rice straw from  
32 landfills by researching and developing diversion options.

33       **Comment.** Section 38251 continues former Health and Safety Code Section 41865(p)  
34 without substantive change.

35   **§ 38252. Legislative intent**

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36       38252. It is the intent of the Legislature that all feasible alternatives to rice straw burning  
37 and options for diverting rice straw from landfills be encouraged.

38       **Comment.** Section 38252 continues former Health and Safety Code Section 41865(q)  
39 without substantive change.

§ 38253. Definitions

38253. As used in this article, the following terms have the following meanings:

(a) "Administrative burning" means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 38100 is not subject to this article.

(b) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 34500.

(c) "Allowable acres to be burned" means the number of acres that may be burned pursuant to Section 38254.

(d) "Conditional rice straw burning permit" means a permit to burn granted pursuant to Sections 38256 and 38258.

(e) "Department" means the Department of Food and Agriculture.

(f) "Maximum fall burn acres" means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(g) "Maximum spring burn acres" means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(h) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 30950.

**Comment.** Section 38253 continues former Health and Safety Code Section 41865(b) & (k) without substantive change. The defined terms have been placed in alphabetical order.

§ 38254. Reduction in allowable burning

38254. Notwithstanding Section 38050, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(a) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

	Maximum Fall Burn	Maximum Spring Burn
Year	Acres	Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(b) Notwithstanding subdivision (a), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(c) Notwithstanding subdivision (a), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(d) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in Section 28259, subject to Sections 38256 and 38258.

**Comment.** Section 38254 continues former Health and Safety Code Section 41865(c) without substantive change.



1   **§ 38255. Daily allowable acreage**

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2       38255. The number of allowable acres to be burned each day shall be determined by the  
3       state board and the air pollution control officers in the Sacramento Valley Air Basin and  
4       equitably allocated among rice growers in accordance with the annual agricultural burning  
5       plan adopted by the air pollution control council and approved by the state board.

6       **Comment.** Section 38255 continues former Health and Safety Code Section 41865(d)  
7       without substantive change.

8   **§ 38256. Conditional rice straw burning permit**

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9       38256. Commencing September 1, 2001, the county air pollution control officers in the  
10       Sacramento Valley Air Basin may grant conditional rice straw burning permits once the  
11       county agricultural commissioner has determined that the applicant has met the conditions  
12       specified in Section 38258. The county agricultural commissioner shall be responsible for  
13       all field inspections associated with the issuance of conditional rice straw burning permits.  
14       A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

15       **Comment.** Section 38256 continues former Health and Safety Code Section 41865(f)  
16       without substantive change.

17   **§ 38257. Conditional rice straw burning permit fee**

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18       38257. The county agricultural commissioner may charge the applicant a fee not to  
19       exceed the costs incurred by the county agricultural commissioner in making the  
20       determination specified in Section 38256. This section shall be operative only until January  
21       1, 2009.

22       **Comment.** Section 38257 continues former Health and Safety Code Section 41865(g)  
23       without substantive change.

24   **§ 38258. Issuance of conditional rice straw burning permit**

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25       38258. If the terms and conditions for issuing conditional rice straw burning permits  
26       specified in subdivisions (a) to (d), inclusive, are met, a conditional rice straw burning  
27       permit may be issued unless the state board and the department have jointly determined,  
28       based upon an annual review process, that there are other economically and technically  
29       feasible alternative means of eliminating the disease that are not substantially more costly to  
30       the applicant. The terms and conditions for issuing the conditional rice straw burning  
31       permits are:

32       (a) The fields to be burned are specifically described.

33       (b) The applicant has not violated any provision of this article within the previous three  
34       years.

35       (c) During the growing season, the county agricultural commissioner has independently  
36       determined the significant presence of a pathogen in an amount sufficient to constitute a rice  
37       disease such as stem rot.

38       (d) The county agricultural commissioner makes a finding that the existence of the  
39       pathogen as identified in subdivision (c) will likely cause a significant, quantifiable  
40       reduction in yield in the field to be burned during the current or next growing season. The  
41       findings of the county agricultural commissioner shall be based on recommendations  
42       adopted by the advisory group established pursuant to Section 38261.

43       **Comment.** Section 38258 continues former Health and Safety Code Section 41865(h)  
44       without substantive change.

1   **§ 38259. Limitations on allowable burning**

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2       38259. (a) The maximum annual number of acres burned in the Sacramento Valley Air  
3 Basin pursuant to subdivision (c) of Section 38254 shall be the lesser of:

4       (1) The total of 25 percent of each individual applicant's planted acres that year.

5       (2) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

6       (b) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres,  
7 as determined by the air pollution control officers in the Sacramento Valley Air Basin and  
8 subject to the maximum annual number of acres burned set forth in subdivision (a), if the  
9 grower has met the criteria for a conditional rice straw burning permit.

10       (c) The air pollution control council shall annually determine which is the lesser of  
11 paragraphs (1) and (2) of subdivision (a), and shall determine the maximum percentage  
12 applicable to all growers subject to the conditions set forth in Sections 38256 and 38258.

13       (d) A grower who owns or operates 400 acres or less who has met the criteria for the  
14 issuance of a conditional rice straw burning permit may burn his or her entire acreage once  
15 every four years, provided that the limit prescribed in subdivision (a) is not exceeded.

16       (e) Nothing in this section shall permit an applicant to transfer, sell, or trade any  
17 permission to burn granted pursuant to this subdivision to another applicant or individual.

18       **Comment.** Section 38259 continues former Health and Safety Code Section 41865(i)  
19 without substantive change.

20   **§ 38260. Extraordinary circumstances**

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21       38260. The state board and the department shall jointly determine if the allowable acres to  
22 be burned, as provided in Sections 38254, 38256, and 38258, may be exceeded due to  
23 extraordinary circumstances, such as an act of God, that have an impact over a continuing  
24 duration and make alternatives other than burning unusable.

25       **Comment.** Section 38260 continues former Health and Safety Code Section 41865(j)  
26 without substantive change.

27   **§ 38261. Regulations**

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28       38261. On or before September 1, 2000, the state board, in consultation with the  
29 department and the air pollution control council, shall adopt regulations consistent with the  
30 criteria provided in Sections 38256 and 38258. On or before September 1, 1996, an  
31 advisory group shall be established by the state board and the department to assist in the  
32 adoption of those regulations.

33       **Comment.** Section 38261 continues former Health and Safety Code Section 41865(e)  
34 without substantive change.


35   **§ 38262. Advisory committee**

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36       38262. (a) On or before September 1, 1992, the state board and the department shall  
37 jointly establish an advisory committee composed of 10 members to assist with the  
38 identification and implementation of alternatives to rice straw burning. Members of the  
39 committee shall be from the Sacramento Valley Air Basin, and the committee shall consist  
40 of two rice growers, two representatives from the environmental community, two health  
41 officials, two county supervisors or their designees, one member from the air pollution  
42 control council, and one member from the business community with expertise in market or  
43 product development. The committee shall meet at least annually. General Fund moneys  
44 shall not be used to support the committee.

(b) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

**Comment.** Section 38262 continues former Health and Safety Code Section 41865(l) without substantive change.

 **Note.** Subdivision (a) specifies a deadline for the creation of an advisory committee. This deadline provision may be obsolete. The Commission would like to receive input on two questions: (1) Was the committee created as required? (2) Does the deadline provision still serve a useful purpose?

#### § 38263. Diversion plan and schedule

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38263. On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Department of Commerce, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

**Comment.** Section 38263 continues former Health and Safety Code Section 41865(m) without substantive change.

#### § 38264. Progress report to legislature

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38264. On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by Section 38263, progress toward achieving the 50 percent diversion goal, any recommended changes to this article, and other issues related to this article. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in Section 38267 to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars (\$50,000).

**Comment.** Section 38264 continues former Health and Safety Code Section 41865(n) without substantive change.

#### § 38265. Study of effects of burning

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38265. The state board and the California Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in subdivision (a) of Section 38254. On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts

1 associated with the burning of rice straw pursuant to the schedule provided in subdivision  
2 (a) of Section 38254.

3 **Comment.** Section 38265 continues former Health and Safety Code Section 41865(o)  
4 without substantive change.

#### 5 **§ 38266. Emission reduction credits**

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6 38266. This section confirms that reductions in emissions from rice straw burning  
7 qualify for air quality offsets, in accordance with subdivisions (a) and (b).

8 (a) These credits shall meet the requirements specified in state law and district rules and  
9 regulations, and shall comply with applicable district banking rules established pursuant to  
10 Sections 32700 to 32751, inclusive, and 32850 to 32856, inclusive. Districts are urged to  
11 establish banking systems in accordance with Sections 32700 to 32751, inclusive, and  
12 32850 to 32856, inclusive. The state board may adopt regulations to implement this  
13 section, including, but not limited to, consideration of the seasonal and intermittent nature  
14 of rice straw burning emissions. In developing the regulations, the state board shall consult  
15 with all concerned parties. However, emission reduction credits that would otherwise  
16 accrue from reductions in emissions from rice straw burning shall not be affected or  
17 negated by the phasedown of burning, as specified in Section 38254.

18 (b) Reductions in emissions achieved in compliance with Section 38254 that are banked  
19 or used as credits shall not be credited for purposes of attainment planning and progress  
20 towards the attainment of any state or national ambient air quality standard as required by  
21 state and federal law.

22 **Comment.** Section 38266 continues former Health and Safety Code Section 41865(r)  
23 without substantive change.

#### 24 **§ 38267. Enforcement**

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25 38267. (a) Any person who negligently or intentionally violates any provision of this  
26 chapter is guilty of a misdemeanor and is subject to a fine of not more than ten thousand  
27 dollars (\$10,000), imprisonment in the county jail for not more than nine months, or by  
28 both that fine and imprisonment. This section applies only to agricultural burning in the  
29 Sacramento Valley Air Basin.

30 (b) Any person who negligently or intentionally violates any provision in this chapter is  
31 liable for a civil penalty of not more than ten thousand dollars (\$10,000). This section  
32 applies only to agricultural burning in the Sacramento Valley Air Basin.

33 **Comment.** Section 38267 continues former Health and Safety Code Section 41865(s)  
34 without substantive change.

#### 35 **§ 38268. Fees to cover costs of program**

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36 38268. Districts in the Sacramento Valley Air Basin shall impose fees on growers to  
37 cover the cost of implementing this article pursuant to Sections 38850 to 38854, inclusive.

38 **Comment.** Section 38268 continues former Health and Safety Code Section 41865(t)  
39 without substantive change.

#### 40 **§ 38269. Further responsibilities**

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41 38269. To the extent that resources are available, the state board and the agencies with  
42 jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the  
43 following:

(a) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(b) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

**Comment.** Section 38269 continues former Health and Safety Code Section 41865(u) without substantive change.


## CHAPTER 6. SANDBLASTING

### § 38300. Committee to recommend standards

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38300. The chairman of the state board shall convene a committee of 11 members to recommend to the state board for adoption, not later than January 1, 1975, air pollution standards for sandblasting operations.

**Comment.** Section 38300 continues former Health and Safety Code Section 41900 without change.

 **Note.** This section specifies a deadline for the creation of an advisory committee. This deadline provision may be obsolete. The Commission would like to receive input on two questions: (1) Was the committee created as required? (2) Does the deadline provision still serve a useful purpose?

### § 38301. Composition of committee

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38301. (a) The committee shall include nine members appointed by the chairman of the state board as follows: three contractors licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code for sandblasting services, three members from public entities which contract for these services, and three members from district boards. The committee shall also include two public members, one of whom shall be appointed by the Senate Rules Committee and one by the Speaker of the Assembly.

(b) The committee shall select a chairman from its membership, and the chairman shall serve at the pleasure of the committee.

**Comment.** Section 38301 continues former Health and Safety Code Section 41901 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

### § 38302. Factors to be considered

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38302. In developing the standards, the committee shall take into consideration the need to reduce air pollution from all sources and the need to also continue sandblasting operations as a means of corrosion control. The committee shall examine present sandblasting procedures and equipment, and determine where improvements can be made so that the standards reflect the strictest standards that can be reasonably achieved.

**Comment.** Section 38302 continues former Health and Safety Code Section 41902 without change.

1   **§ 38303. Adjournment**

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2       38303. Thirty days after the adoption of air pollution standards for sandblasting  
3       operations, the committee shall adjourn. Thereafter, it may meet at least once annually upon  
4       the call of the chairman of the committee to review the standards in light of changes in  
5       sandblasting technology.

6       **Comment.** Section 38303 continues former Health and Safety Code Section 41903 without  
7       change.

8   **§ 38304. Statewide application of standards**

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9       38304. The standards shall be statewide, and no rule or regulation of any district that is  
10      applicable to sandblasting operations shall be stricter or less strict than the standards  
11      adopted by the state board pursuant to the recommendations of the committee.

12      **Comment.** Section 38304 continues former Health and Safety Code Section 41904 without  
13      change.

14   **§ 38305. Relation of standards to other district rules and regulations**

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15      38305. (a) The standards, however, shall not supersede any rule or regulation of any  
16      district governing permanent sandblasting operations or equipment, which rule or  
17      regulation was in effect on January 1, 1974.

18      (b) For purposes of this section, “permanent sandblasting operations or equipment”  
19      means sandblasting operations conducted, or sandblasting equipment located, in a building  
20      which is used, in whole or in part, for sandblasting operations.

21      **Comment.** Section 38305 continues former Health and Safety Code Section 41905 without  
22      substantive change. The former undesignated paragraphs have been designated as  
23      subdivisions.

24                                   **CHAPTER 7. GASOLINE VAPOR CONTROL**

25                                   **Article 1. Definitions**

26   **§ 38350. Application of definitions**

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27      38350. Unless the provision or context otherwise requires, the definitions in this article  
28      govern the construction of this chapter.

29      **Comment.** Section 38350 is new.

30      ☞ **Note.** Health and Safety Code Sections 41951-41953 provide definitions but do not  
31      indicate their application. It appears that these definitions are intended to apply to the  
32      provisions of this chapter.

33   **§ 38355. “Floating roof”**

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34      38355. A “floating roof” consists of a pontoon-type or double-deck-type roof, resting on  
35      the surface of the liquid contents and equipped with a closure seal, or seals, to close the  
36      space between the roof edge and tank wall. The control equipment required by this section  
37      shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds  
38      per square inch absolute or greater under actual storage conditions. All tank gauging and  
39      sampling devices shall be gastight except when gauging or sampling is taking place.



1     **Comment.** Section 38355 continues former Health and Safety Code Section 41953 without  
2 change.

3     **§ 38360. “Pressure tank”**

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4     38360. A “pressure tank” is a tank which maintains working pressure sufficient at all  
5 times to prevent hydrocarbon vapor or gas loss to the atmosphere.

6     **Comment.** Section 38360 continues former Health and Safety Code Section 41951 without  
7 change.

8     **§ 38365. “Vapor recovery system”**

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9     38365. A “vapor recovery system” consists of a vapor gathering system capable of  
10 collecting the hydrocarbon vapors and gases discharged and a vapor disposal system  
11 capable of processing hydrocarbon vapors and gases so as to prevent their emission into  
12 the atmosphere, with all tank gauging and sampling devices gastight except when gauging  
13 or sampling is taking place.

14     **Comment.** Section 38365 continues former Health and Safety Code Section 41952 without  
15 substantive change.

16                     Article 2. Performance Standards and Certification

17     **§ 38400. Authority and responsibilities of state board**

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18     38400. (a) The state board shall adopt procedures for determining the compliance of any  
19 system designed for the control of gasoline vapor emissions during gasoline marketing  
20 operations, including storage and transfer operations, with performance standards which  
21 are reasonable and necessary to achieve or maintain any applicable ambient air quality  
22 standard.

23     (b) The state board shall, after a public hearing, adopt additional performance standards  
24 which are reasonable and necessary to ensure that systems for the control of gasoline  
25 vapors resulting from motor vehicle fueling operations do not cause excessive gasoline  
26 liquid spillage when used in a proper manner. To the maximum extent practicable, the  
27 additional performance standards shall allow flexibility in the design of gasoline vapor  
28 recovery systems and their components.

29     (c) The state board shall certify, in cooperation with the districts, any gasoline vapor  
30 control system, upon its determination that the system, if properly installed and maintained,  
31 will meet the requirements of subdivision (a). The state board shall enumerate the  
32 specifications used for issuing the certification. After a system has been certified, if  
33 circumstances beyond the control of the state board cause the system to no longer meet the  
34 required specifications or standards, the state board may revoke or modify the certification.

35     (d) The state board may test, or contract for testing, gasoline vapor control systems for  
36 the purpose of certifying them.

37     (e) The state board shall charge a reasonable fee for certification, not to exceed its  
38 estimated costs therefor. Payment of the fee shall be a condition of certification.

39     (f) No person shall offer for sale, sell, or install any new or rebuilt gasoline vapor control  
40 system, or any component of the system, unless the system or component has been  
41 certified by the state board and is clearly identified by a permanent identification of the  
42 certified manufacturer or rebuilder.

43     **Comment.** Section 38400 continues former Health and Safety Code Section 41954(a)-(f)  
44 without substantive change. Statements of legislative intent applicable to former Health and

1 Safety Code Section 41954 now apply to this section. See, e.g., Assembly J. 1995-96 Reg.  
2 Sess., p. 8821.

3 **§ 38401. Limitation on authority of district**

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4 38401. (a)(1) Except as authorized by other provisions of law and except as provided in  
5 this subdivision, no district may adopt, after July 1, 1995, stricter procedures or  
6 performance standards than those adopted by the state board pursuant to subdivision (a) of  
7 Section 38400, and no district may enforce any stricter procedures or performance  
8 standards.

9 (2) Stricter procedures or performance standards shall not require the retrofitting,  
10 removal, or replacement of any existing system, which is installed and operating in  
11 compliance with applicable requirements, within four years from the effective date of those  
12 procedures or performance standards, except that existing requirements for retrofitting,  
13 removal, or replacement of nozzles with nozzles containing vapor-check valves may be  
14 enforced commencing July 1, 1998.

15 (3) Stricter procedures or performance standards shall not be implemented until at least  
16 two systems meeting the stricter performance standards have been certified by the state  
17 board.

18 (4) If the certification of a gasoline vapor control system, or a component thereof, is  
19 revoked or modified, no district shall require a currently installed system, or component  
20 thereof, to be removed for a period of four years from the date of revocation or  
21 modification.

22 (b) No district shall require the use of test procedures for testing the performance of a  
23 gasoline vapor control system unless those test procedures have been adopted by the state  
24 board or have been determined by the state board to be equivalent to those adopted by the  
25 state board, except that test procedures used by a district prior to January 1, 1996, may  
26 continue to be used until January 1, 1998, without state board approval.

27 **Comment.** Section 38401 continues former Health and Safety Code Section 41954(g)-(h)  
28 without substantive change. Statements of legislative intent applicable to former Health and  
29 Safety Code Section 41954 now apply to this section. See, e.g., Assembly J. 1995-96 Reg.  
30 Sess., p. 8821.

31 **§ 38402. Limitation on enforcement**

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32 38402. With respect to those vapor control systems subject to certification by the state  
33 board, there shall be no criminal or civil proceedings commenced or maintained for failure  
34 to comply with any statute, rule, or regulation requiring a specified vapor recovery  
35 efficiency if the vapor control equipment which has been installed to comply with  
36 applicable vapor recovery requirements meets both of the following requirements:

37 (a) Has been certified by the state board at an efficiency equal to or greater than the  
38 efficiency required by applicable statutes, rules, or regulations.

39 (b) Is installed, operated, and maintained in accordance with the procedures set forth in  
40 the certification and the instructions of the equipment manufacturer.

41 **Comment.** Section 38402 continues former Health and Safety Code Section 41954(i)  
42 without substantive change. Statements of legislative intent applicable to former Health and  
43 Safety Code Section 41954 now apply to this section. See, e.g., Assembly J. 1995-96 Reg.  
44 Sess., p. 8821.

1   **§ 38403. Certification by other agencies**

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2       38403. Prior to state board certification of a gasoline vapor control system pursuant to  
3 Sections 38400 to 38402, inclusive, the manufacturer of the system shall submit the system  
4 to, or, if appropriate, the components of the system as requested by, the Division of  
5 Measurement Standards of the Department of Food and Agriculture and the State Fire  
6 Marshal for their certification.

7       **Comment.** Section 38403 continues former Health and Safety Code Section 41955 without  
8 substantive change.

9   **§ 38404. Basis for certification by other agencies**

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10       38404. The State Fire Marshal, the Division of Occupational Safety and Health, and the  
11 Division of Measurement Standards shall certify any system or component which complies  
12 with their adopted rules and regulations. Any one of the state agencies may certify a system  
13 or component on the basis of results of tests performed by any entity retained by the  
14 manufacturer of the system or component or by the state agency. The requirements for the  
15 certification of a system or component shall not require that it be tested, approved, or listed  
16 by any private entity, except that certification testing regarding recirculation of gasoline  
17 shall include testing by an independent testing laboratory.

18       **Comment.** Section 38404 continues the second paragraph of former Health and Safety  
19 Code Section 41958 without change.

20   **§ 38405. Fee for certification by other agency**

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21       38405. The State Fire Marshal, the Division of Measurement Standards, and the Division  
22 of Occupational Safety and Health may charge a reasonable fee for certification of a  
23 gasoline vapor control system or a component thereof, not to exceed their respective  
24 estimated costs therefor. Payment of the fee may be made a condition of certification. All  
25 money collected by the State Fire Marshal pursuant to this section shall be deposited in the  
26 State Fire Marshal Licensing and Certification Fund established pursuant to Section 13137  
27 of the Health and Safety Code, and shall be available to the State Fire Marshal upon  
28 appropriation by the Legislature to carry out the purposes of this chapter.

29       **Comment.** Section 38405 continues former Health and Safety Code Section 41961 without  
30 substantive change.

31   **§ 38406. Regulations of State Fire Marshal and Division of Measurement Standards**

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32       38406. (a) As soon as possible after the effective date of this section, the State Fire  
33 Marshal and the Division of Measurement Standards, after consulting with the state board,  
34 shall adopt rules and regulations for the certification of gasoline vapor control systems and  
35 components thereof.

36       (b) The State Fire Marshal shall be the only agency responsible for determining whether  
37 any component or system creates a fire hazard. The division shall be the only agency  
38 responsible for the measurement accuracy aspects, including gasoline recirculation of any  
39 component or system.

40       (c) Within 120 days after the effective date of this subdivision, the Division of  
41 Measurement Standards, shall, after public hearing, adopt rules and regulations containing  
42 additional performance standards and standardized certification and compliance test  
43 procedures which are reasonable and necessary to prevent gasoline recirculation in systems  
44 for the control of gasoline vapors resulting from motor vehicle fueling operations.

1     **Comment.** Section 38406 continues former Health and Safety Code Section 41956 without  
2 change.

3     **§ 38407. Regulations of Division of Occupational Safety and Health**

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4     38407. (a) The Division of Occupational Safety and Health of the Department of  
5 Industrial Relations is the only agency responsible for determining whether any gasoline  
6 vapor control system, or component thereof, creates a safety hazard other than a fire  
7 hazard.

8     (b) If the division determines that a system, or component thereof, creates a safety hazard  
9 other than a fire hazard, that system or component may not be used until the division has  
10 certified that the system or component, as the case may be, does not create that hazard.

11     (c) The division, in consultation with the state board, shall adopt the necessary rules and  
12 regulations for the certification if the certification is required.

13     **Comment.** Section 38407 continues former Health and Safety Code Section 41957 without  
14 substantive change. The former undesignated paragraphs have been designated as  
15 subdivisions.

16     **§ 38408. Requirements for regulations adopted under Sections 38406 and 38407**

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17     38408. To the maximum extent practicable, the rules and regulations adopted pursuant to  
18 Sections 38406 and 38407 shall allow flexibility in the design of gasoline vapor control  
19 systems and their components. The rules and regulations shall set forth the performance  
20 standards as to safety and measurement accuracy and the minimum procedures to be  
21 followed in testing the system or component for compliance with the performance  
22 standards.

23     **Comment.** Section 38408 continues the first paragraph of former Health and Safety Code  
24 Section 41958 without change.

25     **§ 38409. Revision of performance or certification standards**

---

26     38409. (a) Whenever the state board, the Division of Measurement Standards of the  
27 Department of Food and Agriculture, or the State Fire Marshal revises performance or  
28 certification standards or revokes a certification, any systems or any system components  
29 certified under procedures in effect prior to the adoption of revised standards or the  
30 revocation of the certification and installed prior to the effective date of the revised  
31 standards or revocation may continue to be used in gasoline marketing operations for a  
32 period of four years after the effective date of the revised standards or the revocation of the  
33 certification. However, all necessary repair or replacement parts or components shall be  
34 certified.

35     (b) Notwithstanding subdivision (a), whenever the State Fire Marshal determines that a  
36 system or a system component creates a hazard to public health and welfare, the State Fire  
37 Marshal may prevent use of the particular system or component.

38     (c) Notwithstanding subdivision (a), the Division of Measurement Standards may  
39 prohibit the use of any system or any system component if it determines on the basis of test  
40 procedures adopted pursuant to subdivision (c) of Section 38406, that use of the system or  
41 component will result in gasoline recirculation.

42     **Comment.** Section 38409 continues former Health and Safety Code Section 41956.1  
43 without substantive change. Statements of legislative intent applicable to former Health and  
44 Safety Code Section 41956.1 now apply to this section. See, e.g., Assembly J. 1995-96 Reg.  
45 Sess., p. 8821

1    **§ 38410. Simultaneous testing for certification**

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2       38410. Certification testing of gasoline vapor control systems and their components by  
3 the state board, the State Fire Marshal, the Division of Measurement Standards, and the  
4 Division of Occupational Safety and Health may be conducted simultaneously.

5       **Comment.** Section 38410 continues former Health and Safety Code Section 41959 without  
6 change.

7    **§ 38411. Effect of certification**

---

8       38411. (a) Certification of a gasoline vapor recovery system for safety and measurement  
9 accuracy by the State Fire Marshal and the Division of Measurement Standards and, if  
10 necessary, by the Division of Occupational Safety and Health shall permit its installation  
11 wherever required in the state, if the system is also certified by the state board.

12       (b) Except as otherwise provided in subdivision (a) of Section 38401, no local or  
13 regional authority shall prohibit the installation of a certified system without obtaining  
14 concurrence from the state agency responsible for the aspects of the system which the local  
15 or regional authority disapproves.

16       **Comment.** Section 38411 continues former Health and Safety Code Section 41960 without  
17 substantive change. Statements of legislative intent applicable to former Health and Safety  
18 Code Section 41960 now apply to this section. See, e.g., Assembly J. 1995-96 Reg. Sess., p.  
19 8821.

20                                   Article 3. Operating Requirements

21    **§ 38450. Loading gasoline through submerged fill pipe**

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22       38450. (a) Except as provided in subdivisions (b) and (e), no person shall install or  
23 maintain any stationary gasoline tank with a capacity of 250 gallons or more which is not  
24 equipped for loading through a permanent submerged fill pipe, unless the tank is a pressure  
25 tank as described in Section 38360, or is equipped with a vapor recovery system as  
26 described in Section 38365 or with a floating roof as described in Section 38355, or unless  
27 the tank is equipped with other apparatus of equal efficiency which has been approved by  
28 the air pollution control officer in whose district the tank is located.

29       (b) Subdivision (a) shall not apply to any stationary tanks installed prior to December 31,  
30 1970.

31       (c) For the purpose of this section, “gasoline” means any petroleum distillate having a  
32 Reid vapor pressure of four pounds or greater.

33       (d) For the purpose of this section, “submerged fill pipe” means any fill pipe which has  
34 its discharge opening entirely submerged when the liquid level is six inches above the  
35 bottom of the tank. “Submerged fill pipe,” when applied to a tank which is loaded from the  
36 side, means any fill pipe which has its discharge opening entirely submerged when the  
37 liquid level is 18 inches above the bottom of the tank.

38       (e) Subdivision (a) shall not apply to any stationary tank which is used primarily for the  
39 fueling of implements of husbandry.

40       **Comment.** Section 38450 continues former Health and Safety Code Section 41950 without  
41 substantive change.

42    **§ 38451. Operation in accordance with applicable standards**

---

43       38451. All vapor control systems for the control of gasoline vapors resulting from motor  
44 vehicle fueling operations shall be operated in accordance with the applicable standards



1 established by the State Fire Marshal or the Division of Measurement Standards pursuant to  
2 Sections 38404, and 38406 to 38408, inclusive.

3 **Comment.** Section 38451 continues former Health and Safety Code Section 41960.1(a)  
4 without substantive change.

#### 5 **§ 38452. Failure to meet applicable standards**

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6 38452. (a) When a sealer or any authorized employee of the Division of Measurement  
7 Standards determines, on the basis of applicable test procedures of the division, adopted  
8 after public hearing, that an individual system or component for the control of gasoline  
9 vapors resulting from motor vehicle fueling operations does not meet the applicable  
10 standards established by the Division of Measurement Standards, he or she shall take the  
11 appropriate action specified in Section 12506 of the Business and Professions Code.

12 (b) When a deputy State Fire Marshal or any authorized employee of a fire district or  
13 local or regional firefighting agency determines that a component of a system for the control  
14 of gasoline vapors resulting from motor vehicle fueling operations does not meet the  
15 applicable standards established by the State Fire Marshal, he or she shall mark the  
16 component “out of order.” No person shall use or permit the use of the component until the  
17 component has been repaired, replaced, or adjusted, as necessary, and either the  
18 component has been inspected by a representative of the agency employing the person  
19 originally marking the component, or the person using or permitting use of the component  
20 has been expressly authorized by the agency to use the component pending reinspection.

21 **Comment.** Section 38452 continues former Health and Safety Code Section 41960.1(b)-  
22 (c) without substantive change.

#### 23 **§ 38453. Maintenance of installed systems**

---

24 38453. (a) All installed systems for the control of gasoline vapors resulting from motor  
25 vehicle fueling operations shall be maintained in good working order in accordance with the  
26 manufacturer’s specifications of the system certified pursuant to Sections 38400 to 38402,  
27 inclusive.

28 (b) Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone  
29 other than the original manufacturer or its authorized representative, the person shall  
30 permanently affix a plate to the vapor recovery control system which identifies the repairer  
31 or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder of  
32 a vapor control system shall remove any identification of the original manufacturer where  
33 the removal does not affect the continued safety or performance of the vapor control  
34 system.

35 **Comment.** Section 38453 continues former Health and Safety Code Section 41960.2(a)-  
36 (b) without substantive change.

#### 37 **§ 38454. Equipment defects**

---

38 38454. (a) The state board shall identify equipment defects in systems for the control of  
39 gasoline vapors resulting from motor vehicle fueling operations which substantially impair  
40 the effectiveness of the systems in reducing air contaminants.

41 (b) When a district determines that a component contains a defect specified pursuant to  
42 subdivision (a), the district shall mark the component “Out of Order” . No person shall use  
43 or permit the use of the component until the component has been repaired, replaced, or  
44 adjusted, as necessary, and the district has reinspected the component or has authorized use  
45 of the component pending reinspection.



(c) Where a district determines that a component is not in good working order but does not contain a defect specified pursuant to subdivision (a), the district shall provide the operator with a notice specifying the basis on which the component is not in good working order. If, within seven days, the operator provides the district with adequate evidence that the component is in good working order, the operator shall not be subject to liability under this division.

**Comment.** Section 38454 continues former Health and Safety Code Section 41960.2(c)-(e) without substantive change.

#### **§ 38455. Complaints**

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38455. (a) Each district which requires the installation of systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall establish a toll free telephone number for use by the public in reporting problems experienced with the systems. Districts within an air basin or adjacent air basin may enter into a cooperative program to implement this requirement. All complaints received by a district shall be recorded on a standardized form which shall be established by the state board, in consultation with districts, the State Fire Marshal, and the Division of Measurement Standards in the Department of Food and Agriculture.

(b) The operating instructions required by Section 38456 shall be posted at all service stations at which systems for the control of gasoline vapors resulting from motor vehicle fueling operations are installed and shall include a prominent display of the toll free telephone number for complaints in the district in which the station is located.

(c) Upon receipt of each complaint, the district shall diligently either investigate the complaint or refer the complaint for investigation by the state or local agency which properly has jurisdiction over the primary subject of the complaint. When the investigation has been completed, the investigating agency shall take appropriate remedial action and shall advise the complainant of the findings and disposition of the investigation. A copy of the complaint and response to the complaint shall be forwarded to the state board.

**Comment.** Section 38455 continues former Health and Safety Code Section 41960.3 without substantive change. The undesignated second paragraph of former Health and Safety Code Section 41960.3(a) has been designated as subdivision (b), and former subdivision (b) redesignated as subdivision (c).

#### **§ 38456. Operating instructions for service station pumps**

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38456. The operator of each service station utilizing a system for the control of gasoline vapors resulting from motor vehicle fueling operations shall conspicuously post operating instructions for the system in the gasoline dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with vapor recovery nozzles utilized at the station and shall include a warning that repeated attempts to continue dispensing, after the system having indicated that the vehicle fuel tank is full, may result in spillage or recirculation of gasoline.

**Comment.** Section 38456 continues former Health and Safety Code Section 41960.4 without change.

#### **§ 38457. Pump nozzle for leaded gasoline**

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38457. (a) No retailer, as defined in Section 20999 of the Business and Professions Code, shall allow the operation of any gasoline pump from which leaded gasoline is dispensed, or which is labeled as providing leaded gasoline, unless the pump is equipped

1 with a nozzle spout meeting the required specifications for leaded gasoline nozzle spouts set  
2 forth in Title 40, Code of Federal Regulations, Section 80.22(f)(1).

3 (b) For the purpose of this section, “leaded gasoline” means gasoline which is produced  
4 with the use of any lead additive or which contains more than 0.05 gram of lead per gallon  
5 or more than 0.005 gram of phosphorus per gallon.

6 **Comment.** Section 38457 continues former Health and Safety Code Section 41960.5  
7 without change.

#### 8 **§ 38458. Pump nozzle hold open latch**

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9 38458. (a) No retailer, as defined in subdivision (g) of Section 20999 of the Business  
10 and Professions Code, shall allow the operation of a pump, including any pump owned or  
11 operated by the state, or any county, city and county, or city, equipped with a nozzle from  
12 which gasoline or diesel fuel is dispensed, unless the nozzle is equipped with an operating  
13 hold open latch. Any hold open latch determined to be inoperative by the local fire marshal  
14 or district official shall be repaired or replaced by the retailer, within 48 hours after  
15 notification to the retailer of that determination, to avoid any applicable penalty or fine.

16 (b) For purposes of this section, a “hold open latch” means any device which is an  
17 integral part of the nozzle and is manufactured specifically for the purpose of dispensing  
18 fuel without requiring the consumer’s physical contact with the nozzle.

19 (c) Subdivision (a) does not apply to nozzles at facilities which are primarily in operation  
20 to refuel marine vessels or aircraft.

21 (d) Nothing in this section shall affect the current authority of any local fire marshal to  
22 establish and maintain fire safety provisions for his or her jurisdiction.

23 **Comment.** Section 38458 continues former Health and Safety Code Section 41960.6  
24 without change. The reference in subdivision (a) to the date on which the prohibition stated in  
25 that subdivision took effect (July 1, 1992) is obsolete and has not been continued.

26 Uncodified statutory provisions applicable to former Health and Safety Code Section  
27 41960.6 now apply to this section. See, e.g., 1991 Cal. Stat. ch. 468, § 1 (legislative findings  
28 and declarations).

### 29 **Article 4. Cargo Tanks on Tank Vehicles**

#### 30 **§ 38500. Legislative intent**

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31 38500. The Legislature hereby declares that the purposes of this article regarding cargo  
32 tank vapor recovery systems on tank vehicles are (1) to remove from the districts the  
33 authority to certify, except as specified in subdivision (a) of Section 38502, these systems  
34 and to charge fees therefor, and (2) to grant this authority to the state board, which shall  
35 have the primary responsibility to assure that these systems are operated in compliance with  
36 its standards and procedures adopted pursuant to Section 38501.

37 **Comment.** Section 38500 continues former Health and Safety Code Section 41962(i)  
38 without substantive change.

#### 39 **§ 38501. Performance standards and test procedures**

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40 38501. Notwithstanding Section 34002 of the Vehicle Code, the state board shall adopt  
41 test procedures to determine the compliance of vapor recovery systems of cargo tanks on  
42 tank vehicles used to transport gasoline with vapor emission standards which are  
43 reasonable and necessary to achieve or maintain any applicable ambient air quality standard.  
44 The performance standards and test procedures adopted by the state board shall be

1 consistent with the regulations adopted by the Commissioner of the California Highway  
2 Patrol and the State Fire Marshal pursuant to Division 14.7 (commencing with Section  
3 34001) of the Vehicle Code.

4 **Comment.** Section 38501 continues former Health and Safety Code Section 41962(a)  
5 without substantive change.

#### 6 **§ 38502. State board testing and certification**

---

7 38502. (a) The state board may test, or contract for testing, the vapor recovery system of  
8 any cargo tank of any tank vehicle used to transport gasoline. The state board shall certify  
9 the cargo tank vapor recovery system upon its determination that the system, if properly  
10 installed and maintained, will meet the requirements of Section 38501. The state board shall  
11 enumerate the specifications used for issuing the certification. After a cargo tank vapor  
12 recovery system has been certified, if circumstances beyond control of the state board cause  
13 the system to no longer meet the required specifications, the certification may be revoked or  
14 modified.

15 (b) Upon verification of certification pursuant to subdivision (a), which shall be done  
16 annually, the state board shall send a verified copy of the certification to the registered  
17 owner of the tank vehicle, which copy shall be retained in the tank vehicle as evidence of  
18 certification of its vapor recovery system. For each system certified, the state board shall  
19 issue a nontransferable and nonremovable decal to be placed on the cargo tank where the  
20 decal can be readily seen.

21 (c) With respect to any tank vehicle operated within a district, the state board, upon  
22 request of the district, shall send to the district, free of charge, a certified copy of the  
23 certification and test results of any cargo tank vapor recovery system on the tank vehicle.

24 (d) The state board may contract with the Department of the California Highway Patrol to  
25 carry out the responsibilities imposed by subdivisions (a), (b), and (c).

26 (e) The state board shall charge a reasonable fee for certification, not to exceed its  
27 estimated costs therefor. Payment of the fee shall be a condition of certification. The fees  
28 may be collected by the Department of the California Highway Patrol and deposited in the  
29 Motor Vehicle Account in the State Transportation Fund. The Department of the California  
30 Highway Patrol shall transfer to the Air Pollution Control Fund the amount of those fees  
31 necessary to reimburse the state board for the costs of administering the certification  
32 program.

33 **Comment.** Section 38502 continues former Health and Safety Code Section 41962(b)-(f)  
34 without substantive change.

#### 35 **§ 38503. Certification required**

---

36 38503. No person shall operate, or allow the operation of, a tank vehicle transporting  
37 gasoline and required to have a vapor recovery system, unless the system thereon has been  
38 certified by the state board and is installed and maintained in compliance with the state  
39 board's requirements for certification. Tank vehicles used exclusively to service gasoline  
40 storage tanks which are not required to have gasoline vapor controls are exempt from the  
41 certification requirement.

42 **Comment.** Section 38503 continues former Health and Safety Code Section 41962(g)  
43 without substantive change.

1    **§ 38504. Authority of district**

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2       38504. Performance standards of any district for cargo tank vapor recovery systems on  
3 tank vehicles used to transport gasoline shall be identical with those adopted by the state  
4 board therefor and no district shall adopt test procedures for, or require certification of,  
5 cargo tank vapor recovery systems. No district may impose any fees on, or require any  
6 permit of, tank vehicles with vapor recovery systems. However, nothing in this article shall  
7 be construed to prohibit a district from inspecting and testing cargo tank vapor recovery  
8 systems on tank vehicles for the purposes of enforcing this article or any rule and  
9 regulation adopted thereunder that are applicable to these systems and to the loading and  
10 unloading of cargo tanks on tank vehicles.

11       **Comment.** Section 38504 continues former Health and Safety Code Section 41962(h)  
12 without substantive change.

13       **CHAPTER 8. ENFORCEMENT OF GASOLINE CARGO TANK REQUIREMENTS**

14       **§ 38550. Notice to appear**

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15       38550. (a) As an alternative to the criminal penalties provided in Article 2 (commencing  
16 with Section 39550) of Chapter 7 of Title 7 in any case involving a gasoline cargo tank  
17 subject to Chapter 7 (commencing with Section 38350), if it appears that any person has  
18 violated any provision of this part, or any order, rule, or regulation of the state board or of  
19 a district adopted pursuant to this part, and all of the conditions set forth in subdivision (b)  
20 are met and the investigating officer or official decides to initiate enforcement action, he or  
21 she may prepare, in triplicate, and the alleged violator shall sign, a written notice to appear  
22 containing the following statement: "Cited in accordance with Section 38550 of the  
23 Environment Code." If the arrested person presents, by mail or in person, proof of  
24 correction as prescribed in Section 38551 on or before the date on which he or she  
25 promised to appear, the court shall dismiss the applicable charges.

26       (b) Use of the notice to appear pursuant to this chapter is authorized when both of the  
27 following conditions exist:

28           (1) The violation does not evidence intentional avoidance or persistent neglect.

29           (2) The violation has not presented and does not present an immediate safety hazard.

30       **Comment.** Section 38550 continues former Health and Safety Code Section 41970 without  
31 substantive change.

32       **§ 38551. Proof of correction**

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33       38551. Proof of correction shall consist either of a verification pursuant to Section 38552  
34 or of a certification by an authorized representative of one of the following agencies that the  
35 alleged violation has been corrected:

36           (a) The state board.

37           (b) The State Fire Marshal.

38           (c) The district board.

39           (d) The Department of the California Highway Patrol.

40       **Comment.** Section 38551 continues former Health and Safety Code Section 41971 without  
41 substantive change.

1   **§ 38552. Proof of correction by verification**

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2       38552. (a) Proof of correction by verification shall consist of a verification by the owner  
3       or operator of the gasoline cargo tank that the alleged violation has been corrected. The  
4       owner or operator shall notify the agency which issued the notice to appear at least 24  
5       hours in advance of the time when the correction may be inspected, specifying the location  
6       of the gasoline cargo tank.

7       (b) If a representative of the issuing agency fails to appear to make the inspection at the  
8       designated place and time, the owner or operator shall prepare and submit a verification  
9       under penalty of perjury that the alleged violation has been corrected.

10      (c) The state board shall adopt regulations for the making and submission of verifications  
11      pursuant to this section.

12      **Comment.** Section 38552 continues former Health and Safety Code Section 41972 without  
13      substantive change. The second and third paragraphs of former Health and Safety Code  
14      Section 41972(a) have been designated as subdivisions.

15   **§ 38553. Operation without correction of violations**

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16      38553. Each day that a gasoline cargo tank, which is the subject of a notice to appear  
17      issued pursuant to this chapter, is operated without correction of the violation subsequent to  
18      the date of the notice shall constitute a separate offense subject to the penalties provided in  
19      Chapter 7 (commencing with Section 39500) of Title 7.

20      **Comment.** Section 38553 continues former Health and Safety Code Section 41973 without  
21      substantive change.

22   **§ 38554. Application of article**

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23      38554. (a) Except as provided in subdivision (b), Chapter 7 (commencing with Section  
24      39500) of Title 7 shall apply to any gasoline cargo tank subject to Chapter 7 (commencing  
25      with Section 38350).

26      (b) The other provisions of this chapter shall not apply to any gasoline cargo tank  
27      violation of Chapter 7 (commencing with Section 38350) occurring prior to January 1,  
28      1981.

29      **Comment.** Section 38554 continues former Health and Safety Code Section 41974 without  
30      change.

31      ☞ **Note.** Section 41974(b) contains a reference to “that Article 5.” The Commission  
32      believes this to be a reference to the article cited in full in subdivision (a) — “Article 5  
33      (commencing with Section 41950).” In this draft, the reference has been replaced with a full  
34      citation. The Commission would like to receive input on whether this changes the substance  
35      of the provision.

36                   **CHAPTER 9. INCINERATION OF TOXIC WASTE MATERIALS**

37   **§ 38600. Legislative findings and declarations**

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38      38600. The Legislature finds and declares that:

39      (a) Incineration has not been used extensively in California as a means of disposal of  
40      toxic waste materials, primarily because of the extensive area available for landfill, the low  
41      cost of landfill as a method of disposal, and problems with air pollution.

42      (b) Because problems may result from disposing of certain toxic waste materials in  
43      landfills, incineration should be investigated as a method of disposal.



(c) Incineration of certain toxic waste materials has the advantage, when compared to disposal by landfill, of breaking down toxic waste materials into harmless compounds or elements.

(d) The incineration of certain toxic waste materials can result in the net production of energy, which can help to displace the combustion of fossil fuels and reduce dependence on imported energy supplies.

(e) Improper or incomplete incineration of toxic waste materials can result in emissions of compounds in amounts or concentrations which may be hazardous to public health, and hazardous to economically or environmentally significant animal or plant life.

Therefore, it is the intent and purpose of the Legislature to investigate the methods of ensuring that emissions from incineration of toxic wastes do not endanger public health and welfare, while determining what appropriate role incineration could play in reducing the landfilling of toxic waste materials in California.

**Comment.** Section 38600 continues former Health and Safety Code Section 41980 without change.

#### **§ 38601. “Toxic waste”**

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38601. For purposes of this Chapter, “toxic waste” means hazardous waste, as defined in Section 25117 of the Health and Safety Code.

**Comment.** Section 38601 continues former Health and Safety Code Section 41980.5 without substantive change.


#### **§ 38602. Study of emissions**

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38602. (a) The state board shall, in consultation with the affected district and the Department of Health Services, complete a study, using all available data on the emissions from incineration of toxic waste materials.

(b) The state board shall report its findings to the Legislature on or before January 1, 1984.

**Comment.** Section 38602 continues former Health and Safety Code Section 41981 without change. The former undesignated paragraphs have been designated as subdivisions.

 **Note.** This section may be obsolete. It specifies a 1984 deadline for submission of certain findings to the Legislature. The Commission would like to receive input on two questions: (1) Was the requirement met? (2) Does the section still serve a useful purpose?

#### **§ 38603. Guidelines for issuance of permits**

---

38603. The state board shall, after completing the study referred to in Section 38602, in consultation with the affected districts, the Department of Toxic Substances Control, and the Office of Environmental Health Hazard Assessment, and after public hearings, establish guidelines for the issuance of permits by the districts for the incineration of toxic waste materials. The guidelines shall take into consideration factors including, but not limited to, the following:

(a) The characteristics of the toxic waste materials to be incinerated.

(b) The methods or equipment available to minimize or eliminate the emission of air contaminants.

(c) The applicable federal standards, including, but not limited to, the regulations in Part 264 of Title 40 of the Code of Federal Regulations (40 CFR 264) concerning standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Where



the guidelines deviate from the adopted federal standards, the reason for the difference shall be noted by the state board.

**Comment.** Section 38603 continues former Health and Safety Code Section 41982 without substantive change. Enactment of this section codifies part of the Governor's Reorganization Plan No. 1 of 1991, § 138, effective July 17, 1991.

#### § 38604. Construction of article

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38604. (a) This chapter shall not be construed as preventing any district from establishing permit criteria more stringent than the guidelines specified in Section 38603.

(b) This chapter shall not be construed as limiting the authority of the Department of Toxic Substances Control concerning hazardous waste control (Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code), or any regulations promulgated under the authority of those provisions.

**Comment.** Section 38604 continues former Health and Safety Code Section 41983 without substantive change. Enactment of this section codifies part of the Governor's Reorganization Plan No. 1 of 1991, § 139, effective July 17, 1991.

### CHAPTER 10. MISCELLANEOUS EMISSION SOURCES

#### § 38650. Diesel pile-driving hammers

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38650. (a) Neither the state board nor any district shall impose a discharge requirement on emissions of visible smoke from diesel pile-driving hammers which is more stringent than the requirements of this section, except as provided in subdivisions (b) and (c).

(b) A district shall issue a permit to the operator of a diesel pile-driving hammer if the operator submits a completed application for a permit to the district and the district determines, on the basis of information provided in the application, that the proposed use will comply with one of the following requirements:

(1) Meets the Ringelmann 1 limit, as published by the United States Bureau of Mines, and does not exceed that limit for more than four minutes during the driving of a single pile.

(2) Meets the Ringelmann 2 limit, as published by the United States Bureau of Mines, does not exceed that limit for more than four minutes during the driving of a single pile, and uses kerosene fuel, smoke suppressing fuel additives, and synthetic lubricating oil. A district may establish other requirements for compliance with this paragraph if the requirements are technologically and economically feasible. A district may consider the type of soil in which the pile driving is to occur and the number of blows required to drive a pile in determining the technological and economic feasibility of other conditions to be imposed by the district.

(c) A permit issued by a district shall be valid until the pile-driving work has been approved or accepted by the person or entity for which the work is being performed. Upon request of an operator or of a person or entity for which the pile-driving work is performed, a district may extend the time period for which the permit is valid if the operator continues to comply with this section.

**Comment.** Section 38650 continues former Health and Safety Code Section 41701.5 without change.

1   **§ 38651. Diesel auxiliary engines and generators**

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2       38651. Neither the state board nor any district shall impose a discharge requirement on  
3       emissions of visible smoke from any diesel auxiliary engine or generator used exclusively  
4       to operate a drinking water system which is more stringent than the Ringelmann 2 limit, as  
5       published by the United States Bureau of Mines on January 1, 1995, when operated under  
6       emergency circumstances, or operated not more than 30 minutes each week, or two hours  
7       each month, under nonemergency circumstances.

8       **Comment.** Section 38651 continues former Health and Safety Code Section 41701.6  
9       without change.

10   **§ 38652. Vessels using steam boilers**

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11       38652. (a) The state board shall conduct a study in cooperation with the affected districts  
12       and representatives of the maritime industry to determine whether vessels using steam  
13       boilers can be brought into compliance with Section 37602 by January 1, 1984, or any  
14       earlier date, taking into account the age and physical condition of the affected vessels,  
15       vessel safety and operational requirements, and technological feasibility.

16       (b) Following completion of the study, the state board shall conduct a public hearing to  
17       consider and, if appropriate, adopt a compliance schedule by which various classes of  
18       vessels will be brought into compliance with the standards specified in Section 37602 on  
19       and after January 1, 1984. Prior to taking any action to adopt a compliance schedule, the  
20       state board shall report the results of its study to the Legislature, and in no event shall the  
21       study be filed with the Legislature later than January 1, 1983. The report shall also address  
22       emissions from diesel powered vessels.

23       **Comment.** Section 38652 continues former Health and Safety Code Section 41704.5  
24       without substantive change. The former undesignated paragraphs have been designated as  
25       subdivisions.

26       ☞ **Note.** This section may be obsolete. It specifies a 1983 deadline for submission of a  
27       certain study to the Legislature. The Commission would like to receive input on two  
28       questions: (1) Was the requirement met? (2) Does the section still serve a useful purpose?

29   **§ 38653. Lead compounds**

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30       38653. (a) The Legislature hereby finds and declares that recent evidence indicates that  
31       lead compounds emitted into the air by nonvehicular sources accumulate in and upon  
32       vegetation in the vicinity of the sources, pose a grave threat to the health of animals which  
33       consume the vegetation, and constitute a potential human health hazard.

34       (b) Every district shall establish emission standards for lead compounds emitted into the  
35       air from nonvehicular sources. Where a district has failed to establish standards, the state  
36       board shall establish standards for that district.

37       **Comment.** Section 38653 continues former Health and Safety Code Section 41706 without  
38       substantive change.

39   **§ 38654. Cutback asphalt paving material**

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40       38654. (a) Any district may adopt a rule or regulation for the control of volatile organic  
41       compound emissions from cutback asphalt paving material based on local considerations,  
42       including, but not limited to, the degree of air pollution resulting from the paving material,  
43       the economic impact of the rule and regulation, and the feasibility of implementing the rule  
44       and regulation.

(b) The state board shall not override or otherwise amend any action taken by a district relating to the use of cutback asphalts.

**Comment.** Section 38654 continues former Health and Safety Code Section 41708 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### § 38655. Equipment subject to variance

---

38655. No person shall operate any article, machine, equipment, or other contrivance which is the subject of a variance if that article, machine, equipment, or other contrivance, as may be the case, is not in compliance with a required schedule of increments of progress, unless operation is authorized by a hearing board.

**Comment.** Section 38655 continues former Health and Safety Code Section 41702 without substantive change.

#### § 38656. Water projects undertaken by City of Los Angeles

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38656. (a) The Great Basin Air Pollution Control District may require the City of Los Angeles to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and may require the city to pay, on an annual basis, reasonable fees, based on an estimate of the actual costs to the district of its activities associated with the development of the mitigation measures and related air quality analysis with respect to those activities of the city. The mitigation measures shall not affect the right of the city to produce, divert, store, or convey water and, except for studies and monitoring activities, the mitigation measures may only be required or amended on the basis of substantial evidence establishing that water production, diversion, storage, or conveyance by the city causes or contributes to violations of state or federal ambient air quality standards.

(b) The city may appeal any measures or fees imposed by the district to the state board within 30 days of the adoption of the measures or fees. The state board, on at least 30 days' notice, shall conduct an independent hearing on the validity of the measures or reasonableness of the fees which are the subject of the appeal. The decision of the state board shall be in writing and shall be served on both the district and the city. Pending a decision by the state board, the city shall not be required to comply with any measures which have been appealed. Either the district or the city may bring a judicial action to challenge a decision by the state board under this section. The action shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure and shall be filed within 30 days of service of the decision of the state board.

(c) A violation of any measure imposed by the district pursuant to this section is a violation of an order of the district within the meaning of Sections 38701, 39501 and 39601.

(d) The district shall have no authority with respect to the water production, diversion, storage, and conveyance activities of the city except as provided in this section. Nothing in this section exempts a geothermal electric generating plant from permit or other district requirements.

**Comment.** Section 38656 continues former Health and Safety Code Section 42316 without substantive change.

1    **§ 38657. Emission increase resulting from required device or technique**

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2    38657. A district shall not require emission offsets for any emission increase at a source  
3    that results from the installation, operation, or other implementation of any emission control  
4    device or technique used to comply with a district, state, or federal emission control  
5    requirement, including, but not limited to, requirements for the use of reasonably available  
6    control technology or best available retrofit control technology, unless there is a  
7    modification that results in an increase in capacity of the unit being controlled.

8    **Comment.** Section 38657 continues former Health and Safety Code Section 42301.2  
9    without change.

10                    **TITLE 7. ENFORCEMENT**

11                    **CHAPTER 1. GENERAL PROVISIONS**

12    **§ 38700. Right of entry for purpose of inspection**

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13    38700. For the purpose of enforcing or administering any state or local law, order,  
14    regulation, or rule relating to air pollution, the executive officer of the state board or any air  
15    pollution control officer having jurisdiction, or an authorized representative of the officer,  
16    upon presentation of that person's credentials or, if necessary under the circumstances,  
17    after obtaining an inspection warrant pursuant to Title 13 (commencing with Section  
18    1822.50), Part 3 of the Code of Civil Procedure, shall have the right of entry to any  
19    premises on which an air pollution emission source is located for the purpose of inspecting  
20    the source, including securing samples of emissions therefrom, or any records required to  
21    be maintained in connection therewith by the state board or any district.

22    **Comment.** Section 38700 continues former Health and Safety Code Section 41510 without  
23    substantive change.

24    **§ 38701. Injunctions**

---

25    38701. Any violation of any provision of this part, or of any order, rule, or regulation of  
26    the state board or of any district, may be enjoined in a civil action brought in the name of  
27    the people of the State of California, except that the plaintiff shall not be required to allege  
28    facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or  
29    tending to show, irreparable damage or loss.

30    **Comment.** Section 38701 continues former Health and Safety Code Section 41513 without  
31    change.

32                    **CHAPTER 2. PERMITS**

33                    **Article 1. General Provisions**

34    **§ 38750. Establishment of permit system**

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35    38750. (a) Every district board may establish, by regulation, a permit system that  
36    requires, except as otherwise provided in Section 39152, that before any person builds,  
37    erects, alters, replaces, operates, or uses any article, machine, equipment, or other  
38    contrivance which may cause the issuance of air contaminants, the person obtain a permit to  
39    do so from the air pollution control officer of the district.

(b) The regulations may provide that a permit shall be valid only for a specified period. However, the expiration date of any permit shall be eligible for extension upon completion of the annual review required pursuant to subdivision (e) of Section 38753 and payment of the fees required pursuant to Sections 38850 to 38854, inclusive, unless the air pollution control officer or the hearing board has initiated action to suspend or revoke the permit pursuant to Section 38807, 38810, or 38812, that action has resulted in a final determination by the officer or the board to suspend or revoke the permit, and all appeals have been exhausted or the time for appeals from that final determination has been exhausted.

(c) The annual extension of a permit's expiration date pursuant to subdivision (b) does not constitute permit issuance, renewal, reopening, amendment, or any other action subject to the requirements specified in Title V.

**Comment.** Section 38750 continues former Health and Safety Code Section 42300 without substantive change.

#### **§ 38751. Consolidated permit**

---

38751. (a) A district board may issue a consolidated permit which serves as (1) authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) authority to operate or use that article, machine, equipment, or contrivance.

(b) If a district issues consolidated permits, the district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, and operated or used in the manner required by the consolidated permits.

**Comment.** Section 38751 continues former Health and Safety Code Section 42300.1 without change.

#### **§ 38752. Certification of professional application preparers**

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38752. A district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district or district-approved training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by the district, as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) An audit program, including periodic full district review of permit applications prepared by certified private environmental professionals, to determine whether or not district requirements for the preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application in connection with which the certified private environmental professional has a financial conflict of interest as defined in guidelines which shall be adopted by the district.



1     **Comment.** Section 38752 continues former Health and Safety Code Section 42300.2  
2 without change.

3     **§ 38753. Requirements of permit system**

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4     38753. A permit system established pursuant to Section 38750 shall do all of the  
5 following:

6     (a) Ensure that the article, machine, equipment, or contrivance for which the permit was  
7 issued does not prevent or interfere with the attainment or maintenance of any applicable air  
8 quality standard.

9     (b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on  
10 the basis of criteria adopted by the district board, that the article, machine, equipment, or  
11 contrivance will comply with all of the following:

12         (1) All applicable orders, rules, and regulations of the district and of the state board.

13         (2) All applicable provisions of this division.

14     (c) Prohibit the issuance of a permit to a Title V source if the Administrator of the  
15 Environmental Protection Agency objects to its issuance in a timely manner as provided in  
16 Title V. This subdivision is not intended to provide any authority to the Environmental  
17 Protection Agency to object to the issuance of a permit other than that authority expressly  
18 granted by Title V.

19     (d) Provide that the air pollution control officer may issue to a Title V source a permit to  
20 operate or use if the owner or operator of the Title V source presents a variance exempting  
21 the owner or operator from Section 37602, any rule or regulation of the district, or any  
22 permit condition imposed pursuant to this section, or presents an abatement order that has  
23 the effect of a variance and that meets all of the requirements of this part pertaining to  
24 variances, and the requirements for the issuance of permits to operate are otherwise  
25 satisfied. The issuance of any variance or abatement order is a matter of state law and  
26 procedure only and does not amend a Title V permit in any way. Those terms and  
27 conditions of any variance or abatement order that prescribe a compliance schedule may be  
28 incorporated into the permit consistent with Title V and this division.

29     (e) Require, upon annual renewal, that each permit be reviewed to determine that the  
30 permit conditions are adequate to ensure compliance with, and the enforceability of, district  
31 rules and regulations applicable to the article, machine, equipment, or contrivance for  
32 which the permit was issued which were in effect at the time the permit was issued or  
33 modified, or which have subsequently been adopted and made retroactively applicable to an  
34 existing article, machine, equipment, or contrivance, by the district board and, if the permit  
35 conditions are not consistent, require that the permit be revised to specify the permit  
36 conditions in accordance with all applicable rules and regulations.

37     (f) Provide for the reissuance or transfer of a permit to a new owner or operator of an  
38 article, machine, equipment, or contrivance. An application for transfer of ownership only,  
39 or change in operator only, of any article, machine, equipment, or contrivance which had a  
40 valid permit to operate within the two-year period immediately preceding the application is a  
41 temporary permit to operate. Issuance of the final permit to operate shall be conditional  
42 upon a determination by the district that the criteria specified in subdivisions (b) and (e) are  
43 met, if the permit was not surrendered as a condition to receiving emission reduction credits  
44 pursuant to banking or permitting rules of the district. However, under no circumstances  
45 shall the criteria specify that a change of ownership or operator alone is a basis for  
46 requiring more stringent emission controls or operating conditions than would otherwise  
47 apply to the article, machine, equipment, or contrivance.



1     **Comment.** Section 38753 continues former Health and Safety Code Section 42301 without  
2 substantive change.

3     **§ 38754. Temporary permit to operate**

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4     38754. Whenever necessary and appropriate to ensure compliance with all applicable  
5 conditions prior to issuance of a permit to operate an article, machine, equipment, or  
6 contrivance, a district may issue a temporary permit to operate. The temporary permit to  
7 operate shall specify a reasonable period of time during which the article, machine,  
8 equipment, or contrivance may be operated in order for the district to determine whether it  
9 will operate in accordance with the conditions specified in the authority to construct.

10    **Comment.** Section 38754 continues former Health and Safety Code Section 42301.1  
11 without change.

12   Article 2. Procedures

13    **§ 38800. Hearing on denial of permit**

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14     38800. An applicant for a permit which has been denied may request, within 10 days  
15 after receipt of the notice of the denial, the hearing board of the district to hold a hearing on  
16 whether or not the permit was properly denied.

17    **Comment.** Section 38800 continues former Health and Safety Code Section 42302 without  
18 change.

19    **§ 38801. Public hearing to review issuance of permit**

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20     38801. Within 10 days of any decision or action pertaining to the issuance of a permit by  
21 a district, or within 10 days after mailing of the notice of issuance of the permit to any  
22 person who has requested notice or within 10 days of the publication and mailing of notice  
23 provided for in Section 39158, any aggrieved person who, in person or through a  
24 representative, appeared, submitted written testimony, or otherwise participated in the  
25 action before the district may request the hearing board of the district to hold a public  
26 hearing to determine whether the permit was properly issued. Except as provided in Section  
27 39158, within 30 days of the request, the hearing board shall hold a public hearing and  
28 shall render a decision on whether the permit was properly issued.

29    **Comment.** Section 38801 continues former Health and Safety Code Section 42302.1  
30 without substantive change.

31    **§ 38802. Information from applicant or permit holder**

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32     38802. An air pollution control officer, at any time, may require from an applicant for, or  
33 the holder of, any permit provided for by the regulations of the district board, information,  
34 analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree  
35 of air contaminants which are, or may be, discharged by the source for which the permit  
36 was issued or applied.

37    **Comment.** Section 38802 continues former Health and Safety Code Section 42303 without  
38 substantive change.

39    **§ 38803. Customer lists and records of orders**

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40     38803. (a)(1) An air pollution control officer, at any time, may, for the purpose of  
41 permitting or enforcement actions, require from the in-state or out-of-state supplier,

1 wholesaler, or distributor of volatile organic compounds or chemical substances the use of  
2 which results in air contaminants subject to regulation or enforcement by the district,  
3 customer lists and chemical types and quantities of those compounds and substances as  
4 specified by the district pursuant to subdivision (b) which are purchased by, or on order  
5 for, a specified source operator within the district.

6 (2) The supplier, wholesaler, or distributor shall disclose the information required  
7 pursuant to Sections 38803 to 38805, inclusive, to the district.

8 (b) Prior to implementing subdivision (a), an air pollution control officer shall prepare a  
9 comprehensive list of volatile organic compounds or chemical substances the use of which  
10 results in the emission of air contaminants which are subject to regulation or enforcement  
11 by the district.

12 **Comment.** Section 38803 continues former Health and Safety Code Section 42303.2(a)-  
13 (b) without substantive change. The undesignated paragraphs of former subdivision (a) have  
14 been designated as paragraphs. Statements of legislative intent applicable to former Health  
15 and Safety Code Section 42303.2 now apply to this section. See, e.g., Assembly J. Sept. 13,  
16 1991.

#### 17 **§ 38804. Penalties for breach of confidentiality**

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18 38804. (a)(1) Any officer or employee of the district or of a district contractor, or former  
19 officer or employee, who, by virtue of that employment or official position has possession  
20 of, or has access to, any confidential information that is a trade secret, customer list, or  
21 supplier name acquired pursuant to Sections 38803 to 38805, inclusive,, and who,  
22 knowing that the disclosure of the information to the general public is prohibited by  
23 Sections 38803 to 38805, inclusive, knowingly and willfully discloses the information in  
24 any manner to any person not entitled to receive it, is guilty of a misdemeanor punishable  
25 by a six month county jail term and a fine not to exceed one thousand dollars (\$1,000).

26 (2) Any officer or employee of the district or of a district contractor, or former officer or  
27 employee, who, by virtue of that employment or official position has possession of, or has  
28 access to, any other confidential information acquired pursuant to Sections 38803 to  
29 38805, inclusive, and who, knowing that the disclosure of the information to the general  
30 public is prohibited by Sections 38803 to 38805, inclusive, and who, knowing that the  
31 disclosure of the information to the general public is prohibited by Sections 38803 to  
32 38805, inclusive, knowingly and willfully discloses the information in any manner to any  
33 person not entitled to receive it, is guilty of a misdemeanor punishable by a 10-day county  
34 jail term or a fine not to exceed five hundred dollars (\$500).

35 (b) The penalties provided in subdivision (a) shall be in addition to any existing civil  
36 penalties and remedies available under the law.

37 **Comment.** Section 38804 continues former Health and Safety Code Section 42303.2(c)-  
38 (d) without substantive change. Statements of legislative intent applicable to former Health  
39 and Safety Code Section 42303.2 now apply to this section. See, e.g., Assembly J. Sept. 13,  
40 1991.

#### 41 **§ 38805. Relation of Section 38803 to Public Records Act**

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42 38805. Except for the purposes of any enforcement or permit action, and except for  
43 information obtained from an independent source, all information received or compiled by  
44 an air pollution control officer from a supplier, wholesaler, or distributor pursuant to  
45 subdivision (a) of Section 38803 is confidential for the purposes of Chapter 3.5  
46 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and  
47 shall not be disclosed.

**Comment.** Section 38805 continues former Health and Safety Code Section 42303.2(e) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42303.2 now apply to this section. See, e.g., Assembly J. Sept. 13, 1991.

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**§ 38806. False statements**

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38806. No person shall knowingly make any false statement in any application for a permit, or in any information, analyses, plans, or specifications submitted in conjunction with the application or at the request of the air pollution control officer.

**Comment.** Section 38806 continues former Health and Safety Code Section 42303.5 without change.

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**§ 38807. Refusal of holder to furnish information**

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38807. If, within a reasonable time, the holder of any permit issued by a district board willfully fails and refuses to furnish the information, analyses, plans, or specifications requested by the district air pollution control officer, the officer may suspend the permit. The officer shall serve notice in writing of the suspension and the reasons therefor on the permittee.

**Comment.** Section 38807 continues former Health and Safety Code Section 42304 without substantive change.

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**§ 38808. Reinstatement of suspended permit**

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38808. The air pollution control officer shall reinstate a suspended permit when furnished with all the requested information, analyses, plans, and specifications.

**Comment.** Section 38808 continues former Health and Safety Code Section 42305 without change.

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**§ 38809. Request for hearing after suspension of permit**

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38809. Within 10 days after receipt of the notice of suspension pursuant to Section 38807, the permittee may request the hearing board of the district to hold a hearing on whether or not the permit was properly suspended.

**Comment.** Section 38809 continues former Health and Safety Code Section 42306 without substantive change.

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**§ 38810. Revocation hearing**

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38810. An air pollution control officer may request the hearing board of the district to hold a hearing to determine whether a permit should be revoked, if the air pollution control officer finds that the holder of the permit is violating any applicable order, rule, or regulation of the district or any applicable provision of this division.

**Comment.** Section 38810 continues former Health and Safety Code Section 42307 without substantive change.

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**§ 38811. Hearing by board**

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38811. Within 30 days after a hearing has been requested pursuant to Section 38800, 38809, or 38810, the hearing board shall hold a hearing pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3.

**Comment.** Section 38811 continues former Health and Safety Code Section 42308 without substantive change.

### **§ 38812. Actions by board after hearing**

38812. After a hearing, the hearing board may do any of the following:

- (a) Grant a permit denied by the air pollution control officer.
- (b) Continue the suspension of a permit suspended by the air pollution control officer.
- (c) Remove the suspension of an existing permit invoked by the air pollution control officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required.
- (d) Find that no violation exists and reinstate an existing permit.
- (e) Revoke an existing permit, if it finds any of the following:
  - (1) The permittee has failed to correct any conditions required by the air pollution control officer.
  - (2) A refusal of a permit would be justified.
  - (3) Fraud or deceit was employed in the obtaining of the permit.
  - (4) Any violation of this part, or of any order, rule, or regulation of the district.

**Comment.** Section 38812 continues former Health and Safety Code Section 42309 without change.

### Article 3. Fees

### § 38850. Authorized fees

38850. (a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under Sections 38850 to 38854, inclusive shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.

(b) In addition to any other fees authorized by Sections 38850 to 38854, inclusive, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 31450 to 31453, inclusive, 31455, and 31456. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding district activities mandated by Section 31501 to 31505, inclusive related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable.

(c) A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.

(d) A district board may adopt, by regulation, a schedule of fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions on the issuance of permits. However, the hearing board may waive all or part of these fees if it determines that circumstances warrant that waiver.

**Comment.** Section 38850 continues former Health and Safety Code Section 42311(a), (f)-(h) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

#### § 38851. Permit application fee

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38851. The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) of Section 38850 prior to evaluating a permit application, if the district accounts for the costs of its services and refunds to the applicant any significant portion of the deposit which exceeds the actual, reasonable cost of evaluating the application.

**Comment.** Section 38851 continues former Health and Safety Code Section 42311(b) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

#### § 38852. Disposition of fees

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38852. Except as provided in Section 38859, all the fees shall be paid to the district treasurer to the credit of the district.

**Comment.** Section 38852 continues former Health and Safety Code Section 42311(c) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

#### § 38853. South coast district

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38853. Sections 38850 to 38854, inclusive, do not apply to the south coast district board which is governed by Section 36206.

**Comment.** Section 38853 continues former Health and Safety Code Section 42311(d) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42311 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1638, § 11 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

#### § 38854. Public hearing regarding fee regulations

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38854. In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to Sections 38550 to 38554, inclusive, the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by Sections 38550 to 38554, inclusive, is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of



1 providing that service. At least 10 days prior to the meeting, the district board shall make  
2 available to the public information indicating the amount of cost, or estimated cost, required  
3 to provide the service for which the fee is charged and the revenue sources anticipated to  
4 provide the service. Any costs incurred by the district board in conducting the required  
5 meeting may be recovered from fees charged for the programs which were the subject of  
6 the meeting.

7 **Comment.** Section 38854 continues former Health and Safety Code Section 42311(e)  
8 without substantive change. Uncodified statutory provisions applicable to former Health and  
9 Safety Code Section 42311 now apply to this section. See, e.g., 1982 Cal. Stat. ch. 1638, § 11  
10 (legislative intent); 1984 Cal. Stat. ch. 625, § 2 (legislative intent).

11 Subdivision (i) of former Health and Safety Code Section 42311 provided that  
12 amendments made by Section 29 of Chapter 1568 of the Statutes of 1988 did not affect any  
13 previously existing authority of a district to vary fees according to quantity of emissions, and  
14 did not affect any then-pending litigation. This transitional provision is obsolete and has not  
15 been continued.

16  **Note.** It appears that subdivision (i) of Health and Safety Code Section 42311,  
17 governing the effect of amendments made to that section in 1988, is obsolete. The  
18 Commission would like to receive input on whether the provision has any continued  
19 usefulness.

#### 20 **§ 38856. Limitations on fees**

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21 38856. (a) Notwithstanding Sections 38850 to 38854, inclusive, a district shall not adopt  
22 or impose fees which exceed actual district administrative costs for processing or enforcing  
23 permits applicable to any of the following:

24 (1) Prescribed burning operations on state responsibility lands conducted under the terms  
25 of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3  
26 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public  
27 Resources Code when the purpose of the operation is prevention of high-intensity wildland  
28 fires through reduction of the volume and continuity of wildland fuels.

29 (2) Burning of vegetation or disposal of slash following timber operations required under  
30 regulations adopted by the State Board of Forestry pursuant to Section 4551.5 or 4562 of  
31 the Public Resources Code and for the purpose of reducing the incidence and spread of  
32 fires on timberlands.

33 (3) Wildland vegetation management burns. For purposes of this subdivision, “wildland  
34 vegetation management burn” means the use of prescribed burning conducted by a public  
35 agency, or through a cooperative agreement or contract involving a public agency to burn  
36 land predominantly covered with chaparral, trees, grass, or standing brush. For purposes  
37 of this subdivision, “prescribed burning” is the planned application of fire to vegetation to  
38 achieve any specific objective on lands selected in advance of that application. The planned  
39 application of fire may include natural or accidental ignition.

40 (b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or  
41 (3) of subdivision (a), a district shall hold a public hearing and shall consider the following:

42 (1) The costs of the fees on private landowners and other persons who engage in  
43 activities specified in paragraph (1), (2), or (3) of subdivision (a).

44 (2) Any revenues currently provided to the county for general government by public  
45 agencies which administer public lands.

46 **Comment.** Section 38856 continues former Health and Safety Code Section 42311.2  
47 without substantive change.



1     ☞ **Note.** The introductory paragraph of subdivision (b) and paragraph (b)(1) refer to  
2     “paragraph (1), (2), or (3)” without indicating what subdivision these paragraphs fall within.  
3     From context it appears that the references are to paragraphs (1)-(3) of subdivision (a). The  
4     references have been changed to refer to subdivision (a).

5     **§ 38857. Increased fees to finance implementation of certain provisions**

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6     38857. A district board may increase its fee schedule adopted under Sections 38850 to  
7     38854, inclusive, to generate sufficient revenues to pay for any district costs associated  
8     with the implementation of Section 66796.53 of the Government Code or Sections 38000  
9     to 38008, inclusive.

10    **Comment.** Section 38857 continues former Health and Safety Code Section 42311.5  
11    without substantive change.

12    **§ 38858. Permit service provided by county or city**

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13    38858. To aid in administering its permit system, a district board may contract with any  
14    county or city included, in whole or in part, within the district, and the county or city may  
15    contract with the district, for the performance of work in the name of, and subject to the  
16    approval of, the district air pollution control officer by the building department or other  
17    officer, department, or agency of the county or city charged with the enforcement of  
18    regulations pertaining to the erection, construction, reconstruction, movement, conversion,  
19    alteration, or enlargement of buildings or structures.

20    **Comment.** Section 38858 continues former Health and Safety Code Section 42312 without  
21    substantive change.

22    **§ 38859. Fees paid to county or city**

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23    38859. Except in the case of a contract entered into between a county district and the  
24    county, a contract entered into pursuant to Section 38858 may provide that fees for permits  
25    shall be paid to the city or county which issues the permit and may be retained by that city  
26    or county, in whole or in part, as the consideration, or part thereof, for issuing the permits.  
27    Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

28    **Comment.** Section 38859 continues former Health and Safety Code Section 42313 without  
29    substantive change.

30                   Article 4. Air Pollution Control Equipment Permits

31    **§ 38900. Legislative intent**

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32    38900. It is the intent of the Legislature that districts expedite permits for the installation  
33    of air pollution control equipment.

34    **Comment.** Section 38900 continues former Health and Safety Code Section 42301.3(a)  
35    without substantive change.

36    **§ 38901. Application of article**

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37    38901. (a) This article applies only to air pollution control projects at existing sources,  
38    where the project is necessary to comply with emission standards or limitations imposed by  
39    law, including, but not limited to, district regulations.

40    (b) This article does not apply to air pollution control requirements applicable to new or  
41    modified sources that are not air pollution control projects necessary to comply with

1 emission standards or limitations imposed by law. However, this article applies to the  
2 permitting of air pollution control projects necessary to comply with emission standards or  
3 limitations imposed by law that are intended to reduce emissions of one or more pollutants  
4 that may or may not result in an increase in emissions of a different pollutant or pollutants.

5 **Comment.** Section 38901 continues former Health and Safety Code Section 42301.3(b)  
6 without substantive change.

#### 7 **§ 38902. Permitting criteria**

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8 38902. Each district shall prepare, with input from the regulated community, a list of  
9 permitting criteria that identifies streamlined permit application requirements for each type  
10 of mandated air pollution control project. The list shall be consistent with the requirements  
11 of this article but may also include general facility information, a general description of the  
12 equipment affected by the air pollution control project, and specific information regarding  
13 the pollution control equipment or operational changes that will reduce emissions.

14 **Comment.** Section 38902 continues former Health and Safety Code Section 42301.3(c)  
15 without substantive change.

#### 16 **§ 38903. Evaluation of application**

---

17 38903. Within 30 days of the date that the applicant submits the information specified in  
18 Section 38904, the district shall commence evaluation and deem the application complete,  
19 subject to the final as-built design submittal being consistent with the preliminary  
20 engineering and design information specified in subdivision (b) of Section 38904, for the  
21 purpose of issuing a permit to construct. Notwithstanding the limitations of Sections  
22 65944, 65950, and 65952 of the Government Code, if final design information results in a  
23 material change in the permit evaluation that was based on the preliminary submittal, the  
24 application shall undergo a new evaluation based on the final design and the district shall  
25 promptly notify the applicant of any further information that is necessary to complete the  
26 evaluation.

27 **Comment.** Section 38903 continues former Health and Safety Code Section 42301.3(d)(1)  
28 without substantive change.

#### 29 **§ 38904. Information required in complete application**

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30 38904. Prior to the district deeming the application complete pursuant to Section 38903,  
31 the applicant shall provide the following information:

32 (a) The information specified in the list prepared pursuant to Section 38902.

33 (b) Either of the following:

34 (1) Preliminary engineering and design information or other technical equipment  
35 specification data reasonably available during the initial design phase.

36 (2) The manufacturer's performance warranty and the associated preliminary engineering  
37 data on which the bidding documents for the contract with the manufacturer were based.

38 (c) Any reasonably required information regarding an air contaminant for which  
39 emissions will increase as a result of installation of the air pollution control project.

40 (d) Any information necessary to make the application complete with respect to any  
41 federal requirement adopted or promulgated pursuant to the Clean Air Act (42 U.S.C. Sec.  
42 7401 et seq.) that applies to the air pollution control project.

43 **Comment.** Section 38904 continues former Health and Safety Code Section 42301.3(d)(2)  
44 without substantive change.

1   **§ 38905. Information required prior to final approval**

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2       38905. Prior to the final approval of the applicant's permit to operate, the applicant shall  
3       provide the district with final engineering and design information and other data reasonably  
4       necessary to ensure compliance with applicable emission limitations. The information may  
5       be based on source test results and other operating data available after startup and  
6       shakedown of the control equipment. Once the applicant has provided the information  
7       specified in this section, and the final design is consistent with the preliminary design data  
8       specified in subdivision (b) of Section 38904 for purposes of permit evaluation, the district  
9       shall deem the application complete for the purpose of issuing a permit to operate.

10      **Comment.** Section 38905 continues former Health and Safety Code Section 42301.3(e)  
11      without substantive change.

12   **§ 38906. Projects requiring continuous emission monitoring system**

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13       38906. (a) For projects subject to this article for which the use of continuous emission  
14       monitoring systems is required, the air quality permit conditions that relate to emissions  
15       monitored by the continuous emission monitoring systems shall be sufficient for  
16       measurements and reporting as required to meet the specified emission limit as required by  
17       the rule or regulation.

18       (b) Nothing in this section is intended to limit the applicability of standards or limitations  
19       or monitoring requirements set forth in any rule or regulation.

20      **Comment.** Section 38906 continues former Health and Safety Code Section 42301.3(f)  
21      without substantive change.

22   **§ 38907. Petition for variance due to delay in approval**

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23       38907. (a) An applicant may petition the district hearing board for a variance from a  
24       requirement to install air pollution control equipment or to meet a more stringent emission  
25       standard or limitation if there is a delay in the approval of the permit to construct or permit  
26       to operate for projects under this article. The finding required by subdivision (b) of Section  
27       39351 shall be met if the hearing board finds that the delay is not due to the lack of due  
28       diligence on the part of the applicant in the permit process, and the delay results in the  
29       inability of the applicant to legally comply with the requirement or schedule that requires the  
30       installation and operation of air pollution control equipment or achievement of a more  
31       stringent emission standard or limitation. The findings required by subdivisions (c), (d),  
32       and (e) of Section 39351 shall not apply to a variance granted pursuant to this subdivision.  
33       Subdivision (f) of Section 39351 shall apply to a variance granted pursuant to this  
34       subdivision. However, if the district requests that the applicant monitor or otherwise  
35       quantify emission levels from the source during the term of the variance pursuant to  
36       subdivision (f) of Section 39351, that monitoring or quantification required in connection  
37       with the variance shall be limited to any monitoring or quantification already being  
38       performed for the source for which the pollution control project is required. No variance  
39       shall be granted unless the hearing board makes the findings as specified in this section.  
40       The hearing board shall not impose any excess emission fees in connection with the grant  
41       of the variance. In determining the term of the variance, the hearing board shall consider the  
42       period of time that the delay was not due to the lack of due diligence on the part of the  
43       applicant.

44       (b) For purposes of this section, "due diligence" means that all of the following  
45       conditions exist:

(1) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(2) The applicant submitted the permit application in sufficient time for the district to act on the application and for the applicant to complete the project in accordance with the deadline.

(3) The applicant responded in a reasonable time to requests for additional information needed by the district to process the application or prepare any necessary environmental analyses.

(4) The district has not denied or proposed to deny the application on the basis of the project's inability to meet district permit requirements consistent with this article.

(5) During the term of the variance, the applicant will take practicable steps to ensure completion of the project as expeditiously as possible after issuance of the permit.

(c) Subdivision (a) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(d) Nothing in this section shall be interpreted as authorizing a hearing board to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this article.

**Comment.** Section 38907 continues former Health and Safety Code Section 42301.3(g) without substantive change.

#### **§ 38908. Concurrent action on environmental impact report**

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38908. If a supplemental or other environmental impact report or other environmental assessment is required for the project pursuant to the California Environmental Quality Act (Division 3 (commencing with Section 21000)) and the district is the lead agency, the district shall prepare and act upon the report or assessment and the permit to construct concurrently in order to streamline the approval process. However, the district shall be required to take that concurrent action only if the applicant has submitted the information required by this article to allow the district to streamline the approval process.

**Comment.** Section 38908 continues former Health and Safety Code Section 42301.3(h) without substantive change.

#### **§ 38909. "Material change"**

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38909. For purposes of this article, "material change" means a change that would result in a material impact on the level of emission calculated.

**Comment.** Section 38909 continues former Health and Safety Code Section 42301.3(i) without substantive change.

### **Article 5. Regulation Requiring Reduction in Emissions**

#### **§ 38950. Effective date of regulation as applied to specified sources**

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38950. Except as provided in Section 38951, any district regulation which requires a reduction in emissions from any article, machine, equipment, or contrivance for which an authority to construct was issued between January 1, 1981, and December 31, 1987, inclusive, shall become effective for that article, machine, equipment, or contrivance five years after issuance of the permit to operate if the regulation was adopted after issuance of the authority to construct and construction has commenced within two years of the date of issuance of the authority to construct or the applicant has, in good faith reliance upon the permit issued, performed substantial work or incurred substantial liability.

1     **Comment.** Section 38950 continues former Health and Safety Code Section 42301.5(a)  
2 without substantive change.

3     **§ 38951. Compliance required before effective date**

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4     38951. The district may require compliance with a regulation prior to completion of the  
5 five-year period specified in Section 38950 if the district or a portion of the district is  
6 designated by the state board as a nonattainment area for any national ambient air quality  
7 standard and the district determines that earlier compliance is necessary to demonstrate  
8 reasonable progress toward attainment and that, on a case-by-case basis, compliance with  
9 the regulation will not do any of the following:

10     (a) Require the abandonment or removal from service of any existing manufacturing or  
11 energy-producing equipment.

12     (b) Specify an emission level or operating standard which would cause a substantial  
13 increase in the rate of degradation of energy-producing equipment or would cause a  
14 violation or voiding of a manufacturer's warranty for that equipment.

15     (c) Result in an increase in operating costs in excess of 5 percent per year for the article,  
16 machine, equipment, or contrivance for which the authority to construct was originally  
17 issued.

18     (d) Require an increase in capital costs in excess of one hundred thousand dollars  
19 (\$100,000) or 3 percent of the original capital cost of the article, machine, equipment, or  
20 contrivance for which the authority to construct was originally issued, whichever is greater.

21     **Comment.** Section 38951 continues former Health and Safety Code Section 42301.5(b)  
22 without substantive change.

23     **§ 38952. Reasonable schedule of compliance**

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24     38952. (a) Any article, machine, equipment, or contrivance which may emit into the  
25 ambient air any toxic air contaminant identified pursuant to Section 31456 shall comply  
26 with any regulation adopted by the state board or a district requiring a reduction in  
27 emissions of that contaminant or chemical from the article, machine, equipment, or  
28 contrivance consistent with a reasonable schedule of compliance, as determined by the state  
29 board or the district.

30     (b)(1) Any article, machine, equipment, or contrivance which is located within a district  
31 which is designated by the state board as a nonattainment area for any national ambient air  
32 quality standard, and for which an authority to construct is issued on or after January 1,  
33 1988, shall comply with any district regulation which is adopted after December 31, 1982,  
34 and which requires a reduction in emissions of any air pollutant, including any precursor of  
35 an air pollutant, which interferes with the attainment of the standard, from that article,  
36 machine, equipment, or contrivance consistent with a reasonable schedule of compliance,  
37 as determined by the district.

38     (2) In determining a schedule of compliance under this subdivision, the district shall  
39 consider the extent to which the proposed schedule will adversely affect the ability of the  
40 facility owner or operator to amortize the capital costs of pollution control equipment  
41 purchased within the preceding five years.

42     **Comment.** Section 38952 continues former Health and Safety Code Section 42301.5(c)-  
43 (d) without substantive change.



Article 6. Hazardous Air Emission Near School

**§ 39000. Definitions**

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39000. For the purposes of Sections 39001 to 39009, inclusive:


(a) “School” means any public or private school used for purposes of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(b) “Air contaminant” means any contaminant defined pursuant to Section 30125.

(c) “Administering agency” means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(d) “Handle” means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

**Comment.** Section 39000 continues former Health and Safety Code Section 42301.9 without substantive change, except that former subdivision (b) is redundant and has not been continued. See Section 30125 (“air contaminant” defined).

 **Note.** By its terms, Health and Safety Code Section 42301.9 applies to Sections 42301.4-42301.8. This is overbroad. Section 42301.4 doesn’t seem to exist. Section 42301.5 does not use any of the defined terms except “air contaminant” which is already defined at the beginning of the division. In continuing this section its scope of application has been limited to relevant sections (Health and Safety Code Sections 42301.6-42301.8).

**§ 39001. Public notice required**

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39001. Prior to approving an application for a permit to construct or modify a source which emits hazardous air emissions, which source is located within 1,000 feet from the outer boundary of a schoolsite, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described. The notice may be prepared whether or not the material is or would be subject to subdivision (a) of Section 25536 of the Health and Safety Code, if the air pollution control officer determines and the administering agency concurs that hazardous air emissions of the material may result from an air release, as defined by Section 45055. The notice may be combined with any other notice on the project or permit which is required by law.

**Comment.** Section 39001 continues former Health and Safety Code Section 42301.6(a) without substantive change.

**§ 39002. Delivery of public notice**

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39002. (a) The air pollution control officer shall, at the permit applicant’s expense, distribute or mail the public notice to the parents or guardians of children enrolled in any school that is located within one-quarter mile of the source and to each address within a radius of 1,000 feet of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

(1) Notwithstanding Section 49073 of the Education Code, or any other provision of law, the information necessary to mail notices required by Sections 39001 to 39007, inclusive, shall be made available by the school district to the air pollution control officer.



(2) Nothing in this subdivision precludes, at the discretion of the air pollution control officer and with permission of the school, the distribution of the notices to the children to be given to their parents or guardians.

(b) Notwithstanding subdivision (a), an air pollution control officer may require the applicant to distribute the notice if the district had that rule in effect prior to January 1, 1989.

**Comment.** Section 39002 continues former Health and Safety Code Section 42301.6(b)-(c) without substantive change.

#### **§ 39003. Effect of delivery failure**

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39003. The requirements for public notice pursuant to subdivision (a) of Section 39002 or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

**Comment.** Section 39003 continues former Health and Safety Code Section 42301.6(d) without substantive change.

#### **§ 39004. Relation of article to authority of district**

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39004. Nothing in Sections 39001 to 39007, inclusive, shall be deemed to limit any existing authority of any district.

**Comment.** Section 39004 continues former Health and Safety Code Section 42301.6(e) without substantive change.

#### **§ 39005. Effect of delivery failure**

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39005. An applicant for a permit shall certify whether the proposed source or modification is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.

**Comment.** Section 39005 continues former Health and Safety Code Section 42301.6(f) without substantive change.

#### **§ 39006. Exception to application of article**

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39006. The notice requirements of Sections 39001 to 39007, inclusive, shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 30125, or which are hazardous air emissions.

**Comment.** Section 39006 continues former Health and Safety Code Section 42301.6(g) without substantive change.

#### **§ 39007. Definitions**

---

39007. As used in Sections 39001 to 39007, inclusive, the following terms have the following meanings:

(a) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(b) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the state 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 from any substances identified in subdivisions (a) to (f), inclusive, of Section 45101.

**Comment.** Section 39007 continues former Health and Safety Code Section 42301.6(h) without substantive change. The defined terms have been placed in alphabetical order.

#### **§ 39008. Threat of release near school**

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39008. (a) If the air pollution control officer determines there is a reasonably foreseeable threat of a release of an air contaminant from a source within 1,000 feet of the boundary of a school that would result in a violation of Section 37600 and impact persons at the school, the officer shall, within 24 hours, notify the administering agency and the fire department having jurisdiction over the school.

(b) The administering agency may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) Review the facility's risk management and prevention plan prepared pursuant to Section 25534 of the Health and Safety Code to determine whether the program should be modified, and, if so, require submission of appropriate modifications. Notwithstanding any other provision of law, the administering agency may order modification and implementation of a revised risk management and prevention plan at the earliest feasible date.

(2) If the facility has not filed a risk management and prevention plan with the administering agency, require the preparation and submission of a plan to the administering agency pursuant to Section 25534 of the Health and Safety Code. Notwithstanding any other provision of law, the administering agency may require the filing of a risk management and prevention plan and its implementation at the earliest feasible date.

(c) The air pollution control officer may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) If necessary, issue an immediate order to prevent the release or mitigate the reasonably foreseeable threat of a release in violation of Section 37600 pending a hearing pursuant to Section 39751 when there is a substantial probability of an injury to persons at a school resulting from a release that makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate that injury. The officer may not issue the order unless there is written concurrence to issue the order by a representative of the administering agency.

(2) Apply to the district board for issuance of an order for abatement pursuant to Section 39751.

(d) Nothing in this section limits any existing authority of any district.

**Comment.** Section 39008 continues former Health and Safety Code Section 42301.7 without substantive change.

#### **§ 39009. Request from principal of a school**

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39009. Upon receiving a request, for good cause, from the principal or an authorized representative of the principal of a school, the district shall, within 24 hours, respond to the request and notify the administering agency and the fire department having jurisdiction over the school. The administering agency, upon receiving the request, shall notify the district within 24 hours.

1     **Comment.** Section 39009 continues former Health and Safety Code Section 42301.8  
2 without substantive change.

3     👉 **Note.** It isn't clear what this section does. If this section does serve some purpose it  
4 should probably be redrafted to make that purpose clear. The Commission would welcome  
5 suggestions on this point.

## 6                   Article 7. Implementation of Title V of the Federal Clean Air Act

### 7     **§ 39050. Permit issued to Title V source**

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8     39050. In any district that has a permit system established pursuant to Section 38750, the  
9 air pollution control officer may include, in any permit issued to a Title V source, emission  
10 limits, standards, and other requirements that ensure compliance with all federal Clean Air  
11 Act "applicable requirements," as that term is defined in regulations adopted by the  
12 Environmental Protection Agency pursuant to Title V, including those requirements  
13 specified in an applicable implementation plan as defined by Section 7602(q) of Title 42 of  
14 the United States Code, and Parts C (42 U.S.C. Sec. 7470 et seq.) and D (42 U.S.C. Sec.  
15 7501 et seq.) of Title 1 of the Clean Air Act.

16     **Comment.** Section 39050 continues former Health and Safety Code Section 42301.10  
17 without substantive change.

### 18     **§ 39051. Implementation of Title V by districts**

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19     39051. It is the intent of the Legislature that, in addition to their responsibilities and  
20 obligations under state and federal law, in implementing Title V, districts do all of the  
21 following, to the extent feasible:

22     (a) Develop, in recognition that districts are obligated to issue one-third of the Title V  
23 permits within one year of the Title V program's approval by the Environmental Protection  
24 Agency, and in recognition that sources are allowed one year to submit a Title V permit  
25 application, an equitable program for ensuring that all sources receive as much time as  
26 feasible to develop and submit permit applications. In developing the program the districts  
27 shall recognize the complexity and size of the facilities, the number and similarity of  
28 facilities within each industry category, the level of effort required to develop the permit  
29 application, and the resources available to complete the application. The districts should  
30 also consider potential incentive programs to promote voluntary early permit application  
31 submissions.

32     (b) Consider the advantages and disadvantages of including the permit shield authorized  
33 by subsection (f) of Section 70.6 of Title 40 of the Code of Federal Regulations in all Title  
34 V permits to clarify the federal compliance responsibilities of Title V sources.

35     (c) Consistent with state and federal regulations, allow the use of emission monitoring  
36 alternatives, when available and having the accuracy required to ensure enforcement and  
37 compliance, in lieu of the use of continuous emission monitors.

38     (d) Encourage the issuance of Title V permits for five-year terms.

39     **Comment.** Section 39051 continues former Health and Safety Code Section 42301.11  
40 without change.

### 41     **§ 39052. Permit systems or provisions to meet requirements of Title V**

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42     39052. Any district permit system or permit provision established by a district board to  
43 meet the requirements of Title V shall, consistent with federal law, minimize the regulatory  
44 burden on Title V sources and the district and shall meet all of the following criteria:

1 (1) Apply only to Title V sources.

2 (2) Issue permits pursuant to Title V only after the Environmental Protection Agency has  
3 approved the district's Title V permit program.

4 (3) Identify in the permit, to the greatest extent feasible, permit terms and conditions  
5 which are federally enforceable and those which are not federally enforceable. A district  
6 shall make that identification by either of the following means:

7 (A) Identifying in the permit the terms and conditions that are federally enforceable  
8 because they are imposed pursuant to a federal requirement or because the source has  
9 requested the terms and conditions and federal enforceability thereof and the permitting  
10 district has not determined that the request does not meet all applicable federal requirements  
11 and guidelines.

12 (B) Identifying in the permit the terms and conditions which are imposed pursuant to  
13 state law or district rules and are not federally enforceable. Districts may further identify  
14 those terms and conditions of the permit which are not federally enforceable, but which  
15 have been included in the permit to enforce district rules adopted by the district to meet  
16 federal requirements.

