HEALTH AND SAFETY CODE

CALIFORNIA AIR POLLUTION CONTROL LAWS
HEALTH AND SAFETY CODE
DIVISION 26. AIR RESOURCES
(Division 26 repealed and added by Stats. 1975, Ch. 957.)
PART 1. GENERAL PROVISIONS AND DEFINITIONS
(Part 1 added by Stats. 1975, Ch. 957).
CHAPTER 1. FINDINGS, DECLARATIONS, AND INTENT
(Chapter 1 added by Stats. 1975, Ch. 957.)

39000. The Legislature finds and declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California.
(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2247, 2250-2256, 2263.7, 2265, 2266, 2266.5, 2280, 2290-2292.7, 2296, 2300-2317
17, CCR, section 60000

39001. The Legislature, therefore, declares that this public interest shall be safeguarded by an intensive, coordinated state, regional, and local effort to protect and enhance the ambient air quality of the state. Since air pollution knows no political boundaries, the Legislature declares that a regional approach to the problem should be encouraged whenever possible and, to this end, the state is divided into airbasins. The state should provide incentives for such regional strategies, respecting, when necessary, existing political boundaries.
(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2247, 2250-2256, 2263.7, 2265, 2266, 2266.5, 2280, 2290-2292.7, 2296, 2300-2317
17, CCR, section 60102-60113

39002. Local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division, shall be the responsibility of the State Air Resources Board. Except as otherwise provided in this division, including, but not limited to, Sections 41809, 41810, and 41904, local and regional authorities may establish stricter standards than those set bylaw or by the state board for nonvehicular sources. However, the state board shall, after holding public hearings as required in this division, undertake control activities in any area wherein it determines that the local or regional authority has failed to meet the responsibilities given to it by this division or by any other provision of law.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1903, 1950, 1952, 1955.1, 1955.5, 1956-1958, 1959.5, 1960-1960.5, 1965-1968.1, 1970, 1975, 1977, 2001, 2002, 2007.5-2010, 2058-2061, 2100-2107, 2108, 2110, 2150-2152, 2175-2176, 2180-2187, 2190-2194, 2200, 2207, 2220, 2222, 2225, 2247, 2250-2256, 2263.7, 2265, 2266, 2266.5, 2280-2290-2292.7, 2296, 2300-2317, 2500

17, CCR, sections 60002, 60008, 90600-90623, 90800-90803, 94500,94503.5-94517, 94540-94555

39003. The State Air Resources Board is the state agency charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the state.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1903, 1950, 1952, 1955.1- 1958, 1959.5, 1960-1960.4, 1960.15, 1965-1968.1, 1970, 1975, 1976, 1977, 2001, 2002, 2007.5, 2008- 2010, 2058-2061, 2100-2107, 2109, 2110, 2150-2152, 2175-2177, 2180-2187, 2190-2194, 2200-2207, 2220, 2222, 2225, 2235, 2250-2256, 2257, 2261, 2263.7, 2265, 2266, 2266.5, 2280, 2290-2292.7, 2296, 2300-2317, 2500

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

(Repealed and added by Stats. 1975, Ch. 957.)

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

(Repealed and added by Stats. 1975, Ch. 957.)

## Chapter 2. Definitions

(Chapter 2 added by Stats. 1975, Ch. 957.)

39010. 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 39601 which revise such definition.

(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 2180-2187, 2190-2194, 2263.7, 2265, 2266, 2266.5, 2290-2292.7

39010.5. "Acid deposition" means the wet or dry deposition of acid chemical compounds from the atmosphere.

(Added by Stats. 1982, Ch. 1473, Sec. 1.)

39010.6. "Acid deposition precursor" means an air contaminant which may be transformed to an acid gas or particle in the atmosphere.

(Added by Stats. 1982, Ch. 1473, Sec. 2.)

39011. (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.

(Amended by Stats. 1987, Ch. 211, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 80100

39012. "Air basin" means an area of the state designated by the state board pursuant to subdivision (a) of Section 39606.

(Repealed and added by Stats. 1975, Ch. 957.)

39013. "Air contaminant" or "air pollutant" 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.

(Amended by Stats. 1976, Ch. 1063.)

39014. "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.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 70200

39015. "Bay district" means the Bay Area Air Quality Management District continued in existence pursuant to Chapter 4 (commencing with Section 40200) of Part 3.

(Amended by Stats. 1978, Ch. 1025.)

39016. "Bay district board" means the governing body of the bay district.

(Added by Stats. 1975, Ch. 957.)

39016.5. "Bureau" means the Bureau of Automotive Repair in the Department of Consumer Affairs.

(Added by Stats. 1994, Ch. 1192, Sec. 3.)

39017. "Bus" has the same meaning as defined in Section 233 of the Vehicle Code.

(Added by Stats. 1975, Ch. 957.)

39018. "Certification" means a finding by the state board that a motor vehicle, motor vehicle engine, or motor vehicle pollution control device has satisfied the criteria adopted by the state board for the control of specified air contaminants from vehicular sources.

(Added by Stats. 1975, Ch. 957.)

39019. "Certified device" means a motor vehicle pollution control device with a certification, and includes a motor vehicle pollution control device previously accredited or approved by the state board or by the Motor Vehicle Pollution Control Board.

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

(Added by Stats. 1975, Ch. 957.)

39019.5. "Cogeneration technology" has the same meaning as defined in Section 25134 of the Public Resources Code.
(Added by Stats. 1979, Ch. 922.)

39019.6. "Cogeneration technology project" shall not include existing equipment owned or operated by the applicant or host industry which is not modified as a result of utilizing cogeneration technology.
(Added by Stats. 1979, Ch. 922.)

39020. "Combustible or flammable solid waste" means any garbage, rubbish, trash, rags, paper, boxes, crates, excelsior, ashes, offal, carcass of a dead animal, or any other combustible or flammable refuse matter which is in a solid form.
(Repealed and added by Stats. 1975, Ch. 957.)

39021. "Commercial vehicle" has the same meaning as defined in Section 260 of the Vehicle Code.
(Repealed and added by Stats. 1975, Ch. 957.)

39021.5. "Components of emissions control systems" are those parts included in the state board's "Emissions Warranty Parts List," dated December 14, 1978, referenced in subdivision (c) of Section 2036 of Title 13 of the California Administrative Code.
(Added by Stats. 1982, Ch. 892, Sec. 1.)

39022. "County district" means a district continued in existence pursuant to Chapter 2 (commencing with Section 40100) of Part 3.
(Repealed and added by Stats. 1975, Ch. 957.)

39023. "County district board" means the governing body of a county district.
(Repealed and added by Stats. 1975, Ch. 957.)

39024. "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine. Crankcase gases which are conducted to the engine intake or exhaust systems are not included in the definition of crankcase emissions, but are defined as exhaust emissions.
(Added by Stats. 1975, Ch. 957.)

39024.5. "Department" means the Department of Consumer Affairs.
(Added by Stats. 1982, Ch. 892, Sec. 1.2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 80100

39024.6. "Direct import vehicle" means any light-duty motor vehicle manufactured outside of the United States which was not intended by the manufacturer for sale in the United States and which was not certified by the state board pursuant to Article 1 (commencing with Section 43100) of Chapter 2 of Part 5.

(Added by Stats. 1989, Ch. 859, Sec. 1.)

39025. "District" means an air pollution control district or an air quality management district created or continued in existence pursuant to provisions of Part 3 (commencing with Section 40000).

(Amended by Stats. 1976, Ch. 324.)

39026. "District board" means the governing body of a district.

(Added by Stats. 1975, Ch. 957.)

39026.5. "Elderly low-income person" means an individual over 62 years of age who resides in a household wherein the combined adjusted gross income, as defined in Section 17072 of the Revenue and Taxation Code, of all members of the household, including such individual over 62 years of age, was less than seven thousand five hundred dollars ($7,500) for the previous calendar year.

(Added by Stats. 1976, Ch. 231.)

39027. "Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

(Added by Stats. 1975, Ch. 957.)

39027.5. (a) "Emissions retrofit device" means an exhaust device certified pursuant to Section 43630 or approved for use pursuant to Section 27156 of the Vehicle Code which renders a modified vehicle a low-emission motor vehicle, as defined by Section 43800.

(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.

(Added by Stats. 1994, Ch. 1192, Sec. 4.)

39028. "Exhaust device" means a motor vehicle pollution control device to reduce exhaust emissions.

(Added by Stats. 1975, Ch. 957.)

39029. "Exhaust emissions" means substances emitted to the atmosphere from any opening downstream from the exhaust port of a motor vehicle engine.
(Added by Stats. 1975, Ch. 957.)

39030. "Flue" means any duct or passage for air, gases, or the like, such as a stack or chimney.
(Added by Stats. 1975, Ch. 957.)

39031. "Fuel evaporative loss emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.
(Added by Stats. 1975, Ch. 957.)

39032. "Fuel system" means the combination of fuel tank, fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.
(Added by Stats. 1975, Ch. 957.)

39032.5. "Gross polluter" means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions as established by the department in consultation with the state board.
(Added by Stats. 1994, Ch. 27, Sec. 1)

39033. "Heavy-duty" means having a manufacturer's maximum gross vehicle weight rating of 6,001 or more pounds.
(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2180-2187, 2190-2194

39034. "Implement of husbandry" has the same meaning as defined in Chapter 1 (commencing with Section 36000), Division 16 of the Vehicle Code.
(Added by Stats. 1975, Ch. 957.)

39035. "Light-duty" means having a manufacturer's maximum gross vehicle weight rating of under 6,001 pounds.
(Amended by Stats. 1976, Ch. 1063.)

39037. "Local or regional authority" means the governing body of any city, county, or district.

(Added by Stats. 1975, Ch. 957.)

39037.05. "Low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

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

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

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

(Amended by Stats. 1989, Ch. 796, Sec. 2.)

39037.1. "Marine vessel" means any tugboat, tanker, freighter, passenger ship, barge, or other boat, ship, or watercraft, except those used primarily for recreation.

(Added by Stats. 1979, Ch. 1130.)

39037.5. "Medium duty" means a heavy-duty vehicle having a manufacturer's gross vehicle weight rating under a limit established by the state board.

(Added by Stats. 1988, Ch. 1544, Sec. 6.)

39038. "Model year" means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(Added by Stats. 1975, Ch. 957.)

39038.3. "Mojave Desert district" means the Mojave Desert Air Quality Management District created pursuant to Chapter 13 (commencing with Section 41200) of Part 3.

(Added by Stats. 1992, Ch. 642, Sec. 1.)

39038.5. "Mojave Desert district board" means the governing board of the Mojave Desert district.

(Added by Stats. 1992, Ch. 642, Sec. 2.)

39039. "Motor vehicle" has the same meaning as defined in Section 415 of the Vehicle Code.

(Added by Stats. 1975, Ch. 957.)

39040. "Motor vehicle pollution control device" means equipment designed for installation on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle, or a system or engine modification on a motor vehicle which causes a reduction of air contaminants emitted from the vehicle.
(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2200

39041. "Motorcycle" has the same meaning as defined in Section 400 of the Vehicle Code.
(Added by Stats. 1975, Ch. 957.)

39042. "New motor vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser.
(Amended by Stats. 1976, Ch. 1206.)

39042.5. "New motor vehicle engine" means a new engine in a motor vehicle.
(Added by Stats. 1976, Ch. 1206.)

39043. "Nonvehicular sources" means all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources.
(Added by Stats. 1975, Ch. 957.)

39044. "Open outdoor fire" means any combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.
(Added by Stats. 1975, Ch. 957.)

39045. "Orchard or citrus grove heater" means any article, machine, equipment, or other contrivance, burning any type of fuel or material capable of emitting air contaminants, used, or capable of being used, for the purpose of giving protection from frost damage.
(Added by Stats. 1975, Ch. 957.)

39046. "Passenger vehicle" has the same meaning as defined in Section 465 of the Vehicle Code.
(Added by Stats. 1975, Ch. 957.)

39047. "Person" includes all of the following:

(a) A "person" as defined in Section 19.

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

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

(Added by Stats. 1975, Ch. 957.)

39047.4. (a) "Pollution miles" means the product of the smog index for a vehicle times the miles traveled by that vehicle during a period of time.

(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.

(Added by Stats. 1994, Ch. 1192, Sec. 5.)

39047.5. "Qualifying facility" means a qualifying small power production facility as defined in Section 228.5 of the Public Utilities Code.

(Added by Stats. 1985, Ch. 978, Sec. 1.)

39048. "Racing vehicle" means a competition vehicle not used on public highways.

(Added by Stats. 1975, Ch. 957.)

39049. "Regional district" means a district created pursuant to Chapter 5 (commencing with Section 40300) of Part 3.

(Added by Stats. 1975, Ch. 957.)

39050. "Regional district board" means the governing body of a regional district.

(Repealed and added by Stats. 1975, Ch. 957.)

39050.5. "Resource recovery project" means a project which converts municipal wastes, agricultural wastes, forest wastes, landfill gas, or digester gas in a manner so as to produce energy as a byproduct in the air basin in which they are produced.

(Amended by Stats. 1985, Ch. 978, Sec. 1.5.)

39050.7. "Sacramento district" means the Sacramento Metropolitan Air Quality Management District created pursuant to Chapter 10 (commencing with Section 40950) of Part 3.

(Added by Stats. 1988, Ch. 1541, Sec. 1.)

39050.8. "Sacramento district board" means the governing body of the Sacramento district.

(Added by Stats. 1988, Ch. 1541, Sec. 2.)

39051. "Schedule of increments of progress" means a statement of dates when various steps are to be taken to bring a source of air contaminants into compliance with emission standards and shall include, to the extent feasible, the following:

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

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

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

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

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

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

(Repealed and added by Stats. 1975, Ch. 957.)

39051.5. "Schoolbus" means a heavy-duty motor vehicle exclusively designed and built for the transportation of any school, college, or university student to or from educational facilities or activities.

(Added by Stats. 1976, Ch. 741.)

39051.7. (a) "Smog index" means the index number assigned to a motor vehicle by the state board pursuant to Section 44251 to indicate the effect of the use of that vehicle on ozone levels in ozone nonattainment areas.

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

(Added by States. 1994, Ch. 1192, Sec. 6.)

39052. "Solid waste dump" means any accumulation for the purpose of disposal of any solid waste.

(Repealed and added by Stats. 1975, Ch. 957.)

39052.5. "South coast district" means the South Coast Air Quality Management District created pursuant to Chapter 5.5 (commencing with Section 40400) of Part 3.

(Added by Stats. 1976, Ch. 324.)

39052.6. "South coast district board" means the governing body of the south coast district.

(Added by Stats. 1976, Ch. 324.)

39053. "State Board" means the State Air Resources Board.
(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 80100

39053.1. (a) "Target pollution miles" means the target number of pollution miles per year established by a district pursuant to Section 40927. Target pollution miles for any relevant period shall be apportioned among successive owners of a vehicle in proportion to their period of ownership.

(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.

(Added by Stats. 1994, Ch. 1192, Sec. 7.)

39053.3. "Title V" means Title V of the federal Clean Air Act (42 U.S.C. Sec. 7661 et seq.).
(Added by Stats. 1993, Ch. 1166, Sec. 2.)

39053.5. "Title V source" means only a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act (42 U.S.C. Secs. 7661 to 7661f, incl.) and the federal regulations adopted pursuant to Title V.
(Added by Stats. 1993, Ch. 1166, Sec. 3.)

39054. "Truck" means a motor truck as defined in Section 410 of the Vehicle Code.
(Repealed and added by Stats. 1975, Ch. 957.)

39055. "Truck tractor" has the same meaning as defined in Section 655 of the Vehicle Code.
(Repealed and added by Stats. 1975, Ch. 957.)

39055.5. "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.
(Added by Stats. 1976, Ch. 1206.)

39056. "Unified district" means a district created or continued in existence pursuant to Chapter 3 (commencing with Section 40150) of Part 3.
(Repealed and added by Stats. 1975, Ch. 957.)

39057. "Unified district board" means the governing body of a unified district.
(Repealed and added by Stats. 1975, Ch. 957.)

39058. "Used motor vehicle" means any motor vehicle which is not a new motor vehicle.
(Amended by Stats. 1976, Ch. 1206.)

39058.3. "Valley district" means the San Joaquin Valley Air Quality Management District created pursuant to Chapter 11 (commencing with Section 41100) of Part 3.
(Added by Stats. 1991, Ch. 1201, Sec. 2. Conditionally operative by Sec. 1 of Ch. 1201, as amended by Stats. 1992, Ch. 765.)

39058.5. "Valley district board" means the governing body of the valley district.
(Added by Stats. 1991, Ch. 1201, Sec. 3. Conditionally operative by Sec. 1 of Ch. 1201, as amended by Stats. 1992, Ch. 765.)

39059. "Vehicle" has the same meaning as defined in Section 670 of the Vehicle Code.
(Repealed and added by Stats. 1975, Ch. 957.)

39060. "Vehicular sources" means those sources of air contaminants emitted from motor vehicles.
(Repealed and added by Stats. 1975, Ch. 957.)

## PART 2. STATE AIR RESOURCES BOARD
(Part 2 added by Stats. 1975, Ch. 957.)

### CHAPTER 1. FINDINGS, DECLARATIONS, AND INTENT
(Chapter 1 added by Stats. 1975, Ch. 957.)

39500. It is the intent of the Legislature that the State Air Resources Board shall have the responsibility, except as otherwise provided in this division, for control of emissions from motor vehicles and shall coordinate, encourage, and review the efforts of all levels of government as they affect air quality.
(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1903, 1976, 2001, 2002, 2007.5-2010, 2058-2061, 2100-2107, 2109, 2110, 2150, 2151, 2175-2177, 2200, 2202-2207, 2220, 2222, 2224, 2225, 2250-2256, 2257, 2263.7, 2265, 2266, 2266.5, 2280, 2290-2292.7, 2296, 2300-2317

17, CCR, sections 60008, 90600, 90601-90623, 90800-90803

## CHAPTER 2. ADMINISTRATION
(Chapter 2 added by Stats. 1975, Ch. 957.)

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 11 members.

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

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

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

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

(4) Two members shall be public members.

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

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

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

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

(f) Notwithstanding subdivision (e) of Section 1 of Chapter 1201 of the Statutes of 1991, this section shall become operative on January 1, 1994.

(Amended (as amended by Stats. 1991, Ch. 1201) by Stats. 1993, Ch. 579, Sec. 1.)

39511. (a) The Governor shall appoint the chairperson, who shall serve at the pleasure of the Governor, from among the members of the state board, and shall serve as the principal advisor to the Governor on, and shall assist the Governor in establishing, major policy and program matters on environmental protection. The chairperson shall also serve as the principal

communications link for the effective transmission of policy problems and decisions to the Governor relating to the activities of the State Water Resources Control Board and the State Solid Waste Management Board, in addition to serving as the Governor's chief air quality policy spokesperson.

(b) The chairperson shall serve full time.

(Amended by Stats. 1981, Ch. 982.)

39512. Each member of the state board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1983, Ch. 803, Sec. 37.)

39512.5. (a) With respect to the members appointed pursuant to subdivision (c) of Section 39510, those members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for expenses is not otherwise provided or payable by another public agency or agencies. Each elected public official member of the state board shall receive one hundred dollars ($100) for each day, or portion thereof, but not to exceed one thousand dollars ($1,000) in any month, attending meetings of the state board or committees thereof, or upon authorization of the state board while on official business of the state board.

(b) Reimbursements made pursuant to subdivision (a) shall be made by the district from which the person qualified for membership, except that the board member appointed pursuant to paragraph (2) of subdivision (c) of Section 39510 shall be reimbursed by the state board.

(Amended by Stats. 1985, Ch. 1421, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 60001

39513. The state board shall hold regular meetings at least twice a month. Special meetings may be called by the chairman or upon the request of a majority of the members. Each member of the state board shall receive his actual necessary traveling expenses incurred in the performance of his official duties. Time spent in such meetings shall count towards the 60 hours specified in Section 39512.

(Added by Stats. 1975, Ch. 957.)

39514. The provisions of Chapter 2 (commencing with Section 11150), Part 1, Division 3, Title 2 of the Government Code apply to the state board, and the state board is the head of a department within the meaning of the chapter.

(Added by Stats. 1975, Ch. 957.)

39515. (a) The state board shall appoint an executive officer who shall serve at the pleasure of the state board and, except as provided in subdivision (d), may delegate any duty to the executive officer which the state board deems appropriate.

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

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

(1) Making any order pursuant to Section 41507, 41602, or 41603.

(2) Taking action pursuant to Section 41650, 41651, or 41652.

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

(Amended by Stats. 1981, Ch. 982.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60001, 60020, 60023, 60075.2, 90100, 90110, 90200, 90300, 90360, 90370, 90380, 90500, 94000, 94001-94004, 94007, 94010, 94011, 94012, 94013, 94014, 94015, 94100-94149, 94150-94160

13, CCR, sections 2256, 2257, 2263.7, 2265, 2266, 2266.5, 2280, 23300-2317

39516. Any power, duty, purpose, function, or jurisdiction which the state board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the state board, by affirmative vote recorded in the minutes of the state board, specifically has reserved the same for the state board's own action.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2256, 2257, 2263.7, 2265, 2266, 2266.5, 2280, 2300-2317

17, CCR, sections 60001, 90100, 94000, 94007, 94014, 94015, 94100-94149, 94150-94160

39517. The district shall be given notice and the opportunity to act before any rule or regulation is adopted by the state board for the district pursuant to Section 41502.

(Added by Stats. 1981, Ch. 982.)

## CHAPTER 3. GENERAL POWERS AND DUTIES

(Chapter 3 added by Stats. 1975, Ch. 957.)

39600. The state board shall do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60001, 60004, 90600-90623, 90800-90803, 94500, 94503.5, 94504, 94505, 94506, 94506.5, 94507, 94508, 94509-94517, 94540-94555

39601. (a) The state board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

(b) The state board, by rules and regulations, may revise the definitions of terms set forth in Chapter 2 (commencing with Section 39010) of Part 1 in order to conform those definitions to federal laws and rules and regulations.

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

(Amended by Stats. 1983, Ch. 142, Sec. 79.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 70500

39602. The state board is designated the air pollution control agency for all purposes set forth in federal law.

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

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

(Amended by Stats. 1979, Ch. 810.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70100, 70101, 94506.5, 94517

39603. (a) The state board may do both of the following:

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

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

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

(Amended by Stats. 1986, Ch. 726, Sec. 1.)

39604. (a) The state board shall submit to the Governor and the Legislature, not later than January 1, 1985, and every two years thereafter, a biennial report on air quality conditions and trends statewide and on the status and effectiveness of state and local air quality programs.

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

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

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

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

(4) A summary of the results of research projects concluded during the previous two years, the status of current research projects, and the conduct of the research program pursuant to Section 39703.

(5) A summary of any actions taken by the state board to assume the powers of districts under Section 39808.

(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 3.5 (commencing with Section 39650).

(9) A report on acid deposition prepared pursuant to Section 39909.

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

(11) 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.

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

(Amended by Stats. 1984, Ch. 902, Sec. 1.)

39605. To carry out the purposes of this division, the state board may:

(a) Provide any assistance to any district.

(b) Require any district to provide requested information utilized in the normal operation of the district or required by a state or federal statute or regulation.

(c) Hold public hearings.

(d) May accept assistance, financial and otherwise, from any public entity.

(Amended by Stats. 1981, Ch. 700.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90370, 90380, 90500, 94100-94149, 94150-94160

39606. The state board shall:

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

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60100-63113

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

(Amended by Stats. 1978, Ch. 429.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2250-2280
17, CCR, sections 70100, 70101, 70200, 70201

39606.1 (a) On or before January 1, 1997, the state board shall adopt regulations to designate, and determine the boundaries of, an air basin known as the Mojave Desert Air Basin. The air basin shall have a territory that is based upon similar meteorological and geographical conditions and consideration for political boundary lines. The air basin shall consist of at least all of the following:

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

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

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

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

(b) Areas that, immediately prior to the date of the adoption of the regulations, were within the Southeast Desert Air Basin and are not included in the Mojave Desert Air Basin shall remain in the Southeast Desert Air Basin, subject to Section 39606.

(Added by Stats. 1995, Ch. 113, Sec. 1.)

39607. The state board shall:

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

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

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

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

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

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

(g) Establish, not later than July 1, 1996, a uniform methodology which may be used by districts in assessing population exposure, including, but not limited to, reduction in exposure of districtwide subpopulations such as children, the elderly, and persons with respiratory disease, to ambient air pollutants at levels above the state ambient air quality standards, for estimating reductions in population exposure for the purposes of Sections 40913, 40924, and 41503, and for the establishment of the means by which reductions in population exposures may be achieved. The methodology adopted pursuant to this subdivision shall be consistent with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and with this division, including, but not limited to, Section 39610.

(Amended by Stats. 1995, Ch. 713, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70300-70306, 94000, 94002-94004, 94007, 94010, 94011, 94012, 94013, 94014, 94015, 94100-94149

39607.5. (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) In developing the methodology, the state board shall do all of the following:

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

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 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.

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

(A) 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.

(B) 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.

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

(4) 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.

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

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).

(7) Consider all of the following factors:

(A) How long credits should be valid.

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

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

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

(E) 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.

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

(Added by Stats. 1995, Ch. 805, Sec. 1.)

39608. (a) The state board, in consultation with the districts, shall identify, pursuant to subdivision (e) of Section 39607, and classify each air basin which is in attainment and each

air basin which is in nonattainment for any state ambient air quality standard. This identification and classification shall be made on a pollutant-by-pollutant basis. Where the state board finds that data is not sufficient to determine the attainment or nonattainment status for an air basin, the state board shall identify the air basin as unclassified.

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

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

(Amended by Stats. 1990, Ch. 932, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60200-60209, 70300-70306

39609. On or before December 31, 1989, and at least every three years thereafter, the state board shall complete a study on the feasibility of employing air quality models and other analytical techniques to distinguish between emission control measures on the basis of their relative ambient air quality impact. As part of this study, the state board shall determine whether adequate modeling capability exists to support the use of air quality indicators or alternative measures of progress as specified in subdivision (f) of Section 39607 and Section 40914. The state board shall consult with districts and affected groups in conducting this study, and, after a public hearing, shall prepare and transmit its findings to each district for its use in developing plans pursuant to Chapter 10 (commencing with Section 40910).

(Amended by Stats. 1992, Ch. 945, Sec. 2.)

39610. (a) Not later than December 31, 1989, the state board shall identify each air basin, or subregion thereof, in which transported air pollutants from upwind areas outside the air basin, or subregion thereof, cause or contribute to a violation of the state ambient air quality standard for ozone, and shall identify the district of origin of the transported air pollutants based upon the preponderance of available evidence. The state board shall identify and determine the priorities of information and studies needed to make a more accurate determination, including, but not limited to, emission inventories, pollutant characterization, ambient air monitoring, and air quality models.

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

(c) The state board shall make every reasonable effort to supply air pollutant transport information to heavily impacted districts prior to the development of plans to attain the state

ambient air quality standards, shall consult with affected upwind and downwind districts, and shall adopt its findings at a public hearing.

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

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

(Amended by Stats. 1994, Ch. 512, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70500, 70600, 70601

39612. (a) In addition to funds which 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, beginning July 1, 1989, may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

(b) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources.

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

(d) The permit fees collected by a district pursuant to this section, 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.

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

(f) On or before January 1, 1993, the state board shall prepare and submit to the Legislature a report on the amounts of fees collected and the purposes for which the fees were expended.

(g) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats. 1988, Ch. 1568, Sec. 6.5. Inoperative July 1, 1997. Repealed as of January 1, 1998, by its own provisions.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90800-90803

39613. (a) The state board shall convene a technical review group to devise and adopt definitions of terms as they relate to employer-based trip reduction, for recommendation to the state board, for statewide use for purposes of this division and Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 of the Government Code.

(b) The technical review group shall be composed of 15 members appointed by the state board, as follows:

(1) A representative of a district located in northern California.

(2) A representative of a district located in southern California.

(3) A representative of a county congestion management agency located in northern California.

(4) A representative of a county congestion management agency located in southern California.

(5) Three representatives of environmental organizations.

(6) A representative of a regional rideshare matching agency.

(7) A representative of the state Chamber of Commerce.

(8) A representative of a statewide retail group.

(9) A representative of a statewide manufacturing association.

(10) A representative of a statewide organization representing financial institutions.

(11) A representative of a statewide telecommunications company or regional public utility.

(12) Two representatives of labor unions.

(c) The terms that are to be defined by the technical review group shall include all of the following:

(1) Average vehicle ridership (AVR) calculations.

(2) Carpool.

(3) Compressed workweek.

(4) Contract employee.

(5) Credit for alternative fuels.

(6) Credit for low-emission and zero-emission vehicles.

(7) Disabled employee.

(8) Employee.

(9) Employee transportation coordinator.

(10) Employer.

(11) Part-time employee.

(12) Peak period.

(13) Probationary employee.

(14) Satellite worksite.

(15) Seasonal employee.

(16) Standardized data reporting requirements.

(17) Telecommuting.

(18) Temporary employee.

(19) Vanpool.

(20) Worksite employee threshold.

(21) Any other terms which the technical review group or the state board recommends for definition.

(d) The technical review group may consult with other state agencies, including, but not limited to, the Department of Transportation, regarding definitions of terms.

(e) On or before April 1, 1994, the technical review group shall submit its recommended definitions to the state board.

(f) On the basis of the recommendations of the technical review group, on or before June 30, 1994, the state board shall adopt definitions which the state board determines are needed with regard to employer-based trip reductions.

(g) It is the intent of the Legislature to recommend that districts and county congestion management agencies identify and adopt standardized data reporting requirements, as may be defined pursuant to paragraph (16) of subdivision (c).

(h) This section shall become inoperative on July 1, 1994, and, as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats. 1993, Ch. 1029, Sec. 1. Inoperative July 1, 1994. Repealed as of January 1, 1995, by its own provisions.)

39616. (a) The Legislature hereby finds and declares all of the following:

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

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

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

(b) (1) A district may adopt a market-based incentive program as an element of the district's plan for attainment of the state or federal ambient air quality standards.

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

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

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

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

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

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

(5) The program will not in any manner delay, postpone, or otherwise hinder district compliance with Chapter 10 (commencing with Section 40910) of Part 3.

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

(d) (1) A plan or plan revision submitted to the state board prior to January 1, 1993, shall be designed to achieve equivalent emission reductions and reduced cost and job impacts compared to current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's implementation plan. The state board shall, not later than 90 days after the program has been submitted, or by April 1, 1993, whichever is sooner, determine whether the program complies with this paragraph. A district shall not implement the program unless the state board determines that the plan or plan revision complies with this paragraph.

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

(3) Upon the adoption of rules and regulations to implement the program, the district shall submit the rules and regulations to the state board. The state board shall, within 90 days, determine whether the rules and regulations meet the requirements of this section and Section 40440.1, if applicable. This paragraph does not prohibit the district from implementing the program upon the approval of the plan or plan revision and prior to submittal of the implementing rules and regulations.

(e) Within five years of the date of adoption of a program for the use of market-based incentives, the district board shall commence public hearings to reassess the program and shall, not later than seven years from the district's initial adoption of the program, ratify the findings required pursuant to paragraphs (1), (2), (5), and (6) of subdivision (c) and the district's compliance with Section 40440.1 if applicable, with the concurrence of the state board. If the district fails to ratify the findings within the seven-year period, the district shall make appropriate revisions to the district's plan for attainment.

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

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

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

(Amended by Stats. 1994, Ch. 1179, Sec. 1.)

39617. Any rule, regulation, or control measure adopted pursuant to this division which allows for the use of mobile source emission reduction credits through the acceleration of the retirement of in-use motor vehicles, the repair or retirement of gross-polluting and other high-emitting vehicles, or other similar methods of reducing air pollution shall allow the person using the method to calculate the emission reductions by any of the following methods:

(a) The measurement of actual air emissions from those motor vehicles repaired or retired as a result of the rule, regulation, or control measure, pursuant to the methodology and criteria established pursuant to Section 39607.5, or, prior to adoption of the methodology by the state board, by any alternate methodology approved by the agency which has adopted the rule, regulation, or control measure, if that methodology is consistent with federal law and with subdivision (b) of Section 39607.5.

(b) The use of a statistically representative sample of the motor vehicles repaired or retired as a result of the rule, regulation, or control measure, utilizing the methodology and criteria established pursuant to Section 39607.5, or, prior to adoption of the methodology by the state board, by any alternate methodology approved by the agency which has adopted the rule, regulation, or control measure, if that methodology is consistent with federal law and with subdivision (b) of Section 39607.5.

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

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

(Added by Stats. 1995, Ch. 805, Sec. 2.)

## CHAPTER 3.1. PERMIT ASSISTANCE

(Chapter 3.1 added by Stats. 1992, Ch. 1096, Sec. 1.)

39620. (a) The state board shall implement a program to assist districts to improve efficiencies in the issuance of permits pursuant to this division. The program shall be consistent with the requirements of Title V.

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

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

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

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

(Amended by Stats. 1994, Ch. 429, Sec. 1)

## CHAPTER 3.5. TOXIC AIR CONTAMINANTS
(Chapter 3.5 added by Stats. 1983, Ch. 1047, Sec 1.)

### Article 1. Findings, Declarations and Intent
(Article 1 added by Stats. 1983, Ch. 1047, Sec. 1.)

39650. The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

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

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

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

(Added by Stats. 1983, Ch. 1047, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93000, 93100-93103, 93104, 93106, 93107, 93108

Article 2. Definitions
(Article 2 repealed and added by Stats. 1992, Ch. 1161, Sec. 2)

39655. As used in this chapter:

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

(b) "Airborne toxic control measure" means either of the following:

(1) 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.

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

(c) "Pesticide" means any economic poison as defined in Section 12753 of the Food and Agricultural Code.

(d) "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.

(e) "Office" means the Office of Environmental Health Hazard Assessment.

(Repealed and added by Stats. 1992, Ch. 1161, Sec. 2.)

Article 2.5. Coordination With the Federal Act
(Article 2.5 added by Stats. 1992, Ch. 1161, Sec. 3.)

39656. It is the intent of the Legislature that the state board and the districts implement a program to regulate toxic air contaminants that will enable the state to receive approval to implement and enforce emission standards and other requirements for air pollutants subject to Section 112 of the federal act (42 U.S.C. Sec. 7412). The state board and the districts may establish a program that is consistent with the requirements for state programs set forth in subsection (l) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs. 7412(l) and 7661(a). Nothing in this chapter requires that the program be identical to the federal program for hazardous air pollutants as set forth in the federal act.

(Repealed (by Sec. 1) and added by Stats. 1992, Ch. 1161, Sec. 3.)

39657. (a) Except as provided in subdivision (b), the state board shall identify toxic air contaminants which are emitted into the ambient air of the state using the procedures and following the requirements prescribed by Article 3 (commencing with Section 39660).

(b) The state board shall, by regulation, designate any substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) as a toxic air contaminant. A regulation that designates a hazardous air pollutant as a toxic air contaminant shall be deemed to be a regulation mandated by federal law and is not subject to Sections 11346.2 and 11346.9 of the Government Code, Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 3 (commencing with Section 39660).

(Repealed (by Sec. 1) and added by Stats. 1992, Ch. 1161, Sec. 3. Amended by Stats. 1995, Ch. 938, Sec. 71.)

39658. The state board shall establish airborne toxic control measures for toxic air contaminants in accordance with all of the following:

(a) If a substance is identified as a toxic air contaminant pursuant to Article 3 (commencing with Section 39660), the airborne toxic control measure applicable to the toxic air contaminant shall be adopted following the procedures and meeting the requirements of Article 4 (commencing with Section 39665).

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

(1) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), except as provided in paragraphs (2), (3), and (4), that emission standard adopted pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) for the hazardous air pollutant is also the airborne toxic control measure for the toxic air contaminant. The state board shall implement the relevant emission standard and it shall be the airborne toxic control measure for purposes of this chapter. The implementation of the emission standard is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code or Article 4 (commencing with Section 39665).

(2) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) and the state board finds that the emission standard does not achieve the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666, the state board shall adopt an airborne toxic control measure for the toxic air contaminant that it finds will achieve those purposes. The state board shall, when it adopts an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665).

(3) If the state board implements an airborne toxic control measure applicable to the substance pursuant to paragraph (1) and later finds that the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666 are not achieved by the airborne toxic control measure, the state board may revise the airborne toxic control measure to achieve those purposes. The state board shall, when it revises an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665). The state board may revise an airborne toxic control measure pursuant to this paragraph only if it first finds that the reduction in risk to the public health that will be

achieved by the revision justifies the burden that will be imposed on persons who are in compliance with the airborne toxic control measure previously implemented pursuant to paragraph (1).

(4) If an emission standard applicable to the hazardous air pollutant has not been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), the state board may adopt an airborne toxic control measure applicable to the toxic air contaminant pursuant to Article 4 (commencing with Section 39665).

(Added by Stats. 1992, Ch. 1161, Sec. 3.)

39659. (a) The state board and the districts may adopt regulations which do both of the following:

(1) Impose monitoring requirements, establish procedures for issuing, reissuing, and enforcing permits, and take any other action that may be necessary to establish, implement, and enforce programs for the regulation of hazardous air pollutants which have been listed as toxic air contaminants pursuant to subdivision (b) of Section 39657.

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

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

(Added by Stats. 1992, Ch. 1161, Sec. 3.)

## Article 3. Identification of Toxic Air Contaminants
(Article 3 added by Stats. 1983, Ch. 1047, Sec. 1.)

39660. (a) Upon the request of the state board, the office, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California and which may be determined to be toxic air contaminants. The request shall be in accordance with an agreement that ensures that the office's workload in implementing this chapter is not increased over that budgeted for the 1991-92 fiscal year. The agreement shall be revised and the office's workload increased if additional budgetary resources are
appropriated to the office.

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

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

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

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

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

(e) (1) The state board or a district may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

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

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

(f) The office and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of, and exposure to, usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community. In determining

the importance of these factors, the office and the state board shall consider all of the following information, to the extent that it is available:

(1) Research and monitoring data collected by the state board and the districts pursuant to Sections 39607, 39701, and 40715, and by the Environmental Protection Agency pursuant to paragraph (2) of subsection (k) of Section 112 of the federal act (42 U.S.C. Sec. 7412(k)(2)).

(2) Emissions inventory data reported for substances subject to Part 6 (commencing with Section 44300) and the risk assessments prepared for those substances.

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

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

(Amended by Stats. 1992, Ch. 1161, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 91011, 93000

39660.5. (a) In evaluating the level of potential human exposure to toxic air contaminants, the state board shall assess that exposure in indoor environments as well as in ambient air conditions.

(b) The state board shall consult with the State Department of Health Services, pursuant to the program on indoor environmental quality established under Article 9.5 (commencing with Section 426) of Chapter 2 of Part 1 of Division 1, concerning which potential toxic air contaminants may be found in the indoor environment and on the best methodology for measuring exposure to these contaminants.

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

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

(Amended by Stats. 1988, Ch. 778, Sec. 1.)

39661. (a) (1) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form which may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

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

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed

by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report which shall be resubmitted, within 30 days following receipt of the panel's determination, to the scientific review panel which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

(Amended by Stats. 1993, Ch. 418, Sec. 5.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 93000

39662. (a) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (c) of Section 39661, the state board shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a substance is a toxic air contaminant.

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

(c) If a substance is determined to be a toxic air contaminant, the regulation shall specify a threshold exposure level, if any, below which no significant adverse health effects are anticipated, and an ample margin of safety which accounts for the factors described in subdivision (c) of Section 39660.

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

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

(Amended by Stats. 1992, Ch. 1161, Sec. 6.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 93000

39663. (a) Not later than June 30, 1989, the state board shall hold a public hearing to review the potential nature, extent, and severity of public exposure to known and suspected toxic air contaminants emitted by vehicular sources in California. Prior to the hearing, the board shall prepare a report that includes the following:

(1) The identification of known and suspected toxic air contaminants emitted by vehicular sources, including, but not limited to, benzene, polycylic aromatic hydrocarbons, formaldehyde, and diesel smoke.

(2) The identification of the probable sources and precursors of these toxic air contaminants, based on available data.

(3) An estimate of the level of exposure that may be occurring due to emissions of all known and suspected toxic air contaminants from vehicular sources.

(4) The potential risk to public health associated with the estimated level of exposure, based on available unit risk factors.

(5) The identification of available and projected control measures which may reduce public exposure to known and suspected toxic air contaminants emitted by vehicular sources.

(b) Following the hearing, the state board shall reassess the pollutant review schedule under the toxic air contaminant program to determine whether sufficient emphasis has been placed on pollutants emitted by motor vehicles. The state board shall revise the schedule, as necessary, to give due weight to public health risks caused or potentially caused by motor vehicle emissions.

(c) Not later than June 30, 1990, the state board shall hold a public hearing to consider a plan for reducing public exposure to known and suspected toxic air contaminants emitted by motor vehicles.

(d) Nothing in this section restricts the authority of the state board to adopt regulations to control toxic air contaminant emissions from motor vehicles or to delay the exercise of that authority.

(Added by Stats. 1988, Ch. 940, Sec. 2.)

39664. The State Department of Health Services shall conduct an epidemiological study, over a period of up to 10 years, of possible long-term health effects related to the aerial application of pesticides in urban areas, including, but not limited to, cancer, birth defects, and respiratory illnesses.

(Added by Stats. 1990, Ch. 1678, Sec. 6.)

## Article 4. Control of Toxic Air Contaminants
(Article 4 added by Stats. 1983, Ch. 1047, Sec. 1.)

39665. (a) Following adoption of the determinations pursuant to Section 39662, the executive officer of the state board shall, with the participation of the districts, and in consultation with affected sources and the interested public, prepare a report on the need and appropriate degree of regulation for each substance which the state board has determined to be a toxic air contaminant.

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

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

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

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

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

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

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

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

(8) The basis for the finding required by paragraph (3) of subdivision (b) of Section 39658, if applicable.

(c) The staff report, and relevant comments received during consultation with the districts, affected sources, and the public, shall be made available for public review and comment at least 45 days prior to the public hearing required by Section 39666.

(Amended by Stats. 1992, Ch. 1161, Sec. 7.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 93108

39666. (a) Following a noticed public hearing, the state board shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

(b) For toxic air contaminants for which the state board has determined, pursuant to Section 39662, that there is a threshold exposure level below which no significant adverse health effects are anticipated, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions sufficiently so that the source will not result in, or contribute to, ambient levels at or in excess of the level which may cause or contribute to adverse health effects as that level is estimated pursuant to subdivision (c) of Section 39660.

(c) For toxic air contaminants for which the state board has not specified a threshold exposure level pursuant to Section 39662, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health.

(d) Not later than 120 days after the adoption or implementation by the state board of an airborne toxic control measure pursuant to this section or Section 39658, the districts shall implement and enforce the airborne toxic control measure or shall propose regulations

enacting airborne toxic control measures on nonvehicular sources within their jurisdiction which meet the requirements of subdivisions (b), (c), and (e), except that a district may, at its option, and after considering the factors specified in subdivision (b) of Section 39665, adopt and enforce equally effective or more stringent airborne toxic control measures than the airborne toxic control measures adopted by the state board. A district shall adopt rules and regulations implementing airborne toxic control measures on nonvehicular sources within its jurisdiction in conformance with subdivisions (b), (c), and (e), not later than six months following the adoption of airborne toxic control measures by the state board.

(e) District new source review rules and regulations shall require new or modified sources to control emissions of toxic air contaminants consistent with subdivisions (b), (c), and (d) and Article 2.5 (commencing with Section 39656).

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

(Amended by Stats. 1992, Ch. 1161, Sec. 8.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93104, 93106, 93107, 93108, 94146, 94147

39667. Based on its determinations pursuant to Section 39662 or 39663, the state board shall consider the adoption of revisions in the emission standards for vehicular sources and regulations specifying the content of motor vehicle fuel, in order to achieve the maximum possible reduction in public exposure to toxic air contaminants. Except for regulations affecting new motor vehicles which shall be based upon the most advanced technology feasible for the model year, regulations developed pursuant to this section shall be based on the utilization of the best available control technologies or more effective control methods, unless the state board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health. Those regulations may include, but are not limited to, the modification, removal, or substitution of vehicle fuel, vehicle fuel components, or fuel additives, or the required installation of vehicular control measures on new motor vehicles.

(Amended by Stats. 1988, Ch. 940, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1976, 2300-2317

39668. (a) The state board shall, on or before January 1, 1989, prepare a written report on the availability and effectiveness of toxic air contaminant monitoring options in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Department of Food and Agriculture, and the State Department of Health Services. In preparing the report, the state board shall conduct at least one public workshop. The report shall include, but not be limited to, all of the following:

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

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

(3) A list of all substances or classes of substances addressed by the state board pursuant to paragraph (2), including, but not limited to, a discussion of the appropriateness and availability of monitoring for those substances or classes of substances.

(4) An analysis of the feasibility and costs of establishing an indoor toxic air contaminant monitoring program to facilitate the implementation of Section 39660.5.

(b) Based on the findings in the report prepared pursuant to subdivision (a), the state board shall develop, by July 1, 1989, in conjunction with the districts, guidelines for establishing supplemental toxic air contaminant monitoring networks to be implemented by the districts. The board shall develop the guidelines only to the extent that it determines, pursuant to paragraph (2) of subdivision (a), that establishing additional monitoring capacity is appropriate and feasible.

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

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

(Added by Stats. 1987, Ch. 1219, Sec. 1.)

39669. Nothing in this chapter is a limitation on the authority of the state board or a district to implement and enforce an airborne toxic control measure adopted prior to January 1, 1993.

(Added by Stats. 1992, Ch. 1161, Sec. 9. )

Article 5. Scientific Review Panel
(Article 5 added by Stats. 1983, Ch. 1047, Sec. 1.)

39670. (a) A nine-member Scientific Review Panel on Toxic Air Contaminants shall be appointed to advise the state board and the Department of Pesticide Regulation in their evaluation of the health effects toxicity of substances pursuant to Article 3 (commencing with Section 39660) of this chapter and Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

(b) The members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research, and shall be appointed as follows, subject to Section 39671, for a term of three years:

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

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

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

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

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

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

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

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

(g) The state board and the office, and, in the case of economic poisons, the Department of Pesticide Regulation, shall provide sufficient resources for support of the panel, including

technical, administrative, and clerical support, which shall include, but not be limited to, office facilities and staff sufficient for the maintenance of files, scheduling of meetings, arrangement of travel accommodations, and preparation of panel findings, as required by subdivision (b) of Section 39661.

(Amended by Stats. 1992, Ch. 1161, Sec. 10.)

39671. (a) The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to subdivision (b) of Section 39670 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 paragraph (1) of subdivision (b) of Section 39670 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 paragraph (2) of subdivision (b) of Section 39670 is extended until January 1, 1988, as designated by the Senate Committee on Rules.

(3) The term of one member appointed pursuant to paragraph (3) of subdivision (b) of Section 39670 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 subdivision (b) of Section 39670.

(Added by Stats. 1986, Ch. 726, Sec. 3.

## Article 6. Penalties

(Article 6 added by Stats. 1983, Ch. 1047, Sec. 1.)

39674. (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 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 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 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars ($1,000) for each day of violation is sought, there is no liability under paragraph (1) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V

permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occur at a Title V source.

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

(Amended by Stats. 1994, Ch. 727, Sec. 1)

39675. (a) Sections 42400, 42400.1, 42400.2, and 42402.2 apply to violations of regulations or orders adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which are implemented and enforced as authorized by subdivision (b) of Section 39658. The recovery of civil penalties pursuant to Section 39674 or 42402.2 precludes criminal prosecution pursuant to Section 42400.1 or 42400.2 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this division.

(b) The adoption of this section does not constitute a change in, but is declaratory of, existing law.

(Amended by Stats. 1992, Ch. 1161, Sec. 12.)

## CHAPTER 4. RESEARCH

(Chapter 4 added by Stats. 1975, Ch. 957.)

39700. The Legislature hereby declares that an effective research program is an integral part of any broad-based statewide effort to combat air pollution.

(Added by Stats. 1975, Ch. 957.)

39701. The state board shall coordinate and collect research data on air pollution, including, but not limited to, all of the following:

(a) Research relating to specific problems in the following areas:

(1) Motor vehicle emissions control, including alternative propulsion systems, cleaner burning fuels, and improved motor vehicle pollution control devices.

(2) Control of nonvehicular emissions.

(3) Control of specific contaminants to meet ambient air quality standards.

(4) Atmospheric chemistry and physics.

(5) Effects of air pollution on human health and comfort, plants and animals, and reduction in visibility.

(6) Instrumentation development.

(7) Economic and ecological analysis.

(8) Mathematical model development.

(9) Trends in atmospheric quality throughout the state.

(10) Alternatives to agricultural burning.

(b) The consequences of various alternative solutions to specific air pollution problems.

(c) The identification of knowledge gaps.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70200, 91010, 91011

39702. The state board shall report to the Legislature whenever it deems necessary to provide information on problems relating to air quality management.

(Added by Stats. 1975, Ch. 957.)

39703. 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.

(Amended by Stats. 1984, Ch. 902, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 70200

39704. 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.

(Added by Stats. 1975, Ch. 957.)

39705. (a) The state board shall appoint a screening committee of not to exceed nine persons, the membership of which may be rotated as determined by the state board.

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

(c) The committee members shall receive one hundred dollars ($100) per day for each day they attend a meeting of the state board or meet to perform their duties under this section.

In addition to the compensation, they shall receive their actual and necessary travel expenses incurred while performing such duties.

(Amended by Stats. 1986, Ch. 726, Sec. 4.)

39706. The fees deposited in the Air Pollution Control Fund pursuant to Section 41853.5 are hereby continuously appropriated to the state board for research and development of a cotton gin trash incinerator heat exchanger or other device for the disposal of solid waste which is produced from the ginning of cotton, consistent with emission standards set by a district board or the state board. The state board shall consult with the Solid Waste Management Board prior to awarding a contract for, or conducting, such research and development. If the state board determines that such a device is available or that further expenditures for such purposes would not contribute meaningfully to their development, the fees shall be utilized in accordance with the provisions of Section 43014.

(Added by Stats. 1976, Ch. 1216.)

## CHAPTER 5. AIR POLLUTION CONTROL SUBVENTION PROGRAM

(Chapter 5 added by Stats. 1975, Ch. 957.)

39800. As used in this chapter, "dollars budgeted" means moneys derived from revenue sources within a district for use in its air pollution control programs.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulation: 17, CCR, section 90100

39801. The state board shall administer, pursuant to this chapter, such funds as may be appropriated to it for the purposes of this chapter.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90050, 90100, 90110, 90115, 90120, 90200, 90300, 90360, 90370, 90380, 90500

39802. (a) The state board may subvene up to one dollar ($1) for every dollar budgeted for use by any of the following:

(1) A district whose boundaries include an entire air basin.

(2) 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:

(A) Uniform rules and regulations among all districts, excluding administrative rules and regulations.

(B) At least four meetings per year of the basinwide air pollution control council formed under Section 40900, or an equivalent procedure for basinwide consideration of policy matters.

(C) Suitable sharing of qualified air pollution personnel and equipment.

(b) (1) Subventions under this section 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 paragraph (2).

(2) If a district is a rural district, as defined by the state board, the minimum subvention shall be that specified in Section 39802.5 if the district provides the required matching funds and does one of the following:

(A) 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.

(B) Provides its matching funds, for any funds authorized by Section 39802.5 in excess of the dollar amount subvened 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.

(c) The merger into a unified or regional district pursuant to this division by any county district shall cause the minimum subvention of the county district to be transferred to the unified district or regional district if the unified district or regional district provides the required matching funds. If portions of a county district are merged into unified or regional districts pursuant to this division, the state board shall apportion, according to population within each portion of the county, the minimum subvention of the county district to the unified districts or regional districts into which the portions of the county district are merged. A unified district or a regional district which has all or a portion of a county district minimum subvention transferred to it under this section may not also receive subventions under the per capita provisions of this section. A subvention made pursuant to Section 39803 shall preclude subvention under this section.

(Amended by Stats. 1988, Ch. 675, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90050, 90110, 90200, 90300

39802.5. Minimum subventions for purposes of paragraph (2) of subdivision (b) of Section 39802 shall be determined as follows:

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

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

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

(2) Any portion of the amount appropriated in the Budget Act for district subventions which is more than seven million eleven thousand dollars ($7,011,000), but less than seven million five hundred eleven thousand dollars ($7,511,000), and which is not awarded in accordance with the determination of minimum subventions pursuant to paragraph (1) shall be subvened pursuant to Section 39810 only to rural districts, as defined by the state board.

(Added by Stats. 1988, Ch. 675, Sec. 2.)

39803. In air basins where funds are not subvened pursuant to Section 39802, the state board may subvene up to two dollars ($2) for every three dollars ($3) budgeted by a district. Subventions under this section shall not exceed eighteen and four-tenths cents ($0.184) per capita, but shall not be less than twelve thousand dollars ($12,000) for any district, if the district provides the required matching funds. Any county district which merged after January 1, 1980, into a unified district or regional district pursuant to this division shall have its minimum subvention under this section transferred to the unified district or regional district if the unified district or regional district provides the required matching funds. A unified district or regional district which has a county district minimum subvention transferred to it under this section may not also receive subventions under the per capita provisions of this section.

(Amended by Stats. 1983, Ch. 749, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90050, 90110, 90200, 90300

39804. In air basins having a population of less than 98,000, the state board may subvene more than the specified amount allowed under Section 39802, if the subvention does not exceed forty-five thousand dollars ($45,000) per air basin and each district affected adopts a budget equal to or exceeding twenty-three cents ($0.23) per capita.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90050, 90110, 90200, 90300

39805. The per capita limits in Sections 39802 and 39803 and the forty-five thousand dollars ($45,000) limit in Section 39804 may be increased by the state board to reflect the effects of inflation on the moneys needed to carry out air pollution control programs. No increase shall be made without the prior written approval of the Director of Finance.

(Added by Stats. 1975, Ch. 957.)

39806. (a) Money shall be subvened 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.

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 39806.5 and 41500, that the district is not so engaged in the reduction of air contaminants, the subvention, or a portion thereof, which would have been allocated to such district pursuant to Section 39802, 39803, or 39804, plus such additional sum as may be necessary, if moneys are available from appropriations for the purposes of this chapter, shall be allocated to the state board itself to carry out the approved plan or program.

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

(c) If the state board acts under this section pursuant to a resolution of the district board, it may do so without proceeding under Sections 39806.5 and 41500.

(Amended by Stats. 1981, Ch. 982.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90120, 90200, 90300, 90360, 90370, 90380

39806.5. (a) Before taking any action pursuant to Sections 39806 and 39808, the state board shall hold a public hearing within the air basin affected, upon a 45-day written notice given to the basinwide air pollution control council, if any, the affected districts, the affected air quality planning agencies, and the public.

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

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

(d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state board acting pursuant to Section 39515, or to his delegates acting pursuant to Section 39516, with respect to any action taken pursuant to any section enumerated in subdivision (a).

(Added by Stats. 1981, Ch. 982.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90380, 90500

39807. The subvention otherwise due a district may be reduced by the state board up to an amount equal to the funds which are granted to the district by the federal government. In so reducing a subvention, the state board shall take into account all the following factors:

(a) The purpose for which the federal funds were granted.

(b) The needs of the district in relationship to the needs of other districts.

(c) Any special and worthy programs conducted by the district not required by the plan or program approved by the state board pursuant to Sections 41500 and 41603.

(d) The severity of air pollution within the district.

(e) Any other factors which the state board reasonably determines should be considered.

(Added by Stats. 1975, Ch. 957.)

39808. 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 39806.5 do any of the following:

(a) Cease any further payments under the subvention.

(b) Withhold future subventions.

(c) Bring an action against the district, or the counties or cities supporting the district, to recover the subvention paid that fiscal year.

(d) Assume the powers of the district after it has held a public hearing upon a 45-day written notice given to the basinwide air pollution control council, if there is such a council, and to the affected districts.

(Amended by Stats. 1981, Ch. 982.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90380, 90500

39809. The state board may allocate to itself sufficient moneys to administer the subvention program under this chapter and to conduct reviews authorized by Section 39808.

(Added by Stats. 1975, Ch. 957.)

39810. Any moneys not otherwise subvened or allocated by the state board pursuant to this chapter may be used for supplemental subventions, upon application, up to a one-to- one matching basis or, in the state board's discretion, for any other purpose related to the control of nonvehicular sources. Matching supplemental subventions having unusual merit shall be given preference over expenditures for other purposes. In making supplemental subventions, the state board may consider federal grants received by the applicant and by other districts.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90300, 90300

39811. Any moneys appropriated to the state board for expenditure under this chapter not allocated during the fiscal year shall revert to the General Fund.
(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 90360

## CHAPTER 6. ATMOSPHERIC ACIDITY
(Chapter 6 repealed and added by Stats. 1988, Ch. 1518, Sec. 2. )

39900. This chapter shall be known and may be cited as the Atmospheric Acidity Protection Act of 1988.
(Repealed and added by Stats. 1988, Ch. 1518, Sec. 2.)

39901. The Legislature finds and declares that the deposition of atmospheric acidity resulting from other than natural sources is occurring in various regions of California, and that the continued deposition of this acidity, alone or in combination with other man-made pollutants and naturally occurring phenomena, could have potentially significant adverse effects on public health, the environment, and the economy.
(Repealed and added by Stats. 1988, Ch. 1518, Sec. 2.)

39902. The Legislature further finds and declares that the State Air Resources Board has recently completed a multiyear acid deposition research and monitoring program under the Kapiloff Acid Deposition Act and that the research findings of the state board support the following conclusions with respect to the nature of the problem of deposition of acidity from the atmosphere in California:

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

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

(c) Dry acid deposition due to fog, gases, and particles produced in the atmosphere is relatively more important than wet deposition due to rain or snow in California. While nitric acid, formed in the atmosphere from emissions of nitrogen oxides and hydrocarbons, is a major

constituent of atmospheric acidity in California, sulfuric acid accounts for a significant fraction of acidity within the state.

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

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

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

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

(Repealed and added by Stats. 1988, Ch. 1518, Sec.2.)

39903. The Legislature declares that it is the purpose of the program established by this chapter to do all of the following:

(a) Determine the extent to which atmospheric acidity, alone or in combination with other pollutants, adversely affects public health, and the levels and duration of exposure at which those effects may be expected to occur.

(b) Document the long-term trends of all forms of atmospheric acidity deposited in California, the trends in lake and stream chemistry of sensitive watersheds, the quantity and chemical composition of acidic deposition, and the cumulative potential for damage to aquatic and terrestrial ecosystems.

(c) Develop techniques for the early detection of changes in aquatic and terrestrial ecosystems, including the chemistry of soils, which could be expected to precede ecosystem damage due to the deposition of atmospheric acidity, based on the latest scientific research, both in the United States as well as in other countries where the deposition of acidity has caused environmental damage.

(d) Determine the relationship between ambient concentrations of acidity and particles, and variations in atmospheric deposition rates; the relationship between sources of acidic pollutants and the deposition of atmospheric acidity at receptor areas; and the extent of transport and deposition of acid pollutants to mountainous areas and high-elevation watersheds.

(e) Estimate potential economic losses which may be expected to result from the long-term effects of atmospheric acidity, including, but not limited to, impacts on health, worker productivity, materials, fisheries, forests, recreation, and agriculture.

(f) Develop and adopt standards, to the extent supportable by scientific data, at levels which are necessary and appropriate to protect public health and sensitive ecosystems from adverse effects resulting from atmospheric acidity.

(Repealed and added by Stats. 1988, Ch. 1518, Sec.2.)

39904. (a) The state board shall adopt and implement an Atmospheric Acidity Protection Program (AAPP), to determine the nature and extent of potential damage to public health and

the state's ecosystem which may be expected to result from atmospheric acidity, and to develop measures which may be needed for the protection of public health and sensitive ecosystems within the state.

(b) The program shall commence upon the final compilation of information obtained pursuant to the former Kapiloff Acid Deposition Act, shall incorporate the research results and assessments undertaken pursuant to that act, and shall endeavor to acquire the latest available information on the chemical and biological processes in sensitive ecosystems which preceded the acidification of lakes and streams in other parts of the world.

(c) The Scientific Advisory Committee on Acid Deposition, appointed pursuant to the Kapiloff Acid Deposition Act is continued in existence, and shall actively assist the state board in the development and implementation of the Atmospheric Acidity Protection Program.

(Repealed and added by Stats. 1988, Ch. 1518, Sec.2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90621.1, 90621.2,90621.3, 90622

39905. In developing the health and ecosystem protection program the state board shall, at a minimum:

(a) Determine the effects of acidic atmospheres on sensitive populations, and the health consequences of prolonged exposure to acidic atmospheres.

(b) Conduct clinical and epidemiological studies to assess the effects on human health of acidic aerosols and fogs in combination with other pollutants.

(c) Analyze data from ongoing acid deposition monitoring programs operated by the state board and the local air pollution control districts, and relate the data to monitored changes in the chemistry of sensitive soils and bodies of water, and results from field exposure studies of economically significant materials.

(d) Characterize major source-receptor links for the deposition of atmospheric acidity using the best available scientific analysis and techniques, and the potential effects on long-term acid deposition trends of current and future air pollution control measures within the state.

(e) Conduct other studies or assessments as needed to carry out the purposes of this chapter.

(Repealed and added by Stats. 1988, Ch. 1518, Sec.2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90621.1, 90621.2,90621.3, 90622

## PART 3. AIR POLLUTION CONTROL DISTRICTS
(Part 3 added by Stats. 1975, Ch. 957)

## CHAPTER 1. GENERAL PROVISIONS
(Chapter 1 added by Stats. 1975, Ch. 957)

40000. 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.

(Repealed and added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 2002, 2008, 2009, 2010, 2290-2292.7
17, CCR, sections 94500,94503.5, 94504, 94505, 94506, 94506.5, 94507, 94508, 94509- 94517, 94540-94555

40001. (a) Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law.

(b) The rules and regulations may, and at the request of the state board shall, provide for the prevention and abatement of air pollution episodes which, at intervals, cause discomfort or health risks to, or damage to property of, a significant number of persons or class of persons.

(c) 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.

(Amended by Stats. 1992, Ch. 567, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 86000, 94100-94149, 94150-94160
Subchapter 1.6, Local APCD Regulations

40002. (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.

(Amended by Stats. 1994, Ch. 915, Sec. 3.)

40003. A county may be in two or more districts, but not in two or more county districts.

(Repealed and added by Stats. 1975, Ch. 957.)

## CHAPTER 2. COUNTY AIR POLLUTION CONTROL DISTRICTS

(Chapter 2 added by Stats. 1975, Ch. 957.)

Article 1. Administration
(Article 1 added by Stats. 1975, Ch. 957.)

40100. Except as provided in Section 40100.5, a county board of supervisors shall be ex officio the county district board of the county.

(Added by Stats. 1975, Ch. 957; Repealed by Stats. 1993, Ch. 961; added by Stats. 1994, Ch. 3, Sec. 2.)

40100.5. (a) On and after July 1, 1994, 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.

(e) This section does 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.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) 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.

(2) 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.

(3) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), 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.

(Added by renumbering Section 40100 (as added by Stats. 1993, Ch. 961) by Stats. 1994, Ch. 3, Sec. 1.

40100.7. (a) On and after July 1, 1994, Section 40100.5 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 Section 40100.5. 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 Section 40100.5, 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.

(b) Subdivision (a) shall become inapplicable, and Section 40100.5 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 Section 40100.5.

(Added by Stats. 1994, Ch. 260, Sec. 1.)

40101. (a) (1) 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.

(2) All such appropriations are legal charges against the county.

(b) 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.

(Amended by Stats. 1994, Ch. 260, Sec. 2)

40102. A county district which is included entirely within another district created by special law, or pursuant to Chapter 5 (commencing with Section 40300), shall cease to function and exercise its powers upon the date the other district commences to function and exercise its powers.

(Added by Stats. 1975, Ch. 957.)

40103. When a county district ceases to function and exercise its powers because it is included entirely within a regional district created pursuant to Chapter 5 (commencing with Section 40300), the regional district shall succeed to all the funds, property, and obligations of the county district.

Where the county district is included within two or more such 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.

(Added by Stats. 1975, Ch. 957.)

40104. 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.

(Added by Stats. 1991, Ch. 1201, Sec. 6. Conditionally operative July 1, 1992, or later, as prescribed by Sec. 1 of Ch. 1201.)

Article 2. Officers and Employees
(Article 2 added by Stats. 1975, Ch. 957.)

40120. 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.

Except as otherwise provided in this division, they shall perform, without additional compensation, for the county district such duties as they perform for the county.

(Added by Stats. 1975, Ch. 957.)

40121. 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.

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 such prevailing salary or wage can be ascertained.

(Added by Stats. 1975, Ch. 957.)

40122. 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.

A county district is a district as defined in Section 31468 of the Government Code.

(Added by Stats. 1975, Ch. 957.)

40123. If any person is employed by a county district after certification without examination by the civil service commission or similar body because of his employment in a position of similar duties by the county or by a city within the county district, the time such person was employed in such county or city position shall be considered as time such person was employed by the county district in determining his retirement benefits and salary.

(Added by Stats. 1975, Ch. 957.)

40124. In any county having a system of civil service, the county district board shall, nevertheless, appoint the members of the county district hearing board and the air pollution control officer, and the air pollution control officer shall appoint all other officers and employees of the county district pursuant to that system, except as provided in Section 40126.

(Added by Stats. 1975, Ch. 957.)

40125. Any person entitled to participate in promotional examinations for positions in the county classified civil service shall similarly be entitled to participate in promotional examinations for positions in the classified civil service of the county district, pursuant to the county civil service commission rules in effect at the time, and to be certified for such county positions by the county civil service commission, or other body performing the functions thereof, and to be appointed to such county district positions.

(Added by Stats. 1975, Ch. 957.)

40126. If the civil service commission, or body performing the functions thereof, in the county finds that any person has been employed by the county, or by any city within a county district, in a position the duties of which, and the qualifications for which, are substantially the same as, or are greater than and include qualifications which are substantially the same as, those of any position in the county district, the civil service commission or such other body, at the request of the air pollution control officer, may certify, without examination, such person as eligible to hold such county district position.

(Added by Stats. 1975, Ch. 957.)

Article 3. District Budget Adoption
(Article 3 added by Stats. 1993, Ch. 1028, Sec. 2.)

40130. The Legislature hereby finds and declares as follows:

(a) It is in the public interest to ensure that districts adopt their budgets in an open process in order to educate the public of the costs and benefits of air quality improvement.

(b) The process required by this article shall be separate from other budget processes to ensure full opportunity for the public to participate in, and comment upon, a district's budget prior to adoption.

(c) This process also shall provide accountability to district boards and to districts in their budget processes.

(Added by Stats. 1993, Ch. 1028, Sec. 2.)

40131. (a) Each district shall adopt its annual budget in accordance with the following requirements:

(1) The district shall prepare, and make available to the public at least 30 days prior to public hearing, a summary of its budget and any supporting documents, including, but not limited to, a schedule of fees to be imposed by the district to fund its programs.

(2) The district shall notify each person who was subject to fees imposed by the district in the preceding year of the availability of the information described in paragraph (1).

(3) The district shall notice and hold a public hearing for the exclusive purpose of reviewing its budget and of providing the public with the opportunity to comment upon the proposed district budget. The public hearing required to be held pursuant to this section shall be separate from the hearing at which the district adopts its budget.

(b) This article shall not apply to the south coast district, which shall be governed by Article 8 (commencing with Section 40520) of Chapter 5.5.

(Added by Stats. 1993, Ch. 1028, Sec. 2.)

## CHAPTER 3. UNIFIED AIR POLLUTION CONTROL DISTRICTS
(Chapter 3 added by Stats. 1975, Ch. 957.)

40150. Two or more contiguous counties, all or part of which are county districts, may merge those county districts into one unified district pursuant to this chapter.
(Added by Stats. 1975, Ch. 957.)

40151. The board of supervisors of any county may, by a vote of its members, appoint two of its members to meet with an equal number appointed in a like manner from other counties and agree to form a unified district, which agreement, upon ratification by the boards of supervisors, shall create a unified district out of the county districts under their jurisdiction.
(Added by Stats. 1975, Ch. 957.)

40152. (a) On and after July 1, 1994, 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.

(e) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) 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.

(2) 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.

(3) 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.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), 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.

(f) This section does 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.

(Repealed and added by Stats. 1993, Ch. 961, Sec.4.)

40152.5. (a) On and after July 1, 1994, Section 40152 shall not apply to a unified district if each city in the district consents, by the adoption of an ordinance or resolution, to the exclusion of the district from the requirements of Section 40152. Within 60 days from the date of the adoption of an ordinance or resolution by all cities in the district to exclude the district from the requirements of Section 40152, if requested by a majority of the cities in the district, the district shall establish an advisory committee consisting of a mayor, or a city council member, from each city in the district. Each city shall select its representative to the advisory committee.

(b) Subdivision (a) shall become inapplicable, and Section 40152 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 district, as established by the most recent census data, have adopted resolutions requesting the application of Section 40152.

(Added by Stats. 1994, Ch. 260, Sec. 3.)

40153. The boards of supervisors of each county comprising a unified district, or such lesser number as may be designated in the agreement ratified pursuant to Section 40151, shall be, ex officio, the unified district board.

(Added by Stats. 1975, Ch. 957. Repealed as of July 1, 1994, by Stats. 1993, Ch. 961, Secs. 5 and 10.)

40154. Each member of the unified district board shall, upon the adoption of a resolution by the unified district board, receive the actual and necessary expenses incurred in the performance of his or her duties, plus a compensation of one hundred dollars ($100) for each day attending the meetings of the unified district board or any committee of the unified district board or, upon authorization by the unified district board, while engaged in official business of the unified district, but that compensation shall not exceed three thousand six hundred dollars ($3,600) in any one year.

(Amended by Stats. 1986, Ch. 169, Sec. 1.)

40155. The boundaries of a unified district shall be the same as the boundaries of the counties of which it is comprised, or the balance of a county not included in another district, or such portion of a county as may be agreed upon.

(Added by Stats. 1975, Ch. 957.)

40156. The unified district board may designate zones within the unified district.

(Added by Stats. 1975, Ch. 957.)

40157. All county officers and employees of the counties entirely within the unified district, and all other county employees of the zones within the unified district where the county is not entirely therein, shall be ex officio officers and employees of the unified district only within the county in which they are employed.

(Added by Stats. 1975, Ch. 957.)

40158. (a) The board of supervisors of each county included, in whole or in part, within the unified district shall appropriate such funds as are necessary to carry out the purposes of the unified district, as determined by the unified district board, in accordance with the funding provisions specified in the agreement which created the unified district under Section 40151.

(b) A unified district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with a county or counties in which the unified 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 or counties provided to the unified district prior to July 1, 1994.

(Amended by Stats. 1994, Ch. 260, Sec. 4.)

40159. (a) All appropriations made pursuant to subdivision (a) of Section 40158 are legal charges against the county in which the board of supervisors voted the appropriation.

(b) The treasurer of the county shall pay the amount so appropriated into the treasury of the unified district.

(Added by Stats. 1975, Ch. 957.)

40160. By the agreement ratified pursuant to Section 40151 or by resolution, a county treasurer of a member county shall be designated and shall act as the unified district treasurer.

(Added by Stats. 1975, Ch. 957.)

40161. When a unified district ceases to function and exercise its powers because it is included entirely within a regional district created pursuant to Chapter 5 (commencing with Section 40300), the regional district shall succeed to all the funds, property, and obligations of the unified district.

Where the unified district is included within two or more such regional districts, the funds, property, and obligations of the unified district shall be apportioned to the regional districts as agreed upon by the regional districts and unified district.

(Added by Stats. 1975, Ch. 957.)

40162. Funding of the San Joaquin Valley Unified Air Pollution Control District, or, if the unified district ceases to exist, of the valley district if created pursuant to Section 41101,

may be provided by, but is not limited to, grants, subventions, permit fees, penalties, and vehicle license fees. Notwithstanding any other provision of law, no funding contribution shall be required from the counties or cities included in the unified district or valley district.

(Added by Stats. 1992, Ch. 765, Sec. 1.)

## CHAPTER 4. BAY AREA AIR QUALITY MANAGEMENT DISTRICT

(Heading of Chapter 4 amended by Stats. 1978, Ch. 1025.)

### Article 1. Jurisdiction

(Article 1 added by Stats. 1975, Ch. 957.)

40200. 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.

(Amended by Stats. 1978, Ch. 1025.)

40201. 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 40200.

(Added by Stats. 1975, Ch. 957.)

### Article 2. City Selection Committee

(Article 2 added by Stats. 1975, Ch. 957.)

40210. 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 40221.5.

(Amended by Stats. 1976, Ch. 517.)

40211. 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 such county, for purposes of this chapter, shall consist only of the representatives from those cities within that portion of the county.

(Added by Stats. 1975, Ch. 957.)

40212. 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.

(Added by Stats. 1975, Ch. 957.)

Article 3. Governing Body
(Article 3 added by Stats. 1975, Ch. 957.)

40220. The bay district board is the governing body of the bay district and shall exercise all the powers of the bay district.
(Added by Stats. 1975, Ch. 957.)

40220.5. The bay district board shall be a board of directors consisting of members appointed pursuant to Section 40221.5 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.
(Added by renumbering Section 40221 by Stats. 1976, Ch. 517.)

40221. 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.
(Added by Stats. 1976, Ch. 517.)

40221.5. (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.
(Added by Stats. 1976, Ch. 517.)

40222. Each member appointed by the board of supervisors shall hold office for a term of four years and until the appointment and qualification of his successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of his successor.

(Added by Stats. 1975, Ch. 957.)

40223. Any vacancy on the bay district board shall be filled by appointment in the same manner as the vacating member was appointed.

Any member of the bay district board may be removed at any time in the same manner as he 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 such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

(Added by Stats. 1975, Ch. 957.)

40224. If any member of the bay district board is recalled from his office as a supervisor, mayor, or city councilman, pursuant to Division 14 (commencing with Section 27000) of the Elections Code, his office as member of the bay district board shall be vacant.

(Added by Stats. 1975, Ch. 957.)

40225. No supervisor, mayor, or city councilman shall hold office on the bay district board for a period of more than three months after ceasing to hold the office of supervisor, mayor, or city councilman, respectively, and his membership on the bay 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.

(Added by Stats. 1975, Ch. 957.)

40226. A majority of the members of the bay district board constitutes a quorum for the transaction of business and may act for the bay district board.

(Added by Stats. 1975, Ch. 957.)

40227. Each member of the bay district board shall receive actual and necessary expenses incurred in the performance of board duties, and may receive compensation, to be determined by the bay district board, not to exceed one hundred dollars ($100) for each day attending the meetings of the bay district board and committee meetings thereof, or, upon authorization of the bay district board, while on official business of the bay district, but the compensation shall not exceed six thousand dollars ($6,000) in any one year. Compensation pursuant to this section shall be fixed by ordinance.

(Amended by Stats. 1986, Ch. 135, Sec. 1.)

40228. The bay district board may appoint an executive secretary to perform such duties as may be assigned to the executive secretary by the bay district board.

(Added by Stats. 1975, Ch. 957.)

40229. The bay district board may, by ordinance, adopt a civil service system for any or all employees of the bay district, except that the executive secretary and the air pollution control officer shall be exempt from such system and shall serve at the pleasure of the bay district board.

(Added by Stats. 1975, Ch. 957.)

40230. The bay district board may establish, within the bay district, zones wherein special regulations are warranted. In establishing such 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.

(Added by Stats. 1975, Ch. 957.)

40231. The bay district board may establish, within the bay district, zones wherein differing tax formulas may be applied. In establishing such 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.

(Added by Stats. 1975, Ch. 957.)

40232. Except as provided in Section 41705, the bay district board shall establish standards for the emission of identifiable odor-causing substances. Exceptions or variances may be granted from such standards in a manner provided by the bay district board. No person shall discharge from any source any contaminant which violates such standards.

(Added by Stats. 1975, Ch. 957. Amended by Stats. 1995, Ch. 952)

40233. (a) Notwithstanding any other provision of law, the bay district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards, in accordance with all of the following procedures:

(1) The bay district shall estimate, by June 30, 1989, the quantity of emission reductions from transportation sources necessary to attain and maintain state and federal ambient air standards.

(2) The Metropolitan Transportation Commission, in cooperation with the bay district, the Association of Bay Area Governments, local entities, and employers, shall develop and

adopt a plan to control emissions from transportation sources which will achieve the emission reductions established pursuant to paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and a procedure for monitoring the effectiveness of and compliance with the measures. The commission shall submit the plan to the bay district for its adoption according to a reasonable schedule developed by the bay district in consultation with the commission, but not later than June 30, 1990.

(3) Upon receipt of the plan submitted by the commission, the bay district shall review the plan to determine if it will achieve the emission reductions specified in paragraph (1). If the bay district determines that the plan will achieve those reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the plan will not achieve the emission reductions specified in paragraph (1), it shall notify the commission of the specific deficiencies in the plan and return the plan to the commission for revision. Within 60 days after receipt of the plan, the commission shall revise it and return it to the bay district. If the bay district determines that the revised plan will achieve necessary emission reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the revised plan still will not achieve the emission reductions specified in paragraph (1), or if the plan is not submitted pursuant to the schedule established under paragraph (2), the bay district shall develop and adopt a plan to control emissions from transportation sources.

(4) As the bay district periodically revises its estimates of the emission reductions from transportation sources necessary to attain state and federal ambient air standards specified in paragraph (1), the plan for transportation control measures shall also be revised, adopted, and enforced according to the procedure established pursuant to paragraphs (1), (2), and (3).

(b) The bay district may delegate any function with respect to transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the bay district an implementation plan which provides adequate resources to adopt and enforce the measures, and the bay district approves the plan.

(2) The local agency agrees to adopt and implement measures at least as stringent as those in the district air quality management plan to attain state standards.

(3) The bay district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district air quality management plan to attain state standards.

(c) The bay district may revoke a delegation under this section if it determines that the performance of the local agency is in violation of this section or is otherwise inadequate to implement the district air quality management plan.

(d) For purposes of this section, "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.

(e) The bay district and the commission shall report, not later than June 30, 1991, to the Legislature on the effectiveness of this section.

(Added by Stats. 1988, Ch. 1569, Sec. 2.)

40234. In adopting any regulation, the bay district board shall comply with Section 40703.

(Added by Stats. 1990, Ch. 1457, Sec. 1.)

Article 4. Advisory Council
(Article 4 added by Stats. 1975, Ch. 957.)

40260. As used in this article, "council" means the Bay Area Air Quality Management Advisory Council.
(Amended by Stats. 1978, Ch. 1025.)

40261. 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.
(Amended by Stats. 1978, Ch. 1025.)

40262. The council shall consist of the chairman of the bay district board, who shall serve as an ex officio member, and 20 members who preferably are skilled and experienced in the field of air pollution, including at least three representatives of public health agencies, at least four representatives of private organizations active in conservation or protection of the environment within the bay district, and at least one representative of colleges or universities in the state and at least one representative of each of the following groups within the bay district: regional park district, park and recreation commissions or equivalent agencies of any city, public mass transportation system, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor.
To the extent that suitable persons cannot be found for each of the specified categories, council members may be appointed from the general public.
(Added by Stats. 1975, Ch. 957.)

40263. Each council member shall hold office for a term of two years and until the appointment and qualification of his successor.
(Added by Stats. 1975, Ch. 957.)

40264. Any member of the council may be removed at any time by the majority vote of the bay district board.
(Added by Stats. 1975, Ch. 957.)

40265. Any vacancy on the council shall be filled by appointment in the same manner as the vacating member was appointed, except that the member appointed to fill the vacancy shall only serve the unexpired term of the vacating member.

(Added by Stats. 1975, Ch. 957.)

40266. Council members shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.

(Added by Stats. 1975, Ch. 957.)

40267. The council shall select a chairman and vice chairman and such other officers as it deems necessary.

(Added by Stats. 1975. Ch. 957.)

40268. The council shall meet as frequently as the bay district board or the council deem necessary, but not less than four times a year.

(Added by Stats. 1975, Ch. 957.)

Article 5. Financial Provisions
(Article 5 added by Stats. 1975, Ch. 957.)

40270. The bay district may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or for the ensuing year. Such indebtedness shall not exceed the total amount of the estimate of the tax income for either the current year or the ensuing year.

(Added by Stats. 1975, Ch. 957.)

40271. Before the first day of September of each year, the bay district board shall estimate and determine the amount of money required by the bay district for its purposes during the fiscal year and shall apportion this amount to the counties included within the bay district, one-half according to the relative assessed value of property on the secured roll of each county, or that portion thereof, within the bay district as determined by the bay district board and one-half in the proportion that the population of each county, or that portion thereof, within the bay district bears to the total population of the bay district.

For the purposes of this section, the bay district board shall base its determination of the population on the latest official information available to it.

The total amount of money required by the bay district to be apportioned to the counties, or that portion thereof, included within the bay district for its purposes shall not exceed two cents ($0.02) on each one hundred dollars ($100) of the assessed value of all the property included within the bay district.

(Added by Stats. 1975, Ch. 957.)

40272. On or before the first day of September of each year, the bay district board shall certify to the auditor of each county the total amount apportioned to the county.

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 bay district sufficient to secure the amount so apportioned to it. Such 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 bay district.

(Added by Stats. 1975, Ch. 957.)

40273. Taxes levied by the board of supervisors for the benefit of the bay district shall be a lien upon all property within such county, or portion thereof, lying within the bay 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.

(Added by Stats. 1975, Ch. 957.)

40274. The treasurers of the counties included, in whole or in part, within the bay district shall pay into the bay district treasury all funds held by them to the credit of the bay district.

(Amended by Stats. 1976, Ch. 1063.)

40275. The bay district treasury shall be in the custody of the county treasurer of a county included entirely within the bay district designated by the bay district board, and such treasurer shall be the bay district treasurer.

(Added by Stats. 1975, Ch. 957.)

40276. The bay district board shall, in carrying out the provisions of this article, comply as nearly as possible with the provisions of Chapter 1 (commencing with Section 29000), Division 3, Title 3 of the Government Code.

(Added by Stats. 1975, Ch. 957.)

## CHAPTER 5. REGIONAL AIR POLLUTION CONTROL DISTRICTS

(Chapter 5 added by Stats. 1975, Ch. 957.)

### Article 1. Creation of Regional Districts

(Article 1 added by Stats. 1975, Ch. 957.)

40300. (a) The boards of supervisors of two or more counties within an air basin may hold a public hearing to determine whether the counties under their jurisdiction should become part of a regional district.

(b) Such boards of supervisors shall hold a public hearing to resolve such a question, if a petition is submitted to each such board of supervisors. A petition submitted to a board of supervisors shall be signed by not less than 10 percent of the qualified electors of the county under its jurisdiction.

(Added by Stats. 1975, Ch. 957.)

40301. Prior to the public hearing, the board of supervisors shall give, not less than 15 days nor more than 45 days before the hearing, notice of the time and place of the hearing by publication pursuant to Section 6061 of the Government Code.

(Amended by Stats. 1976, Ch. 1063.)

40302. Upon conclusion of the public hearing, the board of supervisors may adopt a resolution declaring that there is need for a regional district to function in the county, or portion thereof, if, from the evidence received at such hearing, it finds that it is in the best interests of the county that a regional district function therein.

(Added by Stats. 1975, Ch. 957.)

40303. Upon adoption of a resolution pursuant to Section 40302, the board of supervisors shall file a certified copy of the resolution with the state board.

(Added by Stats. 1975, Ch. 957.)

40304. From and after the date of the filing of certified copies of resolutions from two or more boards of supervisors desiring to create a regional district, the regional district shall begin to function and may exercise its powers.

(Added by Stats. 1975, Ch. 957.)

Article 2. City Selection Committee
(Article 2 added by Stats. 1975, Ch. 957.)

40310. The city selection committee organized in each county within a regional 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 the regional district board as prescribed in Section 40322.

(Added by Stats. 1975, Ch. 957.)

40311. Where a regional district may transact business and exercise its powers only in a portion of a county, the membership of the city selection committee of such county, for purposes of this chapter, shall consist only of the representatives from those cities within that portion of the county.

(Added by Stats. 1975, Ch. 957.)

40312. The city selection committee for each county shall meet within 90 days after the adoption of the resolution by the board of supervisors to create a regional district. The committee shall thereafter meet on the second Monday in May of each even-numbered year for the purpose of making succeeding appointments to the regional district board pursuant to Section 40322.

(Added by Stats. 1975, Ch. 957.)

40313. The clerk of the board of supervisors shall notify, in writing, the board of supervisors and the clerk of the regional district board of the appointment made by the city selection committee within 10 days after such appointment has been made.

(Amended by Stats. 1976, Ch. 1063.)

40314. Members of a city selection committee may be allowed their actual expenses incurred in the discharge of their duties pursuant to this article.

(Added by Stats. 1975, Ch. 957.)

Article 3. Governing Body
(Article 3 added by Stats. 1975, Ch. 957.)

40320. A regional district board is the governing body of the regional district and shall exercise all the powers of the regional district.

(Added by Stats. 1975, Ch. 957.)

40321. A group consisting of one member of the board of supervisors and one member of the city selection committee, appointed by their respective bodies, from each county included, in whole or in part, within the regional district shall enter into an agreement on the composition of the regional district board.

(Added by Stats. 1975, Ch. 957.)

40322. The agreement entered into, pursuant to Section 40321, shall provide one of the following alternatives:

(a) The number of supervisors, and the number of members of the city selection committee, appointed by their respective bodies, from each county included, in whole or in part, within the regional district to be members of the regional district board.

(b) The weight of vote of each member of the regional district board if each board of supervisors and city selection committee of such counties are represented on the regional district board by the same number of members thereof.

(c) A combination of subdivisions (a) and (b).

The agreement shall also provide a procedure for its modification or termination.

(Added by Stats. 1975, Ch. 957.)

40322.5. (a) Notwithstanding any other provision of this chapter, on and after July 1, 1994, the membership of the governing board of each regional 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.

(e) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) 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.

(2) 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.

(3) 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.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), 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.

(f) This section does 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.

(Added by Stats. 1993, Ch. 961, Sec. 6.)

40323. 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.

Thereafter, each member appointed by the board of supervisors shall hold office for four years and until the appointment and qualification of his successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of his successor.

(Added by Stats. 1975, Ch. 957.)

40324. Any vacancy on a regional district board shall be filled by appointment in the same manner as the vacating member was appointed.

Any member of a regional district board may be removed at any time in the same manner as he 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 such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

(Added by Stats. 1975, Ch. 957.)

40325. If any member of a regional district board is recalled from his office as a supervisor, mayor, or city councilman, pursuant to Division 14 (commencing with Section 27000) of the Elections Code, his office as member of the regional district board shall be vacant.

(Added by Stats. 1975, Ch. 957.)

40326. 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 his 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.

(Added by Stats. 1975, Ch. 957.)

40327. 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.

(Added by Stats. 1975, Ch. 957.)

40328. Each member of a regional district board shall receive the actual and necessary expenses incurred by him in the performance of his duties, plus a compensation of twenty- five dollars ($25) for each day attending the meetings of the regional district board, but such compensation shall not exceed six hundred dollars ($600) in any one year.

(Added by Stats. 1975, Ch. 957.)

40329. A regional district board may appoint an executive secretary to perform such duties as may be assigned to the executive secretary by the regional district board.

(Added by Stats. 1975, Ch. 957.)

40330. A regional district board may, by ordinance, adopt a civil service system for any or all employees of the regional district, except that the executive secretary and the air pollution control officer shall be exempt from such system and shall serve at the pleasure of the regional district board.
(Added by Stats. 1975, Ch. 957.)

Article 4. Advisory Council
(Article 4 added by Stats. 1975, Ch. 957.)

40360. As used in this article, "council" means an air pollution control advisory council appointed pursuant to Section 40361.
(Added by Stats. 1975, Ch. 957.)

40361. A regional district board may appoint an air pollution control advisory council to advise and consult with the regional district board and regional district air pollution control officer in effectuating the purposes of this division.
(Added by Stats. 1975, Ch. 957.)

40362. The council shall consist of the chairman of the regional district board, who shall serve as an ex officio member, and members who preferably are skilled and experienced in the field of air pollution and a representative from each of the following groups within the regional district: the academic community, health agencies, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor.
(Added by Stats. 1975, Ch. 957.)

40363. Council members shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.
(Added by Stats. 1975, Ch. 957.)

40364. The council shall select a chairman and vice chairman and such other officers as it deems necessary.
(Added by Stats. 1975, Ch. 957.)

40365. The council shall meet as frequently as the regional district board or the council deem necessary.
(Added by Stats. 1975, Ch. 957.)

Article 5. Financial Provisions
(Article 5 added by Stats. 1975, Ch. 957.)

40370. A regional district may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or for the ensuing year. Such indebtedness shall not exceed the total amount of the estimate of the tax income for either the current year or the ensuing year.

(Added by Stats. 1975, Ch. 957.)

40371. Before the 15th day of June of each year, the regional district board shall estimate and determine the amount of money required by the regional district for its purposes during the ensuing fiscal year and shall apportion this amount to the counties included within the regional district, one-half according to the relative value of the real property of each county, or that portion thereof, within the regional district as determined by the regional district board and one- half in the proportion that the population of each county, or that portion thereof, within the regional district bears to the total population of the regional district.

For the purposes of this section, the regional district board shall base its determination of the population on the latest official information available to it.

(Added by Stats. 1975, Ch. 957.)

40372. On or before the 15th day of June of each year, the regional district board shall inform the board of supervisors of each county of the amount apportioned to the county.

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. Such 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.

(Added by Stats. 1975, Ch. 957.)

40373. Taxes levied by a board of supervisors for the benefit of a regional district shall be a lien upon all property within such 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.

(Added by Stats. 1975, Ch. 957.)

40374. (a) (1) 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 such expenditures shall constitute a proper expenditure of county funds.

(2) 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 40371, and shall repay the counties for all money borrowed from the first revenues received from taxation.

(b) 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.

(Amended by Stats. 1994, Ch. 260, Sec. 5.)

40375. 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.

(Amended by Stats. 1976, Ch. 1063.)

40376. A regional district treasury shall be in the custody of the county treasurer of a county in the regional district designated by the regional district board, and such treasurer shall be the regional district treasurer.

(Added by Stats. 1975, Ch. 957.)

40377. A regional district board shall, in carrying out the provisions of this article, comply as nearly as possible with the provisions of Chapter 1 (commencing with Section 29000), Division 3, Title 3 of the Government Code.

(Added by Stats. 1975, Ch. 957.)

## Article 6. Withdrawal of County From Regional District

(Article 6 added by Stats. 1975, Ch. 957.)

40390. The board of supervisors of a county within a regional district may withdraw the county, or portion thereof, from the regional district to form a county district or to join the county, or portion thereof, with a unified district, the bay district, or another regional district upon the adoption of a resolution stating its intention to take such action.

The resolution so adopted shall be communicated to the clerks of the boards of supervisors of all counties comprising the regional district from which the county, or portion thereof, is to be withdrawn, that regional district board, and the state board.

(Added by Stats. 1975, Ch. 957.)

40391. The withdrawal of a county, or portion thereof, shall not affect the functioning of other counties within the regional district, and such withdrawal shall not constitute a dissolution of the regional district.

The regional district shall continue to function in a manner not inconsistent with the provisions of this division.

(Added by Stats. 1975, Ch. 957.)

40392. A board of supervisors shall give at least two months' notice to the regional district board of its intention to withdraw the county, or portion thereof, from the regional district. A county, or portion thereof, shall not be withdrawn from a regional district during any fiscal year after the expiration of the first four months of the fiscal year.

(Added by Stats. 1975, Ch. 957.)

## CHAPTER 5.5. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

(Chapter 5.5 added by Stats. 1976, Ch. 324.)

### Article 1. General Provisions

(Article 1 added by Stats. 1976, Ch. 324.)

40400. This chapter shall be known and may be cited as the "Lewis-Presley Air Quality Management Act."

(Amended by Stats. 1988, Ch. 1568, Sec. 8.)

40402. The Legislature finds and declares all of the following:

(a) That the South Coast Air Basin is a geographical entity not reflected by political boundaries.

(b) That the basin is acknowledged to have critical air pollution problems caused by the operation of millions of motor vehicles in the basin, stationary sources of pollution, frequent atmospheric inversions that trap aerial contaminants, and the large amount of sunshine that transforms vehicular and nonvehicular emissions into a variety of deleterious chemicals.

(c) That these critical air pollution problems are most acute in the foothill communities of the San Gabriel/Pomona Valleys and the Riverside/San Bernardino areas, where pollutants which originate in other parts of the basin are trapped by geographical and meteorological conditions characteristic of these areas.

(d) That the state and federal governments have promulgated ambient air quality standards for the protection of public health, and it is in the public interest that those 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.

(Amended by Stats. 1987, Ch. 595, Sec. 1.)

40404. 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.

(Added by Stats. 1988, Ch. 1546, Sec. 2.)

40404.5. 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.

(Added by Stats. 1992, Ch. 186, Sec. 1.)

40405. (a) As used in this chapter, "best available control technology" means an emission limitation that will achieve the lowest achievable emission rate for the source to which it is applied. Subject to subdivision (b), "lowest achievable emission rate," as used in this section, means the more stringent of the following:

(1) The most stringent emission limitation that is contained in the state implementation plan for the particular class or category of source, unless the owner or operator of the source demonstrates that the limitation is not achievable.

(2) The most stringent emission limitation that is achieved in practice by that class or category or source.

(b) "Lowest achievable emission rate" shall not be construed to authorize the permitting of a proposed new source or a modified source that will emit any pollutant in excess of the amount allowable under the applicable new source standards of performance.

(Added by Stats. 1987, Ch. 1301, Sec. 1.)

40406. As used in this chapter, "best available retrofit control technology" means an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.

(Added by Stats. 1987, Ch. 1301, Sec. 1.5.)

40407. As used in this chapter, "electric plant" means an electric plant as defined in Section 217 of the Public Utilities Code, whether publicly or privately owned or operated.

(Added by Stats. 1988, Ch. 665, Sec. 1.)

40408. As used in this chapter, "plan" means the south coast district air quality management plan.

(Added by renumbering Section 40405 (as added by Stats. 1988, Ch. 1546) by Stats. 1990, Ch. 216, Sec. 75.)

Article 2. Creation of the South Coast Air Quality Management District
(Article 2 added by Stats. 1976, Ch. 324.)

40410. 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.

(Added by Stats. 1976, Ch. 324.)

40410.5. (a) There is hereby established within the south coast district a sensitive zone, which shall include the general forecast areas known as the San Gabriel/Pomona Valleys and the Riverside/San Bernardino areas.

(b) In addition to every other requirement for the issuance of a permit, the following requirements shall be applicable to the issuance of a permit by the south coast district for the construction or operation of any stationary source within the sensitive zone:

(1) When emission offsets are required to mitigate the air quality impacts of a stationary source, the offsets shall be secured by the applicant so as to bring about ambient air quality improvements within the sensitive zone. The applicant shall be required to demonstrate, to the satisfaction of the south coast district, that any emissions reductions acquired from stationary sources operating within the South Coast Air Basin will result in a demonstrable net ambient air quality improvement within the sensitive zone.

(2) In considering an application for a permit to construct or operate a stationary source, the south coast district board shall, in addition to making a finding and determination that the impacts of the stationary source will be mitigated so as to result in a net improvement in ambient air quality within the South Coast Air Basin, also make a finding and determination that the impacts of the stationary source can be mitigated so as to result in a net improvement in ambient air quality within the sensitive zone.

(c) The south coast district board shall adopt rules and regulations to implement this section by January 1, 1991.

(d) The south coast district shall report to the Legislature by January 1, 1992, on the implementation of subdivision (b). This report shall include a description of the impact of the requirements of subdivision (b) on the issuance of permits for the construction or operation of stationary sources within the sensitive zone, and upon air quality within the sensitive zone.

(Amended by Stats. 1990, Ch. 686, Sec. 1.)

40411. (a) The south coast district board may, by resolution, include all or part of the County of Santa Barbara or the County of Ventura within the south coast district, upon receipt of a resolution from the appropriate board of supervisors requesting inclusion.

(b) The inclusion of the county, or portion thereof, as the case may be, shall take effect at the commencement of the first quarter commencing at least 60 days after the adoption of the resolution.

(c) A copy of the resolution of approval shall be sent by the south coast district board to the board of supervisors and the state board.

(Amended by Stats. 1980, Ch. 1085.)