17 (4) Utilize, to the extent reasonably feasible, general permits and similar methods to  
18 reduce source and district permitting burdens for Title V sources.

19 (5) Establish clear and simple application completeness criteria.

20 (6) To the extent feasible, minimize the burden of federally mandated paperwork such as  
21 recordkeeping and reporting documents.

22 (7) Allow sources maximum flexibility in selecting cost-effective, reliable, and  
23 representative monitoring methods consistent with applicable state and federal  
24 requirements.

25 (8) If a permit is required to be reopened to comply with Title V requirements, base the  
26 reopening upon the federal criteria for reopening and limit the reopening to only the federal  
27 component of the Title V permit. This paragraph is not intended to limit in any way the  
28 authority under state law to reopen permits.

29 (9) Authorize administrative permit amendments and minor permit modifications as  
30 required by federal law.

31 (10) Provide that, unless the district determines that a Title V application is not complete  
32 within 60 days of receipt of the application, the application shall be deemed to be complete.

33 (11) Authorize, to the extent consistent with existing state law, mandatory operational  
34 flexibility provisions required pursuant to Part 70 (commencing with Section 70.1) of Title  
35 40 of the Code of Federal Regulations, and consider optional operational flexibility  
36 provisions established pursuant to Part 70 (commencing with Section 70.1) of Title 40 of  
37 the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever  
38 any pending litigation.

39 (12) Make every reasonable effort, in partnership with Title V sources and the state  
40 board, to evaluate and respond to the substance of any objection to a proposed permit and  
41 to obtain expeditious approval of Title V permits submitted to the Environmental Protection  
42 Agency.

43 **Comment.** Section 39052 continues former Health and Safety Code Section 42301.12  
44 without substantive change. The designation of the first paragraph as a subdivision has not  
45 been continued, and subordinate paragraphs and subparagraphs have been redesignated as  
46 subdivisions and paragraphs respectively.

47 Uncodified statutory provisions applicable to former Health and Safety Code Section  
48 43012.12 now apply to this section. See, e.g., 1996 Cal. Stat. ch. 984, § 1 (legislative intent).

Article 8. Burning Municipal Waste or Refuse-Derived Fuel

**§ 39100. Permit conditions**

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39100. No district shall issue or renew a permit for the construction of, renew a permit for the operation of, or issue a determination of compliance for, any project which burns municipal waste or refuse-derived fuel unless all of the following conditions have been met:

(a) The project will not prevent or interfere with the attainment or maintenance of state and federal ambient air quality standards.

(b) The project will comply with all applicable emission limitations established prior to issuance of the permit or the determination of compliance.

(c) The project will, after issuance of the permit or determination of compliance, comply with toxic air contaminant control measures adopted by the district pursuant to Sections 31501 to 31505, inclusive, and regulations adopted by the district pursuant to Section 37600 for the protection of public health. Notwithstanding Sections 38950 to 38952, inclusive, compliance with this subdivision shall be consistent with a reasonable schedule, as determined by the district.

(d)(1) A health risk assessment is performed and is submitted by the district to both the state board and the Office of Environmental Health Hazard Assessment for review. The state board shall review and, within 15 days, notify the district and the applicant as to whether the data pertaining to emissions and their impact on ambient air quality are adequate for completing its review pursuant to this subdivision, and what additional data, if any, are required to complete its review. Within 45 days of receiving the health risk assessment, the state board shall submit its comments in writing to the district, on the data pertaining to emissions and their impact on ambient air quality. The district shall forward a copy of the comments of the state board to the office. The office shall review and, within 90 days of receiving the health risk assessment, shall submit its comments to the district on the data and findings relating to health effects.

(2) This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(e) The district finds and determines, based upon the health risk assessment, comments from the state board and the Office of Environmental Health Hazard Assessment, and any other relevant information, that no significant increase in the risk of illness or mortality, including, but not limited to, increases in the risk of cancer and birth defects, is anticipated as a result of air pollution from the construction and operation of the project. This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(f) Prior to, and during, commercial operation of the project, periodic monitoring of emissions, including, but not limited to, toxic air contaminants, is performed pursuant to specifications established by the district.

**Comment.** Section 39100 continues former Health and Safety Code Section 42315(a)(1)-(3), (4)(A) & (E), (5)-(6) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

**§ 39101. Preparation of health assessment**

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39101. (a) For purposes of complying with the requirements of subdivision (d) of Section 39100, the Office of Environmental Health Hazard Assessment may select a qualified independent contractor to review the data and findings relating to health effects. In those cases, the review by the independent contractor shall comply with the following requirements:



- (1) Be performed in a manner consistent with guidelines provided by the office.
  - (2) Be reviewed by the office for accuracy and completeness.
  - (3) Be submitted by the office to the district in accordance with the schedules established by subdivision (d) of Section 39100.
- (b) Notwithstanding Section 6103 of the Government Code, the district shall reimburse the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subdivision (a), for its actual costs incurred in reviewing a health risk assessment for any project subject to this article.
- Comment.** Section 39101 continues former Health and Safety Code Section 42315(a)(4)(B)-(C) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

#### **§ 39102. Completion of permit application**

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39102. An application for any project which burns municipal waste or refuse-derived fuel is not complete until both of the following have been accomplished:
- (a) The health risk assessment has been performed and is submitted to the district.
  - (b) The state board and the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subdivision (a) of Section 39101 have completed their review pursuant to subdivision (d) of Section 39100, and have submitted their comments to the district, unless the state board and the office have failed to submit their comments to the district within 90 days and the district makes a finding that the application contains sufficient information for the district to begin its initial review.
- Comment.** Section 39102 continues former Health and Safety Code Section 42315(a)(4)(D) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

#### **§ 39103. Effect of article**

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39103. (a) This article does not prohibit a district from requiring ambient air monitoring under any other provision of law.
- (b) Nothing in this article prohibits the permit applicant from entering into a contract with any person pursuant to which the person may enforce this article or any other provision of law.
- Comment.** Section 39103 continues former Health and Safety Code Section 42315(b) & (d) without substantive change. Enactment of this section codifies part of Section 140 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

#### **§ 39104. Application of article**

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39104. (a) This article does not apply to any project which does any of the following:
- (1) Exclusively burns digester gas produced from manure or other animal solid or semisolid waste.
  - (2) Exclusively burns methane gas produced from a disposal site as defined in Section 66714.1 of the Government Code, which is used only for the disposal of solid waste as defined in Section 66719 of the Government Code.
  - (3) Exclusively burns forest, agricultural, wood, or other biomass wastes.
- (b) Nothing in this section is intended to prohibit a district from requiring those projects to meet one or more of the conditions of this article.



1     **Comment.** Section 39104 continues former Health and Safety Code Section 42315(c)  
2 without substantive change. The last paragraph of former Health and Safety Code Section  
3 42315(c) has been designated as a subdivision. Enactment of this section codifies part of  
4 Section 140 of the Governor’s Reorganization Plan No. 1 of 1991, effective July 17, 1991.

## 5                                   Article 9. Miscellaneous Permit Provisions

### 6     **§ 39150. Demolition or removal of stationary source**

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7         39150. Notwithstanding any other provision of law, a district shall not require, as part of  
8 its permit system or otherwise, that any form of emission offset or emission credit be  
9 provided to offset emissions resulting from any activity related to, or involved in, the  
10 demolition or removal of a stationary source.

11         **Comment.** Section 39150 continues former Health and Safety Code Section 42301.13(a)  
12 without substantive change.

### 13     **§ 39151. Relocation of portable emissions unit**

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14         39151. (a) Notwithstanding any other provision of law regulating a district permit  
15 system, an owner or operator of an existing portable emissions unit may relocate that  
16 equipment within the same air basin if both of the following requirements are met:

17             (1) The owner or operator provides, not less than 30 days prior to the date that the  
18 equipment is relocated, written notice to the district with jurisdiction over the location to  
19 which the equipment is relocated, and any additional notice required by federal law.

20             (2) The existing permit conditions are at least as stringent as the permit requirements in  
21 the district with jurisdiction over the location to which the equipment is relocated.

22             (b) For purposes of this section, “portable emissions unit” means any article, machine, or  
23 other contrivance, including an internal combustion engine, that meets all of the following  
24 criteria:

25                 (1) Emits or may emit, or results in the emission of, any air contaminant.

26                 (2) Either by itself, or as part of another piece of equipment, is designed to be, and is  
27 capable of, being moved from one location to another.

28                 (3) Must be periodically moved from one location to another because of the nature of the  
29 operation in which it is used.

30             (c) Any equipment that is relocated pursuant to subdivision (a) remains subject to all  
31 previously imposed permit terms and conditions. If the permitted equipment that is  
32 relocated is placed into substantially the same service that it was placed into at its previous  
33 location, a district shall not impose any new permit terms or conditions on that equipment,  
34 except site-specific terms and conditions or public notice requirements.

35         **Comment.** Section 39151 continues former Health and Safety Code Section 42301.13(b)-  
36 (c) without substantive change.

### 37     **§ 39152. Equipment exempt from permit requirements**

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38         39152. (a) A permit shall not be required for:

39             (1) Any vehicle.

40             (2) Any structure designed for and used exclusively as a dwelling for not more than four  
41 families.

42             (3) An incinerator used exclusively in connection with such a structure.

43             (4) Barbecue equipment which is not used for commercial purposes.

(5) Any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals, except that the district board of any district which is, in whole or in part, south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian, may require permits for the operation of orchard and citrus grove heaters. In no event shall a permit be denied an operator of orchard or citrus grove heaters if the heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute or less.

(6) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

(b) As used in this section, maintenance does not include operation.

**Comment.** Section 39152 continues former Health and Safety Code Section 42310 without substantive change. The subdivisions and paragraphs have been redesignated.

### § 39153. Asphalt plants

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39153. (a) Notwithstanding any provision of any district permit system, including the south coast district permit system, any permit issued for the operation of equipment at an asphalt plant shall be valid for operation of the equipment by another operator if all of the following conditions are met:

(1) The permitted operator has given the new operator a copy of the operating permit.

(2) The permitted operator has filed, with the district, a copy of the operating permit attached to a signed statement from the new operator agreeing to comply with the terms of the permit.

(3) The permitted operator has paid a reasonable administrative fee as determined by the district.

(b) If the operation of the equipment by the new operator results in a violation of any state law or rule or regulation of the state board or district adopted pursuant to this division, the liability for the violation shall be determined based upon whether the conduct of the permitted operator or the new operator, or both, caused the violation.

**Comment.** Section 39153 continues former Health and Safety Code Section 42310.5 without change.

### § 39154. Cogeneration technology and resource recovery projects

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39154. (a) Notwithstanding any other provision of any district permit system, and except as provided in this section, no district shall require emissions offsets for any cogeneration technology project or resource recovery project which satisfies all of the following requirements:

(1) The project satisfies one of the following size criteria:

(A) The project produces 50 megawatts or less of electricity. In the case of a combined cycle project, the electrical capacity of the steam turbine may be excluded from the total electrical capacity of the project for purposes of this paragraph if no supplemental firing is used for the steam portion and the combustion turbine has a minimum efficiency of 25 percent.

(B) The project processes municipal wastes and produces more than 50 megawatts, but less than 80 megawatts, of electricity.

(2) The project will use the appropriate degree of pollution control technology (BACT or LAER) as defined and to the extent required by the district permit system.

(3) Existing permits for any item of equipment to be replaced by the project, whether the equipment is owned by the applicant or a thermal beneficiary of the project, are surrendered to the district or modified to prohibit operation simultaneously with the project to the extent necessary to satisfy district offset requirements. The emissions reductions associated with

1 the shutdown of existing equipment shall be credited to the project as emissions offsets in  
2 accordance with district rules.

3 (4) The applicant has provided offsets to the extent they are reasonably available from  
4 facilities it owns or operates in the air basin and which mitigate the remaining impacts of the  
5 project.

6 (5) For new projects which burn municipal waste, landfill gas, or digester gas, the  
7 applicant has, in the judgment of the district, made a good faith effort to secure all  
8 reasonably available emissions offsets to mitigate the remaining impact of the project, and  
9 has secured all reasonably available offsets.

10 (b) This section applies to any project for which an application for an authority to  
11 construct is deemed complete by the district after January 1, 1986, only if the project's net  
12 emissions, combined with the net emissions from projects previously permitted under this  
13 section, are less than the amount provided for in the applicable growth allowance  
14 established by the district pursuant to Section 37450. If a district has not yet provided a  
15 growth allowance pursuant to Section 37450, the growth allowance is zero. For purposes  
16 of this subdivision, "net emissions" means the project's emissions, less any offsets  
17 provided by the applicant and less utility displacement credits granted pursuant to Section  
18 37451.

19 (c) This section does not relieve a project from satisfying all applicable requirements of  
20 Part C (Prevention of Significant Deterioration) of the Clean Air Act, as amended in 1977  
21 (42 U.S.C. Sec. 7401 et seq.), or any rules or regulations adopted pursuant to Part C.

22 **Comment.** Section 39154 continues former Health and Safety Code Section 42314 without  
23 substantive change.

24 ➡ **Note.** Note that former Health and Safety Code Section 41604 was renumbered as  
25 Section 41600. See 1998 Cal. Stat. ch. 1568, § 25. Consequently, this section's reference to  
26 Health and Safety Code Section 41604 is erroneous and has been replaced with a reference to  
27 proposed Section 37450, which continues Health and Safety Code Section 41600.

## 28 **§ 39155. Burning of municipal waste, landfill gas, or digester gas**

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29 39155. (a) Except as provided in subdivision (b), to the extent permissible under federal  
30 law, and notwithstanding any state or local new source review or prevention of significant  
31 deterioration rule or regulation, at the request of an applicant, a district shall issue permits  
32 for the construction of a project which burns municipal waste, landfill gas, or digester gas,  
33 if all of the following conditions are met:

34 (1) The project produces less than 50 megawatts of electricity, except as provided in  
35 paragraph (4).

36 (2) The project will utilize the appropriate degree of pollution control technology (BACT  
37 or LAER) required by the new source review rule of the district.

38 (3) The project applicant has, in the judgment of the district, made a good faith effort to  
39 secure all available emission offsets to mitigate the impact of the project, but sufficient  
40 offsets or other mitigation measures are not available. The applicant, however, is required  
41 to secure all the offsets which are available to mitigate the air quality impact of the project,  
42 except for projects which constitute a modification to an existing source under the district's  
43 new source review rule, in which case the applicant is only required to provide offsets from  
44 facilities which the applicant owns or operates within the air basin.

45 (4) The project produces 50 megawatts or more, but less than 80 megawatts, of  
46 electricity, meets the requirements of paragraphs (2) and (3), is located in a district whose  
47 state implementation plan revisions have been approved by the Environmental Protection  
48 Agency and that has attained, or is reasonably expected to attain, national air quality

standards for any criteria pollutant for which sufficient growth allowances are available in the air quality maintenance plan or, in the event the project would cause any criteria pollutant to exceed the available or possible future growth allowance, the applicant secures offsets in an amount equal to the excess in the growth allowance, and processes municipal wastes from one or more municipalities. Any project under this paragraph shall comply with applicable prevention of significant deterioration rules and regulations.

(b) If a proposed project permitted under subdivision (a) has an electrical generating capacity of 50 megawatts or more, the district shall determine whether the project meets the requirements of this section and, in making its determination, shall consider the potential emission of noncriteria pollutants from project facilities and shall develop appropriate permit conditions. The district shall submit its determination and supporting analyses, including the analysis of noncriteria pollutants and appropriate permit conditions, to the State Energy Resources Conservation and Development Commission for use pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

(c) Any permit issued pursuant to subdivision (a), and any determination made by a district pursuant to subdivision (b), shall meet the additional requirements of Sections 39100 to 39104, inclusive.

**Comment.** Section 39155 continues former Health and Safety Code Section 42314.1 without substantive change.

#### **§ 39156. Resource recovery projects**

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39156. (a) The time limits established under Sections 65950, 65950.1, and 65952 of the Government Code for approval or disapproval of development projects may be extended for district review of an application for a permit for a resource recovery project upon the mutual consent of the district and the permit applicant. Notwithstanding Section 65957 of the Government Code, an extension made pursuant to this section shall not exceed nine months beyond the time limits established under Sections 65950, 65950.1, and 65952 of the Government Code.

(b) The district shall provide public notification at least 30 days prior to the effective date of any extension consented to under subdivision (a), which shall specify the reasons for, and the duration of, the extension period. The district shall provide this public notification by publishing a notice once a week for two consecutive weeks in a newspaper of general circulation in the district.


**Comment.** Section 39156 continues former Health and Safety Code Section 42314.2 without change.

#### **§ 39157. Organic waste utilization facility permits**

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39157. In considering a permit for a facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler) to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall allow offset credits as provided in Sections 37450 and 37452.

**Comment.** Section 39157 continues former Health and Safety Code Section 42314.5 without substantive change.

 **Note.** Note that former Health and Safety Code Section 41604 was renumbered as Section 41600. See 1998 Cal. Stat. ch. 1568, § 25. Consequently, this section's reference to Health and Safety Code Section 41604 is erroneous and has been replaced with a reference to proposed Section 37450, which continues Health and Safety Code Section 41600.

1   **§ 39158. Application of CEQA to certain discretionary decisions**

2       39158. (a) The California Environmental Quality Act (Division 3 (commencing with  
3       Section 21000)) shall not apply to a discretionary decision by an air quality management  
4       district for a project consisting of the application of coatings within an existing facility at an  
5       automotive manufacturing plant if the district finds all of the following:

6       (1) The project will not cause a net increase in any emissions of any pollutant for which a  
7       national or state ambient air quality standard has been established after the internal emission  
8       accounting for previous emission reductions achieved at the facility and recognized by the  
9       district.

10      (2) The project will not cause a net increase in adverse impacts of toxic air contaminants  
11      as determined by a health risk assessment. For purposes of this section, the term “net  
12      increase in adverse impacts of toxic air contaminants as determined by a health risk  
13      assessment” shall be determined in accordance with the rules and regulations of the district.

14      (3) The project will not cause any other adverse effect on the environment.

15      (b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of  
16      the exemption by mail to any person who requests such a notice in writing, and by  
17      publication in two newspapers of general circulation in the area of the project. The notice  
18      shall state that the complete file on the project and the basis for the district’s findings is  
19      available for inspection and copying at the office of the air quality management district.

20      (c) Any person may appeal to the hearing board as provided in Section 38801, from the  
21      issuance of a permit after a decision of any district that a project is exempt pursuant to this  
22      section. If there is substantial evidence in light of the whole record before the hearing board  
23      that the project may not satisfy one or more of the criteria established pursuant to  
24      subdivision (a), the permit shall be revoked. If there is no substantial evidence, the  
25      exemption shall be upheld and there shall be no further compliance with the requirements of  
26      Division 3 (commencing with Section 21000). Any appeal under this subdivision shall be  
27      scheduled for hearing on the calendar of the hearing board within 10 working days of the  
28      appeal being filed. The hearing board shall give the appeal priority on its calendar and shall  
29      render a decision on the appeal within 21 working days of the appeal being filed. The  
30      hearing board may delegate the authority to hear and decide an appeal to a subcommittee of  
31      the hearing board.

32      (d) On or before December 31, 1995, the Resources Agency shall prepare and submit to  
33      the Legislature and the Governor a study on the exemption established pursuant to this  
34      section in order to determine the advisability of expanding this exemption to include other  
35      industrial facilities. The study shall identify the potential benefits and adverse impacts on  
36      the environment from an expansion of the exemption and shall determine the potential  
37      benefits and adverse impacts on public participation of the exemption process.

38      **Comment.** Section 39158 codifies Section 1 of Chapter 1131 of the Statutes of 1993,  
39      which is repealed by the act that enacted this code.

40      👉 **Note.** Subdivision (d) specifies a deadline for submission of a certain report to the  
41      Legislature and Governor. This deadline provision may be obsolete. The Commission would  
42      like to receive input on two questions: (1) Have the requirements of that subdivision been  
43      satisfied? (2) Does the deadline stated in subdivision (d) still serve a useful purpose?



1 CHAPTER 3. AIR POLLUTION PERMIT STREAMLINING ACT

2 **§ 39200. Title of article**

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3 39200. This chapter shall be known, and may be cited, as the Air Pollution Permit  
4 Streamlining Act of 1992.

5 **Comment.** Section 39200 continues former Health and Safety Code Section 42320 without  
6 substantive change.

7 **§ 39201. Legislative findings and declarations**

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8 39201. The Legislature finds and declares as follows:

9 (a) California's air pollution control programs have been among the most successful  
10 efforts in the country to reduce air pollution and to protect public health and the  
11 environment.

12 (b) It is in the interest of the people of the state, particularly during times of economic  
13 difficulty, to enact laws which improve the processes by which businesses comply with  
14 environmental and air quality laws, without sacrificing the protection of public health and  
15 the environment.

16 (c) The purpose of this chapter is to require districts to review their permit programs and  
17 to institute new, efficient procedures which will assist businesses in complying with  
18 regional, state, and federal air quality laws in an expedited fashion, without reducing  
19 protection of public health and the environment.

20 **Comment.** Section 39201 continues former Health and Safety Code Section 42321 without  
21 change.

22 **§ 39202. Review of permits**

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23 39202. (a) Every district shall establish, by regulation, a program to provide for the  
24 expedited review of permits issued pursuant to Chapter 2 (commencing with Section  
25 38750) in order to reduce unnecessary delay in the issuance of those permits and to protect  
26 the public health and the environment. The expedited permit system shall include all of the  
27 following:

28 (1) A precertification program for equipment which is mass-produced and operated by  
29 numerous sources under the same or similar conditions, in order to allow permit applicants  
30 who purchase that equipment to receive permits in an expedited fashion.

31 (2) A consolidated permitting process for any source that requires more than one permit,  
32 which provides that the source will be permitted on a facility or project basis, provides a  
33 single point of contact for the permit applicant, and allows a source to be reviewed and  
34 permitted on a single, consolidated schedule.

35 (3) An expedited permit review schedule, based upon the types and amount of pollution  
36 emitted from sources. In order to comply with this subdivision, a district shall classify  
37 sources within its jurisdiction as minor, moderate, and major sources of air pollution, and  
38 shall establish a permit action schedule that sets forth specific deadlines, based on each  
39 classification, for an air pollution control officer to notify a permit applicant in writing of  
40 the approval or disapproval of a permit application.

41 (4) A training and certification program for private sector personnel, in order to establish  
42 a pool of professionals who can certify businesses as being in compliance with district  
43 rules and regulations.



(5) The development of standardized permit application forms that are written in clear and understandable language and provide applicants with adequate information to complete and return the forms.

(6) To the extent that a district determines that it will not adversely affect the public health and safety or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and paperwork for stationary sources.

(7) An appeals process whereby, if the air pollution control officer fails to notify a permit applicant of the approval or disapproval of a permit application within the schedule established pursuant to paragraph (3), the permit applicant may, after notifying the district, request the district board, at its next regularly scheduled meeting, to set a date certain on which the permit will be acted upon. This paragraph does not prohibit a permit applicant from seeking relief under Section 38800.

(b) For those districts which have a population of less than 1,000,000 persons, the state board shall provide assistance in developing regulations implementing this section.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

**Comment.** Section 39202 continues former Health and Safety Code Section 42322 without substantive change.

#### **§ 39203. Additional requirements for districts of more than 500,000 persons**

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39203. Districts with a population of more than 500,000 persons shall additionally implement the following permit streamlining measures:

(a) Upon a permit applicant's request, the district shall allow the permit applicant to meet with district staff prior to the submittal of a permit to construct in order to identify issues and ways to expedite the permitting process.

(b) The district shall allow the permit applicant to propose conditions that are consistent with the applicable rules or regulations for the district's consideration.

(c) Before a district implements a rule or regulation for categories of emission sources for which significant capital expenditures will be required, the district shall develop, with input from the regulated community, a permitting protocol for any permits that will be required for common types of operating equipment, processes, or related air pollution control equipment as a result of the rule or regulation. Each district shall compile those protocols and make them available to businesses that are regulated by the rule or regulation.

**Comment.** Section 39203 continues former Health and Safety Code Section 42322.5 without change.

#### **§ 39204. Small business stationary sources**

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39204. (a) For purposes of subdivision (b), "small business stationary source" means a source which meets all of the following criteria:

(1) The source is owned or operated by a person who employs 100 or fewer individuals.

(2) The source is a small business as defined under the federal Small Business Act (15 U.S.C. Sec. 631, et seq.).

(3) The source emits less than 10 tons per year of any single pollutant and less than 20 tons per year of all pollutants.

(b) In addition to the requirements of Section 39202, every district shall establish a small business assistance program for small business stationary sources located within the district's jurisdiction. A small business assistance program adopted pursuant to this section shall consist of all of the following:

(1) The development of a standardized permit application form which is written in clear and understandable language and provides small business persons with adequate information to complete and return the form.

(2) To the extent that a district determines that it will not adversely affect public health or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and paperwork for small business stationary sources.

(3) The establishment of expedited variance procedures for small businesses and the provision of technical assistance for applicants on the processing of variances.

(4) The designation of a single person or office within the district which shall serve as a point of initial access and accessibility to the district for small business persons.

(5) Upon the approval of the district board at a duly noticed public hearing, the establishment of surcharges on permit fees levied on sources regulated by the district, to be used for the establishment of a small business economic assistance program.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

**Comment.** Section 39204 continues former Health and Safety Code Section 42323 without substantive change.

#### CHAPTER 4. DISTRICT REVIEW OF A PERMIT APPLICANT'S COMPLIANCE HISTORY

##### **§ 39250. Legislative findings, declarations and intent**

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39250. (a) The Legislature finds and declares that the effective regulation of air pollution emissions requires that permit applicants who have a demonstrated recurring pattern of air pollution control violations, and who have consistently refused to take the necessary steps to cooperate with a district to correct those violations, shall be subject to appropriate permit actions to bring them into compliance. The Legislature further finds that noncompliance may endanger the public health and safety and the environment and places permit applicants that are in compliance at a serious competitive disadvantage.

(b) It is the intent of the Legislature in enacting this chapter to provide districts with an effective enforcement tool to bring noncompliant permit applicants into conformity with the applicable air pollution control laws and regulations. It is further the intent of the Legislature that any permit action authorized by this chapter shall be taken only after a district has attempted to bring the applicant into voluntary or required compliance, in accordance with the procedural and due process requirements prescribed by this chapter.

**Comment.** Section 39250 continues former Health and Safety Code Section 42330 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

##### **§ 39251. Review of compliance history on issuance of permits**

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39251. (a) Prior to issuing a permit pursuant to Chapter 2 (commencing with Section 38750), the air pollution control officer may review the compliance history of the applicant submitted to the district pursuant to Section 39259, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing the applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations, the compliance history of all sources within the facility for which the permit is being sought, and the number of permits held by the applicant.

(c) For a permit for new or modified equipment at an existing facility, the officer's review of an applicant's compliance history shall be limited to the compliance history of the facility in question and the compliance history of other permitted sources at facilities owned, operated, or controlled by the applicant in the district. As used in this subdivision, "modified equipment" means any modification, including a change in the method of operation, that would require a permit modification under district rules.

**Comment.** Section 39251 continues former Health and Safety Code Section 42331 without substantive change.

#### **§ 39252. Review of compliance history on renewal of permits**

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39252. (a) Prior to renewing a permit, an air pollution control officer may review the compliance history of the source in question at the facility, as shown in district records, under laws or regulations governing the control of air pollution, including the Clean Air Act (42 U.S.C. Sec. 7401 and following) and regulations adopted thereunder, and this division and regulations adopted pursuant to this division.

(b) In reviewing an applicant's compliance history, the officer shall take into account the size and complexity of the applicant's operations and the number of permits held by the applicant.

**Comment.** Section 39252 continues former Health and Safety Code Section 42332 without change.

#### **§ 39253. Permit denial, refusal to renew permit, and additional permit conditions**

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39253. An air pollution control officer may, pursuant to this chapter, deny a permit, refuse to renew a permit, or specify additional permit conditions to ensure compliance with applicable rules and regulations, if the officer determines that each of the following has occurred:

(a) In the three-year period preceding the date of application, the applicant has violated laws or regulations identified in subdivision (a) of Section 39251 and subdivision (a) of Section 39252 resulting in either excessive emissions or violations at a facility which is required to be permitted but is not permitted, owned or operated by the applicant.

(b) A notice of violation was issued for those violations.

(c) A variance was not in effect with respect to those violations.

(d) The violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(e) Notice and an opportunity for an office conference was provided pursuant to Section 39257.

**Comment.** Section 39253 continues former Health and Safety Code Section 42333(a) without substantive change.

#### **§ 39254. Application of Sections 39253 to 39256**

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39254. (a) Sections 39253 to 39256, inclusive, do not apply to a permit to operate, or the renewal of a permit to operate, issued by an air pollution control officer for a facility which is owned or operated by an applicant, unless the applicant has met the criteria set forth in subdivisions (a) to (d), inclusive, of Section 39253 at the source in question at that facility.

(b) For the purposes of determining a permit action under Sections 39253 to 39256, inclusive, the air pollution control officer shall take into consideration the size and complexity of the applicant's operations and the number of permits held by the applicant.

**Comment.** Section 39254 continues former Health and Safety Code Section 42333(b)-(c) without substantive change.

#### **§ 39255. Criteria for denial of permit**

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39255. The air pollution control officer's determination of whether to deny a permit shall be based upon all of the following:

(a) Whether the emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(b) Whether a permit denial is not an appropriate action given the severity of the violations, or that the denial is not supported by the applicant's overall compliance history.

(c) Whether a permit denial is not an appropriate action because the equipment type, operational character, or emissions capacity of the sources where the violations occurred are significantly different than that of the source for which the permit is being sought.

(d) Whether the violation has been corrected in a timely fashion or reasonable progress is being made.

(e) Whether a permit denial is not an appropriate action because a variance has been granted with respect to those violations.

(f) Whether the violations demonstrate a recurring pattern of noncompliance or pose or have posed a significant risk to the public health or safety or to the environment.

(g) Whether notice and an opportunity for an office conference was provided pursuant to Section 39257.

**Comment.** Section 39255 continues former Health and Safety Code Section 42333(d) without substantive change.

#### **§ 39256. Violations not admitted or established by law**

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39256. A permit denial pursuant to Section 39253 which is based solely upon violations which have not been admitted by the applicant or otherwise established by law shall be set aside by a hearing board if a hearing has been requested by the applicant pursuant to Section 38800, unless the air pollution control officer, following the presentation of substantial evidence and the applicant's opportunity to rebut the evidence, proves that the violation did occur, and that denial is supported by the applicant's overall compliance history.

**Comment.** Section 39256 continues former Health and Safety Code Section 42333(e) without substantive change.

#### **§ 39257. Preliminary determinations**

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39257. If, in the course of enforcing existing permits and conducting inspections relative thereto, an air pollution control officer makes a preliminary determination that the person has met the criteria prescribed in subdivisions (a) to (d), inclusive, of Section 39253, the officer shall take all of the following actions:

(a) Notify the person, in writing, that the district has made a preliminary determination that the person has met those criteria and that the district may take action pursuant to Section 39253. The notice shall include all facts relating to the preliminary determination which are known to the officer.

(b) Request, as part of the notification required by subdivision (a), that the person confer with the officer in an office conference to discuss the pattern of noncompliance.

(c) Conduct the office conference.

**Comment.** Section 39257 continues former Health and Safety Code Section 42334 without substantive change.

#### **§ 39258. Setting aside permit denials**

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39258. A permit denied pursuant to Sections 39253 to 39256, inclusive, shall be set aside by the hearing board under either of the following conditions:

(a) The applicant proves that either:

(1) The emissions violations forming the basis for the denial were the result of circumstances beyond the reasonable control of the applicant and could not have been prevented by the exercise of reasonable care.

(2) The denial is not an appropriate action given the severity of the violations, or is not supported by the applicant's overall compliance history.

(b) The violation has been corrected in a timely fashion or reasonable progress is being made.

**Comment.** Section 39258 continues former Health and Safety Code Section 42335 without substantive change.

#### **§ 39259. Description of emissions violations**

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39259. In addition to any other information required to be submitted, an applicant for a permit to construct or a permit to operate which involves a change of operator who has owned or operated a facility pursuant to a permit issued by any district shall provide a description of all emissions violations satisfying the criteria specified in subdivisions (a) to (c), inclusive, of Section 39253, under this division or any regulation adopted pursuant to this division, and the Clean Air Act (42 U.S.C. Sec. 7401 and following) or any regulations adopted thereunder, which occurred at any facility permitted by any district and owned or operated by the applicant in the state in the three years prior to the date of application.

**Comment.** Section 39259 continues former Health and Safety Code Section 42336 without substantive change.

#### **§ 39260. Public review of facility owner's compliance history**

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39260. Any public notice provided by the district concerning the issuance of a permit to an applicant shall include, in addition to a description of the proposed project, a statement that information regarding the facility owner's compliance history submitted to the district pursuant to Section 39259, or otherwise known to the district, based on credible information, is available from the district for public review.

**Comment.** Section 39260 continues former Health and Safety Code Section 42337 without change.

#### **§ 39261. Existing authority of district**

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39261. Nothing in this chapter limits the existing authority of the district.

**Comment.** Section 39261 continues former Health and Safety Code Section 42338 without change.

**§ 39262. Application to nuisance complaints based on odor emissions**

39262. This chapter does not apply to nuisance complaints based on odor emissions.

**Comment.** Section 39262 continues former Health and Safety Code Section 42339 without change.

## CHAPTER 5. VARIANCES

## Article 1. Procedure

### § 39300. Application

39300. (a) Any person may apply to the hearing board for a variance from Section 37602 or from the rules and regulations of the district.

**Comment.** Section 39300 continues former Health and Safety Code Section 42350(a) without substantive change.

**§ 39301. Notice of assistance available to small business**

39301. Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

**Comment.** Section 39301 continues former Health and Safety Code Section 42350.5 without change.

**§ 39302. Hearing required before grant of variance**

39302. Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

**Comment.** Section 39302 continues former Health and Safety Code Section 42359 without substantive change.

**§ 39303. Copy of order affecting variance to state board**

39303. Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 39306, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

**Comment.** Section 39303 continues former Health and Safety Code Section 42360 without substantive change.

### § 39304. Application for interim variance

39304. (a) Any person who has submitted an application for a variance and who desires to commence or continue operation pending the decision of the hearing board on the application, may submit an application for an interim variance.

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



(c) The hearing board shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section 32556, or (2) which is being sought to avoid the notice and hearing requirements of Section 32556.

**Comment.** Section 39304 continues former Health and Safety Code Section 42351 without substantive change.

#### **§ 39305. Interim authorization of schedule modification**

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39305. If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

**Comment.** Section 39305 continues former Health and Safety Code Section 42351.5 without substantive change.

#### **§ 39306. Emergency variance**

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39306. (a) Notwithstanding any other provision of this chapter or of Article 2 (commencing with Section 32550) of Chapter 3 of Title 1 of Part 3, the chairman of a district hearing board, or any other member of the hearing board designated thereby, may issue, without notice and hearing, an emergency variance to an applicant.

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

(c) An emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 32554 or 39304.

**Comment.** Section 39306 continues former Health and Safety Code Section 42359.5 without substantive change. The former undesignated paragraph has been designated as subdivision (c).

#### **§ 39307. Fee schedule**

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39307. (a) The district board may adopt, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this chapter and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility.

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

**Comment.** Section 39307 continues former Health and Safety Code Section 42364 without substantive change.

Article 2. Nature of Variance

**§ 39350. Prohibited variances**

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39350. (a) If the district board has established a permit system by regulation pursuant to Section 38750, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

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

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

**Comment.** Section 39350 continues former Health and Safety Code Section 42350(b) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42350(b) now apply to this section. See, e.g., Senate J. 1997-98 Reg. Sess., p. 12.

**§ 39351. Findings required for grant of variance**

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39351. No variance shall be granted unless the hearing board makes all of the following findings:

(a) That the petitioner for a variance is, or will be, in violation of Section 37602 or of any rule, regulation, or order of the district.

(b) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this subdivision, “essential public service” means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

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

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

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

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

**Comment.** Section 39351 continues former Health and Safety Code Section 42352(a) without substantive change. Former Health and Safety Code Section 42352(b) is continued in substance in Section 75 (“public agency” defined).

**§ 39352. Sufficiency of evidence supporting findings**

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39352. The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 39351 or subdivision (b) of Section 39452, shall consider, in addition to any other relevant factors, both of the following:

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

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

**Comment.** Section 39352 continues former Health and Safety Code Section 42352.5(a) without substantive change.

### **§ 39353. Sufficiency of evidence in relation to petition of small business**

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39353. (a) As used in this section, “small business” has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(b) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in Section 39352 in the following manner:

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

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

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

**Comment.** Section 39353 continues former Health and Safety Code Section 42352.5(b) without substantive change.

### **§ 39354. Additional requirements for variance**

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39354. Upon making the specific findings set forth in Section 39351, the hearing board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 37600.

**Comment.** Section 39354 continues former Health and Safety Code Section 42353 without substantive change.

### **§ 39355. Basis for additional requirements**

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39355. In prescribing other and different requirements, in accordance with Section 39354, the hearing board, insofar as is consonant with the Legislature’s declarations in Sections 30000 and 30001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air

1 contaminants and the disadvantages to any otherwise lawful business, occupation, or  
2 activity involved, resulting from requiring compliance with the requirements.

3 **Comment.** Section 39355 continues former Health and Safety Code Section 42354 without  
4 substantive change.

#### 5 **§ 39356. Bond requirement**

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6 39356. (a) The hearing board may require, as a condition of granting a variance, that a  
7 bond be posted by the party to whom the variance was granted to assure performance of  
8 any construction, alteration, repair, or other work required by the terms and conditions of  
9 the variance. The bond may provide that, if the party granted the variance fails to perform  
10 the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or  
11 the sureties shall have the option of promptly remedying the variance default or paying to  
12 the district an amount, up to the amount specified in the bond, that is necessary to  
13 accomplish the work specified as a condition of the variance.

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

17 **Comment.** Section 39356 continues former Health and Safety Code Section 42355 without  
18 change. See the Bond and Undertaking Law. Code Civ. Proc. §§ 995.010-996.510.

#### 19 **§ 39357. Effective period of order**

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20 39357. (a) The hearing board, in making any order permitting a variance, shall specify  
21 the time during which the order shall be effective, in no event, except as otherwise  
22 provided in subdivision (b), to exceed one year, and shall set a final compliance date.

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

27 **Comment.** Section 39357 continues former Health and Safety Code Section 42358 without  
28 substantive change.

#### 29 **§ 39358. Effect of inclusion of issuing district in regional district**

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30 39358. Any variance granted by the hearing board of a county district or a unified  
31 district, or any member of a hearing board pursuant to Section 39306, applicable in an area  
32 which subsequently becomes included within a regional district, including the bay district,  
33 shall remain valid for the time specified therein or for one year, whichever is shorter, or,  
34 unless prior to the expiration of that time, the hearing board of the regional district modifies  
35 or revokes the variance.

36 **Comment.** Section 39358 continues former Health and Safety Code Section 42361 without  
37 substantive change.

### 38 **Article 3. Modification or Revocation**

#### 39 **§ 39400. Modification or revocation of variance**

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40 39400. The hearing board may modify or revoke, by written order, any order permitting  
41 a variance.

1     **Comment.** Section 39400 continues former Health and Safety Code Section 42356 without  
2 change.

3     **§ 39401. Modification of schedule of increments of progress**

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4     39401. The hearing board may review and for good cause, such as a change in the  
5 availability of materials, equipment, or adequate technology, modify a schedule of  
6 increments of progress or a final compliance date in the schedule.

7     **Comment.** Section 39401 continues former Health and Safety Code Section 42357 without  
8 change.

9     **§ 39402. Modification or revocation by state board**

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10    39402. The state board may revoke or modify any variance granted by any district if, in  
11 its judgment, the variance does not require compliance with a required schedule of  
12 increments of progress or emission standards as expeditiously as practicable, or the  
13 variance does not meet the requirements of this chapter.

14    **Comment.** Section 39402 continues former Health and Safety Code Section 42362 without  
15 substantive change.

16    **§ 39403. Hearing required for modification or revocation by state board**

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17    39403. Prior to revoking or modifying a variance pursuant to Section 39402, the state  
18 board shall conduct a hearing pursuant to Chapter 3 (commencing with Section 32500) of  
19 Title 1 of Part 3 on the matter. The person to whom the variance was granted shall be given  
20 immediate notice of the hearing by the hearing board, and shall be afforded an opportunity  
21 to appear at the hearing, to call and examine witnesses, and to otherwise partake as if the  
22 person were a party to the hearing.

23    **Comment.** Section 39403 continues former Health and Safety Code Section 42363 without  
24 substantive change.

25                                   **CHAPTER 6. PRODUCT VARIANCES**

26    **§ 39450. Petition by product manufacturer**

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27    39450. Any person who manufactures a product may petition the hearing board for a  
28 product variance from a rule or regulation of the district pursuant to this chapter.

29    **Comment.** Section 39450 continues former Health and Safety Code Section 42365 without  
30 substantive change.

31    **§ 39451. Availability of product variance**

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32    39451. A product variance is only available if, to provide effective relief, the variance is  
33 required to be granted for, and attached to, a particular product, as distinguished from the  
34 variance that may be granted to an individual petitioner pursuant to Section 39351. A  
35 product variance shall be granted only when a product does not comply with district rules  
36 or regulations and the variance is necessary for the sale, supply, distribution, or use of the  
37 product.

38    **Comment.** Section 39451 continues former Health and Safety Code Section 42366 without  
39 substantive change.

1    **§ 39452. Findings required for grant of product variance**

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2       39452. No product variance shall be granted unless the hearing board makes all of the  
3 following findings:

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

7       (b) Due to conditions beyond the reasonable control of the petitioner, requiring  
8 compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2)  
9 the practical closing and elimination of a lawful business.

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

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

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

17      **Comment.** Section 39452 continues former Health and Safety Code Section 42368(a)  
18 without substantive change.

19    **§ 39453. Notice of conditions on grant of product variance**

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20       39453. (a) If the product variance is granted subject to conditions on the use of the  
21 product, within 10 days from the effective date of the variance, and for the duration of the  
22 time period of the variance, the petitioner shall cause a written notice to be furnished to any  
23 retailer, distributor, and purchaser of the product who is located within the district. The  
24 written notice shall be, attached to, or otherwise accompany, the product, and shall include  
25 all of the following information:

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

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

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

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

33      **Comment.** Section 39453 continues former Health and Safety Code Section 42368(b)-(c)  
34 without substantive change.

35    **§ 39454. Additional requirements for product variance**

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36       39454. The district hearing board may prescribe requirements or conditions in the  
37 product variance that are applicable to the product, other than those imposed by statute or  
38 by any rule, regulation, or order of the district board, if those requirements or conditions  
39 are not more onerous.

40      **Comment.** Section 39454 continues former Health and Safety Code Section 42368(d)  
41 without substantive change.

42    **§ 39455. Prohibited variances**

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43       39455. (a) No product variance shall be granted if the use of the product under the  
44 variance will result in a violation of Section 37600.

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



(c) No product variance shall be granted pursuant to this chapter from a requirement for a permit to build, erect, alter, or replace any article, machine, equipment, or other contrivance pursuant to Section 38750.

**Comment.** Subdivisions (a) and (b) of Section 39455 continue former Health and Safety Code Section 42369 without substantive change. Subdivision (c) continues former Health and Safety Code Section 42367 without substantive change

#### **§ 39456. Effect of variance**

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39456. If the product variance is granted and the product is in compliance with subdivisions (a) of Section 39453 and Section 39454, the petitioner may manufacture, and any person may distribute, offer for sale, sell, apply, solicit the application of, or use the product under the conditions set forth in the product variance.

**Comment.** Section 39456 continues former Health and Safety Code Section 42370 without substantive change.

#### **§ 39457. Sections applicable to granting of variances**

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39457. Sections 39301, 39302, 39304, 39305, 39307, 39352, 39353, 39355, 39356, and 39400 to 39403, inclusive, shall apply to the granting of product variances pursuant to this chapter.

**Comment.** Section 39457 continues former Health and Safety Code Section 42371 without substantive change.

#### **§ 39458. Effective period of variance**

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39458. (a) The hearing board, in making any order permitting a product variance, shall specify the time during which the order shall be effective, which, except as provided in subdivision (b), shall not exceed one year, and shall set a final compliance date.

(b) A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Sections 39452 to 39454, inclusive.

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

**Comment.** Section 39458 continues former Health and Safety Code Section 42372 without substantive change.

## CHAPTER 7. PENALTIES

### Article 1. General Provisions

#### **§ 39500. Application of article**

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39500. Except as provided in Section 39606, this chapter is not applicable to vehicular sources.

**Comment.** Section 39500 continues former Health and Safety Code Section 42407 without substantive change.

#### **§ 39501. Determining separate offenses**

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39501. Each day during any portion of which a violation occurs constitutes a separate offense.

**Comment.** Section 39501 continues former Health and Safety Code Sections 42400(e), 42400.1(c), 42400.2(e), 42400.3(c), 42400.4(d), 42402(c), 42402.1(c), 42402.2(d), and 42402.3(b) without substantive change.

#### **§ 39502. Limitation on enforcement for single offense**

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39502. The recovery of civil penalties pursuant to Section 39601, 39602, 39603, or 39604 precludes prosecution pursuant to Article 2 (commencing with Section 39550) for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this chapter for the same offense.

**Comment.** Section 39502 continues former Health and Safety Code Sections 42400(d), 42400.1(d), 42400.2(f), 42400.3(b), and 42400.4(c) without substantive change.

#### **§ 39503. Costs of putting out unauthorized open outdoor fires**

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39503. In addition to the penalties specified in Sections 39550 and 39551 the cost of putting out any unauthorized open outdoor fires may be imposed on any person violating Section 37900 or 38100.

**Comment.** Section 39503 continues former Health and Safety Code Section 42400.5 without substantive change.

#### **§ 39504. List of potential violations**

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39504. Every district shall publish in writing and make available to any interested party a list which describes potential violations subject to penalties under this chapter. The list shall also include the minimum and maximum penalties for each violation which may be assessed by a district pursuant to this chapter.

**Comment.** Section 39504 continues former Health and Safety Code Section 42409 without substantive change.


#### **§ 39505. Collection of fines and penalties also applicable under Business and Professions Code**

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39505. A fine or monetary penalty specified in Section 31600; 39550 to 39552, inclusive, or 39601; or subdivision (a) of Section 45201, that may be imposed as the result of conduct that is also subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, may be collected either under those

provisions of this code, or under that chapter of the Business and Professions Code, but not under both.

**Comment.** Section 39505 continues former Health and Safety Code Section 42400.6 without substantive change.

 **Note.** Health and Safety Code Section 42400.6 refers to a fine or monetary penalty specified in “subdivision (a), (b), (d), or (e) of Section 42400.” Subdivisions (d) and (e) do not specify penalties and so the reference to these subdivisions has not been continued. Subdivision (c) of Health and Safety Code Section 42400 does specify a monetary penalty and has been added to the range of provisions referenced.

## Article 2. Criminal Penalties

### **§ 39550. Violation of requirement of this part**

39550. (a) Except as otherwise provided in Section 39552, 39553, 39554, or 39555, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, 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.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

**Comment.** Section 39550 continues former Health and Safety Code Section 42400(a)-(b) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 42400 now apply to this section. See, e.g., Assembly J. 1993-94 Reg. Sess., p. 4620.

### **§ 39551. Knowing violation and knowing misrepresentations**

39551. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any

1 monitoring device required by that toxic air contaminant rule, regulation, or permit is guilty  
2 of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000)  
3 or imprisonment in the county jail for not more than six months, or both.

4 (c) Subdivisions (a) and (b) apply only to violations that are not otherwise subject to a  
5 fine of ten thousand dollars (\$10,000) or more pursuant to Section 39552, 39553, or  
6 39554.

7 **Comment.** Section 39551 continues former Health and Safety Code Section 42400(c)  
8 without substantive change. Statements of legislative intent applicable to former Health and  
9 Safety Code Section 42400 now apply to this section. See, e.g., Assembly J. 1993-94 Reg.  
10 Sess., p. 4620.

#### 11 **§ 39552. Negligent emission of air contaminant**

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12 39552. (a) Any person who negligently emits an air contaminant in violation of any  
13 provision of this part or any rule, regulation, permit, or order of the state board or of a  
14 district pertaining to emission regulations or limitations is guilty of a misdemeanor and is  
15 subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the  
16 county jail for not more than nine months, or both.

17 (b) Any person who owns or operates any source of air contaminants in violation of  
18 Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of  
19 Section 39553, to the health or safety of a considerable number of persons or the public is  
20 guilty of a misdemeanor and is punishable as provided in subdivision (a).

21 **Comment.** Section 39552 continues former Health and Safety Code Section 42400.1(a)-  
22 (b) without substantive change.

#### 23 **§ 39553. Knowing emission of air contaminant and knowing misrepresentation**

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24 39553. (a) Any person who emits an air contaminant in violation of any provision of this  
25 part, or any order, rule, regulation, or permit of the state board or of a district pertaining to  
26 emission regulations or limitations, and who knew of the emission and failed to take  
27 corrective action within a reasonable period of time under the circumstances, is guilty of a  
28 misdemeanor and is subject to a fine of not more than twenty-five thousand dollars  
29 (\$25,000) or imprisonment in the county jail for not more than one year, or both.

30 (b) For purposes of this section, “corrective action” means the termination of the  
31 emission violation or the grant of a variance from the applicable order, rule, regulation, or  
32 permit pursuant to Chapter 5 (commencing with Section 39300). If a district regulation  
33 regarding process upsets or equipment breakdowns would allow continued operation of  
34 equipment which is emitting air contaminants in excess of allowable limits, compliance  
35 with that regulation is deemed to be corrective action.

36 (c) Any person who, knowingly and with intent to deceive, falsifies any document  
37 required to be kept pursuant to any provision of this part, or any rule, regulation, permit,  
38 notice to comply, or order of the state board or of a district, is guilty of a misdemeanor and  
39 is punishable as provided in subdivision (a).

40 (d)(1) Any person who owns or operates any source of air contaminants in violation of  
41 Section 37600 which causes actual injury to the health or safety of a considerable number  
42 of persons or the public, and who knew of the emission and failed to take corrective action  
43 within a reasonable period of time under the circumstances, is guilty of a misdemeanor and  
44 is punishable as provided in subdivision (a).

45 (2) As used in this subdivision, “actual injury” means any physical injury which, in the  
46 opinion of a licensed physician and surgeon, requires medical treatment involving more  
47 than a physical examination.

1     **Comment.** Section 39553 continues former Health and Safety Code Section 42400.2(a)-  
2 (d) without substantive change.

3     **§ 39554. Willful and intentional emission of air contaminant**

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4     39554. Any person who willfully and intentionally emits an air contaminant in violation  
5 of any provision of this part or any rule, regulation, permit, or order of the state board or of  
6 a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is  
7 subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the  
8 county jail for not more than one year, or both.

9     **Comment.** Section 39554 continues former Health and Safety Code Section 42400.3(a)  
10 without substantive change.

11    **§ 39555. Violation of Title V permit requirement**

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12     39555. (a) In any district where a Title V permit program has been fully approved by the  
13 Environmental Protection Agency, any person who knowingly violates any federally  
14 enforceable permit condition or any fee or filing requirement applicable to a Title V source  
15 is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars  
16 (\$10,000).

17     (b) In any district in which a Title V permit program has been fully approved by the  
18 Environmental Protection Agency, any person who knowingly makes any false material  
19 statement, representation, or certification in any form or in any notice or report required of  
20 a Title V source of a federally enforceable permit requirement, or who knowingly renders  
21 inaccurate any monitoring device or method required of a Title V source, is guilty of a  
22 misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

23     (c) This section shall not become operative in a district until the Environmental Protection  
24 Agency fully approves that district's Title V permit program.

25     (d) This section applies only to violations described in subdivisions (a) and (b) that are  
26 not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to  
27 Section 39552, 39553, or 39554.

28     **Comment.** Subdivisions (a) and (b) of Section 39555 continue former Health and Safety  
29 Code Section 42400.4(a)-(b) without substantive change. Subdivisions (a) and (c) continue  
30 former Health and Safety Code Section 42400.4(e)-(f) without substantive change.  
31 Statements of legislative intent applicable to former Health and Safety Code Section 42400.4  
32 now apply to this section. See, e.g., Assembly J. 1993-94 Reg. Sess., p. 4620.

33    **§ 39556. Tampering with monitoring equipment**

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34     39556. (a) Any person who tampers with any ambient air monitoring equipment,  
35 including related recording equipment, owned or operated by a county, unified or regional  
36 air pollution control district, air quality management district, or by the State of California, is  
37 guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering  
38 to the owner or operator of the equipment.

39     (b) For purposes of this section, "tampering" means any unauthorized, intentional  
40 touching or other conduct affecting the operational status of monitoring equipment which  
41 has the potential to invalidate data collected from the monitoring activity.

42     **Comment.** Section 39556 continues former Health and Safety Code Section 42408 without  
43 change.



Article 3. Civil Penalties

**§ 39600. Violation of order of abatement**

39600. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 39751, by a hearing board pursuant to Section 39752, or by the state board pursuant to Section 37201 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

**Comment.** Section 39600 continues former Health and Safety Code Section 42401 without substantive change.

**§ 39601. Violation of requirement of this part**

39601. (a) Except as otherwise provided in subdivision (b) or in Section 39602, 39603, or 39604, any person who violates this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars (\$1,000).


(b)(1) Any person who violates any provision of this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2)(A) If a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(B) Subparagraph (A) does not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program adopted by a district pursuant to Section 31151.

**Comment.** Section 39601 continues former Health and Safety Code Section 42402(a)-(b) without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 42402 now apply to this section. See, e.g., 1981 Cal. Stat. ch. 1127, § 1 (legislative findings and intent).

 **Note.** As currently drafted, this section is difficult to understand. Nor is there any published case law or state agency regulations to shed light on the section's meaning. The Commission proposes redrafting the section to make it clearer without changing its substance, and would like to receive input on whether the language set out below accomplishes that goal:

39601. (a) Except as otherwise provided in subdivision (b) or in Section 39602, 39603, or 39604, any person who violates this part, any order issued pursuant to Section 38656, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 30000) to Part 4 (commencing with Section 37000), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).



(b) The civil penalty for a violation subject to subdivision (a) shall not be more than one thousand dollars (\$1,000) if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(c) Subdivision (b) does not apply to either of the following:

(1) A violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(2) A person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program adopted by a district pursuant to Section 31451.

#### **§ 39602. Negligent emission of air contaminant**

---

39602. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 39553, to the health or safety of a considerable number of persons or the public is liable for a civil penalty as provided in subdivision (a).

**Comment.** Section 39602 continues former Health and Safety Code Section 42402.1(a)-(b) without substantive change.

#### **§ 39603. Knowing emission of air contaminant**

---

39603. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 39553, within a reasonable period of time under the circumstances, is liable for a civil penalty, of not more than twenty-five thousand dollars (\$25,000).

(b) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, is subject to the same civil penalty as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 37600 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 39553, to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 39553, within a reasonable period of time under the circumstances, is subject to a civil penalty as provided in subdivision (a).

**Comment.** Section 39603 continues former Health and Safety Code Section 42402.2(a)-(c) without substantive change.

#### **§ 39604. Willful and intentional emission of air contaminant**

---

39604. Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

1     **Comment.** Section 39604 continues former Health and Safety Code Section 42402.3(a)  
2 without substantive change. Statements of legislative intent applicable to former Health and  
3 Safety Code Section 42402.3 now apply to this section. See, e.g., Assembly J. 1993-94 Reg.  
4 Sess., p. 4620.

#### 5     **§ 39605. Administrative civil penalties**

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6     39605. In addition to any civil and criminal penalties prescribed under this chapter, a  
7 district may impose administrative civil penalties for a violation of this part, or any order,  
8 permit, rule, or regulation of the state board or of a district, including a district hearing  
9 board, adopted pursuant to Part 1 (commencing with Section 30000) to Part 4  
10 (commencing with Section 37000), inclusive, if the district board has adopted rules and  
11 regulations specifying procedures for the imposition and amounts of these penalties. No  
12 administrative civil penalty levied pursuant to this section may exceed five hundred dollars  
13 (\$500) for each violation. However, nothing in this section is intended to restrict the  
14 authority of a district to negotiate mutual settlements under any other penalty provisions of  
15 law which exceed five hundred dollars (\$500).

16     **Comment.** Section 39605 continues former Health and Safety Code Section 42402.5  
17 without substantive change.

18     ☞ **Note.** Unlike other sections in this Chapter establishing penalties, Health and Safety  
19 Code Section 42402.5 does not contain a provision providing that each day in which a  
20 violation occurs constitutes a separate offense. The Commission has added a generally-  
21 applicable provision to that effect. See proposed Section 39501. It appears that application of  
22 Section 39501 to this section would change this section slightly. The Commission would like  
23 to receive input on whether such a change would be beneficial or harmful. If it is harmful,  
24 this section can be exempted from the application of Section 39501.

#### 25     **§ 39606. Diesel-powered bus idling**

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26     39606. (a) Notwithstanding Section 39500, any violation of Section 37600 resulting  
27 from the engine of any diesel-powered bus while idling shall subject the owner to civil  
28 penalties assessed under this chapter, which may be recovered pursuant to Section 39650  
29 by the Attorney General, by any district attorney, or by the attorney for any district in  
30 which the violation occurs in any court of competent jurisdiction.

31     (b) There is no liability under subdivision (a) if the person accused of the violation  
32 establishes by affirmative defense that the extent of the harm caused does not exceed the  
33 benefit accrued to bus passengers as a result of idling the engine.

34     **Comment.** Section 39606 continues former Health and Safety Code Section 42403.5  
35 without substantive change.

### 36                     Article 4. Procedure for Recovery of Civil Penalties

#### 37     **§ 39650. Action for civil penalties**

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38     39650. (a) The civil penalties prescribed in Sections 31600, 39600, 39601, 39602,  
39 39603, and 39604 shall be assessed and recovered in a civil action brought in the name of  
40 the people of the State of California by the Attorney General, by any district attorney, or by  
41 the attorney for any district in which the violation occurs in any court of competent  
42 jurisdiction.

(b) In determining the amount assessed, the court, or in reaching any settlement, the district, shall take into consideration all relevant circumstances, including, but not limited to, the following:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.

**Comment.** Section 39650 continues former Health and Safety Code Section 42403 without substantive change.

#### **§ 39651. Precedence of action on court calendar**

---

39651. An action brought pursuant to Section 39650 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 39651 continues former Health and Safety Code Section 42404 without substantive change.

#### **§ 39652. Time limitation**

---

39652. Any limitation of time applicable to actions brought pursuant to Section 39650 shall not commence to run until the offense has been discovered, or could reasonably have been discovered.

**Comment.** Section 39652 continues former Health and Safety Code Section 42404.5 without substantive change.

#### **§ 39653. Disposition of penalty**

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39653. (a) In an action brought pursuant to Section 39650 by the Attorney General on behalf of a district, one-half of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered, and one-half of the penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

(b) If the action is brought by the Attorney General on behalf of the state board, the entire penalty collected shall be paid to the State Treasurer for deposit in the General Fund.

(c) If the action is brought by a district attorney or by an attorney for a district, the entire amount of the penalty collected shall be paid to the treasurer of the district on whose behalf judgment was entered.

**Comment.** Section 39653 continues former Health and Safety Code Section 42405 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

#### **§ 39654. Reward for information resulting in penalty**

---

39654. (a) Any person who provides information which materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted

1 by the district under subdivision (f). The reward shall not exceed 10 percent of the amount  
2 of the civil penalty or criminal fine collected by the district, district attorney, or city  
3 attorney. The district shall pay the reward to the person who provides information which  
4 results in the imposition of a civil penalty, and the city or the county shall pay the reward to  
5 the person who provides information which results in the imposition of a criminal fine. No  
6 reward paid pursuant to this subdivision shall exceed five thousand dollars (\$5,000).

7 (b) No informant shall be eligible for a reward for a violation known to the district,  
8 unless the information materially contributes to the imposition of criminal or civil penalties  
9 for a violation specified in this section.

10 (c) If there is more than one informant for a single violation, the first notification received  
11 by the district shall be eligible for the reward. If the notifications are postmarked on the  
12 same day or telephoned notifications are received on the same day, the reward shall be  
13 divided equally among those informants.

14 (d) Public officers and employees of the United States, the State of California, or  
15 districts, counties, and cities in California are not eligible for the reward pursuant to  
16 subdivision (a), unless reporting of those violations does not relate in any manner to their  
17 responsibilities as public officers or employees.

18 (e) An informant who is an employee of a business and who provides information that  
19 the business violated this part is not eligible for a reward if the employee intentionally or  
20 negligently caused the violation or if the employee's primary and regular responsibilities  
21 included investigating the violation, unless the business knowingly caused the violation.

22 (f) The district shall adopt regulations which establish procedures for a determination of  
23 the accuracy and validity of information provided and for the receipt and review of claims  
24 for payment of rewards. All decisions concerning the eligibility for a reward and the  
25 materiality of the provided information shall be made pursuant to these regulations. In each  
26 case brought under subdivision (a), the district, the office of the city attorney, or the district  
27 attorney, whichever office brings the action, shall determine whether the information  
28 materially contributed to the imposition of civil or criminal penalties for violating any  
29 provision of this part or any rule, regulation, or order of a district pertaining to emission  
30 regulations or limitations.

31 (g) The district shall continuously publicize the availability of the rewards pursuant to this  
32 section for persons who provide information pursuant to this section.

33 (h) Claims may be submitted only for those referrals made on or after January 1, 1989.

34 **Comment.** Section 39654 continues former Health and Safety Code Section 42405.1  
35 without change.

36 ☞ **Note.** Subdivision (e) of Health and Safety Code Section 42405.1 refers to violation of  
37 the "chapter." This seems erroneous. Section 42405 is contained in the enforcement  
38 chapter. It seems more appropriate to refer to violation of the part, given that other chapters  
39 of this part contain substantive provisions that can be violated.

#### 40 **§ 39655. Reimbursement of agencies assisting in actions to recover civil penalties**

---

41 39655. (a) If any state or local government agency provides assistance in the  
42 investigation, data collection, or monitoring, preparation, or prosecution of an action to  
43 recover civil penalties pursuant to Section 39600, 39601, 39602, or 39603, and that  
44 assistance is provided in coordination with the state board or a district prosecuting the  
45 action, that agency shall be reimbursed out of the proceeds of the penalty collected for its  
46 costs and expenses incurred in providing the assistance.

47 (b) If the penalty collected is insufficient to fully reimburse the state board or district for  
48 the costs and expenses incurred in preparing and prosecuting the case and another agency

1 or agencies for the costs and expenses incurred in assisting in the case, the amount  
2 collected shall be prorated among the state board or district and the assisting agency or  
3 agencies, on the basis of costs and expenses incurred by each.

4 (c) This section does not apply where there is an express agreement between the state  
5 board or district and another agency or agencies regarding reimbursement for assistance  
6 services and expenses.

7 **Comment.** Section 39655 continues former Health and Safety Code Section 42405.5  
8 without substantive change.

#### 9 **§ 39656. Lien on vessel**

---

10 39656. To secure a civil penalty imposed pursuant to this chapter on the operation of a  
11 vessel, the district shall have a lien on the vessel which may be recovered in an action  
12 against the vessel in accordance with the provisions of Article 3 (commencing with Section  
13 490), Chapter 2, Division 3 of the Harbors and Navigation Code, except that no  
14 undertaking shall be required to be filed by the district board as a condition to the issuance  
15 of a writ of attachment.

16 **Comment.** Section 39656 continues former Health and Safety Code Section 42406 without  
17 substantive change.

### 18 **CHAPTER 8. COMPLIANCE PROGRAMS**

#### 19 **§ 39700. Legislative findings and declarations**

---

20 39700. The Legislature hereby finds and declares as follows:

21 (a) District enforcement programs should be prioritized to ensure that the imposition of  
22 civil and criminal penalties is commensurate with the severity of the violation.

23 (b) Districts shall endeavor to establish, where appropriate, alternatives to civil or  
24 criminal penalties for those circumstances in which the violation neither contributes to, nor  
25 potentially conceals, an emission that significantly contributes to unhealthful air quality.

26 **Comment.** Section 39700 continues former Health and Safety Code Section 42420 without  
27 change.

#### 28 **§ 39701. Elements of compliance program**

---

29 39701. Each district which has a population of one million or more shall establish a  
30 compliance program that shall consist of all of the following elements:

31 (a) Procedures to ensure the consistent issuance of notices of compliance and notices of  
32 violations.

33 (b) A compliance assistance program to provide information to small businesses with  
34 regard to statutes and district rules and regulations to which they are subject and to assist  
35 them in identifying the most efficient and least costly means of complying with those  
36 statutes and rules and regulations.

37 (c) Settlement agreement procedures whereby persons who are in violation of those  
38 statutes or district rules or regulations may agree to take actions to improve air quality in  
39 lieu of paying monetary fines or penalties.

40 **Comment.** Section 39701 continues former Health and Safety Code Section 42421 without  
41 change.



CHAPTER 9. ORDERS FOR ABATEMENTS

**§ 39750. Application of article**

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39750. This chapter applies to any order for abatement issued pursuant to a determination made under Section 39008.

**Comment.** Section 39750 continues former Health and Safety Code Section 42450.1 without substantive change.

**§ 39751. Issuance by district board**

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39751. (a) The district board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 37600 or 37602 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

(b) In holding the hearing, the district board shall be vested with all the powers and duties of the hearing board. Notice shall be given, and the hearing shall be held, pursuant to Chapter 3 (commencing with Section 32500) of Title 1 of Part 3.

**Comment.** Section 39751 continues former Health and Safety Code Section 42450 without substantive change. The former undesignated paragraphs have been designated as subdivisions.

**§ 39752. Issuance by hearing board**

---

39752. (a) On its own motion, or upon the motion of the district board or the air pollution control officer, the hearing board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or is in violation of Section 37600 or 37602 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

(b) As an alternative to subdivision (a), the hearing board may issue an order for abatement pursuant to the stipulation of the air pollution control officer and the person or persons accused of constructing or operating any article, machine, equipment, or other contrivance without a permit required by this part, or of violating Section 37600 or 37602, or any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air, upon the terms and conditions set forth in the stipulation, without making the finding required under subdivision (a). The hearing board shall, however, include a written explanation of its action in the order for abatement.

**Comment.** Section 39752 continues former Health and Safety Code Section 42451 without substantive change.

**§ 39753. Nature of order**

---

39753. The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met.

**Comment.** Section 39753 continues former Health and Safety Code Section 42452 without change.



1   **§ 39754. Injunction on violation of order**

---

2       39754. A proceeding for mandatory or prohibitory injunction shall be brought by the  
3       district in the name of the people of the State of California in the superior court of the  
4       county in which the violation occurs to enjoin any person to whom an order for abatement  
5       pursuant to Section 39753 has been directed and who violates that order.

6       **Comment.** Section 39754 continues former Health and Safety Code Section 42453 without  
7       substantive change.

8   **§ 39755. Injunction proceedings**

---

9       39755. (a) Proceedings under Section 39754 shall conform to the requirements of  
10       Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure,  
11       except that it shall not be necessary to show lack of adequate remedy at law or to show  
12       irreparable damage or loss.

13       (b) If, in any such proceeding, it shall be shown that an order for abatement has been  
14       made, that it has become final, and that its operation has not been stayed, it shall be  
15       sufficient proof to warrant the granting of a preliminary injunction.

16       (c) If, in addition, it shall be shown that the respondent continues, or threatens to  
17       continue, to violate the order for abatement, it shall be sufficient proof to warrant the  
18       immediate granting of a temporary restraining order.

19       **Comment.** Section 39755 continues former Health and Safety Code Section 42454 without  
20       substantive change. The former undesignated paragraphs have been designated as  
21       subdivisions.

22                                   **TITLE 8. MONITORING DEVICES**

23   **§ 39800. Legislative findings and declaration**

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24       39800. (a) The Legislature hereby finds and declares that stationary sources of air  
25       pollution are known to emit significant amounts of pollutants into the air, but that existing  
26       sampling techniques are not sufficiently precise to permit accurate measurement. The  
27       Legislature further finds and declares that more accurate data will improve the design of  
28       strategies for the control of pollutants in the most cost-effective manner.

29       (b) The Legislature further finds and declares that public complaints about excessive  
30       emissions from stationary sources are difficult or impossible to evaluate in the absence of  
31       adequate means of monitoring emissions on a continuing basis. The Legislature further  
32       finds and declares that, although the state board and the districts are authorized under  
33       Sections 37002 and 38802 to require stationary sources of air contaminants to install and  
34       operate monitoring devices to measure and record continuously the emissions concentration  
35       and amount of any specified pollutant, many districts have failed to exercise that authority.

36       (c) The Legislature further finds and declares that all districts, especially the bay district,  
37       the districts located, in whole or part, within the South Coast Air Basin, and the San Diego  
38       County Air Pollution Control District, should be encouraged to require that monitoring  
39       devices be installed in each stationary source of air contaminants that emits into the  
40       atmosphere 100 tons or more each year of nonmethane hydrocarbons, oxides of nitrogen,  
41       oxides of sulfur, reduced sulfur compounds, or particulate matter or 1,000 tons or more  
42       each year of carbon monoxide.

43       (d) The Legislature further finds and declares that, pursuant to Sections 31150 to 31156,  
44       inclusive, the south coast district has required the installation of a substantial number of  
45       monitoring devices and the installation and use of strip chart recorders for compliance

1 purposes. However, electronic or computer data capture and storage is generally less costly  
2 and may have the capability to provide greater data availability with the same degree of  
3 security.

4 (e) To encourage the districts to take actions to monitor emissions of stationary sources  
5 as described in this section, the state board shall determine the availability, technological  
6 feasibility, and economic reasonableness of monitoring devices for those stationary sources  
7 as provided by Section 39801.

8 (f) To make emissions data available to the public and to minimize burdens on the private  
9 sector, the districts shall allow stationary sources the option of using electronic or computer  
10 data storage for purposes of compliance with Sections 31150 to 31156, inclusive.


11 **Comment.** Section 39800 continues former Health and Safety Code Section 42700 without  
12 substantive change. Statements of legislative intent applicable to former Health and Safety  
13 Code Section 42700 now apply to this section. See, e.g., Senate J. 1997-98 Reg. Sess., p. 12.

14 **§ 39801. Determination of availability, technological feasibility and economic**  
15 **reasonableness**

---

16 39801. For the purposes of Sections 37002 and 38802, the state board shall determine  
17 the availability, technological feasibility, and economic reasonableness of monitoring  
18 devices to measure and record continuously the emissions concentration and amount of  
19 nonmethane hydrocarbons, oxides of nitrogen, oxides of sulfur, reduced sulfur  
20 compounds, particulate matter, and carbon monoxide emitted by stationary sources. The  
21 determination shall be made for stationary sources which emit these contaminants in the  
22 quantities set forth in Section 39800, and may be made for stationary sources which emit  
23 lesser amounts. The state board shall complete an initial review of submitted devices by  
24 June 1, 1975.

25 **Comment.** Section 39801 continues former Health and Safety Code Section 42701 without  
26 substantive change.

27  **Note.** This section specifies a deadline for the completion of an initial review. This  
28 deadline provision may be obsolete. The Commission would like to receive input on two  
29 questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful  
30 purpose?

31 **§ 39802. Specification of types of stationary sources, processes and contaminants**

---

32 39802. The state board shall specify the types of stationary sources, processes, and the  
33 contaminants, or combinations thereof, for which a monitoring device is available,  
34 technologically feasible, and economically reasonable. The specification may be by any  
35 technologically based classification, including on an industrywide basis or by individual  
36 stationary source, by air basin, by district, or any other reasonable classification.

37 **Comment.** Section 39802 continues former Health and Safety Code Section 42702 without  
38 substantive change.

39 **§ 39803. Reimbursement of expenses of determination by manufacturer**

---

40 39803. The state board shall require the manufacturer of any monitoring device submitted  
41 for a determination to reimburse the state board for its actual expenses incurred in making  
42 the determination, including, where applicable, its contract expenses for testing and review.

43 **Comment.** Section 39803 continues former Health and Safety Code Section 42703 without  
44 change.

1   **§ 39804. Revocation or modification of determination of availability**

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2       39804. After the state board has made a determination of availability, the state board  
3 may, as appropriate, revoke or modify its prior determination of availability if  
4 circumstances beyond the control of the state board, or of a stationary source required to  
5 install a monitoring device, cause a substantial delay or impairment in the availability of the  
6 device or cause the device no longer to be available.

7       **Comment.** Section 39804 continues former Health and Safety Code Section 42704 without  
8 change.

9   **§ 39805. Records**

---

10       39805. Any stationary source required by the district in which the source is located to  
11 install and operate a monitoring device shall retain the records from the device for not less  
12 than two years and, upon request, shall make the records available to the state board and  
13 the district. The district shall allow the source the option of using electronic or computer  
14 data storage, as defined in Section 35870 and consistent with Section 36500, as a method  
15 of record retention. The source shall not be limited solely to the installation or maintenance  
16 of strip chart recorders.

17       **Comment.** Section 39805 continues former Health and Safety Code Section 42705 without  
18 substantive change. Statements of legislative intent applicable to former Health and Safety  
19 Code Section 42700 now apply to this section. See, e.g., Senate J. 1997-98 Reg. Sess., p. 12.

20   **§ 39806. Report of violation of emission standard**

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21       39806. Any violation of any emission standard to which the stationary source is required  
22 to conform, as indicated by the records of the monitoring device, shall be reported by the  
23 operator of the source to the district within 96 hours after the occurrence. The district shall,  
24 in turn, report the violation to the state board within five working days after receiving the  
25 report of the violation from the operator.

26       **Comment.** Section 39806 continues former Health and Safety Code Section 42706 without  
27 substantive change.

28   **§ 39807. Inspection**

---

29       39807. The air pollution control officer shall inspect, as the officer determines is  
30 necessary, the monitoring devices installed in every stationary source of air contaminants  
31 located within the officer's jurisdiction required to have monitoring devices to insure that  
32 the devices are functioning properly. The district may require reasonable fees to be paid by  
33 the operator of the source to cover the expense of the inspection and other related costs.

34       **Comment.** Section 39807 continues former Health and Safety Code Section 42707 without  
35 substantive change.

36   **§ 39808. Powers of local or regional authority**

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37       39808. This title shall not prevent any local or regional authority from adopting  
38 monitoring requirements more stringent than those set forth in this title or be construed as  
39 requiring the installation of monitoring devices on any stationary source or classes of  
40 stationary sources. This section shall not limit the authority of the state board to require the  
41 installation of monitoring devices pursuant to Title 1 (commencing with Section 37100).

42       **Comment.** Section 39808 continues former Health and Safety Code Section 42708 without  
43 substantive change.

PART 5. VEHICULAR AIR POLLUTION CONTROL

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS

**§ 40000. Legislative findings and declaration**

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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**

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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.

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

## 4                   CHAPTER 2. RESPONSIBILITY OF STATE BOARD

### 5     **§ 40100. Attainment of state standards at earliest practicable date**

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6     40100. The state board shall endeavor to achieve the maximum degree of emission  
7 reduction possible from vehicular and other mobile sources in order to accomplish the  
8 attainment of the state standards at the earliest practicable date.

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

### 11    **§ 40101. Emission reduction goals**

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12    40101. Not later than January 1, 1992, the state board shall take whatever actions are  
13 necessary, cost-effective, and technologically feasible in order to achieve, not later than  
14 December 31, 2000, a reduction in the actual emissions of reactive organic gases of at least  
15 55 percent, a reduction in emissions of oxides of nitrogen of at least 15 percent from motor  
16 vehicles. These reductions in emissions shall be calculated with respect to the 1987 baseline  
17 year. The state board also shall take action to achieve the maximum feasible reductions in  
18 particulates, carbon monoxide, and toxic air contaminants from vehicular sources.

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

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

### 24    **§ 40102. Adoption of standards and regulations**

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25    40102. (a) In carrying out this chapter the state board shall adopt standards and  
26 regulations which will result in the most cost-effective combination of control measures on  
27 all classes of motor vehicles and motor vehicle fuel, including, but not limited to, all of the  
28 following:

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

37    **Comment.** Section 40102 continues former Health and Safety Code Section 43018(c) &  
38 (e) without substantive change. Subdivision (f) of former Health and Safety Code Section  
39 43018 provided that amendments made to that section in the 1989-90 Regular Session of the  
40 Legislature were declaratory of then-existing law. This transitional provision has not been  
41 continued.



1    **§ 40103. Hearings and workshops**

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

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

31    **§ 40200. Legislative intent**

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

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

38    **§ 40201. Adoption of standards, regulations and specifications**

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

44    (b) The state board shall, consistent with subdivision (a), adopt standards and regulations  
45    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 substantive change.

#### **§ 40202. Farm equipment**

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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**

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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.

☞ **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 Commission 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**

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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**

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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**


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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 undesignated 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.

 **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**

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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**

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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**

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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**

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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**

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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

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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.

 **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 Commission 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 Commission would like to receive input on this question.

#### § 40502. Expenditure of funds by state board

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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, e.g., 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**

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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**

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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**

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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**

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



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

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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

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

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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.

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

6 (1) Notify the agency of its determination.

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

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

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

#### 21 **§ 40757. Time limitation on use of allocated funds**

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22 40757. Any agency which receives fee revenues pursuant to Sections 40750 to 40753,  
23 inclusive, or Section 40755 shall expend the funds within one year of the program or  
24 project completion date.

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

#### 27 **§ 40758. Trip reduction plans**

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28 40758. (a) For each school district that is required to submit a trip reduction plan to the  
29 south coast district, the south coast district shall waive any fee that would otherwise be  
30 imposed for the submission or review of a trip reduction plan or for the submission or  
31 review of any alternative compliance plan, and shall instead recover that amount from the  
32 funds collected by the south coast district pursuant to Sections 40750 to 40753, inclusive.

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

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

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

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

TITLE 3. REGULATION OF VEHICLE FUELS

CHAPTER 1. FUEL AND FUEL SYSTEMS

Article 1. Fuel

**§ 40800. Volatility of gasoline**

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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 substantive change.

**§ 40801. Volatility of gasoline and ethyl alcohol blend**

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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, e.g., 1988 Cal. Stat. ch. 1262, § 1  
12 (legislative determination).

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

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

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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 undesignated paragraphs have been designated as  
27 subdivisions.

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

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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 undesignated paragraphs have been designated as  
43 subdivisions.

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

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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**

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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 substantive change.

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

30                                   **Article 2. Fuel Systems**

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

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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



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

**Comment.** Section 40850 continues former Health and Safety Code Section 43835 without substantive change. The former undesignated paragraphs of subdivision (b) have been designated.

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

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

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

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

### Article 3. Fuel System Evaporative Loss Control Devices

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#### § 40900. Criteria for certification

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

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

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

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

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#### § 40901. Additional criteria

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

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

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#### § 40902. Limitation on mandated installation

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



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

3     **§ 40903. Standards and test procedures for certification**

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4     40903. (a) The state board may adopt, by regulation, standards and test procedures for  
5 the certification of fuel system evaporative loss control devices on new motor vehicles in  
6 the absence of any applicable federal regulations.

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

9     **Comment.** Section 40903 continues former Health and Safety Code Section 43824 without  
10 substantive change. The former undesignated paragraphs have been designated as  
11 subdivisions.

12    **§ 40904. Auxiliary gasoline fuel tank evaporative loss control devices**

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13    40904. (a) The state board shall establish standards or criteria for the certification of  
14 auxiliary gasoline fuel tank evaporative loss control devices or systems on vehicles which  
15 are required, pursuant to this part or the National Emission Standards Act (42 U.S.C.  
16 Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550), to be equipped with  
17 a fuel system evaporative loss control device to prevent as much evaporation of gasoline  
18 into the air from auxiliary fuel tanks as is technologically feasible.

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

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

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

34                                    CHAPTER 2. PENALTIES

35                                    Article 1. Standard Penalty Provisions

36    **§ 41000. Penalties**

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37    41000. (a) Any person who knowingly violates any regulation adopted pursuant to this  
38 part by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor and is  
39 subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the  
40 county jail for not more than six months, or both, for each violation.

41    (b) The recovery of civil penalties pursuant to Section 40300 precludes prosecution  
42 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**

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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.

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

#### **§ 41003. Analysis of sulfur content**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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 30858, regarding the issuance of any variance from gasoline specifications shall be based solely upon substantial evidence in the record of the variance proceeding.

**Comment.** Subdivision (a) of Section 41104 continues former Health and Safety Code Section 43013.2(e) without substantive change. Subdivision (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.** Subdivision (a) of Section 41105 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 substantive 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**

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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**

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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**

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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**

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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**

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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**

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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       ☞ **Note.** Health and Safety Code Section 43012(j) defines “tampering” and “disabling”  
33       for the purpose of that section. The Commission would like to receive input on whether the  
34       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**

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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**

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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**

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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**

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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 ISSUED.

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

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

#### 18 § 41407. Civil penalty for violation by dealer

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19 41407. (a) Civil penalties may be assessed or recovered for one or more violations by a  
20 dealer involving the tampering with or disabling of a vehicle’s air injection, exhaust gas  
21 recirculation, crankcase ventilation, fuel injection or carburetion systems, ignition timing or  
22 evaporative controls, fuel filler neck restrictor, oxygen sensor or electronic controls, or  
23 missing catalytic converter.

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

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

#### 35 § 41408. Referral for investigation

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36 41408. If the executive officer or authorized representative, upon inspection, finds that a  
37 certificate of compliance or noncompliance was issued to a motor vehicle that fails to  
38 comply with applicable emissions standards or equipment, the state board shall immediately  
39 refer these findings to the department for investigation under Title 5 (commencing with  
40 Section 42300). The state board may refer any other suspected violation to the department  
41 for appropriate action.

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

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

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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**

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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 undesignated paragraphs have been designated as  
21 subdivisions.

22   **§ 41501. Limitations on standards**

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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**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as  
22 subdivisions.

#### 23 **§ 41506. Certification of schoolbuses**

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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**

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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, e.g., 1986 Cal. Stat. ch. 511, § 1 (legislative findings  
41 and declarations).

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

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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

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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**

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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**

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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**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as  
32 subdivisions.

#### 33 **§ 41651. Surveillance testing fees**

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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**

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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**

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

Article 5. Manufacturer Reporting

**§ 41700. Decal disclosing exhaust emission information**

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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.

 **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**

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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 undesignated paragraphs have been designated as subdivisions.

#### **§ 41702. Emissions-related defects in engine family**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as subdivisions.



1     ☞ **Note.** An amended form of Health and Safety Code Section 43646, and an alternative  
2 form that would become operative when the amended form becomes inoperative by its own  
3 terms never became operative and have not been continued. The sections are subject to an  
4 operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air  
5 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**

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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 undesignated paragraphs have been designated as  
17 subdivisions.

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

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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 undesignated paragraphs have been designated as  
29 subdivisions.

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

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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**

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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**

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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 undesignated 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**

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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 undesignated paragraphs have been designated as  
33 subdivisions.

34                            CHAPTER 4. USED MOTOR VEHICLES

35                                   Article 1. Certification of Devices

36    **§ 41800. Emission standards**

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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**

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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**

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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**

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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 undesignated 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**

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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**

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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**

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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 undesignated paragraphs have been designated as  
24 subdivisions.

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

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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**

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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**

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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**

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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**

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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 undesignated paragraphs of subdivision (a) have been  
3 designated.

#### 4     **§ 41812. Conditions to certification**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as subdivisions.

#### **§ 41816. Review of certification decision**

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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**

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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**

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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 undesignated paragraphs have been designated as subdivisions.

☞ **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**

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

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

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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**

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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**

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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**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as  
34 subdivisions.

35    **§ 41858. Additional exemption**

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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**

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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**

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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**

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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     👉 **Note.** This section specifies a 1984 deadline for submission of certain findings to the  
2     Legislature. The Commission would like to receive input on two questions: (1) Were the  
3     findings 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**

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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**

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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     ☞ **Note.** Subdivisions (a) and (b) specify deadlines for the adoption of regulations. These  
4 deadline provisions may be obsolete. The Commission 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**

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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 J. 1993-94 Reg. Sess., p. 6869 (legislative intent).

#### 25     **§ 41903. Reimbursement program**

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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.



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

3 (f) All applications for claims shall be postmarked not later than midnight, March 1,  
4 1995. Applications arriving after that deadline are invalid and shall be returned to the  
5 sender.

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

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

15 (i) The state board may expend an amount not to exceed three hundred thousand dollars  
16 (\$300,000) from the Diesel Fuel Trust Fund to administer the reimbursement program.

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

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

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

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

#### 35 § 41904. Legislative findings and declarations

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36 41904. The Legislature hereby finds and declares that the reimbursement program shall  
37 not be considered to be mitigation for the impacts of the standards adopted by the state  
38 board for the formulation of diesel fuel, and by the enactment of Sections 41902 and 41903  
39 the state is not thereby assuming any responsibility for mitigating impacts on operators of  
40 diesel vehicles or equipment arising from the implementation of the standards. The  
41 Legislature further finds and declares that the reimbursement program is a proper use of  
42 public funds and serves a necessary public purpose.

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

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

1 satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental  
2 Protection Agency, California Air Pollution Control Laws 328-29 (1998).

## 3 CHAPTER 5. USED DIRECT IMPORT VEHICLES

### 4 § 42000. “Used direct import vehicle”

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5 42000. (a) For purposes of this chapter, “used direct import vehicle” means any 1975 or  
6 later model year direct import vehicle not required to be certified as a new direct import  
7 vehicle pursuant to this part.

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

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

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

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

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

17 **Comment.** Section 42000 continues former Health and Safety Code Section 44200 without  
18 substantive change. The former undesignated paragraphs have been designated as  
19 subdivisions, and the former subdivisions have been designated as paragraphs.

### 20 § 42001. Certification program

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21 42001. The state board shall adopt, by regulation, a certification program for used direct  
22 import vehicles. The state board shall issue a certificate of conformance to each used direct  
23 import vehicle which meets the requirements of this program.

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

### 26 § 42002. Necessity of certificate of conformance

---

27 42002. A used direct import vehicle which was not registered in this state prior to the  
28 adoption of regulations adopted pursuant to Section 42001, may not be registered in this  
29 state unless it has received a certificate of conformance from the state board, except as  
30 provided in Section 42009.

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

### 33 § 42003. Certificate program components

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34 42003. The certification program established pursuant to Section 42001 shall require all  
35 of the following components:

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

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

39 (c) Any vehicle labeling and description of any emissions-related modifications to the  
40 vehicle that the state board finds appropriate to assure that the emission-related system of  
41 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**

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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

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

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

5 **§ 42009. Certificate of conformity issued by EPA**

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6 42009. The requirements of Section 42002 do not apply to any motor vehicle having a  
7 certificate of conformity issued by the federal Environmental Protection Agency pursuant to  
8 the federal Clean Air Act (42 U.S.C. Section 7401, et seq.) and originally registered in  
9 another state by a person who was a resident of that state for at least one year prior to the  
10 original registration, who subsequently establishes residence in this state and who, upon  
11 registration of the vehicle in California, provides evidence satisfactory to the Department of  
12 Motor Vehicles of that previous residence and registration.

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

15 **CHAPTER 6. LOW-EMISSION MOTOR VEHICLES**

16 **§ 42100. Legislative findings and declaration**

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17 42100. The Legislature finds and declares that emission of air pollutants from motor  
18 vehicles is a major contributor to air pollution within the State of California and, therefore,  
19 declares its policy to encourage the development and testing of various types of low-  
20 emission motor vehicles, which would contribute substantially to achieving a pure and  
21 healthy atmosphere for the people of this state.

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

24 **§ 42101. “Low-emission motor vehicle”**

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25 42101. As used in this chapter, “low-emission motor vehicle” means a motor vehicle  
26 which has been certified by the state board to meet all applicable emission standards and  
27 which meets at least one of the following additional requirements:


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

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

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

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

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

41  **Note.** An amended form of Health and Safety Code Section 43800, and a new form  
42 that would become operative once the amended version becomes inoperative by its own terms  
43 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**


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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.

 **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**

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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**

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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**

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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**

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42200. (a) In any air basin designated as a nonattainment area pursuant to Section 30952, 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**

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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, e.g., 1991 Cal. Stat. ch. 496, § 1 (legislative findings and declarations).

☞ **Note.** This section specifies a deadline for adoption of standards and procedures. This deadline provision may be obsolete. The Commission 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**

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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**

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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 this title:

5       (a) To promote consumer convenience and acceptance, a program phase-in of the  
6       enhanced smog check program requirements in those areas newly subject to those  
7       requirements should be developed. Any program phase-in should be consistent with the  
8       availability of test, repair, referee, and other facilities necessary to provide reliable and  
9       convenient service to vehicle owners subject to the program.

10      (b) Consistent with Section 44201, the Department of Consumer Affairs shall develop  
11      and implement a thorough public awareness and education program that provides motor  
12      vehicle owners with information about enhanced smog check program features, such as the  
13      causes of smog check failures, vehicle retesting, repair, referee station options, the  
14      importance of proper maintenance and effective repairs, and any economic relief programs.  
15      This program is essential to the success of the inspection and maintenance program.

16      (c) It is the intent of the Legislature that the enhanced smog check program should be  
17      reviewed and modified, as appropriate, based on improvements in the program,  
18      technological advances in testing and diagnostic equipment, including remote sensing  
19      devices, and vehicle emission control technology when appropriate. It is further the intent  
20      of the Legislature that a new program should replace that program not later than 2005.

21      **Comment.** Section 42301 codifies Section 2 of Chapter 803 of the Statutes of 1997, which  
22      is repealed by the act that enacted this code.

23   **§ 42302. Program benefits**

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24       42302. The Legislature finds and declares that the motor vehicle inspection and  
25       maintenance program has, since 1984, provided beneficial emission reductions without  
26       undue inconvenience to California vehicle owners, and vehicle owners will benefit from the  
27       maintenance by the state of a substantially decentralized program giving them a choice  
28       among thousands of independent licensed stations able to perform both inspection and  
29       repair of vehicles.

30      **Comment.** Section 42302 continues former Health and Safety Code Section 44000.5(a)  
31      without substantive change.

32   **§ 42303. “Gross polluter” presumption not intended**

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33       42303. With the enactment of this title, the Legislature does not intend to create a  
34       statutory presumption that any motor vehicle, solely by virtue of make, model, or year of  
35       manufacture, shall be classified or categorized as a “gross polluter” or a “gross polluting  
36       vehicle.”

37      **Comment.** Section 42303 continues former Health and Safety Code Section 44000.5(b)  
38      without substantive change.

39   **§ 42304. Unreasonable burden on fleet vehicles not intended**

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40       42304. With the enactment of this title, the Legislature does not intend to place an  
41       unreasonable burden on fleet vehicles with respect to compliance with smog inspection and  
42       maintenance regulations.

43      **Comment.** Section 42304 continues former Health and Safety Code Section 44000.5(c)  
44      without substantive change.

1    **§ 42305. Importance of motor vehicle emissions control**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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 undesignated paragraphs have been designated as  
42   subdivisions.



1   **§ 42502. Cooperation between department and Department of Motor Vehicles**

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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**

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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**

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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.

1     **Comment.** Section 42504 continues former Health and Safety Code Section 44024.5  
2 without substantive change.

3     **§ 42505. Department as information clearinghouse**

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4     42505. The department shall act as a clearinghouse to provide access to the vendors who  
5 possess service information generated by the vehicle manufacturers.

6     **Comment.** Section 42505 continues former Health and Safety Code Section 44025 without  
7 change.

8             CHAPTER 4. INSPECTION AND MAINTENANCE REVIEW COMMITTEE

9     **§ 42600. Creation of Inspection and Maintenance Review Committee**

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10     42600. The Inspection and Maintenance Review Committee is hereby created to analyze  
11 the effect of the improved inspection and maintenance program established by this title on  
12 motor vehicle emissions and air quality. The functions of the review committee shall be  
13 advisory in nature and primarily pertain to the gathering, analysis, and evaluation of  
14 information.

15     **Comment.** Section 42600 continues former Health and Safety Code Section 44021(a)(1)  
16 without substantive change.

17     **§ 42601. Reimbursement and support**

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18     42601. The members of the review committee shall receive no compensation, but shall be  
19 reimbursed by the department for their reasonable expenses in performing committee  
20 duties. The state board and the department shall provide the review committee with any  
21 necessary technical and clerical support in its evaluation and study.

22     **Comment.** Section 42601 continues former Health and Safety Code Section 44021(a)(2)  
23 without substantive change.

24     **§ 42602. Composition of committee**

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25     42602. (a) The review committee shall consist of 13 members, nine to be appointed by  
26 the Governor, two by the Senate Committee on Rules, and two by the Speaker of the  
27 Assembly. All members shall be appointed to four-year terms, and the Governor shall  
28 appoint from among his or her appointees the chairperson of the review committee.

29     (b) The appointees of the Governor shall include an air pollution control officer from an  
30 enhanced program nonattainment area, three public members, an expert in air quality, an  
31 economist, a social scientist, a representative of the inspection and maintenance industry,  
32 and a representative of stationary source emissions organizations.

33     (c) The appointees of the Senate Committee on Rules shall include an environmental  
34 member with expertise in air quality, and a representative from the inspection and  
35 maintenance industry.

36     (d) The appointees of the Speaker of the Assembly shall include an environmental  
37 member with expertise in air quality, and a representative of a local law enforcement agency  
38 charged with prosecuting violations of this title in an enhanced program nonattainment area.

39     **Comment.** Section 42602 continues former Health and Safety Code Section 44021(a)(3)  
40 without substantive change.

1    **§ 42603. Method of proceeding**

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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**

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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**

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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**

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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 substantive change.

## 6 CHAPTER 5. PROGRAM REQUIREMENTS

### 7 Article 1. General Requirements

#### 8 § 42700. Enhanced and basic programs

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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

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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

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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

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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     ☞ **Note. (1)** An amended form of Health and Safety Code Section 44013 and a new form  
4 of that section that would become operative once the amended form becomes inoperative by  
5 its own terms, never became operative and have not been continued. They are subject to an  
6 operation contingency that has not been satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air  
7 Resources Board, California Environmental Protection Agency, California Air Pollution  
8 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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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 substantive change.

31   **§ 42803. Activities constituting conflict of interest prohibited**

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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**

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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**

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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**

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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**

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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 J. 1993-94 Reg.  
26 Sess., p. 7029 (legislative intent).

27     **§ 42854. Sufficient facilities**

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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**

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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**

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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**

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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**

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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**

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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**

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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.

1 (B) Any motor vehicle excepted by this paragraph shall be subject to testing and to  
2 certification requirements as determined by the department, if any of the following apply:

3 (i) The department determines through remote sensing activities or other means that there  
4 is a substantial probability that the vehicle has a tampered emission control system or would  
5 fail for other cause a smog check test as specified in Section 42751.

6 (ii) The vehicle was previously registered outside this state and is undergoing initial  
7 registration in this state.

8 (iii) The vehicle is being registered as a specially constructed vehicle.

9 (iv) The vehicle has been selected for testing pursuant to Section 42907 or any other  
10 provision of this title authorizing out-of-cycle testing.

11 (5) Any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of  
12 Section 42504.

13 (6) Any motor vehicle that the department determines would present prohibitive  
14 inspection or repair problems.