40412. The south coast district shall be the sole and exclusive local agency within the South Coast Air Basin with the responsibility for comprehensive air pollution control, and it shall have the duty to represent the citizens of the basin in influencing the decisions of other public and private agencies whose actions might have an adverse impact on air quality in the basin.

(Amended by Stats. 1976, Ch. 1063.)

40413. The board of supervisors of a county that is only included in part within the south coast district may, by resolution, request the south coast district board to have that area of the county not included within the South Coast Air Basin included in the south coast district, or the board of supervisors may request to contract with the south coast district to perform air pollution control functions in that area of the respective county not within the South Coast Air Basin. The south coast district board may, by resolution, agree to (1) have that area of the county not included within the South Coast Air Basin included in the south coast district, or (2) perform air pollution control functions for that area of the county not included within the South Coast Air Basin, or both (1) and (2).

(Amended by Stats. 1980, Ch. 1085.)

40414. No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board.

(Amended by Stats. 1980, Ch. 1085.)

40416. The south coast district shall commence operation on February 1, 1977, and on that date shall assume the authority, functions, and responsibilities of the Southern California Air Pollution Control District.

(Added by Stats. 1976, Ch. 324.)

Article 3. Governing Body
(Heading of Article 3 renumbered from Article 2.5 by Stats. 1980, Ch. 1085.)

40420. (a) The south coast district shall be governed by a district board consisting of 12 members appointed as follows:

(1) One member appointed by the Governor, with the advice and consent of the Senate.

(2) One member appointed by the Senate Committee on Rules.

(3) One member appointed by the Speaker of the Assembly.

(4) Four members appointed by the boards of supervisors of the counties in the south coast district. Each board of supervisors shall appoint one of these members, who shall be one of the following:

(A) A member of the board of supervisors of the county making the appointment.

(B) A mayor or member of a city council from a city in the portion of the county making the appointment that is included in the south coast district.

(5) Three members appointed by cities in the south coast district. The city selection committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of these members, who shall be either a mayor or a member of the city council of a city in the portion of the county included in the south coast district.

(6) A member appointed by the cities of the western region of Los Angeles County, consisting of the Cities of Agoura Hills, Avalon, Beverly Hills, Carson, Compton, Culver City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Hidden Hills, Inglewood, Lawndale, Lomita, Los Angeles, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Santa Monica, Torrance, West Hollywood, and Westlake Village. These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the western region.

(7) A member appointed by the cities of the eastern region of Los Angeles County, consisting of the cities in Los Angeles County that are not listed in paragraph (6). These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the South Coast Air Basin.

(c) The member appointed by the Governor shall be either a physician who has training and experience in the health effects of air pollution, an environmental engineer, a chemist, a meteorologist, or a specialist in air pollution control.

(d) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the south coast district board, to discharge all duties and responsibilities of a member of the south coast district board on a regular basis, and to participate actively in the affairs of the south coast district. No member may designate an alternate for any purpose or otherwise be represented by another in his or her capacity as a member of the south coast district board.

(e) Each appointment by a board of supervisors shall be considered and acted on at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall provide an opportunity for testimony on the qualifications of the candidates for appointment.

(f) The appointments by cities in the south coast district shall be considered and acted on at a duly noticed meeting of the city selection committee, which shall meet in a government building and provide an opportunity for testimony on the qualifications of the candidates for appointment. Each appointment shall be made by not less than a majority of all the cities in

the portion of the county included in the south coast district having not less than a majority of the population of all the cities in the portion of the county included in the south coast district. Population shall be determined on the basis of the most recent verifiable census data developed by the Department of Finance. Persons residing in unincorporated areas or areas of a county outside the south coast district shall not be considered for the purposes of this subdivision.

(g) The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall have one or more of the qualifications specified in subdivision (c) or shall be a public member. No such member appointed may be a locally elected official.

(h) All members shall be residents of the district.

(Amended by Stats. 1995, Ch. 84, Sec. 1.)

40421.5. For the purpose of complying with Section 50271 of the Government Code, each mayor shall designate a member of the city's legislative body to attend and vote in his or her place and as his or her representative if the mayor is unable to attend any meeting of the city selection committee to be held pursuant to this article. If a mayor does not make this designation within 10 days preceding a meeting of the city selection committee, the legislative body shall designate one of its own members to represent the city.

(Added by Stats. 1988, Ch. 741, Sec. 2.)

40422. (a) The term of each member of the south coast district board shall be four years and until his or her successor is appointed. Upon the expiration of his or her term, a member who is a mayor from the County of Orange or a member of a city council from the County of Orange may be reappointed, in accordance with subdivision (f) of Section 40420, within 60 days, and the office shall become vacant if the member is not so reappointed within 60 days. Any vacancy on the south coast district board shall be filled within 60 days of its occurrence by its appointing authority.

(b) The members first appointed to the board shall classify themselves by lot so that the terms of four members expire January 15, 1990, the terms of four members expire January 15, 1991, and the terms of three members expire January 15, 1992.

(c) Notwithstanding subdivision (a), no member of a board of supervisors, mayor, or member of a city council shall hold office on the south coast district board for more than 60 days after ceasing to be supervisor, mayor, or member of the city council, respectively, and the membership on the board held by that person terminates upon the expiration of that 60-day period. However, any mayor who immediately resumes the office of member of the city council, and any member of a city council who becomes mayor, has not ceased to hold office for the purposes of this subdivision.

(d) Any member who does not attend three consecutive meetings of the south coast district board without good and sufficient cause therefor, shall be removed by the appointing authority. Any member who does not attend three consecutive meetings of the south coast district board, without good and sufficient cause therefor, and is not thereupon removed by the appointing authority, may be removed by the affirmative vote of at least eight members of the south coast district board.

(Amended by Stats. 1993, Ch. 563, Sec. 1.)

40423. The south coast district board shall provide for the frequency and location of its meetings, except that no meeting of the south coast district board shall take place without public notice given at least seven days in advance of the scheduled date of the meeting or, as to special and emergency meetings, without complying with the requirements of Section 54956 or 54956.5, respectively, of the Government Code.

(Amended by Stats. 1988, Ch. 741, Sec. 3.)

40424. (a) Except as provided in subdivision (b), seven members of the south coast district board shall constitute a quorum, and no official action shall be taken by the south coast district board except in the presence of a quorum and upon the affirmative votes of a majority of the members of the south coast district board.

(b) Notwithstanding subdivision (a), whenever there are two or more vacancies on the south coast district board, six members shall constitute a quorum, and the two vacant positions shall not be counted toward the majority required for official action by the south coast district board. Thereafter, whenever at least one of those vacancies is filled, the quorum and voting requirements of subdivision (a) shall apply.

(Amended by Stats. 1988, Ch. 741, Sec. 4.)

40424.5. Voting by the south coast 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. A substitute rollcall shall consist of a unanimous voice vote of the south coast district board members in attendance and shall be recorded by the clerk of the board as an "aye" vote for all members present. For purposes of this section, any consent calendar is a single item.

(Amended by Stats. 1992, Ch. 371, Sec. 1.)

40425. The south coast district board shall elect a chairman every two years from its membership. No member shall serve more than two consecutive terms as chairman.

(Added by renumbering Section 40225 by Stats. 1976, Ch. 1063.)

40426. Each member of the south coast district board shall receive compensation of one hundred dollars ($100) for each day, or portion thereof, but not to exceed one thousand dollars ($1,000) per month, while attending meetings of the south coast district board or any committee thereof or, upon authorization of the south coast district board, while on official business of the south coast district, and the actual and necessary expenses incurred in performing the member's official duties.

(Amended by Stats. 1987, Ch. 1301, Sec. 6.)

40426.5. (a) Upon the request of any person, or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the south coast district board has its principal office alleging that a member of the south coast district board knowingly or willfully violated any provision of Title 9 (commencing with Section 81000) of the Government Code, setting forth the facts upon which the allegation is based, and asking that the member be removed from office. Further proceedings shall be in accordance as near

as may be with rules governing civil actions. If, after trial, the court finds that the member of the south coast district board knowingly violated this section, it shall issue an order removing the member from office.

(b) The remedy provided in this section is in addition to, and not to the exclusion of, any other remedy, sanction, or penalty available pursuant to law.

(Added by Stats. 1987, Ch. 1301, Sec. 7.)

40426.7. (a) No retired, dismissed, or separated employee or officer of the south coast district, or member of the south coast district board, shall participate in any contract of the district in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision making process relevant to the contract while acting in the capacity of employee or officer of the south coast district, or member of the south coast district board, during the 24-month period commencing on the date the person became retired, dismissed, or separated from service with the south coast district or ceased being a member of the south coast district board.

(b) For a period of 12 months following retirement, dismissal, or separation from service with the south coast district, no former employee or officer of the south coast district, or member of the south coast district board, shall enter into a contract with the south coast district if that person had been with the south coast district in a position involving making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation concerning the general subject of the proposed contract within 12 months prior to retirement, dismissal, or separation from service with the south coast district. Notwithstanding the prohibitions in this subdivision, the south coast district board may, by a two-thirds vote, enter into a contract with a retired employee of the south coast district or an employee who separated under conditions satisfactory to the south coast district if the south coast district board finds and determines that, at the time of the retirement or separation, the employee was working on one or more programs that are of great importance to the south coast district, that the services of the employee are necessary to assure the continued effectiveness of the program or programs, that the contract is only for that period of time necessary to complete the employee's work on the program or programs, and that the employee is the most qualified person to provide the needed services.

(c) No former employee or officer of the south coast district previously holding a position designated in the conflict-of-interest code of the south coast district, and no member of the south coast district board, who was, at any time while in the service of the south coast district, involved in making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation involving a particular person shall, with respect to any of these matters that the former employee, officer, or member of the south coast district board was involved in, do any of the following:

(1) Act as an agent or attorney, or otherwise represent, that person in an appearance before the south coast district board or the hearing board.

(2) Make a communication on behalf of that person with the intent to influence the south coast district board or its officers or employees or the hearing board.

(3) Represent, aid, counsel, advise, consult with, or otherwise assist that person in connection with any of these matters in any capacity.

(4) Knowingly enter into a contract or accept employment for any purpose specified in this subdivision.

(d) Any violation of this section is a misdemeanor.

(e) This section applies only to employees and officers who are in the employment of the south coast district on or after July 1, 1988, and members serving on the south coast district board on or after July 1, 1988.

(f) This section shall become operative on July 1, 1988.

(Amended by Stats. 1988, Ch. 1412, Sec. 2. Section applicable July 1, 1988, as specified by this amendment.)

40427. The south coast district board shall determine the location of its headquarters and may establish branch offices in each of the counties included, in whole or in part, within the south coast district, and in such other parts of the south coast district as it deems necessary.

(Added by renumbering Section 40227 by Stats. 1976, Ch. 1063.)

40428. There is continued in existence the South Coast Air Quality Management District Advisory Council, which is appointed by the south coast district board, to advise and consult with the south coast district board in effectuating the purpose of this division.

The membership and rules of the advisory council shall be as established by resolution of the south coast district board.

(Added by Stats. 1980, Ch. 1085.)

Article 4. General Powers and Duties

(Heading of Article 4 renumbered from Article 3 by Stats. 1980, Ch. 1085.)

40440. (a) The south coast district board shall adopt rules and regulations that carry out the plan and are not in conflict with state law and federal laws and rules and regulations. Upon adoption and approval of subsequent revisions of the plan, these rules and regulations shall be amended, if necessary, to conform to the plan.

(b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the following:

(1) Require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

(2) Promote cleaner burning alternative fuels.

(3) Consistent with Section 40414, provide for indirect source controls in those areas of the south coast district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.

(4) Provide for transportation control measures, as listed in the plan.

(c) The south coast district board shall adopt rules and regulations that will assure that all its administrative practices and the carrying out of its programs are efficient and cost-effective, consistent with the goals of achieving and maintaining federal and state ambient air quality standards and achieving the purposes of this chapter.

(d) The south coast district board shall determine what is the best available retrofit control technology for existing electric plants, and shall adopt rules and regulations requiring the use of the best available retrofit control technology in existing electric plants, if the board finds and determines that to do so is necessary to carry out the plan.

(e) In adopting any regulation, the south coast district board shall comply with Section 40703.

(Amended by Stats. 1990, Ch. 1457, Sec. 2.)

40440.1. (a) A market-based incentive program adopted pursuant to Section 39616 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.

(Amended by Stats. 1993, Ch. 144, Sec. 2.)

40440.2. (a) In addition to, and notwithstanding the requirements of, Section 39616, all of the following 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:

(1) (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 paragraph (3). The progress report shall meet all of the following requirements:

(i) 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.

(ii) The data in the report for the sulfur oxides RECLAIM program shall be aggregated by three-digit SIC code only to the extent feasible.

(iii) 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.

(iv) Any publication of the data obtained from facilities by the south coast district shall be in aggregate form only, as specified in this subdivision. 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.

(2) 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 paragraph (4) 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:

(i) 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.

(ii) A facility that emits from 11 to 100 tons, inclusive, of nitrogen oxides or sulfur oxides annually.

(iii) 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 an 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.

(3) In addition to any other information required by subdivision (e) of Section 39616, 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.

(4) The advisory committee shall conduct a peer review of the progress report to the south coast district board required pursuant to paragraph (1). The advisory committee shall present its peer review conclusions to the south coast district board as an independent report concurrently with the staff progress report. The advisory committee may request staff support from the south coast district in conducting its peer review and preparing the report.

(Added by Stats. 1994, Ch. 1179, Sec. 2.)

40440.5. (a) Notice of the time and place of a public hearing of the south coast 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 thereto and, notwithstanding subdivision (b) of Section 40725, shall be published in each county in the south coast district in accordance with the requirements of Section 6061 of the Government Code. The period of notice shall commence on the first day of publication.

(b) In addition to the requirements of subdivision (b) of Section 40725, notice shall be mailed to every person who filed a written request for notice of proposed regulatory action with the south coast district, every person who requested notice for, or registered at, the workshop, if any, held in connection with the development of the proposed rule or regulation, and any person the south coast district believes to be interested in the proposed rule or regulation. The inadvertent failure to mail notice to any particular person as provided in this subdivision shall not invalidate any action taken by the south coast district board.

(c) In addition to the summary description of the effect of the proposal, as required by subdivision (b) of Section 40725, the notice shall include the following:

(1) A description of the air quality objective that the proposed rule or regulation is intended to achieve and the reason or reasons for the proposed rule or regulation.

(2) 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.

(3) 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 40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

(d) 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.

(e) 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 this section, further consideration of the rule or regulation shall be governed by Section 40726.

(f) This section is 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).

(Amended by Stats. 1992, Ch. 371, Sec. 2.)

40440.7. (a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) The time and place for a workshop shall be selected on the basis of affording an opportunity to participate to the greatest number of persons expected to be interested in the workshop.

(f) The requirements of this section are not intended to restrict the south coast district in conducting other public workshops and other meetings for the exchange of information under circumstances not specifically addressed in this section.

(g) A workshop or other meeting shall not constitute consideration of a "regulatory measure" within the meaning of Section 40923.

(h) This section is 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).

(Amended by Stats. 1992, Ch. 371, Sec. 3.)

40440.8. (a) 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 district shall, to the extent data are available from the district's regional economic model or other sources, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

(b) For the purposes of this section, "socioeconomic impact" means only the following:

(1) The type of industries affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy in the south coast basin attributable to the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry, of the rule or regulation.

(4) The availability and cost effectiveness of alternatives to the rule or regulation, as determined pursuant to Section 40922.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation in order to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

(c) (1) On or before April 1, 1991, the south coast district shall enter into a contract with an independent firm to perform a review and analysis of the methods by which the district assesses socioeconomic impacts of district rules and regulations. The analysis shall include an evaluation of any statistical models and other relevant data used by the district, the proficiency by which the data are applied, and recommendations for any improvements needed to ensure the accuracy and reliability of the assessments. The analysis shall evaluate the expertise of the district in performing the assessments and shall evaluate whether the quality and accuracy of these assessments would be substantially improved if they were performed by an independent contractor. The analysis shall compare the relative costs of contracting independently versus having the district perform the assessments. The contract with the independent firm shall be overseen by the district in consultation with the Legislative Analyst.

(2) Prior to entering into a contract pursuant to paragraph (1), the district shall draft a request for proposal to be issued to qualified independent firms which shall be reviewed by the Legislative Analyst prior to issuance. In drafting the request for proposal, the district shall consult with interested parties, including, but not limited to, representatives of industry and commerce, to ensure that their comments are considered.

(3) On or before July 1, 1992, the analysis by the independent firm shall be completed, submitted to the Legislative Analyst for review and comment, and submitted to the Legislature and the Governor. The Legislative Analyst shall review the report and submit any comments to the Legislature and the Governor on or before November 1, 1992.

(Amended by Stats. 1992, Ch. 1296, Sec. 15.)

44040.10. The south coast district board, prior to approving any proposed revision to the best available control technology guidelines developed by the south coast district that amends any policy or implementation procedure for determining the best available control technology, shall hold a public hearing on the proposed revision.

(Added by Stats. 1995, Ch. 837, Sec. 1.)

40440.11. (a) In establishing the best available control technology that is more stringent than the lowest achievable emission rate pursuant to federal law for a proposed new or modified source, the south coast district shall consider only control options or emission limits to be applied to the basic production or process equipment existing in that source category or a similar source category.

(b) In establishing the best available control technology for a source category or determining the best available control technology for a particular new or modified source, when a particular control alternative for one pollutant will increase emissions of one or more other pollutants, the south coast district's cost-effectiveness calculation for that particular control alternative shall include the cost of eliminating or reducing the increases in emissions of the other pollutants as required by the south coast district.

(c) Prior to revising the best available control technology guideline for a source category to establish an emission limit that is more stringent than the existing best available control technology guideline for that source category, the south coast district shall do all of the following:

(1) Identify one or more potential control alternatives that may constitute the best available control technology, as defined in Section 40405.

(2) 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.

(3) Review the information developed to assess the cost-effectiveness of each potential control alternative. For purposes of this paragraph, "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.

(4) Calculate the incremental cost-effectiveness for each potential control option. To determine the incremental cost-effectiveness under this paragraph, 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.

(5) Place the best available control technology revision for a source category proposed under this subdivision on the calendar of a regular meeting agenda of the south coast district board, for its acceptance or further action, as the board determines.

(d) 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 40440.10 prior to revising the value.

(e) 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.

(Added by Stats. 1995, Ch. 837, Sec. 1.)

40441. After adoption of the plan, the south coast district shall have the responsibility for securing the cooperation of other public entities in the implementation of the plan, including all programs, plans, and projects relating to or affecting air quality within the south coast district.

The south coast district board may adopt such rules and regulations as do not conflict with state and federal laws for the coordination of local, state, and federal programs affecting air quality.

(Amended by Stats. 1980, Ch. 1085.)

40442. If the plan is not adopted or approved in compliance with the schedule set forth in Section 40463, the powers and duties of the south coast district board with respect to air quality control shall not be diminished or otherwise affected by such failure to adopt or approve the plan.

(Amended by Stats. 1980, Ch. 1085.)

40443. The south coast district board shall adopt revised and updated nonvehicular source emission limitations for inclusion in the state's implementation plan.

(Amended by Stats. 1980, Ch. 1085.)

40444. The south coast district board shall adopt the necessary rules and regulations to implement the Air Pollution Emergency Plan developed by the state board.

(Amended by Stats. 1980, Ch. 1085.)

40445. Pursuant to its authority under Section 40444 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. Such 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.

(Amended by Stats. 1980, Ch. 1085.)

40445.5. (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 40444 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.

(Added by Stats. 1987, Ch. 893, Sec. 1.)

40446. 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.

(Added by Stats. 1976, Ch. 324.)

40447. 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.

(Added by Stats. 1976, Ch. 324.)

40447.5. Notwithstanding any other provision of law, the south coast district board may adopt regulations that do all of the following:

(a) Require operators of public and commercial fleet vehicles, consisting of 15 or more vehicles under a single owner or lessee and operating substantially in the south coast district, when adding vehicles to or replacing vehicles in an existing fleet or purchasing vehicles to form a new fleet, to purchase vehicles which are capable of operating on methanol or other equivalently clean burning alternative fuel and to require that these vehicles be operated, to the maximum extent feasible, on the alternative fuel when operating in the south coast district. Notwithstanding Section 39021, as used in this subdivision, the term "commercial fleet vehicles" is not limited to vehicles that are operated for hire, compensation, or profit. No regulation adopted pursuant to this paragraph shall apply to emergency vehicles operated by local law enforcement agencies, fire departments, or to paramedic and rescue vehicles until the south coast district board finds and determines that the alternative fuel is available at sufficient locations so that the emergency response capabilities of those vehicles is not impaired.

(b) Encourage and facilitate ridesharing for commuter trips into, out of, and within the south coast district.

(c) Prohibit or restrict the operation of heavy-duty trucks during hours of heaviest commuter traffic on freeways and other high traffic volume highways. In adopting regulations pursuant to this paragraph, the south coast district shall consult with the Department of

Transportation and the Department of the California Highway Patrol and the transportation commission of each county in the south coast district. No regulation adopted pursuant to this paragraph shall, however, prohibit or restrict the operation of any heavy-duty truck engaged in hauling solid or hazardous waste or a toxic substance if that truck is required to be operated at certain times of day pursuant to an ordinance adopted for the protection of public health or safety by a city or county or any heavy-duty truck required to be operated at certain times of the day pursuant Section 25633 of the Business and Professions Code.

(Added by Stats. 1987, Ch. 1301, Sec. 10.)

40447.6. (a) Notwithstanding any other provision of law, the south coast district board may, subject to the approval of the state board, adopt regulations that specify the composition of diesel fuel manufactured for sale in the south coast district. These regulations shall impose requirements at least as stringent as those of the state board. No regulation shall be adopted pursuant to this section until the south coast district has evaluated the safety of any fuel of a particular composition proposed to be required by the regulations. This section shall become operative January 1, 1989.

(b) In adopting regulations pursuant to this section, the south coast district board shall consider the effect of the regulation on emissions, public health, ambient air quality, and visibility in the south coast air basin; the technological feasibility and economic costs and benefits of the regulation compared to other available measures; and the availability of low emission and alternative fueled vehicles and alternative fuels.

(Added by Stats. 1987, Ch. 1301, Sec. 11. Section operative January 1, 1989, by its own provisions.)

40448. (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, Chapter 6.5 (commencing with Section 40725), Chapter 8 (commencing with Section 40800), and Chapter 10 (commencing with Section 40910), 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 39047.

(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.

(Amended by Stats. 1990, Ch. 1702, Sec. 4.)

40448.5. (a) The south coast district shall establish a program to encourage voluntary participation in projects to increase the utilization of clean-burning fuels. The south coast district shall coordinate its program with the state board, the State Energy Resources Conservation and Development Commission, and other appropriate state and federal agencies and private organizations that are conducting activities to promote the use of clean-burning fuels.

(b) After holding at least two public hearings to solicit public comment on a clean-burning fuels program, the south coast district shall adopt a program of activities for increasing the use of clean-burning fuels in the transportation and stationary source sectors.

(c) The program shall include an identification of potential funding sources, including, but not limited to, state and federal funds; private-sector funds; revenues from district permit, variance, and emission fees; proceeds from district penalty settlements and judgments; and funds from other sources under the jurisdiction of the south coast district.

(d) In developing its program, the south coast district shall consider promoting projects in the transportation and stationary source sectors utilizing methanol fuel, fuel cells, liquid petroleum gas, natural gas, including compressed natural gas, combination fuels, synthetic fuels, electricity, including electric vehicles, and other clean-burning fuels.

(e) When considering which clean fuels projects to promote, the south coast district shall consider, among other factors, the current and projected economic costs and availability of fuels, the cost-effectiveness of emission reductions associated with clean fuels compared with other pollution control alternatives, the use of new pollution control technologies in conjunction with traditional fuels as an alternative means of reducing emissions, potential effects on public health, ambient air quality, visibility within the region, and other factors determined to be relevant by the south coast district.

(f) When implementing clean fuels projects, the south coast district shall consider limiting the use of clean fuels to specific seasons, time of day, and locations if those limitations are found by the district to further the goals of the program.

(g) The south coast district shall coordinate the clean-burning fuels program with transportation control measures adopted pursuant to paragraph (4) of subdivision (b) of Section 40440 to reduce traffic congestion, air pollution, and motor vehicle fuel consumption.

(Amended by Stats. 1993, Ch. 956, Sec. 1.)

40448.5.1. (a) Prior to adopting the program specified in subdivision (b) of Section 40448.5 and prior to expending any funds for any research, development, or demonstration program or project relating to vehicles or vehicle fuels, the south coast district shall do both of the following:

(1) Adopt and include in the program specified in subdivision (b) of Section 40448.5 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 and projects funded as part of the program will not duplicate any other past or present program or project funded by the state board, the State Energy Resources Conservation and Development Commission, an air quality management district or air pollution control district, a public transit district or authority within the geographic jurisdiction of the south coast district, the San Diego Transit Corporation, the North County Transit District, the Sacramento Regional Transit District, the Alameda-Contra Costa Transit District, the San Francisco Bay Area Rapid Transit District, the Santa Barbara Metropolitan Transit District, the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District, the Pacific Gas and Electric Company, the Southern California Gas Company, the Southern California Edison Company, the San Diego Gas and Electric Company, or the Office of Mobile Sources within the Environmental Protection Agency. This paragraph is not intended to prevent funding for programs or projects jointly funded with another public or private 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 south coast district, the south coast district 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.

(c) Notwithstanding any other provision of law, the south coast district may recover the costs of implementing this section from the revenues it receives for alternative fuel research, development, and demonstration pursuant to Section 9250.11 of the Vehicle Code.

(Added by Stats. 1995, Ch. 609, Sec. 2.)

40448.6. 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.

(Amended by Stats. 1993, Ch. 1153, Sec. 194.)

40448.7. (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 the purpose of guaranteeing or otherwise participating in the provision of financing assistance for lending programs of other public agencies or private lenders to small businesses for the purpose of complying with the south coast district regulations.

(2) If the balance in the fund established pursuant to subdivision (b) equals or exceeds four million dollars ($4,000,000), the south coast district shall not make that annual allocation to that fund.

(b) In carrying out this section, the south coast district shall establish a special small business assistance fund known as the Air Quality Assistance Fund for the purpose of setting aside funds to be used in underwriting, guaranteeing, or otherwise participating in the provision of financing assistance by other public agencies or private lenders. Moneys in the fund shall be invested and reinvested in the same manner as other surplus government funds and the proceeds deposited in the fund.

(c) In carrying out this section, and its responsibilities for the mitigation of socioeconomic impacts, the south coast district shall utilize, to the maximum extent, the financing instruments and administrative capacity of other public agencies and private lenders with respect to providing financing assistance, and shall endeavor to obtain the maximum leverage of its funds through guarantees and other forms of risk sharing with other public agencies and private lenders, in order to increase the availability of financing assistance to small businesses. The south coast district shall consider, and shall make available to public agencies and private lenders, relevant information contained in environmental and socioeconomic impact assessments conducted by the south coast district.

(d) Notwithstanding any other provision of law, the findings of any environmental audit or assessment conducted by or for a small business pursuant to this section shall remain the property of the business.

(e) "Small business," for the purposes of this section, has the same meaning as defined by the federal Small Business Administration.

(f) Not later than January 1, 1993, the south coast district shall submit to the Legislature and the Governor a report which assesses the effectiveness of this section in increasing the availability of financial assistance to small businesses subject to the rules and regulations of the district.

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

(Amended by Stats. 1993, Ch. 1028, Sec. 3. Repealed as of January 1, 1999, by its own provisions.)

40448.8. (a) As used in this section, "small business" has the same meaning as defined by the federal 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) The south coast district shall establish a small business technical and compliance assistance program. The program shall include all of the following components:

(1) Mechanisms for developing, collecting, and coordinating information concerning air quality compliance methods and technologies for small businesses.

(2) A program which assists small businesses in determining applicable requirements, 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.

(Added by Stats. 1992, Ch. 371, Sec. 4.)

40449. (a) No provision of this chapter is a limitation on the power of any city or county included, in whole or in part, within the south coast district to adopt any ordinance with respect to air pollution control which is stricter than the rules and regulations adopted by the south coast district board and not in conflict therewith. The south coast district board shall enforce any such ordinance.

(b) At the request of the governing body of any city or county included, in whole or in part, within the south coast district, the south coast district board may make available, on a temporary basis, the necessary personnel, equipment, and services to assist in adopting any ordinance stricter than the rules and regulations adopted by the south coast district.

(Amended by Stats. 1980, Ch. 1085.)

40450. Except as provided in Section 40449 regarding the adoption of stricter orders, rules, and regulations than those of the south coast district board, the board of supervisors of any county included, in whole or in part, within the south coast district shall have no authority after February 1, 1977, with respect to the control of air pollution in that part of the county included within the south coast district.

(Added by Stats. 1976, Ch. 324.)

40451. (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.

(Added by Stats. 1987, Ch. 1301, Sec. 12.)

40452. On or before April 1, 1991, and annually thereafter, the south coast district shall submit a 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. Budget information developed by the district pursuant to Section 42311.1 may be used to comply with the requirements established under this section.

(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 Sections 40453 and 42311.1. The response shall include proposed statutory changes needed to implement the recommendations.

(g) The results of the clean fuels program as specified in Section 40448.5. This element of the report shall be submitted biennially.

(Amended by Stats. 1993, Ch. 956, Sec. 2.)

40453. (a) By July 1, 1991, and every three years thereafter, 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.

(Amended by Stats. 1994, Ch. 1078, Sec. 1.)

40454. (a) Notwithstanding Section 40457, 40716, or 40717, or subdivision (c) of Section 40717.5, the south coast district shall not adopt or enforce any rule or regulation that would require any employer to submit a trip reduction plan.

(b) The south coast district may require employers with 100 or more employees at a single worksite to provide ride-matching information and transit information to employees at that worksite.

(Added by Stats. 1992, Ch. 725, Sec. 1. Amended by Stats. 1995, Ch. 858, Sec. 1.)

40455. Notwithstanding subdivision (e) of Section 40717, the south coast district shall not require any local agency to implement any transportation control measure that the district itself is prohibited from enacting pursuant to Section 40454, unless required by the federal Clean Air Act.

(Added by Stats. 1994, Ch. 335, Sec. 1.)

40456. Except as provided in Section 43845, the south coast district shall not require any employer to charge its employees for parking.

(Added by Stats. 1994, Ch. 335, Sec. 2.)

40457. (a) For purposes of this section, "plan" means a trip reduction plan or a related or similar proposal submitted by an employer to the south coast district for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.

(b) The south coast district may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1 of the Government Code; 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 the south coast district shall not 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 district for adoption.

(d) The south coast district shall modify existing regulations to conform to this section not later than June 30, 1995. Any plan adopted by the south coast district prior to January 1, 1994, shall remain in effect until adoption by the district of a modified plan pursuant to this section.

(e) Employers in the south coast district 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 this division or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(Added by Stats. 1994, Ch. 534, Sec. 3.)

## Article 5. Plan

(Article 5 added by Stats. 1980, Ch. 1085.)

40460. (a) 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 40463. 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 participation of the Southern California Association of Governments and the counties and cities within the South Coast Air Basin.

(b) With the assistance of counties and cities, the Southern California Association of Governments shall have responsibility for preparing and approving the portions of the plan relating to regional demographic projections and integrated regional land use, housing, employment, and transportation programs, measures, and strategies. The Southern California Association of Governments shall analyze and provide emissions data related to its planning responsibilities.

(c) The south coast district shall have the responsibility for preparing and analyzing the portions of the plan elements relating to existing air quality, emissions data, results of air quality modeling, and stationary source control measures. The south coast district shall combine its portion of the plan with those prepared by the Southern California Association of Governments.

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.

(d) 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.).

(Repealed and added by Stats. 1980, Ch. 1085.)

40461. 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 Chapter 2 (commencing with Section 41600) of Part 4.

(Repealed and added by Stats. 1980, Ch. 1085.)

40462. (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 40410.5 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.

(Amended by Stats. 1987, Ch. 1301, Sec. 14.)

40463. (a) The plan shall be formally reviewed every two years beginning in 1982 by the agencies responsible for preparing plan revisions. In the event of revisions, the compliance schedules and emission limitations shall be amended to reflect advances in technology, control strategies, and administrative practices. The south coast district board may delay submittal of revisions up to two years if necessary to synchronize with the dates of submittal required under the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) With the active participation of the Southern California Association of Governments, a South Coast Air Basin emission carrying capacity for each state and federal ambient air quality standard shall be established by the south coast district board for each formal review

of the plan consistent with subdivision (a) and shall be updated to reflect new data and modeling results. A carrying capacity is the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant. Emission carrying capacity for state standards shall not be a part of the state implementation plan requirements of the Clean Air Act for the South Coast Air Basin.

(c) The state board shall review and comment, within 60 days of submittal by the south coast district, on the emission carrying capacity, air quality model selection, and all other data required by this section. The south coast district board and the Southern California Association of Governments Executive Committee shall consider the comments of the state board and shall either accept the state board's recommendations regarding carrying capacity or shall advise the state board that the recommendations are not accepted.

(d) If the state board receives notification that its recommendations are not accepted, the state board shall convene a conflict resolution committee within 30 days to attempt to resolve the differences. The committee shall be composed of two members each of the state board, the Executive Committee of the Southern California Association of Governments, and the south coast district board appointed by the entity they represent. The committee shall make a recommendation to the three governing boards.

(Repealed and added by Stats. 1980, Ch. 1085.)

40464. The Southern California Association of Governments shall coordinate the efforts of the counties and cities in the process of developing and reviewing plan elements which meet the requirements of the plan, state and federal law, and local needs relating to transportation, land use, demographic projections, employment, housing, and other matters of local concern.

(Repealed and added by Stats. 1980, Ch. 1085.)

40465. The Southern California Association of Governments shall submit its plan elements to the south coast district board by June 1 of each odd-numbered year, except in the case of a delayed submittal as provided in subdivision (a) of Section 40463, for incorporation into the air quality management plan. The district shall combine the association's plan elements with the south coast district elements as specified in subdivision (a) of Section 40460. Each agency shall prepare and submit all necessary documentation, including that of public and intergovernmental involvement.

(Repealed and added by Stats. 1980, Ch. 1085.)

40466. (a) The south coast district board shall adopt plan revisions, pursuant to subdivision (a) of Section 40463, after holding public hearings throughout the south coast district. The south coast district board shall submit the adopted plan revisions to the state board and to the Legislature.

(b) Notice of the times and places of the public hearings shall be given not less than 45 days prior to the first hearing and shall be published in each county in the south coast district in accordance with the requirements of Section 6061 of the Government Code. The period of notice shall commence on the first day of publication. Notice shall be mailed to every person who filed a written request for notice concerning the plan with the south coast district and any person the south coast district believes to be interested in the plan. The notice shall include a

list of supporting information, documents, and other materials relevant to the plan revision prepared by the south coast district or at its direction, any environmental assessment, and the name, address, and telephone number of the district officer and employee from whom these materials, and a copy of the draft plan, may be obtained.

(Amended by Stats. 1992, Ch. 371, Sec. 6. Effective January 1, 1993.)

40467. Prior to formal submittal of this plan to the state board by the south coast district board, and during the time period specified in subdivision (a) of Section 40463, the south coast district board and the state board shall meet to identify and agree on the portions of the plan which are of prime importance to subsequent state board approval of the plan. The south coast district board and the state board shall work together to resolve any differences concerning these key sections prior to formal submission of the plan to the state board. The south coast district board and the state board shall jointly adopt the procedures by which these plan differences shall be resolved.

(Repealed and added by Stats. 1980, Ch. 1085.)

40468. The state board shall not require as a condition of approval of the plan or subsequent revisions, any indirect source review program or other land use control measures.

(Repealed and added by Stats. 1980, Ch. 1085.)

40469. (a) Following submittal by the south coast district, the state board shall review the plan to determine its adequacy to meet federally mandated primary ambient air quality standards and all other requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and its adequacy to meet the requirements of the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) and to attain state ambient air quality standards through application of the best available control technology, indirect source controls, transportation control measures, and the use of cleaner burning alternative fuels. If the state board determines that portions of the plan meet the requirements of the state and federal acts and are adequate to attain state ambient air quality standards, it shall adopt those portions and submit to the Environmental Protection Agency the portions of the plan required by the federal act within 120 days after receipt of the plan from the south coast district.

(b) If the state board determines that the plan does not meet all the requirements of the state and federal acts, or does not include a deadline for the attainment of the state ambient air quality standards by application of the best available control technology, indirect source controls, transportation control measures, and the use of cleaner burning alternative fuels, the state board shall, prior to amending the plan, convene a committee comprised of two members each of the state board, the Executive Committee of the Southern California Association of Governments, and the south coast district board appointed by the entity they represent to attempt to resolve the differences. If it is necessary to amend the plan, the state board shall do so at a public hearing held pursuant to Section 41652 and shall submit to the Environmental Protection Agency the portions of the plan required by the federal act within 120 days after receipt of the plan from the south coast district. In submitting the plan to the Environmental Protection Agency, the state board shall indicate what changes have been made to the plan.

(c) Within 30 days after the receipt of the plan from the south coast district, the state board shall determine if, with respect to any part of the plan concerning the control of a source of emissions that is within the state board's responsibility under law, it has sufficient information to determine whether the plan, or any part of the plan, meets the applicable requirements of the state and federal acts and is adequate to attain state ambient air quality standards. The state board shall thereupon notify the south coast district, in writing, of the additional information needed to make the determination, and the south coast district shall promptly furnish the information.

(Amended by Stats. 1989, Ch. 998, Sec. 1. Effective September 29, 1989.)

40469.5. Following the adoption of those portions of the plan that comply with the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) and the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and are adequate to attain state ambient air quality standards, the state board shall make all reasonable efforts to assist the south coast district by providing any additional information required to achieve an approvable state implementation plan, including convening joint public workshops on air quality monitoring, modeling, control technologies, and other matters coming within the state board's responsibility under law, and assisting the south coast district in researching and testing transportation control measures.

(Amended by Stats. 1990, Ch. 216, Sec. 76.)

40470. The Southern California Association of Governments shall participate in the joint agency review and conflict resolution processes established by Sections 40463, 40467, and 40469 insofar as the processes relate to plan elements for which the Southern California Association of Governments has plan development responsibility.

(Repealed and added by Stats. 1980, Ch. 1085.)

## Article 6. Officers and Employees

(Heading of Article 6 renumbered from Article 5 by Stats. 1980, Ch. 1085.)

40480. (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.

(d) 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 such functions for the south coast district pursuant to the contract.

(Amended by Stats. 1980, Ch. 1085.)

40481. The executive officer shall be appointed solely on the basis of his 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 such compensation as is determined by the south coast district board.

(Added by Stats. 1976, Ch. 324.)

40482. 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.

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.

(Amended by Stats. 1987, Ch. 1301, Sec. 16.)

40483. The south coast district shall appoint a legal counsel who is admitted to the practice of law in this state.

(Added by Stats. 1976, Ch. 324.)

40484. 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.

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.

(Amended by Stats. 1979, Ch. 239.)

40485. 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).

(Added by Stats. 1976, Ch. 324.)

40486. 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 his time of employment with that district, and his 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 such 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.

Upon transfer to the south coast district, employees shall retain all their accumulated sick leave, vacation, and retirement benefits.

(Added by Stats. 1976, Ch. 324.)

40489. The south coast district may contract for such professional assistance as may be necessary or convenient for the exercise of duties imposed on the south coast district.

(Added by Stats. 1976, Ch. 324.)

Article 7. Variances and Permits

(Heading of Article 7 renumbered from Article 6 by Stats. 1980, Ch. 1085.)

40500. In accordance with the purposes of this chapter as set forth in Section 40402, the south coast district board shall establish rules and regulations for the granting of variances by the hearing board from Section 41701 or from such standards for the discharge of air contaminants as the south coast district may adopt.

The rules and regulations shall include a schedule of fees, which shall be based upon the number of sources the variances are applicable to and the extent the amount of emissions from the sources exceeds the required standards, for the filing of applications for variances. All applicants shall pay the fees required by such rules and regulations, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility. A variance may be granted by the hearing board after a public hearing and upon filing, with appropriate fees, of a variance petition with the hearing board.

(Amended by Stats. 1980, Ch. 1085.)

40500.1. (a) Except as required to comply with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), fees assessed on stationary sources in the south coast district pursuant to Sections 40500 and 40510 shall not exceed, for any fiscal year, the actual costs of district programs pursuant to this article for the immediately preceding fiscal year with an adjustment not greater than the change 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.

(b) Unless specifically authorized by statute, the total amount of all of the fees collected by the south coast district from stationary sources of emissions in the 1995-96 fiscal year, and in each subsequent fiscal year, shall not exceed the level of expenditure in the 1993-94 fiscal year, except that the total fee amount may be adjusted annually by not more than the percentage increase in the California Consumer Price Index, as specified in subdivision (a).

(c) Any new state or federal mandate which is applicable to the south coast district on and after January 1, 1994, shall not be subject to this section. However, each of those mandates shall be separately identified by the state board in its annual report prepared pursuant to Section 42311.1.

(Amended by Stats. 1994, Ch. 712, Sec. 1)

40501. (a) The south coast district board shall appoint a hearing board, or may authorize the board of supervisors of each county included, in whole or in part, within the south coast district to appoint a hearing board in accordance with Article 1 (commencing with Section 40800) of Chapter 8. The hearing board shall have the powers and duties vested in the hearing board of a county district, except as modified in this article. In addition, the hearing board has the same powers and duties with respect to plans for the control of emissions of air contaminants required by a district rule or regulation as it has for permits for authority to construct or operate any article, machine, equipment, or other contrivance required by the south coast district board.

(b) The granting of variances shall be processed by the hearing board in the county in which the variance is applicable unless the applicant and the hearing board agree otherwise, and shall be granted in conformance with the rules and regulations of the south coast district, and, except as modified by this article, with Article 2 (commencing with Section 42350) of Chapter 4 of Part 4, with respect to the granting of variances or the appeal of decisions.

(Amended by Stats. 1991, Ch. 822, Sec. 1. Effective October 14, 1991.)

40501.1. (a) On or before July 1, 1992, the south coast district board shall retire the current hearing board and appoint in its place a new hearing board with the following membership and qualifications:

(1) One member admitted to the practice of law in this state, with two or more years of practice, preferably with litigation experience.

(2) One member who is an engineer with a bachelor's degree from an accredited college in chemical, mechanical, environmental, metallurgical, or petroleum engineering, with two or more years of practical experience, and preferably 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).

(3) One member who is a licensed physician, with two or more years of practical experience, preferably in the fields of epidemiology, physiology, toxicology, or related fields.

(4) Two public members.

(b) In recruiting the hearing board members, the district board shall engage in positive outreach throughout the south coast district. In making these appointments, the district board shall receive recommendations of an advisory committee whose responsibility shall be to review and make recommendations to the appropriate district board committee, which in turn shall finalize recommendations on which the district board shall act in making appointments to the hearing board. The advisory committee shall be composed of one representative appointed by each of the Counties of Los Angeles, Orange, Riverside, and San Bernardino, and the City of Los Angeles. Members of the advisory committee shall be appointed for one-year terms. Recommendations of the advisory committee shall not be binding on the district board.

(c) When the south coast district board first appoints the new hearing board, the attorney and engineer members shall serve terms of two years each and the medical and public members shall serve terms of three years each. Thereafter, each member's term shall be three years.

(d) In the temporary absence of a member and that person's alternate, the hearing board chair, or the chair's designee, may appoint a qualified alternate or any former hearing board member to serve for a period of up to three months plus that period of additional time required to conclude proceedings on which the temporary member deliberated.

(e) The district budget shall have a line item to provide necessary staff and other support dedicated to the hearing board. The services provided by that staff shall include assistance to the public and small business as set forth in subdivision (b) of Section 40448.

(Added by Stats. 1991, Ch. 822, Sec. 3. Effective October 14, 1991.)

40501.3. (a) Notwithstanding any other provision of this division, the south coast district board may authorize, by resolution, the holding of single-member hearings by the chairman of the hearing board and any other member or alternate designated by the hearing board, under the conditions specified in this section.

(b) Single-member hearings shall be authorized, when stipulated to by the executive officer and the petitioner, only for the purpose of hearing petitions for emergency variances pursuant to Section 42359.5, interim variances pursuant to Section 42351, short variances and modifications of a schedule of increments of progress of a duration not to exceed 60 days pursuant to Section 40825, interim authorizations pursuant to Section 42351.5, and modifications of variances pursuant to Section 42356 which do not modify the final compliance date.

(c) The procedure for conducting single-member hearings shall be the same as for hearings before the full board and all legal requirements, including notice requirements, findings, and conditions, shall apply, except that the single member may take action on any matter properly before the member.

(d) A single-member hearing decision may be contested by (1) any person who, in person or through a representative, appeared at the single-member hearing, or (2) any person who informed the air pollution control officer of the nature of his concern prior to the hearing, or (3) any person who for good cause was unable to do either (1) or (2). If a decision is contested under this subdivision, 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.

(Added by renumbering Section 40501.1 by Stats. 1991, Ch. 822, Sec. 2. Effective October 14, 1991.)

40502. 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 40501 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 such time as the south coast district board may prescribe.

(Added by Stats. 1976, Ch. 324.)

40503. (a) The south coast district hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 42352, shall consider, in addition to any other relevant factors, both of the following:

(1) 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.

(2) 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.

(b) (1) As used in this subdivision, "small business" means a business that is independently owned and operated and meets all of the following criteria:

(A) The number of employees is 10 or less.

(B) The total gross annual receipts are five hundred thousand dollars ($500,000) or less.

(C) Emits not more than four tons per year of any nonattainment air contaminant or its precursor.

(2) If the petitioner is a small business, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining whether or not the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining whether or not the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall balance, the impact to the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

(c) Where the petitioner is a governmental agency, public district, or any other governmental or public entity, in determining whether or not an unreasonable burden would be imposed, the hearing board shall consider any effects of requiring immediate compliance on the availability of essential public services.

(Added by Stats. 1992, Ch. 371, Sec. 7. Effective January 1, 1993.)

40504. The south coast district shall work with those persons granted variances to reduce emissions of air contaminants from their operations.

(Amended by Stats. 1987, Ch. 1301, Sec. 18.)

40505. Any form developed by the south coast district for use in filing an application for variance shall contain a notice to small businesses of the availability of assistance in filling out the form, developing compliance schedules, and obtaining low-cost financing for air pollution control equipment to meet its regulations.

(Added by Stats. 1976, Ch. 324.)

40506. (a) In accordance with the purposes of this chapter as set forth in Section 40402, 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.

(Amended by Stats. 1987, Ch. 1301, Sec. 19.)

40506.1. (a) The south coast district shall establish a consolidated permit which 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.

(Added by Stats. 1992, Ch. 371, Sec. 8. Effective January 1, 1993.)

40506.2. 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.

(Added by Stats. 1992, Ch. 371, Sec. 9. Effective January 1, 1993.)

40507. 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.

(Amended by Stats. 1993, Ch. 1166, Sec. 4. Effective January 1, 1994.)

40508. 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.

(Added by Stats. 1976, Ch. 324.)

40509. Any person may petition the south coast district board to hold a public hearing on any application to issue or renew a permit.

(Amended by Stats. 1987, Ch. 1301, Sec. 20.)

40510. (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 39616 and 40440.1, 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 39616 and 40440.1, held by, any source.

(d) Subject to the limits established by this section and Sections 40500.1 and 40523 and the requirements of Section 40510.5, 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.

(Amended by Stats. 1995, Ch. 831, Sec. 1.)

40510.5. In addition to the limits on total fee collections established by Sections 40500.1 and 40523, 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 40510.

(b) The fee increase shall be phased in over a period of at least two years.

(Amended by Stats. 1995, Ch. 831, Sec. 2.)

40510.7. 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.

(Added by Stats. 1990, Ch. 1702, Sec. 8.)

40511. 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 41805.5.

(Added by Stats. 1984, Ch. 1532, Sec. 3.)

40512. (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 40448.5.

(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 40448.5. 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.

(Amended by Stats. 1993, Ch. 956, Sec. 3. Effective January 1, 1994.)

40515. (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 40509.

(c) This section only applies to any facility, machine, or contrivance on which construction began subsequent to May 24, 1985.

(Added by Stats. 1985, Ch. 739, Sec. 1. Effective September 18, 1985.)

40516. (a) 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.