15 (7) Any vehicle registered to the owner of a fleet licensed pursuant to Article 8  
16 (commencing with Section 43050) if the vehicle is garaged exclusively outside the area  
17 included in program coverage, and is not primarily operated inside the area included in  
18 program coverage.

19 (b) Vehicles designated for program coverage in enhanced areas shall be required to  
20 obtain inspections from appropriate smog check stations operating in enhanced areas.

21 **Comment.** Section 42900 continues former Health and Safety Code Section 44011 without  
22 substantive change.

#### 23 **§ 42901. “Registered within an area designated for program coverage”**

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24 42901. For purposes of Section 42900, the term “registered within an area designated for  
25 program coverage” includes any vehicle registered pursuant to the Vehicle Code in this state  
26 when the registered owner’s mailing or residence address is not located within this state, or  
27 when the address at which the vehicle is garaged is not located within this state.

28 **Comment.** Section 42901 continues former Health and Safety Code Section 44011.1  
29 without substantive change.

#### 30 **§ 42902. Documentation of exemption from Section 42900**

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31 42902. Documentation that a motor vehicle is exempt from the requirements of Section  
32 42900 may not be based solely on the owner’s statement that the vehicle is in an exempt  
33 category. Physical inspection of the vehicle by the department is required unless alternative  
34 documentation satisfactory to the department is available.

35 **Comment.** Section 42902 continues former Health and Safety Code Section 44011.5  
36 without substantive change.

#### 37 **§ 42903. Issuance of certificate**

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38 42903. (a) A licensed smog check station shall not issue a certificate of compliance,  
39 except as authorized by this title, to any vehicle that meets the following criteria:

40 (1) A vehicle that has been tampered with.

41 (2) A vehicle that, prior to repairs, has been initially identified by the smog check station  
42 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a  
43 designated test-only facility, or a test-and-repair station that is both licensed and certified  
44 pursuant to Sections 42753 and 42754 and is participating in the pilot program pursuant to  
45 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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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     ☞ **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 Commission would like to receive input on whether the addition of such a definition would be  
6 useful, and if so, would like to receive suggested language for such a definition.

#### 7     **§ 42954. Repair cost limit for low-income vehicle owner**

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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**

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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**

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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**

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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

1 Patrol may conduct these inspections either cooperatively or independently, and the state  
2 board may contract for assistance in the conduct of these inspections.

3 **Comment.** Section 43002 continues former Health and Safety Code Section 44011.6(i)  
4 without substantive change.

### 5 **§ 43003. Development of testing and inspection procedures**

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6 43003. (a) As expeditiously as possible, the state board shall develop a test procedure for  
7 the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is  
8 feasible for use in an intermittent roadside inspection program. During the development of  
9 the test procedure, the state board shall cooperate with the Department of the California  
10 Highway Patrol in conducting roadside inspections.

11 (b) The state board may also specify visual or functional inspection procedures to  
12 determine the presence of tampering or defective emissions control systems in heavy-duty  
13 diesel or heavy-duty gasoline motor vehicles. However, visual or functional inspection  
14 procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those  
15 prescribed for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to  
16 Section 42752.

17 (c) The chairperson of the state board shall appoint an ad hoc advisory committee which  
18 shall include, but not be limited to, representatives of heavy-duty engine manufacturers,  
19 carriers of property for compensation using heavy-duty gasoline or heavy-duty diesel  
20 motor vehicles, and the Department of the California Highway Patrol. The advisory  
21 committee shall cooperate with the state board to develop a test procedure pursuant to this  
22 section and shall advise the state board in developing regulations to implement test  
23 procedures and inspection of heavy-duty commercial motor vehicles.

24 **Comment.** Section 43003 continues former Health and Safety Code Section 44011.6(b)  
25 without substantive change.

### 26 **§ 43004. Testing and inspection procedure requirements**

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27 43004. (a) Any smoke testing procedures or smoke measuring equipment, including any  
28 meter that measures smoke opacity or density and any recorder that stores or records smoke  
29 opacity or density measurements, used to test for compliance with this article and  
30 regulations adopted pursuant to this article, shall produce consistent and repeatable results.  
31 The requirements of this subdivision shall be satisfied by the adoption of Society of  
32 Automotive Engineers recommended practice J 1667, "Snap-Acceleration Smoke Test  
33 Procedures for Heavy-Duty Diesel Powered Vehicles."

34 (b) The smoke test standards and procedures adopted and implemented pursuant to this  
35 article shall be designed to ensure that no engine will fail the smoke test standards and  
36 procedures when the engine is in good operating condition and is adjusted to the  
37 manufacturer's specifications.

38 (c) In implementing this article, the state board shall adopt regulations that ensure that  
39 there will be no false failures or that ensure that the state board will remedy any false  
40 failures without any penalty to the vehicle owner.

41 **Comment.** Section 43004 continues former Health and Safety Code Section 44011.6(c)-  
42 (d) without substantive change. The former paragraphs of Health and Safety Code Section  
43 44011.6(d) have been redesignated as subdivisions (b) and (c).

1   **§ 43005. Smog check stations**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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 substantive change.

16    **§ 43057. Vehicles for hire or high mileage vehicles**

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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 substantive change.

26    **§ 43058. Authority to require testing**

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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 substantive change.

34                                   **CHAPTER 6. QUALITY ASSURANCE**

35                                   **Article 1. General Provisions**

36    **§ 43100. Contracts with private entities**

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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 substantive change.

1   **§ 43101. Contracts for provision of training and retraining courses**

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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**

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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**

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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 substantive change.

23   **§ 43104. Consistency, uniformity, and availability of referees**

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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 substantive change.

30                                   Article 2. Licensing Generally

31   **§ 43150. Licensing and qualification required**

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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**

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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 substantive change.

15                                   Article 3. Smog Check Stations

16    **§ 43200. Standards for licensing of smog check stations**

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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**

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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

1 demonstrated understanding of loaded mode testing principles, purpose, procedures and  
2 equipment.

3 (2) Knowledgeable regarding misfire detection, air injection testing, closed-loop system  
4 testing, and generic idle adjustment procedures specified by the department.

5 (3) Capable of using emissions manuals and tune-up labels to properly identify required  
6 emission control systems and components on any vehicle subject to the enhanced program.

7 (d) The examination shall use state-of-the-art technology, which may include computer  
8 simulations or other computer-based examination formats to determine whether applicants  
9 can properly identify, diagnose, and repair emission-related problems. The department may  
10 contract for the development and administration of this examination.

11 **Comment.** Section 43252 continues former Health and Safety Code Section 44045.5(a)  
12 without substantive change. The reference in the first paragraph to the date on which the  
13 qualifications applied (January 1, 1995) is obsolete and has not been continued. The  
14 reference in subdivision (d) to the date after which state-of-the-art technology is required  
15 (July 1, 1995) is obsolete and has not been continued.

#### 16 **§ 43253. Training and periodic retraining**

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17 43253. (a) The department shall prescribe training and periodic retraining courses for  
18 licensed smog check technicians pursuant to Sections 43255 and 43301.

19 (b) Smog check technicians shall have the option to do hands-on work in lieu of written  
20 work in order to successfully complete the department certified training and retraining  
21 courses.

22 (c) The institution administering the department certified training or retraining courses  
23 shall issue a certificate of completion to each person who successfully completes the  
24 certified courses. The certificate shall be valid for one year.

25 **Comment.** Section 43253 continues former Health and Safety Code Section 44031.5(b) &  
26 (d)-(e) without substantive change.

#### 27 **§ 43254. Retraining of technician determined to be unqualified**

---

28 43254. Whenever the department determines, through investigation, that a previously  
29 qualified smog check technician may lack the skills to reliably and accurately perform the  
30 test or repair functions within the required qualification, the department may prescribe for  
31 the technician one or more retraining courses which have been certified by the department.  
32 The smog check technician may request and be granted a hearing, pursuant to Chapter 5  
33 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
34 Code, on the department's determination. The request for a hearing shall be submitted  
35 within 30 days of the department's notification of its determination. A failure to complete  
36 the prescribed retraining course within the time designated by the department, or to request  
37 a hearing within 30 days of the department's notification of its determination, shall result in  
38 loss of qualification. Upon a later completion of the prescribed department certified  
39 retraining course, the department may reinstate the smog check technician's qualification.

40 **Comment.** Section 43254 continues former Health and Safety Code Section 44031.5(c)  
41 without substantive change.

#### 42 **§ 43255. Remedial training of technician determined to be unqualified**

---

43 43255. The department may require remedial training at a certified training facility or may  
44 take disciplinary action, whichever the department determines to be the most appropriate,  
45 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 substantive change.

### 29 **Article 5. Smog Check Training Institutions**

#### 30 **§ 43300. Standards**

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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 undesignated paragraphs have been designated as  
41 subdivisions.



1   **§ 43301. Certification requirements**

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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 substantive change.

17                   Article 6. Equipment and Replacement Parts

18   **§ 43350. Equipment and replacement parts**

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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 substantive 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 substantive 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

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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

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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

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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. The former paragraphs of Health and Safety Code Section 44036.2(e) have been redesignated as subdivisions (b) and (c).

#### § 43405. Limitation on required service information

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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**

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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       ☞ **Note.** The Commission 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**

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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       ☞ **Note.** (1) The Commission would like to receive input on whether the contingency  
24       stated 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**

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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**

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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**

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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**

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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

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

#### 5     **§ 43501. Electronic data transmission**

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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 substantive change. The reference to the date after which the requirements of this  
12 section applied (January 1, 1995) is obsolete and has not been continued.

#### 13     **§ 43502. Electronic transmittal fee**

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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**

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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**

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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**

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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**

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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**

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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 J. 1995-96 Reg.  
19 Sess. p. 8901.

#### 20 **§ 43652. Authority to adopt regulations**

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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**

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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**

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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**

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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**

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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**

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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 substantive change.

7   **§ 43705. Support of other agencies**

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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**

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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 substantive change.

19      ☞ **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**

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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**

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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**

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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**

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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**

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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 (1) Assistance in the repair of high polluters pursuant to the program established pursuant  
2 to Article 2 (commencing with Section 44050) of Chapter 10.

3 (2) Voluntary accelerated retirement of high polluters.

4 (3) Rulemaking, vehicle testing, and other technical work required to implement and  
5 administer the repair assistance program established pursuant to Article 2 (commencing  
6 with Section 44050) of Chapter 10 and the program described in Chapter 9 (commencing  
7 with Section 43900).

8 (e) An amount of one million dollars (\$1,000,000) annually for the 1997-98 fiscal year  
9 and the 1998-99 fiscal year shall be made available from the account for a program to  
10 evaluate the emission reduction effectiveness of the M-1 strategy of the 1994 SIP.

11 (f) All remaining amounts in the account shall be available to the program of repair  
12 assistance established pursuant to Article 2 (commencing with Section 44050) of Chapter  
13 10.

14 (g) In no case shall the funding available in any subsequent fiscal year to the department  
15 for repairing or removing high-emitting vehicles under the inspection and maintenance  
16 program be less than the amount made available from the Vehicle Inspection and Repair  
17 Fund for that purpose in the 1995-96 fiscal year.

18 **Comment.** Section 43804 continues former Health and Safety Code Section 44091 without  
19 substantive change. Uncodified statutory provisions applicable to former Health and Safety  
20 Code Section 44091 now apply to this section. See, e.g., 1997 Cal. Stat. ch. 802, § 1  
21 (legislative intent).

#### 22 **§ 43805. Fee contingent on specified occurrences**

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23 43805. On or after July 1, 1998, in the event that the smog impact fee imposed pursuant  
24 to Section 6262 of the Revenue and Taxation Code is ruled unconstitutional by an appellate  
25 court or the California Supreme Court, or if the state is in any manner prevented by either  
26 of these courts from imposing or collecting the fee, all of the following actions shall  
27 immediately take place:

28 (a) The fee specified in subdivision (a) of Section 44100 shall be six dollars (\$6). The  
29 revenues from that fee shall be allocated as follows:

30 (1) Except as provided for in paragraph (2), the revenue generated by two dollars (\$2) of  
31 the fee shall be deposited in the account created by Section 43804, while the revenue  
32 generated by the remaining four dollars (\$4) shall continue to be deposited in the Vehicle  
33 Inspection and Repair Fund.

34 (2) All revenue generated by the fee imposed at first registration of a motor vehicle  
35 exempted under paragraph (4) of subdivision (a) of Section 42900 shall be deposited in the  
36 account created by Section 43804.

37 (b) Except as specified in subdivision (c), this section shall remain in effect only until  
38 January 1, 2005, and as of that date shall become inoperative, unless a later enacted statute,  
39 that is enacted before June 30, 2004, deletes or extends that date.

40 (c) With respect to motor vehicles registered in the south coast district, this section shall  
41 remain in effect until January 1, 2010, and as of that date is repealed, unless a later enacted  
42 statute, that is enacted before June 30, 2009, deletes or extends that date.

43 **Comment.** Section 43805 continues former Health and Safety Code Section 44091.1  
44 without substantive change. Former paragraphs (1) and (2) of Health and Safety Code  
45 Section 44091.1(b) have been redesignated as subdivisions (b) and (c).



1    **§ 43806. Adoption of regulations**

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2       43806. The department shall administer the program in accordance with regulations  
3       adopted by the department.

4       **Comment.** Section 43806 continues former Health and Safety Code Section 44095(a)  
5       without substantive change.

6    **§ 43807. Relation to other programs**

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7       43807. Nothing in this chapter shall be construed as superseding or precluding any  
8       similar program that is administered by a district, any other public agency, or any other  
9       person.

10      **Comment.** Section 43807 continues former Health and Safety Code Section 44095(b)(1)  
11      without substantive change.

12   **§ 43808. Analysis of program**

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13      43808. The state board shall develop a methodology for, and shall undertake, a uniform  
14      data analysis of the program operated pursuant to this chapter and any similar programs  
15      operated in this state for the purpose of providing an accounting of the emission reductions  
16      that are achieved by these programs.

17      **Comment.** Section 43808 continues former Health and Safety Code Section 44095(b)(2)  
18      without substantive change.

19   **§ 43809. Authority to contract**

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20      43809. The department may directly operate the program or may provide for the  
21      program's operation pursuant to contract. The department may contract with local agencies,  
22      community colleges, or private entities to perform all or any portion of the program.

23      **Comment.** Section 43809 continues former Health and Safety Code Section 44095(c)  
24      without substantive change.

25    **CHAPTER 9. ACCELERATED LIGHT-DUTY VEHICLE RETIREMENT PROGRAM**

26   **§ 43900. Legislative findings and declarations**

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27      43900. The Legislature hereby finds and declares as follows:

28      (a) Emission reduction programs based on market principles have the potential to provide  
29      equivalent or superior environmental benefits when compared to existing controls at a  
30      lower cost to the citizens of California than traditional emission control requirements.

31      (b) Several studies have demonstrated that a small percentage of light-duty vehicles  
32      contribute disproportionately to the on-road emissions inventory. Programs to reduce or  
33      eliminate these excess emissions can significantly contribute to the attainment of the state's  
34      air quality goals.

35      (c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new  
36      motor vehicle standards by bringing more low-emission vehicles into the on-road fleet  
37      earlier.

38      (d) The California State Implementation Plan for Ozone (SIP), adopted November 15,  
39      1994, and submitted to the Environmental Protection Agency, calls for added reductions in  
40      reactive organic gases (ROG) and oxides of nitrogen (NO<sub>x</sub>) from light-duty vehicles  
41      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:

Year	Emissions, TPD(tons per day) (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 and other strategies of the 1994 SIP shall be accomplished by competitive bid among private businesses solicited by the oversight agency designated pursuant to Section 43903.

**Comment.** Section 43900 continues former Health and Safety Code Section 44100 without substantive change.

#### **§ 43901. Adoption of regulations implementing program**

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43901. Not later than December 31, 1998, the state board shall adopt, by regulation, a statewide program to commence in 1999 that does all of the following:

(a) Provides for the creation, exchange, use, and retirement of light-duty vehicle mobile source emission reduction credits. The credits shall be fungible and exchangeable in the marketplace, and shall reflect the actual emissions of the vehicles that are retired or otherwise disposed of, by measurement, appropriate sampling, or correlations developed from appropriate sampling. The numerical value of credits may be constant over a defined lifetime, or may decline with age measured from the time of origination of the credits. In all cases, the numerical value of the credits shall reflect the useful life expectancies and the projected in-use emissions of the retired vehicles in a manner consistent with the assumptions used in determining the emissions inventory. The credits shall be fully recognized by the United States Environmental Protection Agency, the state board, and the districts.

(b) Sets out the criteria for retiring or otherwise disposing of high-emitting vehicles purchased for this program.

(c) Authorizes the issuance of those credits to private entities that purchase and properly retire high-emitting vehicles.

(d) Authorizes the resale of those credits to public or private entities to be used to achieve the emission reduction requirements of the 1994 state implementation plan, meet the requirements of the inspection and maintenance program, satisfy compliance with other emission reduction mandates, as determined by the district or the state board, create local growth allowances, or satisfy new or modified source emission offset requirements. Nothing in this chapter limits a district's authority to apply emission discount factors pursuant to district rules that regulate emissions banks, trades, or offsets.

(e) Provides for the retirement of those credits when used.

(f) Includes accounting procedures to credit emissions reductions achieved through vehicle scrappage to the M-1 strategy of the 1994 SIP and the inspection and maintenance program.

(g) Contains a program plan pursuant to Section 43910.

(h) Satisfies the attributes described in subdivision (e) of Section 43900.

**Comment.** Section 43901 continues former Health and Safety Code Section 44101 without substantive change.

#### **§ 43902. Relation to other programs**

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43902. (a) The state board, the Department of Motor Vehicles, and the department shall harmonize the requirements and implementation of this program with the motor vehicle inspection program and other programs contained in this title, particularly the provisions relating to gross polluters in Chapter 7 (commencing with Section 43600) and the repair or removal of high polluters in Chapter 8 (commencing with Section 43800).

(b) Insofar as practicable, these programs shall be seamless to the participants and the public.

**Comment.** Section 43902 continues former Health and Safety Code Section 44102 without substantive change.

#### **§ 43903. State oversight of program**

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43903. The regulations shall specify that the program shall be operated as a privately operated program under the oversight of a state agency to be designated by the Governor. In consultation with the districts and interested parties, the state oversight agency shall be responsible for the implementation of the program, including the following:

(a) Solicitation and analysis of public comments on the overall program goals, objectives, and design.

(b) Development of the program structure.

(c) Overall quality control, including verifying emission reductions and certification of the emission reduction credits.

(d) Definition of terms such as “high emitter,” “collector interest vehicles,” and “nonrevivable junk certificates.”

**Comment.** Section 43903 continues former Health and Safety Code Section 44105 without change.

#### **§ 43904. Discouraging misconduct**

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43904. The program shall discourage tampering and other forms of cheating, and effectively address “avoidance vehicles,” such as nonregistered vehicles and vehicles lacking a sufficient inspection and maintenance history.

**Comment.** Section 43904 continues former Health and Safety Code Section 44107 without change.

#### **§ 43905. Monitoring and preventing misconduct**

---

43905. The program shall include provisions for monitoring and preventing all forms of tampering or other forms of cheating, and shall effectively address “avoidance vehicles” such as nonregistered vehicles and vehicles lacking a sufficient inspection and maintenance history. If fraud is detected, the program shall include provisions for suspending all new transactions with the entity suspected of fraud until problems are corrected and revaluing all credits used to meet the emissions reduction requirements. Contracts with authorized entities shall include remedies in cases of fraud.

**Comment.** Section 43905 continues former Health and Safety Code Section 44106 without change.

#### **§ 43906. Solicitation of vehicle owners**

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43906. The program shall include appropriate means to solicit vehicle owners, including mass mailings, media advertising, news coverage, and direct mail to owners of candidate vehicles, and may include high-emitting vehicles based on smog check or remote sensing or high-emitter profile information.

**Comment.** Section 43906 continues former Health and Safety Code Section 44109 without change.

1   **§ 43907. Consideration of effect on purchase convenience**

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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**

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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**

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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**

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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**

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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**

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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

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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.

**Note.** The last sentence in Health and Safety Code Section 44104(b) erroneously refers to “this paragraph.” The Commission assumes that the reference was intended to be to the subdivision and has changed the reference to that effect. The Commission 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**

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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**

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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**

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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**

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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 substantive change.

6                               Article 2. Low-Income Repair Assistance Program

7   **§ 44050. Creation of program**

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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 substantive change.

12   **§ 44051. Eligibility**

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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 substantive change.

31   **§ 44052. Funding**

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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 substantive change.

39   **§ 44053. Performance of repairs**

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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 substantive change.

#### 5 **§ 44054. Copayment**

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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**

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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 substantive 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 substantive change.

#### 34 **§ 44057. “Low-income motor vehicle owner”**

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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 substantive 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.

 **Note.** This provision appears to be substantially redundant. Compare proposed Section 44101. The Commission 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.

**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

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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.

**Note.** This section, added in 1994, may be obsolete. The Commission 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

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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

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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

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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

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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

7 **Comment.** Section 44302 continues former Health and Safety Code Section 44051 without  
8 substantive change.

9 **§ 44303. Specified penalties for violation of regulations**

10 44303. The civil penalty for a violation of the specified Sections of Title 16 of the  
11 California Code of Regulations is as follows:

12			Civil Penalty	
13	Section	Short Description of Violation	Minimum	Maximum
14	3340.10	Unlicensed operation of smog check station.....	\$250	\$1,500
15	3340.15	Smog check station general requirements.....	100	500
16	3340.16	Smog check station equipment and testing procedures.....	150	1,000
17	3340.16.5	Smog check station equipment and testing procedures.....	150	1,000
18	3340.17	Smog check station equipment maintenance and calibration..	150	1,000
19	3340.22	Smog check station sign requirement.....	100	500
20	3340.22.1	Sign restrictions.....	100	500
21	3340.23	Smog check cease operations.....	250	1,500
22	3340.25	Licensed inspector requirement .....	150	1,000
23	3340.30	Qualified mechanic's training and certification requirement ..	100	500
24	3340.35	Certification of compliance and noncompliance requirement.	250	1,500
25	3340.37	NOx device/sticker requirement.....	100	500
26	3340.41	Inspection/test/repair requirement.....	150	1,000
27	3340.41.3	Invoice requirements .....	100	500
28	3340.42	Inspection standards, test procedures, and exhaust		
29		emissions requirement .....	100	500

30 **Comment.** Section 44303 continues former Health and Safety Code Section 44051.5  
31 without change.

32 **§ 44304. Civil penalty amount for first time violator**

33 44304. In assessing a civil penalty pursuant to Section 44300 against a person who has  
34 not previously been cited for a violation of the same statute or regulation, the department  
35 shall fix the penalty at an amount within the minimum and maximum penalties specified in  
36 Section 44302 or 44303, as the case may be, for each violation.

37 **Comment.** Section 44304 continues former Health and Safety Code Section 44050.5  
38 without substantive change.

39 **§ 44305. Multiple violations**

40 44305. (a) When a citation lists more than one violation, the amount of the civil penalty  
41 assessed shall be stated separately for each statute and regulation violated.

42 (b) When a citation lists more than one violation arising from a single motor vehicle  
43 inspection or repair, the total penalties assessed shall not exceed two thousand five hundred  
44 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**

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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**

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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**

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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 substantive change.

28    **§ 44309. Prosecution as misdemeanor**

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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**

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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 undesignated paragraphs have been designated as  
9 subdivisions.

#### 10 **§ 44311. Request for hearing**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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”**

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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**

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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**

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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) continue former Health and Safety Code Section 44072.10(f)-(g) without substantive  
29       change.

30    **§ 44414. Reinstatement or reissuance of licenses**

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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**

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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       ☞ **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 Commission would like to receive input on whether the reference to subdivision (a) should be continued.

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**§ 44416. Refusal to issue or renew**

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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.


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**§ 44417. License not a vested right**

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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.

 **Note. (1)** The reference to “the requirements of subdivision (a)” appears to be erroneous. Subdivision (a) does not set out any requirements. The Commission 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 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**

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**§ 45000. Short title**

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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.

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**§ 45001. Legislative findings and declarations**

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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

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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”

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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,

1 discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the  
2 ambient air and that results from the routine operation of a facility or that is predictable,  
3 including, but not limited to, continuous and intermittent releases and predictable process  
4 upsets or leaks.

5 **Comment.** Section 45055 continues the definition of “air release” provided in former  
6 Health and Safety Code Section 44303 without substantive change. The definition of  
7 “release” provided in former Health and Safety Code Section 44303 is continued in Section  
8 45085.

#### 9 **§ 45060. “Facility”**

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10 45060. “Facility” means every structure, appurtenance, installation, and improvement on  
11 land which is associated with a source of air releases or potential air releases of a hazardous  
12 material.

13 **Comment.** Section 45060 continues former Health and Safety Code Section 44304 without  
14 change.

#### 15 **§ 45065. “Health risk assessment”**

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16 45065. “Health risk assessment” means a detailed comprehensive analysis prepared  
17 pursuant to Section 45600 to evaluate and predict the dispersion of hazardous substances in  
18 the environment and the potential for exposure of human populations and to assess and  
19 quantify both the individual and population wide health risks associated with those levels of  
20 exposure.

21 **Comment.** Section 45065 continues former Health and Safety Code Section 44306 without  
22 substantive change.

#### 23 **§ 45070. “Operator”**

---

24 45070. “Operator” means the person who owns or operates a facility or part of a facility.

25 **Comment.** Section 45070 continues former Health and Safety Code Section 44307 without  
26 change.

#### 27 **§ 45075. “Plan”**

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28 45075. “Plan” means the emissions inventory plan which meets the conditions specified  
29 in Section 45400.

30 **Comment.** Section 45075 continues former Health and Safety Code Section 44308 without  
31 substantive change.

#### 32 **§ 45080. “Prioritization scores”**

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33 45080. “Prioritization score” means a facility’s numerical score for cancer health effects  
34 or noncancer health effects, as determined by the district pursuant to Section 44500 or  
35 44501 in a manner consistent with facility prioritization guidelines prepared by the  
36 California Air Pollution Control Officers Association and approved by the state board.

37 **Comment.** Section 45080 continues former Health and Safety Code Section 44344.4(c)  
38 without substantive change.

#### 39 **§ 45085. “Release”**

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40 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”**

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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**

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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    31450) 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.

 **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 Commission 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.

1 (c) The majority of the class is composed of small businesses.

2 (d) Releases from individual facilities in the class can easily and generically be  
3 characterized and calculated.

4 **Comment.** Section 45103 continues former Health and Safety Code Section 44323 without  
5 substantive change.

6 ☞ **Note.** The Commission believes that the requirements of this section were intended as a  
7 substitute for the requirements applicable to individual facility operators within the specified  
8 class. However, there is no such exemption for individual operators. Consequently, rather than  
9 creating a substitute, this section appears to create an overlay, with the district conducting  
10 industry-wide inventories and assessments and individual operators still subject to the  
11 requirements of the part. The Commission would like to receive input on the following  
12 questions: (1) Is the section intended to provide exemptions for individual operators who are  
13 the subject of a district's industry-wide inventory and health assessment? (2) If so, what  
14 should the scope of the exemption be?

#### 15 **§ 45104. Pesticide exemption**

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16 45104. This part does not apply to any facility where economic poisons are employed in  
17 their pesticidal use, unless that facility was subject to district permit requirements on or  
18 before August 1, 1987. As used in this section, "pesticidal use" does not include the  
19 manufacture or formulation of pesticides.

20 **Comment.** Section 45104 continues former Health and Safety Code Section 44324 without  
21 change.

#### 22 **§ 45105. Solid waste disposal facility**

---

23 45105. Any solid waste disposal facility in compliance with Sections 38000 to 38008,  
24 inclusive, is in compliance with the emissions inventory requirements of this part.

25 **Comment.** Section 45105 continues former Health and Safety Code Section 44325 without  
26 substantive change.

#### 27 **§ 45106. Relationship of part to other requirements**

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28 45106. This part does not prevent any district from establishing more stringent criteria  
29 and requirements than are specified in this part for approval of emissions inventories and  
30 requiring the preparation and submission of health risk assessments. Nothing in this part  
31 limits the authority of a district under any other provision of law to assess and regulate  
32 releases of hazardous substances.

33 **Comment.** Section 45106 continues former Health and Safety Code Section 44365(b)  
34 without substantive change.

#### 35 **§ 45107. Requirements of part as permit condition**

---

36 45107. Every district shall, by regulation, adopt the requirements of this part as a  
37 condition of every permit issued pursuant to Title 7 (commencing with Section 38700) of  
38 Part 4 for all new and modified facilities.

39 **Comment.** Section 45107 continues former Health and Safety Code Section 44382 without  
40 substantive change.

41 ☞ **Note.** Health and Safety Code Section 44384 is obsolete and has not been continued.  
42 The section states an operative date for itself and Section 44380 (July 1, 1988).

Article 4. Responsibilities and Authority of State Board and Districts

**§ 45150. State board oversight**

---

45150. If the state board finds and determines that a district's actions pursuant to this part do not meet the requirements of this part, the state board may exercise the authority of the district pursuant to this part to approve emissions inventory plans and require the preparation of health risk assessments.

**Comment.** Section 45150 continues former Health and Safety Code Section 44365(a) without substantive change.

**§ 45151. Use of reports and assessments by state board**

---

45151. The state board shall utilize the reports and assessments developed pursuant to this part for the purposes of identifying, establishing priorities for, and controlling toxic air contaminants pursuant to Chapter 4 (commencing with Section 31300) of Part 2.

**Comment.** Section 45151 continues former Health and Safety Code Section 44364 without substantive change.

**§ 45152. Annual report of district**

---

45152. (a) Each district shall prepare and publish an annual report which does all of the following:

(1) Describes the priorities and categories designated pursuant to Section 44500 and summarizes the results and progress of the health risk assessment program undertaken pursuant to this part.

(2) Ranks and identifies facilities according to the degree of cancer risk posed both to individuals and to the exposed population.

(3) Identifies facilities which expose individuals or populations to any noncancer health risks.

(4) Describes the status of the development of control measures to reduce emissions of toxic air contaminants, if any.

(b) The district shall disseminate the annual report to county boards of supervisors, city councils, and local health officers and the district board shall hold one or more public hearings to present the report and discuss its content and significance.

**Comment.** Section 45152 continues former Health and Safety Code Section 44363 without substantive change. The reference in subdivision (a) to the date on which the annual report requirement began (July 1, 1991) is obsolete and has not been continued.

Article 5. Enforcement

**§ 45200. Right of entry for purpose of inspection**

---

45200. In order to verify the accuracy of any information submitted by facilities pursuant to this part, a district or the state board may proceed in accordance with Section 38700.

**Comment.** Section 45200 continues former Health and Safety Code Section 44366 without substantive change.

**§ 45201. Civil penalties**

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45201. (a) Any person who fails to submit any information, reports, or statements 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

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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**

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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**

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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**

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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**

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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**

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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.

 **Note.** The first sentence of subdivision (b) specifies deadlines for the submission of plans. These deadline provisions may be obsolete. The Commission 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**

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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**

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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**

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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**

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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**

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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**

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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.

☞ **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 undesignated 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**

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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**

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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**

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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**

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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 31450) 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 undesignated paragraphs have been redesignated.

 **Note.** Subdivision (a) specifies a deadline for satisfying the requirements of this section. The Commission 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**

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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      ☞ **Note.** Subdivisions (a) and (b) specify deadlines for satisfying the requirements of  
12      those subdivisions. The Commission would like to receive input on two questions: (1) Have  
13      the 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**

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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      ☞ **Note.** This section specifies a deadline for the classification of specified facilities. This  
35      provision may be obsolete. The Commission 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**

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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**

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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**

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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 31550  
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**

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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.

 **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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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     👉 **Note.** Health and Safety Code Section 44391(e) provides: “The audit and plan shall  
44 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**

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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**

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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 ☞ **Note.** The second sentence of this section specifies a deadline for the submission of  
35 plans. This deadline provision may be obsolete. The Commission would like to receive input  
36 on 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**

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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.



1     **Comment.** Section 45704 continues former Health and Safety Code Section 44391(g)  
2 without substantive change.

3     **§ 45705. Emissions inventory updates**

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4     45705. Progress on the emission reductions achieved by the plan shall be reported to the  
5 district in emissions inventory updates. Emissions inventory updates shall be prepared as  
6 required by the audit and plan found to be satisfactory by the district pursuant to Section  
7 45704.

8     **Comment.** Section 45705 continues former Health and Safety Code Section 44391(h)  
9 without substantive change.

10    **§ 45706. New information**

---

11    45706. If new information becomes available after the initial risk reduction audit and  
12 plan, on air toxics risks posed by a facility, or emission reduction technologies that may be  
13 used by a facility that would significantly impact risks to exposed persons, the district may  
14 require the plan to be updated and resubmitted to the district.

15    **Comment.** Section 45706 continues former Health and Safety Code Section 44391(i)  
16 without substantive change.

17    **§ 45707. Prohibited emissions not authorized**

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18    45707. Sections 45701 to 45707, inclusive, do not authorize the emission of a toxic air  
19 contaminant in violation of an airborne toxic control measure adopted pursuant to Chapter 4  
20 (commencing with Section 31300) of Part 2 or in violation of Section 37600.

21    **Comment.** Section 45707 continues former Health and Safety Code Section 44391(j)  
22 without substantive change.

23    **§ 45708. Plan equivalence to pollution prevention or source reduction programs**

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24    45708. The plan prepared pursuant to Section 45701 shall not be considered to be the  
25 equivalent of a pollution prevention program or a source reduction program, except insofar  
26 as the audit and plan elements are consistent with source reduction, as defined in Section  
27 25244.14 of the Health and Safety Code, or subsequent statutory definitions of pollution  
28 prevention.

29    **Comment.** Section 45708 continues former Health and Safety Code Section 44393 without  
30 substantive change.

31    **§ 45709. Small businesses**

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32    45709. (a) The state board and districts shall provide assistance to smaller businesses that  
33 have inadequate technical and financial resources for obtaining information, assessing risk  
34 reduction methods, and developing and applying risk reduction techniques.

35    (b) Risk reduction audits and plans for any industry subject to this chapter which is  
36 comprised mainly of small businesses using substantially similar technology may be  
37 completed by a self-conducted audit and checklist developed by the state board. The state  
38 board, in coordination with the districts, shall provide a copy of the audit and checklist to  
39 small businesses within those industries to assist them to meet the requirements of this  
40 chapter.

41    **Comment.** Section 45709 continues former Health and Safety Code Section 44391(d)  
42 without substantive change.

1    **§ 45710. Civil penalties**

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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**

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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**

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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.** Subdivision (a) of Section 46001 continues the first sentence of former Health  
22 and Safety Code Section 44400 without substantive change. Subdivision (b) continues former  
23 Health and 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     ✍ **Note.** The introductory clause of Health and Safety Code Section 44401 erroneously  
2 refers to “this chapter” rather than “this part.” The error has been corrected.

3     **§ 46003. Air pollution permitting**

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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**

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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**

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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.

 **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 Notes to proposed Sections 46503 & 46505.

#### **§ 46501. Application of part**

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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"**

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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**

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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     ☞ **Note.** Health and Safety Code Section 44472 phases in the prohibition on the sale of  
6 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**

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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     ☞ **Note.** This section requires reporting to demonstrate compliance with the phased-in  
35 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 Commission would like to receive input on this point.

#### 38     **§ 46505. Extension of deadlines**

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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     ☞ **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 Commission would like to receive input on whether this  
4     section has any continued usefulness.

#### 5     **§ 46506. Implementing regulations**

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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    ☞ **Note.** This section specifies a deadline for the adoption of implementing regulations.  
11    This deadline provision may be obsolete. The Commission would like to receive input on two  
12    questions: (1) Have the regulations been adopted as required? (2) Does the section still serve a  
13    useful purpose?

#### 14    **§ 46507. Civil penalty**

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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**

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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**

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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”**

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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      ☞ **Note.** Subdivision (b) specifies a deadline for satisfying the requirements of that  
44 subdivision. This deadline provision may be obsolete. The Commission 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**

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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.

 **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”

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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.

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**§ 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.

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**§ 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.

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**§ 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.

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**§ 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.

☞ **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.

**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 Commission 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  **Note.** Subdivision (a) conditions certification of a radon measurement laboratory on  
23 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  **Note.** Subdivision (a) raises the same issue discussed in the Note to proposed Section  
11 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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BUSINESS AND PROFESSIONS CODE

**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:

(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 5 (commencing with Section 44200 42000) of Title 4 of Part 5 of Division 26 4 of the Health and Safety 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 Title 5 (commencing with Section 44000 42300) of Part 5 of Division 26 4 of the Health and Safety 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 Title 5 (commencing with Section 44000 42300) of Part 5 of Division 26 4 of the Health and Safety 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 Title 5 (commencing with Section 44000 42300) of Part 5 of Division 26 4 of the Health and Safety 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 Title 5 (commencing with Section 44000 42300) of Part 5 of Division 26 4 of the ~~Health and Safety 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 Title 5 (commencing with Section 44000 42300) of Part 5 of Division 26 4 of the ~~Health and Safety 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.

**Bus. & Prof. Code § 11018.14 (amended). Commissioner not responsible agency**

SEC. \_\_\_\_\_. Section 11018.14 of the Business and Professions Code is amended to read:  
11018.14. The commissioner shall not be a responsible agency for purposes of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000), ~~Public Resources Environment~~ Code). Receipt by the commissioner of a copy of an environmental impact report or negative declaration prepared pursuant to the California Environmental Quality Act shall be conclusive evidence of compliance with that act for purposes of issuing a subdivision public report.

**Comment.** Section 11018.14 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

CIVIL CODE

**Civ. Code § 3482.6 (amended). Agricultural processing activity not a nuisance**

SEC. \_\_\_\_\_. Section 3482.6 of the Civil Code is amended to read:  
3482.6. (a) No agricultural processing activity, operation, facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has been in continuous operation for more than three years if it was not a nuisance at the time it begins.

(b) If an agricultural processing activity, operation, facility, or appurtenances thereof substantially increases its activities or operations after January 1, 1993, then a public or private nuisance action may be brought with respect to those increases in activities or operations that have a significant effect on the environment. For increases in activities or operations that have been in effect more than three years, there shall be a rebuttable presumption affecting the burden of producing evidence that the increase was not substantial.

(c) This section shall not supersede any other provision of law, except other provisions of this part, if the agricultural processing activity, operation, facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in the provision.

(d) This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state, except regulations adopted pursuant to Section 41700 of the Health and Safety Code 37600 of the Environment Code as applied to agricultural processing activities, operations, facilities, or appurtenances thereof that are surrounded by housing or commercial development on the effective date of this section. However, nothing in this section shall preclude a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural processing activity, operation, facility, or appurtenances thereof and is subject to provisions of this section consistent with Section 1102.6a.

(e) For purposes of this section:

(1) "Agricultural processing activity, operation, facility, or appurtenances thereof" includes, but is not limited to, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

(2) "Continuous operation" means at least 30 days of agricultural processing operations per year.

(3) "Proper and accepted customs and standards" means the compliance with all applicable state and federal statutes and regulations governing the operation of the agricultural processing activity, operation, facility, or appurtenances thereof with respect to the condition or effect alleged to be a nuisance.

(f) This section shall not apply to any litigation pending or cause of action accruing prior to January 1, 1993.

**Comment.** Section 3482.6 is amended to substitute a reference to the Environment Code provision that continues former Section 41700 of the Health and Safety Code.

## CODE OF CIVIL PROCEDURE

### **Code Civ. Proc. § 338 (amended). Three year limitation period**

SEC. \_\_\_\_\_. Section 338 of the Code of Civil Procedure is amended to read:

338. Within three years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. The cause of action in the case of theft, as defined in Section 484 of the Penal Code, of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency which originally investigated the theft.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not to be deemed to have accrued until the discovery, by the

1 aggrieved party or his or her agent, of the facts constituting the cause of action upon the  
2 bond.

3 (f) An action against a notary public on his or her bond or in his or her official capacity  
4 except that any cause of action based on malfeasance or misfeasance is not deemed to  
5 have accrued until discovery, by the aggrieved party or his or her agent, of the facts  
6 constituting the cause of action; provided, that any action based on malfeasance or  
7 misfeasance shall be commenced within one year from discovery, by the aggrieved party  
8 or his or her agent, of the facts constituting the cause of action or within three years from  
9 the performance of the notarial act giving rise to the action, whichever is later; and  
10 provided further, that any action against a notary public on his or her bond or in his or her  
11 official capacity shall be commenced within six years.

12 (g) An action for slander of title to real property.

13 (h) An action commenced under Section 17536 of the Business and Professions Code.  
14 The cause of action in that case shall not be deemed to have accrued until the discovery  
15 by the aggrieved party, the Attorney General, the district attorney, the county counsel, the  
16 city prosecutor, or the city attorney of the facts constituting grounds for commencing  
17 such an action.

18 (i) An action commenced under the Porter-Cologne Water Quality Control Act  
19 (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in  
20 that case shall not be deemed to have accrued until the discovery by the State Water  
21 Resources Control Board or a regional water quality control board of the facts  
22 constituting grounds for commencing actions under their jurisdiction.

23 (j) An action to recover for physical damage to private property under Section 19 of  
24 Article I of the California Constitution.

25 (k) An action commenced under Division 26 4 (commencing with Section 39000  
26 30000) of the ~~Health and Safety~~ Environment Code. These causes of action shall not be  
27 deemed to have accrued until the discovery by the State Air Resources Board or by a  
28 district, as defined in Section 39025 30220 of the ~~Health and Safety~~ Environment Code,  
29 of the facts constituting grounds for commencing the action under its jurisdiction.

30 (l) An action commenced under Section 1603.1 or 5650.1 of the Fish and Game Code.  
31 These causes of action shall not be deemed to have accrued until discovery by the agency  
32 bringing the action of the facts constituting the grounds for commencing the action.

33 **Comment.** Section 338 is amended to substitute references to the Environment Code  
34 provisions that continue former Division 26 (commencing with Section 39000) of the Health and  
35 Safety Code and former Health and Safety Code Section 30925.

36 **Code Civ. Proc. § 529.2 (amended). Action to challenge housing project**

37 SEC. \_\_\_\_\_. Section 529.2 of the Code of Civil Procedure is amended to read:

38 529.2. (a) In all civil actions, including, but not limited to, actions brought pursuant to  
39 Section 21167 of the ~~Public Resources~~ Environment Code, brought by any plaintiff to  
40 challenge a housing project which is a development project, as defined by Section 65928  
41 of the Government Code, and which meets or exceeds the requirements for low- or  
42 moderate-income housing as set forth in Section 65915 of the Government Code, a  
43 defendant may, if the bringing of the action or the seeking by the plaintiff of particular  
44 relief including, but not limited to, injunctions, has the effect of preventing or delaying  
45 the project from being carried out, apply to the court by noticed motion for an order  
46 requiring the plaintiff to furnish an undertaking as security for costs and any damages that  
47 may be incurred by the defendant by the conclusion of the action or proceeding as the  
48 result of a delay in carrying out the development project. The motion shall be made on  
49 the grounds that: (1) the action was brought in bad faith, vexatiously, for the purpose of  
50 delay, or to thwart the low- or moderate-income nature of the housing development  
51 project, and (2) the plaintiff will not suffer undue economic hardship by filing the  
52 undertaking.



(b) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and damages of the defendant. The liability of the plaintiff pursuant to this section for the costs and damages of the defendant shall not exceed five hundred thousand dollars (\$500,000).

(c) If at any time after the plaintiff has filed an undertaking the housing development plan is changed by the developer in bad faith so that it fails to meet or exceed the requirements for low- or moderate-income housing as set forth in Section 65915 of the Government Code, the developer shall be liable to the plaintiff for the cost of obtaining the undertaking.

**Comment.** Section 529.2 is amended to substitute a reference to the Environment Code provision that continues former Section 21167 of the Public Resources Code.

## COMMERCIAL CODE

### **Com. Code § 9302 (amended). Filing required to perfect security interest**

SEC. \_\_\_\_\_. Section 9302 of the Commercial Code is amended to read:

9302. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under Section 9305.

(b) A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under Section 9304 or in proceeds for a 10-day period under Section 9306.

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle or boat required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9313.

(e) A security interest of a collecting bank (Section 4210) or arising under the divisions on sales and leases (see Section 9113) or covered in subdivision (3) of this section.

(f) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(g) A security interest in a deposit account. Such a security interest is perfected:

(i) As to a deposit account maintained with the secured party, when the security agreement is executed.

(ii) As to a deposit account not described in subparagraph (i), when notice thereof is given in writing to the organization with whom the deposit account is maintained.

(h) A security interest in investment property that is perfected without filing under Section 9115 or 9116.

(i) A security interest in or claim in or under any policy of insurance including unearned premiums. Such interest shall be perfected when notice thereof is given in writing to the insurer.

(2) If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to any of the following:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this division for filing of the security interest.



(b) The provisions of the Vehicle Code which require registration of a vehicle or boat, or provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach; but during any period in which collateral is inventory, the filing provisions of this division (Chapter 4 (commencing with Section 9401)) apply to a security interest in that collateral.

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subdivision (2) of Section 9103).

(d) The provisions of the ~~Health and Safety Code~~ Environment Code which require registration of all interests in approved air contaminant emission reductions (~~Sections 40709 to 40713, inclusive, of the Health and Safety Code~~) (Chapter 1 (commencing with Section 32700) of Title 2 of Part 3 of Division 4 of the Environment Code).

(4) Compliance with a statute or treaty described in subdivision (3) is equivalent to the filing of a financing statement under this division and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this division.

**Comment.** Section 9302 is amended to substitute references to the Environment Code provisions that continue former Sections 40709 to 40713 of the Health and Safety Code.

## EDUCATION CODE

### **Educ. Code § 17025 (amended). Submission and approval of plans**

SEC. \_\_\_\_\_. Section 17025 of the Education Code is amended to read:

17025. (a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable, shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division ~~43 3~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division ~~43 3~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, the applicant district shall be deemed to be the “lead agency” with regard to any project funded for that district under this chapter.

**Comment.** Section 17025 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Educ. Code § 17196 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 17196 of the Education Code is amended to read:

17196. (a) This chapter shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized in this chapter, and shall be deemed as being supplemental and additional to the powers conferred by other applicable laws, except that the issuance of revenue bonds and refunding bonds and the undertaking or projects or financings under this chapter need not comply with the requirements of any

1 other laws applicable to the issuance of bonds, including, without limitation, Division 13  
2 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

3 (b) Except as provided in subdivision (a), the financing of a project under this chapter  
4 shall not exempt a project from any of the requirements of law which are otherwise  
5 applicable to the project.

6 **Comment.** Section 17196 is amended to substitute a reference to the Environment Code  
7 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
8 Resources Code.

9 **Educ. Code § 17213 (amended). Requirements for approval of project**

10 SEC. \_\_\_\_\_. Section 17213 of the Education Code is amended to read:

11 17213. The governing board of a school district shall not approve a project involving  
12 the acquisition of a schoolsite by a school district unless all of the following occur:

13 (a) The lead agency, as defined in Section 21067 of the ~~Public Resources~~ Environment  
14 Code, determines that the property purchased or to be built upon is not any of the  
15 following:

16 (1) The site of a current or former hazardous waste disposal site or solid waste disposal  
17 site unless, if the site was a former solid waste disposal site, the governing board of the  
18 school district concludes that the wastes have been removed.

19 (2) A hazardous substance release site identified by the State Department of Health  
20 Services in a current list adopted pursuant to Section 25356 for removal or remedial  
21 action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the  
22 Health and Safety Code.

23 (3) A site which contains one or more pipelines, situated underground or aboveground,  
24 which carries hazardous substances, acutely hazardous materials, or hazardous wastes,  
25 unless the pipeline is a natural gas line which is used only to supply natural gas to that  
26 school or neighborhood.

27 (b) The lead agency, as defined in Section 21067 of the ~~Public Resources~~ Environment  
28 Code, preparing the environmental impact report or negative declaration has consulted  
29 with the administering agency in which the proposed schoolsite is located and with any  
30 air pollution control district or air quality management district having jurisdiction in the  
31 area, to identify facilities within one-fourth of a mile of the proposed schoolsite which  
32 might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous  
33 or acutely hazardous materials, substances, or waste. The lead agency shall include a list  
34 of the locations for which information is sought.

35 (c) The governing board of the school district makes one of the following written  
36 findings:

37 (1) Consultation identified none of the facilities specified in subdivision (b).

38 (2) The facilities specified in subdivision (b) exist, but one of the following conditions  
39 applies:

40 (A) The health risks from the facilities do not and will not constitute an actual or  
41 potential endangerment of public health to persons who would attend or be employed at  
42 the school.

43 (B) The governing board finds that corrective measures required under an existing  
44 order by another jurisdiction which has jurisdiction over the facilities will, before the  
45 school is occupied, result in the mitigation of all chronic or accidental hazardous air  
46 emissions to levels that do not constitute an actual or potential endangerment of public  
47 health to persons who would attend or be employed at the proposed school. If the  
48 governing board makes this finding, the governing board shall also make a subsequent  
49 finding, prior to the occupancy of the school, that the emissions have been mitigated to  
50 these levels.

51 (d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which 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 from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code 45101 of the Environment Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

**Comment.** Section 17213 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Section 44321 and former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Educ. Code § 17621 (amended). Adopting or increasing fee**

SEC. \_\_\_\_\_. Section 17621 of the Education Code is amended to read:

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code, with Section 54994.1 of the Government Code, and with the procedures for mailed notice set forth in Section 54992 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board

1 shall specify, pursuant to that notification, whether or not the collection of the fee or other  
2 charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the  
3 Government Code.

4 (d) Any party on whom a fee, charge, dedication, or other requirement has been directly  
5 imposed pursuant to Section 17620 may protest the establishment or imposition of that  
6 fee, charge, dedication, or other requirement in accordance with Section 66020 of the  
7 Government Code, except that the procedures set forth in Section 66021 of the  
8 Government Code are deemed to apply, for this purpose, to commercial and industrial  
9 development, as well as to residential development.

10 (e) In the case of any commercial or industrial development, the following procedures  
11 shall also apply:

12 (1) The school district governing board shall, in the course of making the findings  
13 required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all  
14 of the following:

15 (A) Make the findings on either an individual project basis or on the basis of categories  
16 of commercial or industrial development. Those categories may include, but are not  
17 limited to, the following uses: office, retail, transportation, communications and utilities,  
18 light industrial, heavy industrial, research and development, and warehouse.

19 (B) Conduct a study to determine the impact of the increased number of employees  
20 anticipated to result from the commercial or industrial development upon the cost of  
21 providing school facilities within the district. For the purpose of making that  
22 determination, the study shall utilize employee generation estimates that are calculated on  
23 either an individual project or categorical basis, in accordance with subparagraph (A).  
24 Those employee generation estimates shall be based upon commercial and industrial  
25 factors within the district or upon, in whole or in part, the applicable employee generation  
26 estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a  
27 report of the San Diego Association of Governments.

28 (C) The governing board shall take into account the results of that study in making the  
29 findings described in this subdivision.

30 (2) In addition to any other requirement imposed by law, in the case of any  
31 development project against which a fee, charge, dedication, or other requirement is to be  
32 imposed pursuant to Section 53080 on the basis of a category of commercial or industrial  
33 development, as described in paragraph (1), the governing board shall provide a process  
34 that permits the party against whom the fee, charge, dedication, or other requirement is to  
35 be imposed the opportunity for a hearing to appeal that imposition. The grounds for that  
36 appeal include, but are not limited to, the inaccuracy of including the project within the  
37 category pursuant to which the fee, charge, dedication, or other requirement is to be  
38 imposed, or that the employee generation or pupil generation factors utilized under the  
39 applicable category are inaccurate as applied to the project. The party appealing the  
40 imposition of the fee, charge, dedication, or other requirement shall bear the burden of  
41 establishing that the fee, charge, dedication, or other requirement is improper.

42 **Comment.** Section 17621 is amended to substitute a reference to the Environment Code  
43 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
44 Resources Code.

45 **Educ. Code § 17725 (amended). Required approval**

46 SEC. \_\_\_\_\_. Section 17725 of the Education Code is amended to read:

47 17725. (a) The board shall not authorize a contract for the construction of any new  
48 school, or for the addition to, or reconstruction or alteration of, any existing building, for  
49 lease-purchase to any school district unless the applicant district has submitted plans  
50 therefor to the Department of General Services and obtained the written approval of the  
51 department pursuant to Article 3 (commencing with Section 39140) of Chapter 1 of Part  
52 23.

(b) The board, or the self-certifying district, as applicable, shall certify the compliance of a project with Sections 39002, 39002.5, and 39003, with Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, and with any other provision of law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other provision of law, for purposes of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, the applicant district shall be deemed to be the “lead agency” with regard to any project funded for that district under this chapter.

**Comment.** Section 17725 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Educ. Code § 17896 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 17896 of the Education Code is amended to read:

17896. (a) This chapter shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized in this chapter, and shall be deemed as being supplemental and additional to the powers conferred by other applicable laws, except that the issuance of revenue bonds and refunding bonds and the undertaking of projects or financings under this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds, including, without limitation, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(b) Except as provided in subdivision (a), the financing of a project under this chapter shall not exempt a project from any of the requirements of law which are otherwise applicable to the project.

**Comment.** Section 17896 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**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)~~ subdivision (a) of Section 44243 40752 of the ~~Health and Safety~~ 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) subdivision (a) of Section 44243 40752 of the ~~Health and Safety~~ 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 § 35700 (amended). Initiation of action to reorganize district**

SEC. \_\_\_\_\_. Section 35700 of the Education Code is amended to read:

35700. An action to reorganize one or more districts is initiated upon the filing, with the county superintendent of schools, of a petition to reorganize one or more school districts signed by any of the following:

(a) At least 25 percent of the registered voters residing in the territory proposed to be reorganized if the territory is inhabited. Where the petition is to reorganize territory in two or more school districts, the petition shall be signed by at least 25 percent of the registered voters in that territory in each of those districts.

(b) A number of registered voters residing in the territory proposed to be reorganized, equal to at least 8 percent of the votes cast for all candidates for Governor at the last gubernatorial election in the territory proposed to be reorganized, where the affected territory consists of a single school district with over 200,000 pupils in average daily attendance and the petition is to reorganize the district into two or more districts.

(c) The owner of the property, provided that territory is uninhabited and the owner thereof has filed either a tentative subdivision map with the appropriate county or city agency or an application for any project, as defined in Section 21065 of the ~~Public Resources~~ Environment Code, with one or more local agencies.

(d) A majority of the members of the governing boards of each of the districts that would be affected by the proposed reorganization.

**Comment.** Section 35700 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Educ. Code § 39003 (amended). Requirements for approval of project**

SEC. \_\_\_\_\_. Section 39003 of the Education Code is amended to read:

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the ~~Public Resources~~ Environment Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the ~~Public Resources~~ Environment Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any



1 air pollution control district or air quality management district having jurisdiction in the  
2 area, to identify facilities within one-fourth of a mile of the proposed schoolsite which  
3 might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous  
4 or acutely hazardous materials, substances, or waste. The lead agency shall include a list  
5 of the locations for which information is sought.

6 (c) The governing board of the school district makes one of the following written  
7 findings:

8 (1) Consultation identified none of the facilities specified in subdivision (b).

9 (2) The facilities specified in subdivision (b) exist, but one of the following conditions  
10 applies:

11 (A) The health risks from the facilities do not and will not constitute an actual or  
12 potential endangerment of public health to persons who would attend or be employed at  
13 the school.

14 (B) The governing board finds that corrective measures required under an existing  
15 order by another jurisdiction which has jurisdiction over the facilities will, before the  
16 school is occupied, result in the mitigation of all chronic or accidental hazardous air  
17 emissions to levels that do not constitute an actual or potential endangerment of public  
18 health to persons who would attend or be employed at the proposed school. If the  
19 governing board makes this finding, the governing board shall also make a subsequent  
20 finding, prior to the occupancy of the school, that the emissions have been mitigated to  
21 these levels.

22 (d) As used in this section:

23 (1) "Hazardous air emissions" means emissions into the ambient air of air contaminants  
24 which have been identified as a toxic air contaminant by the State Air Resources Board or  
25 by the air pollution control officer for the jurisdiction in which the project is located. As  
26 determined by the air pollution control officer, hazardous air emissions also means  
27 emissions into the ambient air from any substance identified in subdivisions (a) to (f),  
28 inclusive, of Section 44321 ~~45101~~ of the ~~Health and Safety~~ Environment Code.

29 (2) "Hazardous substance" means any substance defined in Section 25316 of the Health  
30 and Safety Code.

31 (3) "Acutely hazardous material" means any material defined pursuant to subdivision  
32 (a) of Section 25532 of the Health and Safety Code.

33 (4) "Hazardous waste" means any waste defined in Section 25117 of the Health and  
34 Safety Code.

35 (5) "Hazardous waste disposal site" means any site defined in Section 25114 of the  
36 Health and Safety Code.

37 (6) "Administering agency" means any agency designated pursuant to Section 25502 of  
38 the Health and Safety Code.

39 (7) "Handle" means handle as defined in Article 1 (commencing with Section 25500)  
40 of Chapter 6.95 of Division 20 of the Health and Safety Code.

41 **Comment.** Section 39003 is amended to substitute references to the Environment Code  
42 provisions that continue former Health and Safety Code Section 44321 and former 21067 of the  
43 Public Resources Code.

#### 44 **Educ. Code § 94212 (amended). Applicable law**

45 SEC. \_\_\_\_\_. Section 94212 of the Education Code is amended to read:

46 94212. (a) This chapter shall be deemed to provide a complete, additional, and  
47 alternative method for doing the things authorized, and shall be regarded as supplemental  
48 and additional to powers conferred by other laws; provided, however, that the issuance of  
49 bonds and refunding bonds under the provisions of this chapter need not comply with the  
50 requirements of any other law applicable to the issuance of bonds including the  
51 provisions of Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~  
52 Environment Code.

(b) Except as otherwise provided in subdivision (a), a project that is financed in accordance with this chapter shall not be exempt from any provision of law that is otherwise applicable to the project.

**Comment.** Section 94212 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

## FINANCIAL CODE

### **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 40000) of Division 26 4 of the Health and Safety Environment 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.

## FISH AND GAME CODE

### **Fish & Game Code § 711.2 (amended). Definitions**

SEC. \_\_\_\_\_. Section 711.2 of the Fish and Game Code is amended to read:

711.2. (a) For purposes of this article, unless the context otherwise requires, "wildlife" means and includes all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability and "project" has the same meaning as defined in Section 21065 of the Public Resources Environment Code.

(b) For purposes of this article, "person" includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies of those entities.

**Comment.** Section 711.2 is amended to substitute a reference to the Environment Code provision that continues former Section 21065 of the Public Resources Code.

### **Fish & Game Code § 711.4 (amended). Filing fees**

SEC. \_\_\_\_\_. Section 711.4 of the Fish and Game Code is amended to read:

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust

resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 133 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), consulting pursuant to Section 21104.2 of the ~~Public Resources~~ Environment Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified.

(c)(1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project.

(2) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if the lead or certified regulatory program agency finds that the project is either of the following:

(A) Categorically exempt from the California Environmental Quality Act.

(B) De minimis in its effect on fish and wildlife.

(3) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if all the following conditions exist:

(A) The project is being undertaken by the department.

(B) The project costs are payable from any of the following sources:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund.

(vi) Striped bass stamp funds collected pursuant to Section 7360.

(C) The project is implemented through a contract with either a nonprofit entity or a local government agency. The filing fee shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the ~~Public Resources~~ Environment Code, no project shall be operative, vested, or final until the filing fees required pursuant to this section are paid.

(d) The fees shall be in the following amounts:

(1) For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act.

(2) For a project which is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs which incorporate statutory and categorical exemptions, no filing fee shall be paid.

(3) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the ~~Public Resources~~ Environment Code, the filing fee is one thousand two hundred fifty dollars (\$1,250). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of that code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code, as appropriate.

(4) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the ~~Public Resources~~ Environment Code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code.

(5) For a project which is subject to a certified regulatory program pursuant to Section 21080.5 of the ~~Public Resources~~ Environment Code, the filing fee is eight hundred fifty

dollars (\$850). The filing fee shall be paid to the Secretary of the Resources Agency upon filing of the notice of determination pursuant to Section 21080.5 of that code. If the filing fee is to be paid by the state lead agency, the payment shall be made pursuant to a memorandum of understanding with the department.

(e) The county clerk may charge a documentary handling fee of twenty-five dollars (\$25) per filing in addition to the filing fee specified in subdivision (d).

(1) The county clerk of each county and the Office of Planning and Research shall maintain a record of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.

(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The amount of fees due shall be reported on forms prescribed and provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for any failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, and separate environmental documents or review by the department is required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (5) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

**Comment.** Section 711.4 is amended to substitute references to the Environment Code provisions that continue former Sections 21080, 21080.5, 21081, 21104.2 and 21152 of the Public Resources Code.

#### **Fish & Game Code § 711.7 (amended). Trust resources**

SEC. \_\_\_\_\_. Section 711.7 of the Fish and Game Code is amended to read:

711.7. (a) The fish and wildlife resources are held in trust for the people of the state by and through the department.

(1) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal land and water adjacent to or affecting state trust resources, all persons engaging in projects or activities under federal license, contract, or permit, to the extent permitted by federal law, shall be governed by this article and shall pay project filing fees unless the payment of state filing and permit fees is explicitly preempted by the authority of the federal agency permitting the use or modification of state trust resources.

(2) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal lands and waters adjacent to or affecting state trust resources, all federal agencies acting in their proprietary capacity, to the extent permitted by federal law, shall be governed by this article and ~~Sections 10005 and 21089 of the Public Resources Code~~ Section 10005 of the Public Resources Code and Section 21089 of the Environment Code, unless the payment of state filing and permit fees is explicitly preempted by the authority of a particular federal agency.

(b) If a court of competent jurisdiction finds that any provision of this section or the application thereof to any federal agency, person, or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

**Comment.** Section 711.7 is amended to substitute a reference to the Environment Code provision that continues former Section 21089 of the Public Resources Code.

#### **Fish & Game Code § 1015 (amended). Salmon and steelhead resources**

SEC. \_\_\_\_\_. Section 1015 of the Fish and Game Code is amended to read:

1015. Whenever the department is required, or provided an opportunity, to assess the adequacy of a project or to provide a detailed environmental impact statement or similar document pursuant to ~~Public Law 91-190 the National Environmental Policy Act of 1969~~ (42 U.S.C. Sec. 4321 et seq.) or Section 21100, 21101, or 21102 of the ~~Public Resources~~ Environment Code, or any other provision of law, it shall determine the extent to which salmon and steelhead resources will be protected from damage by the project in question, together with the extent to which the agency or person preparing the plans for such project has incorporated therein plans for increasing the salmon or steelhead resources of this state. To the fullest practicable extent, the department shall advise the commission at one of its regular scheduled meetings of the state's comments on the project. In no event shall more than one regular commission meeting transpire between the time the department renders comments to the requesting person or agency and the time it reports its findings to the commission.

**Comment.** Section 1015 is amended to substitute references to the Environment Code provisions that continue former Sections 21100 to 21102 of the Public Resources Code.

#### **Fish & Game Code § 1785 (amended). Wetlands mitigation bank site**

SEC. \_\_\_\_\_. Section 1785 of the Fish and Game Code is amended to read:

1785. If any person desires to establish a wetlands mitigation bank site under this chapter, the person shall apply to the department for a determination that the bank site and the operator qualify under the criteria established by the department pursuant to this chapter. The determination that a bank site qualifies under this chapter is a project for purposes of Section 21065 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 1785 is amended to substitute a reference to the Environment Code provision that continues former Section 21065 of the Public Resources Code.

#### **Fish & Game Code § 1802 (amended). Jurisdiction of department**

SEC. \_\_\_\_\_. Section 1802 of the Fish and Game Code is amended to read:

1802. The department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The department, as trustee for fish and wildlife resources, shall consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in the California



1 Environmental Protection Act (Division 13 3 (commencing with Section 21000) of the  
2 Public Resources Environment Code).

3 **Comment.** Section 1802 is amended to substitute a reference to the Environment Code  
4 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
5 Resources Code.

6 **Fish & Game Code § 2063 (amended). “Feasible” defined**

7 SEC. \_\_\_\_\_. Section 2063 of the Fish and Game Code is amended to read:  
8 2063. “Feasible” means feasible as defined in Section 21061.1 of the ~~Public Resources~~  
9 Environment Code.

10 **Comment.** Section 2063 is amended to substitute a reference to the Environment Code  
11 provision that continues former Section 21061.1 of the Public Resources Code.

12 **Fish & Game Code § 2064 (amended). “Project” defined**

13 SEC. \_\_\_\_\_. Section 2064 of the Fish and Game Code is amended to read:  
14 2064. “Project” means project as defined in Section 21065 of the ~~Public Resources~~  
15 Environment Code.

16 **Comment.** Section 2064 is amended to substitute a reference to the Environment Code  
17 provision that continues former Section 21065 of the Public Resources Code.

18 **Fish & Game Code § 2065 (amended). “State lead agency” defined**

19 SEC. \_\_\_\_\_. Section 2065 of the Fish and Game Code is amended to read:  
20 2065. “State lead agency” means the state agency, board, or commission which is a  
21 lead agency under the California Environmental Quality Act (Division 13 3 (commencing  
22 with Sec. 21000) of the ~~Public Resources~~ Environment Code).

23 **Comment.** Section 2065 is amended to substitute a reference to the Environment Code  
24 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
25 Resources Code.

26 **Fish & Game Code § 2081 (amended). Authorization of acts prohibited by § 2080**

27 SEC. \_\_\_\_\_. Section 2081 of the Fish and Game Code is amended to read:  
28 2081. The department may authorize acts that are otherwise prohibited pursuant to  
29 Section 2080, as follows:

30 (a) Through permits or memorandums of understanding, the department may authorize  
31 individuals, public agencies, universities, zoological gardens, and scientific or  
32 educational institutions, to import, export, take, or possess any endangered species,  
33 threatened species, or candidate species for scientific, educational, or management  
34 purposes.

35 (b) The department may authorize, by permit, the take of endangered species,  
36 threatened species, and candidate species if all of the following conditions are met:

37 (1) The take is incidental to an otherwise lawful activity.  
38 (2) The impacts of the authorized take shall be minimized and fully mitigated. The  
39 measures required to meet this obligation shall be roughly proportional in extent to the  
40 impact of the authorized taking on the species. Where various measures are available to  
41 meet this obligation, the measures required shall maintain the applicant’s objectives to the  
42 greatest extent possible. All required measures shall be capable of successful  
43 implementation. For purposes of this section only, impacts of taking include all impacts  
44 on the species that result from any act that would cause the proposed taking.

45 (3) The permit is consistent with any regulations adopted pursuant to Sections 2112 and  
46 2114.



(4) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the ~~Public Resources~~ Environment Code to implement subdivision (b).

**Comment.** Section 2081 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Fish & Game Code § 2090 (amended). Consultation with department**

SEC. \_\_\_\_\_. Section 2090 of the Fish and Game Code is amended to read:

2090. (a) Except as provided in subdivision (c), each state lead agency shall consult with the department, in accordance with guidelines developed by the department, to ensure that any action authorized, funded, or carried out by the state lead agency is not likely to jeopardize the continued existence of any endangered or threatened species.

(b) Whenever the department consults with a state lead agency pursuant to Section 21080.3, 21080.4, 21080.5, or 21104.2 of the ~~Public Resources~~ Environment Code, the department shall issue a written finding based on its determination of whether a proposed project would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of the species. The written finding shall also include the department's determination of whether a proposed project would result in any taking of an endangered species or a threatened species incidental to the proposed project. The department shall base its determination on the best available scientific information.

(c) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

**Comment.** Section 2090 is amended to substitute a reference to the Environment Code provisions that continue former Sections 21080.3, 21080.4, 21080.5, and 21104.2 of the Public Resources Code.

**Fish & Game Code § 2092 (amended). Reasonable and prudent alternatives**

SEC. \_\_\_\_\_. Section 2092 of the Fish and Game Code is amended to read:

2092. (a) Notwithstanding Section 21081 of the ~~Public Resources~~ Environment Code, if, after consulting with the department pursuant to Section 2090, jeopardy is found, the state lead agency shall require reasonable and prudent alternatives consistent with conserving the species which would prevent jeopardy.

(b) If specific economic, social, or other conditions make infeasible the alternatives prescribed in subdivision (a), except as provided in subdivision (c), the state lead agency may approve a project when jeopardy is found, if both of the following conditions are met:

(1) The state lead agency requires reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the adverse impacts of the project upon the endangered species or threatened species, or habitat essential to the continued existence of the species, including, but not limited to, live propagation, transplantation, and habitat acquisition, restoration, and improvement.

(2) The state lead agency finds all of the following:

(A) The benefits of the project as proposed clearly outweigh the benefits of the project were it to be carried out with the reasonable and prudent alternatives consistent with conserving the species which would prevent jeopardy.

(B) An irreversible or irretrievable commitment made after initiation of consultation required pursuant to Section 2090, of resources to the project, which has the effect of foreclosing the opportunity for formulating and implementing reasonable and prudent alternatives consistent with conserving the species which prevent jeopardy, has not been made.

(c) A state lead agency shall not approve a project which would likely result in the extinction of any endangered species or threatened species. The state lead agency shall base its determination on the best existing scientific information.

**Comment.** Section 2092 is amended to substitute a reference to the Environment Code provision that continues former Section 21081 of the Public Resources Code.

**Fish & Game Code § 2093 (amended). Mechanism for informal consultation**

SEC. \_\_\_\_\_. Section 2093 of the Fish and Game Code is amended to read:

2093. In order to encourage resolution of potential conflicts as early as possible, the department shall, through guidelines, provide a mechanism for informal consultation prior to a determination pursuant to Section 21080.1 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 2093 is amended to substitute a reference to the Environment Code provision that continues former Section 21080.1 of the Public Resources Code.

**Fish & Game Code § 2095 (amended). Threatened or endangered species**

SEC. \_\_\_\_\_. Section 2095 of the Fish and Game Code is amended to read:

2095. If a project may affect species that are listed as threatened or endangered under both this chapter and the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), and if the project is subject to state lead agency actions pursuant to the provisions of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) and actions of a federal agency action pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), the department shall participate to the greatest extent practicable in the federal consultation.

The Legislature encourages cooperative and simultaneous consultation by every state lead agency in order to develop a coordinated federal Biological Opinion that reflects consistent and compatible findings between state and federal agencies. Whenever

possible, the department, consistent with this act, shall adopt a federal Biological Opinion as the written findings required pursuant to Section 2090.

Whenever the department has reason to believe that a project may affect species that are listed as threatened and endangered under both this chapter and the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), and if the project is subject to state lead agency actions pursuant to the provisions of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000 of the ~~Public Resources~~ Environment Code) and actions of a federal agency action pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), the department shall request the United States Department of the Interior, Fish and Wildlife Service or the National Marine Fisheries Service, whichever is appropriate, to initiate consultation pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

**Comment.** Section 2095 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Fish & Game Code § 2627 (amended). Protection of public interest**

SEC. \_\_\_\_\_. Section 2627 of the Fish and Game Code is amended to read:

2627. (a) Funds granted pursuant to subdivision (c) of Section 2620 for any purpose, other than acquisition, shall not be encumbered by the recipient until the conservancy has entered into an agreement sufficient to protect the public interest in any improvements constructed pursuant to this chapter with the entity that exercises legal control of the real property on which the improvement is constructed.

(b) The conservancy shall not disburse any grant until the applicant, or any other appropriate managing or operating entity, has entered into an agreement with the conservancy or its designee, or both, sufficient to assure that the property acquired, enhanced, or developed, and any improvements thereon, shall be managed and operated for the purpose for which the grant was requested. No use of the property that is incompatible with that purpose shall ever be permitted.

(c) The minimum amount for which an application for an individual project may be made is fifteen thousand dollars (\$15,000).

(d) Every application for a grant shall comply with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(e) Notwithstanding Sections 31207 and 31257 of the Public Resources Code, funds granted pursuant to subdivision (c) of Section 2620 may be encumbered only for the acquisition, enhancement, or development, or any combination thereof, and the costs incurred by the recipient in planning, preparation of construction documents, fiscal management and accounting, and supervision of construction in connection with the project for which the grant was made. All expenditures made by a recipient of a grant shall be subject to being audited.

(f) Funds granted pursuant to subdivision (c) of Section 2620 shall be available for encumbrance by the recipient for a period of three years after the date when the grant became effective.

**Comment.** Section 2627 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Fish & Game Code § 2794 (amended). Management plan**

SEC. \_\_\_\_\_. Section 2794 of the Fish and Game Code is amended to read:

2794. In implementing this chapter, the state or local agency that manages lands acquired with funds appropriated from the fund shall prepare, with full public

1 participation, a management plan for lands that have been acquired, which plan shall  
2 reasonably reduce possible conflicts with neighboring land use and landowners, including  
3 agriculturists. The plans shall comply with the California Environmental Quality Act  
4 (Division 21 ~~3~~(commencing with Section 21000) of the ~~Public Resources~~ Environment  
5 Code).

6 **Comment.** Section 2794 is amended to substitute a reference to the Environment Code  
7 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
8 Resources Code.

9 **Fish & Game Code § 2799 (amended). CEQA compliance**

10 SEC. \_\_\_\_\_. Section 2799 of the Fish and Game Code is amended to read:  
11 2799. Every expenditure made pursuant to this chapter shall comply with the California  
12 Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the  
13 ~~Public Resources~~ Environment Code).

14 **Comment.** Section 2799 is amended to substitute a reference to the Environment Code  
15 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
16 Resources Code.

17 **Fish & Game Code § 2825 (amended). Nonregulatory guidelines**

18 SEC. \_\_\_\_\_. Section 2825 of the Fish and Game Code is amended to read:  
19 2825. (a) The department may prepare nonregulatory guidelines for the development  
20 and implementation of natural community conservation plans. The guidelines are exempt  
21 from Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the  
22 Government Code. The guidelines may include, but are not limited to, all of the  
23 following:

- 24 (1) Defining the scope of a conservation planning area.
- 25 (2) Determining conservation standards, guidelines, and objectives for the planning  
26 area.
- 27 (3) Appointing one or more advisory committees to review and make recommendations  
28 regarding the preparation and implementation of natural community conservation plans.  
29 The advisory committee membership may include representation from the local  
30 community near the plan area.
- 31 (4) Coordinating with local, state, and federal agencies, including the Trade and  
32 Commerce Agency.
- 33 (5) Incorporating public input.
- 34 (6) Ensuring compatibility with the federal Endangered Species Act (16 U.S.C. Sec.  
35 1531 et seq.).
- 36 (7) Obtaining approval of the natural community conservation plan by the department.
- 37 (8) Provisions for implementation of the plan.
- 38 (9) Monitoring and reporting on plan implementation.
- 39 (10) Amending the plan consistent with the initial intent of the plan.

40 (b) Nothing in this chapter exempts projects proposed in a natural community  
41 conservation planning area from the requirements of the California Environmental  
42 Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~  
43 Environment Code).

44 (c) Natural community conservation plans, as appropriate, shall be implemented  
45 pursuant to Section 2081.

46 (d) To the extent practicable, implementation of natural community conservation plans  
47 shall use the services of either the California Conservation Corps or local community  
48 conservation corps.

**Comment.** Section 2825 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Fish & Game Code § 5653.9 (amended). Regulations**

SEC. \_\_\_\_\_. Section 5653.9 of the Fish and Game Code is amended to read:  
5653.9. The department shall adopt regulations to carry out Section 5653 and may adopt regulations to carry out Sections 5653.3, 5653.5, and 5653.7. The regulations shall be adopted in accordance with the requirements of Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 5653.9 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Fish & Game Code § 15101 (amended). Aquaculture facility registration**

SEC. \_\_\_\_\_. Section 15101 of the Fish and Game Code is amended to read:  
15101. (a) The owner of each aquaculture facility shall register all of the following information with the department by March 1 of each year:  
(1) The owner's name.  
(2) The species grown.  
(3) The location or locations of each operation or operations.  
(b) The department may provide registration forms for this purpose, may establish a procedure for the review of the information provided to ensure that the operation will not be detrimental to native wildlife, and shall impose a registration fee of four hundred dollars (\$400) to recover the cost of reviewing new registrations. For renewing registrations, the department shall impose a registration fee of two hundred dollars (\$200). It is unlawful to conduct aquaculture operations or to culture approved species of aquatic plants and animals unless registered under this section.  
(c) The annual registration of information required by subdivision (b) is not a project for purposes of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 15101 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**FOOD AND AGRICULTURAL CODE**

**Food & Agric. Code § 3302 (amended). Cal Expo flood plain**

SEC. \_\_\_\_\_. Section 3302 of the Food and Agricultural Code is amended to read:  
3302. No changes shall be made in the uses of the flood plain on California Exposition and State Fair property until the board has adopted a management plan for the flood plain area which complies with the law concerning Bushy Lake Preservation in Chapter 9 (commencing with Section 5830) of Division 5 of the Public Resources Code and with the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 3302 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.



**Food & Agric. Code § 14022 (amended). Pesticide evaluation**

SEC. \_\_\_\_\_. Section 14022 of the Food and Agricultural Code is amended to read:

14022. (a) In consultation with the Office of Environmental Health Hazard Assessment and the State Air Resources Board, the director shall evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) The director shall complete the evaluation of a pesticide within 90 days after receiving the scientific data specified in subdivision (c) from the office and the State Air Resources Board. The director may extend the 90-day deadline for a period not to exceed 30 days if the director transmits to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline.

(c) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the office, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the office shall provide an assessment of related health effects of pesticides which may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(d) The director may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall, at the request of the director, identify that portion of the information submitted to the department which is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160 of the ~~Public Resources~~ Environment Code.

(e) The director shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

**Comment.** Section 14022 is amended to substitute a reference to the Environment Code provision that continues former Section 21160 of the Public Resources Code.

**Food & Agric. Code § 14023 (amended). Reports**

SEC. \_\_\_\_\_. Section 14023 of the Food and Agricultural Code is amended to read:

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the Office of Environmental Health Hazard Assessment, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include



1 the findings of the office. The report shall be made available to the public, subject to  
2 subdivision (d) of Section 14022.

3 (b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the  
4 scientific review panel established according to ~~Section 39670 of the Health and Safety~~  
5 Code Article 6 (commencing with Section 31550) of Chapter 4 of Part 2 of Division 4 of  
6 the Environment Code. The director shall also make available the data deemed necessary  
7 to the scientific review panel, according to departmental procedures established to ensure  
8 confidentiality of proprietary information. The panel shall review, as appropriate, the  
9 scientific data on which the report is based, the scientific procedures and methods used to  
10 support the data, and the conclusions and assessments on which the report is based. The  
11 panel shall submit its written findings to the director within 45 days after receiving the  
12 report, but it may petition the director for an extension of the deadline, which may not  
13 exceed 15 working days.

14 (c) If the scientific review panel determines that the health effects report is seriously  
15 deficient, the report shall be returned to the director who shall revise and resubmit the  
16 report, within 30 days following receipt of the panel's determination, to the panel prior to  
17 development of emission control measures.

18 (d) Within 10 working days following receipt of the findings of the scientific review  
19 panel pursuant to subdivision (b), the director shall prepare a hearing notice and a  
20 proposed regulation which shall include the proposed determination as to whether a  
21 pesticide is a toxic air contaminant. After conducting a public hearing pursuant to  
22 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
23 Government Code, the director shall list, by regulation, pesticides determined to be toxic  
24 air contaminants.

25 (e) The director shall determine, in consultation with the office, the State Air Resources  
26 Board, and the air pollution control districts or air quality management districts in the  
27 affected counties, the need for and appropriate degree of control measures for each  
28 pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may  
29 submit written information for consideration by the director in making determinations on  
30 control measures.

31 **Comment.** Section 14023 is amended to substitute a reference to the Environment Code  
32 provisions that continue former Health and Safety Code Section 39670.

33 **Food & Agric. Code § 33112 (amended). Registered dairy inspector**

34 SEC. \_\_\_\_\_. Section 33112 of the Food and Agricultural Code is amended to read:  
35 33112. The director shall examine any interested person qualified under Section 33113  
36 for certification as a registered dairy inspector. Such an examination shall be both written  
37 and oral. A certificate as a registered dairy inspector shall be issued to any person who  
38 passes the examination.

39 No person shall be eligible for the examination given under Section 33111 or any  
40 employment as a dairy inspector by an approved milk inspection service, unless ~~he~~ that  
41 person is certificated pursuant to the provisions of this section. Such certification shall be  
42 valid for four years after a person discontinues ~~his~~ the person's employment as a  
43 registered dairy inspector or a ~~registered sanitarian~~ registered environmental health  
44 specialist.

45 The director may adopt such regulations as are necessary to carry out the provisions of  
46 this article.

47 **Comment.** Section 33112 is amended to remove a reference to the obsolete term "registered  
48 sanitarian." See Env't Code § 8000(c) ("registered sanitarian" means "registered environmental  
49 health specialist").

**Food & Agric. Code § 33112.1 (amended). Limited milk inspection certificate;**

SEC. \_\_\_\_\_. Section 33112.1 of the Food and Agricultural Code is amended to read:

33112.1. Notwithstanding any other provision of this chapter, the director shall issue a limited milk inspection certificate to any ~~registered sanitarian~~ registered environmental health specialist employed by any city or county health department who will be employed in connection with an approved milk inspection service. A person holding the certificate shall have full authority to enforce all provisions of this code if this authority is restricted to the inspection and sampling of market milk products in retail outlets and in the inspection of retail establishments licensed pursuant to Section 33704 where an approved milk inspection service has entered into an agreement with the director pursuant to Section 33704.

The limited milk inspection certificate shall be issued following the completion of a certification course that has been approved by the director. This limited milk inspection certificate shall expire upon the termination of employment as a registered sanitarian by the individual or at any time an approved milk inspection service has been terminated.

**Comment.** Section 33112.1 is amended to remove a reference to the obsolete term “registered sanitarian.” See Env’t Code § 8000(c) (“registered sanitarian” means “registered environmental health specialist”).

**Food & Agric. Code § 33113 (amended). Eligibility to take examination**

SEC. \_\_\_\_\_. Section 33113 of the Food and Agricultural Code is amended to read:

33113. A person is not eligible to take the examination unless the person possesses one of the following qualifications:

(a) Graduation from a four-year college with specialization in studies which related to dairy farms, milk and milk products, the food sciences, or animal science.

(b) Graduation from a veterinary college of recognized standing at the time of graduation and at least one year of experience in the production, processing, or inspection of milk or milk products.

(c) Employed as a ~~registered sanitarian~~ registered environmental health specialist in the State of California for at least two years immediately prior to applying for the certification examination and possesses a bachelor’s degree.

**Comment.** Section 33113 is amended to remove a reference to the obsolete term “registered sanitarian.” See Env’t Code § 8000(c) (“registered sanitarian” means “registered environmental health specialist”).

**Food & Agric. Code § 33487 (amended). Dairy farms**

SEC. \_\_\_\_\_. Section 33487 of the Food and Agricultural Code is amended to read:

33487. No environmental impact report may be required by any state agency for any activity of a dairy farm, including adoption of waste discharge requirements pursuant to Division 7 (commencing with Section 13000) of the Water Code, under all of the following circumstances:

(a) When the proposed dairy will be constructed and operated in accordance with the minimum standards established under this chapter.

(b) Where the applicable local public agencies have completed all necessary reviews and approvals, including the provisions of Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, where applicable.

(c) Where a permit for construction has been issued by the appropriate local agency or agencies, and construction undertaken.

This section shall not apply to any dairy that received a permit, and undertook construction, prior to the effective date of the legislation enacting this section.

**Comment.** Section 33487 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

## GOVERNMENT CODE

### **Gov't Code § 16.5 (amended). Digital signatures**

SEC. \_\_\_\_\_. Section 16.5 of the Government Code is amended to read:

16.5. (a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.

(5) It conforms to regulations adopted by the Secretary of State. Initial regulations shall be adopted no later than January 1, 1997. In developing these regulations, the secretary shall seek the advice of public and private entities, including, but not limited to, the Department of Information Technology, the California Environmental Protection Agency, and the Department of General Services. Before the secretary adopts the regulations, he or she shall hold at least one public hearing to receive comments.

(b) The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this section shall require a public entity to use or permit the use of a digital signature.

(c) Digital signatures employed pursuant to Section 71066 15206 of the ~~Public Resources~~ Environment Code are exempted from this section.

(d) "Digital signature" means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

**Comment.** Section 16.5 is amended to substitute a reference to the Environment Code provisions that continue former Public Resources Code Section 71066.

### **Gov't Code § 5956.6 (amended). Agreements that facilitate projects**

SEC. \_\_\_\_\_. Section 5956.6 of the Government Code is amended to read:

5956.6. (a) For purposes of facilitating projects, the agreements specified in Section 5956.4 may include provisions for the lease of rights-of-way in, and airspace over, property owned by a governmental agency, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct infrastructure facilities supplemental to existing government-owned facilities. Infrastructure constructed by a private entity pursuant to this chapter shall, at all times, be owned by a governmental agency, unless the governmental agency, in its discretion, elects to provide for ownership of the facility by the private entity during the term of the agreement. The agreement shall provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the governmental agency at the expiration of the lease at no charge to the governmental agency. Subsequent to the expiration of the lease or ownership period, the governmental agency may continue to charge fees for use of the infrastructure facility. If, after the expiration of the lease or

ownership period, the governmental agency continues to lease airspace rights to the private entity, it shall do so at fair market value.

(b) The agreement between the governmental agency and the private entity shall include, but need not be limited to, provisions to ensure the following:

(1) Compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code). Neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with the act. However, appropriate compliance with the act shall thereafter occur before project development commences.

(2) Security for the construction of the facility to ensure its completion, and contractual provisions that are necessary to protect the revenue streams of the project.

(3) Adequate financial resources of the private entity to design, build, and operate the facility, after the date of the agreement.

(4) Authority for the governmental agency to impose user fees for use of the facility in an amount sufficient to protect the revenue streams necessary for projects or facilities undertaken pursuant to this chapter. User fee revenues shall be dedicated exclusively to payment of the private entity's direct and indirect capital outlay costs for the project, direct and indirect costs associated with operations, direct and indirect user fee collection costs, direct and indirect costs of administration of the facility, reimbursement for the direct and indirect costs of maintenance, and a negotiated reasonable return on investment to the private entity.

(5) As a precondition to the imposition or increase of a user fee, the governmental agency shall conduct at least one public hearing at which public testimony will be received regarding a proposed user fee revenue or increase in user fee revenues. The public hearing shall precede the action by the governmental agency to actually impose a user fee or to increase an existing user fee. The governmental agency shall consider the public testimony prior to imposing a new or increased user fee. The governmental agency shall provide the following notices and utilize the following procedures:

(A) Notice of the date, time, and place of the meeting, including a general explanation of the matter to be considered, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the governmental agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed prior to the expiration of the one-year period for which the written request was filed. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(B) At least 10 days prior to the meeting, the governmental agency shall make available to the public data that supports the amount of the fee or the increase in the fee.

(C)(i) At least 10 days prior to the meeting, the governmental agency shall publish a notice in a newspaper of general circulation in that agency's jurisdiction stating the date, time, and place of the meeting, including a general explanation of the matter to be considered.

(ii) Any costs incurred by the governmental agency in conducting the meeting or meetings required by this section may be recovered from fees charged for the services that are the subject of the fee.

(iii) For transportation projects specifically authorized by this chapter, at least 10 days prior to the meeting, the governmental agency shall publish for four consecutive times, a notice in the newspaper of general circulation in the affected area stating in no smaller than 10-point type a notice specifying the subject of the hearing, the date, time, and place of the meeting, and in at least 8-point type a general explanation of the matter to be considered.

(D) No local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount that exceeds the estimated amount required to provide the

1 service for which the fee or service charge is levied and a reasonable rate of return on  
2 investment, pursuant to paragraph (4). Any action by a local agency to levy a new fee or  
3 service charge or to approve an increase in an existing fee or service charge pursuant to  
4 this chapter shall be taken only by ordinance or resolution. The legislative body of a local  
5 agency shall not delegate the authority to adopt a new fee or service charge, or to increase  
6 a fee or service charge.

7 (6) Require that if the legislative body of the governmental agency determines that fees  
8 or service charges create revenues in excess of the actual cost for which the user fee  
9 revenues are dedicated and a reasonable rate of return on investment, pursuant to  
10 paragraph (4), those revenues shall either be applied to any indebtedness incurred by the  
11 private entity with respect to the project, be paid into a reserve account in order to offset  
12 future operation costs, be paid into the appropriate government account, be used to reduce  
13 the user fee or service charge creating the excess, or a combination of these sources.

14 (7) Require the private entity to maintain the facility in good operating condition at all  
15 times, including the time the facility reverts to the governmental agency.

16 (8) Preparation by the private entity of an annual audited report accounting for the  
17 income received and expenses to operate the facility. The private entity shall make that  
18 report available to any member of the public for a cost not to exceed the cost of  
19 reproduction of the report.

20 (9) Provision for a buyout of the private entity by the governmental entity in the event  
21 of termination or default before the end of the lease term.

22 (10) Provision for appropriate indemnity promises between the governmental agency  
23 and the private entity.

24 (11) Provision requiring the private entity to maintain insurance with those coverages  
25 and in those amounts that the governmental agency deems appropriate.

26 (12) In the event of a dispute between the governmental agency and the private entity,  
27 both parties shall be entitled to all available legal or equitable remedies.

28 **Comment.** Section 5956.6 is amended to substitute a reference to the Environment Code  
29 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
30 Resources Code.

31 **Gov't Code § 6254.11 (amended). Volatile organic compounds or chemical substances**  
32 **information**

33 SEC. \_\_\_\_\_. Section 6254.11 of the Government Code is amended to read:  
34 6254.11. Nothing in this chapter requires the disclosure of records that relate to volatile  
35 organic compounds or chemical substances information received or compiled by an air  
36 pollution control officer pursuant to Section 42303.2 of the Health and Safety Code  
37 38803 of the Environment Code.

38 **Comment.** Section 6254.11 is amended to substitute a reference to the Environment Code  
39 provision that continues former Section 42303.2 of the Health and Safety Code.

40 **Gov't Code § 7075 (amended). Applicant's initial study**

41 SEC. \_\_\_\_\_. Section 7075 of the Government Code is amended to read:  
42 7075. (a) Upon filing a preliminary application, the applicant, as lead agency, shall  
43 submit an initial study and a notice of preparation to the agency, the state clearinghouse,  
44 and all responsible agencies.

45 (b) Only a city, county, or city and county chosen by the agency as a final applicant  
46 shall prepare, or cause to be prepared, a draft environmental impact report, which shall  
47 set forth the potential environmental impacts of any and all development planned within  
48 the enterprise zone. The draft environmental impact report shall be submitted to the  
49 agency with the final application.



1 (c) Prior to final designation by the agency, the applicant shall complete and certify the  
2 final environmental impact report.

3 (d) The environmental impact report shall comply with the information disclosure  
4 provisions and the substantive requirements of Division 13 3 (commencing with Section  
5 21000) of the ~~Public Resources~~ Environment Code.

6 (e) No further environmental impact report shall be required if the effects of the project  
7 were any of the following:

8 (1) Mitigated or avoided as a result of the environmental impact report prepared for the  
9 area.

10 (2) Examined at a sufficient level of detail in the environmental impact report for the  
11 area to enable those effects to be mitigated or avoided by specific site revisions, the  
12 imposition of conditions, or other means in connection with the designation of the area.

13 (3) Identified in the final environmental impact report and the lead agency made written  
14 findings that specific economic, social, or other considerations made the mitigation  
15 measures or project alternatives identified in the final environmental impact report  
16 unfeasible.

17 **Comment.** Section 7075 is amended to substitute a reference to the Environment Code  
18 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
19 Resources Code.

20 **Gov't Code § 7113 (amended). Applicant's initial study**

21 SEC. \_\_\_\_\_. Section 7113 of the Government Code is amended to read:

22 7113. (a) Upon filing a preliminary application, the applicant, as lead agency, shall  
23 submit an initial study and a notice of preparation to the department, the state  
24 clearinghouse, all responsible agencies, and any public agency that has jurisdiction by  
25 law with respect to the project.

26 (b) A governing body selected by the agency as a final applicant shall prepare, or cause  
27 to be prepared, an environmental impact report pursuant to Division 13 3 (commencing  
28 with Section 21000) of the ~~Public Resources~~ Environment Code for any and all projects  
29 planned within the local agency military base recovery area. Whenever a project requires  
30 compliance with both the California Environmental Quality Act and the National  
31 Environmental Policy Act, the lead agency shall, to the greatest extent feasible, prepare a  
32 joint environmental impact report and environmental impact statement. The draft  
33 environmental impact report shall be submitted to the agency with the final application.

34 (c) Prior to final designation by the agency, the applicant shall complete and certify the  
35 final environmental impact report and act on the project.

36 **Comment.** Section 7113 is amended to substitute a reference to the Environment Code  
37 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
38 Resources Code.

39 **Gov't Code § 7550.5 (amended). Reports to Legislature or Governor**

40 SEC. \_\_\_\_\_. Section 7550 of the Government Code is amended to read:

41 7550.5. (a) Notwithstanding any other provision of law, until October 1, 1999, no state  
42 or local agency shall be required to prepare or to submit any written report to the  
43 Legislature or the Governor unless the report is specified in subdivision (b) or any of the  
44 following circumstances exist:

45 (1) The report is required either in whole or in part by a court, federal law, or  
46 regulation.

47 (2) The report is required in the Budget Act.

48 (3) The Legislature expressly provides that, notwithstanding this section, a written  
49 report shall be prepared and submitted.



(4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.

(b) Pursuant to subdivision (a), the reports specified in the following provisions of law shall be prepared and submitted:

- (1) Section 29 of the Business and Professions Code.
- (1.5) Section 116 of the Business and Professions Code.
- (2) Section 312 of the Business and Professions Code.
- (3) Section 327 of the Business and Professions Code.
- (4) Section 472.4 of the Business and Professions Code.
- (4.5) Section 473.2 of the Business and Professions Code.
- (5) Section 806 of the Business and Professions Code.
- (6) Section 1620 of the Business and Professions Code.
- (7) Section 1724 of the Business and Professions Code.
- (8) Section 2075 of the Business and Professions Code.
- (9) Section 2313 of the Business and Professions Code.
- (10) Section 2392 of the Business and Professions Code.
- (11) Section 2435 of the Business and Professions Code.
- (11.5) Section 2688.5 of the Business and Professions Code.
- (12) Section 2815.7 of the Business and Professions Code.
- (13) Section 3151 of the Business and Professions Code.
- (14) Section 3152 of the Business and Professions Code.
- (15) Section 3521.5 of the Business and Professions Code.
- (16) Section 4946 of the Business and Professions Code.
- (16.1) Section 4980.54 of the Business and Professions Code.
- (16.2) Section 4996.22 of the Business and Professions Code.
- (16.3) Section 5025.1 of the Business and Professions Code.
- (18) Section 5681 of the Business and Professions Code.
- (18.5) Section 7011.8 of the Business and Professions Code.
- (19) Section 7017 of the Business and Professions Code.
- (20) Section 7139.7 of the Business and Professions Code.
- (21) Section 7215.5 of the Business and Professions Code.
- (21.5) Section 7215.6 of the Business and Professions Code.
- (22) Section 10239.34 of the Business and Professions Code.
- (23) Section 10264 of the Business and Professions Code.
- (24) Section 12102 of the Business and Professions Code.
- (25) Section 18618 of the Business and Professions Code.
- (26) Section 1920 of the Civil Code.
- (27) Section 8007 of the Education Code.
- (28) Section 8179 of the Education Code.
- (28.3) Section 8182 of the Education Code.
- (28.5) Section 8280 of the Education Code.
- (29) Section 12141 of the Education Code.
- (30) Section 15750 of the Education Code.
- (31) Section 16098 of the Education Code.
- (32) Section 17330 of the Education Code.
- (32.5) Section 32242 of the Education Code.
- (33) Section 33053 of the Education Code.
- (34) Section 42263 of the Education Code.
- (35) Section 45355 of the Education Code.
- (36) Section 45357 of the Education Code.
- (39) Section 66742 of the Education Code.
- (40) Section 66743 of the Education Code.
- (41) Section 66903 of the Education Code.
- (42) Section 69615.4 of the Education Code.