(b) The mechanisms shall include all of the following:

(1) The issuance of consolidated permits, serving the purpose of both the permit to construct and the permit to operate, to expedite the permitting process.

(2) The review and processing of permits on a facility or project basis rather than on an equipment basis to ensure a single point of contact for the applicant and to allow entire projects to be reviewed and evaluated on a single, consolidated schedule.

(3) The establishment of a "fast track" permitting procedure to approve permits in an average of 30 days from receipt of all information requested by the district, except for any of the following facilities:

(A) Facilities that may emit significant amounts of toxic air contaminants.

(B) Facilities that require public notice.

(C) Facilities that require additional review to meet the requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988).

(4) The development and implementation of postconstruction enforcement procedures to ensure that new and modified sources are constructed according to permit requirements.

(5) The establishment of a liaison program in the office of public adviser to assist facilities participating in research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies with preparing permit applications, complying with other district administrative procedures, and identifying and applying for state, federal, district, or other available funds set aside for electric and other clean fuel vehicle-related projects.

(c) For purposes of this section, clean fuels are fuels designated by the state board for use in low, ultralow, or zero emission vehicles and include, but are not limited to, electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, natural gas, and reformulated gasoline.

(Added by Stats. 1992, Ch. 309, Sec. 1. Effective July 23, 1992.)

## Article 8. Financial Provisions

(Heading of Article 8 renumbered from Article 7 by Stats. 1980, Ch. 1085.)

40520. 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.

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.

(Amended by Stats. 1978, Ch. 1025.)

40521. (a) Excluding any increase in apportionments due to increases in the salaries or wages and fringe benefits to the south coast district employees pursuant to subdivision (a) of Section 40488, 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.

(Added by Stats. 1976, Ch. 324.)

40522. 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.

(Added by Stats. 1984, Ch. 804, Sec. 1.)

40522.5. (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 39011.

(2) Emergency incident training necessary for the protection of the community and public safety personnel.

(Added by Stats. 1988, Ch. 1568, Sec. 8.5.)

40523. 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.

(Amended by Stats. 1994, Ch.. 712, Sec. 4)

40524. 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.

(Added by Stats. 1976, Ch. 324.)

40526. The south coast district board may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or for the ensuing year. Such indebtedness shall not exceed the total amount of the estimated revenue for either the current year or the ensuing year.

(Added by Stats. 1979, Ch. 239.)

40527. The south coast district board shall appoint a treasurer, who shall be the custodian of funds of the south coast district and who shall make payments only upon warrants duly and regularly signed by the person authorized by the south coast district board.

The treasurer shall keep an account of all receipts and disbursements.

(Added by Stats. 1981, Ch. 705.)

40528. The south coast district shall appoint a controller who shall be the accounting officer for the south coast district and who shall exercise general supervision over the accounting forms and methods of keeping the accounts of the south coast district.

(Added by Stats. 1981, Ch. 705.)

40529. The south coast district board may, by resolution, cause to be drawn all warrants on the treasurer or checks on a bank against all funds, except funds for debt service, of the south coast district in the treasury or bank for the payment of salaries and expenses of the south coast district.

(Amended by Stats. 1987, Ch. 172, Sec. 1.)

40530. The south coast district board may authorize, in writing, the controller to draw separate payroll warrants or checks in the names of the individual south coast district employees for the respective amounts due each employee so each employee may be furnished with a statement of the amount earned and an itemization of the amounts withheld.

(Amended by Stats. 1987, Ch. 172, Sec. 2.)

40531. (a) Each payroll warrant or check shall show the closing date of the pay period for which it is issued, the date of issue, and a statement that it is drawn by order of the south coast district board. The payroll warrants or checks shall bear the signature of the controller.

(b) The payroll procedure authorized by the south coast district board shall specify the ending date of the pay period and the date of issue for payroll warrants or checks, except that the issue date shall be on or before the 10th calendar day following the end of the pay period. The payroll procedure may provide for salary payments, including salary advances, more frequently than once a month. The payroll procedure may provide for payroll orders authorizing salary payments to individual employees on a continuing basis until the time a notification of changes or adjustments is made.

(Amended by Stats. 1987, Ch. 172, Sec. 3.)

40532. The south coast district board may authorize, in writing, the controller to issue warrants or checks in favor of the persons entitled to payment of all claims chargeable against the south coast district which have been legally examined, allowed, and ordered paid by the south coast district board. The controller shall issue warrants or checks for all those claims against the south coast district.

(Amended by Stats. 1987, Ch. 172, Sec. 4.)

40533. The form of the warrants shall be prescribed by the south coast district board and approved by the treasurer.

(Added by Stats. 1981, Ch. 705.)

40534. Except as specified in Section 40527, no county officer shall be responsible for producing reports, statements, and other data relating to or based upon payments of salaries or claims of the south coast district pursuant to the procedure authorized in this article.

(Added by Stats. 1981, Ch. 705.)

40535. The south coast district shall provide the officials of the Los Angeles County Employees Retirement Association and the San Bernardino County Employees Retirement Association, in the form prescribed by them, the data necessary to make retirement reports and maintain records required by law.

(Added by Stats. 1981, Ch. 705.)

40536. All warrants, checks, vouchers, and supporting documents shall be kept by the south coast district if the procedure authorized under this article is implemented.

(Amended by Stats. 1987, Ch. 172, Sec. 5.)

40537. Notwithstanding Section 27005 of the Government Code, or any other section requiring warrants or orders for warrants to be signed by the county auditor, if the south coast district treasurer is a county treasurer, the county treasurer shall pay the warrant if money is available and a person authorized to sign the warrant has signed it. The county treasurer may charge the south coast district for the cost of fiscal services he or she renders.

(Added by Stats. 1981, Ch. 705.)

40538. The controller shall execute an official bond in an amount fixed by the south coast district board conditioned upon the faithful performances of his or her duties.

A county auditor shall not be liable under the terms of his or her bond or otherwise for a warrant issued pursuant to this article.

This section shall not be applied so as to impair the obligation of any contract in the bond of the officers in effect on the effective date of this section.

(Added by Stats. 1981, Ch. 705.)

40539. If the auditor of the south coast district is a county auditor, he shall be provided, upon his request, a monthly listing of the warrants issued under this section reporting the warrant number, the date and amount of the warrant, the name of the payee and the fund on which the warrant is drawn and a statement showing for the current fiscal year to date, for each required expenditure classification, the amount budgeted, actual expenditures, encumbrances, and unencumbered balances.

The form of the listing and statement shall be as prescribed by the south coast district board and approved by the county auditor.

(Added by Stats. 1981, Ch. 705.)

40540. Upon adoption of a resolution by the south coast district board to implement the 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.

(Added by Stats. 1981, Ch. 705.)

## CHAPTER 6. GENERAL POWERS AND DUTIES

(Chapter 6 added by Stats. 1975, Ch. 957.)

40700. A district is a body corporate and politic and a public agency of the state.

(Added by Stats. 1975, Ch. 957.)

40701. 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, such 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 air quality standards have been adopted, or their precursor pollutants, so that the full spectrum of emission sources can be addressed equitably pursuant to Section 40910.

(Amended by Stats. 1990, Ch. 1034, Sec. 1.)

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a), shall be provided by an annual per capita assessment on those cities which have agreed

to have a member on the district board for purposes of Section 40100, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on 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 valley district.

(Amended by Stats. 1994, Ch. 260, Sec. 6.)

40702. A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions.

No order, rule, or regulation of any district shall, however, specify the design of equipment, type of construction, or particular method to be used in reducing the release of air contaminants from railroad locomotives.

(Added by Stats. 1975, Ch. 957.)

40703. In adopting any regulation, the district shall consider, pursuant to Section 40922, 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.

(Added by Stats. 1990, Ch. 1457, Sec. 3.)

40704. A district board shall file with the state board, within 30 days any rule or regulation the district board adopts, amends, or repeals.

(Added by Stats. 1975, Ch. 957.)

40704.5. (a) Notwithstanding any other provision of law, on and after July 1, 1994, 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.

(e) If a district fails to comply with subdivisions (a) and (b), the composition of the governing board shall be determined as follows:

(1) 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.

(2) 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.

(3) 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.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), 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.

(f) This section does 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.

(Added by Stats. 1993, Ch. 961, Sec. 8. Effective January 1, 1994. Operative July 1, 1994, by Sec. 10 of Ch. 961.)

40705. 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.

(Added by Stats. 1975, Ch. 957.)

40706. 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.

(Added by Stats. 1975, Ch. 957.)

40707. 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.

(Added by Stats. 1975, Ch. 957.)

40708. 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.

(Amended by Stats. 1986, Ch. 1019, Sec. 34.)

40709. (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 Chapter 1 (commencing with Section 41500) 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).

(Amended by Stats. 1992, Ch. 612, Sec. 2. Effective January 1, 1993.)

40709.5. Any district which has established a system pursuant to Section 40709 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 40709 shall provide sufficient information, as determined by the district, to perform the cost analysis. The information shall be a public record.

(Amended by Stats. 1992, Ch. 612, Sec. 3. Effective January 1, 1993.)

40709.6. (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 non attainment status than the downwind district pursuant to Chapter 10 (commencing with Section 40910).

(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 39610 of the Health and Safety Code.

(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. In adopting a resolution pursuant to this subdivision, each governing board shall consider the impact of the offset on air quality, public health, and the regional economy

(Amended by Stats. 1994, Ch. 539, Sec. 1.)

40709.7. (a) For the purposes of this section, "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.).

(b) For the purposes of this section, "base reuse authority" means the authority recognized pursuant to Section 65050 of the Government Code, as added by Assembly Bill 3755 of the 1993-94 Regular Session. If Assembly Bill 3755 is not enacted or does not recognize the authority, "base reuse authority" means the entity which shall be designated for purposes of this section by the California Defense Conversion Council established pursuant to Section 15346.3 of the Government Code.

(c) 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 by June 1, 1995, or within 180 days of the reduction in emissions, whichever occurs later, if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

(d) Not later than July 1, 1995, or six months from the date that the base closure or realignment decision becomes final, whichever occurs last, the district shall request and attempt to obtain all records maintained by a military base that are necessary to quantify emission reductions, including, but not limited to, records on the operation of any equipment which emits air contaminants, provided that the district either waives the payment of direct costs to obtain the records or enters into an agreement with the appropriate entity of the federal

government or the base reuse authority for the payment of the direct costs to obtain the records. The district shall maintain these records.

(e)(1) A base reuse authority may apply to a district, under the emission reductions banking system established pursuant to Section 40709, for any reductions in emissions related to the termination or reduction of operations at the military base under its jurisdiction.

(2) The district shall quantify and bank the emission reductions for a closing or realigning military base within 180 days of a request by a base reuse authority and payment of any applicable fees, if one of the following events has occurred:

(A) The federal government agrees in writing to allow the base reuse authority to apply for and receive the emission reduction credits.

(B) The time period for the federal government to apply for emission reduction credits pursuant to subdivision (c) has expired and the federal government has not applied for the credits.

(C) The base reuse authority has, pursuant to other legal means, obtained the authority to acquire the emission reduction credits.

(f) The district shall permanently retire the emission reduction credits obtained pursuant to this section by 5 percent to improve air quality.

(g) The baseline for quantifying emission reductions shall be the date that the base closure or realignment decision becomes final. The two-year period ending on the date that the base closure or realignment decision was made shall be used to determine average emissions from the military base unless this two-year period is not representative of normal operations, in which case an alternative, consecutive, two-year period which is within the five years prior to the baseline date may be used, as determined by the district.

(h) After registration, certification, or other approval of the emission reductions by a district air pollution control officer pursuant to subdivision (a) of Section 40709 and this section, the base reuse authority shall be deemed the owner of the emissions source for purposes of the issuance of a certificate pursuant to Section 40710. Upon receipt of the certificate, or other approval, the base reuse authority may use, sell, or otherwise dispose of the emission reduction credits as determined by the base reuse authority, provided that the credits may only be used for base reuse within the jurisdiction of the district.

(Added by Stats. 1994, Ch. 1162, Sec. 1)

40710. Upon receipt of approval and pursuant to Section 40709, 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 such reductions shall continue to be banked until they have been used according to district regulations. The owner or owners of such 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.

(Amended by Stats. 1980, Ch. 692.)

40711. (a) A banking system established pursuant to Section 40709 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 subdivision (b), the district shall promptly register all interests in approved emission reductions and issue a certificate evidencing such 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.

(b) 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 such transfer or a memorandum describing the nature of such 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.

(Amended by Stats. 1980, Ch. 692.)

40712. If there is more than one owner of the source of the approved reductions in emission of air contaminants, initial title to such approved reductions shall be deemed held by such co-owners in the same manner as they hold title to the source of such reductions at the time such reductions are approved by the district air pollution control officer.

(Added by Stats. 1979, Ch. 1111.)

40713. Any system established pursuant to Section 40709 shall contain procedures for the approval of reductions in emissions of air contaminants comparable to district permit procedures established pursuant to Section 42300, 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 40709, such 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.

(Added by Stats. 1979, Ch. 1111.)

40714.5. (a) The Legislature hereby finds and declares all of the following:

(1) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(2) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(3) An increased supply of emission reduction credits is beneficial to local economies.

(4) The purpose of this section 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.

(b) (1) With respect to any emission reduction that occurred since January 1, 1991, or occurs at any time in the future 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 new source review permitting of other stationary sources, or according to any applicable requirement of a marketable trading credit program.

(2) Any credits issued by a district pursuant to this subdivision shall meet all of the requirements of state and federal law, including, all of the following:

(A) That the credits do 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.

(B) That the credits do 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.

(C) That the credits do not, in any manner, result in double-counting of emission reductions.

(D) That but not limited to, the credits be permanent, enforceable, quantifiable, and surplus.

(3) Until January 1, 1999, this subdivision applies only to sources within the boundaries of the south coast district or in Ventura County. On and after January 1, 1999, this subdivision applies statewide.

(Added by Stats. 1995, Ch. 856, Sec. 1.)

40715. (a) 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 39668. 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 subdivision (c) of Section 39668. Districts shall not be required to expend any district funds to establish and implement the supplemental toxic air contaminant monitoring program, as determined by Section 39668, that are in excess of the amount of state funds provided by the state board for that purpose.

(b) It is the intent of the Legislature that this 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.

(Added by Stats. 1987, Ch. 1219, Sec. 2.)

40716. (a) In carrying out its responsibilities pursuant to this division with respect to the attainment of state ambient air quality standards, a district may adopt and implement regulations to accomplish both of the following:

(1) Reduce or mitigate emissions from indirect and areawide sources of air pollution.

(2) Encourage or require the use of ridesharing, vanpooling, flexible work hours, or other measures which reduce the number or length of vehicle trips.

(b) Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.

(Added by Stats. 1988, Ch. 1568, Sec. 9.)

40717. (a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.

(b) A district which has entered into an agreement with a council of governments or a regional agency to jointly develop a plan for transportation control measures shall develop the plan in accordance with all of the following:

(1) The district shall establish the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards.

(2) The council of governments or regional agency, in cooperation with the district and any other person or entity authorized by the council of governments or regional agency, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established under paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and procedures for monitoring the effectiveness of and compliance with the measures in the plan. The council of governments or regional agency shall submit the plan to the district for its adoption according to a reasonable schedule developed by the district in consultation with the council of governments or regional agency.

(3) Upon receipt of the plan submitted by the council of governments or regional agency, the district shall review and approve or disapprove the plan in the following manner:

(A) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2).

(B) If the district determines that the plan does not meet the criteria established pursuant to paragraph (1), the district shall return the plan to the council of governments or regional agency with comments which identify the reasons the plan does not meet the criteria established pursuant to paragraph (1). Within 45 days, the council of governments or regional agency shall review the district's comments, revise the plan to meet the criteria established under paragraph (1), and resubmit the plan to the district. The district shall review and approve the revised plan if it meets the criteria established by the district pursuant to paragraph (1) and has been resubmitted to the district within 45 days.

(C) If the plan is not submitted pursuant to the schedule established under paragraph (2), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this subparagraph does not meet the criteria established under paragraph (1), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(4) Whenever the district revises its establishment of the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards, the plan shall be revised, adopted, and enforced in accordance with paragraphs (1), (2), and (3).

(c) Subdivision (b) shall not apply to the Sacramento district. Chapter 10 (commencing with Section 40950) shall govern preparation and enforcement of that plan for transportation control measures for the Sacramento district.

(d) Notwithstanding subdivision (b), a district located in a county of the third class shall develop a plan for transportation control measures as follows:

(1) The district, in consultation with the council of governments, shall develop, approve, and adopt criteria under which the plan shall be developed.

(2) The council of governments shall develop and adopt a plan for transportation control measures which meets the criteria established by the district, and shall submit the plan to the district for its review and adoption according to a reasonable schedule developed by the district in consultation with the council of governments.

(3) Upon receipt of the plan submitted by the council of governments, the district shall review and approve the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2). If the district determines that the plan does not meet the criteria established pursuant to paragraph (1) or if the plan is not submitted pursuant to the schedule established under paragraph (2), the district shall develop and adopt an alternative plan for transportation control measures.

(e) A district may delegate any function with respect to the implementation of transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the district an implementation plan that provides adequate resources to adopt and enforce the measures, and the district approves the plan.

(2) The local agency adopts and implements measures at least as stringent as those in the district plan.

(3) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(4) 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.

(f) A district may revoke an authority granted under this section if it determines that the performance of the local agency is in violation of this section or otherwise inadequate to implement the district plan.

(g) For purposes of this section, "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.

(h) Nothing in this section 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.

(Amended by Stats. 1993, Ch. 1029, Sec. 2. Effective January 1, 1994.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40717.1. (a) At the time that a district adopts a rule or regulation that imposes a transportation control measure, trip reduction measure, or other mobile source emission requirement on employers, the district, consistent with guidelines adopted by the state board pursuant to Sections 40916 and 40919, shall establish a process under which, within 90 days of receiving a request from an employer, the district shall approve or disapprove an employer-established program that produces the equivalent emission reductions as would be achieved under the district rule or regulation through the use of remote sensing or other methods which identify gross polluters or other high-emitting vehicles and which results in the repair of those vehicles.

(b) An employer-established program approved by a district pursuant to this section shall not impose any new emission reduction requirement on employers beyond those requirements established under current law, but instead shall provide cost-effective alternative methods to meet existing requirements.

(c) Nothing in this section shall require a district to implement a program that would result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation requirements.

(Added by Stats. 1994, Ch. 538, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40717.5. (a) Any district which proposes to adopt or amend a rule or regulation pursuant to Section 40716 or 40717, 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:

(1) 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 paragraph, 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.

(2) 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.

(3) Take into account the feasibility of implementing the proposed rule or regulation.

(4) Pursuant to Section 40922, consider the cost effectiveness of the proposed rule or regulation.

(5) 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 40716 or 40717.

(b) A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to subdivision (a). 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 40454 or subdivision (b) of Section 40927, an indirect source which elects to be regulated only by a district pursuant to this subdivision 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.

(c) Any district which proposes to adopt or amend a rule or regulation which establishes employer-based trip reduction requirements shall, prior to the adoption or amendment of the rule or regulation, in addition to complying with subdivision (a), do all of the following:

(1) Ensure that the proposed rule or regulation consists of not more than the following:

(A) Provisions for the submittal of trip reduction plans by employers.

(B) Provisions for the review, approval, or disapproval of the plan by the district.

(C) Provisions for the implementation and enforcement of the plan.

(D) Provisions which ensure that an employer will not be found to be in violation of the rule or regulation for failure to achieve an average vehicle occupancy target if the employer has otherwise complied with the requirements of the rule or regulation.

(2) Hold a public hearing and adopt guidelines, which shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for determining the content of trip reduction plans which comply with this section.

(3) Authorize indirect sources subject to the rule or regulation to use alternative strategies to employer-based trip reduction programs, including, but not limited to, financial and market-based incentives, vehicle scrappage programs, and fleet conversion, which provide equivalent or greater vehicular emission reductions and which are not otherwise required to be achieved by statute or regulation.

(4) Encourage or require the use of ridesharing, vanpooling, flexible work hours, or other measures that reduce the number or length of vehicle trips.

(d) The state board, in consultation with the public, the regulated community, and other interested parties, shall develop, and adopt in a public hearing, within six months of the enactment of this section, and periodically update, a calculation methodology which shall be used by districts to determine emissions equivalency pursuant to paragraph (3) of subdivision (c). In developing the formula, the state board shall take into account and consider any suggestions made by those parties.

(e) (1) Nothing in this section 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.

(2) Nothing in this section provides or transfers new authority over land use to a district.

(Repealed and Added by Stats. 1994, Ch. 924, Secs. 2 and 3. Amended by Stats. 1995, Ch. 949, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40717.6. (a) 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.

(b) Notwithstanding subdivision (a), nothing in this section 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 13 (commencing with Section 21000) of the Public Resources Code).

(3) Enacting requirements on retailers as a result of a voter imposed growth management initiative.

(c) Nothing in this section shall be construed as a limitation on the land use authority of cities and counties.

(Added by Stats. 1995, Ch. 368, Sec. 1.)

40718. (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.

(c) The maps produced pursuant to subdivision (a) 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) 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.

(d) The state board shall publish its criteria for preparing the maps pursuant to this section 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.

(e) 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.

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.

(f) The state board shall review annually, and as appropriate revise, the maps required by this section, using the criteria developed pursuant to subdivision (c).

(g) Nothing in this section 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.

(Added by Stats. 1988, Ch. 1225, Sec. 1.)

40719. (a) Except as provided in subdivision (d), 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.

(d) Notwithstanding subdivisions (a) to (c), inclusive, 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 subdivisions (a) to (c), inclusive, 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.

(Added by renumbering Section 40716 (as added by Stats. 1988, Ch. 160) by Stats. 1990, Ch. 216, Sec. 77.)

40720. (a) 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 section. Except as otherwise provided in this section, 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 section. This section does not apply to appropriations or other authorizations made to carry out a labor contract entered into by the district board.

(b) 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:

(1) All anticipated expenditures.

(2) All anticipated sources of income.

(3) An estimate of proposed revenue changes needed to meet anticipated changes in expenditures.

(4) Provisions for reserves for the fiscal year.

(c) The district shall publish, and mail to any person upon request, a budget summary and shall make available for inspection the complete text, and any supporting documents, of the district's preliminary budget, together with schedules of fees proposed to be adopted for the ensuing fiscal year. The preliminary budget and fee schedules shall be completed as soon as an accurate revenue projection for the ensuing fiscal year can be prepared, but in no event later than April 1 of each year. Notice of the availability of the budget summary, preliminary budget, and fee schedules shall be published in each county in the applicable district in accordance with Section 6061 of the Government Code and a copy shall be mailed to every person who filed a written request with the district. The district shall conduct at least one public workshop on the preliminary budget and fee schedules.

(d) Prior to May 15 of each year, the district board shall meet to consider and adopt a final proposed operating budget. At the meeting, prior to May 15, the preliminary budget may be revised to reflect any changed circumstances occurring after completion of the preliminary budget, but the total expenditure level for any single, major object of expenditure authorized in the final proposed operating budget as adopted shall not be increased by more than 10 percent of the total expenditure level proposed in the preliminary budget. At the meeting prior to May 15, the final fee schedules shall be adopted by the district board by rule or regulation.

(e) The district shall submit its final proposed operating budget to the Legislature and the state board annually by May 15.

(f) The appropriate policy and fiscal committees of the Legislature may hold informational hearings on the final proposed operating budget submitted by the district pursuant to subdivision (e), and on any comments and recommendations made by the state

board pursuant to subdivision (g), and may make comments and formal recommendations to the district for revision of the budget.

(g) The state board shall review the final proposed operating budget submitted by the district pursuant to subdivision (e) and may make comments and formal recommendations to the district for revision of the budget. The state board shall also transmit any such comments or recommendations to the Legislature.

(h) If any formal recommendation of the state board or a committee of the Legislature proposes a budgetary change, the district may, in adopting a final district budget, take any action, within the district's statutory authority, that may be required to effect the recommended change, including reducing any applicable fee or directing any excess funds to a reserve account within the district budget. Any such funds in the reserve account may be expended as determined by the district board. Any state board or legislative committee recommendation that proposes a budgetary change may be incorporated into the district budget only if statutory changes to authorize the change, if any are necessary, have been enacted.

(i) The final proposed operating budget submitted by the district pursuant to subdivision (e) shall become operative on July 1 unless, prior to July 1, the Legislature enacts an urgency statute amending or supplementing the proposed district budget, or the district adopts a revised final budget pursuant to subdivision (g).

(j) During the course of the fiscal year, the final district budget may be further revised by the district by the adoption of one or more supplements to the budget. Notice of a proposal to adopt a supplement to the district budget shall be given by the district not less than 30 days prior to the meeting of the district board at which the supplement will be considered and shall be published in each county in the district as applicable in accordance with Section 6061 of the Government Code. The period of notice shall commence on the first day of publication. The district shall make available to the public the complete text of the supplement and any supporting documents. (k) This section 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.

(Repealed and Added by Stats. 1994, Ch. 712, Sec. 5)

40721. (a) As used in this section, "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.

(b) Not later than February 1 of each year, each district described in subdivision (a) of Section 40720 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 section.

(c)(1) 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.

(2) 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.

(3) 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 paragraph (2). Those legislative committees may make comments and recommendations on the modifications or revisions to the three-year budget forecast. The legislative committees shall submit any such comments and recommendations to the district and the state board.

(d) 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.

(e) On or before April 1 of each year, the south coast district, as part of the summary required by subdivision (a) of Section 40452, shall report, and any other district that is subject to this section 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.

(f) This section 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.

(Repealed and Added by Stats. 1994, Ch. 712, Sec. 6)

## CHAPTER 6.5. REGULATIONS OF AIR POLLUTION CONTROL AND AIR QUALITY MANAGEMENT BOARDS

(Chapter 6.5 added by Stats. 1986, Ch. 758, Sec. 2.)

40725. (a) A district board shall not adopt, amend, or repeal any rule or regulation without first holding a public hearing thereon.

(b) Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or regulation shall be given not less than 30 days prior thereto to the state board, which notice shall include a copy of the rule or regulation proposed to be adopted, amended, or repealed, as the case may be, and a summary description of the effect of the proposal, and by publication in the district pursuant to Section 6061 of the Government Code. In addition, in the case of a district which 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 hearings.

(c) Notice published pursuant to subdivision (b) shall invite written public comment and indicate the name, address, and telephone number of the district officer to whom these comments are to be addressed, and the date by which comments are to be received.

(Added by Stats. 1986, Ch. 758, Sec. 2.)

40726. The public hearing held pursuant to Section 40725 shall provide for the submission of statements, arguments, or contentions, either oral, written, or both. A district board may continue or postpone the hearing from time to time, to a time and place as it shall

determine. Following consideration of all relevant matter presented, a district board may adopt, amend, or repeal a rule or regulation, unless the board makes changes in the text originally made available to the public that are so substantial as to significantly affect the meaning of the proposed rule or regulation. The board shall not take action on a changed text before its next regular meeting, and shall allow further statements, arguments, and contentions, either written, oral, or both, to be made and considered prior to taking final action.

(Added by Stats. 1986, Ch. 758, Sec. 2.)

40727. (a) Before adopting, amending, or repealing a rule or regulation, the district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, as defined in this section, based upon relevant information presented at the hearing.

(b ) As used in this section, "necessity" means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.

(c) As used in this section, "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.

(d) As used in this section, "clarity" means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

(e) As used in this section, "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.

(f) As used in this section, "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.

(g) As used in this section, "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.

(Amended by Stats. 1991, Ch. 794, Sec. 7.)

40728. 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.

(Added by Stats. 1986, Ch. 758, Sec. 2.)

40728.5. (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation. The district board shall actively consider the socioeconomic impact of regulations and make a good faith effort to minimize adverse socioeconomic impacts, as defined below. This section does not apply to the adoption, amendment, or repeal of any rule or regulation that results in any less restrictive emissions limit if the action does not interfere with the district's adopted plan to attain ambient air quality standards, or does not result in any significant increase in emissions.

(b) For purposes of this section, "socioeconomic impact" means the following:

(1) The type of industries or business, including small business, affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry or business, including small business, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

(c) This section does not apply to any district with a population of less than 500,000 persons.

(d) Upon the approval by a majority vote of the district board, a county district is not required to include the analysis specified in paragraphs (2) and (4) of subdivision (b) in any assessment of socioeconomic impacts for any rule or regulation that only adopts a requirement that is substantially similar to, or is required by, a state or federal statute, regulation, or applicable formal guidance document. Examples of state or federal formal guidance documents include, but are not limited to, federal Control Techniques Guidelines, state and federal reasonably available control technology determinations, state best available retrofit control technology determinations, and state air toxic control measures.

(Added by Stats. 1991, Ch. 794, Sec. 8. Amended by Stats. 1995, Ch. 855, Sec. 1.)

40730. (a) A district may establish programs to assist the public, government agencies, and businesses in complying with district regulations.

(b) For the purposes of a program established pursuant to subdivision (a), a district may provide to any person any factual nonconfidential information regarding any product or service that is in compliance with district regulations, and regarding the air emissions associated with a particular use of that product or service. The provision of that information, upon request or otherwise, shall not include any recommendation to any person with respect to any product or service.

(Added by Stats. 1994, Ch. 247, Sec. 1.)

## CHAPTER 7. AIR POLLUTION CONTROL OFFICER

(Chapter 7 added by Stats. 1975, Ch. 957.)

40750. Each district board shall appoint an air pollution control officer for the district.

(Added by Stats. 1975, Ch. 957.)

40751. Subject to the direction of the district board, the air pollution control officer shall appoint district personnel.
(Added by Stats. 1975, Ch. 957.)

40752. The air pollution control officer shall observe and enforce all of the following:
(a) This part and Part 4 (commencing with Section 41500).
(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 42301 and 42301.10.
(Amended by Stats. 1994, Ch. 727, Sec. 2.)

40753. 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.

In observing and enforcing such 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 such action, or who refuses to stop a vehicle under his control upon the order, of the air pollution control officer is guilty of a misdemeanor.
(Added by Stats. 1975, Ch. 957.)

## CHAPTER 8. HEARING BOARDS
(Chapter 8 added by Stats. 1975, Ch. 957.)

### Article 1. General Provisions
(Article 1 added by Stats. 1975, Ch. 957.)

40800. There is continued in existence and shall be, in each district, one or more hearing boards consisting of five members each, as specified in Section 40801, appointed by the district board.

The district board may also appoint one alternate for each member. The alternate shall have the same qualifications, specified in Section 40801, as the member for whom such person is the alternate. The alternate may serve only in the absence of the member, and for the same term as the member.

An alternate shall not hold any of the single member hearings authorized by subdivision (c) of Section 40824, subdivision (c) of Section 40825, Section 42351.5, or Section 42359.5.
(Amended by Stats. 1979, Ch. 239.)

40800.5. 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.

(Added by Stats. 1988, Ch. 1412, Sec. 5.)

40801. 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 as such 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.

(Added by Stats. 1975, Ch. 957.)

40802. 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 40801 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.

(Amended by Stats. 1990, Ch. 150, Sec. 1.)

40803. 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.

(Added by Stats. 1975, Ch. 957.)

40804. The terms of the members of a hearing board shall be three years.

In the case of the initial members of a hearing board appointed subsequent to January 1, 1974, two shall serve for a term of one year, two for a term of two years, and one for a term of three years. (Added by Stats. 1975, Ch. 957.)

40805. Within 30 days after a regional district begins to function and exercise its powers, the regional district board shall appoint a hearing board.

(Added by Stats. 1975, Ch. 957.)

40806. A hearing board shall select a chairman from its members.

(Added by Stats. 1975, Ch. 957.)

40807. 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.

Where a district has two or more hearing boards, the rules shall be the same for all the hearing boards.

(Amended by Stats. 1976, Ch. 1063.)

40808. Except as provided for in Section 42359, 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.

(Added by Stats. 1975, Ch. 957.)

40809. (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.

(Added by Stats. 1986, Ch. 28, Sec. 1.)

Article 2. Procedure
(Article 2 added by Stats. 1975, Ch. 957.)

40820. Except as provided in Section 40501.1, subdivision (c) of Section 40824, subdivision (c) of Section 40825, Section 42351.5, and Section 42359.5, three members of the hearing board shall constitute a quorum, and no action shall be taken by the hearing board except in the presence of a quorum and upon the affirmative vote of a majority of the members of the hearing board.

(Repealed and added by Stats. 1988, Ch. 1412, Sec. 7.)

40821. A hearing board, with not fewer than four members present, may, in its discretion, within 30 days of the effective date of the decision, rehear any matter.

(Amended by Stats. 1988, Ch. 1412, Sec. 8.)

40822. Any hearing conducted by a hearing board shall be held in a location readily accessible to the public.

(Added by Stats. 1975, Ch. 957.)

40823. (a) Except as otherwise provided in Sections 40824, 40825, and 40826, a hearing board shall serve a notice of the time and place of a hearing upon the district air pollution

control officer, and upon the applicant or permittee affected, not less than 10 days prior to such hearing.

(b) Except as otherwise provided in Sections 40824, 40825, and 40826, the hearing board shall also send notice of the hearing to every person who requests such notice and obtain publication of such notice in at least one daily newspaper of general circulation within the district. The notice shall state the time and place of the hearing and such other information as may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting.

(Added by Stats. 1975, Ch. 957.)

40824. In case of a hearing to consider an application for an interim variance, as authorized under Section 42351:

(a) The hearing board shall serve reasonable notice of the time and place of the hearing upon the district air pollution control officer and upon the applicant.

(b) Subdivision (b) of Section 40823 shall not apply.

(c) In districts with a population of less than 750,000, the chairperson of the hearing board, or any other member of the hearing board designated by the board, may hear an application for an interim variance. 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.

(Amended by Stats. 1987, Ch. 362, Sec. 1.)

40825. In case of a hearing to consider an application for a variance, or a series of variances, to be in effect for a period of not more than 90 days, or an application for modification of a schedule of increments of progress:

(a) The hearing board shall serve a notice of the time and place of a hearing to grant such a variance or modification upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 10 days prior to such hearing.

(b) Subdivision (b) of Section 40823 shall not apply.

(c) In districts with a population of less than 750,000, the chairman of the hearing board, or any other member of the hearing board designated by the board, may hear such an 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.

(Amended by Stats. 1987, Ch. 362, Sec. 2.)

40826. In case of a hearing to consider an application for a variance, other than an interim variance or a 90-day variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements for the hearing shall be as follows:

(a) The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer, all other districts within the air basin, the state

board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(b) The hearing board shall also publish a notice of the hearing in at least one daily newspaper of general circulation in the district, and shall send the notice to every person who requests the notice, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(c) The notice shall state the time and place of the hearing; the time when, commencing not less than 30 days, or, under subdivision (d), not less than 15 days, prior to the hearing, and place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection; and any other information that may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting.

(d) In districts with a population of 750,000 or less, the hearing board shall serve, publish, and send the notice pursuant to subdivisions (a) and (b) not less than 15 days prior to the hearing.

(Amended by Stats. 1992, Ch. 1096, Sec. 2. Effective September 29, 1992.)

40827. A hearing board shall serve a notice of the time and place of a hearing either by personal service or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve such person by publication of notice in the district pursuant to Section 6061 of the Government Code.

(Added by Stats. 1975, Ch. 957.)

40828. (a) A hearing board shall allow interested members of the public a reasonable opportunity to testify with regards to the matter under consideration, and shall consider such testimony in making its decision.

(b) The hearing board shall prepare a record of the witnesses and the testimony of each witness at the hearing. Such a record may be a tape recording. The record shall be retained by the hearing board while the variance is in effect, or for the period of one year, whichever is longer. (Added by Stats. 1975, Ch. 957.)

40829. Any member of a hearing board may administer oaths in any hearing in which he participates as a member of the hearing board.

(Added by Stats. 1975, Ch. 957.)

40830. At any hearing, a hearing board shall require any witness to be sworn before testifying.

(Added by Stats. 1975, Ch. 957.)

Article 3. Subpoenas
(Article 3 added by Stats. 1975, Ch. 957.)

40840. Whenever the members of a hearing board conducting any hearing deem it necessary to examine any person as a witness at the hearing, the chairman of the hearing board shall issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession, or under his control, material to the hearing.

(Added by Stats. 1975, Ch. 957.)

40841. A subpoena to appear before a hearing board shall be served in the same manner as a subpoena in a civil action.

(Added by Stats. 1975, Ch. 957.)

40842. 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, he 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.

(Added by Stats. 1975, Ch. 957.)

40843. Upon receipt of a report submitted pursuant to Section 40842, the superior court shall proceed as specified in Section 11455.20 of the Government Code.

(Added by Stats. 1975, Ch. 957. Amended by Stats. 1995, Ch. 938, Sec. 71.5.)

40844. 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.

(Added by Stats. 1975, Ch. 957.)

## Article 4. Decisions

(Article 4 added by Stats. 1975, Ch. 957.)

40860. 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.

(Added by Stats. 1975, Ch. 957.)

40861. 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.

(Added by Stats. 1975, Ch. 957.)

40862. The decision of a hearing board shall include the reasons for the decision.

(Added by Stats. 1975, Ch. 957.)

40863. The decision shall become effective upon filing, unless the hearing board orders otherwise.

(Amended by Stats. 1976, Ch. 1113.)

40864. (a) Judicial review may be had of a decision of a hearing board by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure. Except as otherwise provided in this section, any such petition shall be filed within 30 days after the decision has been mailed pursuant to Section 40860. The right to petition shall not be affected by the failure to seek a rehearing before the hearing board.

(b) The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the hearing board and shall be delivered to the petitioner within 30 days after a request therefor by him, upon payment of the fee specified in Section 69950 of the Government Code for the transcript, the cost of preparation of other portions of the record, and for certification thereof.

(c) The complete record includes the pleadings, all notices and orders issued by the hearing board, any proposed decision by the hearing board, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence, and any other papers in the case.

(d) Where the petitioner, within 10 days after the last day on which a rehearing can be ordered, requests the hearing board to prepare all or any part of the record, the time within which a petition may be filed shall be extended until five days after its delivery to him. The hearing board may file with the court the original of any document in the record in lieu of a copy thereof.

(Amended by Stats. 1976, Ch. 1113.)

40865. In any proceeding pursuant to Section 40864, the court shall receive in evidence any order, rule, or regulation of the district board, any transcript of the proceedings before the hearing board, and such further evidence as the court, in its discretion, deems proper.

(Added by Stats. 1975, Ch. 957.)

## CHAPTER 9. BASINWIDE AIR POLLUTION CONTROL COUNCILS

(Chapter 9 added by Stats. 1975, Ch. 957.)

40900. There is continued in existence and shall be, in each air basin which is comprised of all or part of two or more districts, a basinwide air pollution control council.

The council shall consist of an elected official of, and designated by, the district board of each district which is included, in whole or in part, within the air basin.

Any officer or employee of a district within the air basin may act in an advisory capacity for and on behalf of the basinwide air pollution control council.

(Amended by Stats. 1981, Ch. 172.)

## CHAPTER 10. DISTRICT PLANS TO ATTAIN STATE AMBIENT AIR QUALITY STANDARDS

(Chapter 10 added by Stats. 1988, Ch. 1568, Sec. 11.)

40910. 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.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

40911. (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 39610, shall prepare and submit its plan to the state board not later than June 30, 1991.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70600, 70601

40912. The plans for districts responsible for or affected by air pollutant transport shall provide for attainment and maintenance of the state and federal standards in both the upwind and downwind district. Each upwind district's plan shall contain, at a minimum, all mitigation requirements established by the state board pursuant to subdivision (b) of Section 39610. 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.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70600, 70601

40913. (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.

(Amended by Stats. 1994, Ch. 1162, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70600, 70601

40914. (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, averaged every consecutive three-year period, unless an alternative measure of progress is approved pursuant to Section 39607.

(b) A district may use an alternative emission reduction strategy which achieves less than an average of 5 percent per year reduction in districtwide emissions if the district demonstrates to the state board, and the state board concurs in, either of the following:

(1) That the alternative emission reduction strategy is equal to or more effective than districtwide emission reductions in improving air quality.

(2) That despite the inclusion of every feasible measure in the plan, and an expeditious adoption schedule, the district is unable to achieve at least a 5 percent annual reduction in districtwide emissions.

(c) For purposes of this section and Section 41503.1, reductions in emissions shall be calculated with respect to the actual level of emissions which exist in each district during 1987, as determined by the state board. All reductions in emissions occurring after December 31, 1987, including, but not limited to, reductions in emissions resulting from measures adopted prior to December 31, 1987, shall be included in this calculation.

(Amended by Stats. 1989, Ch. 559, Sec. 3.)

40915. Each district plan shall contain contingency measures to be implemented upon a finding by the state board, pursuant to Section 41503.3, that the district is failing to achieve interim goals or maintain adequate progress toward attainment. Any regulations necessary to implement the contingency measures shall be adopted by the district within 180 days following the state board's determination of inadequate progress.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

40916. (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 which requests assistance, the state board shall give priority to those districts which 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 to be used by the districts for the purpose of establishing equivalent emission reduction targets for alternative strategies to vehicle trip reduction transportation control measures that are required pursuant to Sections 40918, 40919, 40920, and 40920.5

(Amended by Stats. 1994, Ch. 430, Sec. 1)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40917. 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.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

40918. Each district with moderate air pollution shall, to the extent necessary to meet the requirements of the plan developed pursuant to Section 40913, include the following measures in its attainment plan:

(a) A permitting 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.

(b) 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.

(c) 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.

(d) Provisions to develop areawide source and indirect source control programs.

(e) 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 40924.

(f) Provisions for public education programs to promote actions to reduce emissions from transportation and areawide sources.

(g) Any district with moderate air pollution that has not met the criteria for a nonattainment-transitional designation pursuant to Section 40925.5 by December 31, 1997, shall comply with Section 40919.

(Amended by Stats. 1992, Ch. 945, Sec. 5.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40919. Each district with serious air pollution shall, to the extent necessary to meet the requirements of the plan adopted pursuant to Section 40913, include the following measures in its attainment plan:

(a) All measures required for moderate nonattainment areas, as specified in Section 40918.

(b) A permitting program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all permitted 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.

(c) The use of the best available retrofit control technology, as defined in Section 40406, for all existing permitted stationary sources.

(d) Transportation control measures to substantially reduce the rate of increase in passenger vehicle trips and miles traveled per trip, which achieve an average during weekday commute hours of 1.4 or more persons per passenger vehicle by 1999, and no net increase in vehicle emissions after 1997, if the district is located within, or contains all, or part of, a standard metropolitan statistical area with a population of 250,000 or more based upon the 1990 census. The state board shall establish guidelines for calculating average vehicle occupancy, after consultation with the Department of Transportation and other affected groups. The guidelines shall include methods for crediting telecommuting and other measures that concurrently reduce persons per vehicle and vehicle trips.

(e) Measures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.

(f) In implementing subdivisions (d) and (e), a district shall endeavor to provide employers and businesses subject to regulation with regulatory and market-based incentives to facilitate compliance and with the opportunity to develop and demonstrate alternative strategies to achieve equivalent emission reductions that are not otherwise required by statute, rule, or regulation.

(g) Any district with serious air pollution that has not met the criteria for a moderate classification by December 31, 1997, shall comply with Section 40920.

(Amended by Stats. 1992, Ch. 945, Sec. 6.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40920. Each district with severe air pollution shall, to the extent necessary to meet the requirements of Section 40913, include the following measures in its attainment plan:

(a) All measures required for moderate and serious nonattainment areas, as specified in Sections 40918 and 40919.

(b) A permitting program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all permitted new or modified stationary sources which emit, or have the potential to emit, 10 tons or more per year.

(c) Transportation control measures to achieve an average during weekday commute hours of 1.5 or more persons per passenger vehicle by 1999, and no net increase in vehicle emissions after 1997, if the district is located within, or contains all or part of, a standard metropolitan statistical area with a population of 250,000 or more based on the 1990 census. The state board shall establish guidelines for calculating average vehicle occupancy, after consultation with the Department of Transportation and other affected groups. The guidelines shall include methods for crediting telecommuting and other measures that concurrently reduce persons per vehicle and vehicle trips.

(d) Measures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.

(e) Measures sufficient to reduce overall population exposure to ambient pollutant levels in excess of the standard by at least 25 percent by December 31, 1994, 40 percent by December 31, 1997, and 50 percent by December 31, 2000, based on average per capita exposure and the severity of the exposure, so as to minimize health impacts, using the average level of exposure experienced during 1986 through 1988 as the baseline.

(Amended by Stats. 1992, Ch. 945, Sec. 7.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40920.5. Each district with extreme air pollution shall, to the extent necessary to meet the requirements of the plan developed pursuant to Section 40913, include the following measures in its attainment plan:

(a) All measures required for moderate, serious, and severe areas.

(b) A permitting program designed to achieve no net increase in emissions from new or modified stationary sources of nonattainment pollutants or their precursors.

(c) Any other feasible controls that can be implemented, or for which implementation can begin, within 10 years of the adoption date of the most recent air quality plan.

(Added by Stats. 1992, Ch. 945, Sec. 8.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Sections 2330, 2331, 2332

40920.6. (a) Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914, districts shall, in addition to other requirements of this division, do all of the following:

(1) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.

(2) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph "cost-effectiveness" means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.

(3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1). To determine the incremental cost-effectiveness under this paragraph, 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.

(4) Consider, and review in a public meeting, all of the following:

(A) 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 39610.

(B) The cost-effectiveness of each potential control option as assessed pursuant to paragraph (2).

(C) The incremental cost-effectiveness between the potential control options as calculated pursuant to paragraph (3).

(5) 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.

(b) A district may establish its own best available retrofit control technology requirement based upon consideration of the factors specified in subdivision (a) and Section 40406 if the requirement is consistent with this chapter, other state law, and federal law, including, but not limited to, the applicable state implementation plan.

(c) A district shall allow the retirement of marketable emission reduction credits under a program which complies with all of the requirements of Section 39616, or emission reduction credits which meet all of the requirements of state and federal law, including, but not limited to, the requirements that those emission reduction credits be permanent, enforceable, quantifiable, and surplus, in lieu of any requirement for best available retrofit control technology, if the credit also complies with all district rules and regulations affecting those credits.

(Added by Stats. 1995, Ch. 837, Sec. 3.)

40921. For the purposes of Sections 40918, 40919, 40920, and 40920.5, 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.

(Amended by Stats. 1992, Ch. 945, Sec. 9.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70600, 70601

40921.5. (a) For purposes of classifying ozone nonattainment areas pursuant to Sections 40918, 40919, 40920, and 40920.5, 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 permillion, 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 40918 and 40919, the terms moderate and serious shall be defined as follows:

(1) Moderate .....greater than 9.0 to 12.7 partsper 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 39607. 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.

(Amended by Stats. 1993, Ch. 1028, Sec. 6.)

40922. (a) Each plan prepared pursuant to this chapter shall include an assessment of the cost effectiveness of available and proposed control measures and shall contain a list which ranks the control measures from the least cost-effective to the most cost-effective.

(b) In developing an adoption and implementation schedule for a specific control measure, the district shall consider the relative cost effectiveness of the measure, as determined under subdivision (a), as well as other factors including, but not limited to, technological feasibility, total emission reduction potential, the rate of reduction, public acceptability, and enforceability.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

40923. (a) Upon the state board's approval of a district's attainment plan, and each January 1 thereafter, the district shall publish a list of regulatory measures scheduled or tentatively scheduled for consideration during the following year. The district shall not propose a regulatory measure for consideration during any year that is not contained in the district's most recently published list of proposed regulatory measures unless earlier consideration is necessary to satisfy federal requirements, to abate a substantial endangerment to public health or welfare, or to comply with Section 39666 or 40915.

(b) Subdivision (a) does not apply to any modification of existing rules which the district finds and determines is necessary to preserve the original intent of the rules, as stated upon their adoption.

(Amended by Stats. 1992, Ch. 945, Sec. 10.)

40924. (a) On or before December 31 of each year following the state board's approval of a district's attainment plan, the district shall prepare and submit a report to the state board summarizing its progress in meeting the schedules for developing, adopting, or implementing the air pollution control measures contained in the district's plan.

(b) On or before December 31, 1994, and once every three years thereafter, the district shall assess the overall effectiveness of its air quality program, the quantity of emission reductions actually achieved in the preceding three-year period, and the rate of population and industrial- and vehicular- related emissions growth experienced in the district and projected for the future, and shall contrast all of the preceding to the assumptions and goals contained in the district's attainment plan. The district shall also assess the extent of air quality improvement achieved during the preceding three years, based upon ambient pollutant measurements, best available modeling techniques, and air quality indicators identified by the state board for that purpose under subdivision (f) of Section 39607. Upon completion of each triennial analysis, the district shall adopt its findings at a public hearing and report its findings to the state board.

(c) In addition to the requirements established under subdivision (b), on or before December 31, 1994, and once every three years thereafter, the district shall report to the state board, and make available to the public, its progress toward attainment of state ambient air standards as measured by two or more standards of measurement, as determined by the state board. Standards of measurement may include, but are not limited to, population exposure, ozone and carbon monoxide design value, and pollutant concentration hours.

(Amended by Stats. 1992, Ch. 945, Sec. 11.)

40925. (a) Every district shall review and revise its attainment plan at least once every three years, beginning in 1994, to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 40914, and to incorporate new data or projections into the plan.

(b) A district may modify the emission reduction strategy or alternative measure of progress for subsequent years based on this assessment if the district demonstrates to the state board, and the state board finds, that the modified strategy is at least as effective in improving air quality as the strategy which is being replaced. In making that demonstration and finding, the district and the state board shall take into account the effects in the district of district and state programs to reduce emissions from motor vehicles, including, in a district conducting the pilot program established pursuant to subdivision (b) of Section 43705, the smog index program and programs to impose disincentives on motor vehicle owners for excess pollution miles and to subsidize the retrofit or replacement of high-emission motor vehicles. A district conducting the pilot program may require employers and indirect sources to conduct surveys periodically to obtain data on driving decisions to support that demonstration.

(c) Each district which cannot demonstrate attainment by December 31, 2000, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997. The revised plan shall include an interim air quality improvement goal or an equivalent emission reduction strategy, subject to review and approval by the state board, to be achieved in the subsequent five-year period.

(d) A district that elects to conduct the pilot program established pursuant to subdivision (b) of Section 43705 shall not receive federal emission reduction credits for the pilot program unless the Environmental Protection Agency finds that the pilot program may be, dependent on the pilot program's results, a full or partial fulfillment of a federally mandated transportation control measure.

(e) A district that elects to participate in the pilot program established pursuant to subdivision (b) of Section 43705 shall only do so upon a majority vote of the district governing board.

(f) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 8. )

40925. (a) Every district shall review and revise its attainment plan at least once every three years, beginning in 1994, to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 40914, and to incorporate new data or projections into the plan.

(b) A district may modify the emission reduction strategy or alternative measure of progress for subsequent years based on this assessment if the district demonstrates to the state board, and the state board finds, that the modified strategy is at least as effective in improving air quality as the strategy which is being replaced.

(c) Each district which cannot demonstrate attainment by December 31, 2000, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997. The revised plan shall include an interim air quality improvement goal or an equivalent emission reduction strategy, subject to review and approval by the state board, to be achieved in the subsequent five-year period.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 9.)

40925.5. (a) A district which is nonattainment for the state ozone standard shall be designated "nonattainment- transitional" by operation of law if, during a single calendar year, the state standard is not exceeded more than three times at any monitoring location within the air basin.

(b) Any district which is designated nonattainment- transitional under subdivision (a) shall review its plan for attaining the state ozone standard and shall determine whether the stationary source control measures scheduled for adoption within the next three years by the district are needed to accomplish expeditious attainment or to maintain the state standard following the projected attainment date. In making this determination, the district shall consider air quality trends, the effect of the state's motor vehicle control program, including turnover of the vehicle fleet, the impact of measures previously adopted by the district which are in the process of being implemented, and other significant factors influencing emissions trends.

(c) If a nonattainment-transitional district determines that one or more of the stationary source control measures scheduled for adoption within the next three years are no longer necessary to accomplish expeditious attainment or to maintain the state standard, the district shall shift those measures from the rulemaking calendar to the contingency category.

(d) If a nonattainment-transitional district determines that delaying the adoption of one or more stationary source control measures scheduled for rulemaking will not retard the achievement of the state ozone standard, it may delay adoption of that measure for not more than three years.

(e) Subdivisions (c) and (d) shall not apply to any stationary source control measures required by Section 39610. In addition, subdivisions (c) and (d) shall be suspended at any time that the district ceases to qualify for a nonattainment- transitional designation under subdivision (a).

(f) Actions of any district pursuant to this section are subject to the review and approval of the state board. The state board shall not disapprove district actions pursuant to

this section unless it finds that the actions will delay expeditious attainment of the state ozone standard.

(Added by Stats. 1992, Ch. 945, Sec. 12.5.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70303, 70303.5

40926. 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.

(Added by Stats. 1988, Ch. 1568, Sec. 11.)

40927. (a) The Legislature hereby finds and declares all of the following:

(1) In most nonattainment regions of the state, well over half of the air pollution is created from vehicular sources, including excessive amounts of vehicle trips.

(2) Nonetheless, the current economic circumstances in the state make it difficult and costly for small-business employers which employ less than one hundred employees to comply with employer-based trip reduction requirements proposed to be adopted in some regions of the state.

(3) It is the intent of the Legislature that, except as provided in subdivision (b), districts continue to adopt all feasible and cost-effective strategies, which do not displace jobs or businesses, to reduce vehicle trips to meet state and federal ambient air standards by the earliest practicable date.

(b) A district shall not require any employer with fewer than 100 employees at a single worksite to implement a trip reduction program or to submit a trip reduction plan.

(c) This section does not apply to a district which meets all of the following criteria:

(1) The district board, as of January 1, 1993, consisted solely of a county board of supervisors.

(2) The district has, prior to January 1, 1994, adopted a nonattainment plan which includes a proposed employer- based trip reduction rule or regulation which affects employers of fewer than one hundred employees at a single worksite.

(3) The district has made specific findings at a public hearing that the trip reduction rule or regulation is essential to ensure effective implementation of transportation control measures to improve air quality, and that failure to adopt the rule or regulation would result in a 50-percent, or greater, loss in the district's potential to reduce vehicle trips under its adopted nonattainment plan.

(4) The district adopted its rule or regulation on or before January 1, 1994.

(5) The district nonattainment plan has been approved by the state board.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

(Added by Stats. 1993, Ch. 563, Sec. 2. Repealed as of January 1, 1997, by its own provisions.)

40927. (a) Not later than December 31, 1995, or 180 days from the operative date of this section, whichever is later, and at the first triennial review and revision of any plan for an ozone non attainment area, the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District, in consultation with the regional transportation planning agency in whose jurisdiction the district is located, and after public notice and comment, shall do all of the following:

(1) Estimate for the district and for the calendar year following the operative date of this section, the total emissions of ozone precursor chemicals from motor vehicles in the district, vehicle miles traveled, and average pollution miles per vehicle.

(2) In consultation with the regional planning agency for the area determine the target pollution miles for each motor vehicle in the district for each of the next four calendar years. For the first of those four calendar years, the target pollution miles per vehicle for a 12-month period shall be set at a level so that 90 percent of the vehicles have target pollution miles below the threshold.

(3) Reduce the total target pollution miles for all motor vehicles combined in the district by 5 percent per year until the district attains the state ambient air quality standard for ozone, or until the conclusion of the pilot program established pursuant to subdivision (b) of Section 43705.

(b) The district shall update and project the target pollution miles for each motor vehicle for an additional three years at each subsequent triennial review of a plan. The determinations shall be published and shall be provided to the bureau.

(c) 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.

(Added by Stats. 1994, Ch. 1192, Sec. 10.)

40928. (a) For purposes of this section, the following terms have the following meaning:

(1) "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.

(2) "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.

(b)(1) Notwithstanding Section 40717, or any other provision of this chapter, 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 Section 40717, and which is acting pursuant to that delegated authority, shall do either of the following:

(A) 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.

(B) 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.

(2) 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 subdivision (c).

(c) A district or regional or local agency may impose requirements on any event center, without permitting that event center to implement alternative strategies to achieve equivalent emissions reductions, for any of the following purposes:

(1) Traffic management before and after events.

(2) Parking management and vehicle flow within parking areas controlled by the event center.

(3) Reducing the amount of vehicle idling before and after events.

(4) Implementing marketing or education programs designed to educate attendees on mass transit or other alternative transportation methods for transit to and from the event center.

(5) Achieving a designated average vehicle ridership for vehicles which carry persons who are traveling to or from their employment at an event center.

(6) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle miles traveled by event center attendees.

(Added by Stats. 1994, Ch. 425, Sec. 1.)

40929. (a) Notwithstanding Section 40454, 40457, 40717, 40717.1, or 40717.5, or any other provision of law, a district, congestion management agency, as defined in subdivision (b) of Section 65088.1 of the Government Code, or any other public agency shall not require an employer to implement an employee trip reduction program unless the program is expressly required by federal law and the elimination of the program will result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation purposes.

(b) Nothing in this section shall preclude a public agency from regulating indirect sources in any manner that is not specifically prohibited by this section, where otherwise authorized by law.

(Added by Stats. 1995, Ch. 607, Sec. 1.)

## CHAPTER 11. SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

(Heading of Chapter 11 renumbered from Chapter 10 (as added by Stats. 1988, Ch. 1541) by Stats. 1990, Ch. 216, Sec. 79.)

### Article 1. General Provisions

(Article 1 added by Stats. 1988, Ch. 1541, Sec. 3.)

40950. The Legislature finds and declares as follows:

(a) The Sacramento metropolitan region is a geographical and meteorological entity not reflected by political boundaries.

(b) The region has serious air pollution problems caused by the operation of more than 1,000,000 vehicles in the region, numerous stationary sources of air pollution, and atmospheric and meteorological conditions which are conducive to the formation of a variety of air pollutants.

(c) Despite the implementation of improved emission controls on motor vehicles and stationary sources, rapid population growth and increases in vehicle miles traveled in the region are likely to result in worsening air pollution in future years.

(d) The state and federal governments have adopted ambient air quality standards in order to protect public health, and it is in the public interest that those standards be attained as expeditiously as possible.

(e) In order to achieve and maintain air quality standards and protect public health, a metropolitan air quality improvement strategy is required to be implemented in order to provide the maximum achievable reduction in emissions from existing sources and to provide for the maximum feasible reduction or mitigation of emissions resulting from population growth, increased vehicle mileage, and other new sources of emissions.

(f) In order to successfully achieve improvements in air quality throughout the region, there is a need for greater coordination between land use and transportation planning decisions and the achievement of air quality goals.

(g) In order to successfully develop and implement a comprehensive program for the attainment and maintenance of state and federal ambient air quality standards in the region, the air quality management district in the region must be delegated additional authority and responsibility from the state, particularly with respect to reducing motor vehicle emissions and expanding the use of cleaner burning fuels.

(h) In order to successfully implement a coordinated air quality plan for the region, the responsibilities of local and regional authorities with respect to the implementation of air pollution control strategies, clean fuels programs, and motor vehicle use reduction measures should be fully integrated into an agency with countywide or regional authority, as determined by representatives of the affected county and city governments.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40951. As used in this chapter, "best available control technology" has the meaning provided in Section 40405.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40952. As used in this chapter, "best available retrofit control technology" has the meaning given in Section 40406.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40953. As used in this chapter, "strategy" means the Sacramento district air quality improvement strategy.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

Article 2. Creation of the Sacramento Metropolitan Air Quality Management District
(Article 2 added by Stats. 1988, Ch. 1541, Sec. 3.)

40960. There is hereby created the Sacramento Metropolitan Air Quality Management District.

The boundaries of the Sacramento district shall include all of the County of Sacramento and, pursuant to Section 40963, if the board of supervisors of the County of Placer requests to become part of the Sacramento district, shall also include all or a portion of that county, as specified in the resolution of the board of supervisors requesting inclusion in the Sacramento district.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40961. The Sacramento district is the local agency within the boundaries of the Sacramento district with the primary responsibility for the development, implementation, 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.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40962. 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.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

40963. (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.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

Article 3. Governing Body
(Article 3 added by Stats. 1988, Ch. 1541, Sec. 3.)

40980. (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 40963, 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) On and after July 1, 1994, 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 county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

(f) (1) If the district fails to comply with subdivision (c), one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors. The number of those members shall be determined as provided in paragraph (2) of subdivision (c) and the members shall be selected pursuant to subdivision (e).

(2) For purposes of paragraph (1), if any number which is not a whole number results from the application of the term "one-third" 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.

(Amended by Stats. 1993, Ch. 961, Sec. 9.)

40981. The Sacramento district board shall elect a chairperson every two years from its membership. No member shall serve more than two consecutive terms as chairperson.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

Article 4. General Powers and Duties
(Article 4 added by Stats. 1988, Ch. 1541, Sec. 3.)

41010. (a) The Sacramento district board shall adopt rules and regulations that are not in conflict with state and federal laws and rules and regulations that reflect the best available technological and administrative practices. Upon adoption and approval of the air quality improvement strategy, the rules and regulations shall be amended, if necessary, to conform to the strategy.

(b) The rules and regulations adopted pursuant to subdivision (a) shall require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

(c) The rules and regulations of the Sacramento County Air Pollution Control District shall remain in effect and shall be enforced by the Sacramento district, until superseded or amended by the Sacramento district board.

(d) In adopting any regulation, the Sacramento district board shall comply with Section 40703.

(Amended by Stats. 1990, Ch. 1457, Sec. 4.)

41011. (a) After a public hearing, the Sacramento district may adopt regulations to require owners or operators of public or commercial motor vehicle fleets, or both, including those operated by the state, to periodically submit information to the Sacramento district on the number and type of vehicles operated within the Sacramento district, including, but not limited to, the amount and type of fuel used, for use by the Sacramento district in ascertaining the contribution of these vehicles to air pollution emissions within the Sacramento district.

(b) After a public hearing, the Sacramento 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. Rules and regulations adopted under this section shall be applicable to vehicles operated by the state only when funds necessary to pay the costs to the state to comply with those rules and regulations have been appropriated for that purpose.

(c) For purposes of this section, "motor vehicle fleet"means 15 or more vehicles under common ownership or operation.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41012. In consultation with the Department of Transportation and other appropriate state and local public agencies, after a public hearing, the Sacramento district may adopt regulations to encourage ridesharing, van pooling, peak shifting, or flexible work hours, in order to improve air quality within the Sacramento district.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41013. The Sacramento district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41014. The Sacramento district may conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation emission control measures.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41015. 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 such land use to the Sacramento district.
(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41016. 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.
(Added by Stats. 1988, Ch. 1541, Sec. 3.)

Article 5. Sacramento Metropolitan Air Quality Coordinating Council
(Article 5 added by Stats. 1988, Ch. 1541, Sec. 3.)

41040. The Sacramento district may, pursuant to agreement with one or more local agencies within the district, establish the Sacramento Metropolitan Air Quality Coordinating Council to provide for coordinated air quality planning within the Sacramento district.
(Added by Stats. 1988, Ch. 1541, Sec. 3.)

Article 6. Air Quality Improvement Strategy
(Article 6 added by Stats. 1988, Ch. 1541, Sec. 3.)

41060. Not later than January 1, 1990, the Sacramento district shall adopt an air quality improvement strategy to reduce public exposure to air pollution and toxic air contaminants and to achieve and maintain state and federal ambient air quality standards by the earliest practicable date.
(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41061. The strategy shall provide for the enforcement of regulations adopted pursuant to Section 41011 or 41013 and shall provide for the implementation and enforcement of the transportation control measures included in the state implementation plan, as required by state and federal law.
(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41062. (a) The strategy shall include a clean fuels program to provide, to the extent feasible and necessary to carry out the purposes of this chapter, a schedule for the introduction of cleaner burning alternative fuels and low-emission motor vehicles or control measures providing equivalent emission reductions within the district, a program to encourage the establishment of the necessary infrastructure to support the introduction of cleaner burning

fuels, and demonstration programs and incentives to encourage the purchase of clean fueled vehicles and the use of cleaner burning fuels.

(b) In developing the clean fuels program, the district shall consider projects utilizing methanol fuel; fuel cells; liquid petroleum gas; natural gas, including compressed natural gas; combination fuels; synthetic fuels; electricity, including electric vehicles; ethanol; and other cleaner burning fuels.

(c) Nothing in this section authorizes the Sacramento district to require the sale or supply of any specific motor vehicle fuel.

(Amended by Stats. 1990, Ch. 216, Sec. 80.)

41063. The strategy shall provide for the implementation of all feasible measures to improve transportation system management and reduce or mitigate increases in motor vehicle use within the Sacramento Valley region.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41064. In preparing, evaluating, and amending the strategy, the district may contract with the Sacramento Area Council of Governments or with any private organization or consultant for the preparation of analyses of the availability and effectiveness of transportation controls and motor vehicle use reduction measures.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41065. The strategy shall include a public education program designed to achieve effective implementation of all feasible transportation system management measures.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41066. The strategy shall be consistent with any nonattainment area plan required by state or federal law, or any requirement imposed on a local agency with respect to the preparation or administration of a plan.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

## Article 7. Financial Provisions

(Article 7 added by Stats. 1988, Ch. 1541, Sec. 3.)

41080. (a) The Sacramento district may adopt a schedule of fees, levied on permitted and other sources of air pollution, subject to regulation by the Sacramento district, to recover its costs of implementing this chapter.

(b) The Sacramento district may contract with a county or counties, in which the Sacramento 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 or counties provided to the Sacramento district prior to July 1, 1994.

(Amended by Stats. 1994, Ch. 260, Sec. 7.)

41081. (a) Subject to Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, or with the approval of the board of supervisors of each county included, in whole or in part, within the Sacramento district, the Sacramento district board may adopt a surcharge on the motor vehicle registration fees applicable to all motor vehicles registered in those counties within the Sacramento district whose boards of supervisors have adopted a resolution approving the surcharge. The surcharge shall be collected by the Department of Motor Vehicles and, after deducting the department's administrative costs, the remaining funds shall be transferred to the Sacramento district. Prior to the adoption of any surcharge pursuant to this subdivision, the district board shall make a finding that any funds allocated to the district as a result of the adoption of a county transportation sales and use tax are insufficient to carry out the purposes of this chapter.

(b) The surcharge shall not exceed two dollars ($2) for each motor vehicle whose registration expires on or after December 31, 1989, and prior to December 31, 1990. For each motor vehicle whose registration expires on or after December 31 1990, the surcharge shall not exceed four dollars ($4).

(c) After consulting with the Department of Motor Vehicles on the feasibility thereof, the Sacramento district board may provide, in the surcharge adopted pursuant to subdivision (a), to exempt from all or part of the surcharge any category of low-emission motor vehicle.

(d) Funds received by the Sacramento district pursuant to this section shall be used to implement the strategy with respect to the reduction in emissions from vehicular sources, including, but not limited to, a clean fuels program and motor vehicle use reduction measures. Not more than 5 percent of the funds collected pursuant to this section shall be used by the district for administrative expenses.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

41082. Pursuant to Section 41081, 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 assistance or other incentives to encourage the sale and distribution of cleaner burning fuels, and financial assistance or other incentives for the purchase and operation of ridesharing vehicles.

(Added by Stats. 1988, Ch. 1541, Sec. 3.)

## CHAPTER 13. MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT

(Chapter 13 added by Stats. 1992, Ch. 642, Sec. 4.)

### Article 1. General Provisions

(Article 1 added by Stats. 1992, Ch. 642, Sec. 4.)

41200. 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 with respect to reducing motor vehicle emissions and expanding the use of cleaner burning alternative fuels.

(Added by Stats. 1992, Ch. 642, Sec. 4. Amended by Stats. 1995, Ch. 113, Sec. 2.)

## Article 2. Creation of the Mojave Desert Air Quality Management District
(Article 2 added by Stats. 1992, Ch. 642, Sec. 4.)

41210. (a) There is hereby created the Mojave Desert Air Quality Management District.

(b) The boundaries of the Mojave Desert district shall include all of the County of San Bernardino which is not included within the boundaries of the south coast district, and any other area included pursuant to subdivision (c).

(c) The Mojave Desert district board may, by resolution, include in the Mojave Desert district any other area upon receipt of a resolution from the district which currently includes the area requesting inclusion and specifying the area to be included. All territory included within the Mojave Desert district shall be contiguous.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41211. The Mojave Desert district is the local agency with the primary responsibility for the development, implementation, monitoring, and enforcement of air pollution control strategies and motor vehicle use reduction measures, and shall represent the citizens of the Mojave Desert district in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality within the Mojave Desert district.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41212. The Mojave Desert district shall commence operations on July 1, 1993, and on that date shall assume the authority, duties, and employees of the San Bernardino County Air Pollution Control District which shall cease to exist as of that date.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

## Article 3. Governing Body

(Article 3 added by Stats. 1992, Ch. 642, Sec. 4.)

41220. (a) The Mojave Desert district shall be governed by a district board composed of the following members:

(1) The members of the San Bernardino County Board of Supervisors who represent the first and third supervisorial districts of the county, or who, after reapportionment affecting the county supervisorial districts, represent any supervisorial district of the county that lies in whole or in part within the Mojave Desert district.

(2) One member of the city council of each incorporated city within the Mojave Desert district, who shall be appointed by the city council.

(3) 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.

(4) If a district submits a resolution of inclusion pursuant to subdivision (c) of Section 41210, 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.

(5) 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 (3), or upon making an agreement to appoint a member from an area included in the Mojave Desert district pursuant to paragraph (4), 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) As used in this section, "city" means any city, town, or municipal corporation incorporated under the laws of this state.

(Amended by Stats. 1994, Ch. 263, Sec. 1.)

41221. 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.

(Amended by Stats. 1994, Ch. 263, Sec. 2.)

41222. 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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41223. 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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

Article 4. General Powers and Duties
(Article 4 added by Stats. 1992, Ch. 642, Sec. 4.)

41230. (a) The Mojave Desert district board shall adopt rules and regulations that are not in conflict with state and federal laws, rules, and regulations and that reflect the best available technological and administrative practices.

(b) The rules and regulations shall require the level of control necessary to achieve the emission reduction requirements of the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988), pursuant to Sections 40913, 40914, and 40915.

(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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41231. (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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41232. The Mojave Desert district shall conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation control measures.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41233. The Mojave Desert district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources pursuant to Section 40716.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

Article 5. Financial Provisions
(Article 5 added by Stats. 1992, Ch. 642, Sec. 4.)

41240. 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 Section 42311 and Chapter 7 (commencing with Section 44220) of Part 5.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41241. Pursuant to Section 41231, 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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41242. On July 1, 1993, the Mojave Desert district shall succeed to all funds, property, and obligations of the San Bernardino County Air Pollution Control District.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41243. The Mojave Desert district board may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or for the ensuing year. That indebtedness shall not exceed the total amount of the estimated revenue for either the current year or the ensuing year.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41244. Upon adoption of a resolution by the Mojave Desert district board to implement the procedure to issue warrants pursuant to Sections 41245 to 41256, inclusive, 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 Mojave Desert district board determines that the accounting controls of the Mojave Desert district have become inadequate, it may revoke its authorization effective at the beginning of the next fiscal year.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41245. The Mojave Desert district board shall appoint a treasurer, who may be a county treasurer, who shall be the custodian of funds of the Mojave Desert district and who shall make payments only upon warrants duly and regularly signed by the person authorized by the Mojave Desert district board. The treasurer shall keep an account of all receipts and disbursements.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41246. The Mojave Desert district shall appoint a controller, who may be a county auditor, who shall be the accounting officer for the Mojave Desert district and who shall exercise general supervision over the accounting forms and methods of keeping the accounts of the Mojave Desert district.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41247. The Mojave Desert district board may, by resolution, cause to be drawn all warrants on the treasurer against all funds, except funds for debt service, of the Mojave Desert district in the treasury for the payment of salaries and expenses of the Mojave Desert district.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41248. The Mojave Desert district board may authorize, in writing, the controller to draw separate payroll warrants in the names of the individual Mojave Desert district employees for the respective amounts due each employee so that each employee may be furnished with a statement of the amount earned and an itemization of the amounts withheld.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41249. The Mojave Desert district board may authorize, in writing, the controller to issue warrants in favor of the persons entitled to payment of all claims chargeable against the Mojave Desert district which have been legally examined, allowed, and ordered paid by the Mojave Desert district board. The controller shall issue warrants on the treasurer for all those claims against the Mojave Desert district.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41250. The form of the warrants shall be prescribed by the Mojave Desert district board and approved by the treasurer.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41251. Except as specified in this article, no county officer shall be responsible for producing reports, statements, and other data relating to or based upon payments of salaries or claims of the Mojave Desert district pursuant to this article.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41252. The Mojave Desert district shall provide the officials of the San Bernardino County Employees Retirement Association, in the form prescribed by them, the data necessary to make retirement reports and maintain records required by law.
(Added by Stats. 1992, Ch. 642, Sec. 4.)

41253. All warrants, vouchers, and supporting documents shall be kept by the Mojave Desert district.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41254. Notwithstanding Section 27005 of the Government Code, or any other section requiring warrants or orders for warrants to be signed by the county auditor, if the Mojave Desert district treasurer is a county treasurer, the county treasurer shall pay the warrant if money is available and a person authorized to sign the warrant has signed it. The county treasurer may charge the Mojave Desert district for the cost of fiscal services he or she renders.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41255. The controller shall execute an official bond in an amount fixed by the Mojave Desert district board conditioned upon the faithful performance of his or her duties. A county auditor shall not be liable under the terms of his or her bond or otherwise for a warrant issued pursuant to this article. This section shall not be applied so as to impair the obligation of any contract in the bond of the officers in effect on July 1, 1993.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41256. If the auditor of the Mojave Desert district is a county auditor, he or she shall be provided, upon his or her request, a monthly listing of the warrants issued under this section reporting the warrant number, the date and amount of the warrant, the name of the payee, the name of the fund on which the warrant is drawn, and a statement showing for the current fiscal year to date, for each required expenditure classification, the amount budgeted, actual expenditures, encumbrances, and unencumbered balances. The form of the listing and statement shall be as prescribed by the Mojave Desert district board and approved by the county auditor.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

Article 6. Officers and Employees
(Article 6 added by Stats. 1992, Ch. 642, Sec. 4.)

41260. (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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41261. On July 1, 1993, the APCO, designated deputies, and other exempt employees of the San Bernardino County Air Pollution Control District shall be employed by the Mojave Desert district and shall serve in the same capacity for the Mojave Desert district. The APCO

and designated deputies shall serve at the pleasure of the Mojave Desert district board, and shall receive the compensation that is determined by the Mojave Desert district board.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41262. The Mojave Desert district shall appoint a legal counsel who is admitted to the practice of law in this state.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41263. In the appointment of persons to the Mojave Desert district staff, the Mojave Desert district board shall employ the personnel of the San Bernardino County Air Pollution Control District. On July 1, 1993, all employees of the San Bernardino County Air Pollution District shall be employed by the Mojave Desert district and shall be entitled to similar positions and duties on the Mojave Desert district staff. Except as otherwise provided in this article, they shall have permanent merit system employee status. A period of time as specified by the San Bernardino County Board of Supervisors shall be allowed to employees of the San Bernardino County Air Pollution Control District to transfer to other appropriate county employment before July 1, 1993.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41264. 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).

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41265. For the purpose of, but not limited to, retirement benefits, salary rates, seniority, and all fringe benefits, all time of employment with the San Bernardino County Air Pollution Control District immediately prior to employment with the Mojave Desert district, and any time of employment immediately prior thereto with the county, a county district, or both, whose authority, functions, and responsibilities have been assumed by the San Bernardino County Air Pollution Control District, shall be considered time of employment with the Mojave Desert district. Upon transfer to the Mojave Desert district, employees shall retain all their accumulated sick leave, vacation, and retirement benefits.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41266. If the civil service commission, or body performing the functions thereof, in the 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.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

41267. The Mojave Desert district may contract for any professional assistance that may be necessary or convenient for the exercise of its powers and duties.

(Added by Stats. 1992, Ch. 642, Sec. 4.)

PART 4. NONVEHICULAR AIR POLLUTION CONTROL
(Part 4 added by Stats. 1975, Ch. 957.)
CHAPTER 1. GENERAL PROVISIONS
(Chapter 1 added by Stats. 1975, Ch. 957.)

41500. 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 39606, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 40911, and the revised plans submitted pursuant to Section 40925, 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 40704 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 Section 40717 or 40717.2 to determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

(Amended by Stats. 1992, Ch. 945, Sec. 13.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 66008, 86000

41500.5. Notwithstanding any other provision of law, any plan required by the provisions of this title 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.

(Added by Stats. 1978, Ch. 934.)

Reference: Subchapter 1.6, Local APCD Regulations

41502. (a) Before taking any action pursuant to Section 41503, 41504, 41505, or 41652, 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 41652, 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 shall, in the action taken, include a statement of the facts which prevented the state board from giving a 45-day written notice.

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

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

(d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state board acting pursuant to Section 39515, or to his delegates acting pursuant to Section 39516, with respect to any action taken pursuant to any section enumerated in subdivision (a).

(Amended by Stats. 1981, Ch. 564.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 60002
Subchapter 1.6, Local APCD Regulations

41503. (a) Within 12 months of receiving each district's attainment plan developed pursuant to Section 40911, the state board shall determine whether the attainment date specified in the plan represents the earliest practicable date and whether the measures contained in the plan are sufficient to achieve and maintain state ambient air quality standards.

(b) The state board shall conduct its review to include the plans of every district in the air basin, and shall determine whether the combination of measures in all the plans is sufficient to achieve and maintain state ambient air quality standards throughout the air basin. The state board shall hold at least one public hearing in each affected air basin prior to reaching a final determination of the sufficiency of the plans. The state board shall require control measures for the same emission sources to be uniform throughout the air basin to the maximum extent feasible, unless a district demonstrates to the satisfaction of the state board that adoption of the measure within its jurisdiction is not necessary to achieve or maintain the state ambient air quality standard.

(c) Where air pollutant transport is a factor, the state board shall determine whether the attainment plan is sufficient to satisfy the requirements of Section 40912.

(d) If a district is unable to specify an attainment date and the state board concurs that projecting an attainment date is not feasible, the state board shall determine whether the plan contains every feasible control strategy or measure to ensure progress toward attainment is maintained.

(e) In making determinations under subdivisions (a), (b), (c), and (d), the state board shall consider any emission reductions occurring in, or expected to occur in, the district or air basin.

(Amended by Stats. 1989, Ch. 559, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 70600, 70601
Subchapter 1.6, Local APCD Regulations

41503.1. The state board may approve an attainment plan which achieves less emission reductions than 5 percent per year, or less than 15 percent every three years, as specified in Section 40914, if the state board determines that the district is unable to meet these requirements, despite the expeditious adoption of all feasible controls, or if the state board determines that the equivalent air quality improvement will be achieved through an alternate level of emissions reduction.

(Added by Stats. 1988, Ch. 1568, Sec. 15.)

Reference: Subchapter 1.6, Local APCD Regulations

41503.2. (a) If the state board concludes that a district's plan does not meet the requirements of Section 41503, the state board shall notify the district of all deficiencies in writing. The district shall correct the deficiencies identified by the state board, and shall submit its revised plan to the state board for approval.

(b) If the district does not concur with the state board's findings and determinations of deficiency, or the state board determines that the district's plan revisions are inadequate to remedy identified deficiencies, the state board and the district shall attempt to resolve the differences within three months of the board's disapproval. The state board and the districts shall develop a uniform conflict resolution procedure, for purposes of this subdivision, prior to any district's submittal of its attainment plan to the state board.

(c) If a conflict between the state board and district cannot be resolved, the state board shall take all of the following actions:

(1) Conduct a public hearing in the air basin containing the affected district for purposes of hearing testimony on the plan and the deficiencies identified by the state board pursuant to subdivision (a).

(2) Prior to conducting the hearing, provide a 45- day written notice to the affected district and to the public of the date, time, location, and subject of the hearing.

(3) After conducting the public hearing on the plan and the deficiencies identified by the state board, revise the district's plan as it finds and determines necessary.

(Added by Stats. 1988, Ch. 1568, Sec. 16.)

Reference: Subchapter 1.6, Local APCD Regulations

41503.3. Upon receipt of a district's triennial progress report and plan revisions prepared pursuant to subdivision (b) of Section 40924, the state board shall determine whether the district has achieved the minimum rate of progress under Section 40914 or as adjusted by the board pursuant to Section 41503.1. The state board shall require the adoption of one or more contingency measures when the minimum rate of progress has not been achieved, unless the district demonstrates to the satisfaction of the state board that the discrepancy will be corrected and the deficiency restored during the next reporting period.

(Added by Stats. 1988, Ch. 1568, Sec. 17.)

Reference: Subchapter 1.6, Local APCD Regulations

41503.4. All actions of the state board to approve, revise and approve, or disapprove a district's attainment plan or plan revision shall be taken at a noticed public hearing.
(Added by Stats. 1988, Ch. 1568, Sec. 18.)

Reference: Subchapter 1.6, Local APCD Regulations

41503.5. The state board shall ensure that a district's attainment plan and plan revisions meet the requirements of this part and of Part 3 (commencing with Section 40000), and that every reasonable action is taken to achieve the state ambient air quality standards for ozone, carbon monoxide, nitrogen dioxide, and sulfur dioxide at the earliest practicable date.
(Added by Stats. 1988, Ch. 1568, Sec. 19.)

Reference: Subchapter 1.6, Local APCD Regulations

41503.6. (a) The Legislature finds and declares that the California Pollution Control Financing Authority and the Department of Commerce, working with the South Coast Air Quality Management 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.
(Added by Stats. 1992, Ch. 1126, Sec. 1.)

41504. (a) If, after a public hearing, the state board finds that the program or the rules and regulations of a district will not likely achieve and maintain the state's ambient air quality standards, the state board may establish a program, or portion thereof, or rules and regulations it deems necessary to enable the district to achieve and maintain such ambient air quality standards.

(b) Any program, or portion thereof, or rule or regulation established by the state board for the district shall have the same force and effect as a program, rule, or regulation adopted by the district and shall be enforced by the district.
(Amended by Stats. 1976, Ch. 1063.)

Reference: Subchapter 1.6, Local APCD Regulations

41505. If, after a public hearing, the state board finds that a district is not taking reasonable action to enforce the statutory provisions, rules, and regulations relating to air quality in such a manner that will likely achieve and maintain the state's ambient air quality standards, the state board may exercise any of the powers of that district to achieve and maintain such ambient air quality standards.

(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 86000
Subchapter 1.6, Local APCD Regulations

41507. The state board may order, pursuant to Section 41602, review of a basinwide air pollution control plan for revision to achieve and maintain federal ambient air quality standards in the air basin, as part of the state implementation plan required under Section 1857c-5 of Title 42 of the United States Code. Such revision shall be filed with the state board within 60 days of the request of the state board, and the districts shall adopt rules and regulations implementing such plans within 60 days after final review pursuant to Section 41500, or final adoption pursuant to Section 41503, by the state board.

(Amended by Stats. 1976, Ch. 1063.)

Reference: Subchapter 1.6, Local APCD Regulations

41508. Except as otherwise specifically provided in this division, including, but not limited to, Sections 41809, 41810, and 41904, any local or regional authority may establish additional, stricter standards than those set forth by law or by the state board for nonvehicular sources.

(Added by Stats. 1975, Ch. 957.)

41509. No provision of this division, or of any order, rule, or regulation of the state board or of any district, is a limitation on:

(a) The power of any local or regional authority to declare, prohibit, or abate nuisances.

(b) The power of the Attorney General, at the request of a local or regional authority, the state board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) The power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(d) The right of any person to maintain at any time any appropriate action for relief against any private nuisance.

(Added by Stats. 1975, Ch. 957.)

41510. For the purpose of enforcing or administering any state or local law, order, regulation, or rule relating to air pollution, the executive officer of the state board or any air pollution control officer having jurisdiction, or an authorized representative of such officer, upon presentation of his credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50), Part 3 of the

Code of Civil Procedure, shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions therefrom, or any records required to be maintained in connection therewith by the state board or any district.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 91010, 91105, 91200-91220

41511. 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 such action as the state board or the district may determine to be reasonable for the determination of the amount of such emission from such source.

(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2253, 2253.2, 2255,2256, 2257, 2265, 2266, 2280
17, CCR, sections 91010, 91011, 91100, 91200-91220,94504, 94513, 94543-94545, 94547, 94551-94553

41512. (a) The state board or a district board may adopt, by regulation, after a public hearing, a schedule of fees not exceeding the estimated cost of planning, preliminary evaluation, sampling, sample analysis, calculations, and report preparation with respect to samples of emissions secured from air pollution emission sources. However, such fees may be imposed or assessed only when such samples are required to determine compliance with permit conditions or with any state or local law, order, rule, or regulation relating to air pollution. Such fees shall not include charges for the reasonable time exclusively spent by the owner or operator of the source constructing testing facilities or preparing for such testing. The failure to pay any such fee in a timely manner shall constitute grounds for the revocation or suspension, and may be made a condition for the issuance, of any permit. Any such revocation or suspension shall be in accordance with the procedures set forth in Sections 42304 to 42309, inclusive.

(b) Nothing contained in this part shall be construed to include or restrict the use of construction equipment such as portable sandblasting equipment or portable spraying or spray painting equipment, or any similar equipment, used on a temporary basis in connection with new construction, or on maintenance or repairs of existing structures, machinery, or equipment; provided, such equipment is operated in accordance with the requirements of this division and applicable district and state board rules and regulations.

(c) Where testing to demonstrate compliance with permit conditions or with any state or local law, order, rule, or regulation relating to air pollution is required by the state board, the state board, not later than April 1, 1981, shall establish procedures under which the operator may request that such testing be performed by an independent testing service. The state board may, for good cause, reject such a request.

(Amended by Stats. 1980, Ch. 1283, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 91010, 91200-91220

41512.5. A district board may adopt a schedule of fees applicable to emission sources not included within a permit system adopted pursuant to Section 42300 to cover the estimated reasonable costs of evaluating plans required by law or by district rule or regulation, including, but not limited to, review, inspection, and monitoring related thereto. The fees shall not exceed the estimated costs of reviewing, monitoring, and enforcing the plan for which the fees are charged.

The district board shall hold a public hearing at least 30 days prior to the meeting of the district board at which the adoption or revision of the fee schedule is to be considered, and supporting data on the actual or estimated costs required to provide the service for which the fee is proposed to be charged shall be made available at that public hearing.

(Added by Stats. 1987, Ch. 510, Sec. 1.)

41512.7. (a) No district with an annual budget of less than one million dollars ($1,000,000) shall increase any existing fees for authority to construct permits or permits to operate by more than 30 percent in any calendar year, unless required to comply with the minimum fee requirements of Title V.

(b) No district with an annual budget of one million dollars ($1,000,000) or more shall increase any existing fees for authority to construct permits or permits to operate by more than 15 percent in any calendar year.

(c) Notwithstanding subdivision (b), this section shall not apply to the south coast district.

(Amended by Stats. 1994, Ch. 727, Sec. 3)

41513. Any violation of any provision of this part, or of any order, rule, or regulation of the state board or of any district, may be enjoined in a civil action brought in the name of the people of the State of California, except that the plaintiff shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss.

(Added by renumbering Section 41512 by Stats. 1976, Ch. 1056.)

41514. 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.

(Added by Stats. 1995, Ch. 235, Sec. 1)

41514.8. (a) Prior to adopting rules or regulations which would affect the operation of existing powerplants, the state board or any district shall consider and adopt written findings that specify the supporting information relied upon with regard to all of the following:

(1) The need for the emission reductions expected to be achieved from the implementation of the proposed rule or regulation, and the extent to which the rule or regulation is necessary solely for the attainment of a state ambient air quality standard.

(2) The relative cost of achieving the emission reductions from the proposed rule or regulation compared to the cost of feasible reductions from sources other than powerplants.

(3) The availability and technological feasibility of control technologies required by the proposed rule or regulation.

(b) Rules and regulations affecting the operation of existing powerplants adopted after January 1, 1982 by the state board or any district shall take into consideration the findings under subdivision (a).

(Added by Stats. 1981, Ch. 580.)

41515. The Legislature finds and declares (a) that present methods of generating and using energy in California result in substantial waste of such 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) that 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) that 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, and (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 such benefit should be recognized in determining requirements for new cogeneration projects.

(Amended by Stats. 1981, Ch. 952.)

41516. The Legislature further finds and declares (a) that the disposal of liquid and solid waste poses serious environmental and economic problems for local governments in California, (b) that resource recovery technology presently exists which can convert municipal waste to energy while also recovering substantial quantities of raw materials, (c) that 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, and (d) that such projects should therefore be encouraged as a matter of state policy.

(Added by Stats. 1979, Ch. 922.)

41517. 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.

(Added by Stats. 1979, Ch. 922.)

41518. The state board shall develop, in cooperation with the districts and the Public Utilities Commission, an inventory of potential cogeneration technology projects in each air basin in the state which could be constructed before 1987.

(Added by Stats. 1979, Ch. 922.)

41519. The state board, in cooperation with the State Solid Waste Management Board, the districts and the regional planning agencies, shall develop an inventory of potential resource recovery projects which are planned or proposed to be constructed before 1987.

(Added by Stats. 1979, Ch. 922.)

41520. In preparing the inventories required pursuant to Sections 41518 and 41519, the state board shall contract with private firms or utilize existing board staff, whichever costs less. Both inventories shall be completed not later than July 1, 1980.

(Added by Stats. 1979, Ch. 922.)

## CHAPTER 2. BASINWIDE MITIGATION FOR COGENERATION AND RESOURCE RECOVERY PROJECTS

(Heading of Chapter 2 amended by Stats. 1988, Ch. 1568, Sec. 20.)

41600. (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 42314, 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.

(Added by renumbering Section 41604 by Stats. 1988, Ch. 1568, Sec. 25.)

41605. (a) The districts, in cooperation with the state board, shall develop, adopt, and update, as necessary, a procedure to determine the magnitude of the emissions from the existing electric generating system in the air basin which would be displaced if cogeneration technology projects and qualifying facilities were constructed. The procedure shall be used once each year to determine the utility displacement credits which shall be used in reviewing the permit applications for new cogeneration technology projects and qualifying facilities during the following year, and shall ensure that the credits are real, permanent, quantifiable, enforceable, and surplus.

(b) A district may reduce the emission offset requirement for a cogeneration technology project or qualifying facility by the utility displacement credits determined pursuant to subdivision (a). In all cases in which a cogeneration technology project or qualifying facility satisfies subdivision (c), a district shall reduce the offset requirement for the project or facility by the utility displacement credits determined pursuant to subdivision (a). A district shall allocate at least 90 percent of the pounds of emissions available in the form of utility displacement credits to projects and facilities which satisfy the requirements of subdivision (c).

(c) Utility displacement credits shall be granted to cogeneration technology projects and qualifying facilities for those pollutants for which net project or facility emissions, after offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 42314, are lower, on a pounds of pollutant per unit of energy produced basis, than the emissions which would be generated by the fossil-fuel fired existing electric generating system in the air basin in the absence of the project or facility.

(d) Utility displacement credits shall be credited to a project or facility only to the extent necessary to satisfy district offset requirements, and only after credit has been granted for offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 42314.

(e) The cogeneration technology project or qualifying facility proponent, and the owner or operator of the purchasing utility, shall provide to the state board or the 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, all of the following:

(1) Emission source test data.

(2) Chronological fuel use data.

(3) Chronological electric load data.

(f) In providing the utility displacement credits required by this section, and for purposes of this section only, the utility, if not an applicant, shall not be required to furnish emission offsets on a case-by-case basis for the project. This section does not permit a district on a case-by-case basis to limit the ability of the utility to operate its existing hydrocarbon combustion facilities in accordance with the requirements of the Public Utilities Commission or the governing body of a public utility owned by a municipality or other political subdivision of the state.

(Amended by Stats. 1985, Ch. 978, Sec. 3.)

41605.5. (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) The districts and the state board, in cooperation, shall develop and, on or before July 1, 1988, and at least once every two years thereafter, 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 42314.5 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.

(Amended by Stats. 1987, Ch. 565, Sec. 1.)

41651. In addition to any other statutory requirements, at the public hearing held pursuant to Section 41650, 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.

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.

(Added by Stats. 1979, Ch. 810.)

41652. 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 such revisions as necessary to comply with such 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.

(Amended by Stats. 1981, Ch. 564.)

## CHAPTER 3. EMISSION LIMITATIONS

(Chapter 3 added by Stats. 1975, Ch. 957.)

### Article 1. General Limitations

(Article 1 added by Stats. 1975, Ch. 957.)

41700. Except as otherwise provided in Section 41705, no person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the

public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

(Added by Stats. 1975, Ch. 957.)References at the time of publication (see page iii):

Regulations: 17, CCR, section 70200.5

41701. Except as otherwise provided in Section 41704, or Article 2 (commencing with Section 41800) of this chapter other than Section 41812, or Article 2 (commencing with Section 42350) of Chapter 4, 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).

(Amended by Stats. 1977, Ch. 644.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 85000

41701.5. (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 Ringlemann 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 Ringlemann 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.

(Amended by Stats. 1988, Ch. 1541, Sec. 4.)

41702. 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 such operation is authorized by a hearing board.

(Added by Stats. 1975, Ch. 957.)

41703. If a district board adopts a rule or regulation of emission standards to take effect as of a future date, the rule or regulation shall also require any person who owns or operates a source of air contaminants whose emissions exceed such standards to submit to the hearing board, for a public hearing, after notice pursuant to Section 40826, a schedule of increments of progress by which the source emissions will be brought into compliance by the time such standards take effect.

If the rule or regulation itself includes a schedule of increments of progress, the person shall apply for a modification in accordance with Section 42357 in the event he cannot comply with the schedule in the rule or regulation, except that an application for a change in the final compliance date shall be subject to the requirements for a variance, as provided in Section 42352.

(Amended by Stats. 1979, Ch. 239.)

41704. Section 41701 does not apply to any of the following:

(a) Fires set pursuant to Section 41801.

(b) Agricultural burning for which a permit has been granted pursuant to Article 3 (commencing with Section 41850).

(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.

(e) Open outdoor fires used only for cooking of food for human beings or for recreational purposes.

(f) The use of orchard and citrus grove heaters which are in compliance with the requirements set forth in Section 41860.

(g) Agricultural operations necessary for the growing of crops or raising of fowl or animals.

(h) The use of other equipment in agricultural operations necessary for the growing of crops or raising of fowl or animals.

(i) Fugitive dust emissions from rock crushing facilities within the Southeast Desert Air Basin, where the facilities were in existence prior to January 1, 1970, at a location where the population density is less than 10 persons per square mile in each square mile within a seven-mile radius of the facilities; provided, however, that under no circumstances shall the emissions cause a measurable degradation of the ambient air quality or create a nuisance. This subdivision does not apply to any rock crushing facilities which (1) process in excess of 100 tons of rock in any 24-hour period, averaged over any period of 30 consecutive days, (2) have 25 or more employees, (3) fail to operate and maintain in good working order any emission control equipment installed prior to January 1, 1978, or (4) undergo a change of ownership after January 1, 1977.

(j) Emissions from vessels using steam boilers during emergency boiler shutdowns for safety reasons, safety and operational tests required by governmental agencies, and where maneuvering is required to avoid hazards.

(k) Emissions from vessels during a breakdown condition, as long as the discharge is reported in accordance with district requirements.

(l) The use of visible emission generating equipment in training sessions conducted by governmental agencies necessary for certifying persons to evaluate visible emissions for compliance with Section 41701 or applicable district rules and regulations. Any local or regional authority rule or regulation relating to visible emissions are not applicable to the equipment.

(m) Smoke emissions from teepee burners operating in compliance with Section 4438 of the Public Resources Code during the disposal of forestry and agricultural residues or forestry and agricultural residues with supplementary fossil fuels when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This subdivision does not apply to emissions which exceed a period or periods of time aggregating more than 30 minutes in any 24-hour period. This subdivision does not apply to emissions which result from the failure to operate and maintain in good working order any emission control equipment.

(n) Smoke emissions from burners used to produce energy and fired by forestry and agricultural residues with supplementary fossil fuels when the emissions result from startup or shutdown of the combustion process or from the malfunction of emission control equipment. This subdivision does not apply to emissions which exceed a period or periods of time aggregating more than 30 minutes in any 24-hour period, or which result from the failure to operate and maintain in good working order any emission control equipment.