- 1 (43) Section 69944 of the Education Code.
- 2 (44) Section 99105 of the Education Code.
- 3 (44.5) Section 99155 of the Education Code.
- 4 (45) Section 99181 of the Education Code.
- 5 (46) Section 99182 of the Education Code.
- 6 (46.51) Section 14204 of the Environment Code.
- 7 (46.52) Section 30905 of the Environment Code.
- 8 (46.53) Section 37701 of the Environment Code.
- 9 (46.54) Section 38264 of the Environment Code.
- 10 (46.55) Section 41500 of the Environment Code.
- 11 (46.56) Section 41501 of the Environment Code.
- 12 (46.57) Section 41701 of the Environment Code.
- 13 (46.58) Section 41901 of the Environment Code.
- 14 (46.59) Section 43011 of the Environment Code.
- 15 (46.60) Section 42604 of the Environment Code.
- 16 (46.61) Section 45603 of the Environment Code.
- 17 (47) Section 2079 of the Fish and Game Code.
- 18 (48) Section 3409 of the Fish and Game Code.
- 19 (48.1) Section 2281 of the Food and Agricultural Code.
- 20 (48.2) Section 2282 of the Food and Agricultural Code.
- 21 (49) Section 3333 of the Food and Agricultural Code.
- 22 (49.1) Section 12794.5 of the Food and Agricultural Code.
- 23 (49.2) Section 13127 of the Food and Agricultural Code.
- 24 (49.3) Section 13127.93 of the Food and Agricultural Code.
- 25 (49.4) Section 13135 of the Food and Agricultural Code.
- 26 (50) Section 13144 of the Food and Agricultural Code.
- 27 (51) Section 13152 of the Food and Agricultural Code.
- 28 (52) Section 14104 of the Food and Agricultural Code.
- 29 (52.1) Section 42814 of the Food and Agricultural Code.
- 30 (52.2) Section 58591 of the Food and Agricultural Code.
- 31 (53) Section 965.4 of the Government Code.
- 32 (54) Section 965.65 of the Government Code.
- 33 (55) Section 7078 of the Government Code.
- 34 (56) Section 7086 of the Government Code.
- 35 (57) Section 7563 of the Government Code.
- 36 (58) Section 7585 of the Government Code.
- 37 (59) Section 8523 of the Government Code.
- 38 (60) Section 8574.8 of the Government Code.
- 39 (62) Section 8878.97 of the Government Code.
- 40 (62.1) Section 9148.4 of the Government Code.
- 41 (62.2) Section 11371 of the Government Code.
- 42 (63) Section 12010.6 of the Government Code.
- 43 (64) Section 12017 of the Government Code.
- 44 (65) Section 12020 of the Government Code.
- 45 (66) Section 12021 of the Government Code.
- 46 (67) Section 12080.2 of the Government Code.
- 47 (68) Section 12170 of the Government Code.
- 48 (69) Section 12329 of the Government Code.
- 49 (70) Section 12439 of the Government Code.
- 50 (71) Section 12460 of the Government Code.
- 51 (72) Section 12461 of the Government Code.
- 52 (73) Section 12522 of the Government Code.
- 53 (74) Section 12805.5 of the Government Code.
- 54 (74.5) Section 12812.5 of the Government Code.

- 1 (75) Section 13305 of the Government Code.
- 2 (76) Section 13308 of the Government Code.
- 3 (77) Section 13332.04 of the Government Code.
- 4 (78) Section 13332.10 of the Government Code.
- 5 (79) Section 13336.5 of the Government Code.
- 6 (80) Section 13337 of the Government Code.
- 7 (82) Section 14523 of the Government Code.
- 8 (83) Section 14524.15 of the Government Code.
- 9 (84) Section 14525.6 of the Government Code.
- 10 (85) Section 14535 of the Government Code.
- 11 (85.5) Section 14660.1 of the Government Code.
- 12 (86) Section 14840 of the Government Code.
- 13 (87) Section 15323.5 of the Government Code.
- 14 (87.5) Section 15335.11 of the Government Code.
- 15 (88) Section 15355.3 of the Government Code.
- 16 (88.5) Section 15363.10 of the Government Code.
- 17 (90) Section 15364.54 of the Government Code.
- 18 (91) Section 15378 of the Government Code.
- 19 (92) Section 15616 of the Government Code.
- 20 (93) Section 15646 of the Government Code.
- 21 (94) Section 15901 of the Government Code.
- 22 (95) Section 16725 of the Government Code.
- 23 (96) Section 16759 of the Government Code.
- 24 (97) Section 16855 of the Government Code.
- 25 (98) Section 17570 of the Government Code.
- 26 (98.5) Section 19405 of the Government Code.
- 27 (99) Subdivision (c) of Section 19702.5 of the Government Code.
- 28 (100) Section 19705 of the Government Code.
- 29 (101) Section 19792.5 of the Government Code.
- 30 (102) Section 19793 of the Government Code.
- 31 (103) Section 19826 of the Government Code.
- 32 (104) Section 19827.2 of the Government Code.
- 33 (105) Section 19994.20 of the Government Code.
- 34 (106) Section 19996.21 of the Government Code.
- 35 (107) Section 19996.40 of the Government Code.
- 36 (109) Section 20138 of the Government Code.
- 37 (110) Section 20139 of the Government Code.
- 38 (113) Section 20233 of the Government Code.
- 39 (114) Section 22840.1 of the Government Code.
- 40 (115) Section 22840.3 of the Government Code.
- 41 (115.1) Section 65044 of the Government Code.
- 42 (115.2) Section 65048 of the Government Code.
- 43 (115.3) Section 65073 of the Government Code.
- 44 (115.5) Section 429.84 of the Health and Safety Code.
- 45 (116) Section 1266.1 of the Health and Safety Code.
- 46 (117) Section 1596.872b of the Health and Safety Code.
- 47 (118) Section 11605 of the Health and Safety Code.
- 48 (118.5) Section 25133.5 of the Health and Safety Code.
- 49 (119) Section 25161 of the Health and Safety Code.
- 50 (129) Section 25178 of the Health and Safety Code.
- 51 (129.05) Section 25178.1 of the Health and Safety Code.
- 52 (129.1) Section 25200.14.1 of the Health and Safety Code.
- 53 (129.2) Section 25200.17 of the Health and Safety Code.
- 54 (129.3) Section 25204.6 of the Health and Safety Code.

(130) Section 25249.8 of the Health and Safety Code.  
(130.5) Section 25404.6 of the Health and Safety Code.  
(131) Section 39604 of the Health and Safety Code.  
(132) Section 41712 of the Health and Safety Code.  
(133) Section 41865 of the Health and Safety Code.  
(134) Section 42311.1 of the Health and Safety Code.  
(135) Section 43101 of the Health and Safety Code.  
(136) Section 43101.5 of the Health and Safety Code.  
(137) Section 43206 of the Health and Safety Code.  
(138) Section 43701 of the Health and Safety Code.  
(139) Section 44011.6 of the Health and Safety Code.  
(140) Section 44021 of the Health and Safety Code.  
(140.1) Section 44361 of the Health and Safety Code.  
(140.2) Section 57000 of the Health and Safety Code.  
(140.3) Section 59019 of the Health and Safety Code.  
(140.4) Section 100340 of the Health and Safety Code.  
(140.5) Section 104375 of the Health and Safety Code.  
(140.6) Section 105195 of the Health and Safety Code.  
(140.7) Section 105335 of the Health and Safety Code.  
(140.8) Section 108875 of the Health and Safety Code.  
(140.9) Section 120475 of the Health and Safety Code.  
(141) Section 120910 of the Health and Safety Code.  
(141.05) Section 124105 of the Health and Safety Code.  
(141.1) Section 124160 of the Health and Safety Code.  
(141.2) Section 124485 of the Health and Safety Code.  
(141.3) Section 128195 of the Health and Safety Code.  
(141.4) Section 129455 of the Health and Safety Code.  
(141.5) Section 62.9 of the Labor Code.  
(141.6) Section 77 of the Labor Code.  
(141.7) Section 90.5 of the Labor Code.  
(142) Section 98.75 of the Labor Code.  
(143) Section 111 of the Labor Code.  
(144) Section 139.4 of the Labor Code.  
(145) Section 139.43 of the Labor Code.  
(146) Section 147.2 of the Labor Code.  
(147) Section 156 of the Labor Code.  
(148) Section 1143 of the Labor Code.  
(149) Section 3073.5 of the Labor Code.  
(150) Section 3201.5 of the Labor Code.  
(151) Section 3716.5 of the Labor Code.  
(152) Section 5502 of the Labor Code.  
(154) Section 6330 of the Labor Code.  
(155) Section 6511 of the Labor Code.  
(156) Section 6712 of the Labor Code.  
(157) Section 7316 of the Labor Code.  
(158) Section 7384 of the Labor Code.  
(159) Section 7722 of the Labor Code.  
(159.1) Section 989.7 of the Military and Veterans Code.  
(159.2) Section 996.979 of the Military and Veterans Code.  
(159.3) Section 996.993 of the Military and Veterans Code.  
(159.4) Section 997.009 of the Military and Veterans Code.  
(159.5) Section 998.009 of the Military and Veterans Code.  
(159.6) Section 998.029 of the Military and Veterans Code.  
(159.7) Section 998.049 of the Military and Veterans Code.

- 1 (159.8) Section 998.060 of the Military and Veterans Code.
- 2 (159.9) Section 998.071 of the Military and Veterans Code.
- 3 (160) Section 998.082 of the Military and Veterans Code.
- 4 (160.1) Section 998.094 of the Military and Veterans Code.
- 5 (160.2) Section 998.107 of the Military and Veterans Code.
- 6 (160.3) Section 999.7 of the Military and Veterans Code.
- 7 (160.4) Section 1011.5 of the Military and Veterans Code.
- 8 (160.5) Section 1314.5 of the Military and Veterans Code.
- 9 (160.6) Section 628.2 of the Penal Code.
- 10 (161) Section 629.12 of the Penal Code.
- 11 (162) Section 999y of the Penal Code.
- 12 (163) Section 2057 of the Penal Code.
- 13 (164) Section 2807 of the Penal Code.
- 14 (165) Section 2808 of the Penal Code.
- 15 (166) Section 4807 of the Penal Code.
- 16 (166.5) Section 6242.6 of the Penal Code.
- 17 (167) Section 7003.5 of the Penal Code.
- 18 (168) Section 7012 of the Penal Code.
- 19 (169) Section 7433 of the Penal Code.
- 20 (169.5) Section 8061 of the Penal Code.
- 21 (170) Section 11107.5 of the Penal Code.
- 22 (171) Section 13730 of the Penal Code.
- 23 (172) Section 13847 of the Penal Code.
- 24 (173) Section 10359 of the Public Contract Code.
- 25 (174) Section 10115.5 of the Public Contract Code.
- 26 (175) Section 5005.6 of the Public Resources Code.
- 27 (176) Section 14542 of the Public Resources Code.
- 28 (177) Section 14592 of the Public Resources Code.
- 29 (177.3) Section 25306 of the Public Resources Code.
- 30 ~~(177.5) Section 71035.10 of the Public Resources Code.~~
- 31 (177.7) Section 316 of the Public Utilities Code.
- 32 (177.8) Section 321.6 of the Public Utilities Code.
- 33 (178) Section 322 of the Public Utilities Code.
- 34 (178.1) Section 765.5 of the Public Utilities Code.
- 35 (178.2) Section 873 of the Public Utilities Code.
- 36 (178.3) Section 7711 of the Public Utilities Code.
- 37 (178.4) Section 8283 of the Public Utilities Code.
- 38 (178.5) Section 9502 of the Public Utilities Code.
- 39 (179) Section 99243.5 of the Public Utilities Code.
- 40 (181) Section 2246 of the Revenue and Taxation Code.
- 41 (182) Section 6377 of the Revenue and Taxation Code.
- 42 (183) Section 8352.6 of the Revenue and Taxation Code.
- 43 (184) Section 8352.7 of the Revenue and Taxation Code.
- 44 (185) Section 8352.8 of the Revenue and Taxation Code.
- 45 (186) Section 17053.49 of the Revenue and Taxation Code.
- 46 (187) Section 21006 of the Revenue and Taxation Code.
- 47 (188) Section 23649 of the Revenue and Taxation Code.
- 48 (188.5) Section 30461.6 of the Revenue and Taxation Code.
- 49 (189) Section 165 of the Streets and Highways Code.
- 50 (190) Section 199 of the Streets and Highways Code.
- 51 (191) Section 2154 of the Streets and Highways Code.
- 52 (192) Section 2602 of the Streets and Highways Code.
- 53 (193) Section 329 of the Unemployment Insurance Code.
- 54 (194) Section 832 of the Unemployment Insurance Code.



- 1 (195) Section 995 of the Unemployment Insurance Code.
- 2 (196) Section 1267.5 of the Unemployment Insurance Code.
- 3 (197) Section 1562 of the Unemployment Insurance Code.
- 4 (198) Section 2614 of the Unemployment Insurance Code.
- 5 (199) Section 4901 of the Unemployment Insurance Code.
- 6 (200) Section 5007 of the Unemployment Insurance Code.
- 7 (201) Section 5202 of the Unemployment Insurance Code.
- 8 (202) Section 9600 of the Unemployment Insurance Code.
- 9 (203) Section 9614 of the Unemployment Insurance Code.
- 10 (204) Section 9616 of the Unemployment Insurance Code.
- 11 (205) Section 10205 of the Unemployment Insurance Code.
- 12 (206) Section 10522 of the Unemployment Insurance Code.
- 13 (207) Section 10532 of the Unemployment Insurance Code.
- 14 (208) Section 12141 of the Unemployment Insurance Code.
- 15 (209) Section 15037 of the Unemployment Insurance Code.
- 16 (210) Section 15064 of the Unemployment Insurance Code.
- 17 (211) Section 15076.5 of the Unemployment Insurance Code.
- 18 (212) Section 15076.7 of the Unemployment Insurance Code.
- 19 (213) Section 15079 of the Unemployment Insurance Code.
- 20 (214) Section 162 of the Water Code.
- 21 (215) Section 229 of the Water Code.
- 22 (216) Section 230 of the Water Code.
- 23 (217) Section 232 of the Water Code.
- 24 (218) Section 10004 of the Water Code.
- 25 (219) Section 10010 of the Water Code.
- 26 (220) Section 12875 of the Water Code.
- 27 (221) Section 12879.5 of the Water Code.
- 28 (222) Section 12890.4 of the Water Code.
- 29 (223) Section 12928.5 of the Water Code.
- 30 (224) Section 12929.47 of the Water Code.
- 31 (225) Section 13467 of the Water Code.
- 32 (225.5) Section 366.28 of the Welfare and Institutions Code.
- 33 (226) Section 5613 of the Welfare and Institutions Code.
- 34 (226.5) Section 5673 of the Welfare and Institutions Code.
- 35 (227) Section 10612 of the Welfare and Institutions Code.
- 36 (228) Section 10822 of the Welfare and Institutions Code.
- 37 (228.1) Section 11215 of the Welfare and Institutions Code.
- 38 (228.2) Section 11329 of the Welfare and Institutions Code.
- 39 (228.3) Section 11462 of the Welfare and Institutions Code.
- 40 (228.4) Section 11462.05 of the Welfare and Institutions Code.
- 41 (228.5) Section 11465.5 of the Welfare and Institutions Code.
- 42 (228.6) Section 11467 of the Welfare and Institutions Code.
- 43 (228.8) Section 14094.3 of the Welfare and Institutions Code.
- 44 (229) Section 14100.5 of the Welfare and Institutions Code.
- 45 (230) Section 14105.42 of the Welfare and Institutions Code.
- 46 (231) Section 14120 of the Welfare and Institutions Code.
- 47 (232) Section 14161 of the Welfare and Institutions Code.
- 48 (232.5) Section 16522.6 of the Welfare and Institutions Code.
- 49 (233) Section 19106 of the Welfare and Institutions Code.
- 50 (234) Section 2 of Chapter 1495 of the Statutes of 1988.
- 51 (235) Section 9 of Chapter 803 of the Statutes of 1989.
- 52 (236) Section 27.001.50 of Chapter 467 of the Statutes of 1990.
- 53 (237) Section 2 of Chapter 469 of the Statutes of 1990.
- 54 (238) Sections 11 and 12 of Chapter 1672 of the Statutes of 1990.



- (239) Section 16 of Chapter 747 of the Statutes of 1993.
- (240) Section 17 of Chapter 747 of the Statutes of 1993.
- (241) Section 24 of Chapter 1172 of the Statutes of 1991.
- (242) Section 5 of Chapter 1299 of the Statutes of 1992.
- (243) Section 6 of Chapter 419 of the Statutes of 1993.
- (244) Section 1 of Chapter 510 of the Statutes of 1995.
- (245) Section 24 of Chapter 638 of the Statutes of 1995.
- (246) Resolution Chapter 3 of the Statutes of 1994.
- (c) Notwithstanding any other provision of law, resolution, or supplemental language, the University of California, the California State University, and the California Community Colleges shall not be required until October 1, 1999, to prepare or submit any written report to the Legislature or the Governor unless any of the following circumstances exist:
  - (1) The report is required whether in whole or in part by a court, federal law, or regulation.
  - (2) The report is required in the Budget Act.
  - (3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.
  - (4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.
- (d) It is the intent of the Legislature that the University of California continue to prepare and submit reports specified in the following provisions of law:
  - (1) Section 92724 of the Education Code.
  - (2) Section 554 of the Food and Agricultural Code.
  - (3) Section 597 of the Food and Agricultural Code.
  - (4) Section 424.70 of the Health and Safety Code.
  - (5) Section 10500.5 of the Public Contract Code.
  - (6) Section 10507.5 of the Public Contract Code.
  - (7) Section 9 of Chapter 661 of the Statutes of 1993.
- (e) It is further the intent of the Legislature that the University of California, the California State University, and the California Community Colleges continue to provide reports requested through the following supplemental language or resolutions, as applicable:
  - (1) 1989-90 Supplemental Language regarding the report entitled "Five Year Capital Outlay Plan and Seismic Retrofit Schedule."
  - (2) 1985-86 Supplemental Language regarding the report entitled "Lottery Funds."
  - (3) 1985-86 Supplemental Language regarding the report entitled "Faculty Workload Policies."
  - (4) 1980-81 Supplemental Language regarding the report entitled "Post Audit Minor Capital Outlay."
  - (5) 1973-74 Supplemental Language regarding the report entitled "Summary of Instructional Research Space."
  - (6) 1970-71 and 1984-85 Supplemental Language regarding the report entitled "Deferred Maintenance."
  - (7) Senate Concurrent Resolution 51, 1965 and 1978-79 Supplemental Language regarding the report entitled "Faculty Salaries."
  - (8) 1990-91 Supplemental Language regarding the report entitled "Seismic Safety Sign Posting."
  - (9) 1990-91 Supplemental Language regarding the report entitled "Weapons Laboratory Regulations."
  - (10) 1978-79 Supplemental Language regarding the report entitled "Subject A: Report to School Boards."
  - (11) 1987-88 Supplemental Language regarding the report entitled "Projects Funded From Hospital Reserves."

(12) 1994-95 Supplemental Language regarding the report entitled “UC Medical Residents.”

(13) 1994-95 Supplemental Language regarding the report entitled “Advancement to Tenure.”

(14) 1994-95 Supplemental Language regarding the report entitled “Legal Expenses for Discrimination Defense.”

(15) 1994-95 Supplemental Language regarding the report entitled “Degrees Conferred and Work-Force Needs.”

(16) 1994-95 Supplemental Language regarding the report entitled “Four-Year Degree Pledge Program.”

(f) “Written report,” for purposes of this section, means a document, of which the preparation and distribution to the Legislature, or the Governor, or both is mandated in statute. Any mandate exemption, pursuant to this section, shall not relieve the affected agency of the responsibility to provide available information, either in writing or orally, to the Governor or the Legislature with regard to the status of the report and any findings, if applicable.

This section shall become inoperative on October 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

**Comment.** Section 7550.5 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 39604, 41712, 41865, 43101, 43101.5, 43206, 43701, 44011.6, 44021, and 44361; Public Resources Code Section 71035.10. Health and Safety Code Section 42311.1 was repealed by its own terms.

#### **Gov’t Code § 8162.9 (amended). Development limitations**

SEC. \_\_\_\_\_. Section 8162.9 of the Government Code is amended to read:

8162.9. (a) Notwithstanding subdivision (a) of Section 8162.7, a 96-foot height limit shall apply to construction, exclusively for the purposes of residential development, for Lot 4, Block 223 (known as Capitol Area Development Authority Residential Site 21) surrounded by N Street on the north, 14th Street on the east, 120 feet west of 14th Street on the west, and one quarter of a half block to the south of N Street on the south.

(b) Notwithstanding any other provision of law, development on the city blocks surrounding the Stanford Mansion located at 802 N Street, and the Heilbron Mansion located at 704 O Street, shall be environmentally sensitive to these historic mansions. Copies of environmental documents for any development on the city blocks surrounding these mansions shall be distributed by the State Clearinghouse within the Governor’s Office of Planning and Research to the State Office of Historic Preservation, and other agencies as required by the California Environmental Quality Act, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 8162.9 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov’t Code § 8790.41 (amended). Land acquired pursuant to Section 8790.40**

SEC. \_\_\_\_\_. Section 8790.41 of the Government Code is amended to read:

8790.41. (a) Any land acquired by the State Public Works Board pursuant to Section 8790.40 shall be transferred to the Department of General Services.

(b) Notwithstanding Sections 11011 and 11011.1 of this code, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, or any other provision of law, all or any portion of the property transferred pursuant to subdivision (a) may be conveyed by the Department of General Services to the federal government, without cost, for the purposes for which the site was acquired. The

1 Department of General Services may sell, hold, lease, exchange, or otherwise convey for  
2 its fair market value, the fee or any lesser right or interest in any property acquired  
3 hereunder, including mineral rights, which the State Public Works Board determines not  
4 to be necessary for site acquisition purposes. All costs incurred in connection with the  
5 sale, lease, exchange, or management of that property may be deducted from any of the  
6 proceeds received.

7 **Comment.** Section 8790.41 is amended to substitute a reference to the Environment Code  
8 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
9 Resources Code.

10 **Gov't Code § 9115 (amended). Legislative office facilities**

11 SEC. \_\_\_\_\_. Section 9115 of the Government Code is amended to read:

12 9115. (a) In order to adequately provide for the proper housing and administrative  
13 requirements of the Legislature, it is necessary for the Legislature to acquire and finance  
14 additional legislative office facilities in a location adjacent to the State Capitol Building  
15 so as to provide for the efficient and effective operations of state government.

16 (b) The Legislature desires to provide a procedure for acquiring, and to authorize the  
17 financing of, these legislative office facilities by the enactment of this article.

18 (c) It is the intent of the Legislature to conduct a thorough review of the current and  
19 long-term requirements of the Legislature for office facilities and to conduct a study to  
20 determine the most economical and cost-effective method of funding the acquisition of  
21 those office facilities.

22 (d) It is also the intent of the Legislature to minimize delays, and thereby reduce costs,  
23 in the acquisition of adequate office facilities, and to that end it is the intent of the  
24 Legislature that the requirements of Division 13 3 (commencing with Section 21000) of  
25 the ~~Public Resources~~ Environment Code be completed in an expeditious manner without  
26 undue delays.

27 **Comment.** Section 9115 is amended to substitute a reference to the Environment Code  
28 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
29 Resources Code.

30 **Gov't Code § 9121 (amended). Applicable law**

31 SEC. \_\_\_\_\_. Section 9121 of the Government Code is amended to read:

32 9121. (a) This article shall be deemed and construed to be separate and complete  
33 authority for all of the actions authorized by this article, including, but not limited to, the  
34 development, design, construction, operation, maintenance, and financing of the project,  
35 and all acts related thereto, and the transfer and relocation of the present occupants of the  
36 buildings to new facilities. To the extent that this article is inconsistent with any other  
37 general statute or special act or parts thereof, or any local government laws, rules, and  
38 regulations, now or hereafter enacted, this article is controlling.

39 (b) Notwithstanding any other provision of law, the project authorized by this article  
40 shall be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public  
41 Contract Code and Division 13 3 (commencing with Section 21000) of the ~~Public~~  
42 ~~Resources~~ Environment Code.

43 (c) The project authorized by this article shall not be subject to any other state or local  
44 government requirement, limitation, or control, including, but not limited to, zoning and  
45 building permits.

46 (d) This article shall be liberally construed to effect its purpose and in a manner that  
47 will promote the acquisition, construction, renovation, improvement, and financing of the  
48 project.

49 (e) Notwithstanding any other provision of this article, no funds shall be expended for  
50 the destruction, removal, remodeling, or rehabilitation of the existing buildings on the

project property prior to the completion of the feasibility study required pursuant to Section 9116, and the approval of the funding source and the project scope and cost by a subsequently enacted resolution of both houses of the Legislature.

**Comment.** Section 9121 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 11011.21 (amended). Surplus property inventory**

SEC. \_\_\_\_\_. Section 11011.21 of the Government Code is amended to read:

11011.21. (a) The Legislature finds and declares that the Department of General Services has, pursuant to former Section 11011.21, as added by Section 8 of Chapter 150 of the Statutes of 1994, and amended by Section 15 of Chapter 422 of the Statutes of 1994, developed an inventory, known as the Surplus Property Inventory, of state-owned properties that are either surplus to the needs of the state in their entirety or are being used for a state program and some portions of the property are unused or underutilized.

(b) State agencies, when purchasing real property, shall review the Surplus Property Inventory and purchase, lease, or trade property on that list, if possible, prior to purchasing property not on the Surplus Property Inventory.

(c) The Department of General Services may sell, lease, exchange, or transfer for current market value, or upon terms and conditions as the Director of General Services determines are in the best interest of the state, all or part of properties as follows:

Parcel 1. Approximately 292 acres with improvements thereon, known as the Agnews Developmental Center-West Campus, bounded by Lick Mill Blvd., Montague Expressway, Lafayette Street and Hope Drive, in Santa Clara, Santa Clara County.

Parcel 2. Approximately 56 acres known as a portion of the Agnews Developmental Center-East Campus, located between the Agnews Developmental Center and Coyote Creek, in San Jose, Santa Clara County.

Parcel 3. Approximately 102 acres with improvements thereon, known as the Stockton Developmental Center, located at 510 E. Magnolia Street, in Stockton, San Joaquin County.

Parcel 4. Approximately 12.72 acres with improvements thereon, formerly used as a Department of Forestry and Fire Protection facility, known as Bolinger Canyon Pest Management Facility, located off Highway 680 at 18112-18114 Bolinger Canyon Road, in San Ramon, Contra Costa County.

Parcel 5. Approximately one acre with improvements thereon, known as the California Department of Forestry and Fire Protection, Cottonwood Pass Forest Fire Station, located three miles west of Highway 33 on the south side of Highway 41, in Kings County.

Parcel 6. Approximately 33.56 acres with improvements thereon, known as the California Highway Patrol Motor Transport Facility and Shop, located at 2800 Meadowview Road, in Sacramento, Sacramento County.

Parcel 7. Approximately 1.03 acres of land, not including improvements thereon, located at 1614 O Street, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the 17th Street Commons condominiums.

Parcel 8. Approximately 2 acres of land, not including improvements thereon, located on a portion of block 273 bound by 10th, 11th, P, and Q Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Somerset Parkside condominiums.

Parcel 9. Approximately 1.76 acres of land, not including improvements thereon, located on the south 1/2 of block bound by 15th, 16th, O, and P Streets and the south 1/4 of block bound by 14th, 15th, O, and P Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Stanford Park condominiums.



1 Parcel 10. Approximately 1.18 acres of land, not including improvements thereon,  
2 located on the north 1/2 of block bound by 9th, 10th, Q, and R Streets, in Sacramento,  
3 Sacramento County, and leased by the Department of General Services to the Capital  
4 Area Development Authority for development of the Saratoga Townhomes.

5 Parcel 11. Approximately 3.66 acres including improvements thereon, known as the  
6 Department of General Services, Junipero Serra State Office Building, located at 107 S.  
7 Broadway, in Los Angeles, Los Angeles County.

8 Parcel 12. Approximately 32 acres including improvements thereon, being a portion of  
9 the State Department of Developmental Services Fairview Developmental Center, located  
10 at 2501 Harbor Blvd., in Costa Mesa, Orange County.

11 Parcel 13. Approximately 3.6 acres, with improvements thereon. Entire structure used  
12 as the Delano Armory by the Military Department, located at 705 South Lexington Street,  
13 in Delano, Kern County.

14 Parcel 14. Approximately 5 acres of vacant land, being a portion of the Military  
15 Department's San Diego Armory, located at 7401 Mesa College Drive, in San Diego, San  
16 Diego County.

17 Parcel 15. Approximately 23 acres of vacant land fronting the highway, being a portion  
18 of the State Department of Mental Health's Napa State Hospital, located at 2100 Napa  
19 Vallejo Highway, in Napa, Napa County, which shall only be available for lease.

20 Parcel 16. Approximately 1,720 acres of agricultural land, being a portion of the  
21 Department of Corrections' Imperial South Centinella Prison, located at 2302 Brown  
22 Road, in Imperial, Imperial County, which shall only be available for lease.

23 Parcel 17. Approximately 800 acres of agricultural land, being a portion of the  
24 Department of Corrections' Imperial North Calipatria Prison, located at 7018 Blair Road,  
25 in Calipatria, Imperial County, which shall only be available for lease.

26 (d) The Director of General Services, after further study and with the consent of the  
27 agency in control and possession of the property, may sell, lease, exchange, or transfer for  
28 current market value, upon terms and conditions as the director determines are in the best  
29 interest of the state, portions of properties as follows:

30 Parcel 1. Excess acreage of the Department of Forestry and Fire Protection, known as  
31 the Alder Conservation Camp, located at 1400 Alder Camp Road, in Klamath, Del Norte  
32 County, near Highway 101 and Highway 169. Specific parcels available for disposition to  
33 be determined through a study by the Department of General Services and the  
34 Department of Forestry and Fire Protection.

35 Parcel 2. Excess acreage of the Department of Forestry and Fire Protection, known as  
36 the Deadwood Conservation Camp, located at 17140 McAdams Creek Road, in Fort  
37 Jones, Siskiyou County, north of Fort Jones off Highway 3. Specific parcels available for  
38 disposition to be determined through a study by the Department of General Services and  
39 the Department of Forestry and Fire Protection.

40 Parcel 3. Excess acreage of the Department of Forestry and Fire Protection, known as  
41 the Eel River Conservation Camp, located in Redway, Humboldt County, north of  
42 Garberville off Highway 101. Specific parcels available for disposition to be determined  
43 through a study by the Department of General Services and the Department of Forestry  
44 and Fire Protection.

45 Parcel 4. Excess acreage of the Department of Forestry and Fire Protection, known as  
46 the Fawn Lodge Forest Fire Station, located on Fawn Lodge Road off Highway 299, in  
47 Weaverville, Trinity County. Specific parcels available for disposition to be determined  
48 through a study by the Department of General Services and the Department of Forestry  
49 and Fire Protection.

50 Parcel 5. Excess acreage of the Department of Forestry and Fire Protection, known as  
51 the Miramonte Conservation Camp, located at 49039 Orchard Drive, in Miramonte,  
52 Fresno County. Specific parcels available for disposition to be determined through a  
53 study by the Department of General Services and the Department of Forestry and Fire  
54 Protection.

1 Parcel 6. Excess acreage with improvements thereon, of the Department of Forestry and  
2 Fire Protection's Mt. Zion Lookout, located at the end of Mount Zion Road, in Pine  
3 Grove, Amador County. Specific parcels available for disposition to be determined  
4 through a study by the Department of General Services and the Department of Forestry  
5 and Fire Protection.

6 Parcel 7. Excess acreage of the Department of Forestry and Fire Protection, known as  
7 the Shingletown Forest Fire Station, located off Highway 44, in Shingletown, Shasta  
8 County. Specific parcels available for disposition to be determined through a study by the  
9 Department of General Services and the Department of Forestry and Fire Protection.

10 Parcel 8. Excess acreage of Department of Forestry and Fire Protection, known as the  
11 Tularcitos Forest Fire Station, located on Cachagua Road off Valley Road, in Carmel,  
12 Monterey County. Specific parcels available for disposition to be determined through a  
13 study by the Department of General Services and the Department of Forestry and Fire  
14 Protection.

15 Parcel 9. Excess acreage of Department of Forestry and Fire Protection, known as the  
16 Wolf Creek Forest Fire Station, located at 10106 Combie Road, in Higgins Corners,  
17 Nevada County. Specific parcels available for disposition to be determined through a  
18 study by the Department of General Services and the Department of Forestry and Fire  
19 Protection.

20 Parcel 10. Excess acreage with improvements thereon, of the State Department of  
21 Mental Health's Metropolitan State Hospital, located at 11400 South Norwalk Blvd., in  
22 Norwalk, Los Angeles County. Specific parcels available for disposition to be determined  
23 through a study by the Department of General Services and the Department of Mental  
24 Health.

25 Parcel 11. Excess acreage of the Military Department's Camp San Luis Obispo, located  
26 on Highway 101 north of San Luis Obispo, in San Luis Obispo County. Specific parcels  
27 available for disposition to be determined through a study by the Department of General  
28 Services and the Military Department.

29 Parcel 12. Vacant land of the Military Department's Camp Escondido Armory located  
30 at 304 East Park Avenue, in Escondido, San Diego County. Specific parcels available for  
31 disposition to be determined through a study by the Department of General Services and  
32 the Military Department.

33 Parcel 13. Excess acreage of the Military Department's Hollister Armory, located at  
34 2302 San Felipe Road, in Hollister, San Benito County. Specific parcels available for  
35 disposition to be determined through a study by the Department of General Services and  
36 the Military Department.

37 Parcel 14. Excess acreage of the Military Department's Merced Armory, located at  
38 1240 West 8th Street, in Merced, Merced County. Specific parcels available for  
39 disposition to be determined through a study by the Department of General Services and  
40 the Military Department.

41 Parcel 15. Excess acreage of the Military Department's Salinas Armory, located at  
42 Howard and Lincoln Streets, in Salinas, Monterey County. Specific parcels available for  
43 disposition to be determined through a study by the Department of General Services and  
44 the Military Department.

45 Parcel 16. Excess acreage of the Military Department's Visalia Armory, located at 1100  
46 North Akers Road, in Visalia, Tulare County. Specific parcels available for disposition to  
47 be determined through a study by the Department of General Services and the Military  
48 Department.

49 Parcel 17. Excess acreage of the Military Department's Willows Armory, located at  
50 950 West Laurel Street, in Willows, Glenn County. Specific parcels available for  
51 disposition to be determined through a study by the Department of General Services and  
52 the Military Department.

53 (e) The Department of General Services shall be reimbursed for any cost or expense  
54 incurred in the disposition of any parcels.



(f) Notices of every public auction or bid opening shall be posted on the property to be sold pursuant to this section, and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(g) Any sale, exchange, lease, or transfer of a parcel described in this section is exempt from Chapter 3 5 (commencing with Section 21100) to Chapter 6 9 (commencing with Section 21165), inclusive, of Division 13 3 of the ~~Public Resources~~ Environment Code.

(h) As to any property sold pursuant to this section consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this section consisting of more than 15 acres, the director shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(i) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund.

**Comment.** Section 11011.21 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov't Code § 11017 (amended). Compliance with local air pollution control**

SEC. \_\_\_\_\_. Section 11017 of the Government Code is amended to read:

11017. Notwithstanding any other provision of law, each state agency in performing its duties shall comply with all local air pollution control rules, regulations, and ordinances which are more stringent than any applicable state air pollution control statute, rule, or regulation.

In any area where neither any local air pollution control rules, regulations, or ordinances nor any state air pollution control statute, or rule or regulation adopted by the State Air Resources Board pursuant to Section ~~41503 or 41504 of the Health and Safety Code 37150 or 37200 of the Environment Code~~, applies, the State Air Resources Board may adopt, after a public hearing, air pollution control rules and regulations for state agencies performing their duties in such areas, and each state agency in performing its duties in such area shall comply with such air pollution control rules and regulations.

**Comment.** Section 11017 is amended to substitute a reference to the Environment Code provisions that continue former Sections 41503 and 41504 of the Health and Safety Code.

#### **Gov't Code § 11019.6 (amended). Principal state agencies**

SEC. \_\_\_\_\_. Section 11019.6 of the Government Code is amended to read:

11019.6. (a) Notwithstanding any other provision of state law, and to the extent not in conflict with federal law, if a principal agency is not designated by statute, a principal state agency shall be designated by the Governor for the coordination of procedures, forms, and deadlines in every area of regulatory activity under the state's jurisdiction, as determined by the Governor. All other state agencies shall defer to the principal agency in the performance of their duties in a particular regulatory area, or upon a particular project, with respect to procedures, forms, and deadlines, but not with respect to any other area of authority.

(b) This section shall not apply to the processing of any permit pursuant to ~~Division 34 Part 3 (commencing with Section 71000 10000) of, and Part 4 (commencing with Section 15000) of Division 2 of the Public Resources~~ Environment Code.

(c) No part of this section shall be construed to limit the authority of any agency to hold public hearings on any matter within the jurisdiction of that agency.

(d) No part of this section shall be construed to authorize any state agency to adopt or implement procedures, forms, or deadlines in conflict with those explicitly specified in statute or in conflict with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)).

(e) Nothing in this section shall be construed to confer upon any state agency decisionmaking authority over substantive matters within another agency's jurisdiction, including any informational and public hearing requirements needed to make regulatory and permitting decisions.

(f) As used in this section, "agency" and "principal agency" shall not mean a court or any office of the judicial branch of government.

**Comment.** Section 11019.6 is amended to substitute a reference to the Environment Code provisions that continue former Division 34 (commencing with Section 71000) of the Public Resources Code.

**Gov't Code § 14561.3 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 14561.3 of the Government Code is amended to read:

14561.3. (a) This chapter is separate and complete authority for all of the actions authorized by this article. The issuance of short-term financing mechanisms pursuant to this chapter need not comply with any other provision of law applicable to the issuance of short-term financing instruments.

(b) Solely for the purpose of approving short-term financing mechanisms pursuant to this chapter, neither the commission nor the department shall be required to comply with ~~of Division 13~~ § 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 14561.3 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 14670.10 (amended). Sonoma Development Center lease**

SEC. \_\_\_\_\_. Section 14670.10 of the Government Code is amended to read:

14670.10. (a) Notwithstanding any other provision of law, if the Director of General Services leases property located at the Sonoma Developmental Center that was formerly an orchard and that has been determined to be surplus state property pursuant to Section 7 of Chapter 193 of the Statutes of 1996, the director shall lease the property only for an agricultural or open-space purpose consistent with, but not requiring the specific local government approvals related to, all of the following:

(1) The city and county general plan, specific plan, and other requirements, and other plans or policies adopted for the area within which the property is located, including any plans and regulations adopted pursuant to Chapter 4 (commencing with Section 8400) of Part 2 of Division 5 of the Water Code.

(2) The city and county zoning ordinances, regulations, and policies adopted for the area within which the property is located.

(3) The city and county building regulations and policies adopted for the area within which the property is located.

(b) Prior to accepting bids for the lease of the property, the Department of General Services shall comply with the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(c) Leases of properties shall not disrupt existing trails and pathways located on the leased properties or access to trails and pathways on adjacent properties.

1 (d) Lessees of properties shall, as a condition of the lease, agree to restrict the use of  
2 hazardous substances, including, but not limited to, pesticides, herbicides, rodenticides,  
3 and insecticides, pursuant to the department's hazardous substance policy governing state  
4 agricultural leases.

5 (e) In recognition of the long history of persons with developmental disabilities  
6 working in agricultural production on the grounds of the Sonoma Developmental Center,  
7 lessees of properties shall, as a condition of the lease, directly employ persons with  
8 developmental disabilities in numbers equal to at least 15 percent of their total work force  
9 at the leased site. Lessees may also meet this requirement through employment at offsite  
10 facilities in California directly related to the leasehold. This requirement shall be  
11 structured in a manner that recognizes that there may be periods of time when the lessee  
12 may fall below this requirement for justified reasons.

13 (f) Notwithstanding any other provision of law, the Director of General Services may  
14 sell or exchange the property only if the transaction would result in a transfer of the  
15 property to an entity that would hold the property in perpetuity as open space or that  
16 would result in the property becoming part of the Jack London State Park.

17 (g) Notwithstanding any other provision of law, the net proceeds received by the state  
18 from the lease of the property shall be deposited as follows:

19 (1) Fifty percent to the General Fund for appropriation as provided in Section 15863.

20 (2) Fifty percent to a special account within the General Fund to be known as the  
21 Community Services Development Account. All funds within this account shall be  
22 available for appropriation by the Legislature to the State Department of Developmental  
23 Services. Any interest accruing to funds deposited in the account also shall accrue to the  
24 account. It is the intent of the Legislature that the appropriations from this account shall  
25 be used for the purposes of nonrecurring expenditures within the State Department of  
26 Developmental Services such as capital expenditures for developmental centers and  
27 startup of new community-based services. The department shall report annually to the  
28 Legislature on the status of this account and how funds have been expended in the  
29 previous year.

30 "Net proceeds" for the purposes of this subdivision means gross proceeds less all costs  
31 necessary for the completion of the transaction, including costs incurred by the  
32 Department of General Services.

33 (h) The Department of General Services shall enter into negotiations with the County of  
34 Sonoma regarding the conveyance of a conservation easement for property on the  
35 grounds of the Sonoma Developmental Center situated above the 1,100-foot elevation  
36 line. If a conveyance of an easement is agreed upon, the easement on the subject property  
37 may be conveyed to a third-party governmental entity upon the agreement of both the  
38 department and the county.

39 **Comment.** Section 14670.10 is amended to substitute a reference to the Environment Code  
40 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
41 Resources Code.

#### 42 **Gov't Code § 14670.9 (amended). Agnews State Hospital lease**

43 SEC. \_\_\_\_\_. Section 14670.9 of the Government Code is amended to read:

44 14670.9. (a) Notwithstanding Sections 11011 and 14670, and Section 118 of the Streets  
45 and Highways Code, the Director of General Services, with the approval of the State  
46 Public Works Board, may lease for a period of no longer than 66 years, to the City of San  
47 Jose, the County of Santa Clara, or a public authority formed by the City of San Jose or  
48 the County of Santa Clara, the following real property:

49 Approximately 102 acres of vacant land located in the northerly side of the east campus  
50 of Agnews State Hospital, County of Santa Clara. The southerly line of this parcel shall  
51 be located on Center Road.

1 The lease shall be for current market value and upon those terms and conditions and  
2 with such reservations and exception which in his or her opinion may be in the best  
3 interest of the state. The lease shall not permit the construction of any permanent building  
4 within 400 feet of the nearest hospital building.

5 (b) Net revenues generated by the lease of the parcel of Agnews State Hospital land as  
6 described in subdivision (a), shall be deposited as follows:

7 (1) Fifty percent in the General Fund.

8 (2) Fifty percent in the special account of the Department of Developmental Services.

9 "Net revenues," as used in this section, means cash and the cash value of any  
10 compensation other than cash.

11 It is the intent of the Legislature that the appropriations from this account shall be for  
12 the purposes of nonrecurring expenditures within the State Department of Developmental  
13 Services such as capital expenditures for developmental centers and startup of new state  
14 or private developmental services facilities.

15 (c) Notice of every public auction or bid opening shall be posted on the property to be  
16 leased and shall be published in a newspaper of general circulation published in the  
17 county in which the real property to be leased is situated. The lease of property pursuant  
18 to this section is exempt from the provisions of Sections 21100 to 21174, inclusive, of the  
19 Public Resources Environment Code.

20 (d) As to any property leased pursuant to this section, the Director of General Services  
21 shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the  
22 Public Resources Code, below a depth of 500 feet, without surface rights of entry.

23 **Comment.** Section 14670.9 is amended to substitute a reference to the Environment Code  
24 provisions that continue former Sections 21100 to 21174 of the Public Resources Code.

25 **Gov't Code § 15335.2 (amended). Technical and financial assistance to small businesses**

26 SEC. \_\_\_\_\_. Section 15335.2 of the Government Code is amended to read:

27 15335.2. The Office of Small Business shall, to the maximum extent feasible operating  
28 pursuant to this chapter and Article 4 14 (commencing with Section 40440 36450) of  
29 Chapter 5.5 5 of Title 4 of Part 3 of Division 26 4 of the ~~Health and Safety~~ Environment  
30 Code, provide technical and financial assistance to small businesses to facilitate  
31 compliance with environmental requirements and regulations.

32 **Comment.** Section 15335.2 is amended to substitute a reference to the Environment Code  
33 provisions that continue the small business assistance provisions of former Article 4  
34 (commencing with Section 40440) of Chapter 5.5 of Part 3 of Division 26 of the Health and  
35 Safety Code.

36 **Gov't Code § 15373.9 (amended). Loan or grant application**

37 SEC. \_\_\_\_\_. Section 15373.9 of the Government Code is amended to read:

38 15373.9. A local agency may submit an application to the agency for loan or grant  
39 funds pursuant to this article. A local agency may submit an application on behalf of a  
40 special district. Any application shall include information concerning the project which  
41 shall do all of the following:

42 (a) Demonstrate community need for economic development.

43 (b) Demonstrate financial need for state assistance.

44 (c) Demonstrate financial source of loan repayment and interest.

45 (d) Provide evidence of firm financial commitment on the part of the business or  
46 enterprise associated with the project.

47 (e) Provide evidence of site control, including any leases, easements, covenants, or  
48 encumbrances which may affect the project.

49 (f) Demonstrate that the applicant has the ability to administer the project and state  
50 assistance requirements.

(g) Demonstrate that the project is consistent with a city, county, or city and county general plan.

(h) Demonstrate that the project will comply with the California Environmental Quality Act as set forth in Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 15373.9 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 15378.6 (amended). Definitions**

SEC. \_\_\_\_\_. Section 15378.6 of the Government Code is amended to read:

15378.6. As used in this chapter:

(a) "Local agency" means any city, county, or district.

(b) "Permit" means any license, certificate, registration, permit, or any other form of authorization required by a state agency or by a local agency to engage in a particular activity or action. "Permit" does not include a legislative action by a local agency and does not include any certification or decision made pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(c) "State agency" means any agency, department, board, commission, office, or bureau of the state government.

**Comment.** Section 15378.6 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 15399.55 (amended). Alternative dispute resolution**

SEC. \_\_\_\_\_. Section 15399.55 of the Government Code is amended to read:

15399.55. (a) The office may call a conference of parties to resolve questions or mediate disputes arising from permit applications on any proposed development project.

(b) The office shall assist state and local agencies in an attempt to streamline the permit approval process at the state and local level.

(c) The office shall provide information to developers to assist them in meeting the requirements of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 15399.55 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 15455 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 15455 of the Government Code is amended to read:

15455. (a) This part shall be deemed to provide a complete, additional, and alternative method for doing the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided, that the issuance of bonds and refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds, including without limitation the provisions of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(b) Except as provided in subdivision (a), the financing of a project pursuant to this part shall not exempt a project from any requirement of law which otherwise would be applicable to the project.

**Comment.** Section 15455 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.



**Gov't Code §§ 16000-16081 (repealed). Environmental Quality Study Council**

SEC. \_\_\_\_\_. Part 14 (commencing with Section 16000) of Division 3 of Title 2 of the Government Code is repealed.

**Comment.** Sections 16000 to 16081, inclusive, are repealed as obsolete. The Environmental Quality Study Council ceased to exist on the adjournment sine die of the 1972 Regular Session of the Legislature. See former Section 16054.

**Gov't Code § 31468 (amended). District**

SEC. \_\_\_\_\_. Section 31468 of the Government Code is amended to read:

31468. (a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the Constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905 of the Government Code.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

(h) "District" also includes the South Coast Air Quality Management District, a new public agency created on February 1, 1977, pursuant to Chapter 5.5 5 (commencing with Section 40400 35800) of Title 4 of Part 3 of Division 26 4 of the ~~Health and Safety Environment Code~~

(1) Employees of the South Coast Air Quality Management District shall be deemed to be employees of a new public agency occupying new positions on February 1, 1977. On that date, those new positions are deemed not to have been covered by any retirement system.

(2) No retirement system coverage shall be effected for an employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, unless and until the employee shall have elected whether to become a member of the retirement association established in accordance with this chapter for employees of Los Angeles County or the retirement association established in accordance with this chapter for employees of San Bernardino County. The election shall occur before January 1, 1980. Any such employee who fails to make the election provided for herein shall be deemed to have elected to become a member of the retirement association established in accordance with this chapter for the County of Los Angeles.



1 (3) The South Coast Air Quality Management District shall make application to the  
2 retirement associations established in accordance with this chapter for employees of Los  
3 Angeles County and San Bernardino County for coverage of employees of the South  
4 Coast Air Quality Management District.

5 (4) An employee of the South Coast Air Quality Management District who commenced  
6 employment with the district during the period commencing on February 1, 1977, and  
7 ending on December 31, 1978, and who has not terminated employment before January  
8 1, 1980, shall be covered by the retirement association elected by the employee pursuant  
9 to paragraph (2). That coverage shall be effected no later than the first day of the first  
10 month following the date of the election provided for in paragraph (2).

11 (5) Each electing employee shall receive credit for all service with the South Coast Air  
12 Quality Management District. However, the elected retirement association may require,  
13 as a prerequisite to granting that credit, the payment of an appropriate sum of money or  
14 the transfer of funds from another retirement association in an amount determined by an  
15 enrolled actuary and approved by the elected retirement association's board. The amount  
16 to be paid shall include all administrative and actuarial costs of making that  
17 determination. The amount to be paid shall be shared by the South Coast Air Quality  
18 Management District and the employee. The share to be paid by the employee shall be  
19 determined by good faith bargaining between the district and the recognized employee  
20 organization, but in no event shall the employee be required to contribute more than 25  
21 percent of the total amount required to be paid. The elected retirement association's board  
22 shall not grant that credit for that prior service unless the request for that credit is made  
23 to, and the required payment deposited with, the elected retirement association's board no  
24 earlier than January 1, 1980, and no later than June 30, 1980. The foregoing shall have no  
25 effect on any such employee's rights to reciprocal benefits under Article 15 (commencing  
26 with Section 31830).

27 (6) An employee of the South Coast Air Quality Management District who commenced  
28 employment with the district after December 31, 1978, shall be covered by the retirement  
29 association established in accordance with this chapter for employees of San Bernardino  
30 County. That coverage shall be effected as of the first day of the first month following the  
31 employee's commencement date.

32 (7) Notwithstanding paragraphs (2) and (4) above, employees of the South Coast Air  
33 Quality Management District who were employed between February 1, 1977, and  
34 December 31, 1978, and who terminate their employment between February 1, 1977, and  
35 January 1, 1980, shall be deemed to be members of the retirement association established  
36 in accordance with this chapter for the employees of Los Angeles County commencing  
37 on the date of their employment with the South Coast Air Quality Management District.

38 (i) "District" also includes any nonprofit corporation which operates one or more  
39 museums within a county of the 15th class, as described by Sections 28020 and 28036 of  
40 the Government Code, as amended by Chapter 1204 of the Statutes of 1971, pursuant to a  
41 contract between the corporation and the board of supervisors of the county, and which  
42 has entered into an agreement with the board and the county setting forth the terms and  
43 conditions of the corporation's inclusion in the county's retirement system.

44 (j) "District" also includes any economic development association funded in whole or  
45 in part by a county of the 15th class, as described by Sections 28020 and 28036 of the  
46 Government Code, as amended by Chapter 1204 of the Statutes of 1971, and which has  
47 entered into an agreement with the board of supervisors and the county setting forth the  
48 terms and conditions of the association's inclusion in the county's retirement system.

49 (k) "District" also includes any special commission established in the Counties of  
50 Tulare and San Joaquin as described by Section 14087.31 of the Welfare and Institutions  
51 Code, pursuant to a contract between the special commission and the county setting forth  
52 the terms and conditions of the special commission's inclusion in the county's retirement  
53 system with the approval of the board of supervisors and the board of retirement.

1     **Comment.** Section 31468 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Chapter 5.5 (commencing with Section 40400) of Part 3 of  
3 Division 26 of the Health and Safety Code.

4     **Gov't Code § 51119 (amended). Timberland production zone**

5     SEC. \_\_\_\_\_. Section 51119 of the Government Code is amended to read:  
6     51119. Any action of the board or council undertaken to zone a parcel as timberland  
7 production pursuant to Section 51112 or 51113 is exempt from the requirements of  
8 Section 21151 of the ~~Public Resources~~ Environment Code.

9     **Comment.** Section 51119 is amended to substitute a reference to the Environment Code  
10 provision that continues former Section 21151 of the Public Resources Code.

11    **Gov't Code § 51238.1 (amended). Uses on contracted lands**

12    SEC. \_\_\_\_\_. Section 51238.1 of the Government Code is amended to read:  
13    51238.1. (a) Uses approved on contracted lands shall be consistent with all of the  
14 following principles of compatibility:

15    (1) The use will not significantly compromise the long-term productive agricultural  
16 capability of the subject contracted parcel or parcels or on other contracted lands in  
17 agricultural preserves.

18    (2) The use will not significantly displace or impair current or reasonably foreseeable  
19 agricultural operations on the subject contracted parcel or parcels or on other contracted  
20 lands in agricultural preserves. Uses that significantly displace agricultural operations on  
21 the subject contracted parcel or parcels may be deemed compatible if they relate directly  
22 to the production of commercial agricultural products on the subject contracted parcel or  
23 parcels or neighboring lands, including activities such as harvesting, processing, or  
24 shipping.

25    (3) The use will not result in the significant removal of adjacent contracted land from  
26 agricultural or open-space use.

27    In evaluating compatibility a board or council shall consider the impacts on  
28 noncontracted lands in the agricultural preserve or preserves.

29    (b) A board or council may include in its compatible use rules or ordinance conditional  
30 uses which, without conditions or mitigations, would not be in compliance with this  
31 section. These conditional uses shall conform to the principles of compatibility set forth  
32 in subdivision (a) or, for nonprime lands only, satisfy the requirements of subdivision (c).

33    (c) In applying the criteria pursuant to subdivision (a), the board or council may  
34 approve a use on nonprime land which, because of onsite or offsite impacts, would not be  
35 in compliance with paragraphs (1) and (2) of subdivision (a), provided the use is  
36 approved pursuant to a conditional use permit that shall set forth findings, based on  
37 substantial evidence in the record, demonstrating the following:

38    (1) Conditions have been required for, or incorporated into, the use that mitigate or  
39 avoid those onsite and offsite impacts so as to make the use consistent with the principles  
40 set forth in paragraphs (1) and (2) of subdivision (a) to the greatest extent possible while  
41 maintaining the purpose of the use.

42    (2) The productive capability of the subject land has been considered as well as the  
43 extent to which the use may displace or impair agricultural operations.

44    (3) The use is consistent with the purposes of this chapter to preserve agricultural and  
45 open-space land or supports the continuation of agricultural uses, as defined in Section  
46 51205, or the use or conservation of natural resources, on the subject parcel or on other  
47 parcels in the agricultural preserve. The use of mineral resources shall comply with  
48 Section 51238.2.

49    (4) The use does not include a residential subdivision.

50    For the purposes of this section, a board or council may define nonprime land as land  
51 not defined as "prime agricultural land" pursuant to subdivision (c) of Section 51201 or

1 as land not classified as “agricultural land” pursuant to subdivision (a) of Section 21060.1  
2 of the ~~Public Resources~~ Environment Code.

3 Nothing in this section shall be construed to overrule, rescind, or modify the  
4 requirements contained in Sections 51230 and 51238 related to noncontracted lands  
5 within agricultural preserves.

6 **Comment.** Section 51238.1 is amended to substitute a reference to the Environment Code  
7 provision that continues former Section 21606.1 of the Public Resources Code.

8 **Gov’t Code § 51282 (amended). Cancellation of contract**

9 SEC. \_\_\_\_\_. Section 51282 of the Government Code is amended to read:

10 51282. (a) The landowner may petition the board or council for cancellation of any  
11 contract as to all or any part of the subject land. The board or council may grant tentative  
12 approval for cancellation of a contract only if it makes one of the following findings:

13 (1) That the cancellation is consistent with the purposes of this chapter; or

14 (2) That cancellation is in the public interest.

15 (b) For purposes of paragraph (1) of subdivision (a) cancellation of a contract shall be  
16 consistent with the purposes of this chapter only if the board or council makes all of the  
17 following findings:

18 (1) That the cancellation is for land on which a notice of nonrenewal has been served  
19 pursuant to Section 51245.

20 (2) That cancellation is not likely to result in the removal of adjacent lands from  
21 agricultural use.

22 (3) That cancellation is for an alternative use which is consistent with the applicable  
23 provisions of the city or county general plan.

24 (4) That cancellation will not result in discontinuous patterns of urban development.

25 (5) That there is no proximate noncontracted land which is both available and suitable  
26 for the use to which it is proposed the contracted land be put, or, that development of the  
27 contracted land would provide more contiguous patterns of urban development than  
28 development of proximate noncontracted land.

29 As used in this subdivision “proximate, noncontracted land” means land not restricted  
30 by contract pursuant to this chapter, which is sufficiently close to land which is so  
31 restricted that it can serve as a practical alternative for the use which is proposed for the  
32 restricted land.

33 As used in this subdivision “suitable” for the proposed use means that the salient  
34 features of the proposed use can be served by land not restricted by contract pursuant to  
35 this chapter. Such nonrestricted land may be a single parcel or may be a combination of  
36 contiguous or discontinuous parcels.

37 (c) For purposes of paragraph (2) of subdivision (a) cancellation of a contract shall be  
38 in the public interest only if the council or board makes the following findings: (1) that  
39 other public concerns substantially outweigh the objectives of this chapter; and (2) that  
40 there is no proximate noncontracted land which is both available and suitable for the use  
41 to which it is proposed the contracted land be put, or, that development of the contracted  
42 land would provide more contiguous patterns of urban development than development of  
43 proximate noncontracted land.

44 As used in this subdivision “proximate, noncontracted land” means land not restricted  
45 by contract pursuant to this chapter, which is sufficiently close to land which is so  
46 restricted that it can serve as a practical alternative for the use which is proposed for the  
47 restricted land.

48 As used in this subdivision “suitable” for the proposed use means that the salient  
49 features of the proposed use can be served by land not restricted by contract pursuant to  
50 this chapter. Such nonrestricted land may be a single parcel or may be a combination of  
51 contiguous or discontinuous parcels.

(d) For purposes of subdivision (a), the uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(e) The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council as that necessary to permit them to make the findings required.

(f) In approving a cancellation pursuant to this section, the board or council shall not be required to make any findings other than or in addition to those expressly set forth in this section, and, where applicable, in Section 21081 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 51282 is amended to substitute a reference to the Environment Code provision that continues former Section 21081 of the Public Resources Code.

**Gov't Code § 51291 (amended). Public use of land within agricultural preserve**

SEC. \_\_\_\_\_. Section 51291 of the Government Code is amended to read:

51291. (a) As used in this section, Section 51292, and Section 51295 "public agency" means the state, or any department or agency thereof, and any county, city, school district, or other local public district, agency, or entity; and "person" means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the preserve of the intention to consider the location of a public improvement within the preserve. In accordance with Section 51290, the notice shall include an explanation of the preliminary consideration of Section 51292, and give a general description, in text or by diagram, of the agricultural preserve land proposed for acquisition, and a copy of any applicable contract created under this chapter. The Director of Conservation shall forward to the Director of Food and Agriculture a copy of any material received from the public agency or person relating to the proposed acquisition.

Within 30 days thereafter the Director of Conservation and the local governing body shall forward to the public agency or person concerned their comments with respect to the effect of the location of the public improvement on the land within the agricultural preserve and those comments shall be considered by the public agency or person. In preparing those comments, the Director of Conservation shall consider issues related to agricultural land use, including, but not limited to, matters related to the effects of the proposal on the conversion of adjacent or nearby agricultural land to nonagricultural uses, and shall consult with, and incorporate the comments of, the Director of Food and Agriculture on any other matters related to agricultural operations. Failure of any public agency or person to comply with the requirements of this section shall not invalidate any action by the agency or person to locate a public improvement within an agricultural preserve. However, the failure by any person or any public agency other than a state agency to comply with the requirements of this section shall be admissible in evidence in any litigation for the acquisition of that land or involving the allocation of funds or the construction of the public improvement. This subdivision does not apply to the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities within an agricultural preserve if that preserve was established after submission of the location of those facilities to the city or county for review or approval.



(c) When land in an agricultural preserve is acquired by a public entity, within 10 working days the public entity shall notify the Director of Conservation. The notice shall include a general explanation of the decision, and the findings made pursuant to Section 51292. If different from that previously provided pursuant to subdivision (b), the notice shall also include a general description, in text or by diagram, of the agricultural preserve land acquired, and a copy of any applicable contract created under this chapter.

(d) If, after giving the notice required under subdivisions (b) and (c) and before the project is completed within an agricultural preserve, the public agency or person proposes any significant change in the public improvement, it shall give notice of the changes to the Director of Conservation and the local governing body responsible for the administration of the preserve. Within 30 days thereafter, the Director of Conservation and the local governing body may forward to the public agency or person their comments with respect to the effect of the change to the public improvement on the land within the preserve and the compliance of the changed public improvements with this article. Those comments shall be considered by the public agency or person, if available within the time limits set by this subdivision.

(e) If the notices and findings required by this section and Section 51292 are given and contained within documents prepared pursuant to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) those documents may be used to meet the notification and findings requirements of this section and Section 51292, as long as they are provided no later than the times set forth in this section.

Any action or proceeding regarding notices or findings required by this article filed by the Director of Conservation or the local governing body administering the agricultural preserve shall be governed by Section 51294.

**Comment.** Section 51291 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 53080.1 (amended). Adoption or increase of fee**

SEC. \_\_\_\_\_. Section 53080.1 of the Government Code is amended to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020, except that the procedures set forth in Section 66021 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

**Comment.** Section 53080.1 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov't Code § 53096 (amended). Applicability of zoning ordinance**

SEC. \_\_\_\_\_. Section 53096 of the Government Code is amended to read:

53096. (a) Notwithstanding any other provisions of this article, the governing board of a local agency, by vote of four-fifths of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property if the local agency at a noticed public hearing determines by resolution that there is no feasible alternative to its



proposal, except when the proposed use of the property by such local agency is for facilities not related to storage or transmission of water or electrical energy, including, but not limited to, warehouses, administrative buildings or automotive storage and repair buildings. The governing board of a local agency may make such determinations at the time it approves an environmental impact report on its proposal required by Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. Mailed notice of the public hearing shall be provided at least 10 days prior to the hearing, to the owners of all property within 300 feet of the location of the proposed facility and a notice shall be posted in a conspicuous place at the proposed site of such facility. If mailed notice as required above would result in notice to more than 250 persons, as an alternative to such mailed notice, notice may be given by placing a display advertisement of at least one-fourth page in a newspaper of general circulation within the area affected by the proposed facility and by posting such notice in a conspicuous place at the proposed site of such facility.

(b) The board shall, within 10 days, notify the city or county, whose zoning ordinance has been rendered inapplicable under subdivision (a), of such action. If such governing board has taken such action the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of such action of the governing board to determine whether it was supported by substantial evidence. The evidence before the court shall include the record of the proceedings before the city, county, and district. The city or county shall cause a copy of the complaint to be served on the board. If the court determines that such action was not supported by substantial evidence, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by such local agency.

(c) "Feasible" as used in this section means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

**Comment.** Section 53096 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov't Code § 53395.15 (amended). Infrastructure financing plan**

SEC. \_\_\_\_\_. Section 53395.15 of the Government Code is amended to read:  
53395.15. The infrastructure financing plan shall be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) that pertains to the proposed public facilities or the proposed development project for which the public facilities are needed, and shall be made available for public inspection. The report shall also be sent to the planning commission and the legislative body.

**Comment.** Section 53395.15 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov't Code § 56428 (amended). Amendments to sphere of influence or urban service area**

SEC. \_\_\_\_\_. Section 56428 of the Government Code is amended to read:  
56428. (a) Any person or local agency may file a written request with the executive officer requesting amendments to a sphere of influence or urban service area adopted by the commission. The request shall state the nature of the proposed amendment, state the reasons for the request, include a map of the proposed amendment, and contain any additional data and information as may be required by the executive officer.

(b) After complying with the California Environmental Quality Act, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, the executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given. The executive officer shall give notice in the manner provided by Section 56427. On the date and time provided in the notice, the commission may do either of the following:

(1) Without further notice, consider the amendments to a sphere of influence.

(2) Set a future date for the hearing on the request.

(c) The executive officer shall review each requested amendment and prepare a report and recommendation. The report shall be completed not less than five days before the date specified in the notice of hearing. The executive officer shall send copies of the report to the person or agency making the request, each affected local agency, and each person who has filed a request for a report.

(d) At its meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date specified in the original notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(e) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. The commission shall follow the procedures in Sections 56425 and 56426.

(f) The commission may require the person or agency making a request pursuant to this section to pay a fee to cover the commission's costs. The fee shall not exceed the estimated reasonable cost of providing the service and shall be set pursuant to Section 56383. The commission may waive the fee if it finds that the request can be considered and studied as part of the periodic review of spheres of influence required by Section 56425. In addition, the commission may waive the fee if it finds that payment would be detrimental to the public interest.

(g) The commission and executive officer may review and act on any request to amend a sphere of influence or urban service area concurrently with their review and determination on any related change of organization or reorganization. In case of a conflict between the provisions of this section and any other provisions of this part, the other provisions shall prevail.

**Comment.** Section 56428 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Gov't Code § 56828 (amended). Application to initiate proceedings**

SEC. \_\_\_\_\_. Section 56828 of the Government Code is amended to read:

56828. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency and each subject agency. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56800.

(c) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(d) Except when a commission is the lead agency pursuant to Section 21067 of the ~~Public Resources~~ Environment Code, the executive officer shall determine within 30 days

1 of receiving an application whether the application is complete and acceptable for filing  
2 or whether the application is incomplete.

3 (e) The executive officer shall not accept an application for filing and issue a certificate  
4 of filing for at least 20 days after giving the mailed notice required by subdivision (b).  
5 The executive officer shall not be required to comply with this subdivision in the case of  
6 an application which meets the requirements of Section 56837 or in the case of an  
7 application for which a local agency has already given notice pursuant to subdivision (b)  
8 of Section 56800.

9 (f) If the appropriate fees have been paid, an application shall be deemed accepted for  
10 filing if no determination has been made by the executive officer within the 30-day  
11 period. An executive officer shall accept for filing, and file, any application submitted in  
12 the form prescribed by the commission and containing all of the information and data  
13 required pursuant to Section 56652.

14 (g) When an application is accepted for filing, the executive officer shall immediately  
15 issue a certificate of filing to the applicant. A certificate of filing shall be in the form  
16 prescribed by the executive officer and shall specify the date upon which the proposal  
17 shall be heard by the commission. From the date of issuance of a certificate of filing, or  
18 the date upon which an application is deemed to have been accepted, whichever is earlier,  
19 an application shall be deemed filed pursuant to this division.

20 (h) If an application is determined not to be complete, the executive officer shall  
21 immediately transmit that determination to the applicant specifying those parts of the  
22 application which are incomplete and the manner in which they can be made complete.

23 (i) Following the issuance of the certificate of filing, the executive officer shall proceed  
24 to set the proposal for hearing and give published notice thereof as provided in this part.  
25 The date of the hearing shall be not more than 90 days after issuance of the certificate of  
26 filing or after the application is deemed to have been accepted, whichever is earlier.  
27 Notwithstanding Section 56106, the date for conducting the hearing, as determined  
28 pursuant to this subdivision, is mandatory.

29 **Comment.** Section 56828 is amended to substitute a reference to the Environment Code  
30 provision that continues former Section 21067 of the Public Resources Code.

31 **Gov't Code § 56857 (amended). Request for reconsideration of resolution**

32 SEC. \_\_\_\_\_. Section 56857 of the Government Code is amended to read:

33 56857. (a) Any person or affected agency may file a written request with the executive  
34 officer requesting amendments to or reconsideration of any resolution adopted by the  
35 commission making determinations. The request shall state the specific modification to  
36 the resolution being requested.

37 (b) Notwithstanding Section 56106, the deadlines set by this section are mandatory.  
38 The person or agency shall file the written request within 30 days of the adoption of the  
39 initial or superseding resolution by the commission making determinations or prior to the  
40 adoption of a resolution by the conducting authority pursuant to Chapter 4 (commencing  
41 with Section 57075), whichever is earlier. If no person or agency files a timely request,  
42 the commission shall not take any action pursuant to this section.

43 (c) Upon receipt of a timely request, the executive officer shall immediately notify the  
44 conducting authority which shall not take any further action until the commission acts on  
45 the request.

46 (d) Upon receipt of a timely request by the executive officer, the time to file an action  
47 pursuant to Section 21167 of the ~~Public Resources~~ Environment Code and any provisions  
48 of Part 4 (commencing with Section 57000) governing the time within which the  
49 conducting authority is to act shall be tolled for the time that the commission takes to act  
50 on the request.

51 (e) The executive officer shall place the request on the agenda of the next meeting of  
52 the commission for which notice can be given pursuant to this subdivision. The executive

1 officer shall give notice of the consideration of the request by the commission in the same  
2 manner as for the original proposal. The executive officer may give notice in any other  
3 manner as he or she deems necessary or desirable.

4 (f) At that meeting, the commission shall consider the request and receive any oral or  
5 written testimony. The consideration may be continued from time to time but not to  
6 exceed 70 days from the date specified in the notice. The person or agency which filed  
7 the request may withdraw it at any time prior to the conclusion of the consideration by  
8 the commission.

9 (g) At the conclusion of its consideration, the commission may approve or disapprove  
10 with or without amendment, wholly, partially, or conditionally, the request. If the  
11 commission disapproves the request, it shall not adopt a new resolution making  
12 determinations, but shall direct the executive officer to notify the conducting authority of  
13 its action. If the commission approves the request, with or without amendment, wholly,  
14 partially, or conditionally, the commission shall adopt a resolution making determinations  
15 which shall supersede the resolution previously issued.

16 (h) The determinations of the commission shall be final and conclusive. No person or  
17 agency shall make any further request for the same change or a substantially similar  
18 change, as determined by the commission.

19 (i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected  
20 pursuant to Section 56854.

21 **Comment.** Section 56857 is amended to substitute a reference to the Environment Code  
22 provision that continues former Section 21167 of the Public Resources Code.

### 23 **Gov't Code § 65036 (amended). Legislative intent**

24 SEC. \_\_\_\_\_. Section 65036 of the Government Code is amended to read:

25 65036. It is the policy of the state and the intent of the Legislature to assure orderly  
26 planning for specific functions such as water development, transportation, natural  
27 resources, economic development and human resources by units of state government who  
28 exercise management responsibility for these functions. It is further the intent of the  
29 Legislature to provide, as part of the state planning process, that state functional plans  
30 proceed from common assumptions and forecasts of statewide growth and development,  
31 including those set forth in Section 21001 of the ~~Public Resources~~ Environment Code.

32 **Comment.** Section 65036 is amended to substitute a reference to the Environment Code  
33 provision that continues former Section 21001 of the Public Resources Code.

### 34 **Gov't Code § 65040 (amended). Office of Planning and Research**

35 SEC. \_\_\_\_\_. Section 65040 of the Government Code is amended to read:

36 65040. The Office of Planning and Research shall serve the Governor and his or her  
37 Cabinet as staff for long-range planning and research, and constitute the comprehensive  
38 state planning agency. In this capacity the office shall:

39 (a) Assisted by the Planning Advisory and Assistance Council established pursuant to  
40 subdivision (a) of Section 65040.6, engage in the formulation, evaluation and updating of  
41 long-range goals and policies for land use, population growth and distribution, urban  
42 expansion, development, open space, resource preservation and utilization, air and water  
43 quality, and other factors which shape statewide development patterns and significantly  
44 influence the quality of the state's environment.

45 (b) Assist in the orderly preparation by appropriate state departments and agencies of  
46 intermediate- and short-range functional plans to guide programs of transportation, water  
47 management, open space, recreation and other functions which relate to the protection  
48 and enhancement of the state's environment.

49 (c) In conjunction with the council, evaluate plans and programs of departments and  
50 agencies of state government, identify conflicts or omissions, and recommend to the



1 Governor and the Legislature new state policies, programs and actions, or amendments of  
2 existing programs, as required, to resolve conflicts, advance statewide environmental  
3 goals to respond to emerging environmental problems and opportunities, and to assure  
4 that all state policies and programs conform to the adopted land use planning goals and  
5 programs.

6 (d) Assist the Department of Finance in preparing, as part of the annual state budget, an  
7 integrated program of priority actions to implement state functional plans and to achieve  
8 statewide environmental goals and objectives and take other actions to assure that the  
9 program budget, submitted annually to the Legislature, contains information reporting the  
10 achievement of state goals and objectives by departments and agencies of state  
11 government.

12 (e) Coordinate the development of policies and criteria to ensure the federal grants-in-  
13 aid administered or directly expended by state government advance statewide  
14 environmental goals and objectives.

15 (f) Coordinate the development and operation of a statewide environmental monitoring  
16 system to assess the implications of present growth and development trends on the  
17 environment and to identify at an early time, potential threats to public health, natural  
18 resources and environmental quality.

19 (g) Coordinate, in conjunction with appropriate state, regional, and local agencies, the  
20 development of objectives, criteria and procedures for the orderly evaluation and report  
21 of the impact of public and private actions on the environmental quality of the state and  
22 as a guide to the preparation of environmental impact reports required of state and local  
23 agencies in Sections 21102 and 21150 of the ~~Public Resources~~ Environment Code.

24 (h) Coordinate research activities of state government directed to the growth and  
25 development of the state and the preservation of environmental quality, render advice to  
26 the Governor, his or her Cabinet, to the Legislature, and any agency or department of  
27 state government, and provide information to, and cooperate with, the Legislature or any  
28 of its committees or officers.

29 (i) Coordinate the technical assistance provided by state departments and agencies in  
30 regional and local planning to assure that such plans are consistent with statewide  
31 environmental goals and objectives.

32 (j) Accept and allocate or expend grants and gifts from any source, public or private,  
33 for the purpose of state planning and undertake other planning and coordinating activities  
34 as will implement the policy and intent of the Legislature as set forth herein.

35 (k) Develop long-range policies to assist the state and local agencies in meeting the  
36 problems presented by the growth and development of urban areas and defining the  
37 complementary roles of the state, cities, counties, school districts, and special districts  
38 with respect to such growth.

39 (l) Encourage the formation and proper functioning of, and provide planning assistance  
40 to, city, county, district, and regional planning agencies.

41 (m) Assist local government in land use planning.

42 **Comment.** Section 65040 is amended to substitute a reference to the Environment Code  
43 provisions that continue former Sections 21102 and 21150 of the Public Resources Code.

44 **Gov't Code § 65089.1 (amended). Agency requirements for employer plans**

45 SEC. \_\_\_\_\_. Section 65089.1 of the Government Code is amended to read:

46 65089.1 (a) For purposes of this section, "plan" means a trip reduction plan or a related  
47 or similar proposal submitted by an employer to a local public agency for adoption or  
48 approval that is designed to facilitate employee ridesharing, the use of public transit, and  
49 other means of travel that do not employ a single-occupant vehicle.

50 (b) An agency may require an employer to provide rideshare data bases; an emergency  
51 ride program; a preferential parking program; a transportation information program; a  
52 parking cash-out program, as defined in subdivision (f) of Section 65088.1; a public

transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but no agency shall require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.

(c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the agency for adoption.

(d) Each agency shall modify existing programs to conform to this section not later than June 30, 1995. Any plan adopted by an agency prior to January 1, 1994, shall remain in effect until adoption by the agency of a modified plan pursuant to this section.

(e) Employers may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

(f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in Division 26 4 (commencing with Section 39000 30000) of the Health and Safety Environment Code, or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) This section only applies to agencies and employers within the South Coast Air Quality Management District.

**Comment.** Section 65089.1 is amended to substitute a reference to the Environment Code provisions that continue former Division 26 (commencing with Section 39000) of the Health and Safety Code.

**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 § 65361 (amended). Extension of time**

SEC. \_\_\_\_\_. Section 65361 of the Government Code is amended to read:

65361. (a) Notwithstanding any other provision of law, upon application by a city or county, the Director of Planning and Research shall grant a reasonable extension of time not to exceed two years from the date of issuance of the extension, for the preparation and adoption of all or part of the general plan, if the legislative body of the city or county, after a public hearing, makes any of the following findings:

(1) Data required for the general plan shall be provided by another agency and it has not yet been provided.

(2) In spite of sufficient budgetary provisions and substantial recruiting efforts, the city or county has not been able to obtain necessary staff or consultant assistance.

(3) A disaster has occurred requiring reassignment of staff for an extended period or requiring a complete reevaluation and revision of the general plan, or both.

(4) Local review procedures require an extended public review process that has resulted in delaying the decision by the legislative body.

(5) The city or county is jointly preparing all or part of the general plan with one or more other jurisdictions pursuant to an existing agreement and timetable for completion.



(6) Other reasons exist that justify the granting of an extension, so that the timely preparation and adoption of a general plan is promoted.

(b) The director shall not grant an extension of time for the preparation and adoption of a housing element except in the case of a newly incorporated city or newly formed county that cannot meet the deadline set by Section 65360. Before the director grants an extension of time pursuant to this subdivision, he or she shall consult with the Director of Housing and Community Development.

(c) The application for an extension shall contain all of the following:

(1) A resolution of the legislative body of the city or county adopted after public hearing setting forth in detail the reasons why the general plan was not previously adopted as required by law or needs to be revised, including one or more of the findings made by the legislative body pursuant to subdivision (a), and the amount of additional time necessary to complete the preparation and adoption of the general plan.

(2) A detailed budget and schedule for preparation and adoption of the general plan, including plans for citizen participation and expected interim action. The budget and schedule shall be of sufficient detail to allow the director to assess the progress of the applicant at regular intervals during the term of the extension. The schedule shall provide for adoption of a complete and adequate general plan within two years of the date of the application for the extension.

(3) A set of proposed policies and procedures which would ensure, during the extension of time granted pursuant to this section, that the land use proposed in an application for a subdivision, rezoning, use permit, variance, or building permit will be consistent with the general plan proposal being considered or studied.

(d) The director may impose any conditions on extensions of time granted that the director deems necessary to ensure compliance with the purposes and intent of this title. Those conditions shall apply only to those parts of the general plan for which the extension has been granted. In establishing those conditions, the director may adopt or modify and adopt any of the policies and procedures proposed by the city or county pursuant to paragraph (3) of subdivision (c).

(e) During the extension of time specified in this section, the city or county is not subject to the requirement that a complete and adequate general plan be adopted, or the requirements that it be adopted within a specific period of time. Development approvals shall be consistent with those portions of the general plan for which an extension has been granted, except as provided by the conditions imposed by the director pursuant to subdivision (d). Development approvals shall be consistent with any element or elements that have been adopted and for which an extension of time is not sought.

(f) If a city or county that is granted a time extension pursuant to this section determines that it cannot complete the elements of the general plan for which the extension has been granted within the prescribed time period, the city or county may request one additional extension of time, which shall not exceed one year, if the director determines that the city or county has made substantial progress toward the completion of the general plan. This subdivision shall not apply to an extension of time granted pursuant to subdivision (b).

(g) An extension of time granted pursuant to this section for the preparation and adoption of all or part of a city or county general plan is exempt from Division 13 3 (commencing with Section 21000) of the Public Resources Environment Code.

**Comment.** Section 65361 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 65456 (amended). Specific plan fees**

SEC. \_\_\_\_\_. Section 65456 of the Government Code is amended to read:

65456. (a) The legislative body, after adopting a specific plan, may impose a specific plan fee upon persons seeking governmental approvals which are required to be consistent with the specific plan. The fees shall be established so that, in the aggregate, they defray but as estimated do not exceed, the cost of preparation, adoption, and administration of the specific plan, including costs incurred pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. As nearly as can be estimated, the fee charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan. It is the intent of the Legislature in providing for such fees to charge persons who benefit from specific plans for the costs of developing those specific plans which result in savings to them by reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan.

(b) Notwithstanding Section 66016, a city or county may require a person who requests adoption, amendment, or repeal of a specific plan to deposit with the planning agency an amount equal to the estimated cost of preparing the plan, amendment, or repeal prior to its preparation by the planning agency.

(c) Copies of the documents adopting or amending the specific plan, including the diagrams and text, shall be made available to local agencies, and shall be made available to the general public as follows:

(1) Within one working day following the date of adoption, the clerk of the legislative body shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(2) Within two working days after receipt of a request for a copy of the documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the clerk shall furnish the requested copy to the person making the request.

(d) A city or county may charge a fee for a copy of a specific plan or amendments to a specific plan in an amount that is reasonably related to the cost of providing that document.

**Comment.** Section 65456 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Gov't Code § 65457 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 65457 of the Government Code is amended to read:

65457. (a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the ~~Public Resources~~ Environment Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

(b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

(c) This section does not supersede but provides an alternative procedure to Section 21080.7 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 65457 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 65584 (amended). Share of city or county of regional housing needs**

SEC. \_\_\_\_\_. Section 65584 of the Government Code is amended to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon data provided by the Department of Finance, in consultation with each council of government, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). Where the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

1 (c) (1) Within 90 days following a determination of a council of governments pursuant  
2 to subdivision (a), or the department's determination pursuant to subdivision (b), a city or  
3 county may propose to revise the determination of its share of the regional housing need  
4 in accordance with the considerations set forth in subdivision (a). The proposed revised  
5 share shall be based upon available data and accepted planning methodology, and  
6 supported by adequate documentation.

7 (2) Within 60 days after the time period for the revision by the city or county, the  
8 council of governments or the department, as the case may be, shall accept the proposed  
9 revision, modify its earlier determination, or indicate, based upon available data and  
10 accepted planning methodology, why the proposed revision is inconsistent with the  
11 regional housing need.

12 (A) If the council of governments or the department, as the case may be, does not  
13 accept the proposed revision, then the city or county shall have the right to request a  
14 public hearing to review the determination within 30 days.

15 (B) The city or county shall be notified within 30 days by certified mail, return receipt  
16 requested, of at least one public hearing regarding the determination.

17 (C) The date of the hearing shall be at least 30 days from the date of the notification.

18 (D) Before making its final determination, the council of governments or the  
19 department, as the case may be, shall consider comments, recommendations, available  
20 data, accepted planning methodology, and local geological and topographic restraints on  
21 the production of housing.

22 (3) If the council of governments or the department accepts the proposed revision or  
23 modifies its earlier determination, the city or county shall use that share. If the council of  
24 governments or the department grant a revised allocation pursuant to paragraph (1), the  
25 council of governments or the department shall ensure that the current total housing need  
26 is maintained. If the council of governments or department indicates that the proposed  
27 revision is inconsistent with the regional housing need, the city or county shall use the  
28 share which was originally determined by the council of governments or the department.

29 (4) The determination of the council of governments or the department, as the case may  
30 be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil  
31 Procedure.

32 (5) The council of governments or the department shall reduce the share of regional  
33 housing needs of a county if all of the following conditions are met:

34 (A) One or more cities within the county agree to increase its share or their shares in an  
35 amount which will make up for the reduction.

36 (B) The transfer of shares shall only occur between a county and cities within that  
37 county.

38 (C) The county's share of low-income and very low income housing shall be reduced  
39 only in proportion to the amount by which the county's share of moderate- and above  
40 moderate-income housing is reduced.

41 (D) The council of governments or the department, whichever assigned the county's  
42 share, shall have authority over the approval of the proposed reduction, taking into  
43 consideration the criteria of subdivision (a) of Section 65584.

44 (6) The housing element shall contain an analysis of the factors and circumstances, with  
45 all supporting data, justifying the revision. All materials and data used to justify any  
46 revision shall be made available upon request by any interested party within seven days  
47 upon payment of reasonable costs of reproduction unless the costs are waived due to  
48 economic hardship.

49 (d)(1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city  
50 or county which directly limits, by number, the building permits which may be issued for  
51 residential construction, or which limits for a set period of time the number of buildable  
52 lots which may be developed for residential purposes, shall not be a justification for a  
53 determination or a reduction in the share of a city or county of the regional housing need.



(2) Paragraph (1) does not apply to any city or county which imposes a moratorium on residential construction for a set period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings which specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the provisions of the California Environmental Quality Act, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 65584 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 65589.5 (amended). Legislative findings**

SEC. \_\_\_\_\_. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to low- and moderate-income households or condition approval in a manner which renders the project infeasible for development for the use of low- and moderate-income households unless it finds, based upon substantial evidence, one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article and the development project is not needed for the jurisdiction to meet its share of the regional housing need of low-income or very low income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, unavoidable impact, as provided in written standards, policies, or conditions.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or waste water facilities to serve the project.

(6) The development project is inconsistent with the jurisdiction’s general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Environment Code or otherwise complying with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Public Resources Environment Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nor shall anything in this section be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Affordable to low- and moderate-income households” means at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section



50079.5 of the Health and Safety Code, and the remaining units shall be sold or rented to either lower income households or persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) “Area median income” shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for the lower income households in accordance with the provisions of this subdivision for 30 years.

(4) “Neighborhood” means a planning area commonly identified as such in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to low- and moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d).

(j) When a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, unavoidable impact, as provided in written standards, policies, or conditions.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

**Comment.** Section 65589.5 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov’t Code § 65754.5 (amended). Nonconforming housing developments**

SEC. \_\_\_\_\_. Section 65754.5 of the Government Code is amended to read:

65754.5. (a) During the pendency of any action described in Section 65754, or when issuing a final judgment in favor of the plaintiff or petitioner finding that the general plan

1 or any element thereof does not conform to the requirements of Article 5 (commencing  
2 with Section 65300), the court shall not enjoin the development of any housing  
3 development with respect to which all of the following conditions are met:

4 (1) The legislative body of the city, county, or city and county has approved a  
5 development project, as defined by Section 65928, for housing or a specific plan for the  
6 housing development and determined the development project for housing or the specific  
7 plan to be consistent with the general plan of the city, county, or city and county.

8 (2) The legislative body of the city, county, or city and county has certified an  
9 environmental impact report or a negative declaration for the development project for  
10 housing or for the specific plan for housing pursuant to the California Environmental  
11 Quality Act, Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~  
12 Environment Code, and no legal action was brought within the applicable statute of  
13 limitations period relating to that environmental impact report or negative declaration.

14 (3) The owner of the land upon which the housing is proposed to be developed, in  
15 satisfaction of any requirements imposed and in reliance upon any action taken by the  
16 city, county, or city and county pursuant to paragraphs (1) and (2), has irrevocably  
17 committed one million dollars (\$1,000,000), or more, for public infrastructure, including,  
18 but not limited to, roads, and water and sewer facilities.

19 (4) The proposed housing development may be developed without having an impact  
20 upon the city, county, or city and county's ability to implement an adequate housing  
21 element or to properly adopt an adequate housing element if the court determines, in the  
22 pending action, that the general plan or plan element is inadequate. The court shall apply  
23 the provisions of Section 65760 to determine whether a housing development will have  
24 an impact on the ability of the city, county, or city and county to properly adopt and  
25 implement an adequate housing element.

26 (b) The provisions of this section shall be applicable to any legal action pending on  
27 January 1, 1984, and to every action commenced on or after that date.

28 (c) This section shall not be construed to preclude a public agency from exercising  
29 discretion, in a manner authorized by any other provision of law, to alter plans, zoning, or  
30 subsequent development approvals applicable to those lands, or from enacting and  
31 enforcing further regulations upon their use.

32 **Comment.** Section 65754.5 is amended to substitute a reference to the Environment Code  
33 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
34 Resources Code.

35 **Gov't Code § 65759 (amended). CEQA exemption**

36 SEC. \_\_\_\_\_. Section 65759 of the Government Code is amended to read:

37 65759. In any action brought under this section:

38 (a) The California Environmental Quality Act, Division ~~13~~ 3 (commencing with  
39 Section 21000) of the ~~Public Resources~~ Environment Code, does not apply to any action  
40 necessary to bring its general plan or relevant mandatory elements of the plan into  
41 compliance with any court order or judgment under this article.

42 (1) The local agency shall, however, prepare an initial study, within the time limitations  
43 specified in Section 65754, to determine the environmental effects of the proposed action  
44 necessary to comply with the court order. The initial study shall contain substantially the  
45 same information as is required for an initial study pursuant to subdivision (c) of Section  
46 15080 of Title 14 of the California Code of Regulations.

47 (2) If as a result of the initial study, the local agency determines that the action may  
48 have a significant effect on the environment, the local agency shall prepare, within the  
49 time limitations specified in Section 65754, an environmental assessment, the content of  
50 which substantially conforms to the required content for a draft environmental impact  
51 report set forth in Article 9 (commencing with Section 15140) of Title 14 of the  
52 California Code of Regulations. The local agency shall include notice of the preparation

1 of the environmental assessment in all notices provided for the amendments to the  
2 general plan proposed to comply with the court order.

3 (3) The environmental assessment shall be deemed to be a part of the general plan and  
4 shall only be reviewable as provided in this article.

5 (4) The local agency may comply with the provisions of the California Environmental  
6 Quality Act, Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~  
7 Environment Code, in any action necessary to bring its general plan or the plan's relevant  
8 mandatory elements into compliance with any court order or judgment under this section  
9 so long as it does so within the time limitations specified in Section 65754.

10 (b) The court for good cause shown may grant not more than two extensions of time,  
11 not to exceed a total of 240 days, in order to meet the requirements imposed by Section  
12 65754.

13 **Comment.** Section 65759 is amended to substitute references to the Environment Code  
14 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
15 Resources Code.

16 **Gov't Code § 65762 (amended). Applicable law**

17 SEC. \_\_\_\_\_. Section 65762 of the Government Code is amended to read:

18 65762. Nothing in this article shall prohibit a court from invalidating any development  
19 permit based on failure to comply with the Subdivision Map Act, Division 2  
20 (commencing with Section 66401) of Title 7 of the Government Code, the California  
21 Environmental Quality Act, Division 13 3 (commencing with Section 21000) of the  
22 ~~Public Resources~~ Environment Code, the Planning and Zoning Law, Title 7 (commencing  
23 with Section 65000) of the Government Code, or other applicable laws.

24 The procedures and remedies set forth in this article shall not be construed to affect the  
25 substantive standards of court review of a general plan or of other local government land  
26 use decisions. The remedies set forth in this article are interim measures which shall have  
27 no application after a general plan has been revised to substantially comply with state  
28 law.

29 **Comment.** Section 65762 is amended to substitute a reference to the Environment Code  
30 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
31 Resources Code.

32 **Gov't Code § 65850.2 (amended). Local agency responsibilities**

33 SEC. \_\_\_\_\_. Section 65850.2 of the Government Code is amended to read:

34 65850.2. (a) Each city and each county shall include, in its information list compiled  
35 pursuant to Section 65940 for development projects, or application form for projects that  
36 do not require a development permit other than a building permit, both of the following:

37 (1) The requirement that the owner or authorized agent shall indicate whether the  
38 owner or authorized agent will need to comply with the applicable requirements of  
39 Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of  
40 Division 20 of the Health and Safety Code or the requirements for a permit for  
41 construction or modification from the air pollution control district or air quality  
42 management district exercising jurisdiction in the area governed by the city or county.

43 (2) The requirement that the owner or authorized agent certify whether or not the  
44 proposed project will have more than a threshold quantity of a regulated substance in a  
45 process or will contain a source or modified source of hazardous air emissions.

46 (b) A city or county shall not find the application complete pursuant to Section 65943  
47 or approve a development project or a building permit for a project that does not require a  
48 development permit other than a building permit, in which a regulated substance will be  
49 present in a process in quantities greater than the applicable threshold quantity, unless the  
50 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 45101 of the Health and Safety 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 Sections 42303 and 44321 of the Health and Safety Code.

#### **Gov’t Code § 65914 (amended). Litigation costs**

SEC. \_\_\_\_\_. Section 65914 of the Government Code is amended to read:



65914. (a) In any civil action or proceeding, including but not limited to an action brought pursuant to Section 21167 of the ~~Public Resources~~ Environment Code, against a public entity which has issued planning, subdivision, or other approvals for a housing development, to enjoin the carrying out or approval of a housing development or to secure a writ of mandate relative to the approval of, or a decision to carry out the housing development, the court, after entry of final judgment and the time to appeal has elapsed, and after notice to the plaintiff or plaintiffs, may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity if it finds all of the following:

(1) The housing development meets or exceeds the requirements for low- and moderate-income housing as set forth in Section 65915.

(2) The action was frivolous and undertaken with the primary purpose of delaying or thwarting the low- or moderate-income nature of the housing development or portions thereof.

(3) The public entity making application for costs under this section has prevailed on all issues presented by the pleadings, and, if an intervenor, the public entity actively, through counsel or otherwise, took part on a continuing basis in the defense of the lawsuit.

(4) A demand for a preliminary injunction was made by the plaintiff and denied by a court of competent jurisdiction, such denial not having been reversed on appeal, or the action or proceeding was dismissed as a result of a motion for summary judgment by any defendant, and not reversed on appeal.

(b) In any appeal of any action described in subdivision (a), the reviewing court may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity if the court reviews and upholds the trial court's findings with respect to paragraphs (1) to (4), inclusive, of subdivision (a).

**Comment.** Section 65914 is amended to substitute a reference to the Environment Code provision that continues former Section 21167 of the Public Resources Code.

**Gov't Code § 65926 (amended). Air pollution control district**

SEC. \_\_\_\_\_. Section 65926 of the Government Code is amended to read:

65926. "Air pollution control district" means any district created or continued in existence pursuant to the provisions of Part 3 (commencing with Section 4000 32000) of Division 26 4 of the ~~Health and Safety~~ Environment Code .

**Comment.** Section 65926 is amended to substitute a reference to the Environment Code provisions that continue former Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code. Note that, prior to amendment, this section erroneously referred to Section 4000 of the Health and Safety Code.

**Gov't Code § 65941 (amended). Project application**

SEC. \_\_\_\_\_. Section 65941 of the Government Code is amended to read:

65941. (a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application , or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the ~~Public Resources~~ Environment Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, “lead agency” and “responsible agency” shall have the same meaning as those terms are defined in Section 21067 of the ~~Public Resources~~ Environment Code and Section 21069 of the ~~Public Resources~~ Environment Code, respectively.

**Comment.** Section 65941 is amended to substitute references to the Environment Code provisions that continue former Sections 21067, 21069, and 21080.1 of the Public Resources Code.