(o) Emissions from methanol fuel manufacturing plants which manufacture not more than 2,000,000 gallons of methanol fuel per day from wood, agricultural waste, natural gas, or coke (exclusive of petroleum coke). As used in this subdivision, "manufacturing plant" includes all necessary support systems, including field operations equipment that provide feed stock. However, this subdivision shall apply to not more than one methanol fuel manufacturing plant in each air basin and each plant shall be located in an area designated as an "attainment area" pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and shall meet all applicable standards required by the district board. This subdivision shall remain in effect with respect to a plant until five years after construction of the plant and shall have no force and effect with respect to the plant on and after that date.

(Amended by Stats. 1984, Ch. 52, Sec. 2.)

41704.5. The state board shall conduct a study in cooperation with the affected districts and representatives of the maritime industry to determine whether vessels using steam boilers can be brought into compliance with Section 41701 by January 1, 1984, or any earlier date, taking into account the age and physical condition of the affected vessels, vessel safety and operational requirements, and technological feasibility.

Following completion of such study, the state board shall conduct a public hearing to consider and, if appropriate, adopt a compliance schedule by which various classes of vessels will be brought into compliance with the standards specified in Section 41701 on and after January 1, 1984. Prior to taking any action to adopt any such compliance schedule, the state board shall report the results of its study to the Legislature, and in no event shall such study be filed with the Legislature later than January 1, 1983. The report shall also address emissions from diesel powered vessels.

(Added by Stats. 1978, Ch. 1131.)

41705. Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(Added by Stats. 1995, Ch. 952)

41706. (a) The Legislature hereby finds and declares that recent evidence indicates that lead compounds emitted into the air by nonvehicular sources accumulate in and upon vegetation in the vicinity of such sources, pose a grave threat to the health of animals which consume such vegetation, and constitute a potential human health hazard.

(b) Every district shall establish emission standards for lead compounds emitted into the air from nonvehicular sources. Where a district has failed to establish such standards, the state board shall establish such standards for that district.

(Added by Stats. 1975, Ch. 957.)

41707. Notwithstanding the provisions of this chapter restricting burning, the state board, after consultation with the district in which the burning is to take place, may issue permits for experimental burning designed to develop new or improved techniques of burning to reduce emissions, except that no experimental burning may create a nuisance.

(Added by Stats. 1975, Ch. 957.)

41708. Any district may adopt a rule or regulation for the control of volatile organic compound emissions from cutback asphalt paving material based on local considerations, including, but not limited to, the degree of air pollution resulting from such paving material, the economic impact of the rule and regulation, and the feasibility of implementing the rule and regulation.

The state board shall not override or otherwise amend any action taken by a district relating to the use of cutback asphalts.

(Added by Stats. 1979, Ch. 967.)

41712. (a) The state board shall adopt regulations to achieve the maximum feasible reduction in reactive organic compounds emitted by consumer products, if the state board determines that adequate data exists for it to adopt the regulations.

(b) The state board shall not adopt regulations pursuant to subdivision (a) unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(c) For purposes of this section, a "consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products;

home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(d) (1) Prior to adopting regulations pursuant to this section governing health benefit products, including, but not limited to, disinfectants, the state board shall consider any recommendations received from federal, state, or local public health agencies and medical experts in the field of public health.

(2) Within 30 days after the adoption of any regulation pursuant to this section governing health benefit products, the state board shall prepare and submit to the Legislature and the Governor a report which summarizes any recommendations received pursuant to paragraph (1) and any conclusions made by the state board concerning the recommendations.

(3) For purposes of this subdivision, the following definitions apply:

(A) "Health benefit product" means an antimicrobial product registered with the Environmental Protection Agency.

(B) "Medical expert" means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

(e) A district shall adopt no regulation relating to a consumer product which is different than any regulation adopted by the state board for that purpose.

(f) (1) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of reactive organic compounds resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the reactive organic compound content of, or emissions from, aerosol paints until such time as the state board has adopted a regulation regarding those paints, and any district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This subdivision shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until such time as the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(2) On or before January 1, 1995, the state board shall adopt regulations requiring the maximum feasible reduction in reactive organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance not later than December 31, 1999, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds. For the purposes of this subdivision, "maximum feasible reduction in reactive organic compounds emitted" means at least a 60 percent reduction in the emissions of reactive organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year.

(3) On or before December 31, 1998, the state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits by December 31, 1999. If the state board determines that a 60 percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible by December 31, 1999, it may grant an extension of time not to exceed five years. During any such extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this subdivision. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this subdivision do not become federally enforceable prior to the effective date established by the state board for these limits, including any extension granted under this subdivision.

(4) Reductions required for aerosol paints under this subdivision are not intended to apply to any other consumer product and the regulation of aerosol paints is not subject to subdivision (b).

(Amended by Stats. 1993, Ch. 1028, Sec. 7,)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94500, 04503.5-94517, 94540-94555

Article 1.5. Portable Internal Combustion Engines
(Article 1.5 added by Stats. 1995, Ch. 817, Sec. 1.)

41750. The Legislature hereby finds and declares all of the following:

(a) Existing law authorizes each district to impose separate and sometimes inconsistent emission control requirements for, and to require separate permits to operate, portable internal combustion engines that are used at various sites throughout the state.

(b) That multiplicity of permits and regulatory requirements imposes a complex and costly burden on California businesses that use, hire, provide, and manufacture those engines.

(c) A uniform, voluntary system of statewide registration and regulation of portable internal combustion engines, consistent with current state and federal air quality law, is necessary to ensure consistent and reasonable regulation of those engines without undue burden on their owners, operators, and manufacturers.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

41751. As used in this article, a "portable internal combustion engine" is any internal combustion engine that is portable, meaning that it is carried or moved from one location to another in the normal course of business. Indicia of portability shall include, but are not limited to, wheels, skids, carrying handles, or a dolly, trailer, vessel, platform, or mounting. "Portable internal combustion engine" does not include an engine used to propel nonroad equipment or a motor vehicle of any kind, including, but not limited to, a heavy duty vehicle.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

41752. (a) At the earliest feasible date, but not later than January 1, 1997, the state board shall do all of the following:

(1) Evaluate the emissions from the operation of portable internal combustion engines and identify emission reduction technologies that may be applied to those engines.

(2) After holding at least one public hearing, establish, by regulation, emission limits and emission control requirements, consistent with Section 41754, and an optional registration program for portable internal combustion engines that are, 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.

(c) The program shall provide for the voluntary registration of each portable internal combustion engine, and may provide for the renewal of a registration not more than once every three years.

(d) (1) The state board may establish a schedule of fees for purposes of this article to be assessed on persons seeking to register, or to renew the registration of, portable internal combustion engines. The state board may establish separate fees for the initial registration and for the renewal of a registration. The fees charged, in the aggregate, shall not exceed the reasonable cost to the state board of administering the registration program, and adopting the regulations specified in Section 41754.

(2) The state board shall, in adopting the regulations specified in Section 41754, include a uniform statewide district fee schedule for the recovery of the reasonable costs of enforcement pursuant to Section 41755.

(e) Notwithstanding Section 41754, the state board may periodically revise and update the regulations adopted pursuant to this section, including, but not limited to, revising and updating a determination of best available control technology (BACT) for portable internal combustion engines.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

41753. (a) (1) It is the intent of the Legislature that the registration of, and the regulation of emissions from, portable internal combustion engines that are operated in more than one district and that are subject to the registration program be done on a uniform, statewide basis by the state board and that the permitting, registration, and regulation of those engines by the districts be preempted.

(2) Notwithstanding paragraph (1), if the owner or operator of a portable internal combustion engine elects not to register under the statewide registration program, the unregistered engine shall be subject to district permitting requirements pursuant to district regulations.

(b) On and after the effective date of the statewide registration program established by the state board pursuant to subdivision (a) of Section 41752 and upon the registration of a portable internal combustion engine by the engine owner or operator, a district shall not, with respect to the affected portable internal combustion engine, do any of the following:

(1) Require a permit for the construction or operation of the engine.

(2) Assess any fee related to the construction or operation of the engine, other than that specified in paragraph (2) of subdivision (d) of Section 41752.

(3) Adopt any emission limit or emission control requirement applicable to the engine.

(4) Except as provided in Section 41755, enforce any emission limit or emission control requirement applicable to the engine.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

41754. (a) The regulations adopted by the state board, on or before January 1, 1997, shall include, but not be limited to, provisions that ensure all of the following:

(1) That emissions from portable internal combustion engines subject to the statewide registration program do not, in any manner, cause a violation of state or federal ambient air quality standards.

(2) That, to the extent not in conflict with federal law, the registration program preserves the most stringent requirements adopted by a district which require the use of best

available control technology (BACT) for each class or category of portable internal combustion engines which were in effect on January 1, 1995.

(3) That the statewide registration program is consistent with the state implementation plan, and any amendments to that plan, required to be submitted pursuant to the federal Clean Air Act (42 U.S.C.A. Sec. 7401 et seq.).

(4) That any registered portable internal combustion engine, including any turbine, used by the Department of Defense or the National Guard exclusively for military tactical support or other federal emergency purposes, as specified in the state board's regulation, is not subject to any statewide or district emission control or emission limit.

(b) No emission limit or emission control requirement shall be established for any engine or class of engines unless the state board determines that the emission limit or emission control requirement is technologically and economically feasible for those engines or that class of engines, and is necessary to carry out the express terms of this division, including, but not limited to, Section 43013, or to comply with state or federal ambient air quality standards.

(c) Prior to adopting any emission limit or emission control requirement, the state board shall consider the magnitude of the resultant air quality benefits and the potential effects of the regulation on the costs to businesses that use the engines.

(d) The emission limits established for any engine or class of engines shall reflect the effectiveness of all control equipment installed and operated on the engine or particular class of engine.

(e) No emission limits other than those established by the state board for any engine or class of engines shall be used by a district for purposes of calculating and reporting emissions from engines subject to this article.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

41755. Districts shall enforce the statewide registration program, emission limitations, and emission control requirements established by the state board pursuant to this article in the same manner as a district rule or regulation.

(Added by Stats. 1995, Ch. 817, Sec. 1.)

## Article 2. Nonagricultural Burning
(Article 2 added by Stats. 1975, Ch. 957.)

41800. Except as otherwise provided in this chapter, 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.

(Added by Stats. 1975, Ch. 957.)

41801. Nothing in this article shall be construed as limiting the authority granted under other provisions of law to any public officer to set or permit a fire when such fire is, in his opinion, necessary for any of the following purposes:

(a) The prevention of a fire hazard which cannot be abated by any other means.

(b) The instruction of public employees in the methods of fighting fire.

(c) The instruction of employees in methods of fighting fire, when such fire is set, pursuant to permit, on property used for industrial purposes.

(d) The setting of backfires necessary to save life or valuable property pursuant to Section 4426 of the Public Resources Code.

(e) The abatement of fire hazards pursuant to Section 13055.

(f) Disease or pest prevention, where there is an immediate need for and no reasonable alternative to burning.

(Amended by Stats. 1976, Ch. 1063.)

41802. Notwithstanding Section 41800, with respect to wood waste from trees, vines, or bushes on property being developed for commercial or residential purposes, or with respect to the disposal of brush cuttings on the property where the brush was grown when the cuttings resulted from brush clearance done in compliance with local ordinances to reduce fire hazard, a district board may, upon its own motion or the request of any person, authorize the disposal, by open outdoor fires, of such waste, on the property where it was grown, under the conditions specified in Section 41804.

(Added by Stats. 1975, Ch. 957.)

41803. No authorization, however, under Section 41802 or 41804.5 shall be granted after such date as the state board may determine, based upon a finding that an alternative method of disposal has been developed which is technologically and economically feasible.

(Amended by Stats. 1979, Ch. 196.)

41804. Burning may be authorized under Section 41802 only if:

(a) The district board finds that it is more desirable to dispose of such waste by burning than to dispose of it by other available means, such as, but not limited to, by removing it to sanitary fills.

(b) The district has developed criteria for such disposal, which shall include provisions to improve the combustibility of such waste to reduce its smoke level.

(c) The state board has approved the criteria developed pursuant to subdivision (b).

(d) Such authorization, if granted, shall be in the form of a permit issued by the district air pollution control officer, and such permit shall allow burning only on days during which agricultural burning is not prohibited by the state board pursuant to Section 41855.

(e) The district board may adopt rules and regulations to authorize any burning authorized under Section 41802, to review each proposed burn prior to authorizing its air pollution 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 such other or additional criteria as the district board may establish.

(Added by Stats. 1975, Ch. 957.)

41804.5. (a) Notwithstanding Section 41800, a district board may authorize, subject to the limitations in Section 41803 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 39606.

(b) Authorization for such 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 41855.

(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 such land, by such other person, approving the burning on such 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 such wood waste if such an 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 such wood waste, a county may submit its plan for the disposal of such wood waste in the county by the use of open outdoor fires at the disposal sites.

(Amended by Stats. 1982, Ch. 230, Sec. 1.)

41805. (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 such landfill sites. However, it is the intent of the Legislature that the disposal, by open outdoor fires, of such 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.

(Added by Stats. 1975, Ch. 957.)

41805.5. (a) Except as provided in subdivisions (b) and (c), 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.

The solid waste air quality assessment test report shall be prepared in accordance with the guidelines developed by the state board pursuant to subdivision (d).

(b) The operator of an inactive solid waste disposal site shall complete and submit the screening questionnaire, developed pursuant to subdivision (e), to the district on or before November 1, 1986, unless the operator is required to submit a report containing the same information specified in subdivision (a) pursuant to a federal, state, or district order, or unless exempted pursuant to subdivision (c). The district shall evaluate the submitted screening questionnaires in accordance with the guidelines developed pursuant to subdivision (e) 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 subdivision (a) 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.

(c) A district may exempt from subdivisions (a) and (b) 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.

(d) On or before February 1, 1987, the state board, in coordination with the districts, shall develop and publish test guidelines for the solid waste air quality assessment report specifying the air contaminants to be tested for and identifying acceptable testing, analytical, and reporting methods to be employed in completing the report.

(e) On or before October 1, 1986, the state board, in coordination with the districts, shall develop and publish a screening questionnaire for inactive solid waste disposal sites and guidelines for evaluating the questionnaire by the districts pursuant to subdivision (b). The screening questionnaire and guidelines shall require an inactive solid waste disposal site to be evaluated based on the nature and age of materials in the site, the quantity of materials in the site, the size of the site, and other appropriate factors. The guidelines for evaluating the screening questionnaire shall require a district to weigh heavily the proximity of the site to residences, schools, and other sensitive areas, and to pay particular attention to potential adverse impacts on facilities such as hospitals and schools, and on residential areas, within one mile of the site's perimeter.

(f) A district may reevaluate the status of a solid waste disposal site, including sites exempted pursuant to subdivision (c), and require the operator to submit or revise a solid waste air quality assessment test report after January 1, 1987. The district shall give written notification to the operator of the solid waste disposal site that a solid waste air quality assessment test report is to be submitted, or that the existing report is to be revised, and the date by which the report is to be submitted.

(g) A district shall evaluate any solid waste air quality assessment test reports submitted pursuant to subdivisions (a), (b), and (f), and determine if the report's testing, analytical and reporting methods comply with the guidelines developed pursuant to subdivision (d). If the district determines that the solid waste air quality assessment test report complies with the guidelines, it shall evaluate the data. If the district determines, after evaluation of the report and consultation with the state department and the California Waste Management Board, that levels of one or more specified air contaminants pose a health risk to human beings or a threat to the environment, the district shall take appropriate remedial action.

(h) If a district determines that a solid waste air quality assessment test report does not comply with the guidelines developed pursuant to subdivision (d), the district shall provide the

operator of the site with a written notice specifying the inadequacies of the report and shall require the operator to correct the deficiencies and resubmit the report by a date determined by the district.

(i) For the purpose of this section, the following definitions apply:

(1) "Inactive solid waste disposal site" means a solid waste disposal site which has not received any solid waste for disposal after January 1, 1984.

(2) "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.

(3) "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 this section, "operator" means any person who owns or who has owned the solid waste disposal site.

(4) "Perimeter" means the outer boundary of the entire solid waste disposal site property.

(5) "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.

(6) "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 paragraph: 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-trichloroethan e, trichloroethylene, trichloromethane, xylene, and any other substance deemed appropriate by the state board or a district.

(Amended by Stats. 1987, Ch. 932, Sec. 1. Effective September 22, 1987.)

41805.6. Notwithstanding Section 41805.5, a small city which operates a Class III solid waste disposal site is not required to submit a screening questionnaire or a solid waste air quality assessment test report pursuant to Section 41805. 5 if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the water table of the highest aquifer under the disposal site is 250 or more feet below the base of the disposal site and the water in the highest aquifer is not potable, and the site receives less than an average of 12 inches of rainfall per year. This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, and if the site is located in Kings County.

(Added by Stats. 1990, Ch. 1361, Sec. 1.)

41806. Nothing in this article shall be construed as prohibiting burning for the disposal of combustible or flammable solid waste of a single- or two-family dwelling on its premises, or open outdoor fires used only for cooking food for human beings or for recreational purposes.

(Added by Stats. 1975, Ch. 957.)

41807. Nothing in this article 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 such material may be burned pursuant to this section unless (a) agricultural burning is not prohibited on the day pursuant to Section 41855, 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.

(Added by Stats. 1975, Ch. 957.)

41808. 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.

(Added by Stats. 1975, Ch. 957.)

41809. Notwithstanding Sections 41508 and 41800, 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.

(Amended by Stats. 1992, Ch. 427, Sec. 106. Effective January 1, 1993.)

41810. For islands located 15 or more miles from the mainland coast:

(a) The provisions of Section 41701 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.

(Added by Stats. 1975, Ch. 957.)

41811. The provisions of this article 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.

(Added by Stats. 1975, Ch. 957.)

41812. The air pollution control officer of any district in a county with a population of 6,000,000 or less, upon authorization of the district board, may authorize, by permit, open outdoor fires for the purpose of disposing of agricultural wastes, or wood waste from trees, vines, bushes, or other wood debris free of nonwood materials, in a mechanized burner such that no air contaminant is discharged into the atmosphere for a period or periods aggregating more than 30 minutes in any eight- hour period which is:

(a) As dark or darker in shade as that designated as No. 1 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).

In authorizing the operation of a mechanized burner, the air pollution control officer may make the permit subject to whatever conditions he determines are reasonably necessary to assure conformance with the standards prescribed in this section.

(Added by Stats. 1975, Ch. 957.)

41813. Notwithstanding any other provision of this division, inthe San Bernardino County Air Pollution Control District, Group 2 solid waste, as defined in Section 2521 of Title 23 of the California Administrative Code, for a period not to exceed six months from the effective date of this section, may be disposed of by means of an air curtain destructor. The authority provided by this section applies only to an existing solid waste disposal sitein the upper desert area which receives less than 50 tons of solid waste for disposal per day. The use of the air curtain destructor shall be monitored by the San Bernardino County Air Pollution Control District and the state board. Within nine months after the effective date of this section, the district shall file a report with the County of San Bernardino and the state board regarding the extent to which the air curtain destructor meets the emission rules, regulations, and orders of the district and the state board.

At the end of the six-month experimental period, the air curtaindestructor may continue to be used if the state board makes a finding that the public health and safety will not be adversely affected by continued use. The state board, in cooperation with San Bernardino County, shall establish a list of toxic materials that will be removed from the solid waste prior to use of the air curtain destructor.

There shall be no liability on the part of the state board for any injury occurring as a result of the use of the air curtain destructor under the provisions of this section.

(Amended by Stats. 1981, Ch. 714.)

41815. Notwithstanding any local ordinance adopted pursuant to Section 37100 of the Government Code or by charter provision to prohibit the burning of waste materials, the burning of the gaseous byproducts of the recycling of water by a waste water treatment 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.

(Added by Stats. 1991, Ch. 158, Sec. 1.)

## Article 3. Agricultural Burning
(Article 3 added by Stats. 1975, Ch. 957.)

41850. It is the intent of the Legislature, by the enactment of this article, that agricultural burning be reasonably regulated and not be prohibited. The state board and the districts shall take into consideration, in adopting rules and regulations for purposes of this article, various factors, including, but not limited to, the population in an area, the geographical characteristics, the meteorological conditions, the economic and technical impact of such rules and regulations, and the importance of a viable agricultural economy in the state.

(Added by Stats. 1975, Ch. 957.)

41851. Section 41800 shall not apply to burning regulated pursuant to this article.
(Added by Stats. 1975, Ch. 957.)

41852. No person knowingly shall set or permit agricultural burning unless he has a valid permit from the agency designated by the state board to issue such permits in the area where the agricultural burning is to take place.
(Amended by Stats. 1976, Ch. 1063.)

41852.5. The state board may, after holding a public hearing, authorize an exemption from the permit requirement of Section 41852 for a district, or a portion of a district, where agricultural burning does not significantly affect air quality.
(Added by Stats. 1981, Ch. 700.)

41853. The state board shall designate public fire protection agencies or other equivalent agencies to issue permits under subdivision (a) of Section 41852, and shall adopt rules and regulations to provide a procedure for the issuance of the permits. Each agency so designated by the state board shall issue permits subject to the rules and regulations of the state board.
(Added by Stats. 1975, Ch. 957.)

41853.5. (a) No permit shall be issued pursuant to Section 41853 to a person for the burning of solid waste which is produced from the ginning of cotton, unless the person pays to the issuing agency a fee of fifteen cents ($0.15) for each bale of cotton ginned that will produce the solid waste that is to be burned.
(b) Except as provided in subdivision (c), the issuing agency shall deposit monthly the 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.
(Added by Stats. 1976, Ch. 1216.)

41854. (a) No permit issued pursuant to Section 41853 shall be valid for any day during which agricultural burning is prohibited by the state board pursuant to Section 41855 or by a district board pursuant to Section 41508.
(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 41855 of the Health and Safety Code."

(Added by Stats. 1975, Ch. 957.)

41855. The state board shall determine and designate from meteorological data the days when agricultural burning shall be prohibited within each air basin.

(Added by Stats. 1975, Ch. 957.) References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100, 80110, 80120, 80130, 80180, 80190, 80200, 80210, 80220, 80230, 80240, 80250, 80260, 80270, 80290, 80300, 80310, 80320, 80330

41856. 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.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 80100-80102, 80110, 80130, 80140, 80150, 80155, 80160, 80170l, 80175, 80180, 80190, 80200, 80210, 80220, 80230, 80240, 80250, 80260, 80270, 80290, 80300, 89310, 80320, 80330

41857. 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 such burning on the ambient air quality within the air basins affected.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100-80102, 80110, 80120, 80130, 80150, 80155, 80160, 80170, 80175, 80180, 80190, 80200, 80210, 80220, 80230, 80240, 80250, 80260, 80270, 80290, 80300, 80310, 80320, 80330

41858. In adopting such guidelines, the state board shall consider their economic and technical feasibility, including their probable effect on agricultural production in the air basin affected.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100-80102, 80110, 80120, 80130, 80150, 80155, 80160, 80170, 80175, 80210

41859. The state board shall continuously review the guidelines promulgated under this article, and may modify, repeal, or alter such guidelines if scientific and technological data indicates that such changes are warranted. Before adopting any such changes, the state board shall hold a public hearing and shall consider the criteria set forth in Section 41857.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100, 80101-80102, 80120, 80130, 80150, 80155, 80160, 80170, 80175, 80180, 80190, 80200, 80210, 80220, 80230, 80240, 80250, 80260, 80270, 80290, 80300, 80310, 80320, 80330

41860. 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.

No person shall use any orchard or citrus grove heater after January 1, 1975, unless it has been approved by the state board or does not produce more than one gram per minute of unconsumed solid carbonaceous material. In addition to the penalties specified in Section 42400, the cost of putting out the fire caused by a violation of this section may be imposed on any person who violates this section.

(Added by Stats. 1975, Ch. 957.)

41861. No burning shall be conducted for the improvement of land for wildlife or game habitat until the person desiring to conduct such 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 such 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 such statements.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100, 80110, 80120, 80160

41862. A district may issue a permit to authorize agricultural burning on days designated by the state board pursuant to Section 41855 as nonburning days when denial of

such a permit would threaten imminent and substantial economic loss. 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 such 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.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100, 80110, 80120, 80130

41863. Each basinwide coordinating council and district shall, as part of the implementation plans and programs prepared pursuant to Chapter 2 (commencing with Section 41600), include a component for the regulation and control of agricultural burning pursuant to guidelines adopted by the state board therefor.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 80100, 80120, 80140, 80150, 80155, 80160, 80170, 80175, 80180, 80190, 80200, 80210, 80220, 80230, 80240, 80250, 80260, 80270, 80290, 80300, 80310, 80330

41864. The provisions of this article 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.

(Added by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 80101

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) "Conditional rice straw burning permit" means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) "Allowable acres to be burned" means the number of acres which may be burned pursuant to subdivision (c).

(5) "Annual allocation" means the acres for which conditional rice straw burning permits may be issued each year pursuant to subdivisions (f) and (h).

(6) "Department" means the Department of Food and Agriculture.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down beginning September 1, 1992. After September 1, 1992, the number of acres that may be burned between September 1 of each year and August 31 of the following year, inclusive, shall be the following percentage of the total number of acres planted prior to September 1 of each year:

(1) In 1992, 90 percent.

(2) In 1993, 80 percent.

(3) In 1994, 70 percent.

(4) In 1995, 60 percent.

(5) In 1996, 50 percent.

(6) In 1997, 38 percent.

(7) In 1998, 25 percent.

(8) In 1999, 25 percent.

(9) In 2000 and thereafter, the annual allocation prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 1999, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2000, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in the field in an amount sufficient to constitute a rice disease such as stem rot.

(4) After the rice has been harvested, the county agricultural commissioner makes a finding that the existence of a pathogen during the growing season caused a significant, quantifiable reduction in yield.

(i) (1) The maximum annual allocation in the Sacramento Valley Air Basin shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of his or her planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual allocation set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the maximum annual allocation in the Sacramento Valley is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade his or her annual allocation to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, which have an impact over a continuing duration, and which make alternatives other than burning unusable.

(k) "Administrative burning" is burning of vegetative materials along roads, in ditches, and on levies adjacent to or within a rice field. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(l) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) 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.

(m) On or before September 1, 1995, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of 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, any recommended changes to this section, and other issues related to this section. This report shall be updated biennially and transmitted to the Legislature not later than September 1, 1997, 1999, and 2001, respectively. The state board shall have the authority to adjust the air pollution control district burn permit fees specified in subdivision (q) 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).

(n) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(o) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(p) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board shall have the authority to adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits which would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) which are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(q) (1) Any person who negligently or intentionally violates any provision of this article 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 nine months, or both. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(r) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(Amended by Stats. 1992, Ch. 1207, Sec. 1. Effective January 1, 1993. Note: Subd. (g) inoperative Jan. 1, 2004, by its own provisions.)

41866. The Sacramento Valley Basinwide Air Pollution Control Councilmay impose, and may require that districts within the Sacramento Valley AirBasin 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.

(Added by Stats. 1991, Ch. 787, Sec. 2.)

## Article 4. Sandblasting

(Article 4 added by Stats. 1975, Ch. 957.)

41900. 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.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 92000, 92100, 92200, 92210, 92220, 92400, 92500, 92520, 92530

41901. 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 such 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.

The committee shall select a chairman from its membership, and he shall serve at the pleasure of the committee.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 92000, 92100, 92200, 92210, 92220, 92400, 92500, 92510, 92520, 92530

41902. 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.

(Added by Stats. 1975, Ch. 957.)

41903. Thirty days after the adoption of air pollution standards for sandblasting operations, the committee shall adjourn. Thereafter, it may meet at least once annually upon the call of the chairman of the committee to review the standards in light of changes in sandblasting technology.

(Added by Stats. 1975, Ch. 957.)References at the time of publication (see page iii):

Regulations: 17, CCR, sections 92000, 92100, 92200, 92210, 92220, 92400, 92500, 92510, 92520, 92530

41904. The standards shall be statewide, and no rule or regulation of any district that is applicable to sandblasting operations shall be stricter or less strict than the standards adopted by the state board pursuant to the recommendations of the committee.

(Added by Stats. 1975, Ch. 957.)

41905. The standards, however, shall not supersede any rule or regulation of any district governing permanent sandblasting operations or equipment, which rule or regulation was in effect on January 1, 1974.

For purposes of this section, "permanent sandblasting operations or equipment" means sandblasting operations conducted, or sandblasting equipment located, in a building which is used, in whole or in part, for sandblasting operations.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 92000, 92200, 92210, 92220, 92400, 92500, 92510, 92520, 92530

## Article 5. Gasoline Vapor Control

(Heading of Article 5 amended by Stats. 1976, Ch. 1095.)

41950. (a) Except as provided in subdivisions (b) and (e), no person shall install or maintain any stationary gasoline tank with a capacity of 250 gallons or more which is not equipped for loading through a permanent submerged fill pipe, unless such tank is a pressure tank as described in Section 41951, or is equipped with a vapor recovery system as described in Section 41952 or with a floating roof as described in Section 41953, or unless such tank is equipped with other apparatus of equal efficiency which has been approved by the air pollution control officer in whose district the tank is located.

(b) Subdivision (a) shall not apply to any stationary tanks installed prior to December 31, 1970.

(c) For the purpose of this section, "gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(d) For the purpose of this section, "submerged fill pipe" means any fill pipe which has its discharge opening entirely submerged when the liquid level is six inches above the bottom of the tank. "Submerged fill pipe," when applied to a tank which is loaded from the side, means any fill pipe which has its discharge opening entirely submerged when the liquid level is 18 inches above the bottom of the tank.

(e) Subdivision (a) shall not apply to any stationary tank which is used primarily for the fueling of implements of husbandry.

(Added by Stats. 1975, Ch. 957.)

41951. A "pressure tank" is a tank which maintains working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere.

(Added by Stats. 1975, Ch. 957.)

41952. A "vapor recovery system" consists of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission into the atmosphere, with all tank gauging and sampling devices gastight except when gauging or sampling is taking place.

(Added by Stats. 1975, Ch. 957.)

41953. A "floating roof" consists of a pontoon-type or double-deck-type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank wall. The control equipment required by this section shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gastight except when gauging or sampling is taking place.

(Added by Stats. 1975, Ch. 957.)

41954. (a) The state board shall adopt procedures for determining thecompliance of any system designed for the control of gasoline vapor emissionsduring gasoline marketing operations, including storage and transfer operations, with performance standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard.

(b) The state board shall, after public hearing, adopt additionalperformance standards which are reasonable and necessary to ensure thatsystems for the control of gasoline vapors resulting from motor vehicle fueling operations do not cause excessive gasoline liquid spillage when used in a proper manner. To the maximum extent practicable, the additional performance standards shall allow flexibility in the design of gasoline vapor recovery systems and their components.

(c) The state board shall certify any gasoline vapor control system, uponits determination that the system, if properly installed and maintained, will meet the requirements of subdivision (a). The state board shall enumerate the specifications used for issuing such certification. After a system has been certified, if circumstances beyond control of the state board cause the system to no longer meet the required specifications, the certification may be revoked or modified.

(d) The state board may test, or contract for testing, gasoline vaporcontrol systems in order to certify them.

(e) The state board shall charge a reasonable fee for certification, not to exceed its estimated costs therefor. Payment of the fee shall be a condition of certification.

(f) No person shall offer for sale, sell, or install a new or rebuilt gasoline vapor control system, or component parts thereof, unless the system has been certified by the state board and is clearly identified by a permanent identification of the certified manufacturer or rebuilder.

(g) To the extent authorized by other provisions of law, any district mayadopt stricter procedures and performance standards than those adopted by thestate board pursuant to subdivision (a).

(h) With respect to those vapor recovery systems subject to certificationby the state board, there shall be no criminal or civil proceedings commencedor maintained for failure to comply with any statute, rule, or regulation requiring a specified vapor recovery efficiency if the vapor control equipment which has been installed to comply with applicable vapor recovery requirements has been:

(1) Certified by the state board at an efficiency equal to or greater than the efficiency required by applicable statutes, rules, and regulations; and

(2) Installed, operated, and maintained in accordance with the instructions of the equipment manufacturer.

(i) Notwithstanding subdivision (g), until the time that more than onesystem, including at least one balance-type system, is certified under thestandards adopted by the state board pursuant to subdivision (c) and by theDivision of Measurement Standards pursuant to subdivision (c) of Section41956, gasoline vapor control systems which have been installed and areoperating in compliance with the requirements of the Bay Area Air QualityManagement District shall be exempt from any requirements for retrofittingthose systems with new or additional equipment for the purpose of achievinggreater vapor recovery efficiency. All necessary replacement parts shall bethose certified by the state board. In all other areas of the state, the state board may implement its regulations adopted pursuant to subdivision (a).

(Amended by Stats. 1985, Ch. 509, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94000-94004, 94006, 94007

41955. Prior to state board certification of a gasoline vapor control system pursuant to Section 41954, the manufacturer of the system shall submit the system to, or, if appropriate, the components of the system as requested by, the Division of Measurement Standards of the Department of Food and Agriculture and the State Fire Marshal for their certification.

(Added by Stats. 1976, Ch. 1030.)

41956. (a) As soon as possible after the effective date of this section, the State Fire Marshal and the Division of Measurement Standards, after consulting with the state board, shall adopt rules and regulations for the certification of gasoline vapor control systems and components thereof.

(b) The State Fire Marshal shall be the only agency responsible for determining whether any component or system creates a fire hazard. The division shall be the only agency responsible for the measurement accuracy aspects, including gasoline recirculation of any component or system.

(c) Within 120 days after the effective date of this subdivision, the Division of Measurement Standards, shall, after public hearing, adopt rules and regulations containing additional performance standards and standardized certification and compliance test procedures which are reasonable and necessary to prevent gasoline recirculation in systems for the control of gasoline vapors resulting from motor vehicle fueling operations.

(Amended by Stats. 1981, Ch. 902.)

41956.1. (a) Whenever the state board, the Division of Measurement Standards of the Department of Food and Agriculture, or the State Fire Marshal revises performance or certification standards, any systems or components thereof certified under procedures in effect prior to the adoption of revised standards and installed prior to the effective date of the revised standards may continue to be used in gasoline marketing operations for a period of four years after the effective date of the revised standards. However, all necessary repair or replacement parts or components shall be certified and may meet the most recent certification and performance standards once compatible repair or replacement parts become commercially available.

(b) Notwithstanding subdivision (a), whenever the State Fire Marshal determines a system or component thereof creates a hazard to public health and welfare, he may prevent use of the particular system or component.

(c) Notwithstanding subdivision (a), the Division of Measurement Standards may prohibit the use of any system or component thereof if it determines on the basis of test procedures adopted pursuant to subdivision (c) of Section 41956, that use of the system or component will result in gasoline recirculation.

(Added by Stats. 1981, Ch. 902.)

41957. The Division of Occupational Safety and Health of the Department of Industrial Relations is the only agency responsible for determining whether any gasoline vapor control system, or component thereof, creates a safety hazard other than a fire hazard.

If the division determines that a system, or component thereof, creates a safety hazard other than a fire hazard, that system or component may not be used until the division has certified that the system or component, as the case may be, does not create that hazard.

The division, in consultation with the state board, shall adopt the necessary rules and regulations for the certification if the certification is required.

(Amended by Stats. 1981, Ch. 714.)

41958. To the maximum extent practicable, the rules and regulations adopted pursuant to Sections 41956 and 41957 shall allow flexibility in the design of gasoline vapor control systems and their components. The rules and regulations shall set forth the performance standards as to safety and measurement accuracy and the minimum procedures to be followed in testing the system or component for compliance with the performance standards.

The State Fire Marshal, the Division of Occupational Safety and Health, and the Division of Measurement Standards shall certify any system or component which complies with their adopted rules and regulations. Any one of the state agencies may certify a system or component on the basis of results of tests performed by any entity retained by the manufacturer of the system or component or by the state agency. The requirements for the certification of a system or component shall not require that it be tested, approved, or listed by any private entity, except that certification testing regarding recirculation of gasoline shall include testing by an independent testing laboratory.

(Amended by Stats. 1982, Ch. 466, Sec. 72.)

41959. Certification testing of gasoline vapor control systems and their components by the state board, the State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may be conducted simultaneously.

(Amended by Stats. 1981, Ch. 714.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94000-94003

41960. Certification of a gasoline vapor recovery system for safety and measurement accuracy by the State Fire Marshal and the Division of Measurement Standards and, if necessary, by the Division of Occupational Safety and Health shall permit its installation wherever required in the state, if the system is also certified by the state board.

Except as otherwise provided in subdivision (f) of Section 41954, no local or regional authority shall prohibit the installation of a certified system without obtaining concurrence from the state agency responsible for the aspects of the system which the local or regional authority disapproves.

(Amended by Stats. 1981, Ch. 714.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94000-94003

41960.1. (a) All vapor control systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be operated in accordance with the applicable standards established by the State Fire Marshal or the Division of Measurement Standards pursuant to Sections 41956 to 41958, inclusive.

(b) When a sealer or any authorized employee of the Division of Measurement Standards determines, on the basis of applicable test procedures of the division, adopted after public hearing, that an individual system or component for the control of gasoline vapors resulting from motor vehicle fueling operations does not meet the applicable standards established by the Division of Measurement Standards, he or she shall take the appropriate action specified in Section 12506 of the Business and Professions Code.

(c) When a deputy State Fire Marshal or any authorized employee of a fire district or local or regional firefighting agency determines that a component of a system for the control of gasoline vapors resulting from motor vehicle fueling operations does not meet the applicable standards established by the State Fire Marshal, he or she shall mark the component "out of order." No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and either the component has been inspected by a representative of the agency employing the person originally marking the component, or the person using or permitting use of the component has been expressly authorized by the agency to use the component pending reinspection.

(Added by Stats. 1981, Ch. 902.)

41960.2. (a) All installed systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be maintained in good working order in accordance with the manufacturer's specifications of the system certified pursuant to Section 41954.

(b) Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone other than the original manufacturer or its authorized representative, the person shall permanently affix a plate to the vapor recovery control system which identifies the repairer or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder of a vapor control system shall remove any identification of the original manufacturer where the removal does not affect the continued safety or performance of the vapor control system.

(c) The state board shall identify equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations which substantially impair the effectiveness of the systems in reducing air contaminants.

(d) When a district determines that a component contains a defect specified pursuant to subdivision (c), the district shall mark the component "Out of Order". No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and the district has reinspected the component or has authorized use of the component pending reinspection.

(e) Where a district determines that a component is not in good working order but does not contain a defect specified pursuant to subdivision (c), 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.

(Amended by Stats. 1987, Ch. 592, Sec. 1.)

41960.3. (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. The operating instructions required by Section 41960.4 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.

(b) 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 such remedial action as is appropriate 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.

(Amended by Stats. 1986, Ch. 194, Sec. 1.)

41960.4. 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.

(Added by Stats. 1981, Ch. 902.)

41960.5. (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 with a nozzle spout meeting the required specifications for leaded gasoline nozzle spouts set forth in Title 40, Code of Federal Regulations, Section 80.22(f)(1).

(b) For the purpose of this section, "leaded gasoline" means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

(Added by Stats. 1987, Ch. 592, Sec. 2.)

41960.6. (a) No retailer, as defined in subdivision (g) of Section 20999 of the Business and Professions Code, shall, on or after July 1, 1992, allow the operation of a pump, including any pump owned or operated by the state, or any county, city and county, or city, equipped with a nozzle from which gasoline or diesel fuel is dispensed, unless the nozzle is equipped with an operating hold open latch. Any hold open latch determined to be inoperative by the local fire marshal or district official shall be repaired or replaced by the retailer, within 48 hours after notification to the retailer of that determination, to avoid any applicable penalty or fine.

(b) For purposes of this section, a "hold open latch" means any device which is an integral part of the nozzle and is manufactured specifically for the purpose of dispensing fuel without requiring the consumer's physical contact with the nozzle.

(c) Subdivision (a) does not apply to nozzles at facilities which are primarily in operation to refuel marine vessels or aircraft.

(d) Nothing in this section shall affect the current authority of any local fire marshal to establish and maintain fire safety provisions for his or her jurisdiction.

(Added by Stats. 1991, Ch. 468, Sec. 2.)

41961. The State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may charge a reasonable fee for certification of a gasoline vapor control system or a component thereof, not to exceed their respective estimated costs therefor. Payment of the fee may be made a condition of certification. All money collected by the State Fire Marshal pursuant to this section shall be deposited in the State Fire Marshal Licensing and Certification Fund established pursuant to Section 13137, and shall be available to the State Fire Marshal upon appropriation by the Legislature to carry out the purposes of this article.

(Amended by Stats. 1992, Ch. 306, Sec. 5. Effective January 1, 1993. Operative July 1, 1993, by Sec. 6 of Ch. 306.)

41962. (a) Notwithstanding Section 34002 of the Vehicle Code, the state board shall adopt test procedures to determine the compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emission standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. The performance standards and test procedures adopted by the state board shall be consistent with the regulations adopted by the Commissioner of the California Highway Patrol and the State Fire Marshal pursuant to Division 14.7 (commencing with Section 34001) of the Vehicle Code.

(b) The state board may test, or contract for testing, the vapor recovery system of any cargo tank of any tank vehicle used to transport gasoline. The state board shall certify the cargo tank vapor recovery system upon its determination that the system, if properly installed and maintained, will meet the requirements of subdivision (a). The state board shall enumerate the specifications used for issuing such certification. After a cargo tank vapor recovery system has been certified, if circumstances beyond control of the state board cause the system to no longer meet the required specifications, the certification may be revoked or modified.

(c) Upon verification of certification pursuant to subdivision (b), which shall be done annually, the state board shall send a verified copy of the certification to the registered owner of the tank vehicle, which copy shall be retained in the tank vehicle as evidence of certification of its vapor recovery system. For each system certified, the state board shall issue a nontransferable and nonremovable decal to be placed on the cargo tank where the decal can be readily seen.

(d) With respect to any tank vehicle operated within a district, the state board, upon request of the district, shall send to the district, free of charge, a certified copy of the certification and test results of any cargo tank vapor recovery system on the tank vehicle.

(e) The state board may contract with the Department of the California Highway Patrol to carry out the responsibilities imposed by subdivisions (b), (c), and (d).

(f) The state board shall charge a reasonable fee for certification, not to exceed its estimated costs therefor. Payment of the fee shall be a condition of certification. The fees may be collected by the Department of the California Highway Patrol and deposited in the Motor Vehicle Account in the State Transportation Fund. The Department of the California Highway Patrol shall transfer to the Air Pollution Control Fund the amount of those fees necessary to reimburse the state board for the costs of administering the certification program.

(g) No person shall operate, or allow the operation of, a tank vehicle transporting gasoline and required to have a vapor recovery system, unless the system thereon has been certified by the state board and is installed and maintained in compliance with the state board's requirements for certification. Tank vehicles used exclusively to service gasoline storage tanks which are not required to have gasoline vapor controls are exempt from the certification requirement.

(h) Performance standards of any district for cargo tank vapor recovery systems on tank vehicles used to transport gasoline shall be identical with those adopted by the state board therefor and no district shall adopt test procedures for, or require certification of, cargo tank vapor recovery systems. No district may impose any fees on, or require any permit of, tank vehicles with vapor recovery systems. However, nothing in this section shall be construed to prohibit a district from inspecting and testing cargo tank vapor recovery systems on tank vehicles for the purposes of enforcing this section or any rule and regulation adopted thereunder that are applicable to such systems and to the loading and unloading of cargo tanks on tank vehicles.

(i) The Legislature hereby declares that the purposes of this section regarding cargo tank vapor recovery systems on tank vehicles are (1) to remove from the districts the authority to certify, except as specified in subdivision (b), such systems and to charge fees therefor, and (2) to grant such authority to the state board, which shall have the primary responsibility to assure that such systems are operated in compliance with its standards and procedures adopted pursuant to subdivision (a).

(Amended by Stats. 1982, Ch. 1255, Sec. 2. Operative July 1, 1983, or earlier, by Sec. 27.5 of Ch. 1255.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94004, 94007

Article 6. Gasoline Cargo Tanks
(Article 6 added by Stats. 1980, Ch. 1134.)

41970. (a) As an alternative to the criminal penalties provided in Article 3 (commencing with Section 42400) of Chapter 4 in any case involving a gasoline cargo tank subject to Article 5 (commencing with Section 41950), if it appears that any person has violated any provision of this part, or any order, rule, or regulation of the state board or of a district adopted pursuant to this part, and all of the conditions set forth in subdivision (b) are met and the investigating officer or official decides to initiate enforcement action, he or she may prepare, in triplicate, and the alleged violator shall sign, a written notice to appear containing the following statement: "Cited in accordance with Section 41970 of the Health and Safety Code." If the arrested person presents, by mail or in person, proof of correction as prescribed in Section 41971 on or before the date on which he or she promised to appear, the court shall dismiss the applicable charges.

(b) Use of the notice to appear pursuant to this article is authorized when both of the following conditions exist:

(1) The violation does not evidence intentional avoidance or persistent neglect.

(2) The violation has not presented and does not present an immediate safety hazard.

(Added by Stats. 1980, Ch. 1134.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 94005

41971. Proof of correction shall consist either of a verification pursuant to Section 41972 or of a certification by an authorized representative of one of the following agencies that the alleged violation has been corrected:

(a) The state board.

(b) The State Fire Marshal.

(c) The district board.

(d) The Department of the California Highway Patrol.

(Amended by Stats. 1982, Ch. 1255, Sec. 2.3. Operative July 1, 1983, or earlier, by Sec. 27.5 of Ch. 1255.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 94005

41972. (a) Proof of correction by verification shall consist of a verification by the owner or operator of the gasoline cargo tank that the alleged violation has been corrected. The owner or operator shall notify the agency which issued the notice to appear at least 24 hours

in advance of the time when the correction may be inspected, specifying the location of the gasoline cargo tank.

If a representative of the issuing agency fails to appear to make the inspection at the designated place and time, the owner or operator shall prepare and submit a verification under penalty of perjury that the alleged violation has been corrected.

The state board shall adopt regulations for the making and submission of verifications pursuant to this section.

(Added by Stats. 1980, Ch. 1134.)

References at the time of publication (see page iii):

Regulations: 17, CCR, section 94005

41973. Each day that a gasoline cargo tank, which is the subject of a notice to appear issued pursuant to this article, is operated without correction of such violation subsequent to the date of the notice shall constitute a separate offense subject to the penalties provided in Article 3 (commencing with Section 42400) of Chapter 4.

(Added by Stats. 1980, Ch. 1134.)

41974. (a) Except as provided in subdivision (b), Article 3 (commencing with Section 42400) of Chapter 4 shall apply to any gasoline cargo tank subject to Article 5 (commencing with Section 41950).

(b) The other provisions of this article shall not apply to any gasoline cargo tank violation of that Article 5 occurring prior to January 1, 1981.

(Added by Stats. 1980, Ch. 1134.)

## Article 7. Incineration of Toxic Waste Materials
(Article 7 added by Stats. 1982, Ch. 1474, Sec. 1.)

41980. The Legislature finds and declares that:

(a) Incineration has not been used extensively in California as a means of disposal of toxic waste materials, primarily because of the extensive area available for landfill, the low cost of landfill as a method of disposal, and problems with air pollution.

(b) Because problems may result from disposing of certain toxic waste materials in 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.

(Added by Stats. 1982, Ch. 1474, Sec. 1.)

41980.5. For purposes of this article, "toxic waste" means hazardous waste, as defined in Section 25117.

(Added by Stats. 1982, Ch. 1474, Sec. 1.)

41981. 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.

The state board shall report its findings to the Legislature on or before January 1, 1984.

(Added by Stats. 1982, Ch. 1474, Sec. 1.)

41982. The state board shall, after completing the study referred to in Section 41981, in consultation with the affected districts and the Department of Health Services, 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 found 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 board.

(Added by Stats. 1982, Ch. 1474, Sec. 1.)

41983. (a) This article shall not be construed as preventing any district from establishing permit criteria more stringent than the guidelines specified in Section 41982.

(b) This article shall not be construed as limiting the authority of the Department of Health Services concerning hazardous waste control (Chapter 6.5 (commencing with Section 25100) of Division 20), or any regulations promulgated under the authority of those provisions.

(Added by Stats. 1982, Ch. 1474, Sec. 1.)

## CHAPTER 4. ENFORCEMENT

(Chapter 4 added by Stats. 1975, Ch. 957.)

### Article 1. Permits

(Article 1 added by Stats. 1975, Ch. 957.)