**Gov’t Code § 65942 (amended). Revision of information and criteria**

SEC. \_\_\_\_\_. Section 65942 of the Government Code is amended to read:

65942. The information and the criteria specified in Sections 65940, 65941, 65941.5 shall be revised as needed so that they shall be current and accurate at all times. Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to Section 65943 if the application was received before the revision is effective except for revisions for the following reasons resulting from the conditions which were not known and could not have been known by the public agency at the time the application was received:

(a) To provide sufficient information to permit the public agency to make the determination required by Section 21080.1 of the ~~Public Resources~~ Environment Code, as provided by Section 65941.

(b) To comply with the enactment of new or revised federal, state, or local requirements, except for new or revised requirements of a local agency which is also the lead agency.

**Comment.** Section 65942 is amended to substitute a reference to the Environment Code provision that continues former Section 21080.1 of the Public Resources Code.

**Gov’t Code § 65943.5 (amended). Environmental permit applications**

SEC. \_\_\_\_\_. Section 65943.5 of the Government Code is amended to read:

65943.5. (a) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving a permit application to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(b) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving an application for the issuance of an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection under either of the following circumstances:

(1) The environmental agency has not adopted an appeals process pursuant to subdivision (c) of Section 65943.

(2) The environmental agency declines to accept an appeal for a decision pursuant to subdivision (c) of Section 65943.

(c) For purposes of subdivision (b), “environmental permit” has the same meaning as defined in Section ~~71012~~ 10125 of the ~~Public Resources~~ Environment Code, and “environmental agency” has the same meaning as defined in Section ~~71011~~ 10120 of the ~~Public Resources~~ Environment Code, except that “environmental agency” does not include the agencies described in subdivisions (c) and (h) of Section ~~71011~~ 10120 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 65943.5 is amended to substitute references to the Environment Code provisions that continue former Sections 71011 and 71012 of the Public Resources Code.



**Gov't Code § 65944 (amended). Further information**

SEC. \_\_\_\_\_. Section 65944 of the Government Code is amended to read:

65944. (a) After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940. The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

(b) The provisions of subdivision (a) shall not be construed as requiring an applicant to submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application. Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application.

(c) This section shall not be construed as limiting the ability of a public agency to request and obtain information which may be needed in order to comply with the provisions of Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 65944 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 65950 (amended). Period for agency action**

SEC. \_\_\_\_\_. Section 65950 of the Government Code is amended to read:

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the ~~Public Resources~~ Environment Code for the development project.

(2) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(3) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the ~~Public Resources~~ Environment Code, respectively.

**Comment.** Section 65950 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 65950.1 (amended). Extension of time**

SEC. \_\_\_\_\_. Section 65950.1 of the Government Code is amended to read:

65950.1. Notwithstanding Section 65950, if there has been an extension of time pursuant to Section 21100.2 or 21151.5 of the ~~Public Resources~~ Environment Code to complete and certify the environmental impact report, the lead agency shall approve or disapprove the project within 90 days after certification of the environmental impact report.

**Comment.** Section 65950.1 is amended to substitute a reference to the Environment Code provisions that continue former Sections 21100.2 and 21151.5 of the Public Resources Code.

**Gov't Code § 65951 (amended). Combined environmental impact report and statement**

SEC. \_\_\_\_\_. Section 65951 of the Government Code is amended to read:

65951. In the event that a combined environmental impact report-environmental impact statement is being prepared on a development project pursuant to Section 21083.6 21096.6 of the ~~Public Resources~~ Environment Code, a lead agency may waive the time limits established in Section 65950. In any event, such lead agency shall approve or disapprove such project within 60 days after the combined environmental impact report-environmental impact statement has been completed and adopted.

**Comment.** Section 65951 is amended to substitute a reference to the Environment Code provision that continues former Section 21096.6 of the Public Resources Code.

**Gov't Code § 65956.5 (amended). Environmental permit actions**

SEC. \_\_\_\_\_. Section 65956.5 of the Health & Safety Code is amended to read:

65956.5. (a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no governing body, to the director of the environmental agency, as provided by the environmental agency, for a determination regarding the failure by the environmental agency to take timely action on the issuance or denial of the environmental permit in accordance with the time limits specified in this chapter.

(b) There shall be a final written determination by the environmental agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The final written determination by the environmental agency shall specify both of the following:

(1) The reason or reasons for failing to act pursuant to the time limits in this chapter.

(2) A date by which the environmental agency shall act on the permit application.

(c) Notwithstanding any other provision of this chapter, any appeal submitted pursuant to subdivision (a) involving an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection if the environmental agency declines to accept the appeal for a decision pursuant to subdivision (a) or the environmental agency does not make a final written determination pursuant to subdivision (b).

(d) Any appeal submitted pursuant to subdivision (a) involving an environmental permit to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(e) For purposes of this section, "environmental permit" has the same meaning as defined in Section 71012 10125 of the ~~Public Resources~~ Environment Code, and "environmental agency" has the same meaning as defined in Section 71011 10120 of the ~~Public Resources~~ Environment Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 10120 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 65956.5 is amended to substitute references to the Environment Code provisions that continue former Sections 71011 and 71012 of the Public Resources Code.

**Gov't Code § 65957.5 (amended). Appeal of subdivision or construction conditions**

SEC. \_\_\_\_\_. Section 65957.5 of the Government Code is amended to read:

65957.5. (a) Whenever the director of a Department of Transportation highway district recommends to a public agency considering an application to subdivide real property or

1 to issue a construction permit that the agency impose certain conditions on its approval of  
2 the application, the applicant may appeal the district director's recommendation.

3 (b) The Department of Transportation shall adopt regulations prescribing procedures  
4 for effecting an appeal pursuant to subdivision (a). The appeal shall be made in writing to  
5 the Director of Transportation. The director's decision on the appeal shall be rendered  
6 within 60 calendar days after receipt of the appeal, and the director's written  
7 determination shall be transmitted to the appellant and to the agency to whom the  
8 appealed recommendation was made. The adopted regulations shall require the appellant  
9 to pay to the department a fee of not more than 50 percent of the estimated administrative  
10 cost to the department of conducting the appeal.

11 (c) The appeal process, including the director's written determination, shall be  
12 completed at least 60 days prior to completion of the period of public review for a draft  
13 environmental impact report or a negative declaration prescribed by Section 21091 of the  
14 ~~Public Resources~~ Environment Code.

15 **Comment.** Section 65957.5 is amended to substitute a reference to the Environment Code  
16 provision that continues former Section 21091 of the Public Resources Code.

17 **Gov't Code § 65963.1 (amended). Application of chapter**

18 SEC. \_\_\_\_\_. Section 65963.1 of the Government Code is amended to read:

19 65963.1. Except as otherwise provided in Article 8.7 (commencing with Section  
20 25199) of Chapter 6.5 of Division 20 of the Health and Safety Code, this chapter applies  
21 to the making of a land use decision or the issuance of a permit for a hazardous waste  
22 facility project by a public agency, as defined in Section 25199.1 of the Health and Safety  
23 Code, including, but not limited to, all of the following actions:

24 (a) The approval of land use permits and conditional use permits, the granting of  
25 variances, the subdivision of property, and the modification of existing property lines  
26 pursuant to this division or Division 2 (commencing with Section 66410) of Title 7, and,  
27 for purposes of this chapter, "project" includes an activity requiring any of those actions.

28 (b) The issuance of hazardous waste facility permits by the Department of Toxic  
29 Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of  
30 Division 20 of the Health and Safety Code.

31 (c) The issuance of waste discharge requirements by California regional water quality  
32 control boards pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of  
33 Division 7 of the Water Code.

34 (d) The issuance of authority to construct permits by the district board of an air  
35 pollution control district or an air quality management district pursuant to Division 26 4  
36 (commencing with Section 39000 30000) of the ~~Health and Safety~~ Environment Code.

37 (e) The issuance of solid waste facilities permits by the enforcement agency pursuant to  
38 Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3.

39 **Comment.** Section 65963.1 is amended to substitute a reference to the Environment Code  
40 provisions that continue former Division 26 (commencing with Section 39000) of the Health and  
41 Safety Code.

42 **Gov't Code § 65992 (amended). Application of CEQA**

43 SEC. \_\_\_\_\_. Section 65992 of the Government Code is amended to read:

44 65992. This chapter is not a limitation on the authority of any public agency pursuant to  
45 Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
46 Code.

47 **Comment.** Section 65992 is amended to substitute a reference to the Environment Code  
48 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
49 Resources Code.

**Gov't Code § 65996 (amended). Mitigation for adequacy of school facilities**

SEC. \_\_\_\_\_. Section 65996 of the Government Code is amended to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) No public agency shall, pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

**Comment.** Section 65996 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 66030 (amended). Legislative findings and intent**

SEC. \_\_\_\_\_. Section 66030 of the Government Code is amended to read:

66030. (a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

**Comment.** Section 66030 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Gov't Code § 66031 (amended). Mediation**

SEC. \_\_\_\_\_. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.



1     **Comment.** Section 66031 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Gov't Code § 66452.1 (amended). Time periods**

5     SEC. \_\_\_\_\_. Section 66452.1 of the Government Code is amended to read:

6     66452.1. (a) If the advisory agency is not authorized by local ordinance to approve,  
7 conditionally approve or disapprove the tentative map, it shall make its written report on  
8 the tentative map to the legislative body within 50 days after the filing thereof with its  
9 clerk.

10    (b) If the advisory agency is authorized by local ordinance to approve, conditionally  
11 approve, or disapprove the tentative map, it shall take that action within 50 days after the  
12 filing thereof with its clerk and report its action to the subdivider.

13    (c) The local agency shall comply with the time periods referred to in Section 21151.5  
14 of the Public Resources Environment Code. The time periods specified in subdivisions  
15 (a) and (b) shall commence after certification of the environmental impact report,  
16 adoption of a negative declaration, or a determination by the local agency that the project  
17 is exempt from the requirements of Division 13 3 (commencing with Section 21000) of  
18 the Public Resources Environment Code.

19     **Comment.** Section 66452.1 is amended to substitute references to the Environment Code  
20 provision that continues former Section 21151.5 of the Public Resources Code.

21     **Gov't Code § 66452.2 (amended). Time for consideration of tentative map**

22     SEC. \_\_\_\_\_. Section 66452.2 of the Government Code is amended to read:

23     66452.2. (a) If there is an advisory agency which is not authorized by local ordinance to  
24 approve, conditionally approve or disapprove the tentative map, at the next regular  
25 meeting of the legislative body following the filing of the advisory agency's report with  
26 it, the legislative body shall fix the meeting date at which the tentative map will be  
27 considered by it, which date shall be within 30 days thereafter and the legislative body  
28 shall approve, conditionally approve, or disapprove the tentative map within that 30-day  
29 period.

30    (b) If there is no advisory agency, the clerk of the legislative body shall submit the  
31 tentative map to the legislative body at its next regular meeting which shall approve,  
32 conditionally approve or disapprove that map within 50 days thereafter.

33    (c) The local agency shall comply with the time periods referred to in Section 21151.5  
34 of the Public Resources Environment Code. The time periods specified in subdivisions  
35 (a) and (b) shall commence after certification of the environmental impact report,  
36 adoption of a negative declaration, or a determination by the local agency that the project  
37 is exempt from the requirements of Division 13 3 (commencing with Section 21000) of  
38 the Public Resources Environment Code.

39     **Comment.** Section 66452.2 is amended to substitute references to the Environment Code  
40 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
41 the Public Resources Code.

42     **Gov't Code § 66474.01 (amended). Approval of tentative or parcel map**

43     SEC. \_\_\_\_\_. Section 66474.01 of the Government Code is amended to read:

44     66474.01. Notwithstanding subdivision (e) of Section 66474, a local government may  
45 approve a tentative map, or a parcel map for which a tentative map was not required, if an  
46 environmental impact report was prepared with respect to the project and a finding was  
47 made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public  
48 Resources Environment Code that specific economic, social, or other considerations



1 make infeasible the mitigation measures or project alternatives identified in the  
2 environmental impact report.

3 **Comment.** Section 66474.01 is amended to substitute a reference to the Environment Code  
4 provision that continues former Section 21081 of the Public Resources Code.

5 **Gov't Code § 66498.8 (amended). Ordinances or resolutions to implement chapter**

6 SEC. \_\_\_\_\_. Section 66498.8 of the Government Code is amended to read:

7 66498.8. (a) On or before January 1, 1986, a city, county, or city and county shall adopt  
8 ordinances or resolutions necessary or appropriate for the implementation of this chapter.

9 (b) If a city, county, or city and county receives a written request to implement this  
10 chapter, it shall adopt any ordinances or resolutions it determines necessary or  
11 appropriate to implement this chapter. The city, county, or city and county shall adopt the  
12 ordinances or resolutions not more than 120 days from the date the request is made and  
13 any fee is paid to cover the direct expenses the city, county, or city and county determines  
14 it will incur in processing the ordinances or resolutions. The city, county, or city and  
15 county may arrange, with the person making the request, to collect fees from subdividers  
16 filing vesting tentative maps and to reimburse the person requesting the ordinance or  
17 resolution for any costs so advanced by that person.

18 (c) The local agency may charge subdividers who file vesting tentative maps a fee in an  
19 amount sufficient to recover the direct costs associated with establishing and adopting  
20 ordinances or resolutions pursuant to subdivision (a) or (b).

21 (d) No ordinances or resolutions adopted pursuant to subdivision (a) may require more  
22 information than that related to ordinances, resolutions, policies, or standards for the  
23 design, development, or improvement relating to the conferred rights, except where  
24 necessary:

25 (1) To permit the public agency to make the determination required by Section 21080.1  
26 of the ~~Public Resources~~ Environment Code, as provided by Section 65941.

27 (2) To comply with federal or state requirements.

28 **Comment.** Section 66498.8 is amended to substitute a reference to the Environment Code  
29 provision that continues former Section 21080.1 of the Public Resources Code.

30 **Gov't Code § 66666 (amended). Existing regulatory authority**

31 SEC. \_\_\_\_\_. Section 66666 of the Government Code is amended to read:

32 66666. No provision of this chapter shall be construed to change any existing  
33 regulatory authority under Division 6 (commencing with Section 6001), Division 7  
34 (commencing with Section 8600), or Division 13 3 (commencing with Section 21000) of  
35 the ~~Public Resources~~ Environment Code, or the Porter-Cologne Water Quality Control  
36 Act (Division 7 (commencing with Section 13000) of the Water Code), all of which shall  
37 remain in full force and effect. Nothing in this chapter shall be construed to remove or  
38 otherwise affect certifications, waivers of certifications, waste discharge requirements, or  
39 commission or State Lands Commission permits now or hereafter issued for dredging and  
40 disposal projects pursuant to this title or any other applicable provision of state or federal  
41 law.

42 **Comment.** Section 66666 is amended to substitute a reference to the Environment Code  
43 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
44 Resources Code.

45 **Gov't Code § 66682 (amended). White Slough Project**

46 SEC. \_\_\_\_\_. Section 66682 of the Government Code is amended to read:

47 66682. The commission shall issue a permit for all, or any portion, of the White Slough  
48 Project only if the commission finds that the work is consistent with the plan, subdivision  
49 (b) of Section 66681, and all of the following requirements have been met:

1 (a) The city and the county have adopted the necessary implementing ordinances and  
2 have amended their general and specific plans.

3 (b) The department limits the project to a four-lane highway with the minimum  
4 medians and shoulders necessary to assure highway safety, and the project does not  
5 permit access to the wetlands north of State Highway Route 37.

6 (c) A minimum fill of tidal areas will result from construction of the combined flood  
7 barrier, new sewerline, and widened State Highway Route 37 and associated  
8 interchanges, which in no event will result in the loss of more than 13 acres of tidal areas.

9 (d) Fill of tidal and tidally influenced wetlands will be mitigated on a four-to-one basis  
10 in the vicinity of the project, and the mitigation will consist of the acquisition of upland  
11 areas which do not presently provide unique or especially significant wildlife habitat and  
12 the creation and permanent protection of new wetlands for habitat purposes. The  
13 acquisition of the upland areas will take place before construction of the highway project.  
14 Creation of new wetlands will be done concurrently with the construction of the highway  
15 project and will be monitored by an independent biologist. There shall be assurances that  
16 the created wetlands will be fully functional or additional measures shall be taken as  
17 described in paragraph (5) of subdivision (b) of Section 66680.

18 (e) The project will provide a barrier to protect already developed areas of the city from  
19 flooding.

20 (f) The project will include the covering of the flooded sewerline south of State  
21 Highway Route 37 and the relocation of the flooded line north of State Highway Route  
22 37 within the area required for the widening of State Highway Route 37.

23 (g) The project will provide improved water circulation and waterflow throughout  
24 South White Slough, so as to minimize algal growth and air pollution and to improve  
25 wetland habitat values.

26 (h) The White Slough Project is the least environmentally damaging, feasible  
27 alternative identified pursuant to the California Environmental Quality Act (Division 13 3  
28 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

29 **Comment.** Section 66682 is amended to substitute a reference to the Environment Code  
30 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
31 Resources Code.

32 **Gov't Code § 67675.9 (amended). Closure and reuse of Ford Ord**

33 SEC. \_\_\_\_\_. Section 67675.9 of the Government Code is amended to read:

34 67675.9. If an environmental impact statement on the closure and reuse of Fort Ord has  
35 been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42  
36 U.S.C. Sec. 4321 et seq.), the board may proceed in the following manner:

37 (a) A notice of the preparation of an environmental impact report on the Fort Ord Reuse  
38 Plan shall be prepared pursuant to either Section 21080.4 or ~~Section 21080.6~~ of the  
39 ~~Public Resources~~ Environment Code, and shall include a description of the reuse plan and  
40 a copy of the environmental impact statement. The notice shall indicate that the board  
41 intends to utilize the environmental impact statement as a draft environmental impact  
42 report and requests comments on whether, and to what extent, the environmental impact  
43 statement provides adequate information to serve as a draft environmental impact report,  
44 and what specific additional information, if any, is necessary to comply with the  
45 California Environmental Quality Act (Division 13 3 (commencing with Section 21000)  
46 of the ~~Public Resources~~ Environment Code). The notice shall also indicate the address to  
47 which written comments may be sent and the deadline for submitting comments.

48 (b) Upon the close of the comment period on the notice of preparation, the board may  
49 proceed with preparation of the environmental impact report on the reuse plan. The board  
50 shall, to the greatest extent feasible, avoid duplication and utilize information in the  
51 environmental impact statement consistent with this division. The draft environmental  
52 impact report shall consist of all or part of the environmental impact statement and any

1 additional information that is necessary to prepare a draft environmental impact report in  
2 compliance with the California Environmental Quality Act.

3 (c) In all other respects, the environmental impact report for the reuse plan shall be  
4 completed in compliance with the California Environmental Quality Act.

5 **Comment.** Section 67675.9 is amended to substitute references to the Environment Code  
6 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
7 the Public Resources Code. Public Resources Code Section 21080.6 was repealed by its own  
8 terms.

9 **Gov't Code § 91543 (amended). Applicable law**

10 SEC. \_\_\_\_\_. Section 91543 of the Government Code is amended to read:

11 91543. All general or special laws or parts thereof inconsistent with this title shall be  
12 inapplicable to the exercise of any of the powers conferred under the provisions of this  
13 title. Without limiting the generality of the foregoing, the provisions of Divisions 3  
14 (commencing with Section 11000), 4 (commencing with Section 16100), and 5  
15 (commencing with Section 18000) of Title 2 of this code, relating to the executive  
16 department of the state, and of Division 13 (commencing with Section 21000) of the  
17 ~~Public Resources~~ Environment Code, shall not be applicable to authorities.

18 **Comment.** Section 91543 is amended to substitute a reference to the Environment Code  
19 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
20 Resources Code.

21 **HARBORS AND NAVIGATION CODE**

22 **Harb. & Nav. Code § 64.5 (amended). Clear lake aquatic weed control**

23 SEC. \_\_\_\_\_. Section 64.5 of the Harbors and Navigation Code is amended to read:

24 64.5. The department shall make a grant of funds to Lake County to conduct a pilot  
25 project until December 31, 1999, of aquatic weed control on Clear Lake in Lake County  
26 under the following conditions:

27 (a) Lake County has met the requirements of the California Environmental Quality Act  
28 (Division 13 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
29 Code) and, by mutual agreement with the department, agrees to pay a percentage of the  
30 cost of the project not to exceed 25 percent.

31 (b) The aquatic weeds are negatively impacting recreational boating.

32 (c) The department has received a request from the county agricultural commissioner of  
33 Lake County requesting the grant.

34 (d) Any chemical treatment of aquatic weeds prescribed for the pilot project on Clear  
35 Lake, other than those used for the hydrilla eradication or control program pursuant to  
36 Article 9 (commencing with Section 6048) of Chapter 9 of Part 1 of Division 4 of the  
37 Food and Agricultural Code by the Department of Food and Agriculture, shall be  
38 coordinated with the Department of Fish and Game as trustee for fish and wildlife  
39 resources in that ecosystem.

40 **Comment.** Section 64.5 is amended to substitute a reference to the Environment Code  
41 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
42 Resources Code.

43 **Harb. & Nav. Code § 76.4 (amended). Loan application**

44 SEC. \_\_\_\_\_. Section 76.4 of the Harbors and Navigation Code is amended to read:

45 76.4. (a) An application for a loan under Section 76.3 shall be filed with the department  
46 and shall:

(1) Include a feasibility study containing sufficient information and detail to demonstrate that the project is engineeringly and financially feasible.

(2) Be processed with due diligence, giving consideration to the needs of the borrower and the interest of the public in preserving the integrity of the Harbors and Watercraft Revolving Fund.

(3) Include evidence of compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(4) Include all costs incurred by the applicant in processing and obtaining loan proceeds.

(b) The costs of brokerage fees, planning studies, and all other costs for the preparation of the loan application shall be borne by the applicant.

**Comment.** Section 76.4 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Harb. & Nav. Code § 86 (amended). Small craft harbor or boating facility**

SEC. \_\_\_\_\_. Section 86 of the Harbors and Navigation Code is amended to read:

86. (a) The local public agency shall certify to the department that for any small craft harbor or boating facility project which is, or has been, funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3, or a harbor constructed with funds from the State Lands Commission from tidelands oil revenues, adequate restroom and sanitary facilities, parking, refuse disposal, vessel pumpout facilities as required pursuant to Section 776, walkways, oil recycling facilities, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other necessary shoreside facilities sufficient for the use and operation of all vessels using the harbor or facility are provided or provide written findings showing why the facility cannot certify to these conditions.

(b) No city, county, or district, which has received or is receiving money under this division for the construction or improvement of small craft harbors which provides facilities for the operation of commercial fishing vessels registered pursuant to Article 4 (commencing with Section 7880) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall prohibit the commercial operation and use of those facilities by commercial passenger fishing vessels of the same or similar displacement, which are licensed pursuant to Section 7920 of the Fish and Game Code, or the use by private recreational vessels unless otherwise expressly provided by law, unless the city, county, or district provides, elsewhere in the same harbor, alternative, equivalent facilities available at comparable cost for the commercial operation and use of commercial passenger fishing vessels and private recreational vessels or unless the city, county, or district adopts written findings showing why the existing facility cannot accommodate the operation of commercial fishing vessels, including commercial passenger fishing vessels, or private recreational vessels and why the facility cannot be modified to do so or why alternative, equivalent facilities cannot be provided in the same harbor to accommodate those operations. This subdivision does not require a facility to accept an application for the operation of an additional commercial passenger fishing boat at that facility if the harbor provides alternative, equivalent, adequate, safe facilities at comparable cost for the operation and use of commercial passenger fishing boats or if accommodations for the operation of the additional commercial passenger fishing boat are not reasonably available at the facility under the contract or agreement.

For the purposes of this subdivision, an alternative, equivalent facility in the same harbor shall provide, at comparable cost, adequate restroom and sanitary facilities, parking, refuse disposal, walkways, power and water service, and other shoreside facilities and equivalent docks, water channels, navigation aids, and weather protection,

including, but not limited to, breakwaters, which are equivalent to the facility funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3.

(c) Any loan, grant, contract or agreement, or plan funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3 for any small craft harbor or boating facility project shall provide for construction, development, or improvement of facilities to substantially meet the provisions of subdivisions (a) and (b) and to provide vehicular access roads to the harbor or facility, as recommended by the Department of Transportation pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, unless the reasons for not meeting those provisions and recommendations are set forth in the contract or agreement with the department, or an addendum thereto.

(d) During the term of any existing or new loan contract made pursuant to Section 71.4 or 76.3, or any existing or new contract or agreement pursuant to Section 70, 70.2, or 70.8, the department shall supervise and monitor compliance with subdivisions (b) and (c) and the operation and maintenance of the harbor or facility to assure that the planning, construction, development, or improvement fully complies with this section and the contract or agreement terms and conditions.

(e) For the purposes of this chapter and Chapter 2 (commencing with Section 70), any harbor or facility which is the subject of a contract or agreement as described in subdivision (d), is under the jurisdiction of the department.

**Comment.** Section 86 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Harb. & Nav. Code § 5955 (amended). Public beaches and inland parks and recreation areas**

SEC. \_\_\_\_\_. Section 5955 of the Harbors and Navigation Code is amended to read:  
5955. Notwithstanding the provisions of Sections 5940 to 5954, inclusive, the district may acquire, develop, operate, or maintain public beaches or inland parks and recreation areas without holding the hearings and making the findings required by such provisions if there is compliance with Section 21151 of the ~~Public Resources~~ Environment Code and Section 65402 of the Government Code; provided, however, that the board of supervisors shall hold at least one public hearing prior to the approval of any such project. Harbor improvement district funds may be expended prior to the public hearing for the purpose of obtaining compliance with Section 21151 of the ~~Public Resources~~ Environment Code and Section 65402 of the Government Code.

**Comment.** Section 5955 is amended to substitute references to the Environment Code provision that continues former Section 21151 of the Public Resources Code.

## HEALTH AND SAFETY CODE

#### **Health & Safety Code § 1597.46 (amended). Large family day care homes**

SEC. \_\_\_\_\_. Section 1597.46 of the Harbors and Navigation Code is amended to read:  
1597.46. All of the following shall apply to large family day care homes:  
(a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:  
(1) Classify these homes as a permitted use of residential property for zoning purposes.  
(2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal



1 pursuant to that subdivision. Any noise standards shall be consistent with local noise  
2 ordinances implementing the noise element of the general plan and shall take into  
3 consideration the noise level generated by children. The permit issued pursuant to this  
4 paragraph shall be granted by the zoning administrator, if any, or if there is no zoning  
5 administrator by the person or persons designated by the planning agency to grant such  
6 permits, upon the certification without a hearing.

7 (3) Require any large family day care home to apply for a permit to use a lot zoned for  
8 single-family dwellings. The zoning administrator, if any, or if there is no zoning  
9 administrator, the person or persons designated by the planning agency to handle the use  
10 permits shall review and decide the applications. The use permit shall be granted if the  
11 large family day care home complies with local ordinances, if any, prescribing reasonable  
12 standards, restrictions, and requirements concerning spacing and concentration, traffic  
13 control, parking, and noise control relating to such homes, and complies with subdivision  
14 (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision.  
15 Any noise standards shall be consistent with local noise ordinances implementing the  
16 noise element of the general plan and shall take into consideration the noise levels  
17 generated by children. The local government shall process any required permit as  
18 economically as possible, and fees charged for review shall not exceed the costs of the  
19 review and permit process. Not less than 10 days prior to the date on which the decision  
20 will be made on the application, the zoning administrator or person designated to handle  
21 such use permits shall give notice of the proposed use by mail or delivery to all owners  
22 shown on the last equalized assessment roll as owning real property within a 100 foot  
23 radius of the exterior boundaries of the proposed large family day care home. No hearing  
24 on the application for a permit issued pursuant to this paragraph shall be held before a  
25 decision is made unless a hearing is requested by the applicant or other affected person.  
26 The applicant or other affected person may appeal the decision. The appellant shall pay  
27 the cost, if any of the appeal.

28 (b) A large family day care home shall not be subject to the provisions of Division 13 3  
29 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

30 (c) Use of a single-family dwelling for the purposes of a large family day care home  
31 shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with  
32 Section 17910) of Division 13 (State Housing Law), or for purposes of local building and  
33 fire codes.

34 (d) Large family day care homes shall be considered as single-family residences for the  
35 purposes of the State Uniform Building Standards Code and local building and fire codes,  
36 except with respect to any additional standards specifically designed to promote the fire  
37 and life safety of the children in these homes adopted by the State Fire Marshal pursuant  
38 to this subdivision. The State Fire Marshal shall adopt separate building standards  
39 specifically relating to the subject of fire and life safety in large family day care homes  
40 which shall be published in Title 24 of the California Administrative Code. These  
41 standards shall apply uniformly throughout the state and shall include, but not be limited  
42 to: (1) the requirement that a large family day care home contain a fire extinguisher or  
43 smoke detector device, or both, which meets standards established by the State Fire  
44 Marshal; (2) specification as to the number of required exits from the home; and (3)  
45 specification as to the floor or floors on which day care may be provided. Enforcement of  
46 these provision shall be in accordance with Sections 13145 and 13146. No city, county,  
47 city and county, or district shall adopt or enforce any building ordinance or local rule or  
48 regulation relating to the subject of fire and life safety in large family day care homes  
49 which is inconsistent with those standards adopted by the State Fire Marshal, except to  
50 the extent the building ordinance or local rule or regulation applies to single-family  
51 residences in which day care is not provided.

52 (e) No later than April 1, 1984, the State Fire Marshal shall adopt the building  
53 standards required in subdivision (d) and any other regulations necessary to implement  
54 the provisions of this section.



1     **Comment.** Section 1597.46 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Health & Safety Code § 2291.7 (amended). Lake County mosquito abatement districts**

5     SEC. \_\_\_\_\_. Section 2291.7 of the Health and Safety Code is amended to read:

6     2291.7. In Lake County, any mosquito abatement district, as authorized by the district  
7 board, may, notwithstanding Section 2291.3, conduct or contract for algae research  
8 projects and algae control or abatement projects for any part of the district. In undertaking  
9 these projects, the district board shall comply with the procedures set forth in  
10 subdivisions (a), (b), (c), and (d) in order to levy a benefit assessment for these projects.

11     (a) Prior to levying any benefit assessment, the board shall comply with all of the  
12 following:

13     (1) The board shall adopt a resolution which shall specify its intention to undertake the  
14 project. The resolution shall include all of the following:

15     (A) A description of the plan, including, but not limited to, all of the following:

16     (i) The causes of the algae.

17     (ii) Alternative methods and associated costs of algae prevention, reduction, and  
18 control.

19     (iii) Mitigation measures, including mitigation of the effects of potential treatment on  
20 humans, and on fish and wildlife habitat.

21     (iv) The agency or agencies with responsibilities for algae prevention, reduction, and  
22 control. The plan may reference the environmental document prepared pursuant to  
23 Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
24 Code.

25     (B) The establishment of a benefit assessment zone or zones.

26     (C) A description of the properties to be assessed.

27     (D) A description of the cost of each assessment.

28     (E) A statement specifying the duration of the assessment.

29     (2) The board shall hold public hearings after notice has been published for three  
30 successive weeks in a newspaper of general circulation published in the county seat.

31     (3) The board shall send notice of the resolution and of the hearings to those owners of  
32 property to be assessed at least 14 days prior to the public hearing.

33     (4) After the public hearing, the plan shall be approved by a majority of the owners of  
34 property to be assessed. The board shall take no action to implement the plan or the  
35 assessment until after the plan is approved by a majority of owners of property to be  
36 assessed.

37     (b) Any herbicide application for the purpose of algae abatement pursuant to this  
38 section shall be subject to the approval of the Department of Fish and Game. The  
39 department shall grant approval unless it is determined that the application would cause  
40 significant diminishment of green or yellow-green algae or zooplankton.

41     (c) The assessments levied pursuant to this section shall be collected at the same time,  
42 and in the same manner, as county taxes. The county may deduct its actual costs incurred  
43 for collecting the assessments before remitting the balance to the district. The  
44 assessments shall be a lien on all the property benefited thereby. Liens for the  
45 assessments shall be of the same force and effect as liens for taxes, and their collection  
46 may be enforced by the same means as for the enforcement of liens for county taxes.

47     (d) For the purposes of an assessment levied under this section, all properties so  
48 assessed within a given zone are equally benefited.

49     The requirements set forth in this section shall only apply to algae research projects and  
50 algae control or abatement projects in Lake County.

51     In enacting this section, the Legislature does not intend to amend the power of any  
52 other district to use any other power authorized by this chapter.

1     **Comment.** Section 2291.7 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Health & Safety Code § 13137 (amended). State fire marshal licensing and certification**  
5     **fund**

6     SEC. \_\_\_\_\_. Section 13137 of the Health and Safety Code is amended to read:

7     13137. (a) The State Fire Marshal Licensing and Certification Fund is hereby created in  
8 the State Treasury. All money in the fund is available for the support of the State Fire  
9 Marshal upon appropriation by the Legislature. All moneys collected by the State Fire  
10 Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) of  
11 Division 11, and pursuant to Section 41961 38405 of the Environment Code, shall be  
12 deposited in the fund and shall be available to the State Fire Marshal for expenditure  
13 upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing  
14 with Section 12500) of Division 11, or Section 38405 of the Environment Code,  
15 respectively.

16     (b) Neither this article nor any provision of this part or Part 2 (commencing with  
17 Section 12500) of Division 11 or Section 41961 38405 of the Environment Code  
18 authorize fees to exceed the actual cost of administration of the programs administered by  
19 the State Fire Marshal, nor authorize the charging of fees to a particular group being  
20 regulated under a program, for the costs of regulation under another program or for the  
21 costs of a different group under the same program.

22     **Comment.** Section 13137 is amended to substitute references to the Environment Code  
23 provision that continues former Section 41961 of the Health and Safety Code.

24     **Health & Safety Code § 17960.1 (amended). Private plan checkers**

25     SEC. \_\_\_\_\_. Section 17960.1 of the Health and Safety Code is amended to read:

26     17960.1. (a) The governing body of a local agency may authorize its enforcement  
27 agency to contract with or employ a private entity or persons on a temporary basis to  
28 perform the plan-checking function.

29     (b) A local agency need not enter into a contract or employ persons if it determines that  
30 no entities or persons are available or qualified to perform the plan-checking services.

31     (c) Entities or persons employed by a local agency may, pursuant to agreement with the  
32 local agency, perform all functions necessary to check the plans and specifications to  
33 comply with other requirements imposed pursuant to this part or by local ordinances  
34 adopted pursuant to this part, except those functions reserved by this part or local  
35 ordinance to the legislative body. A local agency may charge the applicant fees in an  
36 amount necessary to defray costs directly attributable to employing or contracting with  
37 entities or persons performing services pursuant to this section which the applicant  
38 requested.

39     (d) When there is an excessive delay in checking plans and specifications submitted as  
40 a part of an application for a residential building permit, the local agency shall, upon  
41 request of the applicant, contract with or employ a private entity or persons on a  
42 temporary basis to perform the plan-checking function subject to subdivisions (b) and (c).

43     (e) For purposes of this section:

44     (1) "Enforcement agency" means the building department or building division of a  
45 local agency.

46     (2) "Excessive delay" means the enforcement agency of a local agency has taken either  
47 of the following:

48     (A) More than 30 days after submittal of a complete application to complete the  
49 structural building safety plan check of the applicant's set of plans and specifications  
50 which are suitable for checking. For a discretionary building permit, the time period  
51 specified in this paragraph shall commence after certification of the environmental impact

1 report, adoption of a negative declaration, or a determination by the local agency that the  
2 project is exempt from Division 13 3 (commencing with Section 21000) of the ~~Public~~  
3 ~~Resources~~ Environment Code.

4 (B) Including the days actually taken in (A), more than 45 days to complete the  
5 checking of the resubmitted corrected plans and specifications suitable for checking after  
6 the enforcement agency had returned the plans and specifications to the applicant for  
7 correction.

8 (3) "Local agency" means a city, county, or city and county.

9 (4) "Residential building" means a one-to-four family detached structure not exceeding  
10 three stories in height.

11 **Comment.** Section 17960.1 is amended to substitute a reference to the Environment Code  
12 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
13 Resources Code.

14 **Health & Safety Code § 19837 (amended). Private plan checkers**

15 SEC. \_\_\_\_\_. Section 19837 of the Health and Safety Code is amended to read:

16 19837. (a) The governing body of a local agency may authorize its enforcement agency  
17 to contract with or employ a private entity or persons on a temporary basis to perform  
18 plan-checking functions.

19 (b) A local agency need not enter into a contract or employ persons if it determines that  
20 no entities or persons are available or qualified to perform plan-checking services.

21 (c) Entities or persons employed by a local agency may, pursuant to agreement with the  
22 local agency, perform all functions necessary to check the plans and specifications to  
23 comply with other requirements imposed pursuant to this part or by local ordinances  
24 adopted pursuant to this part, except those functions reserved by this part or local  
25 ordinance to the legislative body. A local agency may charge the applicant fees in an  
26 amount necessary to defray costs directly attributable to employing or contracting with  
27 entities or persons performing services pursuant to this section which the applicant  
28 requested.

29 (d) When there is an excessive delay in checking plans and specifications submitted as  
30 a part of an application for a nonresidential permit, for a building, other than a hotel or  
31 motel, which is one to three stories, inclusive, in height, as determined by the local  
32 agency, the local agency shall, upon request of the applicant, contract with or employ a  
33 private entity or persons on a temporary basis to perform the plan-checking function  
34 subject to subdivisions (b) and (c).

35 (e) When there is an excessive delay in checking plans and specifications submitted as  
36 a part of an application for a nonresidential permit for the remodeling or tenant  
37 improvements of a building, other than a hotel or motel, which is one to three stories,  
38 inclusive, in height, as determined by the local agency, the local agency shall, upon  
39 request of the applicant, contract with or employ a private entity or persons on a  
40 temporary basis to perform the plan-checking function subject to subdivisions (b) and (c).

41 (f) For purposes of this section:

42 (1) "Enforcement agency" means the building department or building division of a  
43 local agency.

44 (2) "Excessive delay" means the enforcement agency of a local agency has taken either  
45 of the following:

46 (A) More than 50 days after submittal of a complete application to complete the  
47 structural building safety plan check of the applicant's set of plans and specifications that  
48 are suitable for checking. For a discretionary building permit, the time period specified in  
49 this paragraph shall commence after certification of the environmental impact report,  
50 adoption of a negative declaration, or a determination by the local agency that the project  
51 is exempt from Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~  
52 Environment Code.

(B) Including the days actually taken in (A), more than 60 days to complete the checking of the resubmitted corrected plans and specifications suitable for checking after the enforcement agency had returned the plans and specifications to the applicant for correction.

(3) “Local agency” means a city, county, or city and county.

**Comment.** Section 19837 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 25149 (amended). Regulation of hazardous waste facilities**

SEC. \_\_\_\_\_. Section 25149 of the Health and Safety Code is amended to read:

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655 31375 of the Environment Code.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the department before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.

(1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.

**Comment.** Section 25149 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 39655(a).

### **Health & Safety Code § 25174 (amended). Hazardous Waste Control Account**

SEC. \_\_\_\_\_. Section 25174 of the Health and Safety Code is amended to read:

25174. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director. In addition to any other money that may be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to Sections 25174.1, 25205.2, 25205.5, 25205.15, and 25205.16.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this chapter, including, but not limited to, the reimbursements required pursuant to Sections 25201.9 and 25205.7.

(b) The funds deposited in the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(1) To the department for the administration and implementation of this chapter.



1 (2) To the department for allocation to the State Board of Equalization to pay refunds  
2 of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation  
3 Code.

4 (3) To the department for the costs of performance or review of analyses of past,  
5 present, or potential environmental public health effects related to toxic substances,  
6 including extremely hazardous waste, as defined in Section 25115, and hazardous waste,  
7 as defined in Section 25117.

8 (4)(A) To the office of the Attorney General for the support of the Toxic Substance  
9 Enforcement Program in the office of the Attorney General, in carrying out the purposes  
10 of this chapter.

11 (B) Notwithstanding subdivision (c), expenditures for the purposes of this paragraph  
12 shall not be subject to an interagency or interdepartmental agreement.

13 (C) On or before October 1 of each year, the Attorney General shall report to the  
14 Legislature on the expenditure of any funds appropriated to the office of the Attorney  
15 General for the preceding fiscal year pursuant to this paragraph and subdivision (c) of  
16 Section 25173.6. The report shall include all of the following:

17 (i) A description of cases resolved by the office of the Attorney General through  
18 settlement or court order, including the monetary benefit to the department and the state.

19 (ii) A description of injunctions or other court orders benefiting the people of the state.

20 (iii) A description of any cases in which the Attorney General's Toxic Substance  
21 Enforcement Program is representing the department or the state against claims by  
22 defendants or responsible parties.

23 (iv) A description of other pending litigation handled by the Attorney General's Toxic  
24 Substance Enforcement Program.

25 (D) Nothing in subparagraph (C) shall require the Attorney General to report on any  
26 confidential or investigatory matter.

27 (c) Except for the appropriation to the office of the Attorney General pursuant to  
28 paragraph (4) of subdivision (b), expenditures from the Hazardous Waste Control  
29 Account for support of state agencies other than the department shall, upon appropriation  
30 by the Legislature to the department, be subject to an interagency or interdepartmental  
31 agreement between the department and the state agency receiving the support.

32 (d) The department shall, at the time of the release of the annual Governor's Budget,  
33 describe the budgetary amounts proposed to be allocated to the State Board of  
34 Equalization, as specified in paragraph (2) of subdivision (b) and in paragraph (3) of  
35 subdivision (b) of Section 25173.6, for the upcoming fiscal year. With respect to  
36 expenditures for the purposes of paragraphs (1) and (3) of subdivision (b) and paragraphs  
37 (1) and (2) of subdivision (b) of Section 25173.6, the department shall also make  
38 available the budgetary amounts and allocations of staff resources of the department  
39 proposed for the following activities:

40 (1) The department shall identify, with regard to the permitting of hazardous waste  
41 facilities, closure plans, and postclosure permits, the projected allocations of budgets and  
42 permitting staff resources for all of the following facilities:

43 (A) Hazardous waste facilities managing RCRA hazardous waste.

44 (B) Hazardous waste facilities managing non-RCRA hazardous waste.

45 (C) Facilities under each tier of the hazardous waste permitting system established  
46 pursuant to Article 9 (commencing with Section 25200).

47 (2) The department shall identify, with regard to surveillance and enforcement  
48 activities, the projected allocations of budgets and staff resources for the management of  
49 RCRA and non-RCRA hazardous waste for all of the following types of regulated  
50 facilities and activities:

51 (A) Hazardous waste facilities by permit tier.

52 (B) Interim status facilities and operations.

53 (C) Generators.

54 (D) Transporters.



- (E) Response to complaints.
- (3) The department shall identify, with regard to the transportation of hazardous waste, the projected allocations of budgets and staff resources for both of the following activities:
- (A) The regulation of hazardous waste transporters.
  - (B) The operation and maintenance of the hazardous waste manifest system.
- (4) The department shall identify, with regard to site mitigation, corrective action, and remedial and removal actions, the projected allocations of budgets and staff resources for the oversight and implementation of the following activities:
- (A) Removal and remedial actions at military bases.
  - (B) Voluntary removal and remedial actions.
  - (C) Removal and remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).
  - (D) Corrective actions at hazardous waste facilities.
  - (E) Other state removal and remedial actions.
- (5) The department shall identify, with regard to the regulation of hazardous waste, the projected allocation of budgets and staff resources for the following activities:
- (A) Determinations pertaining to the classification of hazardous wastes.
  - (B) Determinations for variances made pursuant to Section 25143.
  - (C) Other determinations and responses to public inquiries made by the department regarding the regulation of hazardous waste and hazardous substances.
- (6) The department shall identify projected allocations of budgets and staff resources needed to identify, clean up, store, and dispose of, suspected hazardous substances associated with the investigation of clandestine drug laboratories and other hazardous materials spills.
- (7) The department shall identify projected allocations of budgets and staff resources that are necessary for the department to comply with the California Environmental Quality Act (Division 24 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) when making discretionary decisions pursuant to this chapter.
- (8) The department shall identify the total cumulative expenditures of the Regulatory Structure Update and Site Mitigation Update projects since their inception, and shall identify the total projected allocations of budgets and staff resources that are needed to continue these projects.
- (9) The department shall identify the total projected allocations of budgets and staff resources that are necessary for all other activities proposed to be conducted by the department.
- (e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds which are required to be deposited into the Hazardous Waste Control Account or the Toxic Substances Control Account, the department, with the approval of the Secretary for Environmental Protection, may take any of the following actions:
- (1) Assume responsibility for, or enter into a contract with a private party or with another public agency, other than the State Board of Equalization, for the collection of any fees, surcharges, fines, penalties and funds described in subdivision (a) or otherwise described in this chapter or Chapter 6.8 (commencing with Section 25300), for deposit into the Hazardous Waste Control Account or the Toxic Substances Control Account.
  - (2) Administer, or by mutual agreement, contract with a private party or another public agency, for the making of those determinations and the performance of functions that would otherwise be the responsibility of the State Board of Equalization pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities and functions for which the State Board of Equalization would otherwise be responsible become the responsibility of the department or, by mutual agreement, the contractor selected by the department.

(f) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall be responsible for ensuring that persons who are subject to the fees specified in subdivision (e) have equivalent rights to public notice and comment, and procedural and substantive rights of appeal, as afforded by the procedures of the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Final responsibility for the administrative adjustment of fee rates and the administrative appeal of any fees or penalty assessments made pursuant to this section may only be assigned by the department to a public agency.

(g) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall have equivalent authority to make collections and enforce judgments as provided to the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Unpaid amounts, including penalties and interest, shall be a perfected and enforceable state tax lien in accordance with Section 43413 of the Revenue and Taxation Code.

(h) The department, with the concurrence of the Secretary for Environmental Protection, shall determine which administrative functions should be retained by the State Board of Equalization, administered by the department, or assigned to another public agency or private party pursuant to subdivisions (e), (f), and (g).

(i) The department may adopt regulations to implement subdivisions (e) to (h), inclusive.

(j) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(k) The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars (\$1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.

**Comment.** Section 25174 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Health & Safety Code § 25198.3 (amended). Cooperative agreements**

SEC. \_\_\_\_\_. Section 25198.3 of the Health and Safety Code is amended to read:

25198.3. (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 hazardous materials and hazardous wastes, as determined necessary by the Department of Toxic Substances Control.

(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

1 agreement meets the requirements of this article. The secretary shall take this action  
2 within 130 days of a written request by the tribe that the secretary approve a draft  
3 cooperative agreement. At least 60 days prior to determining whether to enter into a  
4 cooperative agreement, the secretary shall provide notice, and make available for public  
5 review and comment, drafts of his or her proposed action and drafts of the findings and  
6 determinations that are required by this section. The secretary shall hold a public hearing  
7 in the affected area on the proposed action within the time period for taking that action, as  
8 specified in this section. Within 10 days after the close of the public review and comment  
9 period, the agencies shall complete the determinations required by this section and the  
10 secretary shall issue a final decision.

11 (d) The findings and determinations of the secretary and relevant agencies made  
12 pursuant to this section shall explain material differences between state laws and  
13 regulations and the proposed tribal or federal functionally equivalent provisions. The  
14 findings and determinations do not need to explain each difference between the state and  
15 tribal or federal requirements as long as they identify and evaluate whether the material  
16 differences meet the requirements of this article, including, but not limited to, providing  
17 at least as much protection for public health and safety and the environment as would the  
18 state requirements.

19 (e) Any cooperative agreement executed pursuant to this article shall provide for  
20 regulation of the hazardous waste facility through inclusion in the agreement of design,  
21 permitting, construction, siting, operation, monitoring, inspection, closure, postclosure,  
22 liability, enforcement, and other regulatory provisions applicable to a hazardous waste  
23 facility, or which relate to any environmental consequences that may be caused by facility  
24 construction or operation, that are functionally equivalent to all of the following:

25 (1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5  
26 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370)  
27 of, Division 7 of the Water Code.

28 (2) ~~Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with~~  
29 ~~Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and~~  
30 ~~Part 6 (commencing with Section 44300) of, Division 26~~ Title 6 (commencing with  
31 Section 37600) of, Title 7 (commencing with Section 38700) of, and Title 8  
32 (commencing with Section 39800) of Part 4 of, and Part 6 (commencing with Section  
33 45000) of Division 4 of the Environment Code.

34 (3) This chapter, Chapter 6.6 (commencing with Section 25249.5), Chapter 6.8  
35 (commencing with Section 25300), and Chapter 6.95 (commencing with Section 25500).

36 (4) All regulations adopted pursuant to the statutes specified in this section.

37 (5) Any other provision of state environmental, public health, and safety laws and  
38 regulations germane to the hazardous waste facility proposed by the tribe.

39 (f) The tribal organizational structures or other means of implementing the  
40 requirements specified in subdivision (e) are not required to be the same as the state  
41 organizational structures or means of implementing its system of regulation.

42 (g) Neither the approval of any cooperative agreement nor amendments to the  
43 agreement, nor any determination of sufficiency provided in Section 25198.5, shall  
44 constitute a "project" as defined in Section 21065 of the ~~Public Resources~~ Environment  
45 Code and shall not be subject to review pursuant to the California Environmental Quality  
46 Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~  
47 Environment Code).

48 (h) Each cooperative agreement shall provide for the incorporation of the standards and  
49 requirements germane to the protection of the environment, public health, and safety  
50 listed in subdivision (e), as enacted, or as those provisions may be amended after January  
51 1, 1992, or after the effective date of any cooperative agreement, if those standards and  
52 requirements meet both of the following requirements:

53 (1) The standards and requirements do not discriminate against a tribe which has  
54 executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not

1 more stringent than, other rules applicable to other similar or analogous facilities or  
2 operations outside Indian country.

3 (2) Adequate notice and opportunity for comment on the incorporation of new and  
4 amended standards or requirements are provided to the tribe, facility owner, and operator  
5 to facilitate any physical or operational changes in the facility in accordance with state  
6 law.

7 **Comment.** Section 25198.3 is amended to substitute references to the Environment Code  
8 provisions that continue former Chapter 3 (commencing with Section 41700) of, Chapter 4  
9 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of Part 4  
10 of, and Part 6 (commencing with Section 44300) of Division 26 of the Health and Safety Code,  
11 and former Division 13 (commencing with Section 21000) of the Public Resources Code.

12 **Health & Safety Code § 25198.5 (amended). Review of draft tribal and federal permit**

13 SEC. \_\_\_\_\_. Section 25198.5 of the Health and Safety Code is amended to read:

14 25198.5. (a) Each cooperative agreement shall require the public agencies specified in  
15 subdivision (b) of Section 25198.3 to review any draft tribal permit and any applicable  
16 federal permit to determine whether it contains all conditions sufficient to do all of the  
17 following:

18 (1) Meet the functionally equivalent standards provided in the cooperative agreement,  
19 as required by subdivision (e) of Section 25198.3.

20 (2) Provide not less than the level of protection for public health, safety, and the  
21 environment that would have been the case if that state agency had issued the permit.

22 (3) Implement all feasible mitigation measures. For purposes of this paragraph,  
23 “feasible” has the same meaning as in Sections 21001, 21002.1, and 21004 of the Public  
24 Resources Environment Code, and any regulations adopted pursuant to those sections.

25 (b) Each cooperative agreement shall provide that the tribal or federal permits issued  
26 for the hazardous waste facility meet the requirements of this section.

27 (c) The failure of a party to a cooperative agreement to meet the requirements of this  
28 section shall be determined to be an actionable breach of the cooperative agreement.

29 (d) The election by a party to a cooperative agreement to pursue a contractual remedy  
30 shall not limit the ability of a party to assert its respective claims of jurisdiction or  
31 sovereign immunity.

32 (e) Entering into a cooperative agreement shall not be a basis for denying any remedy  
33 to which a party is otherwise entitled.

34 (f) Within 10 days of issuance of a final federal permit or tribal permit, a copy of that  
35 permit shall be provided to the California Environmental Protection Agency and the tribe  
36 having jurisdiction over the facility.

37 **Comment.** Section 25198.5 is amended to substitute a reference to the Environment Code  
38 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
39 Resources Code.

40 **Health & Safety Code § 25199.1 (amended). Definitions**

41 SEC. \_\_\_\_\_. Section 25199.1 of the Health and Safety Code is amended to read:

42 25199.1. Unless the context otherwise requires, the following definitions govern the  
43 construction of this article:

44 (a) “Appeal board” means an appeal board established pursuant to Section 25199.10.

45 (b) “Hazardous waste facility project” means a project undertaken for the purpose of  
46 siting and constructing a new hazardous waste facility that will require a hazardous waste  
47 facilities permit issued pursuant to Section 25200, or for the purpose of significantly  
48 expanding or modifying an existing hazardous waste facility that is being used or  
49 operated under a permit issued pursuant to Section 25200 or a grant of interim status



1 pursuant to Section 25200.5. Unless expressly provided otherwise, “hazardous waste  
2 facility project” includes a specified hazardous waste facility project.

3 (c) “Interested person” means a person who participated in one or more public meetings  
4 or hearings held to consider an application for a land use decision for a specified  
5 hazardous waste facility project. “Participation” includes, but is not limited to, the giving  
6 of oral or written testimony at a meeting or hearing, submission of questions at a meeting  
7 or hearing, or attendance at the meeting or hearing.

8 (d) “Land disposal facility” means a hazardous waste facility where hazardous waste is  
9 disposed in, on, under, or to the land.

10 (e) “Land use decision” means a discretionary decision of a local agency concerning a  
11 hazardous waste facility project, including the issuance of a land use permit or a  
12 conditional use permit, the granting of a variance, the subdivision of property, and the  
13 modification of existing property lines pursuant to Title 7 (commencing with Section  
14 65000) of the Government Code.

15 (f) “Lead agency” means the public agency that has the principal responsibility for  
16 approving a hazardous waste facility project.

17 (g) “Local agency” means any public agency, other than a state agency.

18 (h) “Permit” means a permit, license, certificate, requirement, or other entitlement for  
19 use required to site or construct a hazardous waste facility. “Permit” includes, but is not  
20 limited to, all of the following:

21 (1) A hazardous waste facility permit issued by the department pursuant to this chapter.

22 (2) Waste discharge requirements issued by a California regional water quality control  
23 board pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7  
24 of the Water Code.

25 (3) An authority to construct permit issued by an air pollution control district or air  
26 quality management district pursuant to Division ~~26~~ 4 (commencing with Section ~~39000~~  
27 30000) of the Environment Code.

28 (4) A solid waste facilities permit issued by the enforcement agency pursuant to Article  
29 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government  
30 Code.

31 (i) “Proponent” means any person applying to a public agency for a permit or a land use  
32 decision concerning a specified hazardous waste facility project.

33 (j) “Public agency” means any state agency or any local agency.

34 (k) “Responsible agency” means any public agency, other than the lead agency, which  
35 has the authority to issue a permit or make a land use decision.

36 (l) “Significantly expand or modify” means to expand or modify an existing hazardous  
37 waste facility, including a specified hazardous waste facility, in a manner so that a land  
38 use decision and an environmental impact report are required.

39 (m) “Specified hazardous waste facility” means an offsite facility which serves more  
40 than one producer of hazardous waste.

41 (n) “Specified hazardous waste facility project” means a project undertaken for the  
42 purpose of siting and constructing a new specified hazardous waste facility or for the  
43 purpose of significantly expanding or modifying an existing specified hazardous waste  
44 facility that is being used or operated under a permit issued pursuant to Section 25200 or  
45 a grant of interim status pursuant to Section 25200.5.

46 (o) “State agency” means any agency, board, or commission of state government.  
47 “State agency” also includes an air pollution control district and an air quality  
48 management district.

49 (p) “Technical review” means the review of an application for a hazardous waste  
50 facility project by a state agency to determine if the facility meets the applicable statutes  
51 and regulations.

52 **Comment.** Section 25199.1 is amended to substitute a reference to the Environment Code  
53 provisions that continue former Division 26 (commencing with section 39000).

**Health & Safety Code § 25199.7 (amended). Application for hazardous waste facility project**

SEC. \_\_\_\_\_. Section 25199.7 of the Health and Safety Code is amended to read:

25199.7. (a) At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall specify the location to which the notice of intent is applicable and shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous property, as shown in the latest equalized assessment roll. A notice of intent filed with a local agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to a location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency or until it is withdrawn by the proponent, whichever is earlier.

(b) A notice of intent is not effective and a proponent may not file an application for a land use decision for a specified hazardous waste facility project with a local agency unless the proponent has first complied with subdivision (a).

(c) Within 90 days after a notice of intent is filed with the Office of Permit Assistance pursuant to subdivision (a), the office shall convene a public meeting in the affected city or county to inform the public on the nature, function, and scope of the proposed specified hazardous waste facility project and the procedures that are required for approving applications for the project.

(d) The legislative body of the affected local agency shall appoint a seven member local assessment committee to advise it in considering an application for a land use decision for a specified hazardous waste facility project. The members of the local assessment committee may be appointed at any time after the notice of intent is filed with the local agency but shall be appointed not later than 30 days after the application for the land use decision is accepted as complete by the local agency. The local agency shall charge the project proponent a fee to cover the local agency's costs of establishing and convening the local assessment committee. The fee shall accompany the application for a land use decision.

(1) The membership of the committee shall be broadly constituted to reflect the makeup of the community, and shall include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Members of local assessment committees selected pursuant to this subdivision shall have no direct financial interest, as defined in Section 87103 of the Government Code, in the proposed specified hazardous waste facility project.

(2) The local assessment committee shall, as its primary function, advise the appointing legislative body of the affected local agency of the terms and conditions under which the proposed hazardous waste facility project may be acceptable to the community. To carry out this function, the local assessment committee shall do all of the following:

(A) Enter into a dialogue with the proponent for the proposed hazardous waste facility project to reach an understanding with the proponent on both of the following:

(i) The measures that should be taken by the proponent in connection with the operation of the proposed hazardous waste facility project to protect the public health, safety, and welfare, and the environment of the city or county.



1 (ii) The special benefits and remuneration the facility proponent will provide the city or  
2 county as compensation for the local costs associated with the operation of the facility.

3 (B) Represent generally, in meetings with the project proponent, the interests of the  
4 residents of the city or county and the interests of adjacent communities.

5 (C) Receive and expend any technical assistance grants made available pursuant to  
6 subdivision (g).

7 (D) Adopt rules and procedures which are necessary to perform its duties.

8 (E) Advise the legislative body of the city or county of the terms, provisions, and  
9 conditions for project approval which have been agreed upon by the committee and the  
10 proponent, and of any additional information which the committee deems appropriate.  
11 The legislative body of the city or county may use this advice for its independent  
12 consideration of the project.

13 (3) The legislative body of the affected jurisdiction shall provide staff resources to  
14 assist the local assessment committee in performing its duties.

15 (4) A local assessment committee established pursuant to this subdivision shall cease to  
16 exist after final administrative action by state and local agencies has been taken on the  
17 permit applications for the project for which the committee was convened.

18 (e) A local agency shall notify the Office of Permit Assistance within 10 days after an  
19 application for a land use decision for a specified hazardous waste facility project is  
20 accepted as complete by the local agency and, within 60 days after receiving this notice,  
21 the Office of Permit Assistance shall convene a meeting of the lead and responsible  
22 agencies for the project, the proponent, the local assessment committee, and the interested  
23 public, for the purpose of determining the issues which concern the agencies that are  
24 required to approve the project and the issues which concern the public. The meeting  
25 shall take place in the jurisdiction where the application has been filed.

26 (f) Following the meeting required by subdivision (e), the proponent and the local  
27 assessment committee appointed pursuant to subdivision (d) shall meet and confer on the  
28 specified hazardous waste facility project proposal for the purpose of establishing the  
29 terms and conditions under which the project will be acceptable to the community.

30 (g) (1) If the local assessment committee finds that it requires assistance and  
31 independent advice to adequately review a proposed hazardous waste facility project, it  
32 may request technical assistance grants from the local agency to enable the committee to  
33 hire a consultant. The committee may use technical assistance grant funds made available  
34 to it to hire a consultant to do either, or both, of the following:

35 (A) Assist the committee in reviewing and evaluating the application for the project,  
36 the environmental documents prepared for the project pursuant to the California  
37 Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the  
38 Public Resources Environment Code) and any other documents, materials, and  
39 information that are required by a public agency in connection with the application for a  
40 land use decision or a permit.

41 (B) Advise the local assessment committee in its meetings and discussions with the  
42 facility proponent to seek agreement on the terms and conditions under which the project  
43 will be acceptable to the community.

44 (2) The local agency shall require the proponent of the proposed hazardous waste  
45 facility project to pay a fee equal to the amount of any technical assistance grant provided  
46 the local assessment committee under paragraph (1). The funds received as a result of the  
47 imposition of the fee shall be used to make technical assistance grants exclusively for the  
48 purposes described in paragraph (1).

49 (3) The local agency shall deposit any fee imposed pursuant to paragraph (2) in an  
50 account created in the city or county treasury, maintain records of all expenditures from  
51 the account, and return any unused funds and accrued interest to the project proponent  
52 upon completion of the review of the proposed hazardous waste facility project.

(h) If the local assessment committee and the proponent cannot resolve any differences through the meetings, the Office of Permit Assistance may assist in this resolution pursuant to Section 25199.4.

(i) This section applies only to a specified hazardous waste facility project.

**Comment.** Section 25199.7 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 25199.8 (amended). Pendency of CEQA litigation**

SEC. \_\_\_\_\_. Section 25199.8 of the Health and Safety Code is amended to read:

25199.8. (a) If an action or proceeding has been commenced in any court to attack, review, set aside, void, or annul the acts or decisions of a lead agency for a specified hazardous waste facility project on the grounds of noncompliance with Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code, the proponent may, notwithstanding the action or proceeding, request the responsible agencies for the specified hazardous waste facility project to continue to process applications for approval of permits for the project received and accepted as complete by each responsible agency. If a responsible agency receives such a request, the time limits specified in subdivisions (a), (b), and (c) of Section 25199.6 shall apply.

(b) Except as provided in subdivision (d), if any action or proceeding is commenced to review the acts or decisions of a lead or responsible agency for a specified hazardous waste facility project, the proponent may petition the court to stay the action or proceeding. The court, in its discretion, may stay the action or proceeding until all public agencies for the project have completed reviewing and approving or disapproving the applications for permits for the project. The proponent may, at any time prior to completion of these actions by the lead or responsible agencies, file a petition with the court requesting that the action or proceeding be permitted to proceed and, upon receiving such a petition, the court shall discontinue the stay.

(c) Notwithstanding subdivision (b), a court may enjoin a lead or responsible agency from approving a permit or license if the court finds that the approval would result in an imminent or substantial endangerment of the public health or the environment or if there are other compelling reasons that the action or proceeding should not be stayed.

(d) Subdivision (b) does not apply to an action or proceeding which alleges that a lead or responsible agency has not complied with Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 25199.8 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 25199.9 (amended). Appeal of land use decision**

SEC. \_\_\_\_\_. Section 25199.9 of the Health and Safety Code is amended to read:

25199.9. (a) A proponent may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project with the Governor or the Governor's designee pursuant to subdivision (b), (c), or (d) and any interested person may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project pursuant to subdivision (e). The proponent or an interested person shall file the appeal within 30 calendar days after the date the local agency takes final action on the land use decision. If the proposed project would accept or manage both hazardous waste and solid waste, the appeal shall relate only to the local land use decision concerning the hazardous waste portion of the proposed facility. Any decisions of an appeal board involving the proposed facility shall affect only the hazardous waste portion of the local land use decision.

(b) If an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of the disapproval with the Governor or the Governor's designee. The Governor or the Governor's designee shall convene an appeal board pursuant to Section 25199.10 to hear the appeal pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(c)(1) Notwithstanding subdivision (b), if an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency before an environmental impact report for the project is prepared and certified, as specified in Section 21151 of the ~~Public Resources~~ Environment Code, or before a negative declaration for the project is adopted pursuant to subdivision (c) of Section 21080 of the ~~Public Resources~~ Environment Code, the proponent may file an appeal of the disapproval with the Governor or the Governor's designee.

(2) Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor's designee shall convene an appeal board, pursuant to Section 25199.10. The appeal board shall thereafter be the lead agency for the specified hazardous waste facility project and shall perform the duties specified in, and carry out the actions required by, Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. The proponent may apply for those permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, at any time before or after the appeal board's compliance with actions required by Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code. The time limits specified in subdivisions (a), (b), and (c) of Section 25199.6 apply to these responsible agencies except that, for the purposes of these time limits, the date when the appeal board has complied with all actions required by Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code shall be deemed equivalent to the date when a lead agency decides to approve or disapprove a project.

(3) After the proponent has applied for and obtained the permits specified in paragraph (2), the proponent for the specified hazardous waste facility project may request the Governor or the Governor's designee to reconvene the appeal board to hear the appeal. The Governor or the Governor's designee shall reconvene the appeal board pursuant to Section 25199.10 to hear the appeal of a disapproval pursuant to this subdivision if it has been demonstrated to the Governor or the Governor's designee that the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(d) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of one or more conditions imposed by the land use decision with the Governor or the Governor's designee. An appeal filed under this subdivision shall specify the particular condition or conditions imposed by the land use decision that are appealed and shall be based solely on the grounds that the condition or conditions imposed on the operation of the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained prior to its construction from those responsible agencies which are state agencies.

(e) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, any interested person may file an appeal of the

approval with the Governor or the Governor's designee. An appeal may be filed pursuant to this subdivision only if the appeal is based solely on the grounds that the conditions imposed on the project by the land use decision do not adequately protect the public health, safety, or welfare. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent for the specified hazardous waste facility project has applied for, and obtained, all permits for the project which can be obtained prior to its construction from those responsible agencies which are state agencies. An interested person filing an appeal pursuant to this subdivision shall state in the appeal why the conditions imposed by the land use decision do not adequately protect the public health, safety, or welfare and shall specify the additional condition or conditions which are necessary to provide that protection.

**Comment.** Section 25199.9 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 25200.11 (amended). Final action on hazardous waste facility permit**

SEC. \_\_\_\_\_. Section 25200.11 of the Health and Safety Code is amended to read:  
25200.11. (a) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit to be issued pursuant to Section 25200 for an offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 and which has been operating under a grant of interim status pursuant to Section 25200.5 prior to January 1, 1992, if the permit application was submitted to the department before January 1, 1992. In taking final action pursuant to this section, the department shall either issue the hazardous waste facilities permit or make a final denial of the application. The department may extend final action for one year upon its determination that the permit application is complete and that more time is needed for review and evaluation of the application.

(b) On July 1, 1992, interim status granted for any existing offsite hazardous waste facility, which is not subject to the time limits specified in Section 25200.7, shall be terminated, unless the department has received an application for a final hazardous waste facilities permit pursuant to Section 25200 on or before June 30, 1992.

(c) Except for facilities subject to Section 25201.6, for any offsite facility, which facility or portion of facility was first granted interim status pursuant to Section 25200.5 on or after January 1, 1992, the department shall provide public notice for a permit determination to issue or deny a hazardous waste facilities permit for the facility, including a permit modification to incorporate a portion of a facility operating under a grant of interim status, not later than the following dates:

(1) For interim status that was first granted on or after January 1, 1992, but prior to January 1, 1994, not more than four years from the date that interim status was first granted.

(2) For interim status that was first granted on or after January 1, 1994, but prior to January 1, 1996, not more than three years from the date that interim status was first granted.

(3) For interim status that was granted on or after January 1, 1996, not more than two years from the date that interim status was first granted.

(d) For purposes of complying with this section, any change in the owner or operator of the hazardous waste facility shall not affect the applicability of this section with respect to permit determinations required for the facility, including a permit modification to incorporate a portion of the facility operating under a grant of interim status.

(e) The department shall update and make available to the public, by March 1 and September 1 of each year, a status report and workplan describing its efforts in permitting and regulating offsite facilities operating under a grant of interim status pursuant to



1 Section 25200.5, including permit modifications to incorporate a portion of a facility  
2 operating under a grant of interim status, except those facilities subject to Section  
3 25201.6. The status report and workplan shall include all of the following elements:

4 (1) A listing of all offsite facilities, or portions of facilities, operating under a grant of  
5 interim status, the date on which the grant of interim status was first made, the schedule  
6 for making a permit determination, and a description of the department's resources that  
7 are committed to permitting, regulating, and overseeing interim status activities at these  
8 facilities.

9 (2) A status report on enforcement and other regulatory activities that have been taken  
10 by the department to ensure that these facilities are operating in compliance with the  
11 interim status authority granted by the department pursuant to this chapter.

12 (f)(1) Except as provided in paragraph (2), on or before July 1, 1997, for any facility  
13 operating under a grant of interim status pursuant to Section 25200.5, based on operations  
14 conducted on November 19, 1980, the department shall review the basis for the grant of  
15 interim status, including any amendments of that grant, and shall prepare status reports  
16 concerning the results of that review. If the department discovers an error in the scope of  
17 a grant of interim status made before July 1, 1997, and the error was caused in whole, or  
18 in part, by an intentional or negligent false statement or representation in the documents  
19 filed for purposes of establishing or obtaining interim status, the department shall take  
20 immediate action to correct the error, to the full extent authorized by law. In determining  
21 whether the scope of a grant of interim status made before July 1, 1997, complies with  
22 this chapter, the department shall require evidence other than facility owner or operator or  
23 employee declarations pertaining to previous activities that are the basis for that  
24 eligibility for interim status.

25 (2) Paragraph (1) does not apply to a facility for which, on or before March 1, 1997, a  
26 draft permit has been issued by and is being processed by the department, a draft  
27 environmental impact report, or other appropriate document prepared pursuant to the  
28 California Environmental Quality Act (Division 43 3 (commencing with Section 21000)  
29 of the ~~Public Resources~~ Environment Code) has been issued and made available for  
30 public comment and the environmental impact report or other document prepared  
31 pursuant to the California Environmental Quality Act considers all impacts to the  
32 environment from facility operations, including, at a minimum, all changes to operations  
33 since November 19, 1980, that were not addressed by a previous finally approved  
34 document prepared pursuant to the California Environmental Quality Act. The issuance  
35 of an appropriate document under the California Environmental Quality Act shall be  
36 deemed to have been issued for purposes of this paragraph if the lead agency has  
37 determined in writing that no further document is necessary under that act for purposes of  
38 the permit issuance.

39 **Comment.** Section 25200.11 is amended to substitute a reference to the Environment Code  
40 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
41 Resources Code.

42 **Health & Safety Code § 25200.12 (amended). Modification to offsite facility**

43 SEC. \_\_\_\_\_. Section 25200.12 of the Health and Safety Code is amended to read:  
44 25200.12. A modification to an offsite facility operating under interim status pursuant  
45 to Section 25200.5 that requires a revised Part A application pursuant to Article 4  
46 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the  
47 California Code of Regulations, as that article read on January 1, 1992, is a discretionary  
48 project for purposes of subdivision (a) of Section 21080 of the ~~Public Resources~~  
49 Environment Code and is subject to the requirements of Division 43 3 (commencing with  
50 Section 21000) of the ~~Public Resources~~ Environment Code, unless the modification is  
51 otherwise excluded from that division pursuant to paragraphs (2) to (15), inclusive, of  
52 subdivision (b) of Section 21080 of the ~~Public Resources~~ Environment Code.

1     **Comment.** Section 25200.12 is amended to substitute references to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Health & Safety Code § 25200.18 (amended). Electronic reporting of permit modifications**

5     SEC. \_\_\_\_\_. Section 25200.18 of the Health & Safety Code is amended to read:  
6     25200.18. On or before July 1, 1996, or within six months of the adoption of electronic  
7 reporting standards by the Secretary for Environmental Protection pursuant to Section  
8 71060 15200 of the ~~Public Resources~~ Environment Code, whichever occurs later, the  
9 department shall implement a procedure for the electronic reporting of all hazardous  
10 waste facilities permit modifications, to the extent that the secretary determines that the  
11 procedure is compatible with the electronic reporting standards adopted by the secretary,  
12 as follows:

13     (a) Permit modifications, at the option of the applicant, may be submitted electronically  
14 using the standard file format, transmission protocols, and electronic signature and  
15 authentication techniques adopted by the Secretary for Environmental Protection for other  
16 environmental data reporting purposes under Part 2 4 (commencing with Section 71050  
17 15000) of Division 34 2 of the ~~Public Resources~~ Environment Code.

18     (b) Section 71063 15300 of the ~~Public Resources~~ Environment Code, which requires a  
19 pilot program demonstration and evaluation, does not apply to the electronic permit  
20 modification procedures adopted pursuant to this section.

21     **Comment.** Section 25200.18 is amended to substitute references to the Environment Code  
22 provisions that continue provisions of former Part 2 (commencing with Section 71050) of  
23 Division 34 of the Public Resources Code.

24     **Health & Safety Code § 25244.19 (amended). Source reduction evaluation review**

25     SEC. \_\_\_\_\_. Section 25244.19 of the Health & Safety Code is amended to read:

26     25244.19. (a) On or before September 1, 1991, and every four years thereafter, each  
27 generator shall conduct a source reduction evaluation review and plan pursuant to  
28 subdivision (b).

29     (b) Except as provided in subdivision (c), the source reduction evaluation review and  
30 plan required by subdivision (a) shall be conducted and completed for each site pursuant  
31 to the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include,  
32 at a minimum, all of the following:

33         (1) The name and location of the site.

34         (2) The SIC Code of the site.

35         (3) Identification of all routinely generated hazardous waste streams that result from  
36 ongoing processes or operations that have a yearly volume exceeding 5 percent of the  
37 total yearly volume of hazardous waste generated at the site, or, for extremely hazardous  
38 waste, 5 percent of the total yearly volume generated at the site. For purposes of this  
39 paragraph, a hazardous waste exceeds 5 percent of the total yearly volume, and is subject  
40 to this article, if it is routinely generated on an ongoing basis and meets any of the  
41 following criteria:

42             (A) It is a hazardous waste stream processed in a wastewater treatment unit that  
43 discharges to a publicly owned treatment works or under a national pollutant discharge  
44 elimination system (NPDES) permit, as specified in the Federal Water Pollution Control  
45 Act, as amended (33 U.S.C. Sec. 1251 and following), and its weight before treatment  
46 exceeds 5 percent of the weight of the total yearly volume at the site.

47             (B) It is a hazardous waste stream that is not processed in a wastewater treatment unit  
48 and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less  
49 the weight of any hazardous waste stream identified in subparagraph (A).



(C) It is a hazardous waste stream that annually weighs 600 kilograms or more and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(D) It is an extremely hazardous waste stream that annually weighs 0.6 kilograms or more and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator that are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.

(ii) Operational improvement.

(iii) Production process change.

(iv) Product reformulation.

(5) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures that will be taken by the generator with respect to each hazardous waste stream identified in paragraph (3). The review and plan shall fully document any statement explaining the generator's rationale for rejecting any available source reduction approach identified in paragraph (4).

(6) An evaluation, and, to the extent practicable, a quantification, of the effects of the chosen source reduction method on emissions and discharges to air, water, or land.

(7) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in paragraph (5).

(8) Certification pursuant to subdivision (d).

(9) Any generator subject to this article shall include in its source reduction evaluation review and plan four-year numerical goals for reducing the generation of hazardous waste streams through the approaches provided for in subparagraph (B) of paragraph (4), based upon its best estimate of what is achievable in that four-year period, as follows:

(A) For those generators and waste streams subject to this program prior to January 1, 1993, the four-year numerical goals shall be included in the plan which is required to be prepared by September 1, 1995, and every four years thereafter, pursuant to subdivision (a).

(B) Any generator who is subject to this program pursuant to paragraph (3) of subdivision (d) of Section 25244.15, and was not subject to this program before January 1, 1993, shall prepare its source reduction evaluation review and plan, or compliance check list, as provided in paragraph (3) of subdivision (d) of Section 25244.15, on September 1, 1993, and every four years thereafter.

(10) A summary progress report that briefly summarizes and, to the extent practicable, quantifies, in a manner that is understandable to the general public, the results of implementing the source reduction methods identified in the generator's review and plan for each waste stream addressed by the previous plan over the previous four years. The report shall also include an estimate of the amount of reduction that the generator anticipates will be achieved by the implementation of source reduction methods during the period between the preparation of the review and plan and the preparation of the generator's next review and plan. Notwithstanding any other provision of this section, the summary progress report required to be prepared pursuant to this paragraph shall be submitted to the department on or before September 1, 1999, and every four years thereafter.

(c) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite review and plan addressing all of these sites.

(d) Every review and plan conducted pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 Chapter 1 (commencing with Section 7000) of Part 2 of Division 2 of the Environment Code and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the review and plan only if the review and plan meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to paragraph (3) of subdivision (b).

(2) The review and plan addresses the source reduction approaches specified in subparagraph (B) of paragraph (4) of subdivision (b).

(3) The review and plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and properly documents the rationale for rejecting available source reduction measures.

(4) The review and plan does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(e) At the time a review and plan is submitted to the department or the unified program agency, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan in accordance with the implementation schedule contained in the review and plan. A generator may determine not to implement a measure selected in paragraph (5) of subdivision (b) only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in the release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(f) If the generator elects not to implement the review and plan, including, but not limited to, a selected measure pursuant to subdivision (e), the generator shall amend its review and plan to reflect that election and include in the review and plan proper documentation identifying the rationale for that election.

**Comment.** Section 25244.19 is amended to substitute a reference to the Environment Code provisions that continue former Section 25570.3.

#### **Health & Safety Code § 25244.20 (amended). Performance report**

SEC. \_\_\_\_\_. Section 25244.20 of the Health & Safety Code is amended to read:

25244.20. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (d), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to paragraph (3) of subdivision (b) of Section 25244.19:

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (c).

(B) An abstract for each source reduction, recycling, or treatment technology implemented from the baseline year through the current reporting year, if the reporting year is different from the baseline year.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (e).

(c) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management data is available, prior to 1991, except the generator may select 1990 as the baseline year. If the generator selects 1990 as the baseline year for the initial report, the information required pursuant to paragraph (3) of subdivision (b) for the initial report shall be provided for the 1990 calendar year only.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report addressing all of these sites.

(e) Every report completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 Chapter 1 (commencing with Section 7000) of Part 2 of Division 2 of the Environment Code and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report only if the report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

**Comment.** Section 25244.20 is amended to substitute a reference to the Environment Code provisions that continue former Section 25570.3.

#### **Health & Safety Code § 25299.4 (amended). Design and construction standards**

SEC. \_\_\_\_\_. Section 25299.4 of the Health and Safety Code is amended to read:

25299.4. (a) (1) Any local agency may apply to the board for authority to implement design and construction standards for the containment of a hazardous substance in underground storage tanks which are in addition to those set forth in this chapter. The

1 application shall include a description of the additional standards and a discussion of the  
2 need to implement them. The board shall approve the application if it finds, after an  
3 investigation and public hearing, that the local agency has demonstrated by clear and  
4 convincing evidence that the additional standards are necessary to adequately protect the  
5 soil and the beneficial uses of the waters of the state from unauthorized releases.

6 (2) The board shall make its determination within six months of the date of application  
7 for authority to implement additional standards. If the board's determination upholds the  
8 application for authority to implement additional standards, the standards shall be  
9 effective as of the date of the determination. If the board's determination does not uphold  
10 the application, the additional standards shall not go into effect.

11 (b) (1) Any permitholder or permit applicant may apply to the regional board having  
12 jurisdiction over the location of the permitholder or applicant's facility for a site-specific  
13 variance from Section 25291 or 25292. A site-specific variance is an alternative  
14 procedure which is applicable in one local agency jurisdiction. Prior to applying to the  
15 regional board, the permitholder shall first contact the local agency pursuant to paragraph  
16 (5).

17 (2) The regional board shall hold a public hearing 60 days after the completion of any  
18 documents required by the California Environmental Quality Act (Division 13 3  
19 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

20 (3) The regional board shall consider the local agency's and the city, county, or city and  
21 county's recommendations in rendering its decision. Failure of the local agency or city,  
22 county, or city and county to join in the variance application pursuant to paragraph (5)  
23 shall not affect the request of the applicant to proceed with the variance application.

24 (4) The regional board shall approve the variance if it finds, after investigation and  
25 public hearing, that the applicant has demonstrated by clear and convincing evidence  
26 either of the following:

27 (A) Because of the facility's special circumstances, not generally applicable to other  
28 facilities' property, including size, shape, design, topography, location, or surroundings,  
29 the strict application of Sections 25291 and 25292 is unnecessary to adequately protect  
30 the soil and beneficial uses of the waters of the state from an unauthorized release.

31 (B) Strict application of the standards of Sections 25291 and 25292 would create  
32 practical difficulties not generally applicable to other facilities or property and that the  
33 proposed alternative will adequately protect the soil and beneficial uses of the waters of  
34 the state from an unauthorized release.

35 (5) Before applying for a variance, the applicant shall contact the local agency to  
36 determine if a site-specific variance is required. If the local agency determines that a site-  
37 specific variance is required or does not act within 60 days, the applicant may proceed  
38 with the variance procedure in subdivision (a).

39 (6) At least 30 days before applying to the appropriate regional board, the applicant  
40 shall notify and request the city, county, or city and county to join the applicant in the  
41 variance application before the regional board.

42 (A) The city, county, or city and county shall provide notice of the receipt of that  
43 request to any person who has requested the notice.

44 (B) The local agency within the city, county, or city and county which has the  
45 jurisdiction for land use decisions shall have 30 days from completion of any documents  
46 required by the California Environmental Quality Act (Division 13 3 (commencing with  
47 Section 21000) of the ~~Public Resources~~ Environment Code) to act on the applicant's  
48 request to join the applicant.

49 (c) Applicants requesting a variance pursuant to subdivision (b) shall pay a fee  
50 determined by the board to be necessary to recover the reasonable cost of administering  
51 subdivision (b).

52 (d) The permit issued for any underground storage tank issued a variance pursuant to  
53 subdivision (b) shall require compliance with any conditions prescribed by the board or a  
54 regional board in issuing the variance. The conditions prescribed by the board or regional

board in the permit shall include any conditions necessary to assure compliance with any applicable requirements of the federal act.

(e) This section does not apply to or within any city or county which was exempt from implementing this chapter as of December 31, 1984.

**Comment.** Section 25299.4 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 25352 (amended). Appropriation of money deposited in state account**

SEC. \_\_\_\_\_. Section 25352 of the Health and Safety Code is amended to read:  
25352. Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(a) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(b) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act. No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) or this subdivision for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the National Environmental Policy Act (42 U.S.C. Sec. 4341 et seq.), or was identified as a significant environmental effect to the natural resources which cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

(c) Notwithstanding Section 25355, the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to subdivision (a) or (b).

**Comment.** Section 25352 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 25395.1 (amended). Definitions**

SEC. \_\_\_\_\_. Section 25395.1 of the Health & Safety Code is amended to read:

25395.1. As used in this article, the following terms have the following meaning:

(a) "Private site manager" means an individual who is registered as a class II environmental assessor pursuant to ~~Section 25570.3 Chapter 1~~ (commencing with Section 7000) of Part 2 of Division 2 of the Environment Code.

(b) "Private site management team" means a group coordinated by a private site manager, which may consist of any or all of the following persons:

(1) A person holding a four-year bachelor of science degree from an accredited college or university who has done significant work in biological, chemical, physical,



1 environmental or soil science, environmental health, environmental engineering,  
2 toxicology, industrial hygiene, or a related field.

3 (2) An environmental engineer holding a four-year bachelor of science in engineering  
4 degree from an accredited college or university.

5 (3) An engineer registered in the State of California.

6 (4) A geologist registered in the State of California.

7 (5) A certified hydrogeologist registered in the State of California.

8 (6) A certified engineering geologist registered in the State of California.

9 (7) A geophysicist registered in the State of California.

10 (8) An industrial hygienist or safety engineer registered in the State of California.

11 (9) A process engineer holding a four-year bachelor of science degree in engineering  
12 from an accredited college or university.

13 (10) A petroleum engineer holding a four-year bachelor of science degree in  
14 engineering from an accredited college or university.

15 (11) The necessary technical support personnel and equipment operators, as determined  
16 by the private site manager.

17 (c) "Project proponent" means any person who applies to the department for approval  
18 to conduct the response to a release or threatened release of hazardous substances  
19 pursuant to this article.

20 (d) "Independent," as used in subdivision (b) of Section 25395.3, means that the private  
21 site manager or the members of the private site management team meet all of the  
22 following requirements:

23 (1) The site manager or team member is not an employee of the project proponent, a  
24 known responsible party, or a prospective buyer of the site property.

25 (2) The site manager or team member is not a general partner, or a limited partner, with  
26 any project proponent, known responsible party, or prospective buyer of the site property.

27 (3) The site manager or team member is not a shareholder in the project proponent  
28 entity, known responsible party, or a prospective buyer of the site property.

29 (4) The site manager or team member does not receive any source of income from the  
30 project proponent, known responsible party, or a prospective buyer of the site property,  
31 other than the payment of fees for professional services.

32 (5) The site manager or team member does not accept, or agree to accept, any payment  
33 that is in any way contingent upon the completion of a response action of the site as a  
34 private site management project.

35 **Comment.** Section 25395.1 is amended to substitute a reference to the Environment Code  
36 provisions that continue former Section 25570.3.

### 37 **Health & Safety Code § 25395.11 (amended). Applicable law**

38 SEC. \_\_\_\_\_. Section 25395.11 of the Health and Safety Code is amended to read:

39 25395.11. Except as otherwise specified in this article, all the requirements of this  
40 chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected  
41 pursuant to Section 25396.6, and any other applicable regulation and guidance document  
42 or manual adopted or issued by the department, shall apply to sites approved for private  
43 site management. The requirements of Division 43 3 (commencing with Section 21000)  
44 of the ~~Public Resources~~ Environment Code shall apply to response actions conducted  
45 pursuant to this article in the same manner, and to the same extent, that the requirements  
46 apply to response actions otherwise conducted pursuant to this chapter or Chapter 6.85  
47 (commencing with Section 25396). If, at any time, the department finds that a private site  
48 manager or a private site management team is not in compliance with the requirements of  
49 this chapter or Chapter 6.85 (commencing with Section 25396), the department may,  
50 pursuant to this article, withdraw its approval for the conduct of a response action on the  
51 site.



1     **Comment.** Section 25395.11 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Health & Safety Code § 25400 (amended). Immunity**

5     SEC. \_\_\_\_\_. Section 25400 of the Health and Safety Code is amended to read:

6     25400. (a) The Legislature finds and declares that a threat to the public health and  
7 safety exists wherever there is a discharge, spill, or presence of hazardous substances on  
8 public or private property; and that public entities, county public health directors, public  
9 safety employees, members of radiation emergency screening teams formed pursuant to  
10 Section 25574, persons authorized by a public entity, or ~~registered sanitarian~~ registered  
11 environmental health specialist employees should be encouraged to abate those hazards,  
12 and to that end a qualified immunity from liability should be provided for public entities,  
13 county public health directors, public safety employees, members of radiation emergency  
14 screening teams formed pursuant to Section 25574, persons authorized by a public entity,  
15 or ~~registered sanitarian~~ registered environmental health specialist employees.

16     (b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of  
17 Division 9 of the Vehicle Code, a public entity, county public health director, a public  
18 safety employee, a member of a radiation emergency screening team formed pursuant to  
19 Section 25574, a person authorized by a public entity, or a ~~registered sanitarian~~ registered  
20 environmental health specialist employee shall not be liable for any injury or property  
21 damage caused by an act or omission taken by a county public health director, a public  
22 safety employee, a member of a radiation emergency screening team formed pursuant to  
23 Section 25574, a person authorized by a public entity, or a ~~registered sanitarian~~ registered  
24 environmental health specialist employee acting within the scope of employment to abate  
25 or attempt to abate hazards reasonably believed to be an imminent peril to public health  
26 and safety caused by the discharge, spill, or presence of a hazardous substance, unless the  
27 act taken or omission was performed in bad faith or in a grossly negligent manner.

28     (c) For the purposes of this section, it shall be presumed that the act or omission was  
29 performed in good faith and without gross negligence. This presumption shall be one  
30 affecting the burden of proof.

31     (d) For the purposes of this section, the following definitions apply:

32     (1) "Hazardous substance" means a substance that presents a threat to the public  
33 because of its toxicity, radioactivity, flammability, or other characteristic dangerous to the  
34 public health or the environment.

35     (2) "Imminent peril" includes a peril which, if not mitigated, threatens the public health  
36 or welfare, or the environment.

37     (3) "Person authorized by a public agency" includes a person from whom services are  
38 contracted by a public agency.

39     (4) "Public agency" includes, but is not limited to, the federal government or any  
40 department or agency thereof to the extent permitted by law.

41     (5) "Public safety employee" means any person who is a public entity employee and  
42 whose principal duties include law enforcement, fire protection, fire prevention, or the  
43 enforcement of regulations relating to facilities or sites where hazardous substances are  
44 stored or handled.

45     (6) "~~Registered sanitarian employee~~" "Registered environmental health specialist  
46 employee" means a person who is registered pursuant to ~~Section 520 Chapter 2~~  
47 (commencing with Section 8000) of Part 2 of Division 2 of the Environment Code and  
48 who is a paid employee of a state or local public entity.

49     (e) It is not the intent of this section to impair any cause of action against the person,  
50 firm, or entity creating the spill, discharge, or presence of the hazardous material giving  
51 rise to the response of the public entity, county public health director, public safety  
52 employee, member of a radiation screening team formed pursuant to Section 25574,

1 person authorized by a public entity, or ~~registered sanitarian~~ registered environmental  
2 health specialist employee.

3 (f) The immunity for county public health directors or ~~registered sanitarian~~ registered  
4 environmental health specialist employees provided by this section shall apply only  
5 where the person, at the request of a public entity or public safety employee in charge of  
6 scene management, provides emergency assistance or advice at the scene of the peril in  
7 mitigating or attempting to mitigate the effects of an actual or threatened discharge, spill,  
8 or presence of a hazardous substance on private or public property. The request issued by  
9 the scene manager shall be confirmed by that person in a written report of the incident.

10 **Comment.** Section 25400 is amended to substitute a reference to the provisions of the  
11 Environment Code that continue former Section 520. References to the obsolete term “sanitarian”  
12 have also been corrected. See Env’t Code § 8000(c).

13 **Health & Safety Code § 25421 (amended). Prohibited activities**

14 SEC. \_\_\_\_\_. Section 25421 of the Health and Safety Code is amended to read:

15 25421. (a) Until the rule or order specified in subdivision (b) is adopted, no gas  
16 producer shall knowingly sell, supply, or transport landfill gas to a gas corporation, and  
17 no gas corporation shall knowingly purchase landfill gas, if that gas contains vinyl  
18 chloride in a concentration that exceeds the operative no significant risk level set forth in  
19 Article 7 (commencing with Section 12701) of Chapter 3 of Division 2 of Title 22 of the  
20 California Code of Regulations.

21 (b) On or before January 1, 1990, the Public Utilities Commission shall, by rule or  
22 order, specify the maximum amount of vinyl chloride that may be found in landfill gas  
23 pursuant to the requirements of subdivision (a).

24 (c) No gas corporation shall knowingly and intentionally expose any customer,  
25 employee, or other person to gas from a landfill if that gas contains any chemical known  
26 to the state to cause cancer or reproductive toxicity without first giving clear and  
27 reasonable warning to that individual, except as provided by Section 25249.10.

28 (d) Every person who produces, sells, supplies, or releases landfill gas for sale offsite to  
29 a gas corporation shall, twice each month, sample and test the gas at the point of  
30 distribution for the presence of chemicals known to the state to cause cancer or  
31 reproductive toxicity in accordance with the test guidelines prepared under ~~Section~~  
32 ~~41805.5~~ Sections 38000 to 38008, inclusive, of the Environment Code. The air pollution  
33 control district or air quality management district within which the landfill is situated  
34 shall review the testing procedures for compliance with the guidelines and require the  
35 correction of any deficiencies. The district shall require, among other things, that the gas  
36 be analyzed by a laboratory certified by the department and shall transmit the results of  
37 the analysis to the department for its determination of compliance or noncompliance with  
38 subdivisions (a) and (b). The department shall fix and impose upon the gas producer a fee  
39 to cover its costs under this subdivision. The results of each sample and test shall be  
40 reported promptly to the gas corporation to which the landfill gas is sold, and any person  
41 or public agency requesting a copy of the report.

42 (e) Nothing in this section prohibits the direct delivery of landfill gas for the generation  
43 of electricity, the production of steam, or other industrial application.

44 (f) The gas corporation shall obtain the results of the test conducted pursuant to  
45 subdivision (d) and shall purchase no gas which the test shows to contain vinyl chloride  
46 that exceeds the amount permitted in subdivision (a), or if the rule or order has been  
47 adopted, as specified in subdivision (b).

48 (g) This section applies only to landfill gas delivered to the pipeline of a gas  
49 corporation.

50 **Comment.** Section 25421 is amended to substitute a reference to the Environment Code  
51 provisions that continue former Section 41805.5 of the Health and Safety Code.

**Health & Safety Code § 25532 (amended). Definitions**

SEC. \_\_\_\_\_. Section 25532 of the Health and Safety Code is amended to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) “Accidental release” means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) “Administering agency” means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) “Covered process” means a process that has a regulated substance present in more than a threshold quantity.

(d) “Modified stationary source” means an addition or change to a stationary source that qualifies as a “major change,” as defined in Subpart A of Part 68 of Title 40 of the Code of Federal Regulations. “Modified stationary source” does not include an increase in production up to the source’s existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300 38750 of the Environment Code.

(e) “Process” means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) “Qualified person” means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) “Regulated substance” means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2)(A) An extremely hazardous substance listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than ten millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B)(i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and, therefore, should remain on the list of regulated substances until completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of the extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the

administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) “Regulated substances accident risk” means a potential for the accidental release of a regulated substance into the environment that could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) “RMP” means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) “State threshold quantity” means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) “Stationary source” means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(l) “Threshold quantity” means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

**Comment.** Section 25532 is amended to substitute a reference to the Environment Code provision that continues former Section 42300 of the Health and Safety Code.

#### **Health & Safety Code § 25533 (amended). Accidental release prevention program**

SEC. \_\_\_\_\_. Section 25533 of the Health and Safety Code is amended to read:

25533. (a) The program for prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)), with the additional provisions specified in this article, is the accidental release prevention program for the state. The program shall be implemented by the office and the appropriate administering agency in each city or county. The state’s implementation of the federal program adopted by the Environmental Protection Agency is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding this article or Division 26 4 (commencing with Section 39000 30000) of the Environment Code, the accidental release prevention program submitted by the office to the Environmental Protection Agency to receive delegation of federal authority to implement the federal program shall include only those regulated substances and threshold quantities specified in the regulations adopted by the Environmental Protection Agency.

(b) The office and the administering agency shall, to the maximum extent feasible, coordinate implementation of the accidental release prevention program with the federal Chemical Safety and Hazard Investigation Board, the Emergency Response Commission and local emergency planning committees, the unified program elements specified in subdivision (c) of Section 25404, the permitting programs implemented by the air quality management districts and air pollution control districts pursuant to Title V of the Clean Air Act (42 U.S.C. Section 7661 et seq.), and with other agencies, as specified in Section 25404.2.

(c) Section 39602 30903 of the Environment Code does not apply to the accidental release prevention program promulgated and implemented pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)).



(d) The administering agency in each jurisdiction is the agency designated to implement and enforce any requirements specified by the Environmental Protection Agency and pertaining to any of the following:

(1) Verification of stationary source registration and submission of an RMP or revised RMP.