42300. (a) Every district board may establish, by regulation, a permit system that requires, except as otherwise provided in Section 42310, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to 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 42301 and payment of the fees required pursuant to Section 42311, unless the air pollution control officer or the hearing board has initiated action to suspend or revoke the permit pursuant to Section 42304, 42307, or 42309, 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.

(Amended by Stats. 1994, Ch. 727, Sec. 4.)

42300.1. (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.

(Added by Stats. 1992, Ch. 1126, Sec. 2. Effective January 1, 1993.)

42300.2. 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.

(Added by Stats. 1992, Ch. 1126, Sec. 3. Effective January 1, 1993.)

42301. A permit system established pursuant to Section 42300 shall do all of the following:

(a) Ensure that the article, machine, equipment, or contrivance for which the permit was issued does not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all of the following:

(1) All applicable orders, rules, and regulations of the district and of the state board.

(2) All applicable provisions of this division.

(c) Prohibit the issuance of a permit to a Title V source if the Administrator of the Environmental Protection Agency objects to its issuance in a timely manner as provided in Title V. This subdivision is not intended to provide any authority to the Environmental Protection Agency to object to the issuance of a permit other than that authority expressly granted by Title V.

(d) Provide that the air pollution control officer may issue to a Title V source a permit to operate or use if the owner or operator of the Title V source presents a variance exempting the owner or operator from Section 41701, any rule or regulation of the district, or any permit condition imposed pursuant to this section, or presents an abatement order that has the effect of a variance and that meets all of the requirements of this part pertaining to variances, and the requirements for the issuance of permits to operate are otherwise satisfied. The issuance of any variance or abatement order is a matter of state law and procedure only and does not amend a Title V permit in any way. Those terms and conditions of any variance or abatement order that prescribe a compliance schedule may be incorporated into the permit consistent with Title V and this division.

(e) Require, upon annual renewal, that each permit be reviewed to determine that the permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the permit conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations.

(f) Provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance. An application for transfer of ownership only, or change in operator only, of any article, machine, equipment, or contrivance which had a valid permit to operate within the two-year period immediately preceding the application is a temporary permit to operate. Issuance of the final permit to operate shall be conditional upon a determination by the district that the criteria specified in subdivisions (b) and (e) are met, if the permit was not surrendered as a condition to receiving emission reduction credits pursuant to banking or permitting rules of the district. However, under no circumstances shall the criteria specify that a change of ownership or operator alone is a basis for requiring more stringent emission controls or operating conditions than would otherwise apply to the article, machine, equipment, or contrivance.

(Amended by Stats. 1994, Ch. 727, Sec. 5)

42301.1. Whenever necessary and appropriate to ensure compliance with all applicable conditions prior to issuance of a permit to operate an article, machine, equipment, or

contrivance, a district may issue a temporary permit to operate. The temporary permit to operate shall specify a reasonable period of time during which the article, machine, equipment, or contrivance may be operated in order for the district to determine whether it will operate in accordance with the conditions specified in the authority to construct.

(Added by Stats. 1988, Ch. 1568, Sec. 28.)

42301.3. (a) It is the intent of the Legislature that districts expedite permits for the installation of air pollution control equipment.

(b) (1) This section applies only to air pollution control projects at existing sources, where the project is necessary to comply with emission standards or limitations imposed by law, including, but not limited to, district regulations.

(2) This section does not apply to air pollution control requirements applicable to new or modified sources that are not air pollution control projects necessary to comply with emission standards or limitations imposed by law. However, this section applies to the permitting of air pollution control projects necessary to comply with emission standards or limitations imposed by law that are intended to reduce emissions of one or more pollutants that may or may not result in an increase in emissions of a different pollutant or pollutants.

(c) Each district shall prepare, with input from the regulated community, a list of permitting criteria that identifies streamlined permit application requirements for each type of mandated air pollution control project. The list shall be consistent with the requirements of this section but may also include general facility information, a general description of the equipment affected by the air pollution control project, and specific information regarding the pollution control equipment or operational changes that will reduce emissions.

(d) (1) Within 30 days of the date that the applicant submits the information specified in paragraph (2), the district shall commence evaluation and deem the application complete, subject to the final as-built design submittal being consistent with the preliminary engineering and design information specified in subparagraph (B) of paragraph (2), for the purpose of issuing a permit to construct. Notwithstanding the limitations of Sections 65944, 65950, and 65952 of the Government Code, if final design information results in a material change in the permit evaluation that was based on the preliminary submittal, the application shall undergo a new evaluation based on the final design and the district shall promptly notify the applicant of any further information that is necessary to complete the evaluation.

(2) Prior to the district deeming the application complete pursuant to paragraph (1), the applicant shall provide the following information:

(A) The information specified in the list prepared pursuant to subdivision (c).

(B) Either of the following:

(i) Preliminary engineering and design information or other technical equipment specification data reasonably available during the initial design phase.

(ii) The manufacturer's performance warranty and the associated preliminary engineering data on which the bidding documents for the contract with the manufacturer were based.

(C) Any reasonably required information regarding an air contaminant for which emissions will increase as a result of installation of the air pollution control project.

(D) Any information necessary to make the application complete with respect to any federal requirement adopted or promulgated pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) that applies to the air pollution control project.(e) Prior to the final approval of the applicant's permit to operate, the applicant shall provide the district with final engineering and design information and other data reasonably necessary to ensure compliance with applicable emission limitations. The information may be based on source test results and other operating data available after startup and shakedown of the control equipment. Once the

applicant has provided the information specified in this subdivision, and the final design is consistent with the preliminary design data specified in subparagraph (B) of paragraph (2) of subdivision (d) for purposes of permit evaluation, the district shall deem the application complete for the purpose of issuing a permit to operate.

(f) (1) For projects subject to this section for which the use of continuous emission monitoring systems is required, the air quality permit conditions that relate to emissions monitored by the continuous emission monitoring systems shall be sufficient for measurements and reporting as required to meet the specified emission limit as required by the rule or regulation. (2) Nothing in this subdivision is intended to limit the applicability of standards or limitations or monitoring requirements set forth in any rule or regulation.

(g) (1) An applicant may petition the district hearing board for a variance from a requirement to install air pollution control equipment or to meet a more stringent emission standard or limitation if there is a delay in the approval of the permit to construct or permit to operate for projects under this section. The finding required by paragraph (2) of subdivision (a) of Section 42352 shall be met if the hearing board finds that the delay is not due to the lack of due diligence on the part of the applicant in the permit process, and the delay results in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by paragraphs (3), (4), and (5) of subdivision (a) of Section 42352 shall not apply to a variance granted pursuant to this paragraph. Paragraph (6) of subdivision (a) of Section 42352 shall apply to a variance granted pursuant to this paragraph. However, if the district requests that the applicant monitor or otherwise quantify emission levels from the source during the term of the variance pursuant to paragraph (6) of subdivision (a) of Section 42352, that monitoring or quantification required in connection with the variance shall be limited to any monitoring or quantification already being performed for the source for which the pollution control project is required. No variance shall be granted unless the hearing board makes the findings as specified in this subdivision. The hearing board shall not impose any excess emission fees in connection with the grant of the variance. In determining the term of the variance, the hearing board shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant.

(2) For purposes of this subdivision, "due diligence" means that all of the following conditions exist:

(A) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(B) 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.

(C) 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.

(D) 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 section.

(E) 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.

(3) Paragraph (1) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(4) Nothing in this subdivision 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 section.

(h) 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 13 (commencing with Section 21000) of the Public Resources Code) 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 section to allow the district to streamline the approval process.

(i) For purposes of this section, "material change" means a change that would result in a material impact on the level of emission calculated.

(Amended by Stats. 1994, Ch. 720, Sec. 1.)

42301.5. (a) Except as provided in subdivision (b), 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.

(b) The district may require compliance with a regulation prior to completion of the five-year period specified in subdivision (a) if the district or a portion of the district is designated by the state board as a nonattainment area for any national ambient air quality standard and the district determines that earlier compliance is necessary to demonstrate reasonable progress toward attainment and that, on a case-by-case basis, compliance with the regulation will not do any of the following:

(1) Require the abandonment or removal from service of any existing manufacturing or energy-producing equipment.

(2) Specify an emission level or operating standard which would cause a substantial increase in the rate of degradation of energy-producing equipment or would cause a violation or voiding of a manufacturer's warranty for that equipment.

(3) Result in an increase in operating costs in excess of 5 percent per year for the article, machine, equipment, or contrivance for which the authority to construct was originally issued.

(4) Require an increase in capital costs in excess of one hundred thousand dollars ($100,000) or 3 percent of the original capital cost of the article, machine, equipment, or contrivance for which the authority to construct was originally issued, whichever is greater.

(c) Any article, machine, equipment, or contrivance which may emit into the ambient air any toxic air contaminant identified pursuant to Section 39662 shall comply with any regulation adopted by the state board or a district requiring a reduction in emissions of that contaminant or chemical from the article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the state board or the district.

(d) (1) Any article, machine, equipment, or contrivance which is located within a district which is designated by the state board as a nonattainment area for any national ambient air quality standard, and for which an authority to construct is issued on or after January 1, 1988, shall comply with any district regulation which is adopted after December 31, 1982, and which requires a reduction in emissions of any air pollutant, including any precursor of an air pollutant, which interferes with the attainment of the standard, from that article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the district.

(2) In determining a schedule of compliance under this subdivision, the district shall consider the extent to which the proposed schedule will adversely affect the ability of the facility owner or operator to amortize the capital costs of pollution control equipment purchased within the preceding five years.

(Amended by Stats. 1987, Ch. 602, Sec. 1.)

42301.6. (a) 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, 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 44303. The notice may be combined with any other notice on the project or permit which is required by law.

(b) 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 this section 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.

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) 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.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

(f) 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.

(g) The notice requirements of this section 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 39013, or which are hazardous air emissions.

(h) 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 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 44321 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532.

(Amended by Stats. 1991, Ch. 1183, Sec. 14.)

42301.7. (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 41700 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 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. 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 41700 pending a hearing pursuant to Section 42450 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 such an 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 42450.

(d) Nothing in this section limits any existing authority of any district.

(Added by Stats. 1988, Ch. 1589, Sec. 9.)

42301.8. 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 such a request, shall notify the district within 24 hours.

(Added by Stats. 1988, Ch. 1589, Sec. 10.)

42301.9. For the purposes of Sections 42301.4 to 42301.8, 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 39013.

(c) "Administering agency" means an agency designated pursuant to Section 25502.

(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.

(Amended by Stats. 1991, Ch. 1183, Sec. 15.)

42301.10. In any district that has a permit system established pursuant to Section 42300, the air pollution control officer may include, in any permit issued to a Title V source, emission limits, standards, and other requirements that ensure compliance with all federal Clean Air Act "applicable requirements, " as that term is defined in regulations adopted by the Environmental Protection Agency pursuant to Title V, including those requirements specified in an applicable implementation plan as defined by Section 7602(q) of Title 42 of the United States Code, and Parts C (42 U.S.C. Sec. 7470 et seq.) and D (42 U.S.C. Sec. 7501 et seq.) of Title 1 of the Clean Air Act. (Added by Stats. 1993, Ch. 1166, Sec. 8. Effective January 1, 1994.)

42301.11. It is the intent of the Legislature that, in implementing Title V, districts do all of the following:

(a) Develop, in recognition that districts are obligated to issue one-third of the Title V permits within one year of the Title V program's approval by the Environmental Protection Agency, and in recognition that sources are allowed one year to submit a Title V permit application, an equitable program for ensuring that all sources receive as much time as feasible to develop and submit permit applications. In developing the program the districts shall recognize the complexity and size of the facilities, the number and similarity of facilities within each industry category, the level of effort required to develop the permit application, and the resources available to complete the application. The districts should also consider potential incentive programs to promote voluntary early permit application submissions.

(b) Consider the merits and benefits of including the permit shield authorized by subsection (f) of Section 70.6 of Title 40 of the Code of Federal Regulations in all Title V permits to clarify the federal compliance responsibilities of Title V sources.

(c) Consistent with state and federal regulations, allow the use of emission monitoring alternatives, when available and having the accuracy required to ensure enforcement and compliance, in lieu of the use of continuous emission monitors.

(d) Give priority to the issuance of Title V permits for five-year terms.

(Added by Stats. 1993, Ch. 1166, Sec. 9. Effective January 1, 1994.)

42301.12. (a) Any district permit system or permit provision established by a district board to meet the requirements of Title V shall minimize the regulatory burden on Title V sources and the district and shall, consistent with federal law, meet all of the following criteria:

(1) Apply only to Title V sources, as defined in Section 39053.5.

(2) Issue permits pursuant to Title V only after the Environmental Protection Agency has approved the district's Title V permit program.

(3) Identify in the permit, to the greatest extent feasible, permit terms and conditions which are federally enforceable and those which are not federally enforceable, so that requirements imposed only by the state are not made federally enforceable solely as a result of being included as part of a Title V permit. A district may make that identification by either of the following means:

(A) Identifying in the permit the terms and conditions which are federally enforceable because they are imposed pursuant to a federal requirement.

(B) Identifying in the permit the terms and conditions which are imposed pursuant to state law or district rules and are not federally enforceable. Districts may further identify those terms and conditions of the permit which are not federally enforceable, but which have been

included in the permit to enforce district rules adopted by the district to meet federal requirements.

(4) Utilize, to the extent reasonably feasible, general permits and similar methods to reduce source and district permitting burdens for Title V sources.

(5) Establish clear and simple application completeness criteria.

(6) To the extent feasible, minimize the burden of federally mandated paperwork such as recordkeeping and reporting documents.

(7) Allow sources maximum flexibility in selecting cost-effective, reliable, and representative monitoring methods consistent with applicable state and federal requirements.

(8) If a permit is required to be reopened to comply with Title V requirements, base the reopening upon the federal criteria for reopening and limit the reopening to only the federal component of the Title V permit. This paragraph is not intended to limit in any way the authority under state law to reopen permits.

(9) Authorize administrative permit amendments and minor permit modifications as required by federal law.

(10) Provide that, unless the district determines that a Title V application is not complete within 60 days of receipt of the application, the application shall be deemed to be complete.

(11) Authorize, to the extent consistent with existing state law, mandatory operational flexibility provisions required pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations, and consider optional operational flexibility provisions established pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever any pending litigation.

(12) Make every reasonable effort, in partnership with Title V sources and the state board, to evaluate and respond to the substance of any objection to a proposed permit and to obtain expeditious approval of Title V permits submitted to the Environmental Protection Agency.

(Amended by Stats. 1994, Ch. 727, Sec. 7)

42302. An applicant for a permit which has been denied may request, within 10 days after receipt of the notice of the denial, the hearing board of the district to hold a hearing on whether or not the permit was properly denied.

(Added by Stats. 1975, Ch. 957.)

42302.1. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, or within 10 days after mailing of the notice of issuance of the permit to any person who has requested notice or within 10 days of the publication and mailing of notice provided for in Section 1 of the act amending this section in the 1993 Regular Session of the Legislature, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Except as provided in Section 1 of the act amending this section in the 1993 Regular Session of the Legislature, within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

(Amended by Stats. 1993, Ch. 1131, Sec. 3. Effective January 1, 1994.)

42303. An air pollution control officer, at any time, may require from an applicant for, or the holder of, any permit provided for by the regulations of the district board, such information, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which the permit was issued or applied.

(Added by Stats. 1975, Ch. 957.)

42303.2. (a) An air pollution control officer, at any time, may, for the purpose of permitting or enforcement actions, require from the in-state or out-of-state supplier, wholesaler, or distributor of volatile organic compounds or chemical substances the use of which results in air contaminants subject to regulation or enforcement by the district, customer lists and chemical types and quantities of those compounds and substances as specified by the district pursuant to subdivision (b) which are purchased by, or on order for, a specified source operator within the district. The supplier, wholesaler, or distributor shall disclose the information required pursuant to this section to the district.

(b) Prior to implementing subdivision (a), an air pollution control officer shall prepare a comprehensive list of volatile organic compounds or chemical substances the use of which results in the emission of air contaminants which are subject to regulation or enforcement by the district.

(c) (1) Any officer or employee of the district or of a district contractor, or former officer or employee, who, by virtue of that employment or official position has possession of, or has access to, any confidential information that is a trade secret, customer list, or supplier name acquired pursuant to this section, and who, knowing that the disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor punishable by a six month county jail term and a fine not to exceed one thousand dollars ($1,000).

(2) Any officer or employee of the district or of a district contractor, or former officer or employee, who, by virtue of that employment or official position has possession of, or has access to, any other confidential information acquired pursuant to this section, and who, knowing that the disclosure of the information to the general public is prohibited by this section, and who, knowing that the disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor punishable by a 10-day county jail term or a fine not to exceed five hundred dollars ($500).

(d) The penalties provided in subdivision (c) shall be in addition to any existing civil penalties and remedies available under the law.

(e) Except for the purposes of any enforcement or permit action, and except for information obtained from an independent source, all information received or compiled by an air pollution control officer from a supplier, wholesaler, or distributor pursuant to subdivision (a) is confidential for the purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and shall not be disclosed.

(Added by Stats. 1991, Ch. 902, Sec. 2.)

42303.5. 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.

(Added by Stats. 1976, Ch. 1063.)

42304. 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, such officer may suspend the permit. Such officer shall serve notice in writing of such suspension and the reasons therefor on the permittee.

(Added by Stats. 1975, Ch. 957.)

42305. The air pollution control officer shall reinstate a suspended permit when furnished with all the requested information, analyses, plans, and specifications.

(Added by Stats. 1975, Ch. 957.)

42306. Within 10 days after receipt of the notice of suspension pursuant to Section 42304, the permittee may request the hearing board of the district to hold a hearing on whether or not the permit was properly suspended.

(Added by Stats. 1975, Ch. 957.)

42307. 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 he 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.

(Added by Stats. 1975, Ch. 957.)

42308. Within 30 days after a hearing has been requested pursuant to Section 42302, 42306, or 42307, the hearing board shall hold a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3.

(Added by Stats. 1975, Ch. 957)

42309. 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.

(Added by Stats. 1975, Ch. 957)

42310 A permit shall not be required for:

(a) Any vehicle.

(b) Any structure designed for and used exclusively as a dwelling for not more than four families.

(c) An incinerator used exclusively in connection with such a structure.

(d) Barbecue equipment which is not used for commercial purposes.

(e) 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 such heaters if the heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute or less.

(f) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

As used in this section, maintenance does not include operation.

(Amended by Stats. 1976, Ch. 1063.)

42310.5. (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.

(Added by Stats. 1987, Ch. 183, Sec. 1.)

42311. (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 this section 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) The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) 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.

(c) Except as provided in Section 42313, all the fees shall be paid to the district treasurer to the credit of the district.

(d) This section does not apply to the south coast district board which is governed by Section 40510.

(e) In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to this section, 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 this section 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 providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.

(f) In addition to any other fees authorized by this section, 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 39660, 39661, and 39662. 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 39666 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.

(g) 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.

(h) 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.

(i) Nothing in the amendments to this section enacted in 1988 limits or abridges any previously existing authority of a district to vary fees according to quantity of emissions, nor affects any pending litigation which might affect that previous authority.

(Amended by Stats. 1988, Ch. 1568, Sec. 29.)

42311.1. (a) Contemporaneously with the annual State Budget, the state board shall prepare a report on the sources of funding for each district with an annual budget which exceeds one million dollars ($1,000,000). The report shall include all of the following:

(1) The annual budget of each district, based upon the most recent fiscal year for which data are available.

(2) A description of each district's budgetary process, including, but not limited to, criteria for allocating costs.

(3) A description of current funding sources for district programs, including, but not limited to, fees, state subventions, federal grants, and local tax revenues, and the approximate amount each source contributes to the district's annual budget.

(4) A comparison of the fees paid by different industries within each district, to the extent these data are available.

(5) A description of program needs, if any, which are not met by current funding levels.

(6) For a district which adopts a schedule of fees for issuance of permits for activities described under Section 42311.2, a comparison between the fees paid by persons or entities issued a permit and district administrative costs for issuing and enforcing those permits.

(7) A fee system to identify the costs and revenues associated with each of the major services and programs of each district, to identify the services and programs supported in whole or in part by each type of fee and how the costs are allocated among fees, and to assess whether the fee system includes a program consistent with the requirements of paragraph (3) of subdivision (b) of Section 7661a of Title 42 of the United States Code.

(8) A statement of district revenues derived from enforcement activities, including a report of how much revenue, as a percentage of a district's overall budget, is derived from fines and penalties levied by the district.

(b) Every district included within subdivision (a) shall provide data and analyses to the state board for inclusion in the report.

(c) The state board shall consult with districts and other interested parties prior to preparing the report required under subdivision (a).

(d) Upon adoption of the report described in subdivision (a), the state board shall transmit copies of the report to the Governor and the Legislature.

(e) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 1993, Ch. 1028, Sec. 8. Effective January 1, 1994. Inoperative July 1, 1997. Repealed as of January 1, 1998, by its own provisions.)

42311.2. (a) Notwithstanding Section 42311, a district shall not adopt or impose fees which exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry pursuant to Section 4551.5 or 4562 of the Public Resources Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, "wildland vegetation management burn" means 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. For purposes of this subdivision, "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 include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

(Added by Stats. 1988, Ch. 1568, Sec. 29.4.)

42311.5. A district board may increase its fee schedule adopted under Section 42311 to generate sufficient revenues to pay for any district costs associated with the implementation of Section 66796.53 of the Government Code or Section 41805.5.

(Added by Stats. 1984, Ch. 1532, Sec. 5.)

42312. To aid in administering its permit system, a district board may contract with any county or city included, in whole or in part, within the district, and any such county or city may contract with the district, for the performance of such work in the name of, and subject to the approval of, the district air pollution control officer by the building department or other officer, department, or agency of the county or such city charged with the enforcement of regulations pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or enlargement of buildings or structures.

(Added by Stats. 1975, Ch. 957)

42313. Except in the case of a contract entered into between a county district and the county, a contract entered into pursuant to Section 42312 may provide that fees for permits shall be paid to the city or county which issues the permit and may be retained by that city or county, in whole or in part, as the consideration, or part thereof, for issuing the permits. Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

(Added by Stats. 1975, Ch. 957)

42314. (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 the shutdown of existing equipment shall be credited to the project as emissions offsets in accordance with district rules.

(4) The applicant has provided offsets to the extent they are reasonably available from facilities it owns or operates in the air basin and which mitigate the remaining impacts of the project.

(5) For new projects which burn municipal waste, landfill gas, or digester gas, the applicant has, in the judgment of the district, made a good faith effort to secure all reasonably available emissions offsets to mitigate the remaining impact of the project, and has secured all reasonably available offsets.

(b) This section applies to any project for which an application for an authority to construct is deemed complete by the district after January 1, 1986, only if the project's net emissions, combined with the net emissions from projects previously permitted under this section, are less than the amount provided for in the applicable growth allowance established by the district pursuant to Section 41604. If a district has not yet provided a growth allowance pursuant to Section 41604, the growth allowance is zero. For purposes of this subdivision, "net emissions" means the project's emissions, less any offsets provided by the applicant and less utility displacement credits granted pursuant to Section 41605.

(c) This section does not relieve a project from satisfying all applicable requirements of Part C (Prevention of Significant Deterioration) of the Clean Air Act, as amended in 1977 (42 U.S.C. Sec. 7401 et seq.), or any rules or regulations adopted pursuant to Part C.

(Repealed and added by Stats. 1985, Ch. 978, Sec. 5.)

42314.1. (a) Except as provided in subdivision (b), to the extent permissible under federal law, and notwithstanding any state or local new source review or prevention of significant deterioration rule or regulation, at the request of an applicant, a district shall issue permits for the construction of a project which burns municipal waste, landfill gas, or digester gas, if all of the following conditions are met:

(1) The project produces less than 50 megawatts of electricity, except as provided in paragraph (4).

(2) The project will utilize the appropriate degree of pollution control technology (BACT or LAER) required by the new source review rule of the district.

(3) The project applicant has, in the judgment of the district, made a good faith effort to secure all available emission offsets to mitigate the impact of the project, but sufficient offsets or other mitigation measures are not available. The applicant, however, is required to secure all the offsets which are available to mitigate the air quality impact of the project, except for projects which constitute a modification to an existing source under the district's new source review rule, in which case the applicant is only required to provide offsets from facilities which the applicant owns or operates within the air basin.

(4) The project produces 50 megawatts or more, but less than 80 megawatts, of electricity, meets the requirements of paragraphs (2) and (3), is located in a district whose state

implementation plan revisions have been approved by the Environmental Protection 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 Section 42315.

(Amended by Stats. 1986, Ch. 1134, Sec. 2.)

42314.2. (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.

(Added by Stats. 1987, Ch. 205, Sec. 1.)

42314.5. 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 41604 and 41605.5.

(Amended by Stats. 1987, Ch. 565, Sec. 2.)

42315. (a) 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:

(1) The project will not prevent or interfere with the attainment or maintenance of state and federal ambient air quality standards.

(2) The project will comply with all applicable emission limitations established prior to issuance of the permit or the determination of compliance.

(3) 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 Section 39666, and regulations adopted by the district pursuant to Section 41700 for the protection of public health. Notwithstanding Section 42301. 5, compliance with this subdivision shall be consistent with a reasonable schedule, as determined by the district.

(4) (A) A health risk assessment is performed and is submitted by the district to both the state board and the State Department of Health Services 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 State Department of Health Services. The State Department of Health Services 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.

(B) For purposes of complying with the requirements of this paragraph, the State Department of Health Services 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:

(i) Be performed in a manner consistent with guidelines provided by the state department.

(ii) Be reviewed by the state department for accuracy and completeness.

(iii) Be submitted by the state department to the district in accordance with the schedules established by this paragraph.

(C) Notwithstanding Section 6103 of the Government Code, the district shall reimburse the State Department of Health Services, or a qualified independent contractor designated by the state department pursuant to subparagraph (B), for its actual costs incurred in reviewing a health risk assessment for any project subject to this section.

(D) An application for any project which burns municipal waste or refuse-derived fuel is not complete until both of the following have been accomplished:

(i) The health risk assessment has been performed and is submitted to the district.

(ii) The state board and the State Department of Health Services, or a qualified independent contractor designated by the state department pursuant to subparagraph (B) have completed their review pursuant to this paragraph, and have submitted their comments to the district, unless the state board and the State Department of Health Services 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.

(E) This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(5) The district finds and determines, based upon the health risk assessment, comments from the state board and the State Department of Health Services, 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.

(6) 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.

(b) This section does not prohibit a district from requiring ambient air monitoring under any other provision of law.

(c) This section 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.

Nothing in this subdivision is intended to prohibit a district from requiring those projects to meet one or more of the conditions of this section.

(d) Nothing in this section prohibits the permit applicant from entering into a contract with any person pursuant to which the person may enforce this section or any other provision of law.

(Added by Stats. 1986, Ch. 1134, Sec. 3.)

42316. (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 41513 and 42402.

(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.

(Added by Stats. 1983, Ch. 608, Sec. 1. Effective September 1, 1983.)

42317. (a) If a district, which has received an application to construct facilities, processing units, or equipment which is necessary for producing Phase 2 reformulated gasoline, is not the lead agency for preparation of an environmental impact report pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the district shall process the application to the extent possible at the same time as the environmental impact report is being prepared.

(b) For purposes of this section, "Phase 2 reformulated gasoline" has the same meaning as defined in subdivision (h) of Section 21178.1 of the Public Resources Code.

(c) This section shall become inoperative on March 1, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats. 1992, Ch. 945, Sec. 15. Effective January 1, 1993. Inoperative March 1, 1996. Repealed as of January 1, 1997, by its own provisions.)

Article 1.5. Air Pollution Permit Streamlining Act
(Article 1.5 added by Stats. 1992, Ch. 1096, Sec. 3. Effective September 29, 1992.)

42320. This article shall be known, and may be cited, as the Air Pollution Permit Streamlining Act of 1992.

(Added by Stats. 1992, Ch. 1096, Sec. 3. Effective September 29, 1992.)

42321. The Legislature finds and declares as follows:

(a) California's air pollution control programs have been among the most successful efforts in the country to reduce air pollution and to protect public health and the environment.

(b) It is in the interest of the people of the state, particularly during times of economic difficulty, to enact laws which improve the processes by which businesses comply with environmental and air quality laws, without sacrificing the protection of public health and the environment.

(c) The purpose of this article is to require districts to review their permit programs and to institute new, efficient procedures which will assist businesses in complying with regional, state, and federal air quality laws in an expedited fashion, without reducing protection of public health and the environment.

(Added by Stats. 1992, Ch. 1096, Sec. 3. Effective September 29, 1992.)

42322. (a) Every district shall establish, by regulation, a program to provide for the expedited review of permits issued pursuant to Article 1 (commencing with Section 42300) in order to reduce unnecessary delay in the issuance of those permits and to protect the public health and the environment. The expedited permit system shall include all of the following:

(1) A precertification program for equipment which is mass-produced and operated by numerous sources under the same or similar conditions, in order to allow permit applicants who purchase that equipment to receive permits in an expedited fashion.

(2) A consolidated permitting process for any source that requires more than one permit, which provides that the source will be permitted on a facility or project basis, provides

a single point of contact for the permit applicant, and allows a source to be reviewed and permitted on a single, consolidated schedule.

(3) An expedited permit review schedule, based upon the types and amount of pollution emitted from sources. In order to comply with this subdivision, a district shall classify sources within its jurisdiction as minor, moderate, and major sources of air pollution, and shall establish a permit action schedule that sets forth specific deadlines, based on each classification, for an air pollution control officer to notify a permit applicant in writing of the approval or disapproval of a permit application.

(4) A training and certification program for private sector personnel, in order to establish a pool of professionals who can certify businesses as being in compliance with district 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 42302.

(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.

(Added by Stats. 1992, Ch. 1096, Sec. 3. Effective September 29, 1992.)

42322.5. 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.

(Added by Stats. 1993, Ch. 1180, Sec. 2. Effective January 1, 1994.)

42323. (a) For purposes of subdivision (b), "smallbusiness stationary source" means a source which meets all thefollowing criteria:

(1) The source is owned or operated by a person who employs100 or fewer individuals.

(2) The source is a small business as defined under thefederal Small Business Act (15 U.S.C. Sec. 631, et seq.).

(3) The source emits less than 10 tons per year of anysingle pollutant and less that 20 tons per year of allpollutants.

(b) In addition to the requirements of Section 42322, everydistrict shall establish a small business assistance program forsmall business stationary sources located within the district'sjurisdiction. A small business assistance program adoptedpursuant to this section shall consist of all of the following:

(1) The development of a standardized permit applicationform which is written in clear and understandable language andprovides small business persons with adequate information tocomplete and return the form.

(2) To the extent that a district determines that it willnot adversely affect public health or the environment, theconsolidation of the authority to construct and permit to operateinto a single permit process in order to reduce processing timesand paperwork for small business stationary sources.

(3) The establishment of expedited variance procedures forsmall businesses and the provision of technical assistance forapplicants on the processing of variances.

(4) The designation of a single person or office within thedistrict which shall serve as a point of initial access andaccessibility to the district for small business persons.

(5) Upon the approval of the district board at a dulynoticed public hearing, the establishment of surcharges on permitfees levied on sources regulated by the district, to be used forthe establishment of a small business economic assistanceprogram.

(c) This section does not apply to county air pollutioncontrol districts in counties that have a population of less than 250,000 persons.

(Added by Stats. 1992, Ch. 1096, Sec. 3.)

Article 1.5. District Review of a Permit Applicant's Compliance History
(Article 1.5 added by Stats. 1991, Ch. 1209, Sec. 3.)

42330. 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.It is the intent of the Legislature in enacting this article 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 article 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 article.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42331. (a) Prior to issuing a permit pursuant to Article 1 (commencing with Section 42300), the air pollution control officer may review the compliance history of the applicant

submitted to the district pursuant to Section 42336, 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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42332. (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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42333. (a) An air pollution control officer may, pursuant to this article, 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:

(1) In the three-year period preceding the date of application, the applicant has violated laws or regulations identified in subdivision (a) of Section 42331 and subdivision (a) of Section 42332 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.

(2) A notice of violation was issued for those violations.

(3) A variance was not in effect with respect to those violations.

(4) 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.

(5) Notice and an opportunity for an office conference was provided pursuant to Section 42334.

(b) This section does not apply to a permit to operate, or the renewal of such a permit, 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 paragraphs (1) to (4), inclusive, of subdivision (a) at the source in question at that facility.

(c) For the purposes of determining a permit action under this section, 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.

(d) The air pollution control officer's determination of whether to deny a permit shall be based upon all of the following:

(1) 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.

(2) 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.

(3) 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.

(4) Whether the violation has been corrected in a timely fashion or reasonable progress is being made.

(5) Whether a permit denial is not an appropriate action because a variance has been granted with respect to those violations.

(6) 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.

(7) Whether notice and an opportunity for an office conference was provided pursuant to Section 42334.

(e) A permit denial pursuant to subdivision (a) 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 42302, 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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42334. 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 paragraphs (1) to (4), inclusive, of subdivision (a) of Section 42333, 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 subdivision (a) of Section 42333. 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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42335. A permit denied pursuant to Section 42333 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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42336. 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 paragraphs (1) to (3), inclusive, of subdivision (a) of Section 42333, 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.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42337. 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 42336, or otherwise known to the district, based on credible information, is available from the district for public review.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42338. Nothing in this article limits the existing authority of the district.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

42339. This article does not apply to nuisance complaints based on odor emissions.

(Added by Stats. 1991, Ch. 1209, Sec. 3.)

## Article 2. Variances

(Article 2 added by Stats. 1975, Ch. 957.)

42350. (a) Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district.

(b)(1) If the district board has established a permit system by regulation pursuant to Section 42300, 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.

(2) 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.

(Amended by Stats. 1993, Ch. 1166, Sec. 11. Effective January 1, 1994.)

42350.5. 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.

(Added by Stats. 1992, Ch. 1126, Sec. 4. Effective January 1, 1993.)

42351. (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 such a 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 40826, or (2) which is being sought to avoid the notice and hearing requirements of Section 40826.

(Amended by Stats. 1976, Ch. 1063.)

42351.5. 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 such 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.

(Amended by Stats. 1990, Ch. 150, Sec. 2.)

42352. (a) No variance shall be granted unless the hearing board makes all of the following findings:

(1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either

(A) an arbitrary or unreasonable taking of property, or

(B) the practical closing and elimination of a lawful business. 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 paragraph, "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.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(6) 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.

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

(Amended by Stats. 1992, Ch. 1025, Sec. 1. Effective January 1, 1993.)

42352.5. (a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(l) 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.

(2) 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.

(b)(1) As used in this subdivision, "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.

(2) 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 subdivision (a) in the following manner:

(A) 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.

(B) 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.

(C) 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.

(Amended by Stats. 1994, Ch. 443, Sec. 1.)

42353. Upon making the specific findings set forth in Section 42352, 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 41700.

(Added by Stats. 1975, Ch. 957.)

42354. In prescribing other and different requirements, in accordance with Section 42353, the hearing board, insofar as is consonant with the Legislature's declarations in Sections 39000 and 39001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with such requirements.

(Added by Stats. 1975, Ch. 957.)

42355. (a) The hearing board may require, as a condition of granting a variance, that a bond be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the sureties shall have the option of promptly remedying the variance default or paying to the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

(Amended by Stats. 1982, Ch. 517, Sec. 277.)

42356. The hearing board may modify or revoke, by written order, any order permitting a variance.

(Added by Stats. 1975, Ch. 957.)

42357. The hearing board may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule.

(Added by Stats. 1975, Ch. 957.)

42358. (a) The hearing board, in making any order permitting a variance, shall specify the time during which such order shall be effective, in no event, except as otherwise provided in subdivision (b), to exceed one year, and shall set a final compliance date.

(b) A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.

(Added by Stats. 1975, Ch. 957.)

42359. Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

(Added by Stats. 1975, Ch. 957.)

42359.5. (a) Notwithstanding any other provision of this article or of Article 2 (commencing with Section 40820) of Chapter 8 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. The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

(Amended by Stats. 1979, Ch. 239.)

42360. Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 42359. 5, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

(Amended by Stats. 1976, Ch. 773.)

42361. Any variance granted by the hearing board of a county district or a unified district, or any member of such a hearing board pursuant to Section 42359.5, applicable in an area which subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless

prior to the expiration of such time, the hearing board of the regional district modifies or revokes the variance.

(Amended by Stats. 1976, Ch. 773.)

42362. The state board may revoke or modify any variance granted by any district if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this article.

(Added by Stats. 1975, Ch. 957.)

42363. Prior to revoking or modifying a variance pursuant to Section 42362, the state board shall conduct a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 on the matter. The person to whom the variance was granted shall be given immediate notice of any such hearing by the hearing board, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.

(Added by Stats. 1975, Ch. 957.)

42364. (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 article 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 such fees shall be paid to the district treasurer to the credit of the district.

(Amended by Stats. 1977, Ch. 1195.)

Article 2.5. Product Variances
(Article 2.5 added by Stats. 1994, Ch. 443, Sec. 2.)

42365. Any person who manufacturers a product may petition the hearing board for a product variance from a rule or regulation of the district pursuant to this article.

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

42366. A product variance is only available if, to provide effective relief, the variance is required to be granted for, and attached to, a particular product, as distinguished from the variance that may be granted to an individual petitioner pursuant to Section 42352. A product variance shall be granted only when a product does not comply with district rules or regulations and the variance is necessary for the sale, supply, distribution, or use of the product.

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

42367. No product variance shall be granted pursuant to this article from a requirement for a permit to build, erect, alter, or replace any article, machine, equipment, or other contrivance pursuant to Section 42300.

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

42368. (a) No product variance shall be granted unless the hearing board makes all of the following findings:

(1) The manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.

(2) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either

(A) an arbitrary or unreasonable taking of property, or

(B) the practical closing and elimination of a lawful business.

(3) The taking or closing would be without a corresponding benefit in reducing air contaminants.

(4) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with district rules and regulations.

(5) During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission levels to the district, if requested by the district.

(b) If the product variance is granted subject to conditions on the use of the product, within 10 days from the effective date of the variance, and for the duration of the time period of the variance, the petitioner shall cause a written notice to be furnished to any retailer, distributor, and purchaser of the product who is located within the district. The written notice shall be, attached to, or otherwise accompany, the product, and shall include all of the following information:

(1) That the product is being sold pursuant to a product variance granted by the district hearing board.

(2) The beginning and ending dates of the product variance.

(3) Any other condition set forth in the product variance.

(c) Within 10 days from the effective date of the granting of the product variance, the district shall cause to be published pursuant to Section 6061 of the Government Code, the information specified in subdivision (b).

(d) The district hearing board may prescribe requirements or conditions in the product variance that are applicable to the product, other than those imposed by statute or by any rule, regulation, or order of the district board, if those requirements or conditions are not more onerous.

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

42369. (a) No product variance shall be granted if the use of the product under the variance will result in a violation of Section 41700.

(b) No emergency product variance shall be granted pursuant to this article.

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

42370. If the product variance is granted and the product is in compliance with subdivisions (b) and (d) of Section 42368, the petitioner may manufacture, and any person may distribute, offer for sale, sell, apply, solicit the application of, or use the product under the conditions set forth in the product variance.

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

42371. Sections 42350.5, 42351, 42351.5, 42352.5, 42354 to 42357, inclusive, 42359, and 42362 to 42364, inclusive, shall apply to the granting of product variances pursuant to this article.

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

42372. (a) The hearing board, in making any order permitting a product variance, shall specify the time during which the order shall be effective, which, except as provided in subdivision (b), shall not exceed one year, and shall set a final compliance date.

(b) A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Section 42368.

(c) If the product variance is for a process or product that is equivalent to, or exceeds, the applicable standards required by the district's rules and regulations, and the hearing board granting the variance specifies that the only way to achieve compliance will be for the district to adopt or amend a rule or regulation, the air pollution control officer within 180 daysfrom the effective date of the variance, shall set a public hearing before the district governing board and make a recommendation on whether or not the board should adopt or amend a rule or regulation to bring the product into compliance. The district governing board shall, within one year of the effective date of the variance, take action to (1) adopt or amend a district rule or regulation to bring the product into compliance, or (2) determine that no amendment, rule, or regulation is warranted. If the district governing board fails to take either action, nothing in this subdivision shall limit the petitioner's rights and remedies under existing law.

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

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, or 42400.3, or 42400.4 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 39000) to Part 4 (commencing with Section 41500), 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.

(c)(1) 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 39000) to Part 4 (commencing with Section 41500), 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.

(2) 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 39000) to Part 4 (commencing with Section 41500), 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 monitoring device required by that toxic air contaminant rule, regulation, or permit 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.

(3) Paragraphs (1) and (2) apply only to violations that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

(d) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section 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 article for the same offense.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

(Amended by Stats. 1994, Ch. 727, Sec. 8)

References at the time of publication (see page iii):

Regulations:17, CCR, sections 94546, 94551

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision 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 guilty of a misdemeanor and is subject to a fine of not more than fifteenthousand dollars ($15,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) ofsubdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(c) Each day during any portion of which a violation occurs is a separate offense.

(d) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section 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 article for the same offense.

(Amended by Stats. 1992, Ch. 1252, Sec. 3. Effective January 1, 1993.)

42400.2. (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 within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars ($25,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who, knowingly and with intent to deceive, falsifies anydocument 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 guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d) (1) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury 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 within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(2) As used in this subdivision, "actual injury" means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation occurs constitutes a separate offense.

(f) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section 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 article for the same offense.

(Amended by Stats. 1992, Ch. 1252, Sec. 4. Effective January 1, 1993.)

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision 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 guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars ($50,000) or imprisonment in the county jail for not more than one year, or both. (b) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2 or 42402.3 precludes prosecution pursuant to this section 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 article for the same offense. (c) Each day during any portion of which a violation occurs constitutes a separate offense.

(Amended by Stats. 1993, Ch. 1166, Sec. 13. Effective January 1, 1994.)

42400.4. (a) In any district where a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and issubject to a fine of not more than ten thousand dollars ($10,000).

(b) In any district in which a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42404.3 precludes prosecution pursuant to this section 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 article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the Environmental Protection Agency fully approves that district's Title V permit program.(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3

(Added by Stats. 1994, Ch. 727, Sec. 9)

42400.5. In addition to the penalties, specified in Section 42400, the cost of putting out any unauthorized open outdoor fires may be imposed on any person violating Section 41800 or 41852.

(Added by Stats. 1976, Ch. 1063.)

42400.6 A fine or monetary penalty specified in Section 39674; subdivision (a), (b), (d), or (e) of Section 42400; Section 42402; or subdivision (a) of Section 44381 of this code, 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.

(Added by Stats. 1995, Ch. 618, Sec. 1.)

42401. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by the state board pursuant to Section 41505 is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(Amended by Stats. 1986, Ch. 1453, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94546, 94551

42402. (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates this part, any order issued pursuant to Section 42316, 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 39000) to Part 4 (commencing with Section 41500), 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 42316, 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 39000) to Part 4 (commencing with Section 41500), 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 subdivision (b) of Section 39616.

(c) Each day during any portion of which a violation occurs is a separate offense.

(Amended by Stats. 1994, Ch. 734, Sec. 1)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94546, 94551

42402.1. (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 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, 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).

(c) Each day during any portion of which a violation occurs is a separate offense.

(Amended by Stats. 1992, Ch. 1252, Sec. 7. Effective January 1, 1993.)

42402.2. (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 42400.2, 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 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, 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 42400.2, within a reasonable period of time under the circumstances, is subject to a civil penalty as provided in subdivision (a).

42402.3. (a) 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).

(b) Each day during any portion of which a violation occurs is a separate offense.

(Amended by Stats. 1993, Ch. 1166, Sec. 16. Effective January 1, 1994.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 94546, 94551

42402.5. In addition to any civil and criminal penalties prescribed under this article, a district may impose administrative civil penalties for a violation of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, if the district board has adopted rules and regulations specifying procedures for the imposition and amounts of these penalties. No administrative civil penalty levied pursuant to this section may exceed five hundred dollars ($500) for each violation. However, nothing in this section is intended to restrict the authority of a district to negotiate mutual settlements under any other penalty provisions of law which exceed five hundred dollars ($500).

(Added by Stats. 1988, Ch. 1568, Sec. 31.)

42403. (a) The civil penalties prescribed in Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent 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.

(Amended by Stats. 1992, Ch. 1252, Sec. 10. Effective January 1, 1993.)

42403.5. (a) Notwithstanding Section 42407, any violation of Section 41700 resulting from the engine of any diesel-powered bus while idling shall subject the owner to civil penalties assessed under this article, which may be recovered pursuant to Section 42403 by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.

(b) There is no liability under subdivision (a) if the person accused of the violation establishes by affirmative defense that the extent of the harm caused does not exceed the benefit accrued to bus passengers as a result of idling the engine.

(Added by Stats. 1987, Ch. 107, Sec. 1.)

42404. An action brought pursuant to Section 42403 to recover such 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.

(Added by Stats. 1975, Ch. 957.)

42404.5. Any limitation of time applicable to actions brought pursuant to Section 42403 shall not commence to run until the offense has been discovered, or could reasonably have been discovered.

(Added by Stats. 1987, Ch. 260, Sec. 1.)

42405. In an action brought pursuant to Section 42403 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.

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.

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.

(Amended by Stats. 1981, Ch. 1127.)

42405.1. (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 by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district, district attorney, or city attorney. The district shall pay the reward to the person who provides information which results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information which results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(b) No informant shall be eligible for a reward for a violation known to the district, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(c) If there is more than one informant for a single violation, the first notification received by the district shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(d) Public officers and employees of the United States, the State of California, or districts, counties, and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting of those violations does not relate in any manner to their responsibilities as public officers or employees.

(e) An informant who is an employee of a business and who provides information that the business violated this chapter is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(f) The district shall adopt regulations which establish procedures for a determination of the accuracy and validity of information provided and for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for a reward and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the district, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violating any provision of this part or any rule, regulation, or order of a district pertaining to emission regulations or limitations.

(g) The district shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(h) Claims may be submitted only for those referrals made on or after January 1, 1989.

(Added by Stats. 1988, Ch. 1412, Sec. 9.)

42405.5. (a) If any state or local government agency provides assistance in the investigation, data collection, or monitoring, preparation, or prosecution of an action to recover civil penalties pursuant to Section 42401, 42402, 42402.1, or 42402.2, and that assistance is provided in coordination with the state board or a district prosecuting the action, that agency shall be reimbursed out of the proceeds of the penalty collected for its costs and expenses incurred in providing the assistance.

(b) If the penalty collected is insufficient to fully reimburse the state board or district for the costs and expenses incurred in preparing and prosecuting the case and another agency or agencies for the costs and expenses incurred in assisting in the case, the amount collected shall be prorated among the state board or district and the assisting agency or agencies, on the basis of costs and expenses incurred by each.

(c) This section does not apply where there is an express agreement between the state board or district and another agency or agencies regarding reimbursement for assistance services and expenses.

(Added by Stats. 1986, Ch. 1453, Sec. 9.)

42406. To secure a civil penalty imposed pursuant to this article on the operation of a vessel, the district shall have a lien on the vessel which may be recovered in an action against the vessel in accordance with the provisions of Article 3 (commencing with Section 490), Chapter 2, Division 3 of the Harbors and Navigation Code, except that no undertaking shall be required to be filed by the district board as a condition to the issuance of a writ of attachment.

(Added by Stats. 1975, Ch. 957.)

42407. Except as provided in Section 42403.5, this article is not applicable to vehicular sources.

(Amended by Stats. 1987, Ch. 107, Sec. 2.)

42408. (a) Any person who tampers with any ambient air monitoring equipment, including related recording equipment, owned or operated by a county, unified or regional air pollution control district, air quality management district, or by the State of California, is guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering to the owner or operator of the equipment.

(b) For purposes of this section, "tampering" means any unauthorized, intentional touching or other conduct affecting the operational status of monitoring equipment which has the potential to invalidate data collected from the monitoring activity.

(Added by Stats. 1989, Ch. 722, Sec. 1.)

42409. Every district shall publish in writing and make available to any interested party a list which describes potential violations subject to penalties under this article. The list shall also include the minimum and maximum penalties for each violation which may be assessed by a district pursuant to this article.

(Added by Stats. 1991, Ch. 744, Sec. 1.)

Article 3.5. Compliance Programs

(Article 3.5 added by Stats. 1993, Ch. 1028, Sec. 9. Effective January 1, 1994.)