(2) Verification of source submission of stationary certifications or compliance schedules.

(3) Mechanisms for ensuring that stationary sources permitted pursuant to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) are in compliance with the requirements of this article.

(e) Notwithstanding subdivision (d) and paragraph (2) of subdivision (a) of Section 25404.1, if, after a public hearing, the office determines that an administering agency is not taking reasonable actions to enforce the statutory provisions and regulations pertaining to accidental releases of regulated substances, the office may exercise any of the powers of that administering agency as necessary to implement this article.

(f) Notwithstanding any other provision of law, at any time there is no local agency certified to implement in a city or unincorporated portion of a county the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), the office shall do one of the following:

(1) Authorize the administering agency which implemented this article in the city or county as of December 31, 1993, to continue to implement this article until such time as a local agency is certified to implement the unified program.

(2) Assume authority and responsibility to implement this article in that city or county until a local agency is certified to implement the unified program, in which case all references in this article to the administering agency shall be deemed to refer to the office.

**Comment.** Section 25533 is amended to substitute references to the Environment Code provisions that continue former Division 26 (commencing with section 39000) and former Section 39602.

#### **Health & Safety Code § 25548.4 (amended). Limitations of chapter**

SEC. \_\_\_\_\_. Section 25548.4 of the Health and Safety Code is amended to read:

25548.4. This chapter does not do any of the following:

(a) Affect any rights, defenses, or immunities that are available to any lender or fiduciary under any applicable law.

(b) Create any liability for any lender or fiduciary.

(c) Create any private right of action against any lender or fiduciary.

(d) Exempt or excuse a lender or fiduciary who operates or directs the operation, or maintains the operation, of the property from compliance with the operational requirements of applicable laws. Those operational requirements include, but are not limited to, permitting, reporting, monitoring, emission limitation, corrective action, financial responsibility and assurance requirements, requirements to take removal or remedial action to respond to a release or threatened release of hazardous materials caused by the lender or fiduciary and the requirements of Division 26 4 (commencing with Section 39000 30000) of this code of the Environment Code or of Division 7 (commencing with Section 13000) of the Water Code. Operational requirements include the payment of fees, fines, and penalties, and compliance with any other enforcement provisions that are applicable as a result of the operation, or the direction of the operation, or the maintenance of the operation, of the property by the lender or fiduciary.

(e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of Division 9 of the Probate Code.

(f) Affect any liabilities of a fiduciary estate.

(g) Exempt a lender from liability imposed by Chapter 6.8 (commencing with Section 25300) for a removal or remedial action or the recovery of damages relating to a release or threatened release of hazardous material, to the extent that the lender is a responsible party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or (4)).

(h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5 (commencing with Section 25100).

(i) Exempt or excuse a lender from liability under any state or local statute, regulation, or ordinance for a known or suspected release or known or suspected threatened release of hazardous materials caused by events or conditions occurring prior to foreclosure or its equivalent, unless, after taking possession of the property, the lender promptly takes each of the following actions in accordance with applicable law:

(1) Suspends operations with respect to that portion of the property where the known or suspected release or known or suspected threatened release occurred or may occur.

(2) Removes from the suspended operations and affected areas on the property, all hazardous material not released into the environment and secures the suspended operations.

(3) Reports any known or suspected releases of hazardous material.

(j) Limit the application or enforcement of Section 25359.4 or 25359.5 or other state or local fencing, posting, securing, notification, or reporting laws with regard to property that is acquired by a lender through foreclosure or its equivalent, to the extent that those requirements are otherwise applicable to the property.

(k) Exempt a lender from compliance with an administrative order requiring immediate and temporary measures to prevent, abate, or minimize an emergency caused by a release or threatened release of hazardous material at, from, or in connection with, any property that has been acquired by the lender through foreclosure or its equivalent, when all of the following circumstances exist:

(1) The release or threatened release presents an imminent and substantial endangerment to the public health or welfare or the environment.

(2) No other person who is viable and potentially responsible for the release or threatened release has been identified and located by the agency issuing the order, following a reasonable effort by the agency to identify and locate any such person.

(3) The costs and expenses incurred by the lender to comply with the administrative order do not exceed twenty-five thousand dollars (\$25,000).

(4) If the lender complies with the administrative order, the compliance would not, in and of itself, subject the lender to liability for a removal or remedial action or damages, fines, penalties, impositions, or assessments relating to the release or threatened release under any federal law.

(l)(1) Exempt a lender who has acquired title to property through foreclosure or its equivalent from operation and maintenance requirements that were established on the property as a result of a removal or remedial action conducted on the property.

(2) "Operation and maintenance requirements" include, but are not limited to, deed restrictions and requirements to maintain passive exposure controls and to perform monitoring. If there are requirements other than operation and maintenance requirements, which are applicable to the property to maintain the effectiveness of the removal or remediation action, the lender shall comply with those requirements unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency that it does not intend to comply with the requirements and the agency concurs.

(m) Require a lender to conduct, or require a lender to direct the taking of, an inspection of the property after foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on, or affected by, the lender not conducting, or not requiring, an inspection of the property after foreclosure or its equivalent.



(n) Require a fiduciary to conduct or require an inspection of the property in a fiduciary estate to qualify for the exemption provided by this chapter and the liability of the fiduciary shall not be based on, or affected by, the fiduciary not conducting or not requiring an inspection prior to holding the property as part of the fiduciary estate.

**Comment.** Section 25548.4 is amended to substitute a reference to the Environment Code provisions that continue former Division 26 (commencing with section 39000).

**Health & Safety Code §§ 25570-25570.4 (repealed). Environmental Assessors**

SEC. \_\_\_\_ Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code is repealed.

**Health & Safety Code § 33333.3 (amended). Draft environmental impact report**

SEC. \_\_\_\_ Section 33333.3 of the Health and Safety Code is amended to read:

33333.3. (a) The redevelopment agency shall send a notice of preparation and a copy of a draft environmental impact report to each affected taxing entity, as defined in Section 33353.2, prepared in accordance with the provisions of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) and regulations adopted pursuant thereto.

(b) If the project area contains land in agricultural use, as defined in subdivision (b) of Section 51201 of the Government Code, the redevelopment agency shall also send a copy of the draft environmental impact report to the Department of Conservation, the county agricultural commissioner, the county farm bureau, the California Farm Bureau Federation, and agricultural entities and general farm organizations that provide a written request for notice. A separate written request for notice shall be required for each proposed redevelopment plan or amendment that adds territory. A written request for notice applicable to one redevelopment plan or amendment shall not be effective for a subsequent plan or amendment.

**Comment.** Section 33333.3 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 33352 (amended). Report on redevelopment plan**

SEC. \_\_\_\_ Section 33352 of the Health and Safety Code is amended to read:

33352. Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following:

(a) The reasons for the selection of the project area, a description of the specific projects then proposed by the agency, a description of how these projects will improve or alleviate the conditions described in subdivision (b) .

(b) A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. The description shall include a list of the conditions described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist.

(c) An implementation plan that describes specific goals and objectives of the agency, specific projects then proposed by the agency, including a program of actions and expenditures proposed to be made within the first five years of the plan, and a description of how these projects will improve or alleviate the conditions described in Section 33031.

(d) An explanation of why the elimination of blight and the redevelopment of the project area cannot reasonably be expected to be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing.

1 (e) The proposed method of financing the redevelopment of the project area in  
2 sufficient detail so that the legislative body may determine the economic feasibility of the  
3 plan.

4 (f) A method or plan for the relocation of families and persons to be temporarily or  
5 permanently displaced from housing facilities in the project area, which method or plan  
6 shall include the provision required by Section 33411.1 that no persons or families of low  
7 and moderate income shall be displaced unless and until there is a suitable housing unit  
8 available and ready for occupancy by the displaced person or family at rents comparable  
9 to those at the time of their displacement.

10 (g) An analysis of the preliminary plan.

11 (h) The report and recommendations of the planning commission.

12 (i) The summary referred to in Section 33387.

13 (j) The report required by Section 65402 of the Government Code.

14 (k) The report required by Section 21151 of the ~~Public Resources~~ Environment Code.

15 (l) The report of the county fiscal officer as required by Section 33328.

16 (m) If the project area contains low- or moderate-income housing, a neighborhood  
17 impact report which describes in detail the impact of the project upon the residents of the  
18 project area and the surrounding areas, in terms of relocation, traffic circulation,  
19 environmental quality, availability of community facilities and services, effect on school  
20 population and quality of education, property assessments and taxes, and other matters  
21 affecting the physical and social quality of the neighborhood. The neighborhood impact  
22 report shall also include all of the following:

23 (1) The number of dwelling units housing persons and families of low or moderate  
24 income expected to be destroyed or removed from the low- and moderate-income housing  
25 market as part of a redevelopment project.

26 (2) The number of persons and families of low or moderate income expected to be  
27 displaced by the project.

28 (3) The general location of housing to be rehabilitated, developed, or constructed  
29 pursuant to Section 33413.

30 (4) The number of dwelling units housing persons and families of low or moderate  
31 income planned for construction or rehabilitation, other than replacement housing.

32 (5) The projected means of financing the proposed dwelling units for housing persons  
33 and families of low and moderate income planned for construction or rehabilitation.

34 (6) A projected timetable for meeting the plan's relocation, rehabilitation, and  
35 replacement housing objectives.

36 (n)(1) An analysis by the agency of the report submitted by the county as required by  
37 Section 33328, which shall include a summary of the consultation of the agency, or  
38 attempts to consult by the agency, with each of the affected taxing entities as required by  
39 Section 33328 . If any of the affected taxing entities have expressed written objections or  
40 concerns with the proposed project area as part of these consultations, the agency shall  
41 include a response to these concerns, additional information, if any, and, at the discretion  
42 of the agency, proposed or adopted mitigation measures.

43 (2) As used in this subdivision:

44 (A) "Mitigation measures" may include the amendment of the redevelopment plan with  
45 respect to the size or location of the project area, time duration, total amount of tax  
46 increment to be received by the agency, or the proposed use, size, density, or location of  
47 development to be assisted by the agency.

48 (B) "Mitigation measures" shall not include obligations to make payments to any  
49 affected taxing entity.

50 **Comment.** Section 33352 is amended to substitute a reference to the Environment Code  
51 provision that continues former Section 21151 of the Public Resources Code.

**Health & Safety Code § 33490 (amended). Implementation plan**

SEC. \_\_\_\_\_. Section 33490 of the Health and Safety Code is amended to read:

33490. (a)(1)(A) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the project area and implement the requirements of Sections 33334.2, 33334.4, 33334.6, and 33413. After adoption of the first implementation plan, the parts of the implementation plan that address Sections 33334.2, 33334.4, 33334.6, and 33413 shall be adopted every five years either in conjunction with the housing element cycle or the implementation plan cycle. The agency may amend the implementation plan after conducting a public hearing on the proposed amendment. If an action attacking the adoption, approval, or validity of a redevelopment plan adopted prior to January 1, 1994, has been brought pursuant to Chapter 5 (commencing with Section 33500), the first implementation plan required pursuant to this section shall be adopted within six months after a final judgment or order has been entered. Subsequent implementation plans required pursuant to this section shall be adopted pursuant to the terms of this section, and as if the first implementation plan had been adopted on or before December 31, 1994.

(B) Adoption of an implementation plan shall not constitute an approval of any specific program, project, or expenditure and shall not change the need to obtain any required approval of a specific program, project, or expenditure from the agency or community. The adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 of the ~~Public Resources~~ Environment Code. However, the inclusion of a specific program, potential project, or expenditure in an implementation plan prepared pursuant to subdivision (c) of Section 33352 in conjunction with a redevelopment plan adoption shall not eliminate analysis of those programs, potential projects, and expenditures in the environmental impact report prepared pursuant to subdivision (k) of Section 33352 to the extent that it would be otherwise required. In addition, the inclusion of programs, potential projects, and expenditures in an implementation plan shall not eliminate review pursuant to the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), at the time of the approval of the program, project, or expenditure, to the extent that it would be otherwise required.

(2)(A) A portion of the implementation plan shall address the agency housing responsibilities and shall contain a section addressing Sections 33334.2, 33334.4, and 33334.6, the Low and Moderate Income Housing Fund, and, if subdivision (b) of Section 33413 applies, a section addressing agency-developed and project area housing. The section addressing the Low and Moderate Income Housing Fund shall contain:

(i) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts which will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.

(ii) A housing program with estimates of the number of new, rehabilitated, or price-restricted units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.

(B) For each project area to which subdivision (b) of Section 33413 applies, the section addressing the agency developed and project area housing shall contain:

(i) Estimates of the number of new, substantially rehabilitated or price-restricted residential units to be developed or purchased within one or more project areas, both over the life of the plan and during the next 10 years.

(ii) Estimates of the number of units of very low, low-, and moderate-income households required to be developed within one or more project areas in order to meet the requirements of paragraph (2) of subdivision (b) of Section 33413, both over the life of the plan and during the next 10 years.

(iii) The number of units of very low, low-, and moderate-income households which have been developed within one or more project areas which meet the requirements of paragraph (2) of subdivision (b) of Section 33413.

(iv) Estimates of the number of agency developed residential units which will be developed during the next five years, if any, which will be governed by paragraph (1) of subdivision (b) of Section 33413.

(v) Estimates of the number of agency developed units for very low, low-, and moderate-income households which will be developed by the agency during the next five years to meet the requirements of paragraph (1) of subdivision (b) of Section 33413.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code and posted in at least four permanent places within the project area for a period of three weeks. Publication and posting shall be completed not less than 10 days prior to the date set for hearing.

**Comment.** Section 33490 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 33492.110 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 33492.110 of the Health and Safety Code is amended to read:

33492.110. (a) Notwithstanding subdivision (k) of Section 33352, the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) shall not apply to the adoption of a redevelopment plan prepared pursuant to this article if the redevelopment agency determines at a public hearing, noticed in accord with this section, that the need to adopt a redevelopment plan at the soonest possible time in order to use the authority in this article requires the redevelopment agency to delay application of the provisions of the California Environmental Quality Act to the redevelopment plan in accordance with this section.

(b) If the redevelopment agency finds, pursuant to subdivision (a), that the application of the California Environmental Quality Act to the redevelopment plan is required to be delayed, the redevelopment agency or the community shall certify an environmental impact report for the redevelopment plan within 18 months after the effective date of the



ordinance adopting the redevelopment plan. If, as a result of the preparation of the environmental document prepared pursuant to this subdivision, it is necessary to amend the redevelopment plan to mitigate any impacts, the agency shall amend the redevelopment plan according to the procedures of this part. If the environmental document is determined to be inadequate, the redevelopment agency shall not continue with projects that implement the redevelopment plan until an adequate environmental document has been certified; however, this determination shall not affect the validity of the redevelopment plan.

(c) Until the redevelopment agency or the community certifies an environmental impact report for the redevelopment plan, all projects, as defined in the California Environmental Quality Act, that implement the redevelopment plan shall be subject to the California Environmental Quality Act, including, but not limited to, specific plans and rezonings. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts, if any, that otherwise would not be known until an environmental document for the redevelopment plan is certified or approved and shall also include a reporting or monitoring program required pursuant to Section 21081 of the ~~Public Resources~~ Environment Code.

(d) The notice for the public hearing required by subdivision (a) shall comply with, and may be combined with, the notices in Section 33349 or 33361. The notice shall state that the agency intends to consider and act upon a determination that the need to adopt a redevelopment plan at the soonest possible time in order to use the authority in this article requires the redevelopment agency to delay application of the provisions of the California Environmental Quality Act to the redevelopment plan in accordance with this section.

**Comment.** Section 33492.110 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Health & Safety Code § 33492.18 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 33492.18 of the Health and Safety Code is amended to read:

33492.18. (a) Notwithstanding subdivision (k) of Section 33352, the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) shall not apply to the adoption of a redevelopment plan prepared pursuant to this article if the redevelopment agency determines at a public hearing, noticed in accordance with this section, that the need to adopt a redevelopment plan at the soonest possible time in order to use the authority in this article requires the redevelopment agency to delay application of the provisions of the California Environmental Quality Act to the redevelopment plan in accordance with this section.

(b) If the redevelopment agency finds, pursuant to subdivision (a), that the application of the California Environmental Quality Act to the redevelopment plan is required to be delayed, the redevelopment agency or the community shall certify an environmental impact report for the redevelopment plan within 18 months after the effective date of the ordinance adopting the redevelopment plan. If, as a result of the preparation of the environmental document prepared pursuant to this subdivision, it is necessary to amend the redevelopment plan to mitigate any impacts, the agency shall amend the redevelopment plan according to the procedures of this part. If the environmental document is determined to be inadequate by a court of competent jurisdiction, the redevelopment agency shall not undertake additional projects that implement the redevelopment plan until an adequate environmental document has been certified. However, this determination shall not affect the validity of the redevelopment plan.

(c) Until the redevelopment agency or the community certifies an environmental impact report for the redevelopment plan, all projects, as defined in the California Environmental Quality Act, that implement the redevelopment plan shall be subject to the California Environmental Quality Act, including, but not limited to, specific plans and rezonings.

1 The environmental document for any implementing project shall include an analysis and  
2 mitigation of potential cumulative impacts, if any, that otherwise would not be known  
3 until an environmental document for the redevelopment plan is certified or approved and  
4 shall also include a reporting or monitoring program required pursuant to Section 21081  
5 of the ~~Public Resources~~ Environment Code.

6 (d) The notice for the public hearing required by subdivision (a) shall comply with, and  
7 may be combined with, the notices in Section 33349 or 33361. The notice shall state that  
8 the agency intends to consider and act upon a determination that the need to adopt a  
9 redevelopment plan at the soonest possible time in order to use the authority in this article  
10 requires the redevelopment agency to delay application of the provisions of the California  
11 Environmental Quality Act to the redevelopment plan in accordance with this section.

12 **Comment.** Section 33492.18 is amended to substitute references to the Environment Code  
13 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
14 the Public Resources Code.

15 **Health & Safety Code § 33492.41 (amended). Redevelopment plan for Norton Air Force**  
16 **Base**

17 SEC. \_\_\_\_\_. Section 33492.41 of the Health and Safety Code is amended to read:  
18 33492.41. (a) Notwithstanding Section 21090 of the ~~Public Resources~~ Environment  
19 Code, the Inland Valley Development Agency may determine at a noticed public hearing  
20 that the amendment of a redevelopment plan for the Norton Air Force Base  
21 Redevelopment Project Area pursuant to this chapter is not subject to the California  
22 Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the  
23 ~~Public Resources~~ Environment Code), except that projects implementing the  
24 redevelopment plan, including specific plans, rezonings, and ministerial projects that may  
25 have a significant effect on the environment, shall be subject to the California  
26 Environmental Quality Act. The environmental document for any implementing project  
27 shall include an analysis and mitigation of potential cumulative impacts that otherwise  
28 will not be known until an environmental impact report for the redevelopment plan is  
29 certified.

30 (b) The notice of the public hearing required pursuant to subdivision (a) shall include  
31 the date, time, and place of the hearing, a brief description of the proposed project and its  
32 location, the date when notice will be provided pursuant to Section 21092 of the ~~Public~~  
33 ~~Resources~~ Environment Code, and the address where copies of the notice of exemption  
34 are available for review.

35 (c) The notice required by this section shall be given to all organizations and  
36 individuals who have previously requested notice pursuant to the California  
37 Environmental Quality Act, and shall be given by publication, no fewer times than  
38 required by Section 6061 of the Government Code, by the public agency in a newspaper  
39 of general circulation in the area affected by the proposed project.

40 (d) If the Inland Valley Development Agency determines, pursuant to subdivision (a),  
41 that the amendment of a redevelopment plan is not subject to the California  
42 Environmental Quality Act, the redevelopment agency shall prepare and certify an  
43 environmental impact report for the redevelopment plan amendment within 12 months  
44 after the effective date of the ordinance amending the redevelopment plan.

45 (e) An environmental impact report prepared and certified for a specific plan or other  
46 comprehensive land use plan for the applicable portion of the Inland Valley  
47 Redevelopment Project Area shall satisfy the requirement of subdivision (d) if the plan  
48 covers the same area and project as the amendment to the redevelopment plan and is  
49 certified within 12 months after the effective date of the ordinance amending the  
50 redevelopment plan.



(f) The redevelopment agency shall revise the redevelopment plan if necessary to mitigate any impacts and comply with the California Environmental Quality Act and adopt mitigation measures as conditions of project approval.

(g) This section shall only apply to a redevelopment plan amendment approved on or before September 1, 1995.

**Comment.** Section 33492.41 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 33492.65 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 33492.65 of the Health and Safety Code is amended to read:

33492.65. (a) Notwithstanding Section 21090 of the ~~Public Resources~~ Environment Code, the redevelopment agency for the County of Sacramento or the legislative body of the County of Sacramento may determine at a noticed public hearing that the adoption of a redevelopment plan for the Mather Air Force Base Redevelopment Project Area pursuant to this chapter is not subject to the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), except that projects implementing the redevelopment plan, including specific plans, rezonings, and ministerial projects, that may have a significant effect on the environment shall be subject to the California Environmental Quality Act. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts that otherwise will not be known until an environmental impact report for the redevelopment plan is certified.

(b) The notice of the public hearing required pursuant to subdivision (a) shall include the date, time, and place of the hearing, a brief description of the proposed project and its location, the date when notice will be provided pursuant to Section 21092 of the ~~Public Resources~~ Environment Code, and the address where copies of the notice of exemption are available for review.

(c) The notice required by this section shall be given to all organizations and individuals who have previously requested notice pursuant to the California Environmental Quality Act, and shall be given by publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(d) If the redevelopment agency for the County of Sacramento or the legislative body of the County of Sacramento determines, pursuant to subdivision (a), that the adoption of a redevelopment plan is not subject to the California Environmental Quality Act, the redevelopment agency shall prepare and certify an environmental impact report for the redevelopment plan within 18 months after the effective date of the ordinance adopting the redevelopment plan. An environmental impact report prepared and certified for a specific plan or other comprehensive land use plan for the Mather Air Force Base Redevelopment Project Area shall satisfy the requirement of this subdivision.

**Comment.** Section 33492.65 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 33492.94 (amended). Mare Island Redevelopment Project Area**

SEC. \_\_\_\_\_. Section 33492.94 of the Health and Safety Code is amended to read:

33492.94. (a) Notwithstanding Section 21090 of the ~~Public Resources~~ Environment Code, the redevelopment agency for the City of Vallejo or the legislative body of the City of Vallejo may determine at a noticed public hearing that the adoption of a redevelopment plan for the Mare Island Redevelopment Project Area pursuant to this article is not subject to the California Environmental Quality Act (Division ~~13~~ 3 (commencing with

1 Section 21000) of the ~~Public Resources~~ Environment Code), except that projects  
2 implementing the redevelopment plan, including specific plans, rezonings, and  
3 ministerial projects that may have a significant effect on the environment, shall be subject  
4 to the California Environmental Quality Act. The environmental document for any  
5 implementing project shall include an analysis and mitigation of potential cumulative  
6 impacts that otherwise will not be known until an environmental impact report for the  
7 redevelopment plan is certified.

8 (b) The notice of the public hearing required pursuant to subdivision (a) shall include  
9 the date, time, and place of the hearing, a brief description of the proposed project and its  
10 location, the date when notice will be provided pursuant to Section 21092 of the ~~Public~~  
11 ~~Resources~~ Environment Code, and the address where copies of the notice of exemption  
12 are available for review.

13 (c) The notice required by this section shall be given to all organizations that, and  
14 individuals who, have previously requested notice pursuant to the California  
15 Environmental Quality Act, and shall be given by publication, no fewer times than  
16 required by Section 6061 of the Government Code, by the public agency in a newspaper  
17 of general circulation in the area affected by the proposed project.

18 (d) If the redevelopment agency for the City of Vallejo or the legislative body of the  
19 City of Vallejo determines, pursuant to subdivision (a), that the adoption of a  
20 redevelopment plan is not subject to the California Environmental Quality Act, the  
21 redevelopment agency shall prepare and certify an environmental impact report for the  
22 redevelopment plan within 18 months after the effective date of the ordinance adopting  
23 the redevelopment plan. An environmental impact report prepared and certified jointly  
24 with the preparation of the environmental impact statement by the federal lead agency  
25 pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321, et seq.)  
26 shall satisfy the requirement of this subdivision.

27 **Comment.** Section 33492.94 is amended to substitute references to the Environment Code  
28 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
29 Resources Code.

### 30 **Health & Safety Code § 33852 (amended). CEQA exemption**

31 SEC. \_\_\_\_\_. Section 33852 of the Health and Safety Code is amended to read:  
32 33852. All proceedings and decisions undertaken or made pursuant to this chapter shall  
33 be exempt from the requirements of Division 13 3 (commencing with Section 21000) of  
34 the ~~Public Resources~~ Environment Code.

35 **Comment.** Section 33852 is amended to substitute a reference to the Environment Code  
36 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
37 Resources Code.

### 38 **Health & Safety Code § 34005 (amended). CEQA exemption**

39 SEC. \_\_\_\_\_. Section 34005 of the Health and Safety Code is amended to read:  
40 34005. (a) Notwithstanding subdivision (k) of Section 33352, the California  
41 Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the  
42 ~~Public Resources~~ Environment Code) shall not apply to the adoption of a redevelopment  
43 plan prepared pursuant to this part if the redevelopment agency determines at a public  
44 hearing, noticed in accord with this section, that the need to adopt a redevelopment plan  
45 at the soonest possible time in order to use the authority in the Community  
46 Redevelopment Disaster Project Law requires the redevelopment agency to delay  
47 application of the provisions of the California Environmental Quality Act to the  
48 redevelopment plan in accordance with this section.

49 (b) If the redevelopment agency finds, pursuant to subdivision (a), that the application  
50 of the California Environmental Quality Act to the redevelopment plan is required to be

1 delayed, the redevelopment agency shall prepare and certify an environmental impact  
2 report or approve a negative declaration for the redevelopment plan within 12 months  
3 after the effective date of the ordinance adopting the redevelopment plan. If, as a result of  
4 the preparation of the environmental document prepared pursuant to this subdivision, it is  
5 necessary to amend the redevelopment plan to mitigate any impacts, the agency shall  
6 amend the redevelopment plan according to the procedures of this part. If the  
7 environmental document is determined to be inadequate, the redevelopment agency shall  
8 not continue with projects which implement the redevelopment plan until an adequate  
9 environmental document has been certified; however, this determination shall not affect  
10 the validity of the redevelopment plan.

11 (c) Until the redevelopment agency certifies an environmental impact report or negative  
12 declaration for the redevelopment plan, all projects, as defined in the California  
13 Environmental Quality Act, which implement the redevelopment plan shall be subject to  
14 the California Environmental Quality Act, including, but not limited to, specific plans and  
15 rezonings. The environmental document for any implementing project shall include an  
16 analysis and mitigation of potential cumulative impacts, if any, that otherwise will not be  
17 known until an environmental document for the redevelopment plan is certified or  
18 approved and shall also include a reporting or monitoring program required pursuant to  
19 Section 21081 of the ~~Public Resources~~ Environment Code.

20 (d) The notice for the public hearing required by subdivision (a) shall comply with and  
21 may be combined with the notices in Section 33349 or 33361. The notice shall state that  
22 the agency intends to consider and act upon a determination that the need to adopt a  
23 redevelopment plan at the soonest possible time in order to use the authority in the  
24 Community Redevelopment Disaster Project Law requires the redevelopment agency to  
25 delay application of the provisions of the California Environmental Quality Act to the  
26 redevelopment plan in accordance with this section.

27 **Comment.** Section 34005 is amended to substitute references to the Environment Code  
28 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
29 the Public Resources Code.

30 **Health & Safety Code §§ 39000-44474 (repealed). Air Resources**

31 SEC. \_\_\_\_\_. Division 26 (commencing with Section 39000) of the Health and Safety  
32 Code is repealed.

33 **Health & Safety Code § 44561 (amended). Applicable law**

34 SEC. \_\_\_\_\_. Section 44561 of the Health and Safety Code is amended to read:

35 44561. (a) This division provides a complete, additional, and alternative method for the  
36 doing of the things authorized by this division, and is supplemental and additional to  
37 powers conferred by other laws. The issuance of bonds and refunding bonds under this  
38 division need not comply with any other law applicable to the issuance of bonds  
39 including, but not limited to, Division 43 3 (commencing with Section 21000) of the  
40 ~~Public Resources~~ Environment Code. In the construction and acquisition of a project  
41 pursuant to this division, the authority need not comply with any other law applicable to  
42 the construction or acquisition of public works, except as specifically provided in this  
43 division. Pollution control facilities and projects may be acquired, constructed,  
44 completed, repaired, altered, improved, or extended, and bonds may be issued for any of  
45 those purposes under this division, notwithstanding that any other law may provide for  
46 the acquisition, construction, completion, repair, alteration, improvement, or extension of  
47 like pollution control facilities or for the issuance of bonds for like purposes, and without  
48 regard to the requirements, restrictions, limitations, or other provisions contained in any  
49 other law.

(b) Except as provided in subdivision (a), the financing of a project pursuant to this part shall not exempt a project from any requirement of law which otherwise would be applicable to the project.

**Comment.** Section 44561 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 56040 (amended). Large scale urban development**

SEC. \_\_\_\_\_. Section 56040 of the Health and Safety Code is amended to read:

56040. The legislative body is hereby designated the lead agency and shall certify an environmental impact report in accordance with the provisions of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) prior to approving a large scale urban development. When an environmental impact report has been certified for a large scale urban development pursuant to this section, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency unless one or more of the following events occur:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a legislative body made at a public hearing pursuant to this section unless he or she has participated in that public hearing. However, this provision shall not be applicable if the legislative body failed to give notice of the public hearing as required by law. For purposes of this provision, a person has participated in the public hearing if he or she has submitted either oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

**Comment.** Section 56040 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 57001 (amended). Fee accountability program**

SEC. \_\_\_\_\_. Section 57001 of the Health and Safety Code is amended to read:

57001. (a) Except as provided in subdivision (f), each office, board, and department within the agency shall, on or before December 31, 1995, implement a fee accountability program for the fees specified in subdivision (d). That fee accountability program shall be designed to encourage more efficient and cost-effective operation of the programs for which the fees are assessed, and shall be designed to ensure that the amount of each fee is not more than is reasonably necessary to fund the efficient operation of the activities or programs for which the fee is assessed.

(b) Before implementing the fee accountability program required by this section, each board, department, and office within the agency shall conduct a review of the fees identified in subdivision (d) which it assesses. The purpose of this review shall be to determine what changes, if any, should be made to all of the following, in order to implement a fee system which accomplishes the purposes set forth in subdivision (a):

(1) The amount of the fee.

(2) The manner in which the fee is assessed.



(3) The management and workload standards of the program or activity for which the fee is assessed.

(c) The fee accountability program of each board, department, or office within the agency shall include those elements of the requirements of Section 25206 which the secretary determines are appropriate in order to accomplish the purposes set forth in subdivision (a).

(d) This section applies to the following fees:

(1) The fee assessed pursuant to subdivision (d) of Section 13146 of the Food and Agricultural Code to develop data concerning the environmental fate of a pesticide when the registrant fails to provide the required information.

(2) The surface impoundment fees assessed pursuant to Section 25208.3.

(3) The fee assessed pursuant to Section 43203 41651 of the Environment Code to recover the costs of the State Air Resources Board in verifying manufacturer compliance on emissions from new vehicles prior to retail sale.

(4) The fee assessed pursuant to ~~Section 44380~~ Sections 45250 to 45253, inclusive, of the Environment Code to recover the costs of the State Air Resources Board and the Office of Environmental Health Hazard Assessment in implementing and administering the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300 45000) of Division 26 4 of the Environment Code).

(5) The fee assessed pursuant to Section 43212 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board when it assumes the responsibilities of the local enforcement agency.

(6) The fee assessed pursuant to Section 43508 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board in reviewing closure plans.

(7) The water rights permit fees assessed pursuant to Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code.

(8) The fee assessed pursuant to subdivision (c) of Section 13260 of the Water Code for waste discharge requirements, including, but not limited to, requirements for storm water discharges, and the fee assessed pursuant to subdivision (i) of Section 12360 of the Water Code for National Pollution Discharge Elimination System permits.

(9) The costs assessed pursuant to Section 13304 of the Water Code to recover the costs of the State Water Resources Control Board or the California regional water quality control boards in implementing and enforcing cleanup and abatement orders.

(e) If a board, department, or office within the agency determines that the amount of a fee that is fixed in statute should be increased in order to implement a fee accountability system which accomplishes the purposes of subdivision (a), it shall notify the Legislature, and make recommendations concerning appropriate increases in the statutorily fixed fee amount. For fees whose amount is not fixed in statute, the board, department, or office may increase the fee only if it makes written findings in the record that it has implemented a fee accountability program which complies with this section.

(f) The Department of Toxic Substances Control shall be deemed to be in compliance with this section if it complies with Section 25206.

**Comment.** Section 57001 is amended to substitute references to the Environment Code provisions that continue former Section 43203 of the Health and Safety Code and provisions of former Part 6 (commencing with Section 44300) of Division 26 of the Health and Safety Code.

#### **Health & Safety Code § 57004 (amended). Scientific peer review of rules**

SEC. \_\_\_\_\_. Section 57004 of the Health and Safety Code is amended to read:

57004. (a) For purposes of this section, the following terms have the following meaning:

(1) “Rule” means either of the following:

1 (A) A regulation, as defined in subdivision (g) of Section 11342 of the Government  
2 Code.

3 (B) A policy adopted by the State Water Resources Control Board pursuant to the  
4 Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)  
5 of the Water Code) that has the effect of a regulation and that is adopted in order to  
6 implement or make effective a statute.

7 (2) “Scientific basis” and “scientific portions” means those foundations of a rule that  
8 are premised upon, or derived from, empirical data or other scientific findings,  
9 conclusions, or assumptions establishing a regulatory level, standard, or other  
10 requirement for the protection of public health or the environment.

11 (b) The agency, or a board, department, or office within the agency, shall enter into an  
12 agreement with the National Academy of Sciences, the University of California, the  
13 California State University, or any similar scientific institution of higher learning, any  
14 combination of those entities, or with a scientist or group of scientists of comparable  
15 stature and qualifications that is recommended by the President of the University of  
16 California, to conduct an external scientific peer review of the scientific basis for any rule  
17 proposed for adoption by any board, department, or office within the agency. The  
18 scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6  
19 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 4 (commencing with  
20 Section 39650 31300) of Part 2 of Division 26 4 of the Environment Code shall be  
21 deemed to have complied with this section if it complies with the peer review processes  
22 established pursuant to these statutes.

23 (c) No person may serve as an external scientific peer reviewer for the scientific portion  
24 of a rule if that person participated in the development of the scientific basis or scientific  
25 portion of the rule.

26 (d) No board, department, or office within the agency shall take any action to adopt the  
27 final version of a rule unless all of the following conditions are met:

28 (1) The board, department, or office submits the scientific portions of the proposed rule,  
29 along with a statement of the scientific findings, conclusions, and assumptions on which  
30 the scientific portions of the proposed rule are based and the supporting scientific data,  
31 studies, and other appropriate materials, to the external scientific peer review entity for its  
32 evaluation.

33 (2) The external scientific peer review entity, within the timeframe agreed upon by the  
34 board, department, or office and the external scientific peer review entity, prepares a  
35 written report that contains an evaluation of the scientific basis of the proposed rule. If the  
36 external scientific peer review entity finds that the board, department, or office has failed  
37 to demonstrate that the scientific portion of the proposed rule is based upon sound  
38 scientific knowledge, methods, and practices, the report shall state that finding, and the  
39 reasons explaining the finding, within the agreed-upon timeframe. The board, department,  
40 or office may accept the finding of the external scientific peer review entity, in whole, or  
41 in part, and may revise the scientific portions of the proposed rule accordingly. If the  
42 board, department, or office disagrees with any aspect of the finding of the external  
43 scientific peer review entity, it shall explain, and include as part of the rulemaking record,  
44 its basis for arriving at such a determination in the adoption of the final rule, including the  
45 reasons why it has determined that the scientific portions of the proposed rule are based  
46 on sound scientific knowledge, methods, and practices.

47 (e) The requirements of this section do not apply to any emergency regulation adopted  
48 pursuant to subdivision (b) of Section 11346.1 of the Government Code.

49 (f) Nothing in this section shall be interpreted to, in any way, limit the authority of a  
50 board, department, or office within the agency to adopt a rule pursuant to the  
51 requirements of the statute that authorizes or requires the adoption of the rule.



1     **Comment.** Section 57004 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Chapter 3.5 (commencing with Section 39650) of Part 2 of  
3 Division 26 of the Health and Safety Code.

4     **Health & Safety Code § 57053 (amended). Consolidated permit agency**

5     SEC. \_\_\_\_\_. Section 57053 of the Health and Safety Code is amended to read:

6     57053. (a) Any responsible party may request the office to designate a consolidated  
7 permit agency for a repair or maintenance project to administer the processing and  
8 issuance of a consolidated permit for the repair or maintenance project subject to this  
9 division. The office is not authorized to act pursuant to this chapter in the absence of a  
10 request by a responsible party. The office shall designate a consolidated permit agency  
11 within 30 days from the date that the request was received.

12     (b) A responsible party that requests the designation of a consolidated permit agency  
13 shall provide the office with a description of the repair or maintenance project, a  
14 preliminary list of the repair or maintenance project permits that the repair or  
15 maintenance project may require, the identity of any public agency that has been  
16 designated the lead agency for the repair or maintenance project pursuant to Chapter 4.5  
17 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or  
18 Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
19 Code, and the identity of the participating permit agencies. The office may request any  
20 information from the responsible party that is necessary to make the designation under  
21 subdivision (a), and may convene a scoping meeting of the likely consolidated permit  
22 agency and participating permit agencies to make that designation.

23     (c) In those cases where a public agency is the lead agency for purposes of Chapter 4.5  
24 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or  
25 Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
26 Code, that agency shall be the consolidated permit agency. In other cases, the following  
27 factors shall be considered in determining which public agency has the greatest overall  
28 jurisdiction over the repair or maintenance project:

29     (1) The type of facility or structure that is the subject of the proposed repair or  
30 maintenance project.

31     (2) The nature of the threat that a failure to repair and maintain the structure or facility  
32 poses to public health or safety or to the environment, including the environmental  
33 medium that may be affected by a failure to repair and maintain the structure or facility.

34     (3) The environmental and human health and safety concerns that should be considered  
35 in properly carrying out the repair or maintenance project.

36     (4) The statutory and regulatory standards applicable to the repair or maintenance  
37 project.

38     (d) The consolidated permit agency shall serve as the main point of contact for the  
39 responsible party with regard to the processing of the consolidated permit for the repair or  
40 maintenance project and shall coordinate the procedural aspects of the processing  
41 consistent with existing laws governing the consolidated permit agency and participating  
42 permit agencies, and with the procedures agreed to by those agencies in accordance with  
43 Section 57053.1. In carrying out those responsibilities, the consolidated permit agency  
44 shall ensure that consolidated permit applicant has all of the information needed to apply  
45 for all of the component repair or maintenance project permits that are incorporated in the  
46 consolidated permit, coordinate the review of those repair or maintenance project permits  
47 by the respective participating permit agencies, ensure that timely permit decisions are  
48 made by the participating permit agencies, and assist in resolving any conflict or  
49 inconsistency among the repair or maintenance project permit requirements and  
50 conditions that are to be imposed by the participating permit agencies with regard to the  
51 repair or maintenance project.

(e) This division shall not be construed to limit or abridge the authority or responsibilities of any participating permit agency pursuant to the law that authorizes or requires the agency to issue a permit for a repair or maintenance project or to grant any agency any new powers independent of those granted by other laws. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component repair or maintenance project permit that is within the scope of its authority or responsibility, including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The consolidated permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters.

**Comment.** Section 57053 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 59004 (amended). Functions and responsibilities of office**

SEC. \_\_\_\_\_. Section 59004 of the Health and Safety Code is amended to read:

59004. The office succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Health Hazard Assessment Division of the State Department of Health Services relating to assessment of human health risks of chemicals and to toxicologic and scientific consultation to programs in the State Department of Health Services and in other state agencies. The functions and responsibilities of the office shall include, but not be limited to, those performed pursuant to the following provisions of law:

(a) Article 6 (commencing with Section 32060) of Chapter 1 of Part 19 of Division 1 of Title 1 of the Education Code.

(b) Sections 217.6 and 7715 of the Fish and Game Code.

(c) Article 10.5 (commencing with Section 12980), Article 14 (commencing with Section 13121), and Article 15 (commencing with Section 13141) of Chapter 2 of Division 7 of, Sections 13060 and 13061 of, and Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of, the Food and Agricultural Code.

(d) Section 425 of, Chapter 9 (commencing with Section 2950) of Division 3 of, Sections 25416, 25886.5 and 39606 of, Article 3 (commencing with Section 39660) of Chapter 3.5 of Part 2 of Division 26 of, Sections 41982 and 42315 of, and Chapter 4 (commencing with Section 44360) of Part 6 of Division 26 of, this code.

(e) Section 21151.1 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 59004 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 100425 (amended). Annual adjustment of fees or charges**

SEC. \_\_\_\_\_. Section 100425 of the Health & Safety Code is amended to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2202, 2805, 11887, 100720, 100860, ~~106700~~, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750, 112755, 113060, 113065, 113845, 114056, 114065, paragraph (2), of subdivision (c) of Section 114090, 114140, subdivision (b) of Section 114290, 114367, 115035, 115065, 115080, 116205, 117923, 117995, 118045, 118210, and 118245, and Section 8508 of the Environment Code shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be

determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 100425 is amended to substitute a reference to the Environment Code provisions that continue former Section 106700.

#### **Health & Safety Code § 101085 (amended). Health emergencies**

SEC. \_\_\_\_\_. Section 101085 of the Health and Safety Code is amended to read:

101085. (a) After the declaration of a health emergency or a county health emergency pursuant to Section 101080, the director or local health officer may do any or all of the following:

(1) Require any person or organization that the director or local health officer shall specify to furnish any information known relating to the properties, reactions, and identity of the material that has been released, spilled, or escaped. The director or local health officer may require information to be furnished, under penalty of perjury, by the person, company, corporation, or other organization that had custody of the material, and, if the material is being transferred or transported, by any person, company, corporation, or organization that caused the material to be transferred or transported. This information shall be furnished to the director or local health officer upon request in sufficient detail, as determined by the director or local health officer, as required to take any action necessary to abate the health emergency or county health emergency or protect the health of persons in the county, or any area thereof, who are, or may be affected. However, the burden, including costs, of furnishing the information shall bear a reasonable relationship to the need for the information and the benefits to be obtained therefrom.

(2) Provide the information, or any necessary portions thereof, or any other necessary information available to the director or local health officer to state or local agencies responding to the health emergency or county health emergency or to medical and other professional personnel treating victims of the local health emergency.

(3) Sample, analyze, or otherwise determine the identifying and other technical information relating to the health emergency or county health emergency as necessary to respond to or abate the county health emergency and protect the public health.

(b) This section does not limit or abridge any of the powers or duties granted to the State Water Resources Control Board and to each regional water quality control board by Division 7 (commencing with Section 13000) of the Water Code. This section also does not limit or abridge the powers or duties granted to the State Air Resources Board or to any air pollution control district by Division 26 4 (commencing with Section 39000 30000) of the Environment Code.

This section does not limit or abridge any of the powers or duties granted to the Director of Food and Agriculture or to any county agricultural commissioner by Division 6 (commencing with Section 11401) or by Division 7 (commencing with Section 12501) of the Food and Agricultural Code.

**Comment.** Section 101085 is amended to substitute a reference to the Environment Code provisions that continue former Division 26 (commencing with section 39000).

**Health & Safety Code § 101165 (amended). Certified individuals; restriction, limitation or prevention of public health duties**

SEC. \_\_\_\_\_. Section 101165 of the Health & Safety Code is amended to read:

101165. Nothing in this article, or any other provision of law, shall be construed to restrict, limit, or prevent individuals certified under authority of this part or ~~106600 8000~~ of Chapter 4 ~~2~~ of Part 4 ~~2~~ of Division 104 ~~2~~ of the Environment Code from performing their duties for the protection of the public health.

**Comment.** Section 101165 is amended to substitute a reference to the Environment Code provisions that continue former Article 1 (commencing with Section 106600) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

**Health & Safety Code §§ 105400-105430 (repealed). Indoor Environmental Quality**

SEC. \_\_\_\_\_. Chapter 7 (commencing with Section 105400) of Part 5 of Division 103 of the Health and Safety Code is repealed.

**Health & Safety Code §§ 106600-106735 (repealed). Registered Environmental Health Specialists**

SEC. \_\_\_\_\_. Article 1 (commencing with Section 106600) of Chapter 4 of Division 104 of the Health and Safety Code is repealed.

**Health & Safety Code §§ 106750-106865 (repealed). Radon Specialists and Laboratories**

SEC. \_\_\_\_\_. Article 2 (commencing with Section 106750) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code is repealed.

**Health & Safety Code § 116760.50 (amended). Funding criteria**

SEC. \_\_\_\_\_. Section 116760.50 of the Health and Safety Code is amended to read:

116760.50. The department shall establish criteria that shall be met for projects to be eligible for consideration for funding under this chapter. The criteria shall include all of the following:

(a) All preliminary design work for a defined project that will enable the applicant to supply water that meets safe drinking water standards, including a cost estimate for the project, shall be completed.

(b) A legal entity shall exist that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department. If the proposed project is funded by a loan under this chapter, the department may require the applicant to secure a lease for the full term of the loan if the loan exceeds 20 years.

(c) The applicant shall hold all necessary water rights.

(d) The applicant shall have completed any review required pursuant to the California Environmental Quality Act (Division ~~13 3~~ (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) and the guidelines adopted pursuant thereto, and have included plans for compliance with that act in its preliminary plans for the project.

(e) The applicant has assembled sufficient financial data to establish its ability to complete the proposed project and to establish the amount of debt financing it can undertake.

**Comment.** Section 116760.50 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Health & Safety Code § 118460 (amended). Power to enter and inspect rags**

SEC. \_\_\_\_\_. Section 118460 of the Health and Safety Code is amended to read:  
118460. Every local health officer or ~~registered sanitarian~~ registered environmental health specialist, upon proper demand and notice of his or her authority, may, during business hours, enter any place where wiping rags are used, are kept for sale, or offered for sale, and inspect the wiping rags. No person shall refuse to permit the inspection, or impede or obstruct the officer during the inspection.

**Comment.** Section 118460 is amended to remove a reference to the obsolete term “registered sanitarian.” See Env’t Code § 8000(c) (“registered sanitarian” means “registered environmental health specialist”).

**Health & Safety Code §§ 119150-119160 (repealed). Chlorofluorocarbons**

SEC. \_\_\_\_\_. Chapter 6 (commencing with Section 119150) of Part 15 of Division 104 of the Health and Safety Code is repealed.

PE N A L C O D E

**Penal Code § 803 (amended). Tolling or extension of time periods**

SEC. \_\_\_\_\_. Section 803 of the Penal Code is amended to read:  
803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under



Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, ~~or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or Part 4 (commencing with Section 37100) of Division 4 of the Environment Code,~~ or under Section 386.

(f)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B)(i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.



(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B)(i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

**Comment.** Section 803 is amended to substitute a reference to the Environment Code provisions that continue former Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code.

**Penal Code § 830.12 (amended). Not peace officers**

SEC. \_\_\_\_\_. Section 830.12 of the Penal Code is amended to read:

830.12. Notwithstanding any other provision of law, persons designated by a local agency as litter control officers, vehicle abatement officers, ~~registered sanitarians~~ registered environmental health specialists, and solid waste specialists, are not peace officers, may not exercise the powers of arrest of a peace officer, as specified in Section 836, and shall not be authorized to carry or use firearms within the scope and course of their employment. These persons may, however, be authorized by the governing board of the particular local agency to issue citations involving violations of laws relating to abandoned vehicles and littering.

**Comment.** Section 830.12 is amended to remove a reference to the obsolete term “registered sanitarian.” See Env’t Code § 8000(c) (“registered sanitarian” means “registered environmental health specialist”).

**Penal Code § 1174.3 (amended). Facility design**

SEC. \_\_\_\_\_. Section 1174.3 of the Penal Code is amended to read:

1174.3. (a) The department shall ensure that the facility designs provide adequate space to carry out this chapter, including the capability for nonsecure housing, programming, child care, food services, treatment services, educational or vocational services, intensive day treatment, and transitional living skills services.

(b) The agency selected to operate the program shall administer and operate the center and program consistent with the criteria set forth in this chapter and any criteria established by the department. These responsibilities shall include maintenance and compliance with all laws, regulations, and health standards. The department shall contract to reimburse the agency selected to operate this program for women who would otherwise be sentenced to state prison based upon actual costs not provided by other funding sources.

(c) Notwithstanding any other law, Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code shall not apply to any facility used for multiperson residential use in the last five years, including, but not limited to, motels, hotels, long-term care facilities, apartment buildings, and rooming houses, or to any project for which facilities intended to house no more than 75 women and children are constructed or leased pursuant to this chapter.

(d) Proposals submitted pursuant to this chapter are exempt from approval and submittal of plans and specifications to the Joint Legislative Committee on Prison Construction Operations and other legislative fiscal committees.

**Comment.** Section 1174.3 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Penal Code § 2045.11 (amended). Facility level**

SEC. \_\_\_\_\_. Section 2045.11 of the Penal Code is amended to read:

2045.11. The facility authorized by Section 2045.10 shall be a combination 1,000-bed Level III and 1,000-bed Level IV prison together with a 200-bed Level I support services facility on the existing grounds of the Correctional Training Facility in Monterey County.

1 The provisions of Division 13 3 (commencing with Section 21000) of the ~~Public~~  
2 ~~Resources~~ Environment Code that require consideration of alternatives for a proposed  
3 project shall not apply to the project authorized by Section 2045.10.

4 **Comment.** Section 2045.11 is amended to substitute a reference to the Environment Code  
5 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
6 Resources Code.

7 **Penal Code § 4497.02 (amended). Application of CEQA**

8 SEC. \_\_\_\_\_. Section 4497.02 of the Penal Code is amended to read:

9 4497.02. (a) For the purpose of this chapter:

10 (1) "Board" means the Board of Corrections.

11 (2) "Fund" means the 1988 County Correctional Facilities Capital Expenditure and  
12 Youth Facility Fund.

13 (b) The Board of Corrections shall not itself be deemed a responsible agency, as  
14 defined by Section 21069 of the ~~Public Resources~~ Environment Code, or otherwise be  
15 subject to the California Environmental Quality Act for any activities under this title, the  
16 County Jail Capital Expenditure Bond Acts of 1981 or 1984, or the County Facility  
17 Capital Expenditure Bond Act of 1986. This subdivision does not exempt any local  
18 agency from the requirements of the California Environmental Quality Act.

19 **Comment.** Section 4497.02 is amended to substitute a reference to the Environment Code  
20 provision that continues former Section 21069 of the Public Resources Code.

21 **Penal Code § 6241 (amended). Substance Abuse Community Correctional Detention**  
22 **Centers Fund**

23 SEC. \_\_\_\_\_. Section 6241 of the Penal Code is amended to read:

24 6241. (a) The Substance Abuse Community Correctional Detention Centers Fund is  
25 hereby created within the State Treasury. The Board of Corrections is authorized to  
26 provide funds, as appropriated by the Legislature, for the purpose of establishing  
27 substance abuse community correctional detention centers. These facilities shall be  
28 operated locally in order to manage parole violators, those select individuals sentenced to  
29 state prison for short periods of time, and other sentenced local offenders with a known  
30 history of substance abuse, and as further defined by this chapter.

31 (b) The facilities constructed with funds disbursed pursuant to this chapter in a county  
32 shall contain no less than 50 percent of total beds for use by the Department of  
33 Corrections.

34 (1) Upon agreement, the county and the department may negotiate any other mix of  
35 state and local bed space, providing the state's proportionate share shall not be less than  
36 50 percent in the portion of the facilities financed through state funding.

37 (2) Nothing in this chapter shall prohibit the county from using county funds or  
38 nonrestricted jail bond funds to build and operate additional facilities in conjunction with  
39 the centers provided for in this chapter.

40 (c) Thirty million dollars (\$30,000,000) in funds shall be provided from the 1990  
41 Prison Construction Fund and the 1990-B Prison Construction Fund, with fifteen million  
42 dollars (\$15,000,000) each from the June 1990 bond issue and the November 1990 bond  
43 issue, for construction purposes set forth in this chapter, provided that funding is  
44 appropriated in the state budget from the June and November 1990, prison bond issues  
45 for purposes of this chapter.

46 (d) Funds shall be awarded to counties based upon the following policies and criteria:

47 (1) Priority shall be given to urban counties with populations of 450,000 or more, as  
48 determined by Department of Finance figures. The board may allocate up to 10 percent of  
49 the funding to smaller counties or combinations of counties as pilot projects, if it

1 concludes that proposals meet the requirements of this chapter, commensurate with the  
2 facilities and programming that a smaller county can provide.

3 (2) Upon application and submission of proposals by eligible counties, representatives  
4 of the board shall evaluate proposals and select recipients.

5 To help ensure that state-of-the-art drug rehabilitation and related programs are  
6 designed, implemented, and updated under this chapter, the board shall consult with not  
7 less than three authorities recognized nationwide with experience or expertise in the  
8 design or operation of successful programs in order to assist the board in all of the  
9 following:

10 (A) Drawing up criteria on which requests for proposals will be sought.

11 (B) Selecting proposals to be funded.

12 (C) Assisting the board in evaluation and operational problems of the programs, if  
13 those services are approved by the board.

14 Funding also shall be sought by the board from the federal government and private  
15 foundation sources in order to defray the costs of the board's responsibilities under this  
16 chapter.

17 (3) Preference shall be given to counties that can demonstrate a financial ability and  
18 commitment to operate the programs it is proposing for a period of at least three years  
19 and to make improvements as proposed by the department and the board.

20 (4) Applicants receiving awards under this chapter shall be selected from among those  
21 deemed appropriate for funding according to the criteria, policies, and procedures  
22 established by the board. Criteria shall include success records of the types of programs  
23 proposed based on nationwide standards for successful programs, if available, expertise  
24 and hands-on experience of persons who will be in charge of proposed programs, cost  
25 effectiveness, including cost per bed, speed of construction, a demonstrated ability to  
26 construct the maximum number of beds which shall result in an overall net increase in the  
27 number of beds in the county for state and local offenders, comprehensiveness of  
28 services, location, participation by private or community-based organizations, and  
29 demonstrated ability to seek and obtain supplemental funding as required in support of  
30 the overall administration of this facility from sources such as the Department of Alcohol  
31 and Drug Programs, the Office of Criminal Justice Planning, the National Institute of  
32 Corrections, the Department of Justice, and other state and federal sources.

33 (5) Funds disbursed under subdivision (c) shall be used for construction of substance  
34 abuse community correctional centers, with a level of security in each facility  
35 commensurate with public safety for the types of offenders being housed in or utilizing  
36 the facilities.

37 (6) Funds disbursed under this chapter shall not be used for the purchase of the site.  
38 Sites shall be provided by the county. However, a participating county may negotiate  
39 with the state for use of state land at nearby corrections facilities or other state facilities,  
40 provided that the locations fit in with the aims of the programs established by this  
41 chapter.

42 The county shall be responsible for ensuring the siting, acquisition, design, and  
43 construction of the center consistent with the California Environmental Quality Act  
44 pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~  
45 Environment Code.

46 (7) Staff of the department and the board, as well as persons selected by the board, shall  
47 be available to counties for consultation and technical services in preparation and  
48 implementation of proposals accepted by the board.

49 (8) The board also shall seek advice from the Department of Alcohol and Drug  
50 Programs in exercising its responsibilities under this chapter.

51 (9) Funds shall be made available to the county and county agency which is selected to  
52 administer the program by the board of supervisors of that county.

53 (10) Area of greatest need can be a factor considered in awarding contracts to counties.

(11) Particular consideration shall be given to counties that can demonstrate an ability to provide continuing counseling and programming for offenders in programs established under this chapter, once the offenders have completed the programs and have returned to the community.

(12) A county may propose a variety of types and sizes of facilities to meet the needs of its plan and to provide the services for varying types of offenders to be served under this chapter. Funds granted to a county may be utilized for construction of more than one facility.

Any county wishing to use existing county-owned sites or facilities may negotiate those arrangements with the Department of Corrections and the Board of Corrections to meet the needs of its plan.

**Comment.** Section 6241 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Penal Code § 7008 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 7008 of the Penal Code is amended to read:

7008. (a) Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code shall not apply to the addition of 150 Level I and Level II beds authorized by Section 5 of this act at San Gabriel Canyon, provided that the department has made the following finding with respect to that facility:

(1) The increase in bed capacity, if any, shall not exceed, 5 percent of the total capacity of the facility prior to the increase.

(2) Any modifications made to existing structures are internal only. No external additions to existing structures or construction of new structures shall be done. Modular structures used exclusively for prisoner program activity shall be exempt from this requirement.

(3) Any modifications to a facility shall not result in a significant depletion in water, sewage, or other environmental resources. The department shall present substantial evidence that this requirement has been met in the findings described in subdivision (b).

(b) The department shall make findings that the requirements of subdivision (a) have been met, and shall make the findings available to the public.

**Comment.** Section 7008 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Penal Code § 8631 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 8631 of the Penal Code is amended to read:

8631. The provisions of this division shall not be subject to the provisions of the California Environmental Quality Act (commencing with Section 21000 of the ~~Public Resources~~ Environment Code), the Subdivision Map Act (commencing with Section 66410 of the Government Code), or the Property Acquisition Law (commencing with Section 15850 of the Government Code).

**Comment.** Section 8631 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.



PUBLIC CONTRACT CODE

**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 42100) 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 provisions of former Article 1 (commencing with Section 43800) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code.

PUBLIC RESOURCES CODE

**Pub. Res. Code § 614 (amended). Implementation of soil conservation plan**

SEC. \_\_\_\_\_. Section 614 of the Public Resources Code is amended to read:  
614. (a) In order to implement the soil conservation plan which is adopted by the soil conservation committee, the department shall conduct a study and propose an implementation strategy to meet the intent of the plan. The study shall include, but not be limited to, all of the following:

(1) An assessment of the structural and policy changes needed in the department to carry out the soil conservation plan.

(2) A review of the provisions of Division 9 (commencing with Section 9000) for the purposes of providing a framework for soil conservation administration at the state and local levels.

(3) Recommendations on how the department can best deliver soil conservation services.

The department shall report the results of this study to the Legislature on or before December 1, 1988.

(b) The department shall conduct a study of resource conservation districts in California. The study shall include, but not be limited to, all of the following:

(1) A review of the provisions of Division 9 (commencing with Section 9000) to determine the changes in policy and structure necessary to enable resource conservation districts to better provide soil conservation assistance.

(2) Recommendations on the consolidation and reorganization of resource conservation districts.

The department shall report the result of this study to the Legislature on or before December 1, 1989.

(c) The department shall provide soil conservation advisory services to local governments, land owners, farmers and ranchers, resource conservation districts, and the general public. The services shall include, but not be limited to, all of the following:

(1) State level liaison with the resource conservation districts.

(2) Review of environmental impact reports as required under the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the Environment Code).



(3) Provision of information on the soil conservation components of the 1985 Food Security Act.

(4) Assistance to local governments on the development of soil conservation guidelines for general plans.

(5) Responding to inquiries from the general public.

From funds appropriated for purposes of this section, an amount, not to exceed fifty thousand dollars (\$50,000), shall be utilized for the purposes of this subdivision.

**Comment.** Section 614 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 2714 (amended). Excavation and grading**

SEC. \_\_\_\_\_. Section 2714 of the Public Resources Code is amended to read:

2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code.

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code.

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

1 (f) Any other surface mining operations that the board, as defined by Section 2001,  
2 determines to be of an infrequent nature and which involve only minor surface  
3 disturbances.

4 (g) The solar evaporation of sea water or bay water for the production of salt and  
5 related minerals.

6 (h) Emergency excavations or grading conducted by the Department of Water  
7 Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or  
8 restoring damage to property due to imminent or recent floods, disasters, or other  
9 emergencies.

10 (i)(1) Surface mining operations conducted on lands owned or leased, or upon which  
11 easements or rights-of-way have been obtained, by the Department of Water Resources  
12 for the purpose of the State Water Resources Development System or flood control, and  
13 surface mining operations on lands owned or leased, or upon which easements or rights-  
14 of-way have been obtained, by the Reclamation Board for the purpose of flood control, if  
15 the Department of Water Resources adopts, after submission to and consultation with, the  
16 Department of Conservation, a reclamation plan for lands affected by these activities, and  
17 those lands are reclaimed in conformance with the standards specified in regulations of  
18 the board adopted pursuant to this chapter. The Department of Water Resources shall  
19 provide an annual report to the Department of Conservation by the date specified by the  
20 Department of Conservation on these mining activities.

21 (2) Nothing in this subdivision shall require the Department of Water Resources or the  
22 Reclamation Board to obtain a permit or secure approval of a reclamation plan from any  
23 city or county in order to conduct surface mining operations specified in paragraph (1).  
24 Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant  
25 to Section 2774.1, if it is determined that a surface mine operator, acting under contract  
26 with the Department of Water Resources or the Reclamation Board on lands other than  
27 those owned or leased, or upon which easements or rights-of-way have been obtained, by  
28 the Department of Water Resources or the Reclamation Board, is otherwise not in  
29 compliance with this chapter.

30 (j)(1) Excavations or grading for the exclusive purpose of obtaining materials for  
31 roadbed construction and maintenance conducted in connection with timber operations or  
32 forest management on land owned by the same person or entity. This exemption is  
33 limited to excavation and grading that is conducted adjacent to timber operation or forest  
34 management roads and shall not apply to onsite excavation or grading that occurs within  
35 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to  
36 excavation for materials that are, or have been, sold for commercial purposes.

37 (2) This exemption shall be available only if slope stability and erosion are controlled  
38 in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of  
39 Title 14 of the California Code of Regulations and, upon closure of the site, the person  
40 closing the site implements, where necessary, revegetation measures and postclosure uses  
41 in consultation with the Department of Forestry and Fire Protection.

42 (k) Excavations, grading, or other earthmoving activities in an oil or gas field that are  
43 integral to, and necessary for, ongoing operations for the extraction of oil or gas that  
44 comply with all of the following conditions:

45 (1) The operations are being conducted in accordance with Division 3 (commencing  
46 with Section 3000).

47 (2) The operations are consistent with any general plan or zoning applicable to the site.

48 (3) The earthmoving activities are within oil or gas field properties under a common  
49 owner or operator.

50 (4) No excavated materials are sold for commercial purposes.

51 **Comment.** Section 2714 is amended to substitute references to the Environment Code  
52 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
53 Resources Code.

**Pub. Res. Code § 2762 (amended). Mineral resource management policies**

SEC. \_\_\_\_\_. Section 2762 of the Public Resources Code is amended to read:

2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 3 (commencing with Section 21000) of the Environment Code, or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 3 (commencing with Section 21000) of the Environment Code, the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

**Comment.** Section 2762 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 2770 (amended). Permit for surface mining operations**

SEC. \_\_\_\_\_. Section 2770 of the Public Resources Code is amended to read:

1       2770. (a) Except as provided in this section, no person shall conduct surface mining  
2 operations unless a permit is obtained from, a reclamation plan has been submitted to and  
3 approved by, and financial assurances for reclamation have been approved by, the lead  
4 agency for the operation pursuant to this article.

5       (b) Any person with an existing surface mining operation who has vested rights  
6 pursuant to Section 2776 and who does not have an approved reclamation plan shall  
7 submit a reclamation plan to the lead agency not later than March 31, 1988. If a  
8 reclamation plan application is not on file by March 31, 1988, the continuation of the  
9 surface mining operation is prohibited until a reclamation plan is submitted to the lead  
10 agency. For purposes of this subdivision, reclamation plans may consist of all or the  
11 appropriate sections of any plans or written agreements previously approved by the lead  
12 agency or another agency, together with any additional documents needed to substantially  
13 meet the requirements of Sections 2772 and 2773 and the lead agency surface mining  
14 ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all  
15 documents which together were proposed to serve as the reclamation plan are submitted  
16 for approval to the lead agency in accordance with this chapter.

17       (c) If a person with an existing surface mining operation has received lead agency  
18 approval of its financial assurances for reclamation prior to January 1, 1991, the lead  
19 agency shall administratively review those existing financial assurances in accordance  
20 with subdivision (d) prior to January 1, 1992. The review of existing financial assurances  
21 shall not be considered a project for purposes of Division 43 3 (commencing with Section  
22 21000) of the Environment Code. Any person with an existing surface mining operation  
23 which does not have financial assurances that received lead agency approval prior to  
24 January 1, 1991, shall submit financial assurances for reclamation for review in  
25 accordance with subdivision (d).

26       (d) The lead agency's review of reclamation plans submitted pursuant to subdivision  
27 (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or  
28 the financial assurances substantially meet the applicable requirements of Sections 2772,  
29 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to  
30 subdivision (a) of Section 2774, but, in any event, the lead agency shall require that  
31 financial assurances for reclamation be sufficient to perform reclamation of lands  
32 remaining disturbed. Reclamation plans or financial assurances determined to  
33 substantially meet these requirements shall be approved by the lead agency for purposes  
34 of this chapter. Reclamation plans or financial assurances determined not to substantially  
35 meet these requirements shall be returned to the operator within 60 days. The operator  
36 has 60 days to revise the plan or financial assurances to address identified deficiencies, at  
37 which time the revised plan or financial assurances shall be returned to the lead agency  
38 for review and approval. Except as specified in subdivision (e) or (i), unless the operator  
39 has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to  
40 nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal  
41 pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that  
42 appeal is pending before the board, the continuation of the surface mining operation is  
43 prohibited until a reclamation plan and financial assurances for reclamation are approved  
44 by the lead agency.

45       (e) Any person who, based on the evidence of the record, can substantiate that a lead  
46 agency has either (1) failed to act according to due process or has relied on considerations  
47 not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1,  
48 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of  
49 Section 2774, in reaching a decision to deny approval of a reclamation plan or financial  
50 assurances for reclamation, (2) failed to act within a reasonable time of receipt of a  
51 completed application, or (3) failed to review and approve reclamation plans or financial  
52 assurances as required by subdivisions (c) and (d), may appeal that action or inaction to  
53 the board.



1 (f) The board may decline to hear an appeal if it determines that the appeal raises no  
2 substantial issues related to the lead agency's review pursuant to this section.

3 (g) Appeals that the board does not decline to hear shall be scheduled and heard at a  
4 public hearing within 45 days of the filing of the appeal, or any longer period as may be  
5 mutually agreed upon by the board and the person filing the appeal. In hearing an appeal,  
6 the board shall only determine whether the reclamation plan or the financial assurances  
7 substantially meet the applicable requirements of Sections 2772, 2773, 2773.1, and the  
8 lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section  
9 2774. A reclamation plan or financial assurances determined to meet these requirements  
10 shall be approved. A reclamation plan or financial assurances determined not to meet  
11 these requirements shall be returned to the person filing the appeal with a notice of  
12 deficiencies, who shall be granted, once only, a period of 30 days, or a longer period  
13 mutually agreed upon by the operator and the board, to correct the noted deficiencies and  
14 submit the revised reclamation plan or the revised financial assurances to the lead agency  
15 for review and approval.

16 (h)(1) Within 90 days of a surface mining operation becoming idle, as defined in  
17 Section 2727.1, the operator shall submit to the lead agency for review and approval, an  
18 interim management plan. The review and approval of an interim management plan shall  
19 not be considered a project for purposes of Division 43 3 (commencing with Section  
20 21000) of the Environment Code. The approved interim management plan shall be  
21 considered an amendment to the surface mining operation's approved reclamation plan,  
22 for purposes of this chapter. The interim management plan shall provide measures the  
23 operator will implement to maintain the site in compliance with this chapter, including,  
24 but not limited to, all permit conditions.

25 (2) The interim management plan may remain in effect for a period not to exceed five  
26 years, at which time the lead agency shall do one of the following:

27 (A) Renew the interim management plan for another period not to exceed five years, if  
28 the lead agency finds that the surface mining operator has complied fully with the interim  
29 management plan.

30 (B) Require the surface mining operator to commence reclamation in accordance with  
31 its approved reclamation plan.

32 (3) The financial assurances required by Section 2773.1 shall remain in effect during  
33 the period that the surface mining operation is idle. If the surface mining operation is still  
34 idle after the expiration of its interim management plan, the surface mining operation  
35 shall commence reclamation in accordance with its approved reclamation plan.

36 (4) Within 60 days of the receipt of the interim management plan, or a longer period  
37 mutually agreed upon by the lead agency and the operator, the lead agency shall review  
38 and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a)  
39 of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so  
40 notify the operator in writing. Otherwise, the lead agency shall notify the operator in  
41 writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period  
42 mutually agreed upon by the operator and the lead agency, to submit a revised plan.

43 (5) The lead agency shall approve or deny approval of the revised interim management  
44 plan within 60 days of receipt. If the lead agency denies approval of the revised interim  
45 management plan, the operator may appeal that action to the lead agency's governing  
46 body, which shall schedule a public hearing within 45 days of the filing of the appeal, or  
47 any longer period mutually agreed upon by the operator and the governing body.

48 (6) Unless review of an interim management plan is pending before the lead agency, or  
49 an appeal is pending before the lead agency's governing body, a surface mining operation  
50 which remains idle for over one year after becoming idle as defined in Section 2727.1  
51 without obtaining approval of an interim management plan shall be considered  
52 abandoned and the operator shall commence and complete reclamation in accordance  
53 with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

**Comment.** Section 2770 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 2772 (amended). Reclamation plan**

SEC. \_\_\_\_\_. Section 2772 of the Public Resources Code is amended to read:

2772. (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations on the lands.

(b) All documentation for the reclamation plan shall be submitted by the lead agency to the department at one time.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) The size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(6) A description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.

(8) A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including both of the following:

(A) A description of the manner in which contaminants will be controlled, and mining waste will be disposed.

(B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation will occur.

(9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) Any other information which the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining operation, or



as part of an environmental document prepared for the project pursuant to Division 13 3 (commencing with Section 21000) of the Environment Code, may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirements of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with Division 13 3 (commencing with Section 21000) of the Environment Code.

**Comment.** Section 2772 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 2774 (amended). Review and approval of plan**

SEC. \_\_\_\_\_. Section 2774 of the Public Resources Code is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause such an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the surface mining operation in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a

1 reclamation plan or plan amendments to the director for review, the lead agency shall also  
2 submit to the director, for use in reviewing the reclamation plan or plan amendments,  
3 information from any related document prepared, adopted, or certified pursuant to  
4 Division 13 3 (commencing with Section 21000) of the Environment Code, and shall  
5 submit any other pertinent information. The lead agency shall certify to the director that  
6 the reclamation plan is in compliance with the applicable requirements of Article 1  
7 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California  
8 Code of Regulations in effect at the time that the reclamation plan is submitted to the  
9 director for review.

10 (d)(1) The director shall have 30 days from the date of receipt of a reclamation plan or  
11 plan amendments submitted pursuant to subdivision (c), and 45 days from the date of  
12 receipt of financial assurances submitted pursuant to subdivision (c), to prepare written  
13 comments, if the director so chooses. The lead agency shall evaluate any written  
14 comments received from the director relating to the reclamation plan, plan amendments,  
15 or financial assurances within a reasonable amount of time.

16 (2) The lead agency shall prepare a written response to the director's comments  
17 describing the disposition of the major issues raised. In particular, if the lead agency's  
18 position is at variance with any of the recommendations made, or objections raised, in the  
19 director's comments, the written response shall address, in detail, why specific comments  
20 and suggestions were not accepted. Copies of any written comments received and  
21 responses prepared by the lead agency shall be forwarded to the operator.

22 (3) To the extent that there is a conflict between the comments of a trustee agency or a  
23 responsible agency that are based on the agency's statutory or regulatory authority and  
24 the comments of other commenting agencies which are received by the lead agency  
25 pursuant to Division 13 3 (commencing with Section 21000) of the Environment Code  
26 regarding a reclamation plan or plan amendments, the lead agency shall consider only the  
27 comments of the trustee agency or responsible agency.

28 (e) Lead agencies shall notify the director of the filing of an application for a permit to  
29 conduct surface mining operations within 30 days of such an application being filed with  
30 the lead agency. By July 1, 1991, each lead agency shall submit to the director for every  
31 active or idle mining operation within its jurisdiction, a copy of the mining permit  
32 required pursuant to Section 2774, and any conditions or amendments to those permits.  
33 By July 1 of each subsequent year, the lead agency shall submit to the director for each  
34 active or idle mining operation a copy of any permit or reclamation plan amendments, as  
35 applicable, or a statement that there have been no changes during the previous year.  
36 Failure to file with the director the information required under this section shall be cause  
37 for action under Section 2774.4.

38 **Comment.** Section 2774 is amended to substitute references to the Environment Code  
39 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
40 Resources Code.

#### 41 **Pub. Res. Code § 3715.5 (amended). Application of CEQA**

42 SEC. \_\_\_\_\_. Section 3715.5 of the Public Resources Code is amended to read:  
43 3715.5. For the purposes of the California Environmental Quality Act (commencing  
44 with Section 21000 of the Environment Code), the division shall be the lead agency as  
45 defined in Section 21067 of the Environment Code for all geothermal exploratory  
46 projects as defined in Section 21065.5 of the Environment Code. The division shall  
47 complete all its responsibilities pursuant to the California Environmental Quality Act,  
48 including public and agency review and approval or disapproval of the project, within  
49 135 days of the receipt of the application for such project. The division may delegate its  
50 lead agency responsibility under this section to a county which has adopted a geothermal  
51 element, as defined in Section 25133, for its general plan. Any such delegation shall  
52 provide that the county complete its lead agency responsibility under this section within

1 135 days of the receipt of the application for such project. The provisions of this section  
2 shall not apply to geothermal exploratory projects as defined in Section 21065.5 of the  
3 Environment Code where, prior to January 1, 1979, preparation of an environmental  
4 impact report for such project has begun or an application for such project which will  
5 require preparation of an environmental impact report has been filed.

6 **Comment.** Section 3715.5 is amended to substitute references to the Environment Code  
7 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
8 Resources Code.

9 **Pub. Res. Code § 4467 (amended). Elements in plan**

10 SEC. \_\_\_\_\_. Section 4467 of the Public Resources Code is amended to read:

11 4467. (a) Each plan shall include, but shall not be limited to, elements regarding  
12 wildland fuel management and reduction, air and water quality, water conservation and  
13 watershed improvement, soil conservation, wildlife habitat improvement and protection,  
14 range and forage improvement, and timberland improvement and protection.

15 (b) The plan shall be prepared in accordance with the California Environmental Quality  
16 Act (commencing with Section 21000 of the Environment Code) and, when approved,  
17 shall constitute the environmental impact report for the implementation of the plan for  
18 each area of wildlands designated by the board.

19 (c) The department shall coordinate the development of each plan with the general plan  
20 of each county in which the experimental program is conducted and shall, to the  
21 maximum extent feasible, conform the plan to the land-use plans and objectives of state  
22 and local government.

23 (d) Copies of each plan shall be made available to each county, resource conservation  
24 district, and person owning land in the area in which the experimental program is  
25 conducted.

26 **Comment.** Section 4467 is amended to substitute a reference to the Environment Code  
27 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
28 Resources Code.

29 **Pub. Res. Code § 4582.6 (amended). Timber harvesting plan**

30 SEC. \_\_\_\_\_. Section 4582.6 of the Public Resources Code is amended to read:

31 4582.6. (a) Upon receipt of the timber harvesting plan, the department shall place it, or  
32 a true copy thereof, in a file available for public inspection in the county in which timber  
33 operations are proposed under the plan, and, for the purpose of interdisciplinary review,  
34 shall transmit a copy to the Department of Fish and Game, the appropriate California  
35 regional water quality control board, the county planning agency, and, if the area is  
36 within its jurisdiction, the Tahoe Regional Planning Agency, as the case may be. The  
37 department shall invite, consider, and respond in writing to comments received from  
38 public agencies to which the plan has been transmitted and shall consult with those  
39 agencies at their request.

40 (b) Within the public comment period, any responsible agency, as defined in Section  
41 21069 of the Environment Code, shall provide the department with specific comments or  
42 recommendations, or both, on any significant environmental issues and proposed  
43 mitigation measures raised by the timber harvesting plan. The responsible agency shall  
44 also identify its statutory authority for any requests for mitigation measures that it may  
45 determine to be necessary. If the responsible agency fails to respond by the end of the  
46 public comment period, the department may assume that the responsible agency has no  
47 comments or recommendations concerning the timber harvesting plan, but the failure of  
48 the responsible agency to make comments or recommendations shall not be used as the  
49 basis for a determination or presumption that the timber harvesting plan will have no  
50 significant effect on the environment. The department shall consider all comments and

1 recommendations received from responsible agencies and from the public during the  
2 public comment period. If a responsible agency fails to respond within the public  
3 comment period, it may request additional time to respond. The director may grant an  
4 extension of the time to respond of up to 14 calendar days if he or she determines, after  
5 consultation with the person submitting the timber harvesting plan, that an extension is  
6 necessary.

7 (c) To ensure that all public comments and concerns are considered by the department,  
8 each responsible agency shall maintain a list of written information it disseminates on the  
9 timber harvesting plan under review prior to the close of the public comment period.

10 (d) On and after July 1, 1983, the board of supervisors or planning commission of any  
11 county for which rules have been adopted pursuant to Section 4516.5 may request a  
12 public hearing on any timber harvesting plan submitted for lands within the county, and  
13 the department shall hold a hearing for the purpose of public comment, if requested, prior  
14 to taking any action on the timber harvesting plan pursuant to Section 4582.7. The  
15 hearing shall be held in the county in which the proposed harvest is located at a time and  
16 place convenient to the public. The hearing shall be held in county offices if made  
17 available by the county for that purpose. The chairperson of the hearing shall be a  
18 representative of the department, shall receive both oral and written testimony from  
19 members of the public, local government officials, persons submitting the plans, and  
20 others, and shall provide for the hearing to be electronically recorded. The department  
21 shall prepare and make available written responses to significant issues raised at the  
22 hearing. The requirements of this subdivision shall not be construed as extending the time  
23 within which any action is required to be taken pursuant to Section 4582.7.

24 **Comment.** Section 4582.6 is amended to substitute a reference to the Environment Code  
25 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
26 Resources Code.

27 **Pub. Res. Code § 4800 (amended). Legislative intent**

28 SEC. \_\_\_\_\_. Section 4800 of the Public Resources Code is amended to read:  
29 4800. It is the intent of the Legislature, in enacting this chapter, to do all of the  
30 following:

31 (a) To provide coordination on wildlife and timberland issues within the Resources  
32 Agency.

33 (b) To improve and coordinate the state data bases for use in analyzing the cumulative  
34 impacts of timber harvesting pursuant to the California Environmental Quality Act  
35 (Division 13 3 (commencing with Section 21000) of the Environment Code).

36 (c) To improve the technical basis upon which the Department of Fish and Game  
37 predicates recommendations for mitigating site-specific and cumulative effects on  
38 wildlife from timber harvesting activities.

39 (d) To provide recommendations to the board concerning creation of a list of species of  
40 special concern for which additional forest practices rules may be needed.

41 (e) To provide recommendations to the Fish and Game Commission concerning  
42 additions to its list of species that are threatened or endangered.

43 (f) To provide authority to the state to work cooperatively with the United States Forest  
44 Service, including the ability to provide and receive funding for wildlife studies.

45 **Comment.** Section 4800 is amended to substitute a reference to the Environment Code  
46 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
47 Resources Code.

48 **Pub. Res. Code § 5002.2 (amended). Classification or reclassification of unit**

49 SEC. \_\_\_\_\_. Section 5002.2 of the Public Resources Code is amended to read:



1 5002.2. (a) Following classification or reclassification of a unit by the State Park and  
2 Recreation Commission, and prior to the development of any new facilities in any  
3 previously classified unit, the department shall prepare a general plan or revise any  
4 existing plan, as the case may be, for the unit.

5 The general plan shall consist of elements that will evaluate and define the proposed  
6 land uses, facilities, concessions, operation of the unit, any environmental impacts, and  
7 the management of resources, and shall serve as a guide for the future development,  
8 management, and operation of the unit.

9 The general plan constitutes a report on a project for the purposes of Section 21100 of  
10 the Environment Code. The general plan for a unit shall be submitted by the department  
11 to the State Park and Recreation Commission for approval.

12 (b) The resource element of the general plan shall evaluate the unit as a constituent of  
13 an ecological region and as a distinct ecological entity, based upon historical and  
14 ecological research of plant-animal and soil-geological relationships and shall contain a  
15 declaration of purpose, setting forth specific long-range management objectives for the  
16 unit consistent with the unit's classification pursuant to Article 1.7 (commencing with  
17 Section 5019.50), and a declaration of resource management policy, setting forth the  
18 precise actions and limitations required for the achievement of the objectives established  
19 in the declaration of purpose.

20 (c) Notwithstanding the requirements of subdivision (a), the department is not required  
21 to prepare a general plan for a unit that has no general plan or to revise an existing plan,  
22 as the case may be, if the only development contemplated by the department consists of  
23 the repair, replacement, or rehabilitation of an existing facility; the construction of a  
24 temporary facility, so long as such construction does not result in the permanent  
25 commitment of a resource of the unit; any undertaking necessary for the protection of  
26 public health or safety; or any emergency measure necessary for the immediate protection  
27 of natural or cultural resources; or any combination thereof at a single unit. Any  
28 development is subject to the requirements of the California Environmental Quality Act  
29 (Division 13 3 (commencing with Section 21000) of the Environment Code).

30 (d) Any general plan approved prior to July 1, 1972, may be used as the basis for  
31 development if the director finds that there has been no significant change in the  
32 resources of the unit since approval of the plan and that the plan is compatible with  
33 current policies governing development of the unit and the classification of the unit.

34 (e) Consistent with good planning and sound resource management, the department  
35 shall, in discharging its responsibilities under this section, attempt to make units of the  
36 state park system accessible and usable by the general public at the earliest opportunity.

37 (f) The department may prepare a general plan which includes more than one unit of  
38 the state park system for units which are in close proximity to one another and which  
39 have similar resources and recreational opportunities if that action will facilitate the  
40 protection of public resources and public access to units of the state park system.

41 **Comment.** Section 5002.2 is amended to substitute references to the Environment Code  
42 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
43 the Public Resources Code.

#### 44 **Pub. Res. Code § 5072.8 (amended). Recreational Trails Fund**

45 SEC. \_\_\_\_\_. Section 5072.8 of the Public Resources Code is amended to read:

46 5072.8. (a) The Recreational Trails Fund is hereby created. Moneys in the Recreational  
47 Trails Fund shall be available, upon appropriation by the Legislature, to the department  
48 for competitive grants to cities, counties, districts, state agencies, and nonprofit  
49 organizations with management responsibilities over public lands to acquire and develop  
50 recreational trails.

51 (b) The Controller shall promptly transfer all money received by the state from the  
52 federal government as allocations from the National Recreational Trails Trust Fund

pursuant to the Steve Symms National Recreational Trails Fund Act of 1991 (P.L. 102-240) and deposited in the Federal Trust Fund, to the Recreational Trails Fund. The money in the Recreational Trails Fund shall be available to the department for expenditure, upon appropriation by the Legislature, for grants pursuant to subdivision (a), in accordance with the Steve Symms National Recreational Trails Fund Act of 1991. Seventy percent of the money received by the state from the federal government and transferred to the Recreational Trails Fund pursuant to this subdivision shall be available only for nonmotorized recreational trails with at least one-half of that amount available only for grants to cities, counties, districts, and nonprofit organizations for the acquisition and development of new nonmotorized recreational trails and the reconstruction or relocation of existing nonmotorized recreational trails.

(c) The department shall prepare and adopt criteria and procedures for evaluating applications for grants, which, at a minimum, shall include certification that the project is consistent with the applicant's general plan or the equivalent planning document, complies with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code) and other environmental protection laws and regulations, and is not required as a mitigation measure as a condition for a permit or other entitlement. The department shall forward to the Director of Finance for inclusion in the Governor's Budget of each fiscal year all projects that are recommended for funding and those projects shall be contained in the Budget Bill for that fiscal year.

(d) No grant shall be made from the Recreational Trails Fund to an applicant unless the applicant agrees to both of the following conditions:

(1) To maintain and operate the property acquired, developed, rehabilitated, or restored with the funds in perpetuity. With the approval of the department, the applicant or its successors in interest in the property may transfer the responsibility to maintain and operate the property in accordance with this section. In the case of lands not held in fee by the applicant (limited tenure projects), perpetuity shall be in accordance with the tenure or for the length of time sufficient to provide public benefits commensurate with the type and duration of interest in land held by the applicant.

(2) To use the property only for the purposes of the grant and to make no other use, sale, or other disposition or conversion of the property except as authorized by a specific act of the Legislature and the property shall be replaced with property of equivalent value and usefulness as determined by the department. The property acquired or developed may be transferred to another public agency if the successor agency assumes the obligations imposed under this chapter.

(e) All applicants for a grant pursuant to this section shall submit an application to the department for approval. Each application shall include in writing the conditions specified in paragraphs (1) and (2) of subdivision (d).

**Comment.** Section 5072.8 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5090.32 (amended). Functions, duties and responsibilities performed by division**

SEC. \_\_\_\_\_. Section 5090.32 of the Public Resources Code is amended to read:  
5090.32. All of the following functions, duties, and responsibilities of the department shall be performed exclusively by the division:

(a) The planning, acquisition, development, construction, and conservation and rehabilitation of lands in and for the system.

(b) The direct management, maintenance, administration, and operation of lands in the system and the providing of law enforcement and appropriate public safety activities.

(c) Management of the fund.

(d) The implementation of all aspects of the program.



(e) Ensuring program compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code) in state vehicular recreation areas.

**Comment.** Section 5090.32 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5090.50 (amended). Trails and related uses**

SEC. \_\_\_\_\_. Section 5090.50 of the Public Resources Code is amended to read:

5090.50. Grants may be made to cities, counties, and appropriate districts for the planning, acquisition, development, construction, maintenance, administration, operation, and conservation of trails, trailheads, areas, and other facilities for the use of off-highway motor vehicles that are in accordance with local plans and any plans for off-highway motor vehicle recreation areas and trails prepared by the division and for the enforcement of laws and regulations regarding the use of off-highway vehicles within the project site.

Every applicant for a grant shall comply with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code). This paragraph is declaratory of, and does not constitute a change in, existing law.

**Comment.** Section 5090.50 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5090.55 (amended). Funding for cooperative agreements**

SEC. \_\_\_\_\_. Section 5090.55 of the Public Resources Code is amended to read:

5090.55. (a) Any moneys in the fund allocated pursuant to subdivision (a) of Section 5090.61 and not appropriated for local assistance grants pursuant to Section 5090.50, shall be available for appropriation to the division for expenditure pursuant to cooperative agreements with agencies of the United States or federally recognized Indian reservations for any joint undertaking of any function that the division is authorized by this chapter to perform.

(b) No cooperative agreement shall become effective until the division has determined that the participating agency of the United States has completed environmental review procedures that are at least comparable to those of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code).

(c) All new acquisitions, development projects, and cooperative agreements shall be subject to the uniform application of soil, wildlife, and habitat protection standards required at state vehicular recreation areas.

**Comment.** Section 5090.55 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.130 (amended). Grant application review**

SEC. \_\_\_\_\_. Section 5096.130 of the Public Resources Code is amended to read:

5096.130. (a) An application for a grant pursuant to subdivision (a) of Section 5096.124 shall be submitted to the Director of Parks and Recreation for review. The application shall be accompanied by a certification from the planning agency of the applicant that the project is consistent with the park and recreation plan for the applicant's jurisdiction.

(b) The minimum amount that may be applied for any individual grant project is ten thousand dollars (\$10,000). Any application for a state grant shall comply with the provisions of the Environmental Quality Act of 1970 (commencing with Section 21000 of the Environment Code).

(c) Upon completion of the grant application review by the Director of Parks and Recreation, approved projects shall be forwarded to the Director of Finance for inclusion in the Budget Bill.

**Comment.** Section 5096.130 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.157 (amended). Local assistance grants**

SEC. \_\_\_\_\_. Section 5096.157 of the Public Resources Code is amended to read:

5096.157. (a) An application for a local assistance grant pursuant to this article shall be submitted to the Director of Parks and Recreation for review. The application shall be accompanied by certification from the planning agency of the applicant that the project is consistent with the park and recreation plan for the applicant's jurisdiction and would satisfy a demonstrated need.

(b) The minimum amount that may be applied for any individual project is twenty thousand dollars (\$20,000).

(c) Every application for a grant shall comply with the provisions of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the Environment Code).

(d) Upon completion of the review of applications submitted pursuant to subdivision (a), approved projects shall be forwarded to the Director of Finance for inclusion in the Budget Bill.

**Comment.** Section 5096.157 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.174 (amended). Grant application evaluation**

SEC. \_\_\_\_\_. Section 5096.174 of the Public Resources Code is amended to read:

5096.174. (a) An application for a grant shall be submitted to the State Coastal Conservancy for preliminary evaluation, review of adequacy, and classification as a park, beach, coastal access, or other project necessary to preserve coastal resource values.

(b) The minimum amount that may be applied for any individual project is one thousand dollars (\$1,000).

(c) Every application for a grant shall comply with the provisions of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the Environment Code).

**Comment.** Section 5096.174 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.236 (amended). Local assistance grant application**

SEC. \_\_\_\_\_. Section 5096.236 of the Public Resources Code is amended to read:

5096.236. (a) An application for a local assistance grant pursuant to this article shall be submitted to the Director of Parks and Recreation for review. Except for an application for a grant under category (4) or (5) of subdivision (a) of Section 5096.231, the application shall be accompanied by certification from the planning agency of the applicant that the project is consistent with the park and recreation plan for the applicant's jurisdiction and would satisfy a demonstrated need.

(b) The minimum amount that may be applied for any individual project is ten thousand dollars (\$10,000).

(c) Every application for a grant shall comply with the provisions of the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code).

(d) Upon completion of the review of applications submitted pursuant to subdivision (a), approved projects shall be forwarded to the Director of Finance for inclusion in the Budget Bill.

**Comment.** Section 5096.236 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.244 (amended). State Coastal Conservancy oversight**

SEC. \_\_\_\_\_. Section 5096.244 of the Public Resources Code is amended to read:

5096.244. (a) The State Coastal Conservancy shall prepare and adopt priorities, criteria, and procedures for the making of grants to local public agencies or non-profit organizations pursuant to Section 5096.232.

The procedures shall specify the categories of expenditures for grants, and shall include procedures for the submittal, review, and approval of applications, disbursements, and, where appropriate, repayment of grant funds.

(b) An application for a grant pursuant to this article shall be submitted to the State Coastal Conservancy for evaluation, review of adequacy, and classification as a park, beach, coastal access, or other project necessary to protect coastal resource values.

(c) The minimum amount that may be applied for any individual project is one thousand dollars (\$1,000).

(d) Every application for a grant shall comply with the provisions of the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code).

(e) Funds granted pursuant to Section 5096.232 may be expended for development, rehabilitation, or restoration only on lands owned by, or subject to a lease or other interest held by, the applicant. If those lands are not owned by the applicant, the applicant shall first demonstrate to the satisfaction of the State Coastal Conservancy that the development, rehabilitation, or restoration will provide benefits commensurate with the type and duration of interest in land held by the applicant.

(f) No state grant funds authorized under Section 5096.232 may be disbursed until the applicant agrees that any property acquired or developed with the funds shall be used by the applicant only for the purpose for which the funds were requested and that no other use, sale, or other disposition of the property shall be permitted except by specific act of the Legislature. If the use of the property is changed to one other than permitted under the category in Section 5096.232 from which the funds were appropriated, or the property is sold or otherwise disposed of, an amount equal to the amount of the grant or equal to the fair market value of the real property, or portion thereof, acquired or developed with the grant, whichever is greater, shall be used by the local public agency or the nonprofit organization for a purpose authorized in that category or shall be reimbursed to the State Coastal Conservancy Fund of 1984 for a use authorized in that category.

(g) No state grant funds authorized under Section 5096.232 may be disbursed unless the applicant agrees to maintain and operate the property acquired or developed pursuant to this article for a period commensurate with the type of project and the proportion of state grant funds and local funds allocated to the capital costs of the project.

(h) The State Coastal Conservancy shall report to the Legislature annually, on or before January 1, on the implementation of urban waterfront projects and local coastal program projects under categories (b) and (c) of Section 5096.232.

**Comment.** Section 5096.244 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5096.89 (amended). Application for state grant**

SEC. \_\_\_\_\_. Section 5096.89 of the Public Resources Code is amended to read:

5096.89. An application for a state grant pursuant to subdivision (a) of Section 5096.85 shall be submitted to the Secretary of the Resources Agency. The application for the state grant shall be accompanied by an adopted plan showing park and recreation lands and facilities, existing and proposed, sufficient to enable the state to determine the needs of the general public for recreation lands and facilities in the applicant's jurisdiction and the quality and quantity thereof. The project for which funds are being requested shall appear on the applicant's plan. The applicant shall state that the project is compatible with the land use plans of those jurisdictions immediately surrounding the project. Where the project land or facilities are located outside the political boundaries of the applicant, such project lands or facilities shall appear on the adopted plan of the jurisdiction in which the project is located. Prior to the approval of any project, the applying jurisdiction's park stewardship history will be reviewed for protecting existing park and recreation and open-space resources and operating and maintaining areas to acceptable standards. The Secretary of the Resources Agency, in cooperation with the Office of Planning and Research, shall review the material submitted by the county or counties for completeness and conformity with the State Environmental Goals and Policy Report. All applications shall contain an environmental impact statement in compliance with the Environmental Quality Act of 1970 (commencing with Section 21000 of the ~~Public Resources~~ Environment Code).

Upon completion of the review by the Secretary of the Resources Agency, approved projects shall be forwarded to the Governor for inclusion in the Budget Bill.

**Comment.** Section 5096.89 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5097.9 (amended). protection of Native American religion**

SEC. \_\_\_\_\_. Section 5097.9 of the Public Resources Code is amended to read:

5097.9. No public agency, and no private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. The provisions of this chapter shall be enforced by the commission, pursuant to Sections 5097.94 and 5097.97.

The provisions of this chapter shall not be construed to limit the requirements of the Environmental Quality Act of 1970, Division 13 ~~3~~ 3 (commencing with Section 21000) of the Environment Code.

The public property of all cities, counties, and city and county located within the limits of the city, county, and city and county, except for all parklands in excess of 100 acres, shall be exempt from the provisions of this chapter. Nothing in this section shall, however, nullify protections for Indian cemeteries under other statutes.

**Comment.** Section 5097.9 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 5097.98 (amended). Native American human remains**

SEC. \_\_\_\_\_. Section 5097.98 of the Public Resources Code is amended to read:

1        5097.98. (a) Whenever the commission receives notification of a discovery of Native  
2 American human remains from a county coroner pursuant to subdivision (c) of Section  
3 7050.5 of the Health and Safety Code, it shall immediately notify those persons it  
4 believes to be most likely descended from the deceased Native American. The  
5 descendants may, with the permission of the owner of the land, or his or her authorized  
6 representative, inspect the site of the discovery of the Native American remains and may  
7 recommend to the owner or the person responsible for the excavation work means for  
8 treating or disposing, with appropriate dignity, the human remains and any associated  
9 grave goods. The ~~descendents~~ descendants shall complete their inspection and make their  
10 recommendation within 24 hours of their notification by the Native American Heritage  
11 Commission. The recommendation may include the scientific removal and nondestructive  
12 analysis of human remains and items associated with Native American burials.

13        (b) Whenever the commission is unable to identify a descendant, or the descendant  
14 identified fails to make a recommendation, or the landowner or his or her authorized  
15 representative rejects the recommendation of the descendant and the mediation provided  
16 for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the  
17 landowner, the landowner or his or her authorized representative shall reinter the human  
18 remains and items associated with Native American burials with appropriate dignity on  
19 the property in a location not subject to further subsurface disturbance.

20        (c) Notwithstanding the provisions of Section 5097.9, the provisions of this section,  
21 including those actions taken by the landowner or his or her authorized representative to  
22 implement this section and any action taken to implement an agreement developed  
23 pursuant to subdivision (l ) of Section 5097.94, shall be exempt from the requirements of  
24 the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section  
25 21000) of the Environment Code).

26        (d) Notwithstanding the provisions of Section 30244, the provisions of this section,  
27 including those actions taken by the landowner or his or her authorized representative to  
28 implement this section, and any action taken to implement an agreement developed  
29 pursuant to subdivision (l ) of Section 5097.94 shall be exempt from the requirements of  
30 the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

31        **Comment.** Section 5097.98 is amended to substitute a reference to the Environment Code  
32 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
33 Resources Code.

34        **Pub. Res. Code § 5721 (amended). Grant applications**

35        SEC. \_\_\_\_\_. Section 5721 of the Public Resources Code is amended to read:

36        5721. (a) Individual applications for grants shall be submitted to the department for  
37 approval as to conformity with the requirements of this chapter. The application shall be  
38 accompanied by certification from the planning agency of the applicant that the project  
39 for which the grant is applied is consistent with the park and recreation element of the  
40 applicable city or county's general plan or the district's park and recreation plan and will  
41 satisfy a high priority need. In order to utilize available grant funds as effectively as  
42 possible, overlapping or adjoining jurisdictions are encouraged to combine projects and  
43 submit a joint application.

44        (b) The minimum amount that the applicant may request for any individual project is  
45 twenty thousand dollars (\$20,000).

46        (c) Every application shall comply with the California Environmental Quality Act  
47 (Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code).

48        (d) Grants that are wholly or partially for the acquisition of real property shall be made  
49 on the basis of 75 percent state funds and 25 percent local matching funds or property  
50 donated to be part of the project. The grant recipient shall certify to the department that  
51 there is available, or will become available prior to the commencement of any work on



1 the project, matching funds or property in the required amount from a nonstate source.  
2 Certification of the source and amount or value shall be set forth in the application.

3 (e) The director shall annually forward a statement of the total amount to be  
4 appropriated in each fiscal year for projects approved for grants to the Director of Finance  
5 for inclusion in the Budget Bill. The amount of grant funds to be allocated to each  
6 eligible jurisdiction shall be published in the Governor's Budget for the fiscal year in  
7 which the appropriation for those grants is to be made and, as soon as possible thereafter,  
8 a list of projects for which grants have been approved shall be made available by the  
9 department.

10 (f) Grant funds shall be encumbered by the recipient within three years of the date the  
11 appropriation became effective, regardless of the date when the project was approved by  
12 the department pursuant to this section.

13 **Comment.** Section 5721 is amended to substitute a reference to the Environment Code  
14 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
15 Resources Code.

16 **Pub. Res. Code § 5918 (amended). Application of CEQA**

17 SEC. \_\_\_\_\_. Section 5918 of the Public Resources Code is amended to read:

18 5918. Every expenditure pursuant to this division shall comply with the California  
19 Environmental Quality Act (Division ~~43~~ 3 (commencing with Section 21000) of the  
20 Environment Code).

21 **Comment.** Section 5918 is amended to substitute a reference to the Environment Code  
22 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
23 Resources Code.

24 **Pub. Res. Code § 6217 (amended). Deposit of revenues**

25 SEC. \_\_\_\_\_. Section 6217 of the Public Resources Code is amended to read:

26 6217. (a) With the exception of revenue derived from state school lands and from  
27 sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and Sections 8551 to 8558,  
28 inclusive, and Section 6406 (insofar as the proceeds are from property that has been  
29 distributed or escheated to the state in connection with unclaimed estates of deceased  
30 persons), the commission shall deposit in the State Treasury all revenue, money, and  
31 remittances received by the commission under this division, and under Chapter 138 of the  
32 Statutes of 1964, First Extraordinary Session, and those funds shall be applied to the  
33 following obligations in the following order:

34 (1) To the General Fund, the revenue necessary to provide in any fiscal year for the  
35 following:

36 (A) Payment of refunds, authorized by the commission, out of appropriations made for  
37 that purpose by the Legislature.

38 (B) Payment of expenditures of the commission as provided in the annual Budget Act  
39 enacted by the Legislature.

40 (C) Payments to cities and counties of the amounts specified in Section 6817 for the  
41 purposes specified in that section, and the revenues so deposited are appropriated for that  
42 purpose.

43 (D) Payments to cities and counties of the amounts agreed to pursuant to Section 6875.

44 (2) To the California Housing Trust Fund, each fiscal year, the amount of two million  
45 dollars (\$2,000,000).

46 (3)(A) To the Resources Trust Fund, which is hereby created in the State Treasury.

47 (B) The Controller shall transfer the sum of thirty million three hundred forty-seven  
48 thousand dollars (\$30,347,000) of the revenue, money, and remittances received by the  
49 State Lands Commission pursuant to this section in the 1997-98 fiscal year to the  
50 Resources Trust Fund. The Controller shall transfer the balance, if any, of all such



1 revenue, money, and remittances received by the commission in the 1997-98 fiscal year  
2 to the General Fund.

3 (C) Commencing July 1, 1998, the Controller shall, after meeting the obligations in  
4 paragraphs (1) and (2), transfer the balance of all such revenue, money, and remittances  
5 received by the commission pursuant to this section in each fiscal year to the Resources  
6 Trust Fund.

7 (D) The money in the Resources Trust Fund shall be collected for the purposes of, and  
8 held in trust for, preserving and protecting the natural and recreational resources of the  
9 state, as specified in subdivisions (b) and (c) and in Section 6217.1.

10 (b) The Salmon and Steelhead Trout Restoration Account is hereby created in the  
11 Resources Trust Fund. The money in the account shall be appropriated in the annual  
12 Budget Act to the Department of Fish and Game for expenditure for the recovery of coho  
13 salmon, other species of salmon, and anadromous trout pursuant to Section 6217.1 of this  
14 code and Chapter 8 (commencing with Section 2760) of Division 3 of the Fish and Game  
15 Code.

16 (c) The Natural Resources Infrastructure Fund is hereby created as an account in the  
17 Resources Trust Fund. The money in the Natural Resources Infrastructure Fund shall be  
18 available for expenditure, upon appropriation by the Legislature, for the purposes of  
19 preserving and protecting the natural and recreational resources of the state in accordance  
20 with paragraph (3) of subdivision (d).

21 (d)(1) Of the amount deposited in the Resources Trust Fund for the 1997-98 fiscal year  
22 pursuant to subparagraph (B) of paragraph (3) of subdivision (a), the Controller shall  
23 transfer the sum of three million dollars (\$3,000,000) to the Salmon and Steelhead Trout  
24 Restoration Account, and the sum of twenty-seven million three hundred forty-seven  
25 thousand dollars (\$27,347,000) to the Natural Resources Infrastructure Fund.

26 (2) Commencing July 1, 1998, of the amount deposited for each fiscal year in the  
27 Resources Trust Fund pursuant to subparagraph (C) of paragraph (3) of subdivision (a),  
28 the Controller shall annually transfer eight million dollars (\$8,000,000) to the Salmon and  
29 Steelhead Trout Restoration Account. However, the Controller may transfer less than  
30 eight million dollars (\$8,000,000) if the Controller determines that the Resources Trust  
31 Fund will receive less than that amount during the fiscal year. If the Controller makes that  
32 determination, the Controller shall transfer the entire balance of the Resources Trust Fund  
33 to the Salmon and Steelhead Trout Restoration Account.

34 (3) If, after making the annual transfer required by paragraph (2), any money remains in  
35 the Resources Trust Fund, the Controller shall, commencing July 1, 1998, annually  
36 transfer the balance of the trust fund to the Natural Resources Infrastructure Fund.  
37 Priority for the use of the money in the Natural Resources Infrastructure Fund shall be  
38 given to the following:

39 (A) For expenditure by the Department of Fish and Game, upon appropriation by the  
40 Legislature, for environmental review and monitoring, consultation with lead agencies,  
41 recommending mitigation measures, and enforcement related activities pursuant to  
42 Division 13 3 (commencing with Section 21000) of the Environment Code.

43 (B) For expenditure, upon appropriation by the Legislature, for the purposes of land  
44 acquisition in Orange County and San Diego County pursuant to Chapter 10  
45 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

46 (C) For expenditure to meet the requirements of Section 2796 of the Fish and Game  
47 Code that are not met pursuant to Section 2795 of the Fish and Game Code, upon  
48 appropriation by the Legislature.

49 (D) For expenditure for nonpoint source pollution control programs of the State Water  
50 Resources Control Board and the California Coastal Commission, upon appropriation by  
51 the Legislature.

52 (e) The Controller shall transfer any unencumbered balances remaining in the Salmon  
53 and Steelhead Trout Restoration Account and the Natural Resources Infrastructure Fund  
54 on June 30 of each year to the General Fund.

(f) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

**Comment.** Section 6217 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 6371 (amended). Disposition of lands under State Lands Commission**

SEC. \_\_\_\_\_. Section 6371 of the Public Resources Code is amended to read:

6371. Until submission of the report required in Section 6370.2 the State Lands Commission shall not sell any of the lands under its jurisdiction unless it has made a finding at a public meeting that such sale is necessary for the health, welfare or safety of the people of the state or a finding that such land would not meet the intent of environmentally significant lands indicated in Section 6370; provided, however, that this section and Sections 6372, 6373, 6374, and 6375 shall not be applicable to settlements of title and boundary problems by the commission and exchanges in connection therewith. The commission shall not lease any of the lands under its jurisdiction unless it shall have complied with the environmental impact report requirements of Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code and rules and regulations adopted by the commission pursuant to Section 21082 of the Environment Code.

**Comment.** Section 6371 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 6873.2 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 6873.2 of the Public Resources Code is amended to read:

6873.2. In carrying out the requirements of subdivision (b) of Section 6873 and the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code), the commission shall, prior to leasing tide and submerged lands or the beds of navigable rivers or lakes for oil and gas, hold at least one hearing on any draft environmental impact report prepared for the proposed lease. The hearing shall be held within a city or county near the area being considered for leasing. The commission shall give at least 30 days' written notice regarding the public hearing to each city or county within or adjacent to the proposed lease area and shall publish the notice in the manner prescribed in Section 6834. The authority to hold hearings provided in this section may be delegated by the commission to its officers or employees.

**Comment.** Section 6873.2 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 8631 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 8631 of the Public Resources Code is amended to read:

8631. The provisions of this division shall not be subject to the provisions of the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Environment Code), the Subdivision Map Act (commencing with Section 66410 of the Government Code), or the Property Acquisition Law (commencing with Section 15850 of the Government Code).

**Comment.** Section 8631 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 8710 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 8710 of the Public Resources Code is amended to read:

8710. Actions under this division are not subject to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code), the Subdivision Map Act (Division 2 (commencing with Section 66410 of Title 7 of the Government Code)), or the Property Acquisition Law (Part 11 (commencing with Section 15850)) of Division 3 of Title 2 of the Government Code).

**Comment.** Section 8710 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code §§ 21000-21177 (repealed). California Environmental Quality Act**

SEC. \_\_\_\_\_. Division 13 (commencing with Section 21000) of the Public Resources Code is repealed.

**Pub. Res. Code § 25404 (amended). Cooperation among interested parties**

SEC. \_\_\_\_\_. Section 25404 of the Public Resources Code is amended to read:

25404. The commission shall cooperate with the Office of Planning and Research, the Resources Agency and other interested parties in developing procedures to ensure that mitigation measures to minimize wasteful, inefficient, and unnecessary consumption of energy are included in all environmental impact reports required on local projects as specified in Section 21151 of the Environment Code.

**Comment.** Section 25404 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 25519 (amended). Application for certification of site and related facility**

SEC. \_\_\_\_\_. Section 25519 of the Public Resources Code is amended to read:

25519. (a) In order to obtain certification for a site and related facility, an application for certification of such site and related facility shall be filed with the commission. Such application shall be in a form prescribed by the commission and shall be for a site and related facility which has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site which has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility which was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), which it determines is reasonably necessary to make any decision on the application.

(c) The commission shall be the lead agency as provided in Section 21165 of the Environment Code for all projects which require certification pursuant to this chapter and for projects which are exempted from such certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5 of the Environment Code, an environmental impact report shall be completed within one year after receipt of the application. If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory

1 program certified pursuant to Section 21080.5 of the Environment Code, any other public  
2 agency which must make a decision which is subject to the California Environmental  
3 Quality Act, Division 13 3 (commencing with Section 21000) of the Environment Code,  
4 on a site or related facility, shall use the document or documents prepared by the  
5 commission in the same manner as they would use an environmental impact report or  
6 negative declaration prepared by a lead agency.

7 (d) If the site and related facility specified in the application is proposed to be located in  
8 the coastal zone, the commission shall transmit a copy of the application to the California  
9 Coastal Commission for its review and comments.

10 (e) If the site and related facility specified in the application is proposed to be located in  
11 the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and  
12 Development Commission, the commission shall transmit a copy of the application to the  
13 San Francisco Bay Conservation and Development Commission for its review and  
14 comments.

15 (f) Upon receipt of an application, the commission shall forward the application to local  
16 governmental agencies having land use and related jurisdiction in the area of the  
17 proposed site and related facility. Such local agencies shall review the application and  
18 submit comments on, among other things, the design of the facility, architectural and  
19 aesthetic features of the facility, access to highways, landscaping and grading, public use  
20 of lands in the area of the facility, and other appropriate aspects of the design,  
21 construction, or operation of the proposed site and related facility.

22 (g) Upon receipt of an application, the commission shall cause a summary of the  
23 application to be published in a newspaper of general circulation in the county in which  
24 the site and related facilities, or any part thereof, designated in the application, is  
25 proposed to be located. The commission shall transmit a copy of the application to each  
26 federal and state agency having jurisdiction or special interest in matters pertinent to the  
27 proposed site and related facilities and to the Attorney General.

28 (h) The adviser shall require that adequate notice is given to the public and that the  
29 procedures specified by this division are complied with.

30 (i) For any proposed site and related facility requiring a certificate of public  
31 convenience and necessity, the commission shall transmit a copy of the application to the  
32 Public Utilities Commission and request the comments and recommendations of the  
33 Public Utilities Commission on the economic, financial, rate, system reliability, and  
34 service implications of the proposed site and related facility. In the event the commission  
35 requires modification of the proposed facility, the commission shall consult with the  
36 Public Utilities Commission regarding the economic, financial, rate, system reliability,  
37 and service implications of such modifications.

38 (j) The commission shall transmit a copy of the application to any governmental agency  
39 not specifically mentioned in this act, but which it finds has any information or interest in  
40 the proposed site and related facilities, and shall invite the comments and  
41 recommendations of each such agency. The commission shall request any relevant laws,  
42 ordinances, or regulations which any such agency has promulgated or administered.

43 (k) An application for certification of any site and related facilities shall contain a  
44 listing of every federal agency from which any approval or authorization concerning the  
45 proposed site is required, specifying the approvals or authorizations obtained at the time  
46 of the application and the schedule for obtaining any approvals or authorizations pending.

47 **Comment.** Section 25519 is amended to substitute references to the Environment Code  
48 provisions that continue provisions of former Division 13 (commencing with Section 21000) of  
49 the Public Resources Code.

50 **Pub. Res. Code § 25523 (amended). Written decision**

51 SEC. \_\_\_\_\_. Section 25523 of the Public Resources Code is amended to read:



1       25523. The commission shall prepare a written decision after the public hearing on an  
2 application, which includes all of the following:

3       (a) Specific provisions relating to the manner in which the proposed facility is to be  
4 designed, sited, and operated in order to protect environmental quality and assure public  
5 health and safety.

6       (b) In the case of a site to be located in the coastal zone, specific provisions to meet the  
7 objectives of Division 20 (commencing with Section 30000) as may be specified in the  
8 report submitted by the California Coastal Commission pursuant to subdivision (d) of  
9 Section 30413, unless the commission specifically finds that the adoption of the  
10 provisions specified in the report would result in greater adverse effect on the  
11 environment or that the provisions proposed in the report would not be feasible.

12       (c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the  
13 San Francisco Bay Conservation and Development Commission, specific provisions to  
14 meet the requirements of Division 19 (commencing with Section 29000) of this code or  
15 Title 7.2 (commencing with Section 66600) of the Government Code as may be specified  
16 in the report submitted by the San Francisco Bay Conservation and Development  
17 Commission pursuant to subdivision (d) of Section 66645 of the Government Code,  
18 unless the commission specifically finds that the adoption of the provisions specified in  
19 the report would result in greater adverse effect on the environment or the provisions  
20 proposed in the report would not be feasible.

21       (d)(1) Findings regarding the conformity of the proposed site and related facilities with  
22 standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of  
23 Section 25402, with public safety standards and the applicable air and water quality  
24 standards, and with other relevant local, regional, state, and federal standards, ordinances,  
25 or laws. If the commission finds that there is noncompliance with any state, local, or  
26 regional ordinance or regulation in the application, it shall consult and meet with the  
27 state, local, or regional governmental agency concerned to attempt to correct or eliminate  
28 the noncompliance. If the noncompliance cannot be corrected or eliminated, the  
29 commission shall inform the state, local, or regional governmental agency if it makes the  
30 findings required by Section 25525.

31       (2) The commission shall not find that the proposed facility conforms with applicable  
32 air quality standards pursuant to paragraph (1) unless the applicable air pollution control  
33 district or air quality management district certifies that complete emissions offsets for the  
34 proposed facility have been identified and will be obtained by the applicant prior to the  
35 commission's licensing of the project, to the extent that the proposed facility requires  
36 emission offsets to comply with local, regional, state, or federal air quality standards.

37       (e) Provision for restoring the site as necessary to protect the environment, if the  
38 commission denies approval of the application.

39       (f) Findings regarding the conformity of the proposed facility with the integrated  
40 assessment of need for new resource additions determined pursuant to subdivisions (a) to  
41 (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 or, where  
42 applicable, findings pursuant to Section 25523.5 regarding the conformity of a  
43 competitive solicitation for new generation resources with the integrated assessment of  
44 need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive,  
45 of Section 25305 and adopted pursuant to Section 25308 that was in effect at the time that  
46 the solicitation was developed.

47       (g) In the case of a geothermal site and related facility, findings on whether there are  
48 sufficient commercial quantities of geothermal resources available to operate the  
49 proposed facility for its planned life.

50       (h) In the case of a site and related facility using resource recovery (waste- to-energy)  
51 technology, specific conditions requiring that the facility be monitored to ensure  
52 compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of  
53 the Health and Safety Code subdivisions (a), (b), (c), and (f) of Section 39100 of the  
54 Environment Code.

(i) In the case of a facility, other than a resource recovery facility subject to subdivision (h), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to ~~subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code~~ Section 31503 or 37600 of the Environment Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

**Comment.** Section 25523 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 39666, 41700, and 42315.

**Pub. Res. Code § 25540.4 (amended). Time for decision**

SEC. \_\_\_\_\_. Section 25540.4 of the Public Resources Code is amended to read:

25540.4. Notwithstanding any other provision of law:

(a) The decision of the commission on an application for an additional facility at a potential multiple facility site shall be issued within three months after the acceptance of the application or at such later time as is mutually agreed upon by the commission and the applicant.

(b) In reviewing an application for an additional facility at a potential multiple facility site, the commission may, upon a showing of good cause, undertake a reconsideration of its prior determinations in the final report for the site pursuant to Section 25514 or its decision pursuant to Section 25523 based on current conditions and other reasonable alternatives to the proposed facility. Such reconsideration must be completed within seven months after acceptance of such application for an additional facility.

(c) The commission shall, pursuant to Section 21100.2 of the Environment Code, provide by resolution or order for completing and certifying the environmental impact report within the time limits established by subdivisions (a) and (b).

**Comment.** Section 25540.4 is amended to substitute a reference to the Environment Code provision that continues former Section 21100.2 of the Public Resources Code.

**Pub. Res. Code § 25541.5 (amended). Regulatory program**

SEC. \_\_\_\_\_. Section 25541.5 of the Public Resources Code is amended to read:

25541.5. The commission shall, not later than January 31, 1979, adopt regulations pursuant to this chapter which comply with all the requirements of this chapter and Section 21080.5 of the Environment Code, and shall submit a regulatory program to the Secretary of the Resources Agency for certification pursuant to Section 21080.5 of the Environment Code. After certification by the Secretary of the Resources Agency, the commission shall amend such regulatory program from time to time, as necessary to permit the Secretary to continue to certify the program.

**Comment.** Section 25541.5 is amended to substitute references to the Environment Code provision that continues former Section 21080.5 of the Public Resources Code.

**Pub. Res. Code § 25985 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 25985 of the Public Resources Code is amended to read:

25985. Any city, or for unincorporated areas, any county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of such an ordinance shall not be subject to the provisions of the California Environmental Quality Act (commencing with Section 21000 of the Environment Code).

**Comment.** Section 25985 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.



**Pub. Res. Code § 26559 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 26559 of the Public Resources Code is amended to read:

26559. All activities of a local agency taken pursuant to this division for the formation of a district or the annexation of territory thereto are specific actions necessary to prevent or mitigate an emergency within the meaning of paragraph (4) of subdivision (b) of Section 21080 of the Environment Code.

**Comment.** Section 26559 is amended to substitute a reference to the Environment Code provision that continues former Section 21080 of the Public Resources Code.

**Pub. Res. Code § 26601 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 26601 of the Public Resources Code is amended to read:

26601. Improvement caused to be undertaken pursuant to this division, and all activities in furtherance thereof or in connection therewith, shall be deemed to be specific actions necessary to prevent or mitigate an emergency within the meaning of paragraph (4) of subdivision (b) of Section 21080 of the Environment Code.

**Comment.** Section 26601 is amended to substitute a reference to the Environment Code provision that continues former Section 21080 of the Public Resources Code.

**Pub. Res. Code § 30600 (amended). Coastal development permit**

SEC. \_\_\_\_\_. Section 30600 of the Public Resources Code is amended to read:

30600. (a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066 70 of the Environment Code, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

(b)(1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government.

(2) A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).

(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.

(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

**Comment.** Section 30600 is amended to substitute a reference to the Environment Code provision that continues former Section 21066 of the Public Resources Code.

**Pub. Res. Code § 30718 (amended). Approved developments forwarded to commission**

SEC. \_\_\_\_\_. Section 30718 of the Public Resources Code is amended to read:

30718. For developments approved by the commission in a certified master plan, but not appealable under the provisions of this chapter, the port governing body shall forward all environmental impact reports and negative declarations prepared pursuant to the Environmental Quality Act of 1970 (commencing with Section 21000 of the Environment Code) or any environmental impact statements prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) to the commission in a timely manner for comment.

**Comment.** Section 30718 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 33911 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 33911 of the Public Resources Code is amended to read:

33911. The department may receive donations of land and funds for the acquisition of land from local agencies, including special districts, and private entities. Land acquired by the department through donation, purchase, or by any other means, shall be maintained by the department for future transportation purposes. The acquisition of land by the department for that purpose is not subject to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Environment Code) if the land, when received or acquired, is within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code and the applicable regional transportation planning agency has complied with Section 33913 of the Government Code.

**Comment.** Section 33911 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 40055 (amended). Authority of state agencies**

SEC. \_\_\_\_\_. Section 40055 of the Public Resources Code is amended to read:

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer, including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the Department of Toxic Substances Control of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management

1 district of any of its powers and duties pursuant to Division 26 4 (commencing with  
2 Section 39000 30000) of the Health and Safety Environment Code.

3 (b) The exercise of authority under this division, including, but not limited to, the  
4 adoption of regulations, plans, permits, or standards or the taking of any enforcement  
5 actions shall not duplicate or be in conflict with any determination relating to water  
6 quality control made by the state water board or regional water boards, including  
7 requirements in regulations adopted by or under the authority of the state water board.

8 (c) Any plans, permits, standards, or corrective action taken under this division shall be  
9 consistent with all applicable water quality control plans adopted pursuant to Section  
10 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the  
11 Water Code and the state policies for water quality control adopted pursuant to Article 3  
12 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing  
13 at the time of the action or proposed action.

14 **Comment.** Section 40055 is amended to substitute a reference to the Environment Code  
15 provisions that continue former Division 26 (commencing with Section 39000) of the Health and  
16 Safety Code.

17 **Pub. Res. Code § 41000 (amended). Source reduction and recycling element**

18 SEC. \_\_\_\_\_. Section 41000 of the Public Resources Code is amended to read:

19 41000. (a) On or before July 1, 1992, each city shall prepare, adopt, and, excepting a  
20 city and county, submit to the county in which the city is located a source reduction and  
21 recycling element which includes all of the components specified in this chapter and  
22 which complies with the requirements specified in Chapter 6 (commencing with Section  
23 41780).

24 (b) Notwithstanding subdivision (a), if a city determines that it is unable to comply with  
25 the deadline established under subdivision (a) and unable to comply with Division 13 3  
26 (commencing with Section 21000) of the Environment Code, to the extent that division  
27 requires the preparation and certification of an environmental impact report for the  
28 element, the city shall do all of the following:

29 (1) On or before July 1, 1992, the city shall adopt a resolution stating the reasons it is  
30 unable to comply with the deadline established under subdivision (a) and to complete and  
31 certify the environmental impact report for the element. The resolution shall also state a  
32 date when the city will comply with the deadline established under subdivision (a) and  
33 complete and certify the environmental impact report for the element.

34 (2) On or before July 1, 1992, the city shall submit its draft source reduction and  
35 recycling element and a copy of the resolution adopted pursuant to paragraph (1) to the  
36 county within which the city is located.

37 (3) Upon completion and certification of the environmental impact report for the source  
38 reduction and recycling element, or December 1, 1992, whichever is sooner, the city shall  
39 submit its final source reduction and recycling element to the county.

40 **Comment.** Section 41000 is amended to substitute a reference to the Environment Code  
41 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
42 Resources Code.

43 **Pub. Res. Code § 41300 (amended). Source reduction and recycling element**

44 SEC. \_\_\_\_\_. Section 41300 of the Public Resources Code is amended to read:

45 41300. (a) On or before July 1, 1992, each county shall prepare and adopt for the  
46 unincorporated area a county source reduction and recycling element which includes all  
47 of the components specified in this chapter and which complies with the requirements  
48 specified in Chapter 6 (commencing with Section 41780).

49 (b) Notwithstanding subdivision (a), if a county determines that it is unable to comply  
50 with the deadline established under subdivision (a) and unable to comply with Division

13 3 (commencing with Section 21000) of the Environment Code, to the extent that division requires the preparation and certification of an environmental impact report for the element, the county shall do all of the following:

(1) On or before July 1, 1992, the county shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the element. The resolution shall also state a date when the county will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the element.

(2) On or before July 1, 1992, the county shall submit a copy of the resolution adopted pursuant to paragraph (1) to the board.

(3) Upon completion and certification of the environmental impact report for the source reduction and recycling element, or December 1, 1992, whichever is sooner, the county shall adopt its source reduction and recycling element.

**Comment.** Section 41300 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 41500 (amended). Household hazardous waste element**

SEC. \_\_\_\_\_. Section 41500 of the Public Resources Code is amended to read:

41500. (a) On or before July 1, 1992, each city shall prepare, adopt, and submit to the county in which the city is located a household hazardous waste element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households in the city and which should be separated from the solid waste stream.

In preparing a city household hazardous waste element pursuant to this section, a city may use components of a city hazardous waste plan prepared pursuant to subdivision (c) of Section 25135.7 of the Health and Safety Code if the city hazardous waste plan meets the requirements of this article and Section 41802.

(b) Notwithstanding subdivision (a), if a city determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 3 (commencing with Section 21000) of the Environment Code, to the extent that division requires the preparation and certification of an environmental impact report for the element, the city shall do all of the following:

(1) On or before July 1, 1992, the city shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the household hazardous waste element. The resolution shall also state a date when the city will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the household hazardous waste element.

(2) On or before July 1, 1992, the city shall submit its draft household hazardous waste element and a copy of the resolution adopted pursuant to paragraph (1) to the county within which the city is located.

(3) Upon completion and certification of the environmental impact report for the household hazardous waste element, or December 1, 1992, whichever is sooner, the city shall submit its final household hazardous waste element to the county.

**Comment.** Section 41500 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 41510 (amended). Household hazardous waste element**

SEC. \_\_\_\_\_. Section 41510 of the Public Resources Code is amended to read:

1 41510. (a) On or before July 1, 1992, each county shall prepare a household hazardous  
2 waste element which identifies a program for the safe collection, recycling, treatment,  
3 and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety  
4 Code, which are generated by households in the unincorporated area of the county and  
5 which should be separated from the solid waste stream. In preparing a county household  
6 hazardous waste element pursuant to this section, a county may use components of a  
7 county hazardous waste management plan prepared pursuant to Section 25135.1 of the  
8 Health and Safety Code, if that plan meets the requirements of this article and of Section  
9 41802.

10 (b) Notwithstanding subdivision (a), if a county determines that it is unable to comply  
11 with the deadline established under subdivision (a) and unable to comply with Division  
12 ~~13~~ 3 (commencing with Section 21000) of the Environment Code, to the extent that  
13 division requires the preparation and certification of an environmental impact report for  
14 the element, the county shall do all of the following:

15 (1) On or before July 1, 1992, the county shall adopt a resolution stating the reasons it  
16 is unable to comply with the deadline established under subdivision (a) and to complete  
17 and certify the environmental impact report for the household hazardous waste element.  
18 The resolution shall also state a date when the county will comply with the deadline  
19 established under subdivision (a) and complete and certify the environmental impact  
20 report for the household hazardous waste element.

21 (2) On or before July 1, 1992, the county shall submit its draft household hazardous  
22 waste element and a copy of the resolution adopted pursuant to paragraph (1) to the  
23 board.

24 (3) Upon completion and certification of the environmental impact report for the  
25 household hazardous waste element, or December 1, 1992, whichever is sooner, the  
26 county shall adopt its household hazardous waste element.

27 **Comment.** Section 41510 is amended to substitute a reference to the Environment Code  
28 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
29 Resources Code.

30 **Pub. Res. Code § 41735 (amended). CEQA exemption**

31 SEC. \_\_\_\_\_. Section 41735 of the Public Resources Code is amended to read:

32 41735. (a) Notwithstanding Division ~~13~~ 3 (commencing with Section 21000) of the  
33 Environment Code, the adoption or amendment of a nondisposal facility element shall not  
34 be subject to environmental review.

35 (b) Local agencies may impose a fee on project proponents to fund their necessary and  
36 actual costs of preparing and approving amendments to nondisposal facility elements.

37 **Comment.** Section 41735 is amended to substitute a reference to the Environment Code  
38 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
39 Resources Code.

40 **Pub. Res. Code § 41783 (amended). Source reduction and recycling**

41 SEC. \_\_\_\_\_. Section 41783 of the Public Resources Code is amended to read:

42 41783. For any city, county, or regional agency source reduction and recycling element  
43 submitted to the board after January 1, 1995, the 50 percent diversion requirement  
44 specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than  
45 10 percent through transformation, as defined in Section 40201, if all of the following  
46 conditions are met:

47 (a) The transformation project is in compliance with ~~Sections 21151.1 and Section~~  
48 ~~44150 of this code and Section 42315 of the Health and Safety Code~~ Sections 21151.1,  
49 and 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 references to the Environment Code provisions that continue former Health and Safety Code Section 42315 and former Public Resources Code Section 21151.1.

#### **Pub. Res. Code § 42812 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 42812 of the Public Resources Code is amended to read:

42812. Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in the design or operation of the waste tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

**Comment.** Section 42812 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Pub. Res. Code § 43200 (amended). Certification regulations**

SEC. \_\_\_\_\_. Section 43200 of the Public Resources Code is amended to read:

43200. (a) The board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2)(A) Adequacy of staff resources.

(B) For the purposes of this paragraph, the board shall adopt regulations for specified enforcement agencies, as defined in subparagraph (C), which meet all of the following requirements:

(i) The regulations shall not require a specific number of person-hours or staff resources for the performance of duties as a specified enforcement agency.

(ii) The regulations shall establish performance standards for specified enforcement agencies which will provide a comparable level of public health and safety and



environmental protection to that required of other local agencies certified pursuant to this article.

(iii) The regulations shall establish procedures to ensure that all duties required of specified enforcement agencies pursuant to this article are actually performed.

(iv) The regulations shall require specified enforcement agency personnel to receive a comparable level of training to that required of personnel employed by other local agencies certified pursuant to this article.

(C) For the purposes of subparagraph (B), “specified enforcement agency” means a local enforcement agency which has a population of less than 50,000 persons.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility within the jurisdiction of the local agency. For the purposes of this paragraph, “permitted solid waste facility” includes a proposed solid waste facility for which an environmental impact report or negative declaration has been prepared and certified pursuant to Division 13 3 (commencing with Section 21000) of the Environment Code or for which a conditional use permit has been issued by a city or county.

(b) The regulations adopted pursuant to subdivision (a) shall specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

**Comment.** Section 43200 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 43209.1 (amended). Complaints pertaining to compost facility odors**

SEC. \_\_\_\_\_. Section 43209.1 of the Public Resources Code is amended to read:

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the ~~Health and Safety Code~~ 37601 of the Environment Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the ~~Health and Safety Code~~ 37601 of the Environment Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) This section shall become inoperative on the date that is four years from the effective date of the amendments to this section enacted in 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

**Comment.** Section 43209.1 is amended to substitute references to the Environment Code provision that continues former Section 41705 of the Health and Safety Code.

**Pub. Res. Code § 44002 (amended). Solid waste facilities permit**

SEC. \_\_\_\_\_. Section 44002 of the Public Resources Code is amended to read:

44002. (a)(1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division. If the enforcement agency determines that a person is so operating a solid waste facility, the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease operations, and directing the owner or operator of the facility to obtain a solid waste facilities permit in order to resume operation of the facility.

(2) This subdivision shall become operative October 16, 1996.

(b)(1) Notwithstanding subdivision (a), the enforcement agency may stay the issuance of a cease and desist order issued pursuant to subdivision (a) if the solid waste facility meets all of the following conditions:

(A) The facility is in the process of changing its ownership and use, and is in the process of obtaining a new or modified solid waste facilities permit.

(B) The owner or operator of the facility is actively engaging in good faith efforts, as determined by the enforcement agency, to obtain the new or modified solid waste facilities permit in an expeditious manner.

(C) An environmental impact report has been prepared and certified for the solid waste facility pursuant to Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code.

(D) During the time that the facility is operating without a solid waste facilities permit, the facility is otherwise operating in a manner that is in compliance with this division and with any conditions required for that compliance imposed by the enforcement agency.

(2) A stay granted by the enforcement agency pursuant to paragraph (1) shall be for not more than one year and may be extended by the enforcement agency for a period of time not to exceed one additional year, provided that the operator or proposed operator of the solid waste facility makes a continuing good faith effort, as determined by the enforcement agency, to obtain the solid waste facilities permit and remains in compliance with paragraph (1).

(3) This subdivision shall become inoperative on January 1, 1999.

**Comment.** Section 44002 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 44004 (amended). Change in design or operation of facility**

SEC. \_\_\_\_\_. Section 44004 of the Public Resources Code is amended to read:

44004. (a) No operator of a solid waste facility shall make any significant change in the design or operation of the solid waste facility not authorized by the existing permit, unless the change is approved by the enforcement agency, and conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 150 days in advance of the date when the proposed modification is to take place unless the 150-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 3 (commencing with Section 21000) of the Environment Code.

(d) Within 30 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 3 (commencing with Section 21000) of the Environment Code before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44500) of Chapter 4.

(f) Under circumstances which present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 120-day filing period may be waived.

(g)(1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) Any owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to any other requirement imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

**Comment.** Section 44004 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 44005 (amended). Encumbrance, sale, transfer or conveyance of facility or site**

SEC. \_\_\_\_\_. Section 44005 of the Public Resources Code is amended to read:

44005. (a) Any owner or operator of a solid waste facility who plans to encumber, sell, transfer, or convey the ownership or operations of a solid waste facility or disposal site to a new owner or operator, shall notify the enforcement agency and the board, 45 days prior to the date of the anticipated transfer. The notification shall be in writing and shall include information as determined by the board, including any financial assurances, if applicable.

(b) The enforcement agency and the board shall review the notification documentation and any available records of enforcement actions taken against the proposed transferee, and shall determine, within 30 days of receipt, whether the facility will be operated in compliance with the terms and conditions of an approved permit and any other applicable requirements, including, but not limited to, the requirements of Division 13 3

(commencing with Section 21000) of the Environment Code. If the solid waste facility will not be operated in compliance with the terms and conditions of an approved permit, or any other applicable requirements of Division 13 3 (commencing with Section 21000) of the Environment Code, the new owner or operator shall be required to file an application for a revised or modified solid waste facilities permit.

(c) If the enforcement agency or the board determines that the facility will be operated in compliance with the terms and conditions of the existing permit, the enforcement agency may change the name of the owner or operator on the permit.

**Comment.** Section 44005 is amended to substitute references to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**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 of the Environment Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the Environment Code).

(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, 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, and former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 44205 (amended). Review of draft tribal and federal permit**

SEC. \_\_\_\_\_. Section 44205 of the Public Resources Code is amended to read:

44205. (a) Each cooperative agreement shall require the public agencies specified in subdivision (b) of Section 44203 to review any draft tribal permit and any applicable federal permit to determine whether it contains all conditions sufficient to do all of the following:

(1) Meet the functionally equivalent standards provided in the cooperative agreement, as required by subdivision (e) of Section 44203.

(2) Provide not less than the level of protection for public health, safety, and the environment that would have been the case if that state agency had issued the permit.

(3) Implement all feasible mitigation measures. For purposes of this paragraph, “feasible” has the same meaning as in Sections 21001, 21002.1, and 21004 of the Environment Code, and any regulations adopted pursuant to those sections.

(b) Each cooperative agreement shall provide that the tribal or federal permits issued for the solid waste facility meet the requirements of this section.

(c) The failure of a party to a cooperative agreement to meet the requirements of this section shall be determined to be an actionable breach of the cooperative agreement.

(d) The election by a party to a cooperative agreement to pursue a contractual remedy shall not limit the ability of a party to assert its respective claims of jurisdiction or sovereign immunity.

(e) Entering into a cooperative agreement shall not be a basis for denying any remedy to which a party is otherwise entitled.

(f) Within 10 days of issuance of a final federal permit or tribal permit, a copy of that permit shall be provided to the California Environmental Protection Agency and the tribe having jurisdiction over the facility.

**Comment.** Section 44205 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 44300 (amended). Permit denial**

SEC. \_\_\_\_\_. Section 44300 of the Public Resources Code is amended to read:

44300. An enforcement agency may, after holding a public hearing in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 3 (commencing with Section 21000) of the Environment Code.

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

**Comment.** Section 44300 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Res. Code § 60030 (amended). Merger between city and county solid waste management operations**

SEC. \_\_\_\_\_. Section 60030 of the Public Resources Code is amended to read:

60030. (a) Any merger of county and city solid waste management operations pursuant to this division shall be subject to the provisions contained in that certain agreement between the city, county, and Stationary Engineers Local 39 International Union of Operating Engineers, AFL-CIO, dated December 11, 1992.

(b) Unless otherwise provided in the agreement specified in subdivision (a), all officers and employees of the city and the county who, as of the date of formation of the district, have solid waste management responsibilities shall be ex officio officers and employees, respectively, of the district, shall, unless otherwise provided by the governing board, perform, without additional compensation, for the district those duties that they



performed for the city or the county, and, to the extent appropriate, the provisions of Sections 40121, 40122, 40123, and 40125 of the Health and Safety Code 33701, 33702, 33703, and 33705 of the Environment Code, with regard to the officers and employees of a county air pollution control district, shall apply to the officers and employees of the district.

(c) The Director of Public Works of Sacramento County shall be the chief administrative officer of the district and shall be responsible for the proper and efficient administration of the district. In addition to the other powers and duties delegated by the governing board, the chief administrative officer shall have the power to do all of the following:

(1) Under the policy direction of the governing board, to plan, organize, and direct all district activities.

(2) To authorize expenditures within the designations and limitations of the approved budget.

(3) To make recommendations to and requests of the governing board concerning all of the matters that are to be performed by the governing board.

(4) To have charge of, handle, or have access to any property of the district.

**Comment.** Section 60030 is amended to substitute a reference to the Environment Code provisions that continue former Sections 40121, 40122, 40123, and 40125 of the Health and Safety Code.

**Pub. Res. Code §§ 71000-71067 (repealed). Environmental Protection**

SEC. \_\_\_\_\_. Division 34 (commencing with Section 71000) of the Public Resources Code is repealed.

**PUBLIC UTILITIES CODE**

**Pub. Util. Code § 21632 (amended). Acquisition of existing airports and air navigation facilities**

SEC. \_\_\_\_\_. Section 21632 of the Public Utilities Code is amended to read:

21632. (a) The department may also acquire existing airports and air navigation facilities, but it shall not acquire any airport or air navigation facility owned or controlled by a political subdivision of this or any other state without the consent of the political subdivision.

(b) Whenever an airport owned or operated by the United States in this state ceases to be so owned or operated, the department, in consultation with local and regional transportation planning agencies, shall evaluate the present and future need for the airport in the state's public-use airport system, including the need for both the transportation of people and goods. This evaluation shall be completed prior to December 31, 1990, or within one year of the federal announcement setting the date of closure for any airport, if the latter action occurs after January 1, 1990. The purpose of the evaluation is to determine aviation needs and does not eliminate any requirement of the California Environmental Quality Act, Division 43 3 (commencing with Section 21000) of the Public Resources Environment Code.

(c) Prior to finalizing the evaluation, the department shall submit a copy of its report to the commission for review and comment. The commission shall complete its review and forward any comments to the department not later than 45 days after receiving the evaluation.

(d) Upon completion of its evaluation, the department shall make a recommendation to the Legislature, the commission, the California Commission on Aviation and Airports, affected local agencies, and the appropriate federal agency for the airport's ownership

1 and type of operation as a public-use airport, if the department determines that the airport  
2 would be of significant benefit to the state's airport system. It is the intent of the  
3 Legislature that the department, in making its recommendation, give priority for  
4 ownership and operation of these public-use airports to a local political subdivision or  
5 subdivisions acting jointly.

6 (e) Notwithstanding Section 21606, if a political subdivision or subdivisions acting  
7 jointly notify the department of their intentions to prepare a reuse plan for the airport, and  
8 simultaneously apply to the Federal Aviation Administration for a federal grant to  
9 develop an airport master plan for the airport, the department shall not make its  
10 recommendation pursuant to subdivision (d). If the department's evaluation determines  
11 that the airport would be of significant benefit to the state's airport system, and the  
12 political subdivision or subdivisions acting jointly fail to convert the federal airport to a  
13 civil public-use airport in accordance with the department's evaluation within five years  
14 of notification to the department, or fail to evidence substantial progress toward that  
15 purpose as determined by the department, then the department shall take action in  
16 accordance with subdivision (f).

17 (f) If the department determines the airport is of present or future benefit to the state's  
18 public-use airport system, and no political subdivision applies to the appropriate federal  
19 agency to acquire or operate the airport, or has notified the department of its intention to  
20 prepare a reuse plan for the airport and thereafter fails to act upon its application pursuant  
21 to subdivision (e), the department may, subject to subdivision (g), assist in the formation  
22 of a public entity to own and operate the airport which shall be representative of political  
23 subdivisions in the area which surrounds and is served by the airport, as determined by  
24 the department. If established, the owning and operating entity may, subject to  
25 subdivision (g), prepare and submit an application to the appropriate federal agency to  
26 acquire or operate, or acquire and operate, the airport as a public airport.

27 (g) Notwithstanding subdivision (f), if any political subdivision has previously applied  
28 to the appropriate federal agency to acquire and operate the airport as a public airport, has  
29 completed all required environmental and fiscal evaluations, and subsequently withdrew  
30 its application prior to December 31, 1988, the department shall not file any application  
31 to acquire or operate the airport or assist in the formation of a public entity to own and  
32 operate the airport.

33 **Comment.** Section 21632 is amended to substitute a reference to the Environment Code  
34 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
35 Resources Code.

36 **Pub. Util. Code § 21679 (amended). Court proceedings on zoning**

37 SEC. \_\_\_\_\_. Section 21679 of the Public Utilities Code is amended to read:

38 21679. (a) In any county in which there is no airport land use commission or other body  
39 designated to assume the responsibilities of an airport land use commission, or in which  
40 the commission or other designated body has not adopted an airport land use plan, an  
41 interested party may initiate proceedings in a court of competent jurisdiction to postpone  
42 the effective date of a zoning change, a zoning variance, the issuance of a permit, or the  
43 adoption of a regulation by a local agency, which directly affects the use of land within  
44 one mile of the boundary of a public airport within the county.

45 (b) The court may issue an injunction which postpones the effective date of the zoning  
46 change, zoning variance, permit, or regulation until the governing body of the local  
47 agency which took the action does one of the following:

48 (1) In the case of an action which is a legislative act, adopts a resolution declaring that  
49 the proposed action is consistent with the purposes of this article stated in Section 21670.

50 (2) In the case of an action which is not a legislative act, adopts a resolution making  
51 findings based on substantial evidence in the record that the proposed action is consistent  
52 with the purposes of this article stated in Section 21670.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670, and complies with either paragraph (1) or (2) of this subdivision, whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency which took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the ~~Public Resources~~ Environment Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

**Comment.** Section 21679 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Util. Code § 21679.5 (amended). Moratorium on proceedings**

SEC. \_\_\_\_\_. Section 21679.5 of the Public Utilities Code is amended to read:

21679.5. (a) Until June 30, 1991, no action pursuant to Section 21679 to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport, shall be commenced in any county in which the commission or other designated body has not adopted an airport land use plan, but is making substantial progress toward the completion of the plan.

(b) If a commission has been prevented from adopting the comprehensive land use plan by June 30, 1991, or if the adopted plan could not become effective, because of a lawsuit involving the adoption of the plan, the June 30, 1991, date in subdivision (a) shall be extended by the period of time during which the lawsuit was pending in a court of competent jurisdiction.

(c) Any action pursuant to Section 21679 commenced prior to January 1, 1990, in a county in which the commission or other designated body has not adopted an airport land use plan, but is making substantial progress toward the completion of the plan, which has not proceeded to final judgment, shall be held in abeyance until June 30, 1991. If the commission or other designated body adopts an airport land use plan on or before June 30, 1991, the action shall be dismissed. If the commission or other designated body does not adopt an airport land use plan on or before June 30, 1991, the plaintiff or plaintiffs may proceed with the action.

(d) An action to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport for which an airport land use plan has not been adopted by June 30, 1991, shall be commenced within 30 days of June 30, 1991, or within 30 days of the decision by the local agency, or within the appropriate time periods set by Section 21167 of the ~~Public Resources~~ Environment Code, whichever date is later.

**Comment.** Section 21679.5 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Util. Code § 99624 (amended). Alameda-San Pedro branch rail line**

SEC. \_\_\_\_\_. Section 99624 of the Public Utilities Code is amended to read:

99624. (a) Eighty million dollars (\$80,000,000) to the department for grade separations along the Alameda-San Pedro branch rail line connecting the Los Angeles and Long Beach Harbors with downtown Los Angeles and paralleling Alameda Street, to alleviate vehicle traffic congestion, conserve energy, reduce air pollution in the area, and facilitate the more efficient and expeditious shipment of freight to and from the Los Angeles and Long Beach Harbors. The current owner of the Alameda-San Pedro branch line may, at its option, continue to own and operate the line and related right-of-way.

(b) The allocation and granting of funds pursuant to this Section shall be exempt from Sections 99653 and 99663. The allocation and granting of funds pursuant to this section shall also be exempt from subdivision (c) of Section 1202, and Sections 1202.5 and 99317.8 of the Public Utilities Code, and Sections 2450 to 2461, inclusive, of the Streets and Highways Code if the affected railroad corporation contributes ten (10) percent of the costs of constructing the grade separations funded pursuant to this section. Notwithstanding any provision of this code or the Streets and Highways Code, no city on the Alameda-San Pedro branch line shall be assessed costs for the grade separations. The department is the sole state agency responsible for designing, determining priorities, and implementing the construction of those grade separations. The department shall coordinate its planning with any joint powers agency established to represent affected cities, local agencies, or commissions. The department shall further coordinate and cooperate with any such joint powers agency so that the expenditure of any federal, local, and private funds including those for tracks, switching, and interconnection improvements, and the possible construction of a proposed Alameda Street truck corridor is accomplished in an efficient and well-planned manner.

(c) For the purposes of the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), grade separations funded pursuant to this section and all related track and switching improvements and rail interconnections shall be considered to be one project.

**Comment.** Section 99624 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pub. Util. Code § 99686 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 99686 of the Public Utilities Code is amended to read:

99686. Every expenditure made pursuant to this part shall be made in compliance with the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 99686 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

REVENUE AND TAXATION CODE

**Rev. & Tax. Code § 6262 (amended). Vehicles subject to fee**

SEC. \_\_\_\_\_. Section 6262 of the Revenue and Taxation Code is amended to read:

(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 dollars (\$300) for any such motor vehicle which, prior to the date of application, was last registered outside this state, unless the motor vehicle has been certified pursuant to Chapter 2 3 (commencing with Section 43100 41500) of Title 4 of Part 5 of Division 26 4 of the ~~Health and Safety~~ Environment Code to meet the California carbon monoxide (CO), hydrocarbon (HC), and oxides of nitrogen (NO subx ) emission standards for the applicable model year, and the California emission standard for that vehicle in that model year is more stringent than the federal emission standards for CO, HC, or NO subx for that vehicle in that model year. This subdivision does not authorize the registration of motor vehicles that are prohibited from being brought into this state pursuant to Article 1.5 2 (commencing with Section 43150 41550) of Chapter 2 3 of Title 4 of Part 5 of Division 26 4 of the ~~Health and Safety~~ Environment Code.

(b) The determination that a vehicle is subject to the fee imposed pursuant to this section shall be made by the Department of Motor Vehicles, or its designee.

(c)(1) For purposes of this chapter, if a motor vehicle does not have affixed a vehicle emission control label from which the Department of Motor Vehicles may determine whether the vehicle is California-certified, the vehicle shall be presumed not to be California-certified unless confirmed to be by the manufacturer.

(2) Any manufacturer of light-duty motor vehicles doing business in California shall provide information, within 30 days from the date of the receipt of a request from the Department of Motor Vehicles, stating whether a vehicle, identified in the request by the vehicle identification number (VIN) assigned by the manufacturer in accordance with federal law, has been certified for sale in California pursuant to 2 3 (commencing with Section 43100 41500) of Title 4 of Part 5 of Division 26 4 of the ~~Health and Safety~~ Environment Code.

(3) For purposes of this subdivision, "vehicle emission control label" means the permanent label that vehicle manufacturers are required to affix to motor vehicles certified by the State Air Resources Board for sale in California in accordance with 2 3 (commencing with Section 43100 41500) of Title 4 of Part 5 of Division 26 4 of the ~~Health and Safety~~ Environment Code and pursuant to Sections 1965 and 1965.5 of Title 13 of the California Code of Regulations.

(d) After deduction of all costs incurred by the department in carrying out this section that have been approved by the Department of Finance, the revenues received pursuant to this section shall be deposited in the General Fund through June 30, 1998. On and after July 1, 1998, those revenues shall be deposited in the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091 43804 of the ~~Health and Safety~~ Environment Code and shall be available solely for the purpose of funding the low-income repair assistance program established pursuant to ~~Section 44062.1~~ Sections 44050 to 44057, inclusive, of the ~~Health and Safety~~ Environment Code and the voluntary accelerated retirement of high-emission motor vehicles as specified in subdivisions (d) and (f) of Section 44091 43804 of the ~~Health and Safety~~ Environment Code.

(e) This section does not apply to any of the following:

(1) A commercial vehicle, as defined in Section 260 of the Vehicle Code, with an unladen 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



1 residence or accepting gainful employment, if the vehicle was acquired by the owner in a  
2 foreign jurisdiction where those military orders required the owner's presence.

3 (3) Any vehicle that is required to be registered on or after January 1, 1993, that has  
4 been subject to the fee imposed by this section within the prior four years, if the emission  
5 control devices and systems were not modified out of state subsequent to the previous  
6 payment of that fee.

7 (f) Notwithstanding any other provision of law, the fee imposed pursuant to subdivision  
8 (a) is imposed pursuant to the Sales and Use Tax Law.

9 **Comment.** Section 6262 is amended to substitute references to the Environment Code  
10 provisions that continue former Chapter 2 (commencing with Section 43100) of Part 5 of  
11 Division 26 of the Health and Safety Code and former Health and Safety Code Sections 44091  
12 and 44062.1.

13 **Rev. & Tax. Code § 17053.66 (amended). Credit against net tax**

14 SEC. \_\_\_\_\_. Section 17053.66 of the Revenue and Taxation Code is amended to read:

15 17053.66. (a) For each taxable year beginning on or after January 1, 1995, and before  
16 January 1, 2000, there shall be allowed, as determined by the Department of Fish and  
17 Game, a credit against the "net tax," as defined in Section 17039. The credit amount shall  
18 be equal to the lesser of 10 percent of the qualified costs paid or incurred by the taxpayer  
19 or partnership for salmon and steelhead trout habitat restoration and improvement  
20 projects or an amount determined in subparagraph (B) of paragraph (2) of subdivision (f).  
21 The credit allowed by this section shall be claimed on the return for the taxable year in  
22 which the expense for the habitat restoration or improvement project was paid or  
23 incurred.

24 (b) The taxpayer or partnership shall be eligible to claim the credit only after  
25 application to and certification by the Department of Fish and Game that all of the  
26 following conditions are met:

27 (1) The salmon or steelhead trout habitat restoration or improvement project meets the  
28 objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act  
29 (Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game  
30 Code) and would aid in increasing the natural production of salmon and steelhead trout  
31 through improvement of stream and streambank conditions, improvement of land use  
32 practices, or changes in streamflow operations.

33 (2) The work to be undertaken is not otherwise required to be carried out pursuant to  
34 the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section  
35 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative  
36 impacts to the environment caused by timber operations or required for mitigation of  
37 negative impacts on fish and wildlife habitat caused by a project pursuant to an approved  
38 environmental impact report or mitigated negative declaration required pursuant to the  
39 California Environmental Quality Act (Division 43 3 (commencing with Section 21000)  
40 of the ~~Public Resources~~ Environment Code).

41 (c)(1) Qualified costs are those costs paid or incurred by the taxpayer or partnership  
42 which are directly related to labor and materials which aid in increasing the natural  
43 production of salmon and steelhead trout through improvement of stream and streambank  
44 conditions, improvement of land use practices, or changes in streamflow operations.

45 (2) Qualified costs do not include costs paid or incurred with respect to any of the  
46 following:

47 (A) Construction of office, storage, garage, or maintenance buildings.

48 (B) Drilling wells or installation of pumping equipment.

49 (C) Construction of permanent hatchery facilities, including raceways, water systems,  
50 or bird enclosures.

51 (D) Construction of permanent surface roadways or bridges.

52 (E) Any project requiring engineered design or certification by a registered engineer.



1 (3) Qualified costs shall be no greater than prevailing costs for similar work completed  
2 in the area where the project is proposed, and the project design and implementation shall  
3 follow Department of Fish and Game guidelines.

4 (d) For purposes of computing the credit provided by this section, the cost of any  
5 salmon or steelhead trout habitat restoration or improvement project eligible for the credit  
6 shall be reduced by the amount of any grant or cost-share payment provided by a public  
7 entity for that project. The Department of Fish and Game shall certify the amount of  
8 funding, if any, provided by the Department of Fish and Game for the project.

9 (e) The taxpayer or partnership shall do all of the following:

10 (1)(A) Submit an application for the restoration tax credit with a description of the  
11 proposed project in a format acceptable to the Department of Fish and Game.

12 (B) The application for the restoration tax credit shall include all information that is  
13 required by the Department of Fish and Game, pursuant to subdivision (b), as well as, but  
14 not limited to, all of the following:

15 (i) A project description of the habitat restoration or improvement work to be  
16 accomplished, including the location of the project.

17 (ii) If other than the project applicant, the name of the owner of the land where the  
18 project is to be carried out.

19 (iii) The estimated qualified cost to accomplish the project, as well as the project's  
20 overall estimated cost.

21 (iv) A statement that a reasonable attempt will be made to hire unemployed persons  
22 previously employed in the commercial fishing or forest products industries for  
23 implementation of the project.

24 (v) The tax identification number of each taxpayer allowed the credit.

25 (2) Obtain from the Department of Fish and Game certification that the project is  
26 approved, and the amount of credit allocation authorized, which shall not exceed the  
27 maximum amount of credit allocation set forth in subdivision (k).

28 (3) Notify the Department of Fish and Game in a form and manner specified by the  
29 department that the habitat restoration or improvement work was actually completed and  
30 the amount of qualified costs that were paid.

31 (4) Provide access, subject to prior notification by the Department of Fish and Game  
32 staff and permission by the taxpayer, to proposed project sites by the Department of Fish  
33 and Game staff for preproject and postproject evaluation, for project monitoring during  
34 all phases of implementation, and for verification that projects have been completed in  
35 accordance with department guidelines and recommendations. The Department of Fish  
36 and Game shall not include a project on its list of approved projects eligible for the tax  
37 credit that is submitted to the Franchise Tax Board unless these conditions are met.

38 (5) Retain a copy of and make the certification referred to in paragraph (3) of  
39 subdivision (f) available to the Franchise Tax Board upon demand.

40 (6) Calculate the credit amount, equal to the lesser of 10 percent of the taxpayer's  
41 actual qualified costs or the amount of credit allocation authorized to the taxpayer, as  
42 determined by the Department of Fish and Game.

43 (7) A partnership shall disclose in its partnership return for the taxable year all of the  
44 following:

45 (A) The name of each partner who received a distributive share of the credit.

46 (B) Each partner's social security number or identification number.

47 (C) Each partner's distributive share of the credit.

48 (f) The Department of Fish and Game shall do all of the following:

49 (1) Accept and review applications to determine if projects meet the conditions  
50 specified in subdivision (b).

51 (2) After all applications have been received for a calendar year, determine if 10  
52 percent of the estimated costs for all approved projects exceeds the annual credit  
53 allocation. If the annual amount of credit allocation is exceeded, the amount of each  
54 taxpayer's credit allocation shall be calculated as follows:

(A) Divide the annual amount of credit allocation set forth in subdivision (j) by the total estimated qualified costs for all approved projects.

(B) Multiply each approved project's estimated qualified cost by the quotient of the calculation in subparagraph (A).

(C) If the annual amount of credit allocation is not exceeded, the amount of each credit allocation shall be 10 percent of the estimated qualified costs.

(3) Issue certificates to each taxpayer or partnership with an approved project that specifies the amount of credit allocated to the project.

(4) Provide an annual listing to the Franchise Tax Board (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the Department of Fish and Game) of the taxpayers or partnerships who were issued the certification, their respective tax identification numbers, and the allowable amount of the credit allocated to each taxpayer or partnership.

(g) The Department of Fish and Game shall have the authority to establish annual timeframes for the receipt of applications.

(h) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(i) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(j) For purposes of this section, the annual amount of credit allocation means the aggregate amount of tax credits which may be granted pursuant to this section and Section 23666 shall not exceed five hundred thousand dollars (\$500,000) per year. The Department of Fish and Game shall not authorize any credit which would cause the total amount of credits authorized with respect to any calendar year under this section and Section 23666 to exceed five hundred thousand dollars (\$500,000).

(k) The maximum credit amount which the Department of Fish and Game may authorize with respect to any taxable year to any taxpayer or partnership is fifty thousand dollars (\$50,000).

(l) In the case of a partnership, the credit limitation specified in subdivision (k) shall apply with respect to the partnership and with respect to each partner.

(m) This section shall remain in effect only until December 1, 2000, and as of that date is repealed.

**Comment.** Section 17053.66 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Rev. & Tax. Code § 23666 (amended). Credit against net tax**

SEC. \_\_\_\_\_. Section 23666 of the Revenue and Taxation Code is amended to read:

23666. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2000, there shall be allowed, as determined by the Department of Fish and Game, a credit against the "tax," as defined in Section 23036. The credit amount shall be equal to the lesser of 10 percent of the qualified costs paid or incurred by the taxpayer for salmon and steelhead trout habitat restoration and improvement projects or an amount determined in subparagraph (B) of paragraph (2) of subdivision (f). The credit allowed by this section shall be claimed on the return for the income year in which the expense for the habitat restoration or improvement project was paid or incurred.

(b) A taxpayer shall be eligible to claim the credit only after application to and certification by the Department of Fish and Game that all of the following conditions are met:

(1) The salmon or steelhead trout habitat restoration or improvement project meets the objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act

(Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code) and would aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) The work to be undertaken is not otherwise required to be carried out pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative impacts to the environment caused by timber operations or required for mitigation of negative impacts on fish and wildlife habitat caused by a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(c)(1) Qualified costs are those costs paid or incurred by the taxpayer which are directly related to labor and materials which aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) Qualified costs do not include costs paid or incurred with respect to any of the following:

(A) Construction of office, storage, garage, or maintenance buildings.

(B) Drilling wells or installation of pumping equipment.

(C) Construction of permanent hatchery facilities, including raceways, water systems, or bird enclosures.

(D) Construction of permanent surface roadways or bridges.

(E) Any project requiring engineered design or certification by a registered engineer.

(3) Qualified costs shall be no greater than prevailing costs for similar work completed in the area where the project is proposed, and the project design and implementation shall follow the Department of Fish and Game guidelines.

(d) For purposes of computing the credit provided by this section, the cost of any salmon or steelhead trout habitat restoration or improvement project eligible for the credit shall be reduced by the amount of any grant or cost-share payment provided by a public entity for that project. The Department of Fish and Game shall certify the amount of funding, if any, provided by the Department of Fish and Game for the project.

(e) The taxpayer shall do all of the following:

(1)(A) Submit an application for the restoration tax credit with a description of the proposed project in a format acceptable to the Department of Fish and Game.

(B) The application for the restoration tax credit shall include all information that is required by the Department of Fish and Game, pursuant to subdivision (b), as well as, but not limited to, all of the following:

(i) A project description of the habitat restoration or improvement work to be accomplished, including the location of the project.

(ii) If other than the project applicant, the name of the owner of the land where the project is to be carried out.

(iii) The estimated qualified cost to accomplish the project, as well as the project's overall estimated cost.

(iv) A statement that a reasonable attempt will be made to hire unemployed persons previously employed in the commercial fishing or forest products industries for implementation of the project.

The tax identification number of each taxpayer allowed the credit.

(2) Obtain from the Department of Fish and Game certification that the project is approved, and the amount of credit allocation authorized, which shall not exceed the maximum amount of credit allocation set forth in subdivision (k).

(3) Notify the Department of Fish and Game in a form and manner specified by the department that the habitat restoration or improvement work was actually completed and the amount of qualified costs that were paid.

1 (4) Provide access, subject to prior notification by the Department of Fish and Game  
2 staff and permission by the taxpayer, to proposed project sites by the Department of Fish  
3 and Game staff for preproject and postproject evaluation, for project monitoring during  
4 all phases of implementation, and for verification that projects have been completed in  
5 accordance with department guidelines and recommendations. The Department of Fish  
6 and Game shall not include a project on its list of approved projects eligible for the tax  
7 credit that is submitted to the Franchise Tax Board unless these conditions are met.

8 (5) Retain a copy of and make the certification referred to in paragraph (3) of  
9 subdivision (f) available to the Franchise Tax Board upon demand.

10 (6) Calculate the credit amount, equal to the lesser of 10 percent of the taxpayer's  
11 actual qualified costs or the amount of credit allocation authorized to the taxpayer, as  
12 determined by the Department of Fish and Game.

13 (f) The Department of Fish and Game shall do all of the following:

14 (1) Accept and review applications to determine if projects meet the conditions  
15 specified in subdivision (b).

16 (2) After all applications have been received for a calendar year, determine if 10  
17 percent of the estimated costs for all approved projects exceeds the annual credit  
18 allocation. If the annual amount of credit allocation is exceeded, the amount of each  
19 taxpayer's credit allocation shall be calculated as follows:

20 (A) Divide the annual amount of credit allocation set forth in subdivision (j) by the total  
21 estimated qualified costs for all approved projects.

22 (B) Multiply each approved project's estimated qualified cost by the quotient of the  
23 calculation in subparagraph (A).

24 (C) If the annual amount of credit allocation is not exceeded, the amount of each credit  
25 allocation shall be 10 percent of the estimated qualified costs.

26 (3) Issue certificates to each taxpayer or partnership with an approved project that  
27 specifies the amount of credit allocated to the project.

28 (4) Provide an annual listing to the Franchise Tax Board (preferably on magnetic tape  
29 or other machine-readable form, and in a form and manner agreed upon by the Franchise  
30 Tax Board and the Department of Fish and Game) of the taxpayers or partnerships who  
31 were issued the certification, their respective tax identification numbers, and the  
32 allowable amount of the credit allocated to each taxpayer or partnership.

33 (g) The Department of Fish and Game shall have the authority to establish annual  
34 timeframes for the receipt of applications.

35 (h) The taxpayers' identification numbers obtained through the tax credit application  
36 and certification process shall be used exclusively for state tax administrative purposes.

37 (i) In the case where the credit allowed by this section exceeds the "tax," the excess  
38 may be carried over to reduce the "tax" in the following year, and succeeding years if  
39 necessary, until the credit has been exhausted.

40 (j) For purposes of this section, the annual amount of credit allocation means the  
41 aggregate amount of tax credits which may be granted pursuant to this section and  
42 Section 17053.66 shall not exceed five hundred thousand dollars (\$500,000) per year.  
43 The Department of Fish and Game shall not authorize any credit which would cause the  
44 total amount of credits authorized with respect to any calendar year under this section and  
45 Section 17053.66 to exceed five hundred thousand dollars (\$500,000).

46 (k) The maximum credit amount which the Department of Fish and Game may  
47 authorize with respect to any income year to any taxpayer or partnership is fifty thousand  
48 dollars (\$50,000).

49 (l) In the case of a partnership, the credit limitation specified in subdivision (k) shall  
50 apply with respect to the partnership and with respect to each partner.

51 (m) This section shall remain in effect only until December 1, 2000, and as of that date  
52 is repealed.

**Comment.** Section 23666 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

## STREETS AND HIGHWAYS C O D E

### **Sts. & Hy. Code § 180.2 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 180.2 of the Streets and Highways Code is amended to read:  
180.2. The following projects under this article shall be considered to be activities under paragraph (4) of subdivision (b) of Section 21080 of the ~~Public Resources~~ Environment Code:

- (a) The structural modification of an existing highway structure or toll bridge.
- (b) The replacement of a highway structure or toll bridge within, or immediately adjacent to, an existing right-of-way.

**Comment.** Section 180.2 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Sts. & Hy. Code § 229.3 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 229.3 of the Streets and Highways Code is amended to read:  
229.3. Any project subject to this article is a project for purposes of paragraph (3) of subdivision (b) of Section 21080 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 229.3 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Sts. & Hy. Code § 671.5 (amended). Encroachment permits**

SEC. \_\_\_\_\_. Section 671.5 of the Streets and Highways Code is amended to read:  
671.5. (a) The department shall either approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application, as determined by the department. An application for an encroachment permit is complete when all other statutory requirements, including the California Environmental Quality Act (Division 43 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), have been complied with. The department's failure to notify the applicant within that 60-day period that the permit is denied shall be deemed to constitute approval of the permit. Thereafter, upon notifying the department, the applicant may act in accordance with its permit application, as if the permit had been approved.

(b) If the department denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(c) The department shall adopt regulations prescribing procedures for an applicant to appeal to the director for a final determination of the department's denial of an application. The appeal shall be made in writing to the director. There shall be a final written determination by the director within 60 calendar days after receipt of the applicant's written appeal. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(d) Nothing in this section precludes an applicant and the department from mutually agreeing to an extension of any time limit provided by this section.



1     **Comment.** Section 671.5 is amended to substitute a reference to the Environment Code  
2 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
3 Resources Code.

4     **Sts. & Hy. Code § 2580 (amended). Loans**

5     SEC. \_\_\_\_\_. Section 2580 of the Streets and Highways Code is amended to read:

6     2580. (a) The Department of Transportation may make loans to other state agencies for  
7 the purpose of purchasing vanpool vehicles, as defined by subdivision (b) of Section  
8 2570, for state employee vanpooling. The purchased vehicles, to the extent practicable,  
9 shall be either “low-emission vehicles,” as defined by Section 39037.05 30300 of the  
10 ~~Health and Safety~~ Environment Code, or “alternative fuel vehicles,” which are either of  
11 the following:

12     (1) An original equipment manufactured vehicle capable of operating on a  
13 nonpetroleum-based alternative fuel such as electricity, ethanol, hydrogen, liquefied  
14 petroleum gas, methanol, or natural gas and that has demonstrated to the satisfaction of  
15 the State Air Resources Board the ability to meet applicable California emission  
16 standards.

17     (2) A vehicle that has been converted to use a nonpetroleum-based alternative fuel such  
18 as electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, or natural gas  
19 through the installation of an alternative fuel retrofit system that has been certified by the  
20 State Air Resources Board.

21     (b) The department shall establish criteria and adopt guidelines for making the loans  
22 and for the purchase of vanpool vehicles, including, but not limited to, requirements on  
23 the type of vehicles authorized for purchase, areas within the state eligible for the  
24 vehicles’ operation, types of routes for the vehicles’ operation, and agencies which are  
25 authorized to participate in the program. State agencies may submit loan applications to  
26 the department for approval. State agencies receiving loans and purchasing vehicles  
27 pursuant to this section shall be responsible for all of the following:

28     (1) Operational responsibilities for the vehicles, including, but not limited to, vehicle  
29 maintenance and repair.

30     (2) Administration of departmental rideshare programs, including, but not limited to,  
31 ridership development and retention.

32     (3) Compliance with applicable state and federal laws and regulations, including driver  
33 and vehicle certification, licenses, and vehicle registration.

34     (4) Retaining title to vanpool vehicles purchased.

35     (5) Repayment of the loan for the purchase of the vanpool vehicle.

36     (c) An agency which receives a loan for the purchase of a vanpool vehicle pursuant to  
37 this section shall charge each employee participating in the vanpooling program a  
38 monthly fee in an amount determined by the agency. Proceeds of the fees shall be  
39 sufficient to fully reimburse the agency for repayment of the loan and for the operational  
40 cost of the vanpool vehicle. The operational cost includes, at a minimum, fuel,  
41 maintenance, and repairs. The agency shall maintain records to demonstrate that the  
42 vanpooling program which it operates is self-supporting.

43     (d) Funds for loans for purposes of this section shall be provided in the annual Budget  
44 Act.

45     **Comment.** Section 2580 is amended to substitute a reference to the Environment Code  
46 provision that continues former Health and Safety Code Section 39037.05.



## VEHICLE CODE

### **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:

~~(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.~~

☞ **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 ~~40000~~) of Division 26 4 of the ~~Health and Safety~~ 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 ~~40000~~) of Division 26 4 of the ~~Health and Safety~~

1 Environment Code, the provisions of Article 2 (commencing with Section 40150) of  
2 Chapter 1 of Division 17 of this code shall apply.

3 The provisions of this section relating to motor vehicle pollution control devices apply  
4 to vehicles of the United States or its agencies, to the extent authorized by federal law.

5 **Comment.** Section 2814 is amended to substitute references to the Environment Code  
6 provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the  
7 Health and Safety Code.

8 **Veh. Code § 4000 (amended). Offstreet parking facility**

9 SEC. \_\_\_\_ Section 4000 of the Vehicle Code is amended to read:

10 4000. (a)(1) No person shall drive, move, or leave standing upon a highway, or in an  
11 offstreet public parking facility, any motor vehicle, trailer, semitrailer, pole or pipe dolly,  
12 logging dolly, or auxiliary dolly unless it is registered and the appropriate fees have been  
13 paid under this code, except that an off- highway motor vehicle which displays an  
14 identification plate or device issued by the department pursuant to Section 38010 may be  
15 driven, moved, or left standing in an offstreet public parking facility without being  
16 registered or paying registration fees.

17 (2) For purposes of this subdivision, “offstreet public parking facility” means either of  
18 the following:

19 (A) Any publicly owned parking facility.

20 (B) Any privately owned parking facility for which no fee for the privilege to park is  
21 charged and which is held open for the common public use of retail customers.

22 (3) This subdivision does not apply to any motor vehicle stored in a privately owned  
23 offstreet parking facility by, or with the express permission of, the owner of the privately  
24 owned offstreet parking facility.

25 (b) No person shall drive, move, or leave standing upon a highway any motor vehicle,  
26 as defined in ~~Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the~~  
27 ~~Health and Safety Code~~ Section 30330 of the Environment Code, which has been  
28 registered in violation of Part 5 (commencing with Section ~~43000~~ 40000) of that Division  
29 ~~26 4 of the Environment Code~~.

30 (c) Subdivisions (a) and (b) do not apply to off-highway motor vehicles operated  
31 pursuant to Sections 38025 and 38026.5.

32 (d) This section does not apply, following payment of fees due for registration, during  
33 the time that registration and transfer is being withheld by the department pending the  
34 investigation of any use tax due under the Revenue and Taxation Code.

35 (e) Subdivision (a) does not apply to a vehicle that is towed by a tow truck on the order  
36 of a sheriff, marshal, or other official acting pursuant to a court order or on the order of a  
37 peace officer acting pursuant to this code.

38 (f) Subdivision (a) applies to a vehicle that is towed from a highway or off- street  
39 parking facility under the direction of a highway service organization when that  
40 organization is providing emergency roadside assistance to that vehicle. However, the  
41 operator of a tow truck providing that assistance to that vehicle is not responsible for the  
42 violation of subdivision (a) with respect to that vehicle. The owner of an unregistered  
43 vehicle that is disabled and located on private property, shall obtain a permit from the  
44 department pursuant to Section 4003 prior to having the vehicle towed on the highway.

45 (g) For purposes of this section, possession of a California driver’s license by the  
46 registered owner of a vehicle shall give rise to a rebuttable presumption that the owner is  
47 a resident of California.

48 **Comment.** Section 4000 is amended to substitute references to the Environment Code  
49 provisions that continue former Chapter 2 (commencing with Section 39010 ) of Part 1 of, and  
50 Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

**Veh. Code § 4000.1 (amended). Certificate of compliance or noncompliance**

SEC. \_\_\_\_\_. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the ~~Health and Safety Code~~ 41854 of the Environment Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety Environment Code~~, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the ~~Health and Safety Environment Code~~, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the ~~Health and Safety Code~~ 42903 of the Environment Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 3 (commencing with Section 43100 41300) of Title 4 of Part 5 of Division 26 4 of the ~~Health and Safety Environment Code~~, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010 30100) of Part 1 of Division 26 4 of the ~~Health and Safety Environment Code~~ shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) In any district in which biennial certification is required and a valid certificate was issued in connection with the most recent renewal of registration of the vehicle, and the transfer occurred not more than 60 days following the date by which that renewal of registration was required.

(2) The transferor is either the parent, grandparent, sibling, child, grandchild, or spouse of the transferee.

(3) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(5) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(6) Prior to January 1, 2003, the motor vehicle was manufactured prior to the 1974 model-year.

(7) Beginning January 1, 2003, the motor vehicle is 30 or more model-years old.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety Environment Code~~, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

(f) Subdivision (a) does not apply to a motor vehicle when an additional individual is added as a registered owner of the vehicle.

**Comment.** Section 4000.1 is amended to substitute references to the Environment Code provisions that continue provisions of former Chapter 2 (commencing with Section 30100) of Part 1 of, and Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

**Veh. Code § 4000.2 (amended). Out-of-state motor vehicles**

SEC. \_\_\_\_\_. Section 4000.2 of the Vehicle Code is amended to read:

4000.2. (a) Except as otherwise provided in subdivision (b) of Section 43654 41854 of the ~~Health and Safety Environment Code~~, and, commencing on January 1, 1993, except

for 1965 or earlier model-year motor vehicles, the department shall require upon registration of a motor vehicle subject to Part 5 (commencing with Section 43000 ~~40000~~) of Division 26 ~~4~~ of the ~~Health and Safety~~ Environment Code, previously registered outside this state, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 ~~42903~~ of the ~~Health and Safety~~ Environment Code.

(b) For the purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010 ~~30100~~) of Part 1 of Division 26 ~~4~~ of the ~~Health and Safety~~ Environment Code shall control.

**Comment.** Section 4000.2 is amended to substitute references to the Environment Code provisions that continue provisions of former Chapter 2 (commencing with Section 39010) of Part 1 of, and Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

**Veh. Code § 4000.3 (amended). Certificate of compliance**

SEC. \_\_\_\_\_. Section 4000.3 of the Vehicle Code is amended to read:

(a) Except as otherwise provided in Section 44011 ~~42900~~ of the ~~Health and Safety~~ Environment Code, the department shall require biennially, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000 ~~40000~~) of Division 26 ~~4~~ of the ~~Health and Safety~~ Environment Code, a valid certificate of compliance issued in accordance with Section 44015 ~~40903~~ of the ~~Health and Safety~~ 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 provisions of former 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 ~~40000~~) of Division 26 ~~4~~ of the ~~Health and Safety~~ 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:

(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~~ 40000) of Division 26 ~~4 of the Health and Safety 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.

"By signing this statement, you acknowledge that the seller is not required to provide you with an additional certificate of compliance prior to the completion of this transaction.

"You may have this vehicle tested at a licensed smog check station prior to completion of this transaction to verify compliance. If the vehicle passes the test, you shall be responsible for the costs of the test. If the vehicle fails the test, the seller is obligated to reimburse you the cost of having the vehicle tested and, without expense to you, must have the vehicle repaired to comply with specified emission standards prior to completion of this transaction.

\_\_\_\_\_  
(Transferor) (Date)

\_\_\_\_\_  
(Transferee) (Date)

(c) Any sale of a motor vehicle with regard to which the transferor is found to have committed perjury, as described in subdivision (a), may be rescinded by the transferee within 60 days of the date that the transferee obtained knowledge of the perjury. The transferee shall be entitled to recover all consideration paid to the transferor and any interest from the date of sale. In addition, the court may, upon motion, award reasonable attorney's fees to the prevailing plaintiff.

**Comment.** Section 5751.5 is amended to substitute references to the Environment Code provisions that continue provisions of former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

**Veh. Code § 9250.11 (amended). Additional fees for South Coast Air Quality Management District**

SEC. \_\_\_\_\_. Section 9250.11 of the Vehicle Code is amended to read:

(a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar (\$1) may be imposed by the South Coast Air Quality Management District and shall be paid to the department, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000 ~~40000~~) of Division ~~26~~ 4 of the ~~Health and Safety~~ Environment Code and registered in the south coast district, except any vehicle that is expressly exempted under this code from the payment of registration fees.

(b) Prior to imposing fees pursuant to this section, the south coast district board shall approve the imposition of the fees through the adoption of a resolution by both a majority of the district board and a majority of the district board who are elected officials. After deducting all costs incurred pursuant to this section, the department shall distribute the additional fees collected pursuant to subdivision (a) to the south coast district, which shall use the fees to reduce air pollution from motor vehicles through implementation of ~~Section 40448.5 of the Health and Safety Code~~ 36406 of the Environment Code.

(c) Any memorandum of understanding reached between the district and a county prior to the imposition of a one dollar (\$1) fee by a county shall remain in effect and govern the allocation of the funds generated in that county by that fee.

(d) The South Coast Air Quality Management District shall adopt accounting procedures to ensure that revenues from motor vehicle registration fees are not commingled with other 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:

(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:

(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 Title 5 (commencing with Section ~~44000~~ 42300) of Part 5 of Division 26 ~~4~~ of the ~~Health and Safety~~ 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 references to the Environment Code provisions that continue provisions of former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

**Veh. Code § 9250.2 (amended). Surcharge for Sacramento Metropolitan Air Quality Management District**

SEC. \_\_\_\_\_. Section 9250.2 of the Vehicle Code is amended to read:

9250.2. The department shall, if requested by the Sacramento Metropolitan Air Quality Management District pursuant to Section 41081 35602 of the ~~Health and Safety~~

1 Environment Code, impose and collect a surcharge on the registration fees for every  
2 motor vehicle registered in that district, not to exceed either of the following amounts,  
3 whichever is applicable, as specified by the governing body of that district:

4 (a) For each motor vehicle registered in that district whose registration expires on or  
5 after December 31, 1989, and prior to December 31, 1990, two dollars (\$2).

6 (b) For each motor vehicle registered in that district whose registration expires on or  
7 after December 31, 1990, not to exceed four dollars (\$4).

8 **Comment.** Section 9250.2 is amended to substitute a reference to the Environment Code  
9 provision that continues former Section 41081 of the Health and Safety Code.

10 **Veh. Code § 11519 (amended). Registration of dismantled vehicles**

11 SEC. \_\_\_\_\_. Section 11519 of the Vehicle Code is amended to read:

12 (a) No vehicle that has been reported dismantled may be subsequently registered until  
13 there is submitted to the department with the prescribed bill of sale an appropriate  
14 application, official lamp and brake adjustment certificates issued by an official lamp and  
15 brake adjusting station licensed by the Department of Consumer Affairs, except that fleet  
16 owners of motor trucks of three or more axles which are more than 6,000 pounds unladen  
17 weight and truck tractors may instead submit an official lamp and brake certification for  
18 their rebuilt vehicle if they operate an inspection and maintenance station licensed by the  
19 commissioner pursuant to subdivision (b) of Section 2525, other documents and fees  
20 required, and, with respect to any motor vehicle subject to Part 5 (commencing with  
21 Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code, a  
22 valid certificate of compliance from a licensed motor vehicle pollution control device  
23 installation and inspection station indicating that the vehicle is properly equipped with a  
24 motor vehicle pollution control device or devices which are in proper operating condition  
25 and which are in compliance with the provisions of Part 5 (commencing with Section  
26 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code.

27 (b) The department shall not register a vehicle that has been referred to the Department  
28 of the California Highway Patrol under subdivision (b) of Section 5505 or that has been  
29 selected for inspection by that department under subdivision (c) of that section, until the  
30 applicant for registration submits to the department a certification of inspection issued by  
31 the Department of the California Highway Patrol and all of the documents required under  
32 subdivision (a).

33 (c) This section shall remain in effect only until January 1, 2003, and as of that date is  
34 repealed, unless a later enacted statute, that is enacted on or before January 1, 2003,  
35 deletes or extends that date.

36 **Comment.** Section 11519 is amended to substitute references to the Environment Code  
37 provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the  
38 Health and Safety Code.

39 **Veh. Code § 11705 (amended). Suspension or revocation of license**

40 SEC. \_\_\_\_\_. Section 11705 of the Vehicle Code is amended to read:

41 (a) The department, after notice and hearing, may suspend or revoke the license issued  
42 to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer,  
43 remanufacturer branch, distributor, or distributor branch upon determining that the person  
44 to whom the license was issued is not lawfully entitled thereto, or has done any of the  
45 following:

46 (1) Filed an application for the license using a false or fictitious name not registered  
47 with the proper authorities, or knowingly made any false statement or knowingly  
48 concealed any material fact, in the application for the license.

49 (2) Made, or knowingly or negligently permitted, any illegal use of the special plates  
50 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.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, "person" also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated ~~Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code~~ Section 41551, 41552, 41553, or 44408 of the Environment Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 11705 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 43151, 43152, 43153, and 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:

(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 that the person claiming the vehicle is properly licensed and the vehicle is properly registered. A vehicle impounded pursuant to the circumstances described in paragraph (3) of subdivision (c) shall be released to a registered owner



1 whether or not the driver of the vehicle at the time of impoundment presents a valid  
2 driver's license.

3 (2) If there is a community property interest in the vehicle impounded pursuant to  
4 subdivision (c), owned at the time of impoundment by a person other than the driver, and  
5 the vehicle is the only vehicle available to the driver's immediate family that may be  
6 operated with a class C driver's license, the vehicle shall be released to a registered owner  
7 or to the community property interest owner upon compliance with all of the following  
8 requirements:

9 (A) The registered owner or the community property interest owner requests release of  
10 the vehicle and the owner of the community property interest submits proof of that  
11 interest.

12 (B) The registered owner or the community property interest owner submits proof that  
13 he or she, or an authorized driver, is properly licensed and that the impounded vehicle is  
14 properly registered pursuant to this code.

15 (C) All towing and storage charges related to the impoundment and any administrative  
16 charges authorized pursuant to Section 22850.5 are paid.

17 (D) The registered owner or the community property interest owner signs a stipulated  
18 vehicle release agreement, as described in paragraph (3), in consideration for the  
19 nonforfeiture of the vehicle. This requirement applies only if the driver requests release of  
20 the vehicle.

21 (3) A stipulated vehicle release agreement shall provide for the consent of the signator  
22 to the automatic future forfeiture and transfer of title to the state of any vehicle registered  
23 to that person, if the vehicle is driven by a driver with a suspended or revoked license, or  
24 by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on  
25 a driving record maintained by the department pursuant to Section 1806.1.

26 (4) The stipulated vehicle release agreement described in paragraph (3) shall be  
27 reported by the impounding agency to the department not later than 10 days after the day  
28 the agreement is signed.

29 (5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a  
30 registered owner indicates that a prior stipulated vehicle release agreement was signed by  
31 that person.

32 (e)(1) The impounding agency, in the case of a vehicle that has not been redeemed  
33 pursuant to subdivision (d), or that has not been otherwise released, shall promptly  
34 ascertain from the department the names and addresses of all legal and registered owners  
35 of the vehicle.

36 (2) The impounding agency, within two days of impoundment, shall send a notice by  
37 certified mail, return receipt requested, to all legal and registered owners of the vehicle, at  
38 the addresses obtained from the department, informing them that the vehicle is subject to  
39 forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice  
40 shall also include instructions for filing a claim with the district attorney, and the time  
41 limits for filing a claim. The notice shall also inform any legal owner of its right to  
42 conduct the sale pursuant to subdivision (g). If a registered owner was personally served  
43 at the time of impoundment with a notice containing all the information required to be  
44 provided by this paragraph, no further notice is required to be sent to a registered owner.  
45 However, a notice shall still be sent to the legal owners of the vehicle, if any. If notice  
46 was not sent to the legal owner within two working days, the impounding agency shall  
47 not charge the legal owner for more than 15-days' impoundment when the legal owner  
48 redeems the impounded vehicle.

49 (3) No processing charges shall be imposed on a legal owner who redeems an  
50 impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are  
51 filed and served within 15 days after the mailing of the notice in paragraph (2), or if no  
52 claims are filed and served within five days of personal service of the notice specified in  
53 paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the  
54 district attorney shall prepare a written declaration of forfeiture of the vehicle to the state.



1 A written declaration of forfeiture signed by the district attorney under this subdivision  
2 shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the  
3 declaration shall be provided on request to any person informed of the pending forfeiture  
4 pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant  
5 shall be deemed not to have been filed.

6 (4) If a claim is timely filed and served, then the district attorney shall file a petition of  
7 forfeiture with the appropriate justice, juvenile, or municipal court within 10 days of the  
8 receipt of the claim. The district attorney shall establish an expedited hearing date in  
9 accordance with instructions from the court, and the court shall hear the matter without  
10 delay. The court filing fee, not to exceed fifty dollars (\$50), shall be paid by the claimant,  
11 but shall be reimbursed by the impounding agency if the claimant prevails. To the extent  
12 practicable, the civil and criminal cases shall be heard at the same time in an expedited,  
13 consolidated proceeding.

14 (5) The burden of proof in the civil case shall be on the prosecuting agency, by a  
15 preponderance of the evidence. All questions that may arise shall be decided and all other  
16 proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture  
17 does not require as a condition precedent the conviction of a defendant of an offense  
18 which made the vehicle subject to forfeiture. The filing of a claim within the time limits  
19 specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the  
20 action authorized by that paragraph.

21 (6) All right, title, and interest in the vehicle shall vest in the state upon commission of  
22 the act giving rise to the forfeiture.

23 (f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is  
24 subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is  
25 issued by the district attorney of the county of the impounding agency or a court, as the  
26 case may be, pursuant to subdivision (e).

27 (g) Any legal owner who in the regular course of business conducts sales of  
28 repossessed or surrendered motor vehicles may take possession and conduct the sale of  
29 the forfeited vehicle if it notifies the agency impounding the vehicle of its intent to  
30 conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e).  
31 Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the  
32 time, in the manner, and on the notice usually given by the legal owner for the sale of  
33 repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal  
34 owner shall be disposed of as provided in subdivision (i).

35 (h) If the legal owner does not notify the agency impounding the vehicle of its intent to  
36 conduct the sale as provided in subdivision (g), the agency shall offer the forfeited  
37 vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low  
38 value vehicles shall be disposed of pursuant to subdivision (k).

39 (i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following  
40 priority:

41 (1) To satisfy the towing and storage costs following impoundment, the costs of  
42 providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of  
43 judicial proceedings, if any.

44 (2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner  
45 remaining as of the date of sale, including accrued interest or finance charges and  
46 delinquency charges, providing that the principal indebtedness was incurred prior to the  
47 date of impoundment.

48 (3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a  
49 registered or legal owner, to satisfy any indebtedness so secured if written notification of  
50 demand is received before distribution of the proceeds is completed. The holder of a  
51 subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its  
52 interest and, unless it does so upon request, is not entitled to distribution pursuant to this  
53 paragraph.

(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.

(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.

(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by ~~Article 9 Chapter 8~~ (commencing with Section 44090 43800) of ~~Chapter 5 Title 5~~ of Part 5 of Division 26 ~~4~~ of the ~~Health and Safety Environment~~ Code and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with information leading to the arrest and conviction of hit and run drivers and to publicize the availability of the reward fund.

(j) The person conducting the sale shall disburse the proceeds of the sale as provided in subdivision (i) and shall provide a written accounting regarding the disposition to the impounding agency and, on request, to any person entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(k) If the vehicle to be sold pursuant to this section is not of the type that can readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to an eleemosynary institution. License plates shall be removed from any vehicle conveyed to a dismantler pursuant to this subdivision.

(l) No vehicle shall be sold pursuant to this section if the impounding agency determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered owner at any time after impoundment, providing the vehicle registration is current and the registered owner has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.

(m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of any vehicle pursuant to this section may recover the amount of the loss from the unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a business establishment in good faith, and an unlicensed driver employed or otherwise directed by the business establishment is the cause of the impoundment of the vehicle, a registered owner of the impounded vehicle may recover damages for the loss of use of the 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 (amended). Responsibility of dealer or other person selling motor vehicle**

SEC. \_\_\_\_\_. Section 24007 of the Vehicle Code is amended to read:

24007. (a)(1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

(2) Paragraph (1) does not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(b)(1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010 30100) of Part 1 of Division 26 4 of the ~~Health and Safety~~ Environment Code, subject to Part 5 (commencing with Section 43000 40000) of that Division 26 4 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 42903 of the ~~Health and Safety~~ Environment Code.

(3) Paragraph (2) does not apply to any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1.

(4) Paragraphs (1) and (2) do not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or ~~or~~ a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(c)(1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 42903 of the ~~Health and Safety~~ Environment Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 3 (commencing with Section 43100 41500) of Title 4 of

Part 5 of Division 26 ~~4~~ of the ~~Health and Safety~~ Environment Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that Chapter 2 ~~3~~. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

**Comment.** Section 24007 is amended to substitute references to the Environment Code provisions that continue provisions of former Chapter 2 (commencing with Section 39010) of Part 1 of, and Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

**Veh. Code § 24007.2 (amended). Low-income elderly persons**

SEC. \_\_\_\_\_. Section 24007.2 of the Vehicle Code is amended to read:

24007.2. If a dealer, or a person holding a retail seller's permit, sells to an elderly low-income person, as defined in Section 39026.5 ~~30230~~ of the ~~Health and Safety~~ Environment Code, a 1966 through 1970 model year motor vehicle which is not equipped, as required pursuant to Sections 43654 and 43656 of that code, with a certified device to control its exhaust emission of oxides of nitrogen, the dealer or such person, as the case may be, shall install the required certified device on the motor vehicle without cost to the elderly low-income person.

**Comment.** Section 24007.2 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 39026.5.

**Veh. Code § 24007.5 (amended). Sale by auctioneer or public agency**

SEC. \_\_\_\_\_. Section 24007.5 of the Vehicle Code is amended to read:

(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



1 failure to comply will result in a lien against any vehicle owned by the buyer pursuant to  
2 Section 10876 of the Revenue and Taxation Code, enforceable pursuant to Section 10877  
3 of the Revenue and Taxation Code and Article 6 (commencing with Section 9800) of  
4 Chapter 6 of Division 3. Receipt of the notice required by this subparagraph shall be  
5 evidenced by the signature of the buyer.

6 (f) The exceptions in this section do not apply to any requirements for registration of a  
7 vehicle pursuant to Section 4000.1, 4000.2, or 4000.3.

8 (g) Except as otherwise provided in subdivision (e), any public agency or auctioneer  
9 which sells, at public auction, any vehicle specified in subdivision (b) of Section 24007,  
10 which is registered to a public agency or a public utility, shall provide each bidder with a  
11 notice in writing that a certificate of compliance is required to be obtained, certifying that  
12 the vehicle complies with Part 5 (commencing with Section 43000 40000) of Division 26  
13 4 of the ~~Health and Safety~~ Environment Code, before the vehicle may be registered in this  
14 state, unless the vehicle is sold to a dealer or for the purpose of being wrecked or  
15 dismantled or is sold exclusively for off-highway use. Prior to the sale of the vehicle, a  
16 public agency or public utility shall remove the license plates from the vehicle and  
17 surrender them to the department. The purchaser of the vehicle shall be given a bill of  
18 sale which includes, in addition to any other required information, the vehicle's last issued  
19 license plate number.

20 **Comment.** Section 24007.5 is amended to substitute references to the Environment Code  
21 provisions that continue provisions of former Part 5 (commencing with Section 43000) of  
22 Division 26 of the Health and Safety Code.

23 **Veh. Code § 27156 (amended). Gross polluters; air pollution control devices; fines**

24 SEC. \_\_\_\_\_. Section 27156 of the Vehicle Code is amended to read:

25 27156. (a) No person shall operate or leave standing upon any highway any motor  
26 vehicle which is a gross polluter, as defined in Section 39032.5 30275 of the ~~Health and~~  
27 Safety Environment Code.

28 (b) No person shall operate or leave standing upon any highway any motor vehicle  
29 which is required to be equipped with a motor vehicle pollution control device under Part  
30 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~  
31 Environment Code or any other certified motor vehicle pollution control device required  
32 by any other state law or any rule or regulation adopted pursuant to that law, or required  
33 to be equipped with a motor vehicle pollution control device pursuant to the National  
34 Emission Standards Act (42 U.S.C. Secs. 1857f-1 to 1857f-7, inclusive) and the standards  
35 and regulations adopted pursuant to that federal act, unless the motor vehicle is equipped  
36 with the required motor vehicle pollution control device which is correctly installed and  
37 in operating condition. No person shall disconnect, modify, or alter any such required  
38 device.

39 (c) No person shall install, sell, offer for sale, or advertise any device, apparatus, or  
40 mechanism intended for use with, or as a part of, any required motor vehicle pollution  
41 control device or system which alters or modifies the original design or performance of  
42 any such motor vehicle pollution control device or system.

43 (d) If the court finds that a person has willfully violated this section, the court shall  
44 impose the maximum fine that may be imposed in the case, and no part of the fine may be  
45 suspended.

46 (e) "Willfully," as used in this section, has the same meaning as the meaning of that  
47 word prescribed in Section 7 of the Penal Code.

48 (f) No person shall operate a vehicle after notice by a traffic officer that the vehicle is  
49 not equipped with the required certified motor vehicle pollution control device correctly  
50 installed in operating condition, except as may be necessary to return the vehicle to the  
51 residence or place of business of the owner or driver or to a garage, until the vehicle has  
52 been properly equipped with such a device.

(g) The notice to appear issued or complaint filed for a violation of this section shall require that the person to whom the notice to appear is issued or against whom the complaint is filed produce proof of correction pursuant to Section 40150 or proof of exemption pursuant to Section 4000.1 or 4000.2.

(h) This section shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to do either of the following:

(1) Not to reduce the effectiveness of any required motor vehicle pollution control device.

(2) To result in emissions from any such modified or altered vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted.

(i) This section applies to motor vehicles of the United States or its agencies, to the extent authorized by federal law.

**Comment.** Section 27156 is amended to substitute references to the Environment Code provisions that continue former Section 39032.5 and former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

#### **Veh. Code § 27156.1 (amended). Auxiliary gasoline fuel tanks**

SEC. \_\_\_\_\_. Section 27156.1 of the Vehicle Code is amended to read:

27156.1. The installation, prior to January 1, 1974, of an auxiliary gasoline fuel tank for use on a 1973 or earlier model year motor vehicle, which vehicle is required, pursuant to Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code or the National Emission Standards Act (42 U.S.C., Secs. ~~1857f-1 to 1857f-7, inclusive~~ 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550), to be equipped with a fuel system evaporative loss control device, shall not be deemed a violation of Section 27156 of this code. As used in this section, the term "auxiliary gasoline fuel tank," has the same meaning as defined in subdivision (b) of ~~Section 43834 of the Health and Safety Code~~ Section 40904 of the Environment Code.

**Comment.** Section 27156.1 is amended to substitute references to the Environment Code provisions that continue provisions of former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code .

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.

#### **Veh. Code § 27157 (amended). Vehicle pollution emission regulations**

SEC. \_\_\_\_\_. Section 27157 of the Vehicle Code is amended to read:

27157. The State Air Resources Board, after consultation with, and pursuant to the recommendations of, the commissioner, shall adopt such reasonable regulations as it determines are necessary for the public health and safety regarding the maximum allowable emissions of pollutants from vehicles upon a highway. Such regulations shall apply only to vehicles required by Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code or any federal law or regulation to be equipped with devices or systems to control emission of pollutants from the exhaust and shall not be stricter than the emission standards required of that model year motor vehicle when first manufactured.

**Comment.** Section 27157 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 § 27159 (amended). Removal of heavy-duty diesel motor vehicles from service**

SEC. \_\_\_\_\_. Section 27159 of the Vehicle Code is amended to read:

27159. Any uniformed member of the California Highway Patrol may order a vehicle stored when it is located within the territorial limits in which the member may act if requested by a representative of the State Air Resources Board to remove the vehicle from service pursuant to subdivision (f) of Section 44011.6 of the Health and Safety Code Section 43006 of the Environment Code. All towing and storage fees for a vehicle removed under this section shall be paid by the owner.

**Comment.** Section 27159 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 44011.6(f).

**Veh. Code § 28113 (amended). Low-emission vehicle requirements**

SEC. \_\_\_\_\_. Section 28113 of the Vehicle Code is amended to read:

28113. (a) Every light-duty and medium-duty motor vehicle operated for compensation to transport persons in an air quality management district or air pollution control district, which does not meet all applicable state ambient air quality standards, shall be a low-emission vehicle, as defined by regulation of the State Air Resources Board. If the vehicle is capable of operating on more than one fuel, it shall be operated within any nonattainment area to the maximum extent practicable either on the designated clean fuel on which the low-emission vehicle was certified or on any other fuel designated by the State Air Resources Board as a substitute fuel for the designated clean fuel. Any air quality management district or air pollution control district may adopt regulations for the enforcement of this section which are consistent with regulations of the State Air Resources Board.

(b) As used in this section, “motor vehicle operated for compensation to transport persons” includes a taxi cab, bus, airport shuttle vehicle, transit authority or transit district vehicle, or a vehicle owned by a private entity providing transit service under contract with a transit district or transportation authority.

(c) As used in this section, “light-duty” has the same meaning as defined in Section 39035 ~~30290~~ of the ~~Health and Safety~~ Environment Code.

(d) As used in this section, “medium-duty” has the same meaning as defined in Section 39037.5 ~~30310~~ of the ~~Health and Safety~~ Environment Code.

(e) This section applies to all new light-duty motor vehicles purchased on or after January 1, 1997, and to all new medium-duty vehicles purchased on or after January 1, 1998.

**Comment.** Section 28113 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 39035 and 39037.5.

**Veh. Code § 28114 (amended). Heavy-duty vehicles operated by transit authority**

SEC. \_\_\_\_\_. Section 28114 of the Vehicle Code is amended to read:

28114. (a) Every heavy-duty vehicle operated by a transit authority or transit district, or owned by a private entity providing transit service under contract with a transit district or transportation authority, and used to transport persons for compensation shall meet the emission standards adopted by the State Air Resources Board pursuant to Section 43806 ~~42201~~ of the ~~Health and Safety~~ Environment Code.

(b) As used in this section, “heavy-duty” has the same meaning as defined in Section 39033 ~~30280~~ of the ~~Health and Safety~~ Environment Code.

(c) This section applies to all new heavy-duty motor vehicles purchased on or after January 1, 1996, and all new or replacement engines purchased on or after January 1, 1996, for use in heavy-duty vehicles.

**Comment.** Section 28114 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 39033 and 43806.

**Veh. Code § 38390 (amended). Pollution control device**

SEC. \_\_\_\_\_. Section 38390 of the Vehicle Code is amended to read:

38390. No person shall operate or maintain in a condition of readiness for operation any off-highway motor vehicle which is required to be equipped with a motor vehicle pollution control device under Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code or with any other certified motor vehicle pollution control device required by any other state law or any rule or regulation adopted pursuant to such law, or required to be equipped with a motor vehicle pollution control device pursuant to the Clean Air Act (42 U.S.C. 1857 7401 et seq.) and the standards and regulations promulgated thereunder, unless it is equipped with the required motor vehicle pollution control device which is correctly installed and in operating condition. No person shall disconnect, modify, or alter any such required device. Notwithstanding Section 43107 of the ~~Health and Safety~~ Environment Code 41502 of the Environment Code, this section shall apply only to off-highway motor vehicles of the 1978 or later model year.

**Comment.** Section 38390 is amended to substitute references to the Environment Code provisions that continue provisions of former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code .

The former reference to Section 1857 *et seq.* of Title 42 of the U.S. Code is obsolete and has been replaced with a reference to Section 7401 *et seq.* of Title 42 of the U.S. Code.

**Veh. Code § 40001 (amended). Compliance requirements**

SEC. \_\_\_\_\_. Section 40001 of the Vehicle Code is amended to read:

(a) It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle upon a highway in any manner contrary to law.

(b) It is unlawful for an owner to request, cause, or permit the operation of any vehicle:

(1) Which is not registered or for which any fee has not been paid under this code.

(2) Which is not equipped as required in this code.

(3) Which does not comply with the size, weight, or load provisions of this code.

(4) Which does not comply with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.

(5) Which is not in compliance with the provisions of Part 5 (commencing with Section 43000 40000) of Division 26 4 of the ~~Health and Safety~~ Environment Code and the rules and regulations of the State 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:

(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 Chapter 7~~ (commencing with Section 44080 43600) of ~~Chapter Title 5 of Part 5 of Division 26 4~~ of the ~~Health and Safety 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 Chapter 7~~ (commencing with Section 44080 43600) of ~~Chapter Title 5 of Part 5 of Division 26 4~~ of the ~~Health and Safety 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:

(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 provision that continues former Health and Safety Code Section 44017.

## WATER CODE

### **Water Code § 1013 (amended). Imperial Irrigation District**

SEC. \_\_\_\_\_. Section 1013 of the Water Code is amended to read:

1013. The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

This section shall not be construed to exempt the Imperial Irrigation District from any requirements established under the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 1013 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Water Code § 1029 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 1029 of the Water Code is amended to read:

1029. Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code applies to water lease agreements authorized by this chapter. For purposes of that division, the lessor is the lead agency, except that if the lessor is a private party and the lessee is a water district, the lessee is the lead agency. If both the lessor and the lessee are private parties, the state board is the lead agency.

**Comment.** Section 1029 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Water Code § 1275 (amended). Additional information**

SEC. \_\_\_\_\_. Section 1275 of the Water Code is amended to read:

1275. After an application has been perfected, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Article 2 (commencing with Section 1260) or Article 3 (commencing with Section 1270). The board shall provide a reasonable period for submitting the information. The additional information may include, but is not limited to, any of the following:

(a) Information needed to demonstrate that unappropriated water is available for appropriation.

(b) Information needed to comply, or demonstrate compliance with, any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

(c) Information needed to comply with Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 1275 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 1335 (amended). Failure to provide information**

SEC. \_\_\_\_\_. Section 1335 of the Water Code is amended to read:

1335. (a) The board may cancel a protest or application for failure to provide information requested by the board under this article within the period provided.

(b) Except as provided in subdivisions (c) and (d), a protest shall not be canceled for failure to submit information not in the possession or under the control of the protestant if the protest is in compliance with Section 1331 and the applicant is or could be required to submit the information under Section 1260 or 1275.

(c) If a protest is based on interference with a prior right, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:

(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.

(2) Information that is reasonably necessary to determine if the protestant has a valid water right.

(3) Information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed appropriation will result in injury to the protestant's exercise of its water right.

(d) If the protest is based on an allegation that the proposed appropriation would not be in the public interest, would adversely affect public trust uses, or would have adverse environmental impact, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

**Comment.** Section 1335 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 1729 (amended). CEQA exemption**

SEC. \_\_\_\_\_. Section 1729 of the Water Code is amended to read:



1729. A proposed temporary change under this article shall be exempt from the requirements of Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

**Comment.** Section 1729 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 8730.1 (amended). Board action on applications**

SEC. \_\_\_\_\_. Section 8730.1 of the Water Code is amended to read:

8730.1. The board shall acknowledge the receipt of all applications in writing within 10 days of receipt. All applications shall be acted upon within 90 days of receipt, except that applications subject to the provisions of Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code shall be acted upon within 180 days of receipt. Applicants may waive the requirement that applications be acted upon within such period.

This section shall not apply to emergency permits.

**Comment.** Section 8730.1 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 10652 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 10652 of the Water Code is amended to read:

10652. The California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) does not apply to the preparation and adoption of plans pursuant to this part or to the implementation of actions taken pursuant to Section 10632. Nothing in this part shall be interpreted as exempting from the California Environmental Quality Act any project that would significantly affect water supplies for fish and wildlife, or any project for implementation of the plan, other than projects implementing Section 10632, or any project for expanded or additional water supplies.

**Comment.** Section 10652 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 10851 (amended). Application of CEQA**

SEC. \_\_\_\_\_. Section 10851 of the Water Code is amended to read:

10851. The California Environmental Quality Act (Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) does not apply to the preparation and adoption of plans prepared and adopted under this part. Nothing in this part exempts projects for implementation of the plan or for expanded or additional water supplies from the California Environmental Quality Act.

**Comment.** Section 10851 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 10910 (amended). Environmental impact reports**

SEC. \_\_\_\_\_. Section 10910 of the Water Code is amended to read:

10910. (a) Any city or county that determines that an environmental impact report is required in connection with a project, as defined in Section 10913, shall comply with this part if, as part of the approval of the project, either of the following is required:



1 (1) The adoption of a specific plan, if the city or county has not previously complied  
2 with this part for the project in question.

3 (2) An amendment to, or revision of, the land use element of a general plan, or a  
4 specific plan, that will result in a net increase in the stated population density or building  
5 intensity to provide for additional development.

6 (b) Notwithstanding subdivision (a), only a project that will result in a net increase in  
7 the stated population density or building intensity that has been identified in connection  
8 with the revision of any part of a general plan is subject to the requirements imposed by  
9 this part, if the project has not previously complied with this part.

10 (c) The city or county shall, at the time that it submits a notice of preparation pursuant  
11 to Section 21080.4 of the ~~Public Resources~~ Environment Code, identify any water system  
12 that is, or may become, a public water system, as defined in Section 10912, that may  
13 supply water for the project.

14 (d) The city or county, at the time it submits a notice of preparation, shall request each  
15 public water system identified pursuant to subdivision (c) to assess whether the projected  
16 water demand associated with a proposed project described in subdivision (a) or (b) was  
17 included as part of the most recently adopted urban water management plan adopted  
18 pursuant to Part 2.6 (commencing with Section 10610). As part of that assessment, the  
19 public water system shall indicate whether its total projected water supplies available  
20 during normal, single-dry, and multiple-dry water years included in the 20-year  
21 projection contained in the urban water management plan will meet the projected water  
22 demand associated with the proposed project, in addition to the public water system's  
23 existing and planned future uses.

24 (e) The governing body of each public water system shall approve the assessment  
25 prepared pursuant to subdivision (d), at a regular or special meeting and submit the  
26 assessment to the city or county not later than 30 days after the date on which the request  
27 was received.

28 (f) If the public water system that receives a request pursuant to subdivision (d) fails to  
29 submit its assessment to the city or county within the 30 days provided in subdivision (e),  
30 it shall be assumed, without a request for a specific extension of time, that the public  
31 water system has no information to submit.

32 **Comment.** Section 10910 is amended to substitute a reference to the Environment Code  
33 provision that continues former Section 21080.4 of the Public Resources Code.

34 **Water Code § 10911 (amended). Plan for additional water supplies**

35 SEC. \_\_\_\_\_. Section 10911 of the Water Code is amended to read:

36 10911. (a) If, as a result of its assessment, the public water system concludes that its  
37 water supplies are, or will be, insufficient, the public water system shall provide to the  
38 city or county its plans for acquiring additional water supplies, setting forth the measures  
39 that are being undertaken to acquire and develop those water supplies. Those plans may  
40 include, but are not limited to, information concerning all of the following:

41 (1) The estimated total costs, and the proposed method of financing the costs,  
42 associated with acquiring the additional water supplies.

43 (2) All federal, state, and local permits, approvals, or entitlements that are anticipated to  
44 be required in order to acquire and develop the additional water supplies.

45 (3) Based on the considerations set forth in paragraphs (1) and (2), the estimated  
46 timeframes within which the public water system expects to be able to acquire additional  
47 water supplies.

48 (b) The lead agency shall include in the environmental impact report the water supply  
49 assessment provided to the lead agency by the public water system pursuant to Section  
50 10910, and any information provided pursuant to subdivision (a), except that the  
51 assessment and information shall not exceed 10 standard typewritten pages in length  
52 unless the lead agency determines that additional information is appropriate.

(c) The lead agency may include in the environmental impact report an evaluation of any information included in the environmental impact report provided pursuant to subdivision (b). The lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency shall include that determination in its findings pursuant to Section 21081 of the ~~Public Resources~~ Environment Code.

**Comment.** Section 10911 is amended to substitute a reference to the Environment Code provision that continues former Section 21081 of the Public Resources Code.

**Water Code § 12669 (amended). Fresno County Stream Group Flood Control Project**

SEC. \_\_\_\_\_. Section 12669 of the Water Code is amended to read:

12669. The plan of improvement for flood control and other purposes on the Fresno County Stream Group identified as the Redbank-Fancher Creeks Flood Control Project, including the Redbank Creek Detention Basin, is hereby adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 98-147, at an estimated cost to the state of such sum as may be appropriated for state cooperation by the Legislature upon recommendation and advice of the department or Reclamation Board, except that no nonflood control application of water may occur within the Redbank Creek Detention Basin except for landscape irrigation or dust control. The preconstruction environmental assessment by the United States Army Corps of Engineers shall include the conduct of field permeability tests and consideration of the recommendations set forth in the "Evaluation Of Impacts On The THAN Site By The Proposed Redbank Creek Flood Detention Basin," 1988, of the State Department of Health Services, Toxic Substances Control Division. Basin design criteria and operational procedures shall include, but not be limited to, the detailed post excavation soils mapping, installation and monitoring of observation wells, and creation of a contingency fund, as indicated by the environmental assessment and as required for compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code). If state bond act moneys are available for flood control purposes, the Legislature may appropriate those moneys for this project. This authorization shall not be deemed to confer preference on this project over the needs of other statewide programs in the appropriation of available funds. Funds shall be appropriated pursuant to this authorization only upon the act of Congress adopting and authorizing the project as substantially described in House Document Numbered 98-147. The Legislature affirms the topographical and hydrological characteristics of the Fresno County Stream Group for which provision for participation in reservoirs has been made in Section 12868 and determines that the Redbank-Fancher Creeks Flood Control Project is a project on the Fresno County Stream Group, as defined and excepted in Section 12826. The department or Reclamation Board may loan the local agency the funds necessary to pay the local portion of the costs of the lands, easements, and rights-of-way, less the credit provided by Section 12585.3. The rate of interest on the loan shall be the current rate for the Pooled Money Investment Account. The department or Reclamation Board may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

**Comment.** Section 12669 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 12994 (amended). Emergency levee work**

SEC. \_\_\_\_\_. Section 12994 of the Water Code is amended to read:

12994. (a) The Legislature finds and declares all of the following:

(1) The CALFED Bay-Delta Program has identified as a core action the need for emergency levee management planning for delta levees to improve system reliability.

(2) Even with active levee maintenance, the threat of delta levee failures from earthquake, flood, or poor levee foundation, will continue to exist.

(3) Because of this threat of failure, and the potential need to mobilize people and equipment in an emergency to protect delta levees and public benefits, the department needs authority that will enable it to act quickly.

(b) The department may do all of the following:

(1) In an emergency, as defined by Section 21060.3 of the Public Resources Environment Code, that requires immediate levee work to protect public benefits in the delta, the department may use funds pursuant to this part without prior approval of a plan by the board or the Department of Fish and Game, in which case the requirements of Sections 12987 and 12314, and the memorandum of understanding pursuant to Section 12307, shall be carried out as soon as possible.

(A) The amount of funds that may be expended each year on emergency levee work under this section shall not be greater than two hundred thousand dollars (\$200,000) and the amount that may be expended per emergency levee site shall not be greater than fifty thousand dollars (\$50,000). The local agency shall fund 25 percent of the total costs of the emergency repair at a site or shall fund an appropriate share of the costs as approved by the board and based upon information of the local agency's ability to pay for the repairs.

(B) Department contracts executed for emergency levee work under this section shall be exempted from Department of General Services approval required under the Public Contract Code.

(C) As soon as as feasible after the emergency repair, the department shall submit a report to the board describing the levee work, costs incurred, and plans for future work at the site, including any necessary mitigation.

(D) This section is intended to supplement emergency services provided by the state or the United States. Nothing in this section overrides or supersedes the authority of the Director of the Office of Emergency Services under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) or the Natural Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680) of Division 1 of Title 2 of the Government Code).

(2) Prepare and submit to the board for adoption a delta emergency response plan for levee failures. The plan is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The plan may include recommendations of the multiagency response team established pursuant to paragraph (3) and may include, but not be limited to, the following:

(A) Standardized contracts for emergency levee work to be executed by the department, local agencies, or other appropriate entities.

(B) Criteria for eligible emergency levee work.

(C) Definition of an emergency levee site.

(D) Documentation requirements.

(E) Proposals for complying with the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) in an emergency.

(F) Stages of emergency response that may occur in various situations.

(3) Establish a multiagency emergency response team, consisting of representatives from the department, the board, the Department of Fish and Game, the California Conservation Corps, the Office of Emergency Services, the Federal Emergency Management Agency, the United States Army Corps of Engineers, and the United States Fish and Wildlife Service to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.

**Comment.** Section 12994 is amended to substitute a reference to the Environment Code provision that continues former Section 21060.3 of the Public Resources Code.

**Water Code § 13264 (amended). Changes in waste discharge**

SEC. \_\_\_\_\_. Section 13264 of the Water Code is amended to read:

13264. (a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 120 days after compliance with Section 13260 if any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the ~~Public Resources~~ Environment Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The regional board's waiver pursuant to Section 13269.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting any person who is violating or threatening to violate this section from doing any of the following, whichever is applicable:

(1) Discharging the waste or fluid.

(2) Making any material change in the discharge.

(3) Constructing the injection well.

**Comment.** Section 13264 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 13274 (amended). General waste discharge requirements**

SEC. \_\_\_\_\_. Section 13274 of the Water Code is amended to read:

13274. (a)(1) The state board or a regional board, upon receipt of applications for waste discharge requirements for discharges of dewatered, treated, or chemically fixed sewage sludge and other biological solids, shall prescribe general waste discharge requirements for that sludge and those other solids. General waste discharge requirements shall replace individual waste discharge requirements for sewage sludge and other biological solids, and their prescription shall be considered to be a ministerial action.

(2) The general waste discharge requirements shall set minimum standards for agronomic applications of sewage sludge and other biological solids and the use of that sludge and those other solids as a soil amendment or fertilizer in agriculture, forestry, and surface mining reclamation, and may permit the transportation of that sludge and those other solids and the use of that sludge and those other solids at more than one site. The requirements shall include provisions to mitigate significant environmental impacts,



1 potential soil erosion, odors, the degradation of surface water quality or fish or wildlife  
2 habitat, the accidental release of hazardous substances, and any potential hazard to the  
3 public health or safety.

4 (b) The state board or a regional board, in prescribing general waste discharge  
5 requirements pursuant to this section, shall comply with Division 13 3 (commencing with  
6 Section 21000) of the ~~Public Resources~~ Environment Code and guidelines adopted  
7 pursuant to that division, and shall consult with the State Air Resources Board, the  
8 Department of Food and Agriculture, and the California Integrated Waste Management  
9 Board.

10 (c) The state board or a regional board may charge a reasonable fee to cover the costs  
11 incurred by the board in the administration of the application process relating to the  
12 general waste discharge requirements prescribed pursuant to this section.

13 (d) Notwithstanding any other provision of law, except as specified in subdivisions (f)  
14 to (i), inclusive, general waste discharge requirements prescribed by a regional board  
15 pursuant to this section supersede regulations adopted by any other state agency to  
16 regulate sewage sludge and other biological solids applied directly to agricultural lands at  
17 agronomic rates.

18 (e) The state board or a regional board shall review general waste discharge  
19 requirements for possible amendment upon the request of any state agency, including, but  
20 not limited to, the Department of Food and Agriculture and the State Department of  
21 Health Services, if the board determines that the request is based on new information.

22 (f) Nothing in this section is intended to affect the jurisdiction of the California  
23 Integrated Waste Management Board to regulate the handling of sewage sludge or other  
24 biological solids for composting, deposit in a landfill, or other use.

25 (g) Nothing in this section is intended to affect the jurisdiction of the State Air  
26 Resources Board or an air pollution control district or air quality management district to  
27 regulate the handling of sewage sludge or other biological solids for incineration.

28 (h) Nothing in this section is intended to affect the jurisdiction of the Department of  
29 Food and Agriculture Code in enforcing Sections 14591 and 14631 of the Food and  
30 Agriculture Code and any regulations adopted pursuant to those sections, regarding the  
31 handling of sewage sludge and other biological solids sold or used as fertilizer or as a soil  
32 amendment.

33 (i) Nothing in this section restricts the authority of a local government agency to  
34 regulate the application of sewage sludge and other biological solids to land within the  
35 jurisdiction of that agency, including, but not limited to, the planning authority of the  
36 Delta Protection Commission, the resource management plan of which is required to be  
37 implemented by local government general plans.

38 **Comment.** Section 13274 is amended to substitute a reference to the Environment Code  
39 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
40 Resources Code.

#### 41 **Water Code § 13389 (amended). Application of CEQA**

42 SEC. \_\_\_\_\_. Section 13389 of the Water Code is amended to read:

43 13389. Neither the state board nor the regional boards shall be required to comply with  
44 the provisions of Chapter 3 5 (commencing with Section 21100) of Division 13 3 of the  
45 ~~Public Resources~~ Environment Code prior to the adoption of any waste discharge  
46 requirement, except requirements for new sources as defined in the Federal Water  
47 Pollution Control Act or acts amendatory thereof or supplementary thereto.

48 **Comment.** Section 13389 is amended to substitute a reference to the Environment Code  
49 provisions that continue former Chapter 3 (commencing with Section 21100) of Division 13 of  
50 the Public Resources Code.

**Water Code § 13398.5 (amended). Duties of oversight agency**

SEC. \_\_\_\_\_. Section 13398.5 of the Water Code is amended to read:

13398.5. The oversight agency shall do all of the following:

(a) Comply with the requirements of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) in connection with the review of any remediation plan.

(b) Provide an opportunity for public review of, and comment with regard to, the remediation plan.

(c) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

**Comment.** Section 13398.5 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 13552.4 (amended). Recycled water for irrigation of residential landscaping**

SEC. \_\_\_\_\_. Section 13552.4 of the Water Code is amended to read:

13552.4. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for irrigation of residential landscaping, if all of the following requirements are met:

(1) Recycled water, for this use, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The irrigation systems are constructed in accordance with Chapter 3 (commencing with Section 60301) of Division 4 of Title 22 of the California Code Regulations.

(b) This section applies to both of the following:

(1) New subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of recycled water.

(2) Any residence that is retrofitted to permit the use of recycled water for landscape irrigation and for which the State Department of Health Services has approved the use of recycled water.

(c)(1) Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

**Comment.** Section 13552.4 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 13552.8 (amended). Recycled water in floor trap priming, cooling towers and air conditioning devices**

SEC. \_\_\_\_\_. Section 13552.8 of the Water Code is amended to read:

13552.8. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water in floor trap priming, cooling towers, and air-conditioning devices, if all of the following requirements are met:



(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) If public exposure to aerosols, mist, or spray may occur, appropriate mist mitigation or mist control is provided, such as the use of mist arrestors or the addition of biocides to the water in accordance with criteria established pursuant to Section 13521.

(4) The person intending to use recycled water has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the public agency, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies to both of the following:

(1) New industrial facilities and subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of recycled water.

(2) Any structure that is retrofitted to permit the use of recycled water for floor traps, cooling towers, or air-conditioning devices, for which the State Department of Health Services has approved the use of recycled water.

(c)(1) Division ~~13~~ 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for floor trap priming, cooling towers, or air-conditioning devices necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

**Comment.** Section 13552.8 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

### **Water Code § 13554 (amended). Recycled water for toilet and urinal flushing**

SEC. \_\_\_\_\_. Section 13554 of the Water Code is amended to read:

13554. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for toilet and urinal flushing in structures, except a mental hospital or other facility operated by a public agency for the treatment of persons with mental disorders, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The public agency has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the use site, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies only to either of the following:

(1) New structures for which the building permit is issued on or after March 15, 1992, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1992.

(2) Any construction pursuant to subdivision (a) for which the State Department of Health Services has, prior to January 1, 1992, approved the use of recycled water.

(c) Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code does not apply to any project which only involves the repiping, redesign, or use of recycled water by a structure necessary to comply with a requirement issued by a public agency under subdivision (a). This exemption does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

**Comment.** Section 13554 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 55338 (amended). Water needs of California State Prison — Los Angeles County**

SEC. \_\_\_\_\_. Section 55338 of the Water Code is amended to read:  
55338. (a) The Department of Corrections and the Los Angeles County Waterworks District No. 4 shall enter into a contract for the district to meet the operational needs of the California State Prison--Los Angeles County for water, to be supplied to the district by the Antelope Valley-East Kern Water Agency.

(b) The Department of Corrections shall use the water supplied to it by the Los Angeles County Waterworks District No. 4 pursuant to subdivision (a) as its primary source of water and shall use the Antelope Valley groundwater basin only as a supplementary source of drinking water or as an emergency backup supply.

(c) Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code does not apply to any action undertaken pursuant to subdivision (a) or (b).

**Comment.** Section 55338 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 78648 (amended). Definitions**

SEC. \_\_\_\_\_. Section 78648 of the Water Code is amended to read:  
78648. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a)(1) “Eligible seawater intrusion control project” means a project which is all of the following:

(A) Necessary to protect groundwater that is (i) within a basin that is subject to a local groundwater management plan for which a review is completed pursuant to the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) and (ii) is threatened by seawater intrusion in an area where restrictions on groundwater pumping, a physical solution, or both, are necessary to prevent the destruction of, or irreparable injury to, groundwater quality.

(B) Is cost-effective. In the case of a project to provide a substitute water supply, the project shall be cost-effective as compared to the development of other new sources of water and shall include requirements or measures adequate to ensure that the substitute supply will be used in lieu of previously established extractions or diversions of groundwater.

(C) Complies with applicable water quality standards, policies, and plans.

(2) Eligible projects may include, but are not limited to, water conservation, freshwater well injection, and substitution of groundwater pumping from local surface supplies.

(b) “Local agency” means any city, county, district, joint powers authority, or other political subdivision of the state involved in water management.

(c) “Subaccount” means the Seawater Intrusion Control Subaccount created by Section 78648.2.

**Comment.** Section 78648 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 78680.4 (amended). Definitions**

SEC. \_\_\_\_\_. Section 78680.4 of the Water Code is amended to read:

78680.4. The following definitions govern the construction of this article:

(a) “Feasibility study” means a report on the feasibility of a project, dam, or reservoir. A feasibility study may include an environmental impact report prepared pursuant to Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(b) “Project” means any of the following:

(1) The construction of a conveyance facility, pumping facility, groundwater extraction facility, clear or ranney well, or facility for diversion from existing storage or conveyance facilities undertaken by a public agency for the diversion, storage, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, or fish and wildlife mitigation and enhancement purposes.

(2) Fish and wildlife mitigation and enhancement measures undertaken by a public agency, including the acquisition of lands which may be necessary for the mitigation of significant impact on fish and wildlife resources resulting from the implementation of a project undertaken pursuant to paragraph (1).

(c) “Public agency” means any city, county, city and county, special district or other political subdivision of the state, including a joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, in a county of the 22nd class or any county having a smaller population than a county of the 22nd class on the date on which this division becomes effective.

**Comment.** Section 78680.4 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 78684.10 (amended). Expenditure of funds in account**

SEC. \_\_\_\_\_. Section 78684.10 of the Water Code is amended to read:

78684.10. No funds in the account may be expended until all of the following conditions have been met:

(a) The final programmatic EIS/EIR has been certified by the state lead agency and a notice of determination has been issued as required by Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code.

(b) The identical final programmatic EIS/EIR has been filed by the federal lead agencies with the Environmental Protection Agency, the required notice has been published in the Federal Register, and there has been federal approval of the identical program approved by the state.

(c) A cost-sharing agreement has been entered into by the State of California and the United States, pursuant to which the United States agrees to share in the costs of eligible projects.

**Comment.** Section 78684.10 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Water Code § 78688 (amended). Applicable law**

SEC. \_\_\_\_\_. Section 78688 of the Water Code is amended to read:

78688. Nothing in this division diminishes, or otherwise affects, the requirements of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000))

of the Public Resources Environment Code) or the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)).

**Comment.** Section 78688 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

## WELFARE AND INSTITUTIONS CODE

### **Welf & Inst. Code § 18335 (amended). Inspections of nutrition project sites**

SEC. \_\_\_\_\_. Section 18335 of the Welfare and Institutions Code is amended to read:  
18335. Notwithstanding any other provision of law:

(a) Retired firemen may be utilized to conduct fire inspections of the sites of nutrition projects for senior citizens in order to determine whether such sites are in compliance with state and local fire safety standards.

(b) Retired ~~licensed sanitarians~~ registered environmental health specialists may be utilized to conduct sanitation inspections of sites of nutrition projects for senior citizens in order to determine whether such sites are in compliance with applicable state and local sanitation standards.

Such retirees may contract with local area agencies on aging or nutrition projects to perform the required inspections as independent contractors. Fees for the undertaking of such inspections shall be paid out of federal funds allocated to local area agencies on aging which are provided by Title III of the Older Americans Act.

A written report of the findings of such fire safety and sanitation inspections shall be furnished to the appropriate area agency on aging or the director of the nutrition project in which sites inspected are located.

A report of uncorrected fire safety deficiencies, after a followup inspection, shall be supplied or mailed to the local fire protection agency.

A report of uncorrected sanitation deficiencies, after a followup inspection, shall be supplied or mailed to the local health agency.

It is the intent of this section that inspections carried out pursuant hereto shall satisfy federal regulations which provide that sites for nutrition projects for senior citizens must meet applicable state and local fire sanitation standards.

**Comment.** Section 18335 is amended to remove a reference to the obsolete term “sanitarian.” See Env’t Code § 8000(c) (“sanitarian” means “registered environmental health specialist”).

## SESSION LAWS

### **Section 11 of Chapter 1252 of the Statutes of 1992 (repealed).**

SEC. \_\_\_\_\_. Section 11 of Chapter 1252 of the Statutes of 1992 is repealed.

~~11. (a) If a violation is punishable under Division 26 (commencing with Section 39000) of the Health and Safety Code as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.~~

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

### **Section 1 of Chapter 1131 of the Statutes of 1993 (repealed).**

SEC. \_\_\_\_\_. Section 1 of Chapter 1131 of the Statutes of 1993 is repealed.

1. (a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of any such exemption by mail to any person who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 42302.1 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light of the whole record before the hearing board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a), the permit shall be revoked. If there is no such substantial evidence, the exemption shall be upheld and there shall be no further compliance with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of the hearing board.

(d) On or before December 31, 1995, the Resources Agency shall prepare and submit to the Legislature and the Governor a study on the exemption established pursuant to this section in order to determine the advisability of expanding this exemption to include other industrial facilities. The study shall identify the potential benefits and adverse impacts on the environment from an expansion of the exemption and shall determine the potential benefits and adverse impacts on public participation in such an exemption process.

#### **Section 1 of Chapter 803 of the Statutes of 1997 (repealed).**

SEC. \_\_\_\_\_. Section 1 of Chapter 803 of the Statutes of 1997 is repealed.

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

(a) Since the adoption of the federal Clean Air Act in 1972, California has made great strides in improving air quality.

(b) To comply with federal air quality standards by the year 2010, and to meet every Californian's desire for cleaner air, further reductions in air pollution are necessary.

(c) California's stationary source industries and businesses are already among the cleanest in the world, and tighter regulations will achieve few additional pollution reductions.



(d) Mobile sources generate roughly one-half of all the remaining air pollution in this state, and the worst polluting 10 to 15 percent of automobiles generate one-half of all the pollution caused by mobile sources.

(e) Motor vehicle inspection and maintenance programs can significantly reduce vehicle emissions and thereby contribute to the attainment of clean air standards.

(f) Any motor vehicle inspection and maintenance program should provide the maximum possible pollution reduction at a minimum cost and inconvenience to the people of the state.

(g) The Legislature recognizes that where new government regulations impose significant costs on businesses or individuals, the government has a responsibility to ensure that the burden of compliance does not fall unfairly on any one group or class of people.

**Section 2 of Chapter 803 of the Statutes of 1997 (repealed).**

SEC. \_\_\_\_ . Section 2 of Chapter 803 of the Statutes of 1997 is repealed.

2. It is the intent of the Legislature that the Department of Consumer Affairs and the State Air Resources Board adhere to the following principles in implementing the motor vehicle inspection and maintenance program established by Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code:

(a) To promote consumer convenience and acceptance, a program phase-in of the enhanced smog check program requirements in those areas newly subject to those requirements should be developed. Any program phase-in should be consistent with the availability of test, repair, referee, and other facilities necessary to provide reliable and convenient service to vehicle owners subject to the program.

(b) Consistent with Section 44070.5, the Department of Consumer Affairs shall develop and implement a thorough public awareness and education program that provides motor vehicle owners with information about enhanced smog check program features, such as the causes of smog check failures, vehicle retesting, repair, referee station options, the importance of proper maintenance and effective repairs, and any economic relief programs. Such a program is essential to the success of the inspection and maintenance program.

(c) It is the intent of the Legislature that the enhanced smog check program should be reviewed and modified, as appropriate, based on improvements in the program, technological advances in testing and diagnostic equipment, including remote sensing devices, and vehicle emission control technology when appropriate. It is further the intent of the Legislature that a new program should replace that program not later than 2005.

**Antelope Valley Storm Water Conservation and Flood Control District Act § 27 (amended).  
CEQA applicable**

SEC. \_\_\_\_ . Section 27 of the Antelope Valley Storm Water Conservation and Flood Control District Act (Section 1 of Chapter 764 of the Statutes of 1994) is amended to read:

27. Nothing in this act is intended to exempt the activities, programs, or projects of the district from the requirements of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the Public Resources Environment Code) where that act is otherwise applicable.

**Comment.** Section 27 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.



**Honey Lake Valley Groundwater Basin Act § 701 (amended). CEQA compliance**

SEC. \_\_\_\_\_. Section 701 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is amended to read:

701. If, upon receipt of the recommendations of its engineers, consultants, and staff, the board of directors determines that groundwater management activities may be necessary, the board of directors shall, after compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), give notice of and hold a hearing to receive evidence on the need for a program and on the form and scope of the management activities required. The requirement in this section for compliance with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with that act for other discretionary actions by the board.

**Comment.** Section 701 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Mojave Water Agency Law § 15.4 (amended). Definitions**

SEC. \_\_\_\_\_. Section 15.4 of the Mojave Water Agency Law (Section 2 of Chapter 518 of the Statutes of 1996) is amended to read:

15.4. (a) Unless the context requires otherwise, the following definitions govern the construction of this section:

(1) “Affected lands” means lands that are affected by groundwater pollution or pollutants in soils that threaten to cause groundwater pollution and are in a location where the agency has implemented or proposes to implement a remediation plan.

(2) “Oversight agency” means either the State Water Resources Control Board or the appropriate regional water quality control board. “Remediation plan” means a plan to improve the quality of groundwater underlying lands within the jurisdiction of the agency that has been directly and adversely affected by groundwater pollution.

(b) Notwithstanding any other provision of law, if the agency has submitted a remediation plan to an oversight agency, the oversight agency has approved that remediation plan, and the agency has implemented the remediation plan, in accordance with this section, the agency shall not be deemed, based on the actions taken to implement the remediation plan, to be the owner or operator of any affected lands, or any structure, improvement, waste management unit, or facility on those affected lands, and shall not be deemed, based on the actions taken to implement the remediation plan, to be responsible for any discharge, or the results of any discharge, of pollutants on or from those affected lands or any structure, improvement, waste management unit, or facility on those affected lands.

(c) Except as provided in subdivision (d), and Chapter 5.5 (commencing with Section 13370) of the Water Code, the responsibilities of the agency are limited to the following:

(1) Submitting a remediation plan to an oversight agency for approval in accordance with subdivision (d).

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the affected lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5)(A) Determining if the remediation plan implemented by the agency has been effective to provide a substantial improvement in groundwater quality affected by the discharge or potential discharge of pollutants on or from affected lands.

(B) If the agency determines that the remediation plan implemented by the agency is not effective, the agency shall promptly report that determination to the oversight agency. If the agency or the oversight agency determines that the remediation plan implemented

1 by the agency is not effective, the agency shall submit a modified remediation plan to the  
2 oversight agency that includes a proposal to improve the plan to make it effective, or a  
3 proposal to cease remedial activities on the affected lands and return those lands,  
4 including the groundwater quality on those lands, to a condition that approximates the  
5 quality that existed prior to commencing remedial activities. The agency shall implement  
6 the modified remediation plan as approved by the oversight agency.

7 (6) Notwithstanding any other provision of law, except as provided in Chapter 5.5  
8 (commencing with Section 13370) of the Water Code, if the agency implements or has  
9 implemented the approved remediation plan and any modifications to the plan approved  
10 by the oversight agency, the agency, with regard to any discharge of pollutants that is the  
11 subject of the plan, shall not be required to achieve water quality objectives pursuant to,  
12 or to comply with other requirements of, the Porter-Cologne Water Quality Control Act  
13 (Division 7 (commencing with Section 13000) of the Water Code) or other laws that are  
14 administered by the State Water Resources Control Board or the regional water quality  
15 control boards, and shall not be subject to any enforcement actions pursuant to state law  
16 based on actions taken to implement the approved remediation plan, except for violations  
17 involving gross negligence, including reckless, willful, or wanton misconduct, or  
18 intentional misconduct by the agency.

19 (d) The remediation plan to be submitted by the agency to the oversight agency shall  
20 include all of the following:

21 (1) Identification of the affected lands that are the subject of the plan, including a legal  
22 description and the owner of record.

23 (2) Identification of the groundwater that is affected by discharges of pollutants on or  
24 from the affected lands.

25 (3) A description of the physical conditions of the affected lands that have had, or are  
26 having, an adverse effect on groundwater quality.

27 (4) A description of the practices, including system design and construction plans, and  
28 operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the  
29 adverse effects on groundwater quality and a schedule for implementing those practices.

30 (5) An analysis demonstrating that the implementation of the practices described in the  
31 plan have caused, or are expected to cause, a substantial improvement in groundwater  
32 quality for the identified groundwater.

33 (6) A description of monitoring or other assessment activities to be undertaken to  
34 evaluate the success of the implemented practices during and after implementation,  
35 including an assessment of baseline conditions.

36 (7) A budget and identified funding to pay for the implementation of the plan.

37 (8) Remediation goals and objectives.

38 (9) Contingency plans.

39 (10) A description of the agency's legal right to enter and conduct remedial activities.

40 (11) The signature of an authorized representative of the agency.

41 (12) Identification of the pollutants to be addressed by the plan.

42 (e) The oversight agency shall do all of the following:

43 (1) Comply with the requirements of the California Environmental Quality Act  
44 (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment  
45 Code) in connection with the review of any remediation plan.

46 (2) Provide an opportunity for public review of, and comment with regard to, the  
47 remediation plan.

48 (3) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

49 (f)(1) The oversight agency may approve the remediation plan if the oversight agency  
50 finds that there is substantial evidence in the record that the plan will substantially  
51 improve groundwater quality affected by discharges of pollutants on or from affected  
52 lands. The oversight agency may disapprove a remediation plan even if there is  
53 substantial evidence that the plan would improve the groundwater quality.

(2) The agency is not required to include in the remediation plan a plan to achieve water quality objectives, with regard to any discharge of pollutants that is the subject of the plan, to comply with other requirements of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), except for Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code, or to comply with any other law that is administered by the state board or the regional boards, with regard to that discharge of pollutants.

(3) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing the remediation project or to otherwise modify the plan, after an opportunity for public comment.

(4) If the oversight agency determines that the agency is not implementing the approved remediation plan in substantial compliance with its terms, that oversight agency shall notify the agency of its determination, including the specific causes for that determination.

(5) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to paragraph (4), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to paragraph (4), the oversight agency may determine that the agency is in violation of this section. If the agency is determined to be in violation of this section, the agency is not protected by the limitations on responsibility provided by this section for remediation of groundwater quality adversely affected by discharges of pollutants on or from affected lands and may be subject to any enforcement action authorized by law.

(g) This section has no effect on any of the following:

(1) The tort liability of the agency for personal injury or wrongful death.

(2) The liability of the agency based upon activities other than those undertaken in connection with the implementation of an approved remediation plan.

(3) The responsibilities of the owner of affected lands or other property that is the source of pollutants on affected lands or any other person responsible for activities that caused or permitted the discharge of pollutants.

(4) The liability of the agency for damages resulting from the agency's negligent implementation of the remediation plan.

**Comment.** Section 15.4 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

#### **Mono County Tri-Valley Groundwater Management District Act § 405 (amended).**

##### **Advisory board**

SEC. \_\_\_\_\_. Section 405 of the Mono County Tri-Valley Groundwater Management District Act (Section 1 of Chapter 844 of the Statutes of 1989) is amended to read:

405. The advisory board shall exercise the following powers:

(a) Advise the board on all matters included within the purposes and provisions of this act.

(b) Independently comment on projects or other matters which may affect the district, whether in the context of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) or any other relevant proceeding.

(c) Hold public hearings on matters affecting the district for the purpose of gathering evidence and making recommendations to the board.

(d) Comment or initiate on rules and regulations affecting the district which may be adopted by the board.

**Comment.** Section 405 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Mono County Tri-Valley Groundwater Management District Act § 701 (amended). CEQA compliance**

SEC. \_\_\_\_\_. Section 701 of the Mono County Tri-Valley Groundwater Management District Act (Section 1 of Chapter 844 of the Statutes of 1989) is amended to read:

701. If, upon receipt of the recommendations of its engineers, consultants, and staff, or any of them, the board determines that groundwater management activities may be necessary, the board shall, after compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), give notice of and hold a hearing to receive evidence and make findings on the need for such a program and on the form and scope of the management activities required. The requirement to comply with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with that act for other discretionary actions by the board.

**Comment.** Section 701 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Ojai Basin Groundwater Management Agency Act § 701 (amended). CEQA compliance**

SEC. \_\_\_\_\_. Section 701 of the Ojai Basin Groundwater Management Agency Act (Section 1 of Chapter 750 of the Statutes of 1991) is amended to read:

701. If, after a noticed public hearing and consideration of any relevant investigations, studies, and evidence, including compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), the board determines that groundwater management activities are necessary in order to improve or protect the quantity or quality of groundwater supplies within the basin, the board may, by ordinance, undertake any of the activities authorized by this article. The requirement in this section for compliance with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with that act for other discretionary actions by the board.

**Comment.** Section 701 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Pajaro Valley Water Management Agency Act § 515 (amended). Project consistent with city and county general plans**

SEC. \_\_\_\_\_. Section 515 of the Pajaro Valley Water Management Agency Act (Section 1 of Chapter 257 of the Statutes of 1984) is amended to read:

515. Prior to approving any project, as defined in Section 21065 of the ~~Public Resources~~ Environment Code, the agency directors shall make a finding that the project is consistent with applicable city and county general plans.

**Comment.** Section 515 is amended to substitute a reference to the Environment Code provision that continues former Section 21065 of the Public Resources Code.

**Sacramento Area Flood Control Agency Act § 52 (amended). Agency priorities**

SEC. \_\_\_\_\_. Section 52 of the Sacramento Area Flood Control Agency Act (Section 1 of Chapter 510 of the Statutes of 1990) is amended to read:

52. Notwithstanding the purposes specified in the agreement, the agency shall have as its highest priority the protection of life, property, watercourses, watersheds, and public

highways within its boundaries from damage from flood and storm waters. In addition, to the maximum extent economically feasible and consistent with its flood protection and flood management requirements and with state and federal agreements, the agency shall carry out its responsibilities in ways which provide for the optimum protection of the natural environment, especially riparian habitat and natural stream channels suitable for native plant and wildlife habitat and public recreation. Nothing in this act is intended to amend, modify, or alter the provisions of the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code) or any other state or federal laws whose purpose is to protect and preserve the natural environment.

**Comment.** Section 52 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Stanislaus County Flood Control Enabling Act § 104 (amended). Lead agency**

SEC. \_\_\_\_\_. Section 104 of the Stanislaus County Flood Control Enabling Act (Section 1 of Chapter 421 of the Statutes of 1981) is amended to read:

104. Unless otherwise agreed by the board of supervisors and the commission, the commission shall serve as lead agency, as defined in Section 21067 of the ~~Public Resources~~ Environment Code, and shall carry out the responsibilities of a lead agency under the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code).

**Comment.** Section 104 is amended to substitute references to the Environment Code provisions that continue provisions of former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Surprise Valley Groundwater Basin Act § 701 (amended). CEQA compliance**

SEC. \_\_\_\_\_. Section 701 of the Surprise Valley Groundwater Basin Act (Section 1 of Chapter 698 of the Statutes of 1995) is amended to read:

701. If, upon receipt of the recommendations of its engineers, consultants, and staff, the board of directors determines that groundwater management activities may be necessary, the board of directors, after compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), shall give notice of, and hold, a hearing to receive evidence on the need for a groundwater management program and on the form and scope of the management activities required. The requirement in this section for compliance with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with the act for other discretionary actions by the board of directors.

**Comment.** Section 701 is amended to substitute a reference to the Environment Code provisions that continue former Division 13 (commencing with Section 21000) of the Public Resources Code.

**Willow Creek Valley Groundwater Basin Act § 701 (amended). CEQA compliance**

SEC. \_\_\_\_\_. Section 701 of the Willow Creek Valley Groundwater Basin Act (Section 1 of Chapter 1181 of the Statutes of 1993) is amended to read:

701. If, upon receipt of the recommendations of its engineers, consultants, and staff, the board of directors determines that groundwater management activities may be necessary, the board of directors shall, after compliance with the California Environmental Quality Act (Division 13 3 (commencing with Section 21000) of the ~~Public Resources~~ Environment Code), give notice of, and hold, a hearing to receive evidence on the need for a program and on the form and scope of the management activities required. The requirement in this section for compliance with the California Environmental Quality Act



1 does not affect any requirement under existing law to comply with that act in connection  
2 with other discretionary actions undertaken by the board.

3 **Comment.** Section 701 is amended to substitute a reference to the Environment Code  
4 provisions that continue former Division 13 (commencing with Section 21000) of the Public  
5 Resources Code.





## DISPOSITION OF EXISTING LAW

**Note.** This table shows the disposition of sections in the Government Code, Health and Safety Code, Public Resources Code, and 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.

### GOVERNMENT CODE

Gov't Code	Env't Code	Gov't Code	Env't Code
16000	Omitted	16052	Omitted
16001	Omitted	16052.1	Omitted
16020	Omitted	16053	Omitted
16021	Omitted	16054	Omitted
16022	Omitted	16055	Omitted
16050	Omitted	16080	Omitted
16051	Omitted	16081	Omitted

### HEALTH AND SAFETY CODE

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
25570	7001	39001	30001
25570.1	7000	39002	30002
25570.2(a)	7105	39003	30003
25570.2(b)	7110	39010	30100
25570.2(c)	7140	39010.5	30105
25570.2(d)	7115	39010.6	30110
25570.2(e)	7145	39011	30115
25570.2(f) (pt.)	7125	39012	30120
25570.2(f) (pt.)	7108	39013 (1st pt.)	30125
25570.2(g) (pt.)	7120	39013 (2d pt.)	30130
25570.2(g) (pt.)	7107	39014	30135
25570.2(h) (1st pt.)	7130	39015	30140
25570.2(h) (last pt.)	7135	39016	30145
25570.2 (intro.)	7100	39016.5	30150
25570.3(a)	7200	39017	30155
25570.3(b)	7201	39018	30160
25570.3(c)	7202	39019	30165
25570.3(d)	7203	39019.5	30170
25570.3(e)	7204	39019.6	30175
25570.3(f)	7205	39020	30180
25570.3(g)	7206	39021	30185
25570.3(h)	7207	39021.5	30190
25570.3(i)	7208	39022	30195
25570.3(j)	7209	39023	30200
25570.3(k)	7210	39024	30205
25570.3(l)	7211	39024.5	30210
25570.3(m)	7212	39024.6	30215
25570.4	7213	39025	30220
39000	30000	39026	30225

**Note:** This table is sorted in decimal order. Some sections occur in serial order in the codes.

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
39026.5	30230	39150(c)	30650
39027	30240	39150(d)	30651
39027.5	Omitted	39150(e)	30652(a)
39028	30250	39150(f)	30652(b)
39029	30255	39151	30700
39030	30260	39152(a)	30701(a)
39031	30265	39152(b)	30703
39032	30270	39152(c)	30701(b)
39032.5	30275	39152(d)	30701(c)
39033	30280	39152(e)	30702
39034	30285	39152(f)	30705
39035	30290	39152(g)	30750
39037	30295	39152(h)	30704(a)
39037.05	30300	39152(i)	30704(b)
39037.1	30305	39152(j)	30752
39037.5	30310	39152(k)	30751
39038	30315	39153(a)	30601
39038.3	30320	39153(b)	30602
39038.5	30325	39500	30800
39039	30330	39510(a)-(d)	30850
39040	30335	39510(e)	30851
39041	30340	39510(f)	omitted
39042	30345	39511	30852
39042.5	30350	39512	30853
39043	30355	39512.5	30854
39043.5	30360	39513	30855
39044	30365	39514	30856
39045	30370	39515	30857
39046	30375	39516	30858
39047	30380	39517	30859
39047.5	30385	39600	30900
39048	30390	39601	30902
39049	30395	39602	30903
39050	30400	39603	30904
39050.5	30405	39604	30905
39050.7	30410	39605	30901
39050.8	30415	39606	30950
39051	30420	39606.1	30951
39051.5	30425	39607	31000
39051.7	Omitted	39607.3	31001
39052	30435	39607.5(a)	31050(a)
39052.5	30440	39607.5(b)	31051
39052.6	30445	39607.5(c)	31050(b)
39053	30450	39608	30952
39053.3	30455	39609	31002
39053.5	30460	39610	31003
39053.6 (1st pt.)	30465	39612(a)	31100(a)
39053.6 (2d pt.)	30235	39612(b)	31101
39054	30470	39612(c)	31100(b)
39055	30475	39612(d)	31102
39055.5	30480	39612(e)	31103
39056	30485	39612(f)	31104
39057	30490	39612(g)	31105
39058	30495	39616(a)	31150
39059	30500	39616(b)	31151
39060	30505	39616(c)	31152
39150(a) & (b)	30600	39616(d)	31153

**Note:** This table is sorted in decimal order. Some sections occur in serial order in the codes.

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
39616(e) . . . . .	31154	39702 . . . . .	31652
39616(f) . . . . .	31155	39703 . . . . .	31653
39616(g) . . . . .	31156(a)	39704 . . . . .	31654
39616(h) . . . . .	31156(b)	39705 . . . . .	31655
39617 . . . . .	31200	39706 . . . . .	31656
39618 . . . . .	31201	39750 . . . . .	31657
39619 . . . . .	31250	39751 . . . . .	31658
39619.5 . . . . .	31251	39752 . . . . .	31659
39620 . . . . .	30906	39753 . . . . .	31660
39650 . . . . .	31300	39800 . . . . .	31701
39655(a) . . . . .	31375	39801 . . . . .	31700
39655(b) . . . . .	31355	39802(a) . . . . .	31750
39655(c) . . . . .	31370	39802(b) . . . . .	31751
39655(d) . . . . .	31360	39802(c) . . . . .	31755
39655(e) . . . . .	31365	39802.5 . . . . .	31752
39655 (intro.) . . . . .	31350	39803 . . . . .	31753
39656 . . . . .	31400	39804 . . . . .	31754
39657 . . . . .	31401	39805 . . . . .	31756
39658 . . . . .	31402	39806 . . . . .	31800
39659 . . . . .	31403	39806.5 . . . . .	31802
39660(a) . . . . .	31450(a)	39807 . . . . .	31758
39660(b) . . . . .	31451(a)	39808 . . . . .	31801
39660(c) . . . . .	31451(b) & (c)	39809 . . . . .	31702
39660(d) . . . . .	31450(b)	39810 . . . . .	31757
39660(e) . . . . .	31452	39811 . . . . .	31703
39660(f) . . . . .	31453	39900 . . . . .	31900
39660.5 . . . . .	31454	39901 . . . . .	31901
39661 . . . . .	31455	39902 . . . . .	31902
39662 . . . . .	31456	39903 . . . . .	31903
39663 . . . . .	31457	39904 . . . . .	31904
39664 . . . . .	31458	39905 . . . . .	31905
39665 . . . . .	31500	40000 . . . . .	32000
39666(a) . . . . .	31501	40001(a) . . . . .	32004(a)
39666(b) . . . . .	31502(a)	40001(b) . . . . .	32004(b)
39666(c) . . . . .	31502(b)	40001(c) . . . . .	32300
39666(d) . . . . .	31503	40001(d) . . . . .	32004(c)
39666(e) . . . . .	31504	40002 . . . . .	33600
39666(f) . . . . .	31505	40003 . . . . .	32056
39667 . . . . .	31506	40100 . . . . .	33650
39668(a) . . . . .	31507	40100.5(a)-(d) . . . . .	33651
39668(b) . . . . .	31508	40100.5(e) . . . . .	33653
39668(c) . . . . .	31509	40100.5(f) . . . . .	33652
39668(d) . . . . .	31510	40100.7 . . . . .	33654
39669 . . . . .	31511	40101(a) . . . . .	33601
39670(a) . . . . .	31550	40101(b) . . . . .	33602
39670(b) . . . . .	31552	40102 . . . . .	33603
39670(c) . . . . .	31553	40103 . . . . .	33604
39670(d) . . . . .	31554	40104 . . . . .	33605
39670(e) . . . . .	31555	40106 . . . . .	34600
39670(f) . . . . .	31556	40120 . . . . .	33700
39670(g) . . . . .	31557	40121 . . . . .	33701
39671 . . . . .	31558	40122 . . . . .	33702
39674 . . . . .	31600	40123 . . . . .	33703
39675(a) . . . . .	31601	40124 . . . . .	33704
39675(b) . . . . .	omitted	40125 . . . . .	33705
39700 . . . . .	31650	40126 . . . . .	33706
39701 . . . . .	31651	40130 . . . . .	33750

**Note:** This table is sorted in decimal order. Some sections occur in serial order in the codes.

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40131	33751	40274	34954
40150	33800	40275	34955
40151	33801	40276	34956
40152(a)-(d)	33850	40300	34000
40152(e)	33851	40301	34001
40152(f)	33852	40302	34002
40152.5	33853	40303	34003
40154	33854	40304	34004
40155	33802	40310	34150
40156	33803	40311	34151
40157	33900	40312	34152
40158(a)	33804	40313	34153
40158(b)	33805	40314	34154
40159	33806	40320	34050
40160	33901	40321	34051
40161	33807	40322	34052
40162	33808	40322.5(a)-(d)	34053
40200	34700	40322.5(e)	34054
40201	34701	40322.5(f)	34055
40210	34850	40323	34056
40211	34851	40324(1st ¶)	34057
40212	34852	40324(2d ¶)	34058
40220	34750	40325	34059
40220.5	34751	40326	34060
40221	34752	40327	34061
40221.5	34753	40328	34062
40222	34754	40329	34100
40223(1st ¶)	34755	40330	34101
40223(2d ¶)	34756	40360	34200
40224	34757	40361	34201
40225	34758	40362	34202
40226	34759	40363	34203
40227	34760	40364	34204
40228	34800	40365	34205
40229	34801	40370	34250
40230	34702	40371	34251
40231	34703	40372	34252
40232	35050	40373	34253
40233(a)	35000	40374(a)	34254
40233(b)-(c)	35001	40374(b)	34255
40233(d)	35002	40375	34256
40233(e)	35003	40376	34257
40234	34704	40377	34258
40234	34853	40390	34300
40260	34900	40391	34301
40261	34901	40392	34302
40262	34902	40400	35800
40263	34903	40402	35801
40264	34904	40404	35802
40265	34905	40404.5	35803
40266	34906	40405	35855
40267	34907	40405(intro.)	35850
40268	34908	40406	35860
40270	34950	40406(intro.)	35850
40271	34951	40407	35865
40272	34952	40407(intro.)	35850
40273	34953	40407.5	35870

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40407.5(intro.)	35850	40440.8(a)-(b)	36056
40408	35875	40440.8(c)	36057
40408(intro.)	35850	40441	36253
40410	35804	40442	36115
40410.5	35806	40443	36251
40411	35807	40444	36252
40412	35808	40445	36400
40413	35809	40445.5	36401
40414	35810	40446	36402
40416	35805	40447	36403
40420(a)	35900	40447.5	36404
40420(b)	35901(a)	40447.6	36405
40420(c)	35901(b)	40448	36450
40420(d)	35901(c)	40448.1	36407
40420(e)-(f)	35902	40448.5	36406
40420(g)	35901(d)	40448.6	36451
40420(h)	35901(e)	40448.7	36452
40421.5	35903	40448.8	36453
40422(a)-(b)	35904	40449	35811
40422(c)	35905	40450	35812
40422(d)	35906	40451	36501
40423	35907	40452	36502
40424	35908	40453	36503
40424.5	35909	40454	36408
40425	35910	40455	36409
40426	35911	40456	36410
40426.5	35912	40458	36411
40426.7	35913	40460(a)	36100
40426.7(e)	Omitted	40460(b)	36101
40427	35914	40460(c)	36104
40428	35915	40460(d)	36105
40440	36250	40461	36106
40440.1	36300	40462	36107
40440.10	36350	40463	36108
40440.11(a)	36351	40464	36102
40440.11(b)	36352	40465	36103
40440.11(c)	36353	40466	36109
40440.11(d)	36354	40467	36110
40440.11(e)	36355	40468	36111
40440.2(a)(1)	36302	40469	36112
40440.2(a)(2)	36303	40469.5	36113
40440.2(a)(3)	36304	40470	36114
40440.2(a)(4)	36305	40480(a)-(c)	35950
40440.2(a)(intro.)	36301	40480(d)	35958
40440.3	36500	40481	35951
40440.5(a)-(b)	36058	40482	35952
40440.5(c)	36059	40483	35953
40440.5(d)	36060	40484	35954
40440.5(e)	36061	40485	35955
40440.5(f)	36062	40486	35956
40440.7(a)	36050	40489	35957
40440.7(b)-(c)	36051	40500	36150
40440.7(d)	36052	40500.1	36151
40440.7(e)	36053	40500.5	36152
40440.7(f)	36055(a)	40501	36153
40440.7(g)	36054	40501.1(a)	36154
40440.7(h)	36055(b)	40501.1(b)	36155

**Note:** This table is sorted in decimal order. Some sections occur in serial order in the codes.



<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40501.1(c) . . . . .	36156	40706 . . . . .	32053
40501.1(d) . . . . .	36157	40707 . . . . .	32054
40501.1(e) . . . . .	36158	40708 . . . . .	32055
40501.3 . . . . .	36159	40709 . . . . .	32700
40502 . . . . .	36160	40709.5 . . . . .	32750
40503(a) . . . . .	36161	40709.6 . . . . .	32751
40503(b) . . . . .	36162	40709.7(a) . . . . .	32850(b)
40503(c) . . . . .	36163	40709.7(b) . . . . .	32850(a)
40504 . . . . .	36164	40709.7(c) . . . . .	32851
40505 . . . . .	36165	40709.7(d) . . . . .	32852
40506 . . . . .	36200	40709.7(e) . . . . .	32853
40506.1 . . . . .	36201	40709.7(f) . . . . .	32854
40506.2 . . . . .	36202	40709.7(g) . . . . .	32855
40507 . . . . .	36203	40709.7(h) . . . . .	32856
40508 . . . . .	36205	40710 . . . . .	32701
40509 . . . . .	36204	40711(a) . . . . .	32702
40510 . . . . .	36206	40711(b) . . . . .	32703
40510.5 . . . . .	36207	40712 . . . . .	32704
40510.7 . . . . .	36208	40713 . . . . .	32705
40511 . . . . .	36209	40714.5 . . . . .	32800
40512 . . . . .	36210	40714.5(b)(1)-(2) . . . . .	32801
40515 . . . . .	36211	40714.5(b)(3)(A)-(C) . . . . .	Omitted
40516(a) . . . . .	36212	40714.5(b)(3)(D) . . . . .	32802
40516(b) . . . . .	36213	40715(a) . . . . .	33500
40516(c) . . . . .	36214	40715(b) . . . . .	33501
40520 . . . . .	36000	40716 . . . . .	32005
40521 . . . . .	36001	40717(a) . . . . .	32900
40522 . . . . .	36002	40717(b) . . . . .	32901
40522.5 . . . . .	36003	40717(c) . . . . .	32902
40523 . . . . .	36004	40717(d) . . . . .	32903
40524 . . . . .	36005	40717(e) . . . . .	32904
40526 . . . . .	36006	40717(f) . . . . .	32905
40527 . . . . .	36007	40717(g) . . . . .	32906
40528 . . . . .	36008	40717(h) . . . . .	32907
40529 . . . . .	36009	40717.5(a) . . . . .	32950
40530 . . . . .	36010	40717.5(b) . . . . .	32951
40531 . . . . .	36011	40717.5(c) . . . . .	32952
40532 . . . . .	36012	40717.6(a) . . . . .	33000
40533 . . . . .	36013	40717.6(b)-(c) . . . . .	33001
40534 . . . . .	36014	40718(a)-(b) . . . . .	33550
40535 . . . . .	36015	40718(c) . . . . .	33551
40536 . . . . .	36016	40718(d) . . . . .	33552
40537 . . . . .	36017	40718(e) . . . . .	33553
40538 . . . . .	36018	40718(f) . . . . .	33554
40539 . . . . .	36019	40718(g) . . . . .	33555
40540 . . . . .	36020	40719(a)-(c) . . . . .	33050
40700 . . . . .	32050	40719(d) . . . . .	33051
40701 . . . . .	32001	40720(a) . . . . .	32150
40701.5 . . . . .	32051	40720(b) . . . . .	32151
40702(1st ¶) . . . . .	32002	40720(c) . . . . .	32152
40702(2d ¶) . . . . .	32003	40720(d) . . . . .	32153
40703 . . . . .	32301	40720(e) . . . . .	32154
40704 . . . . .	32302	40720(f) . . . . .	32155
40704.5(a)-(d) . . . . .	34400	40720(g) . . . . .	32156
40704.5(e) . . . . .	34401	40720(h) . . . . .	32157
40704.5(f) . . . . .	34402	40720(i) . . . . .	32158
40705 . . . . .	32052	40720(j) . . . . .	32159

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40720(k)	32160	40863	32653
40721(a)	32200	40864	32654
40721(b)	32201	40865	32655
40721(c)	32202	40900	34500
40721(d)	32203	40910	33200
40721(e)	32204	40911	33201
40721(f)	32205	40912	33300
40725	32303	40913	33250
40726	32304	40914	33251
40727	32305	40915	33252
40727.2(a)-(b)	32350	40916	33202
40727.2(c)-(d)	32351	40917	33203
40727.2(e)	32352	40918	33303
40727.2(f)	32353	40918.5	33350
40727.2(g)	32354	40918.6	33351
40727.2(h)	32355	40918.7	33352
40727.2(i)	32356	40919	33304
40727.2(j)	32357	40920	33305
40728	32306	40920.5	33306
40728.5(a)(1st-2d snt.)	32400	40920.6(a)	33400
40728.5(a)(last snt.)	32402(a)	40920.6(b)	33401
40728.5(b)	32401	40920.6(c)	33402
40728.5(c)-(d)	32402(b)-(c)	40920.6(d)	33403
40730	32006	40921	33301
40750	32100	40921.5	33302
40751	32101	40922	33253
40752	32102	40923	33451
40753	32103	40924	33452
40800	32500	40925	33453
40801	32502	40925.5	33454
40802	32503	40926	33204
40803	32504	40928(a)	33100
40804	32505	40928(b)	33101
40805	32506	40928(c)	33102
40806	32507	40929(a)	33150
40807	32508	40929(b)	33151
40808	32509	40930	33450
40809	32510	40950	35400
40820	32550	40951	35455
40821	32551	40951(intro.)	35450
40822	32552	40952	35460
40823	32553	40952(intro.)	35450
40824	32554	40953	35465
40825	32555	40953(intro.)	35450
40826	32556	40960	35401
40827	32557	40961	35402
40828	32558	40962	35403
40829	32559	40963	35404
40830	32560	40980	35500
40840	32600	40981	35501
40841	32601	41010	35650
40842	32602	41011	35651
40843	32603	41012	35652
40844	32604	41013	35653
40860	32650	41014	35654
40861	32651	41015	35405
40862	32652	41016	35406

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
41040	35550	41503.5	37155
41060	35700	41503.6	37000
41061	35701	41504	37200
41062	35702	41505	37201
41063	35703	41507	37202
41064	35704	41508	37001
41065	35705	41510	38700
41066	35706	41511	37002
41080(a)	35600	41512(a)	37300
41080(b)	35601	41512(b)	37005
41081	35602	41512(c)	37006
41082	35603	41512.5	37301
41200	35100	41512.7(a)-(c)	37302
41210	35101	41512.7(d)(1)-(2)	37303
41211	35102	41512.7(d)(3)	37304
41212	35103	41513	38701
41220	35150	41514	37003
41221	35151	41514.8	37004
41222	35152	41515	37400
41223	35301	41516	37401
41230	35300	41517	37402
41231	35302	41518	Omitted
41232	35303	41519	Omitted
41233	35304	41520	Omitted
41240	35250	41600	37450
41241	35251	41605	37451
41242	35252	41605.5	37452
41243	35253	41650(a)	37500
41244	35254	41650(b)	37501
41245	35255	41651	37502
41246	35256	41652	37503
41247	35257	41700	37600
41248	35258	41701	37602
41249	35259	41701.5	38650
41250	35260	41701.6	38651
41251	35261	41702	38655
41252	35262	41703	37605
41253	35263	41704	37603
41254	35264	41704.5	38652
41255	35265	41705	37601
41256	35266	41706	38653
41260	35200	41707	37604
41261	35201	41708	38654
41262	35206	41712(a)(1)	37655
41263	35202	41712(a)(2)	37660
41264	35205	41712(a)(3)	37665
41265	35203	41712(a)(4)	37670
41266	35204	41712(a)(intro.)	37650
41267	35207	41712(b)	37700
41500	37100	41712(c)-(f)	37701(a)-(d)
41500.5	37101	41712(g)	37704
41502	37102	41712(h)	37702
41503	37150	41712(i)	37703
41503.1	37151	41712(j)	37701(e)
41503.2	37152	41712(k)	37705
41503.3	37153	41750	37750
41503.4	37154	41751(a)(1)	37805

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
41751(a)(1)-(2)(intro.)	37800	41865(g)	38257
41751(a)(2)-(b)	37815	41865(h)	38258
41751(c)	37810	41865(i)	38259
41752	37850	41865(j)	38260
41753	37851	41865(l)	38262
41754(a)	37852	41865(m)	38263
41754(b)-(g)	37853	41865(n)	38264
41755	37854	41865(o)	38265
41800	37900	41865(p)	38251
41801	37950	41865(q)	38252
41802	37951	41865(r)	38266
41803	37954	41865(s)	38267
41804	37952	41865(t)	38268
41804.5	37953	41865(u)	38269
41805	37955	41866	38104
41805.5(a)	38001	41900	38300
41805.5(b)	38002	41901	38301
41805.5(c)	38003	41902	38302
41805.5(d)	38004	41903	38303
41805.5(e)	38005	41904	38304
41805.5(f)	38008	41905	38305
41805.5(g)	38006	41950	38450
41805.5(h)	38007	41951	38360
41805.5(i)	38000	41952	38365
41805.6	38009	41953	38355
41806	37956	41954(a)-(f)	38400
41807	37957	41954(g)-(h)	38401
41808	37958	41954(i)	38402
41809	37959	41955	38403
41810	37902	41956	38406
41811	37901	41956.1	38409
41812	37960	41957	38407
41813	37961	41958 (1st ¶)	38408
41815	37962	41958 (2d ¶)	38404
41850	38050	41959	38410
41851	38051	41960	38411
41852	38100	41960.1(a)	38451
41852.5	38101	41960.1(b)-(c)	38452
41853	38102	41960.2(a)-(b)	38453
41853.5	38103	41960.2(c)-(e)	38454
41854	38150	41960.3	38455
41855	38151	41960.4	38456
41856	38200	41960.5	38457
41857	38201	41960.6	38458
41858	38202	41961	38405
41859	38203	41962(a)	38501
41860	38105	41962(b)-(f)	38502
41861	38106	41962(g)	38503
41862	38152	41962(h)	38504
41863	38204	41962(i)	38500
41864	38052	41970	38550
41865(a)	38250	41971	38551
41865(b)&(k)	38253	41972	38552
41865(c)	38254	41973	38553
41865(d)	38255	41974	38554
41865(e)	38261	41980	38600
41865(f)	38256	41980.5	38601

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
41981 .....	38602	42311(i) .....	38855
41982 .....	38603	42311.2 .....	38856
41983 .....	38604	42311.5 .....	38857
42300 .....	38750	42312 .....	38858
42300.1 .....	38751	42313 .....	38859
42300.2 .....	38752	42314 .....	39154
42301 .....	38753	42314.1 .....	39155
42301.1 .....	38754	42314.2 .....	39156
42301.10 .....	39050	42314.5 .....	39157
42301.11 .....	39051	42315(a)(1)-(3), (4)(A) & (E), (5)-(6) . . .	39100
42301.12 .....	39052	42315(a)(4)(B)-(C) .....	39101
42301.13(a) .....	39150	42315(a)(4)(D) .....	39102
42301.13(b)-(c) .....	39151	42315(b) & (d) .....	39103
42301.2 .....	38657	42315(c) .....	39104
42301.3(a) .....	38900	42316 .....	38656
42301.3(b) .....	38901	42320 .....	39200
42301.3(c) .....	38902	42321 .....	39201
42301.3(d)(1) .....	38903	42322 .....	39202
42301.3(d)(2) .....	38904	42322.5 .....	39203
42301.3(e) .....	38905	42323 .....	39204
42301.3(f) .....	38906	42330 .....	39250
42301.3(g) .....	38907	42331 .....	39251
42301.3(h) .....	38908	42332 .....	39252
42301.3(i) .....	38909	42333(a) .....	39253
42301.5(a) .....	38950	42333(b)-(c) .....	39254
42301.5(b) .....	38951	42333(d) .....	39255
42301.5(c)-(d) .....	38952	42333(e) .....	39256
42301.6(a) .....	39001	42334 .....	39257
42301.6(b)-(c) .....	39002	42335 .....	39258
42301.6(d) .....	39003	42336 .....	39259
42301.6(e) .....	39004	42337 .....	39260
42301.6(f) .....	39005	42338 .....	39261
42301.6(g) .....	39006	42339 .....	39262
42301.6(h) .....	39007	42350 .....	39300
42301.7 .....	39008	42350 .....	39350
42301.8 .....	39009	42350.5 .....	39301
42301.9 .....	39000	42351 .....	39304
42302 .....	38800	42351.5 .....	39305
42302.1 .....	38801	42352(a) .....	39351
42303 .....	38802	42352(b) .....	75
42303.2(a)-(b) .....	38803	42352.5(a) .....	39352
42303.2(c)-(d) .....	38804	42352.5(b) .....	39353
42303.2(e) .....	38805	42353 .....	39354
42303.5 .....	38806	42354 .....	39355
42304 .....	38807	42355 .....	39356
42305 .....	38808	42356 .....	39400
42306 .....	38809	42357 .....	39401
42307 .....	38810	42358 .....	39357
42308 .....	38811	42359 .....	39302
42309 .....	38812	42359.5 .....	39306
42310 .....	39152	42360 .....	39303
42310.5 .....	39153	42361 .....	39358
42311(a), (f)-(h) .....	38850	42362 .....	39402
42311(b) .....	38851	42363 .....	39403
42311(c) .....	38852	42364 .....	39307
42311(d) .....	38853	42365 .....	39450
42311(e) .....	38854	42366 .....	39451

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
42367	39455(c)	42701	39801
42368(a)	39452	42702	39802
42368(b)-(c)	39453	42703	39803
42368(d)	39454	42704	39804
42369	39455(a)-(b)	42705	39805
42370	39456	42706	39806
42371	39457	42707	39807
42372	39458	42708	39808
42400(a)-(b)	39550	43000	40000
42400(c)	39551	43000.5	40001
42400(d)	39502	43001 (1st pt.)	40400
42400(e)	39501	43001 (last ¶)	Omitted
42400.1	39552	43002	40401
42400.1(c)	39501	43002.2	40402
42400.1(d)	39502	43004	40403 (a)
42400.2(a)-(d)	39553	43005	40403 (b)
42400.2(e)	39501	43006	40851
42400.2(f)	39502	43007	41300
42400.3(a)	39554	43008	41301
42400.3(b)	39502	43008.5	40206
42400.3(c)	39501	43008.6 (a)	41402
42400.4(a)-(b)	39555(a)-(b)	43008.6 (b)-(d)	41403
42400.4(c)	39502	43009	41302
42400.4(d)	39501	43009.5	41401
42400.4(e)-(f)	39555(c)-(d)	43010	Omitted
42400.5	39503	43011	41303
42400.6	39505	43012 (a)-(b) & (i)	41404
42401	39600	43012 (c)	41405
42402(a)-(b)	39601	43012 (d)	41406
42402(c)	39501	43012 (e)-(f)	41407
42402.1(a)-(b)	39602	43012 (g)	41408
42402.1(c)	39501	43012 (h)	41409
42402.2(a)-(c)	39603	43012 (j)	41400
42402.2(d)	39501	43013 (a)-(b)	40201
42402.3(a)	39604	43013 (c)	40202
42402.3(b)	39501	43013 (d)	40203
42402.5	39605	43013 (e)	40204
42403	39650	43013 (f)-(g)	40205
42403.5	39606	43013 (h)	40200
42404	39651	43013.2 (a)	41100
42404.5	39652	43013.2 (b)	41101
42405	39653	43013.2 (c)	41102
42405.1	39654	43013.2 (d)	41103
42405.5	39655	43013.2 (e)	41104 (a)
42406	39656	43013.2 (f)(1st snt.)	41104 (b)
42407	39500	43013.2 (f)(last 3 snt.)	41105 (a)
42408	39556	43013.2 (g)	41105 (b)
42409	39504	43013.2 (h)	41106
42420	39700	43013.2 (i)	Omitted
42421	39701	43013.5 (a)	41003
42450	39751	43013.5 (b)	40805
42450.1	39750	43014	41304
42451	39752	43015	40500
42452	39753	43016	40300
42453	39754	43017	40301
42454	39755	43018 (a)	40100
42700	39800	43018 (b)	40101

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
43018 (c) & (e) . . . . .	40102	43610 . . . . .	41806
43018 (d) . . . . .	40103	43611 . . . . .	41807
43018 (f) . . . . .	Omitted	43612 . . . . .	41808
43019 . . . . .	40501	43613 . . . . .	41809
43020 . . . . .	41000	43614 . . . . .	41810
43021 . . . . .	41001	43630 . . . . .	41811
43022 . . . . .	40502	43635 . . . . .	41812
43025 . . . . .	41050	43636 . . . . .	41813
43026 . . . . .	41051	43640 . . . . .	41815
43027 . . . . .	41052	43641 . . . . .	41816
43028 . . . . .	41053	43642 . . . . .	41817
43029 . . . . .	41054	43643 . . . . .	41818
43030 (a)-(b) . . . . .	41055	43644 . . . . .	41801
43030 (c) . . . . .	41056	43645 . . . . .	41814
43031 . . . . .	41057	43646 . . . . .	Omitted
43031.5 . . . . .	41058	43650 . . . . .	41850
43032 . . . . .	41059	43651 . . . . .	41852
43033 . . . . .	41060	43652 . . . . .	41851
43100 . . . . .	41503	43653 . . . . .	41853
43101 . . . . .	41500	43654 . . . . .	41854
43101.5 . . . . .	41501	43655 . . . . .	41855
43102 . . . . .	41504	43656 . . . . .	41856
43103 . . . . .	41508	43656.5 . . . . .	41857
43104 . . . . .	41507	43657 . . . . .	41858
43105 . . . . .	41758	43658 . . . . .	41859
43106 . . . . .	41509	43659 . . . . .	41860
43107 . . . . .	41502	43660 . . . . .	41861
43108 . . . . .	41506	43700 . . . . .	41900
43150 . . . . .	41550	43701 . . . . .	41901
43151 . . . . .	41551	43702 (a)-(b) . . . . .	41902
43152 . . . . .	41552	43702 (c) . . . . .	41903
43153 . . . . .	41553	43702 (d) . . . . .	41904
43154 . . . . .	41750	43706 . . . . .	Omitted
43155 . . . . .	41751	43707 . . . . .	Omitted
43156 . . . . .	41554	43800 . . . . .	42101
43200 . . . . .	41700	43801 . . . . .	42100
43201 . . . . .	41752	43802 . . . . .	42102
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

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
43845	42200	44014.4	42755
44000	42300	44014.5 (a)	42701
44000.5 (a)	42302	44014.5 (b)	42800
44000.5 (b)	42303	44014.5 (c)	42801
44000.5 (c)(1)	42304	44014.5 (d)	42802
44000.5 (c)(2)	42400	44014.5 (e)	42803
44001 (a)	42306	44014.5 (f)	42804
44001 (b)	42307	44014.5 (g)	42805
44001 (c)	42308	44014.5 (h)	42806
44001.3	42309	44014.5 (i)	42807
44001.5	42500	44014.7	42907
44002	42501	44015 (a)-(b)	42903
44003 (a)	42700	44015 (c)(1)	42950
44003 (b)	42702	44015 (c)(2)	42951
44003 (c)	42703	44015 (d)	42952
44004 (a)(1)	42707	44015 (e)	42904
44004 (a)(2d ¶)	42402	44015 (f)	42905
44004 (b)	42401	44015.5	42906
44005(a)	42502	44016	42503
44005 (b)	42704	44017	42953
44010	42750	44017.1	42954
44010.5 (a)-(c)	42850	44017.3	42756
44010.5 (d)	42864	44017.5	42757
44010.5 (e)	42851	44018	42706
44010.5 (f)	42852	44019	42908
44010.5 (g)	42853	44020 (1st ¶)	43050
44010.5 (h)	42854	44020 (a)	43051
44010.5 (i)	42863	44020 (b)(1st snt.)	43052
44010.5 (j)	42862	44020 (b)(2d snt.)	43053
44010.5 (k)	42855	44020 (c)	43054
44010.5 (l)	42856	44020 (d)-(e)	43055
44010.5 (m)	42857	44020 (f)	43056
44010.5 (n)	42858	44020 (g)	43057
44010.5 (o)	42859	44020 (h)	43058
44010.5 (p)	42860	44021 (a)(1)	42600
44010.5 (q)	42861	44021 (a)(2)	42601
44011	42900	44021 (a)(3)	42602
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

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
44036 (b) . . . . .	43350	44062.1 (c) . . . . .	44052
44036 (c) . . . . .	43351	44062.1 (d) . . . . .	44053
44036 (d) . . . . .	43102	44062.1 (e) . . . . .	44054
44036 (e) . . . . .	43352	44062.1 (f) . . . . .	44055
44036 (f) . . . . .	43353	44062.1 (g) . . . . .	44056
44036.1 . . . . .	43354	44062.1 (h) . . . . .	44057
44036.2 (a) . . . . .	43400	44062.2 . . . . .	44103
44036.2 (b) . . . . .	43402	44063 . . . . .	44104
44036.2 (c) . . . . .	43403	44070 . . . . .	44200
44036.2 (d)-(e) . . . . .	43404	44070.5 . . . . .	44201
44036.2 (f)(1) . . . . .	43405	44071 . . . . .	44202
44036.2 (f)(2) . . . . .	43401	44072 . . . . .	44400
44036.2 (g) . . . . .	43406	44072.1 . . . . .	44405
44036.3 . . . . .	43450	44072.10 (a) . . . . .	44412
44036.5 . . . . .	43355	44072.10 (b) . . . . .	44408
44036.8 . . . . .	43451	44072.10 (c) . . . . .	44410
44037 . . . . .	43452	44072.10 (d) . . . . .	44409
44037.1 (a)-(b) . . . . .	43500	44072.10 (e)(1st snt.) . . . . .	44415
44037.1 (c) . . . . .	43501	44072.10 (e)(2d snt.) . . . . .	44413 (a)
44037.2 (a) & (c) . . . . .	43503	44072.10 (f)-(g) . . . . .	44413 (b)-(c)
44037.2 (b) . . . . .	43502	44072.11 (a) . . . . .	44416
44038 . . . . .	43453	44072.11 (b) . . . . .	44417
44039 . . . . .	43454	44072.2 . . . . .	44407
44040 . . . . .	43455	44072.3 . . . . .	44406
44041 . . . . .	43456	44072.4 . . . . .	44401
44045.5 (a) . . . . .	43252	44072.5 . . . . .	44404
44045.5 (b) . . . . .	42450	44072.6 . . . . .	44402
44045.5 (c) . . . . .	43257	44072.7 . . . . .	44403
44045.5 (d) . . . . .	43258	44072.8 . . . . .	44411
44045.6 (a)-(b) . . . . .	43301	44072.9 . . . . .	44414
44045.6 (c) . . . . .	43255	44080 . . . . .	43600
44045.6 (d) . . . . .	43101	44081 (a) . . . . .	43650
44050 . . . . .	44300	44081 (b) . . . . .	43651
44050.5 . . . . .	44304	44081 (c) . . . . .	43652
44051 . . . . .	44302	44081 (d) . . . . .	43653
44051.5 . . . . .	44303	44081 (e) . . . . .	43654
44052 . . . . .	44305	44081 (f) . . . . .	43655
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

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
44100	43900	44253	Omitted
44101	43901	44254	Omitted
44102	43902	44257	Omitted
44103	43909	44300	45000
44104	43913	44301	45001
44104.5 (a)	43910	44302	45050
44104.5 (b)	43911	44303	45055
44104.5 (c)	43912	44304	45060
44105	43903	44306	45065
44106	43905	44307	45070
44107	43904	44308	45075
44109	43906	44309	45090
44115	43907	44320	45100
44120	43908	44321	45101
44121	43914	44322	45102
44122	43915	44323	45103
44200	42000	44324	45104
44201	42001	44325	45105
44202	42002	44340	45300
44203	42003	44341	45301
44204	42004	44342	45400
44205	42005	44343	45302
44207	42006	44344	45303
44208	42007	44344.4(a), (b) & (d)	45304
44209	42008	44344.4(c)	45080
44210	42009	44344.5	45307
44220	40600	44344.6	45306
44223	40601	44344.7	45305
44225	40602	44345	45401
44227	40603	44346(a) & (d)	45351
44229	40650	44346(b)	45352
44231	40604	44346(c)	45353
44233	40651	44346(e)	45354
44235	40652	44346(f)	45355
44236	40653	44346(g)	45356
44237	40654	44346(h)	45350
44241 (a)	40700	44360(a)	45500
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

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<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
44380.1	45254	106630(b)	8302(a)
44380.5	45255	106630(c)	8303
44381	45201	106630(d)	8401(a)
44382	45107	106630(e)	8401(b)
44384	Omitted	106630 (intro.)	8300
44390	45700	106635	8500
44391(a)-(c)	45701	106640	8501
44391(d)	45709	106645	8503
44391(e)	Omitted	106650	8504
44391(f)	45703	106655	8506
44391(g)	45704	106660	8600
44391(h)	45705	106665(a)	8601
44391(i)	45706	106665(b)	8602
44391(j)	45707	106665(c)	8603
44392	45702	106665(d)	8604
44393	45708	106670	8505
44394	45710	106675(a)	8700
44400 (1st snt.)	46001(a)	106675(b)	8701
44400 (2d snt.)	46000	106680	8702
44401	46002	106687	8703
44402	46001(b)	106690	8704
44403	46003	106695	8507
44404	46004	106700	8508
44470	46500	106705	8502
44471(a)	46501	106710	8400
44471(b)	46502	106715(a)	8800
44472	46503	106715(b)(1)-(5)	8801(a)-(e)
44473(a)	46504	106715(b)(6)(A)-(C)	8801(f)
44473(b)	46505	106715(b)(6)(D)	8802
44473(c)	46506	106715(c)	8801(g)
44474	46507	106715(d)	8803
44521	Omitted	106720	8804
105400	47000	106725	8402
105405	47050	106730	8002
105410	47001	106735	8200
105415	47002	106750	47100
105420	47003	106755	47160
105425	47004	106760	47165
105430	47051	106765	47170
106600	8000	106770	47155
106605	8001	106775	47101
106610	8705	106780	47203
106615(a)	8120	106785	47204
106615(b)	8115	106790	47200
106615(c)	8140	106795	47201
106615(d)	8130	106800	47202
106615(e)	8145	106805	47205
106615(f)	8110	106810	47104
106615(g)	8135	106815	47250
106615(h)	8105	106820	47251
106615(i)	8125	106825	47252
106615 (intro.)	8100	106830	47253
106620	8003	106835	47254
106625	8201	106840	47103
106630(a)(1)	8301(a)	106845	47102
106630(a)(2)	8301(b)	106850	47255
106630(a)(3)	8302(b)	106855	47256

**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
106860 . . . . .	47300	119155 . . . . .	46601
106865 . . . . .	47301	119160 . . . . .	46602
119150 . . . . .	46600		

## PUBLIC RESOURCES CODE

Pub. Res. Code	Env't Code	Pub. Res. Code	Env't Code
21000 . . . . .	21000	21080.23 . . . . .	21080.23
21001 . . . . .	21001	21080.24 . . . . .	21080.24
21001.1 . . . . .	21001.1	21080.26 . . . . .	21080.26
21002 . . . . .	21002	21080.3 . . . . .	21080.3
21002.1 . . . . .	21002.1	21080.32 . . . . .	21080.32
21003 . . . . .	21003	21080.33 . . . . .	21080.33
21003.1 . . . . .	21003.1	21080.4 . . . . .	21080.4
21004 . . . . .	21004	21080.5 . . . . .	21080.5
21005 . . . . .	21005	21080.7 . . . . .	21080.7
21050 . . . . .	21050	21080.8 . . . . .	21080.8
21060 . . . . .	21060	21080.9 . . . . .	21080.9
21060.1 . . . . .	21060.1	21081 . . . . .	21081
21060.3 . . . . .	21060.3	21081.5 . . . . .	21081.5
21060.5 . . . . .	21060.5	21081.6 . . . . .	21081.6
21061 . . . . .	21061	21081.7 . . . . .	21081.7
21061.1 . . . . .	21061.1	21082 . . . . .	21082
21061.2 . . . . .	21061.2	21082.1 . . . . .	21082.1
21062 . . . . .	21062	21082.2 . . . . .	21082.2
21063 . . . . .	75	21083 . . . . .	21083
21064 . . . . .	21064	21083.1 . . . . .	21083.1
21064.5 . . . . .	21064.5	21083.2 . . . . .	21096.2
21065 . . . . .	21065	21083.3 . . . . .	21096.3
21065.5 . . . . .	21065.5	21083.5 . . . . .	21096.5
21066 . . . . .	70	21083.6 . . . . .	21096.6
21067 . . . . .	21067	21083.7 . . . . .	21096.7
21068 . . . . .	21068	21083.8 . . . . .	21096.8
21068.5 . . . . .	21068.5	21083.8.1 . . . . .	21096.9
21069 . . . . .	21069	21083.9 . . . . .	21097
21080 . . . . .	21080	21084 . . . . .	21084
21080.01 . . . . .	21080.01	21084.1 . . . . .	21097.1
21080.02 . . . . .	21080.02	21084.2 . . . . .	21097.2
21080.03 . . . . .	21080.03	21085 . . . . .	21097.3
21080.04 . . . . .	21080.04	21086 . . . . .	21086
21080.05 . . . . .	21080.05	21087 . . . . .	21087
21080.07 . . . . .	21080.07	21088 . . . . .	21088
21080.08 . . . . .	21080.08	21089 . . . . .	21089
21080.09 . . . . .	21080.09	21090 . . . . .	21090
21080.1 . . . . .	21080.1	21090.1 . . . . .	21090.1
21080.10 . . . . .	21080.10	21091 . . . . .	21091
21080.11 . . . . .	21080.11	21092 . . . . .	21092
21080.12 . . . . .	21080.12	21092.1 . . . . .	21092.1
21080.13 . . . . .	21080.13	21092.2 . . . . .	21092.2
21080.14 . . . . .	21080.14	21092.3 . . . . .	21092.3
21080.17 . . . . .	21080.17	21092.4 . . . . .	21092.4
21080.18 . . . . .	21080.18	21092.5 . . . . .	21092.5
21080.19 . . . . .	21080.19	21092.6 . . . . .	21092.6
21080.2 . . . . .	21080.2	21093 . . . . .	21093
21080.21 . . . . .	21080.21	21094 . . . . .	21094
21080.22 . . . . .	21080.22	21095 . . . . .	21095

**Note:** This table is sorted in decimal order. Some sections occur in serial order in the codes.



<b>Pub. Res. Code</b>	<b>Env't Code</b>	<b>Pub. Res. Code</b>	<b>Env't Code</b>
21096	21096	21169	21169
21100	21100	21170	21170
21100.1	21100.1	21171	21171
21100.2	21100.2	21172	21172
21101	21101	21172.5	21172.5
21102	21102	21173	12
21104	21104	21174	21174
21104.2	21104.2	21175	21175
21105	21105	21176	21176
21106	21106	21177	21167.9
21108	21108	71000	10000
21150	21150	71001	10001
21151	21151	71010	10140
21151.1	21151.1	71011	10120
21151.2	21151.2	71012	10125
21151.4	21151.4	71013	10135
21151.5	21151.5	71014	10105
21151.7	21151.7	71015	10110
21151.8	21151.8	71016	10130
21151.9	21151.9	71017	10115
21152	21152	71020(a) & (b)	11101
21153	21153	71020(c)	11102
21154	21154	71021(a) & (b)	11100
21156	21156	71021(c)	11200
21157	21157	71021(d)	11000
21157.1	21157.1	71022(a)(1)-(6)	11202
21157.5	21157.5	71022(a)(1st snt.)	11201(a)
21157.6	21157.6	71022(b) & (c)	11201(b) & (c)
21158	21158	71023	11300
21158.1	21158.1	71024	11203
21158.5	21158.5	71025	11205
21159	21159	71026	11204
21159.1	21159.1	71027	11301
21159.2	21159.2	71028	11302
21159.3	21159.3	71029	11206
21159.4	21159.4	71030	12000
21159.9	21159.9	71031	13000
21160	21160	71035(a)	14105
21161	21161	71035(b)	14110
21162	21162	71035(c)	14115
21165	21165	71035(d)	14120
21166	21166	71035 (intro.)	14100
21166.1	21166.1	71035.1	14200
21167	21167	71035.10	14204
21167.1	21167.1	71035.11	14001
21167.2	21167.2	71035.2	14201
21167.3	21167.3	71035.3	14202
21167.4	21167.4	71035.4	14203
21167.5	21167.5	71035.5	14300
21167.6	21167.6	71035.6(a)-(d)	14301
21167.7	21167.7	71035.6(e)	14302
21167.8	21167.8	71035.6(f)	14303
21168	21168	71035.7	14304
21168.5	21168.5	71035.8	14305
21168.6	21168.6	71035.9	14000
21168.7	21168.7	71050	15000
21168.9	21168.9	71053	15105

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Pub. Res. Code	Env't Code	Pub. Res. Code	Env't Code
71054 .....	15110	71066 .....	15206
71055 .....	15115	71067 .....	15500
71060 .....	15200	71068(a) .....	15205
71061 .....	15201	71068(b) .....	15203
71062 .....	15202	71068(c) .....	15501
71063 .....	15300	71068(d) .....	15502
71064 .....	15400	71068(e) .....	15001
71065 .....	15204		

## SESSION LAWS

Session Laws	Env't Code	Session Laws	Env't Code
1992 Cal. Stat. ch. 1252, § 11 .....	30004		
1993 Cal. Stat. ch. 1131, § 1 .....	39158		
1997 Cal. Stat. ch. 803, § 1. ....	42305		
1997 Cal. Stat. ch. 803, § 2. ....	42301		

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