42420. The Legislature hereby finds and declares as follows:

(a) District enforcement programs should be prioritized to ensure that the imposition of civil and criminal penalties is commensurate with the severity of the violation.

(b) Districts shall endeavor to establish, where appropriate, alternatives to civil or criminal penalties for those circumstances in which the violation neither contributes to, nor potentially conceals, an emission that significantly contributes to unhealthful air quality.

(Added by Stats. 1993, Ch. 1028, Sec. 9. Effective January 1, 1994.)

42421. Each district which has a population of one million or more shall establish a compliance program that shall consist of all of the following elements:

(a) Procedures to ensure the consistent issuance of notices of compliance and notices of violations.

(b) A compliance assistance program to provide information to small businesses with regard to statutes and district rules and regulations to which they are subject and to assist them

in identifying the most efficient and least costly means of complying with those statutes and rules and regulations.

(c) Settlement agreement procedures whereby persons who are in violation of those statutes or district rules or regulations may agree to take actions to improve air quality in lieu of paying monetary fines or penalties.

(Added by Stats. 1993, Ch. 1028, Sec. 9. Effective January 1, 1994.)

## Article 4. Orders for Abatements
(Article 4 added by Stats. 1975, Ch. 957.)

42450. 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 41700 or 41701 or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.

In holding such a 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 8 (commencing with Section 40800) of Part 3.

(Amended by Stats. 1988, Ch. 183, Sec. 1.)

42450.1. This article applies to any order for abatement issued pursuant to a determination made under Section 42301.7.

(Added by Stats. 1988, Ch. 1589, Sec. 12.)

42451. (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 41700 or 41701 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 41700 or 41701, 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.

(Amended by Stats. 1988, Ch. 183, Sec. 2.)

42452. 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.

(Added by Stats. 1975, Ch. 957.)

42453. A proceeding for mandatory or prohibitory injunction shall be brought by the district in the name of the people of the State of California in the superior court of the county in which the violation occurs to enjoin any person to whom an order for abatement pursuant to Section 42452 has been directed and who violates such order.

(Added by Stats. 1975, Ch. 957.)

42454. Proceedings under Section 42453 shall conform to the requirements of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure, except that it shall not be necessary to show lack of adequate remedy at law or to show irreparable damage or loss.

If, in any such proceeding, it shall be shown that an order for abatement has been made, that it has become final, and that its operation has not been stayed, it shall be sufficient proof to warrant the granting of a preliminary injunction.

If, in addition, it shall be shown that the respondent continues, or threatens to continue, to violate such order for abatement, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

(Added by Stats. 1975, Ch. 957.)

## CHAPTER 5. MONITORING DEVICES

(Chapter 5 added by Stats. 1975, Ch. 957)

42700. The Legislature hereby finds and declares that stationary sources of air pollution are known to emit significant amounts of pollutants into the air, but that existing sampling techniques are not sufficiently precise to permit accurate measurement. The Legislature further finds and declares that more accurate data will improve the design of strategies for the control of such pollutants in the most cost-effective manner.

The Legislature further finds and declares that public complaints about excessive emissions from stationary sources are difficult or impossible to evaluate in the absence of adequate means of monitoring such emissions on a continuing basis. The Legislature further finds and declares that, although the state board and the districts are authorized under Sections 41511 and 42303, to require stationary sources of air contaminants to install and operate monitoring devices to measure and record continuously the emissions concentration and amount of any specified pollutant, many districts have failed to exercise such authority.

The Legislature further finds and declares that all districts, especially the bay district, the districts located, in whole or part, within the South Coast Air Basin, and the San Diego County Air Pollution Control District, should be encouraged to require that monitoring devices be installed in each stationary source of air contaminants which emits into the atmosphere 100 tons or more each year of nonmethane hydrocarbons, oxides of

nitrogen, oxides of sulfur, reduced sulfur compounds, or particulate matter or 1,000 tons or more each year of carbon monoxide.

In order to encourage such action by the districts, the state board shall determine the availability, technological feasibility, and economic reasonableness of monitoring devices for such stationary sources as provided by Section 42701.

(Added by Stats. 1975, Ch. 957.)

42701. (a) For purposes of Sections 41511 and 42303, the state board shall determine the availability, technological feasibility, and economic reasonableness of monitoring devices to measure and record continuously the emissions concentration and amount of nonmethane hydrocarbons, oxides of nitrogen, oxides of sulfur, reduced sulfur compounds, particulate matter, and carbon monoxide emitted by stationary sources. Such determination shall be madefor stationary sources which emit such contaminants in the quantities set forth in Section 42700, and may be made for stationary sources which emit lesser amounts. The state board shall complete an initial review of submitted devices by June 1, 1975.

(Added by Stats. 1975, Ch.957.)

42702. The state board shall specify the types of stationary sources, processes, and the contaminants, or combinations thereof, for which a monitoring device is available, technologically feasible, and economically reasonable. Such specification may be by any technologically based classification, including on an industrywide basis or by individual stationary source, by air basin, by district, or any other reasonable classification.

(Added by Stats. 1975, Ch. 957.)

42703. The state board shall require the manufacturer of any monitoring device submitted for a determination to reimburse the state board for its actual expenses incurred in making the determination, including, where applicable, its contract expenses for testing and review.

(Added by Stats. 1975, Ch. 957.)

42704. After the state board has made a determination of availability, the state board may, as appropriate, revoke or modify its prior determination of availability if circumstances beyond the control of the state board, or of a stationary source required to install a monitoring device, cause a substantial delay or impairment in the availability of the device or cause the device no longer to be available.

(Amended by Stats. 1976, Ch. 1063.)

42705. Any stationary source required by the district in which the source is located to install and operate a monitoring device shall retain the records from the device for not

less than two years and, upon request, shall make the records available to the state board and the district.

(Added by Stats. 1975, Ch. 957.)

42706. Any violation of any emission standard to which the stationary source is required to conform, as indicated by the records of the monitoring device, shall be reported by the operator of the source to the district within 96 hours after such occurrence. The district shall, in turn, report the violation to the state board within five working days after receiving the report of the violation from the operator.

(Added by Stats. 1975, Ch. 957.)

42707. The air pollution control officer shall inspect, as he determines necessary, the monitoring devices installed in every stationary source of air contaminants located within his jurisdiction required to have such devices to insure that such devices are functioning properly. The district may require reasonable fees to be paid by the operator of any such source to cover the expense of such inspection and other costs related thereto.

(Added by Stats. 1975, Ch. 957.)

42708. This chapter shall not prevent any local or regional authority from adopting monitoring requirements more stringent than those set forth in this chapter or be construed as requiring the installation of monitoring devices on any stationary source or classes of stationary sources. This section shall not limit the authority of the state board to require the installation of monitoring devices pursuant to Chapter 1 (commencing with Section 41500).

(Amended by Stats. 1976, Ch. 1063.)

## PART 5. VEHICULAR AIR POLLUTION CONTROL

(Part 5 added by Stats. 1975, Ch. 957.)

## CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1975, Ch. 957.)

43000. 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.

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2060, 2190-2194, 2253.4, 2257, 2265, 2290-2293, 2296

(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.

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1.5, 1960.15

(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.

(Amended by Stats. 1991, Ch. 900, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1-1960.4, 1964-1968, 1970, 1975, 1976, 1977, 2001, 2002, 2007.5, 2008-1010, 2030, 2031, 2100, 2100.6, 2101-2107, 2109-2149, 2515, 2175-2177, 2180-2187, 2200-2207, 2220-2222, 2224, 2225, 2235, 2250-2256, 2261, 2266, 2280, 2300-2317

43000.5. 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 40911, 40902, and 40925.

(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.

(Amended by Stats. 1991, Ch. 900, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1990, 1991, 1992, 1993, 1994

43001. The provisions of this part shall not apply to:
(a) Racing vehicles.
(b) Motorcycles, except as otherwise provided in Section 43107.
This section shall become operative on January 1, 1989.
(Amended (as amended by Stats. 1982, Ch. 467, Sec. 2) by Stats. 1984, Ch. 233, Sec. 2. Section operative January 1, 1989, by its own provisions.)

43002. No motor vehicle of historic interest shall be required to have any motor vehicle pollution control device, except for such devices that were required by this part for such vehicles prior to the time that special identification plates were issued for that vehicle pursuant to Section 5004 of the Vehicle Code.
(Added by Stats. 1975, Ch. 957.)
43002.2. The state board shall waive the provisions of this division on a case-by-case basis for the purpose of allowing the importation of vehicles designed only for use for disabled persons.
(Added by Stats. 1984, Ch. 244, Sec. 1. Effective June 26, 1984.)

43004. Except as otherwise provided in Section 43001, 43002, or 43005, the standards applicable under this part for exhaust emissions for gasoline-powered motor vehicles shall apply to motor vehicles which have been modified or altered to use a fuel other than gasoline or diesel.
(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1904, 2030, 2031, 2177

43005. Section 43004 of this code, 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.
(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1904

43006. 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 Section 43004 and adopt test procedures for such certification.

(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2030, 2031, 2177

43007. 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 43658, such motor vehicle shall be equipped with such device.

(Added by Stats. 1975, Ch. 957.)

43008. Except as provided by Sections 43100 and 43101 and Chapter 3 (commencing with Section 43600), all motor vehicles required pursuant to the National Emission Standards Act (42 U.S.C., Secs. 1857f-1 to 1857f-7, inclusive) and the standards and regulations promulgated thereunder, to be equipped with motor vehicle pollution control devices, shall be equipped with such devices required by that act.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1975

43008.5. In addition to the standards and test procedures adopted by the state board pursuant to Sections 43203.5 and 44201, 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., Secs. 1857f-1 to 1857f-7, incl.) 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 43203.5 or 44201, respectively.

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 43203.5 or 44201, as applicable.

(Added by Stats. 1989, Ch. 859, Sec. 2.)

43008.6. (a) Notwithstanding Section 43012, for the purpose of enforcing or administering Section 27156 of the Vehicle Code, the executive officer of the state board or an authorized representative of the executive officer, upon presentation of credentials or, if necessary under the circumstances, after obtaining a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated, used, leased, or rented by an owner or operator of any vehicle operated for commercial purposes in order to inspect any such motor vehicle, secure emission samples therefrom, or inspect and copy any maintenance, use, or other records pertaining to that vehicle.

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

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

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

(Added by Stats. 1989, Ch. 1154, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2030, 2031

43009. Except as otherwise provided in Section 43002, every motor vehicle subject to this part shall meet the standards adopted by the state board pursuant to Sections 27157 and 27157.5 of the Vehicle Code.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2151, 2152, 2177

43009.5. (a) If, based on a review of information derived from a statistically valid and representative sample of vehicles, the state board determines that a substantial percentage of any class or category of vehicles certified under the optional standards of Section 43101.5, and of Section 1960.15 of Title 13 of the California Administrative Code, exhibits, prior to 75,000 miles or seven years, whichever occurs first, an identifiable, systematic defect in a component listed in paragraph (2) of subdivision (c) of Section 1960.15, which causes a significant increase in emissions above those exhibited by vehicles free of defects and of the same class or category and having the same period of use and mileage, the state board may invoke its enforcement authority under Section 43105 to require remedial action by the vehicle manufacturer. The remedial action shall be limited to owner notification and repair or replacement of the defective component. As used in this section, the term "defect" shall not include failures which are the result of abuse, neglect, or improper maintenance.

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

(Added by Stats. 1982, Ch. 1173, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1, 2111-2149

43010. With respect to the program designed and adopted by the Department of Consumer Affairs pursuant to Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code, the state board shall, in time for the Department of Consumer Affairs to comply with the schedule specified in subdivisions (a) and (b) of Section 9889.55 of that code, after public hearings, prescribe maximum air pollution emission standards to be applied in inspecting motor vehicles.

In prescribing such standards, the state board shall undertake such studies and experiments as are necessary and feasible, evaluate available data, and confer with automotive engineers.

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. The standards shall be designed to secure the operation of all such motor vehicles, as soon as possible, with a substantial reduction in air pollution emissions, and shall be revised from time to time, as experience justifies.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1902, 1903, 1950, 2001, 2002,2222, 2253

43011. (a) The state board shall establish criteria for the evaluation of the effectiveness of motor vehicle pollution control devices. After the establishment of such criteria, the state board shall evaluate motor vehicle pollution control devices which have been submitted to it for testing.

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

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

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

(Added by Stats. 1975, Ch. 957.)

43012. (a) For the purpose of enforcing or administering any federal, state, or local law, order, regulation, or rule relating to vehicular sources of emissions, the executive officer of the state board or an authorized representative of the executive officer, or a representative of the department upon presentation of credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing

with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated, used, leased, or rented by any new or used car dealer, as defined in Sections 285, 286, and 426 of the Vehicle Code, for the purpose of inspecting any vehicle for which emissions standards have been enacted or adopted or for which emissions equipment is required and which is situated on the premises for the purpose of emission-related maintenance, repair, or service, or for the purpose of sale, lease, or rental, whether or not the vehicle is owned by the dealer. The inspection may extend to all emission-related parts and operations of the vehicle, and may require the on-premises operation of an engine or vehicle, the on-premises securing of samples of emissions from the vehicle, and the inspection of any records which relate to vehicular emissions required by the Environmental Protection Agency or by any state or local law, order, regulation, or rule to be maintained by the dealer in connection with the dealer's business.

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

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

(d) If the executive officer or authorized representative, or a representative of the department, upon inspection, finds that a used motor vehicle fails to comply with applicable emissions standards or equipment, the state board or the department shall issue a notice to correct. Until all violations in the notice have been corrected and the dealer has sent proof of correction by certified mail to the state board or the department, whichever issued the notice, the motor vehicle shall prominently display the following disclosure affixed to the windshield in at least 18-point type:

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

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

(e) Civil penalties may be assessed or recovered for one or more violations by a dealer involving the tampering with or disabling of a vehicle's air injection, exhaust gas recirculation,crankcaseventilation,fuelinjectionor carburetion systems, ignition timing or

evaporative controls, fuel filler neck restrictor, oxygen sensor or electronic controls, or missing catalytic converter.

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

(g) If the executive officer or authorized representative, upon inspection, finds that a certificate of compliance or noncompliance was issued to a motor vehicle that fails to comply with applicable emissions standards or equipment, the state board shall immediately refer these findings to the department for investigation under Chapter 5 (commencing with Section 44000). The state board may refer any other suspected violation to the department for appropriate action.

(h) Notwithstanding Section 17150 of the Vehicle Code, the state shall be liable for any injury or damage caused by the negligent or wrongful act or omission of the operator of any vehicle which is operated pursuant to this section.

(i) This section provides the exclusive authority for inspections of motor vehicles for the purposes specified in this section.

(j) As used in this section, the terms "tampering" and "disabling" mean an unauthorized modification, alteration, removal, or disconnection.

(Amended by Stats. 1994, Ch. 27, Sec. 2)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2151, 2152

43013. (a) The state board may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.

(b) The state board shall, consistent with subdivision (a), adopt standards and regulations 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.

(c) 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.

(d) Notwithstanding subdivision (b), 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.

(e) Prior to adopting or amending any standard or regulation relating to motor vehicle fuel specifications pursuant to this section, the state board shall, after consultation with public or private entities that would be significantly impacted as described in paragraph (2) of subdivision (f), do both of the following:

(1) 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.

(2) 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.

(f) Prior to adopting or amending any motor vehicle fuel specification pursuant to this section, 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.

(g) To the extent that there is any conflict between the information required to be prepared by the state board pursuant to subdivision (f) 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 (f) shall prevail.

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

(Amended by Stats. 1995, Ch. 930, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1956-1958, 1960.1-2960.4,1960.15, 1965-1968.1, 1970, 1975, 1976, 1977,1990-1994, 2030, 2031, 2176, 2177, 2180-2187,2202, 2235, 2250, 2253.2, 2253.4, 2254, 2280,2296, 2300-2317, 2410-2414, 2420-2427

43013.2. (a) (1) The Legislature finds and declares that variances from the state board's gasoline specifications may be needed if gasoline producers cannot meet the specifications as required due to circumstances beyond their reasonable control, and that the state board's process for granting variances from fuel specifications should be clarified.

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

(b) The state board may grant variances from gasoline specifications adopted by the state board pursuant to Sections 43013 and 43018. In granting a variance, the board may impose fees and conditions.

(c) The state board shall adopt regulations to implement this section in accordance 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 this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(d) All variance fee revenues collected pursuant to this section 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 44091. All money deposited in the account pursuant to this section 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.

(e) 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.

(f) Any determination of the state board, or the executive officer of the state board pursuant to the authority delegated pursuant to Section 39516, regarding the issuance of any variance from gasoline specifications shall be based solely upon substantial evidence in the record of the variance proceeding. The variance shall be valid for a period not exceeding 120 days, commencing on or after March 1, 1996. The variance may be extended, subject to this section, 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.

(g) 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 (f), 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.

(h) 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.

(i) Subdivisions (b) and (e) do not constitute a change in, but are declaratory of, existing law.

(Added by Stats. 1995, Ch. 675, Sec. 1.)

43013.5. (a) For purposes of implementing and enforcing Sections 43020 and 43021, 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.

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

(Added by Stats. 1991, Ch. 770, Sec. 1.)

43014. The state board may issue permits for the testing of experimental motor vehicle pollution control devices installed in used motor vehicles, or for the testing of experimental or prototype motor vehicles which appear to have very low emission characteristics.

(Added by Stats. 1976, Ch. 1063.)

43015. 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.

(Amended by Stats. 1982, Ch. 1473, Sec. 4.)

43016. 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 penalty of not to exceed five hundred dollars ($500) per vehicle. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2109, 2110, 2253.2, 2253.4,2255, 2256, 2257, 2265, 2266, 2280, 2290-2292.7

43017. The state board may enjoin any violation of any provision of this part, or of any order, rule, or regulation of the state board, in a civil action brought in the name of the people of the State of California, except that the state board shall not be required to allege

facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss.

(Added by Stats. 1986, Ch. 110, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2424, 2427

43018. (a) The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date.

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

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

(1) Reductions in motor vehicle exhaust and evaporative emissions.

(2) Reductions in emissions from in-use emissions from motor vehicles through improvements in emission system durability and performance.

(3) Requiring the purchase of low-emission vehicles by state fleet operators.

(4) Specification of vehicular fuel composition.

(d) In order to accomplish the purposes of this division, and to ensure timely approval of the district's plans for attainment of the state air quality standards by the state board, the state board shall adopt the following schedule for workshops and hearings to consider the adoption of the standards and regulations required pursuant to this section:

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

(2) Notwithstanding Section 43830, workshops on the adoption of regulations governing gasoline Reid vapor pressure, and standards for heavy-duty and medium-duty vehicle emissions, shall be held not later than January 31, 1990. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1990.

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

(e) Prior to adopting standards and regulations pursuant to this section, the state board shall consider the effect of the standards and regulations on the economy of the state, including, but not limited to, motor vehicle fuel efficiency.

(f) The amendment of this section made at the 1989-90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

(Amended by Stats. 1990, Ch. 932, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Section 2265, 2410-2413, 2418

43019. 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 chapter 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.

(Added by Stats. 1988, Ch. 1568, Sec. 35.)

43020. (a) Any person who knowingly violates any regulation adopted pursuant to this part by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both, for each violation.

(b) The recovery of civil penalties pursuant to Section 43016 precludes prosecution pursuant to this section for the same offense. When the executive officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to Section 43016 for the same offense.

(Added by Stats. 1990, Ch. 1252, Sec. 1.)

43021. (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 company 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 record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

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

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

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

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease have been delivered to the owner, manager, or attendant on duty at the facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten 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.

(Repealed and added by Stats. 1995, Ch. 966, Secs. 1 and 2.)

43022. (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.

(Added by Stats. 1995, Ch. 609, Sec. 3.)

## CHAPTER 1.5. PENALTIES FOR VIOLATION OF FUEL REGULATIONS

(Chapter 1.5 added by Stats. 1995, Ch. 966, Sec. 3.)

43025. It is the intent of the Legislature in the enactment of this chapter 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 chapter, it is not the intent of the Legislature to modify penalty settlements beyond historic levels. The civil and administrative penalty provisions in this chapter are designed to give the state board an effective, efficient, and flexible tool to fairly enforce all violations.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43026. (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 record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

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

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described

in subdivision (c). Any person who transports, or provides vehicles to transport, motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per day. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision unless that person has specific knowledge of noncompliance.

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

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease and desist have been delivered to the owner, manager, or attendant on duty at the retailer facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten 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 motor vehicle fuel distributors, and shall mail a copy to every licensed transporter of petroleum products.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43027. The following civil penalties apply to the following acts not included within Section 43026:

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

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

(c) 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 and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable 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 43031, the specific circumstances and intent of the defendant in making the false entry or in failing to keep the document.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43028. 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 tothis 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.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43029. In an action to recover civil penalties pursuant to (subdivisions (b) and (c) of Section 43027, a proceeding to assess (administrative civil penalties pursuant to Section 43028, or a criminal prosecution pursuant to Section 43020, 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 commodities, less fuels and related products and power, published by the United States Bureau of Labor Statistics, averaged over the previous 5 years.

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

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43030. (a) For the penalties prescribed in Sections 43027 and 43028, each day during any portion of which a violation occurs is a separate offense.

(b) In applying penalties under Section 43027 or 43028 for violations based solely upon the state board's review of monthly production records, each day within a month for which a violation occurs is a separate violation.

(c) The recovery of civil or administrative civil penalties pursuant to this chapter precludes prosecution pursuant to Section 43020 for the same offense. When the executive officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action or administrative proceedings brought pursuant to this chapter for the same offense.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43031. (a) The civil or administrative civil penalties prescribed in this chapter shall be assessed and recovered either in a civil action brought in the name of the people of the State of California by the Attorney General or by the state board, or in administrative hearings established pursuant to regulations adopted by the state board.

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

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

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

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

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

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

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

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

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

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43031.5. The revenues from penalties recovered by the state board pursuant to this chapter shall be deposited in the Air Pollution Control Fund and shall only be expended by the state board for environmental cleanup, abatement, or pollution prevention technology.

43032. On or before June 30, 1998, the state board shall report to the Assembly Committee on Natural Resources, the Assembly Committee on Transportation, the Senate Committee on Criminal Procedure, and the Senate Committee on Transportation all violations that are subject to this chapter, any settlements reached, and the rate of compliance with any requirements that are subject to this chapter.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

43033. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

(Added by Stats. 1995, Ch. 966, Sec. 3.)

## CHAPTER 2. NEW MOTOR VEHICLES

(Chapter 2 added by Stats. 1975, Ch. 957.)

### Article 1. General Provisions

(Article 1 added by Stats. 1975, Ch. 957.)

43100. The state board may certify new motor vehicles and new motor vehicle engines pursuant to this article.

(Amended by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1900, 1901, 1952, 1955.1, 1955.5- 1960.2, 1960.15, 1964, 1965, 1968, 1968.1, 1970, 1976, 1977, 2108-2110, 2150, 2152

43101. The state board shall adopt and implement emission standards for new motor vehicles for the control of emissions therefrom, which standards the state board has found to be necessary and technologically feasible to carry out the purposes of this division. Prior to adopting such standards, the state board shall consider the impact of such standards on the economy of the state, including, but not limited to, their effect on motor vehicle fuel efficiency. The state board shall submit a report of its findings on which the standards are based to the Legislature within 30 days of adoption of the standards.

Such standards may be applicable to motor vehicle engines, rather than to motor vehicles.

(Amended by Stats. 1976, Ch. 1049.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1901, 1902, 1955.5-1960.4, 1960.15, 1965-1968.1, 1970, 1976, 1977, 2058-2061, 2109-2149, 2175, 2175.5, 2235, 2250, 2251, 2253.2, 2253.4, 2254-2257, 2265, 2266, 2280, 2290-2292.7, 2296, 2300-2317, 2410, 2411
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43101.5. The emission standards adopted by the state board pursuant to Section 43101 for the 1983 and later model-year motor vehicles shall be limited by the following:

(a) For all gasoline-powered passenger vehicles prior to the 1986 model year, the state board shall not adopt primary standards for the emission of oxides of nitrogen which are more stringent than 0.7 grams per vehicle mile, unless the state board by regulation also provides for optional standards which are not more stringent, with respect to each

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

(b) If the state board intends by regulation to eliminate for 1986 and later model-year vehicles the optional standards specified in subdivision (a), the state board shall submit to the Legislature, not later than January 15th of the year which is at least two calendar years prior to the year in which production would commence of vehicles subject to the new standard, a report with an estimate of the air quality benefits of the more stringent standard, the technological and economic feasibility of requiring the standard, and the potential effects on fuel economy associated with the standard. The state board shall consult with the Environmental Protection Agency and motor vehicle and engine manufacturers prior to submitting the air quality and fuel economy estimates.

(Added by Stats. 1981, Ch. 1185.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1956.8, 1960.1, 1960.1.5,1960.15, 1964

43102. (a) No new motor vehicle or new motor vehicle engine shall be certified by the state board, unless the vehicle or engine, as the case may be, meets the emission standards adopted by the state board pursuant to Section 43101 under test procedures adopted by the state board pursuant to Section 43104.

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

(c) Subdivision (b) shall not be applicable to any vehicle or engine model which is certified to meet the emission standards established pursuant to Section 43101 or 43101.5.

(Amended by Stats. 1981, Ch. 1185.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1956.8, 1960.1, 1960.5,1964, 1968, 1968.1, 1976, 1977, 2061, 2107, 2109,2110, 2150

43103. (a) Except as provided in subdivision (b), the state board may adopt a schedule of nonconformance fees applicable to manufacturers of heavy-duty vehicles and heavy-duty vehicle engines which are unable to comply with emissions standards adopted pursuant to Section 43101 for those vehicles and engines. Upon adoption and implementation of the schedule by the state board, a manufacturer of a heavy-duty vehicle or heavy-duty vehicle engine to which a standard adopted pursuant to Section 43101 applies may, notwithstanding subdivision (a) of Section 43102, elect to pay to the state board the fee applicable to any vehicle or engine failing to meet the standard.

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

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

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

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

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

(d) Any warranty required under Section 43106 or 43204, and any action required by the state board under Section 43105, are applicable only to the emissions levels for which certification is granted under this section.

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

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

(Amended by Stats. 1988, Ch. 119, Sec. 1. Effective May 27, 1988. Repealed as of January 1, 1999, by its own provisions.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1956.8, 1960, 1960.1,1964, 1965

43104. For the certification of new motor vehicles or new motor vehicle engines, the state board shall adopt, by regulation, test procedures to determine whether such vehicles or engines are in compliance with the emission standards established pursuant to Section 43101. The state board shall base its test procedures on federal test procedures or on driving patterns typical in the urban areas of California.

(Amended by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1902, 1952, 1955.1,1955.5, 1956-16960.4, 1960.15, 1964, 1965, 1968,1968.1, 1976, 1977, 2106, 2109, 2110-2149, 2235,2410

43105. No new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine required pursuant to this part to meet the emission standards established pursuant to Section 43101 shall be sold to the ultimate purchaser, offered or delivered for sale to the ultimate purchaser, or registered in this state if the manufacturer has violated emission standards or test procedures and has failed to take corrective action, which may include recall of vehicles or engines, specified by the state board in accordance with regulations of the state board. If a manufacturer contests the necessity for, or the scope of, a recall of vehicles or engines ordered pursuant to this section and so advises the state board, the state board shall not require such recall unless it first affords the manufacturer the opportunity, at a public hearing, to present evidence in support of the manufacturer's objections. If a vehicle or engine is recalled pursuant to this section, the manufacturer shall make all necessary corrections specified by the state board without charge to the registered owner of the vehicle or vehicle with such engine or, at the manufacturer's election, reimburse the registered owner for the cost of making such necessary corrections.

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

(Amended by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1, 1964, 1968, 1968.1,2015-2061, 2100.6, 2106-2108, 2111-2149, 2410,2414
17, CCR, sections 60040-60053

43106. Each new motor vehicle or engine required pursuant to this part to meet the emission standards established pursuant to Section 43101 shall be, in all material respects, substantially the same in construction as the test motor vehicle or engine, as the case may be, which has been certified by the state board in accordance with this article. However, changes with respect to new motor vehicles or engines previously certified may be made if such 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.

(Amended by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 2956.8, 1960-1960.4,1960.15, 1964, 2035-2042, 2045, 2046, 2100.6,2101-2105, 2107-2149, 2235

43107. (a) The state board may, by regulation, adopt emission standards for new 1977 and later model year motorcycles registered or identified by the Department of Motor Vehicles which are sold in the state on or after July 1, 1976, or such later date as established by the state board by regulation.

(b) Motorcycles shall be exempt from the provisions of Section 43200.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1958, 1960.5, 1965, 1976, 1977,2111-2149, 2410-2414

43108. (a) In lieu of certification pursuant to Section 43102, the state board may certify a new motor vehicle designed for exclusive use as a schoolbus, or a new motor vehicle engine intended for use in a schoolbus, if the Administrator of the Environmental Protection Agency has granted a certificate of conformity for the schoolbus or engine pursuant to the Clean Air Act (42 U.S.C. Sec. 1857 et seq.).

(b) The state board shall grant a certification pursuant to subdivision (a) only if the manufacturer of the schoolbus or engine demonstrates that an engine suitable for use in the manufacturer's standard type of schoolbus which meets the applicable emissions standards established by the state board pursuant to Section 43102 is not available for installation.

(c) The state board, prior to granting a certification pursuant to subdivision (a), shall require a showing by the manufacturer of the schoolbus or engine of a good faith effort to procure or manufacture an engine which meets the standards established by the state board pursuant to Section 43102 and, in the case of the schoolbus manufacturer, a good faith effort to accomplish a schoolbus redesign to accommodate such an engine. In the absence of these showings, the state board shall not grant a certification pursuant to subdivision (a).

(Added by Stats. 1976, Ch. 741.)

Article 1.5. Prohibited Transactions
(Article 1.5 added by Stats. 1976, Ch. 1206.)

43150. 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.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2160

43151. (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 such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action.

(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 such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such 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 the amendments to this subdivision at the 1979-80 Regular Session of the Legislature if the vehicle was registered in this state before such 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. Sec. 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 43203.5.

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

(Amended by Stats. 1985, Ch. 1235, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2160

43152. No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2160-2165

43153. No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2160-2165

43154. (a) Any person who violates any provision of this article 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 such 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.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2160-2165

43155. An action brought pursuant to Section 43154 to recover such 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.

(Added by Stats. 1976, Ch. 1206.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2160-2165

43156. (a) For purposes of this article, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more, has been transferred to an ultimate purchaser, except as provided in subdivision (b), and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles, has not been transferred to an ultimate purchaser.

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

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

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

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

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

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

(Amended by Stats. 1989, Ch. 859, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2160-2165

## Article 2. Manufacturers and Dealers
(Article 2 added by Stats. 1975, Ch. 957.)

43200. 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 such motor vehicle:

(a) The emission standards adopted by the state board pursuant to Section 43101 which are applicable to that motor vehicle.

(b) For 1976 and subsequent model year motor vehicles, 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.

Any such 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.

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.

(Amended by Stats. 1976, Ch. 131.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 1977

43200.5. (a) The sale and registration in this state of any new motor vehicle is prohibited unless a decal in the form specified by the state board pursuant to subdivision (b) of Section 44254 has been securely affixed by the manufacturer to a window of the motor vehicle, and affixed in accordance with Section 43200 and any regulations adopted pursuant to Section 43200, which discloses the smog index for the vehicle.

(b) This section does not apply to any authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or to any employer-provided car pool or van pool vehicle.

(c) 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.

(Added by Stats. 1994, Ch. 1192, Sec. 11.)

43201. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 or 43200.5 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 in the General Fund.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 12.)

43201. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 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.

(c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 13.)

43202. No new motor vehicle required to meet the emission standards adopted by the state board pursuant to Section 43101 shall be sold and registered in this state unless the manufacturer thereof permits the state board to conduct surveillance testing of emissions of new motor vehicles at his assembly facilities, or at any other location where the manufacturer's assembly line testing is performed and assembly line testing records are kept.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2100

43203. (a) In connection with surveillance of emissions from new motor vehicles prior to their retail sale, the state board may, by regulation, impose fees on manufacturers of these vehicles to recover the state board's costs in conducting this surveillance.

(b) A manufacturer who fails to pay a fee imposed pursuant to this section within 60 days after receiving an invoice shall pay the state board an additional fee equal to 10 percent of the fee specified in subdivision (a). If the manufacturer notifies the state board, within 60 days after receiving the invoice, that additional information is needed to honor the invoice, the state board shall grant an additional 90 days for payment without the imposition of an additional fee. An additional interest fee equal to the rate of interest earned by the Pooled Money Investment Fund shall be imposed upon the fee specified in subdivision (a) and the additional fees specified in this subdivision and subdivision (c) for each 30-day period for which they remain unpaid, commencing 60 days after the receipt of the original invoice.

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

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

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

(Amended by Stats. 1985, Ch. 607, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1964

43203.5. The state board shall adopt, by regulation, a certification program for new direct import vehicles, as defined by Sections 39024.6, and 39042, which are less than two years old. The state board shall issue a certificate of conformance to each new direct import vehicle which meets the requirements of the certification program. Any bonding requirements for the certification program may not exceed one thousand dollars ($1,000) per new direct import vehicle or engine.

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

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

Fees collected in accordance with this section shall be deposited in the Air Pollution Control Fund.

(Amended by Stats. 1989, Ch. 859, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1964

43204.(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 such motorvehicle or motor vehicle engine to fail to conform with applicable regulationsfor its useful life, determined pursuant to subdivision (b).

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

(1) In the case of light-duty motor vehicles, and motor vehicle enginesused in such 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 ignitionsystems 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 vehiclesor vehicle engines certified to the optional standards pursuant to Section43101.5

and subject to subdivision (a) of Section 43009.5, "useful life" meansa 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, aperiod of use of five years or 50,000 miles, whichever first occurs, unless thestate board determines that a period of use of greater duration or mileage isappropriate.

(Amended by Stats. 1988, Ch. 1544, Sec. 12.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1900, 1956.8, 1960.1, 1964, 1968, 1968.1, 2035-2046, 2111-2149, 2200, 2205-2207, 2220, 2224, 2235, 2275, 2276

43205. (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 Section 44012, 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 with the consumer price index, as published by the United States Bureau of Labor Statistics.

(c) For purposes of this section and Sections 43204 and 43205.5, a motorcycle is not a light-duty vehicle.

(Amended by Stats. 1989, Ch. 1154, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1, 2035, 2037-2041, 2111-2149

43205.5. Commencing with the 1990 model-year, the manufacturer of each motor vehicle and motor vehicle engine, other than a light-duty or medium-duty motor vehicle or 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:

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

(b) 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 the same or lesser period of use established under subdivision (a).

(Added by Stats. 1988, Ch. 1544, Sec. 14.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1, 2035, 2036, 2039-2041,2111-2149, 2410

43206. Commencing January 1, 1982, and annually thereafter, every person who manufactures new motor vehicles for sale in California shall file with the state board a report as to the person's efforts and progress in meeting state standards adopted pursuant to Section 43101 and federal standards and research objectives specified in Section 7521 of Title 42 of the United States Code.

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.

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

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 43101, 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.

(Amended by Stats. 1992, Ch. 711, Sec. 73. Effective September 15, 1992.)

43207. The state board may revoke outstanding certification of new motor vehicles for sale in California if the manufacturer thereof willfully fails to file any semiannual report required by Section 43206 or files a report which is deemed by the state board to inadequately describe the manufacturer's efforts and progress.

The state board may also withhold future certification of such manufacturer's vehicles until such time as the manufacturer offers for sale in California vehicles which meet the standards promulgated pursuant to Section 1857f-1(b)(1) of Title 42 of the United States Code.

(Added by Stats. 1975, Ch. 957.)

43208. Factory assembly line test procedures shall not apply to light-duty motor vehicles, if (a) the manufacturer thereof advises the state board in writing that the manufacturer does not intend to sell more than 1,000 motor vehicles in California in a

given model year, and (b) the manufacturer does not sell more than 1,000 motor vehicles of its make in such a year. Nothing in this section shall be construed to prohibit the state board from requiring testing by the applicable certifying test procedure of up to 2 percent of the motor vehicles of such a manufacturer sold in California. This section shall not apply to 1976 and later model year motor vehicles.

(Amended by Stats. 1976, Ch. 1063.)

43209. No manufacturer or distributor who pays a penalty pursuant to Section 43212 shall add the amount of such penalty to the cost of any motor vehicles sold by such manufacturer, and any provision of any contract of sale including such penalty as part of the cost of a motor vehicle shall be void and unenforceable.

(Added by Stats. 1975, Ch. 957.)

43210. (a) The state board shall provide, by regulation, for the testing of motor vehicles on factory assembly lines or in a manner which the state board determines best suited to carry out the purpose of this part and this section.

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

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

(Amended by Stats. 1981, Ch. 1185.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2050-2061, 2100-2108,2150-2153, 2414

43210.5. 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.

(Added by Stats. 1988, Ch. 1544, Sec. 15.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1964

43211. No new motor vehicle shall be sold in California that does not meet the emission standards adopted by the state board, and any manufacturer who sells, attempts to sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable

emission standards shall be subject to a civil penalty of five thousand dollars ($5,000) for each such action.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2057-2061, 2100-2100.6,2134, 2149, 2151

43212. Any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty of fifty dollars ($50) for each vehicle which does not comply with the standards or procedures and which is first sold in this state. The payment of such penalties to the state board shall be a condition to the further sale by such manufacturer or distributor of motor vehicles in this state.

Any penalty recovered pursuant to this section shall be deposited into the Air Pollution Control Fund.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2057-2061, 2100, 2100.6,2134, 2149, 2151

43213. Sections 43211 and 43212 shall be enforced by the state board, and may be enforced by the Department of the California Highway Patrol, the Department of Motor Vehicles, and the Bureau of Automotive Repair in the Department of Consumer Affairs.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2100.6, 2134, 2149

43213. Sections 43211 and 43212 shall be enforced by the state board, and may be enforced by the Department of the California Highway Patrol, the Department of Motor Vehicles, and the Bureau of Automotive Repair in the Department of Consumer Affairs.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2100.6, 2134, 2149

## CHAPTER 3. USED MOTOR VEHICLES
(Chapter 3 added by Stats. 1975, Ch. 957.)

### Article 1. Device Certification
(Article 1 added by Stats. 1975, Ch. 957.)

43600. The state board shall adopt and implement emission standards for used motor vehicles for the control of emissions therefrom, which standards the state board has found to be necessary and technologically feasible to carry out the purposes of this division; however, the installation of certified devices on used motor vehicles shall not be mandated except by statute. Such standards may be applicable to motor vehicle engines, rather than to motor vehicles.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1901, 1902, 1904, 1975, 2001, 2002, 2007.5, 2008, 2151, 2152, 2176, 2225

43601. The state board shall certify exhaust devices for 1955 through 1965 model year motor vehicles.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2002

43602. An exhaust device certified by the state board pursuant to Section 43601 shall not allow emissions exceeding any of the following:

(a) 350 parts per million hydrocarbons.

(b) 2 percent carbon monoxide.

(c) 800 parts per million nitrogen oxide.

However, if no exhaust device meets all three of the maximums specified in subdivisions (a), (b), and (c), the state board may certify an exhaust device which meets any two of the three maximums specified, if the installation of such a device in a motor vehicle would not increase the other emission in excess of the emission of that pollutant by the vehicle in the absence of such a device.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2010

43603. The state board shall adopt, by regulation, criteria for the certification of exhaust devices pursuant to Section 43601. Such criteria shall include, but not be limited to, requirements that:

(a) The device meets the cost and performance requirement specified in Section 43604.

(b) The device shall not allow exhaust emissions exceeding the amount specified in Section 43602.

(c) The manufacturer of the device comply with Section 43635.

(Added by Stats. 1975, Ch. 957.)

43604. An exhaust device certified pursuant to Section 43601:

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

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

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

(Added by Stats. 1975, Ch. 957.)

43610. The state board shall set standards for, and certify, exhaust devices to significantly reduce the emission of oxides of nitrogen from 1966 through 1970 model year motor vehicles, as determined by the state board from a representative sampling of such motor vehicles, which the state board has found to be necessary and technologically feasible to carry out the purposes of this division.

In setting standards under this section, the primary consideration shall be the greatest possible reduction of oxides of nitrogen.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2002, 2005

43611. The state board shall adopt, by regulation, criteria for the certification of exhaust devices pursuant to Section 43610. Such criteria shall include, but not be limited to, requirements that:

(a) The device meets the cost and performance requirements specified in Section 43612.

(b) The device shall not allow exhaust emissions of oxides of nitrogen exceeding the standard adopted by the state board pursuant to Section 43610.

(c) The manufacturer of the device comply with Sections 43613 and 43635.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2005

43612. An exhaust device certified pursuant to Section 43610:

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

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

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

(Added by Stats. 1975, Ch. 957.)

43613. The manufacturer of an exhaust device certified pursuant to Section 43610 shall include, with the sale of such device, instructions setting forth what steps the purchaser should take to maintain such device in proper working condition.

(Added by Stats. 1975, Ch. 957.)

43614. After one or more devices are initially certified pursuant to Section 43610, no device shall be certified under that section which is less effective than the one or ones initially certified. Any subsequent certification of a more effective device shall not affect the certification of a previously certified device.

(Added by Stats. 1975, Ch. 957.)

43630. (a) In addition to certifying devices which meet the standards set forth in, or established pursuant to, Sections 43602 and 43610, the state board shall adopt standards for certifying exhaust devices which achieve a reduction of the emission of hydrocarbons, carbon monoxide, and oxides of nitrogen from the exhaust of a motor vehicle substantially below the standards for any two pollutants set forth in, or established pursuant to, Section 43602 or 43610.

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

(b) Devices certified pursuant to this section may be certified without regard to the provisions of subdivision (a) of Section 43604 or subdivision (a) of Section 43612.

(c) After one or more such devices are initially certified, no device shall be certified pursuant to this section which is substantially less effective than any device previously certified, unless the state board determines, pursuant to a cost- benefit analysis, that such less effective device is also substantially less costly and therefore merits certification. Any

subsequent certification of a more effective device shall not affect the certification of a previously certified device.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2010

43635. As a condition to the certification of any motor vehicle pollution control device required under this chapter, except Section 43630, the manufacturer of such a device, in order to protect the public interest, shall agree to either of the following:

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

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

(Added by Stats. 1975, Ch. 957.)

43636. (a) In establishing the fair and reasonable retail price for a motor vehicle pollution control device for purposes of subdivision (b) of Section 43635, the state board shall take into consideration the cost of manufacturing the device and the manufacturer's suggested retail price.

(b) The price established by the state board shall, in no case, exceed the amount specified in subdivision (a) of Section 43604 or subdivision (a) of Section 43612, as the case may be.

(Added by Stats. 1975, Ch. 957.)

43640. The state board may revoke, suspend, or restrict a certification of a previously certified device, or an exemption previously granted, upon a determination by the state board that the device no longer operates within the applicable criteria and standards adopted by the state board or no longer should be exempted.

Such a determination may be based on any relevant information, including, but not limited to, a change in the device, significant differences between certified and production

models, or new data which bear upon the applicable certification criteria or standards and require the revocation of the device.

(Added by Stats. 1975, Ch. 957.)

43641. 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.

(Added by Stats. 1975, Ch. 957.)

43642. 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 43635.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2225

43643. 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.

Replacement parts for the device may continue to be supplied and used for such 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 such a finding.

(Added by Stats. 1975, Ch. 957.)

43644. (a) No person shall install, sell, offer for sale, or advertise, or, except in an application to the state board for certification of a device, represent, any device as a motor vehicle pollution control device for use on any used motor vehicle unless that device has been certified by the state board. No person shall sell, offer for sale, advertise, or represent any motor vehicle pollution control device as a certified device which, in fact, is not a certified device. Any violation of this subdivision is a misdemeanor.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2221, 2222, 2225

43645. Whenever the state board certifies a motor vehicle pollution control device for the control of emissions of pollutants from a particular source of emissions from motor vehicles for which standards have been set by this part or by the state board, it shall so notify the Department of Motor Vehicles, the Department of the California Highway Patrol, and the Bureau of Automotive Repair in the Department of Consumer Affairs.

(Added by Stats. 1975, Ch. 957.)

43646. (a) The bureau, in consultation with the state board, may develop, not later than 180 days from the operative date of this section, a list of engine maintenance practices that are designed to improve a motor vehicle's engine operating efficiency. The bureau shall conduct any evaluations that it determines to be necessary to identify the extent to which various maintenance practices could reduce vehicle emissions, and the minimum periodic application of each maintenance practice that is required to achieve the desired improvement in engine operating efficiency. The bureau may contract with private automotive testing services to carry out the evaluations.

(b) The bureau shall make the list available to the public, and shall specify therein the extent to which each maintenance practice can be expected to reduce vehicle emissions, and how the application of each practice could result in a reduction of the vehicle's smog index.

(c) A motor vehicle owner who subjects his or her vehicle to enhanced maintenance practices, as established by the bureau, may submit the vehicle to an in-use emissions evaluation at a smog check station to determine if excessive in-use emissions have been reduced. If the vehicle is certified as having reduced its emissions relative to its last in-use emissions evaluation, the Department of Motor Vehicles shall adjust the smog index for the vehicle. Vehicles receiving adjustments pursuant to this subdivision shall submit to annual in-use emissions evaluations to maintain their adjusted smog index. A failure to submit an annual in-use emissions evaluation to the Department of Motor Vehicles shall result in the vehicle's smog index being adjusted to its original level.

(d) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

(Added by Stats. 1994, Ch. 1192, Sec. 14.)

## Article 2. Certified Device Installation
(Article 2 added by Stats. 1975, Ch. 957.)

43650. 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 43658.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2007.5, 2008

43651. Every 1963 or later model year motor vehicle, subject to registration in this state, shall be equipped with a certified device to control its crankcase emissions.

(Amended by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 1975

43652. Except as provided in Section 43657, every 1955 through 1965 model year motor vehicle, subject to registration in this state, upon either transfer of ownership and registration, or upon initial registration of such vehicle not previously registered in this state, shall be equipped with a certified device to control its exhaust emissions in accordance with a schedule of installation adopted by the state board.

(Added by Stats. 1975, Ch. 957.)

43653. Every 1966 or later model year motor vehicle, subject to registration and first sold and registered in this state, shall be equipped with a certified device to control its crakcase emissions and exhaust emissions.

(Added by Stats, 1975, Ch.957.)

43654. (a) Except as otherwise provided in subdivision (b), every 1966 through 1970 light-duty motor vehicle, subject to registration in this state, shall be equipped with a certified device to control its exhaust emission of oxides of nitrogen upon initial registration, upon transfer of ownership and registration, and upon registration of a motor vehicle previously registered outside this state.

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

(c) For purposes of subdivision (b), the Department of Motor Vehicles may require satisfactory proof (1) of the age of the transferee of the motor vehicle, (2) of the combined adjusted gross income of the household in which the transferee resides, and (3) that the

transferor of the motor vehicle is a person other than a dealer or a person holding a retail seller's permit.

(Amended by Stats. 1982, Ch. 664, Sec. 2.)

43655. (a) The state board shall adopt, by regulation, schedules of installation for purposes of Section 43652, after consultation with the Department of the California Highway Patrol, the Department of Motor Vehicles, and the Bureau of Automotive Repair in the Department of Consumer Affairs.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2007, 2008

43656. The state board may exempt from any schedule of installation adopted pursuant to Section 43654 or 43655:

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

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

(c) Implements of husbandry.

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

(Added by Stats. 1975, Ch. 957.)

43656.5. The charge that can be made for the inspection and certification of exemption granted by the state board pursuant to Section 43656 shall not exceed three-tenths (0.3) of one hour multiplied by the hourly labor rate charged by the particular garage or service station.

The charge shall be posted as a fixed fee.

(Added by Stats. 1976, Ch. 1063.)

43657. The state board may also exempt, from the schedule of installation adopted pursuant to Section 43655, any motor vehicle registered to an owner whose residence is in a county, or portion thereof, which the state board finds, after a public hearing, that the installation of a certified device pursuant to Section 43652 to control exhaust emissions is not

necessary or desirable to preserve and protect the public health and the existing ambient air quality thereof.

(Added by Stats. 1975, Ch. 957.)

43658. (a) If the evidence submitted at a public hearing indicates that, in order to preserve the ambient air quality of a district, it is necessary that every 1955 through 1965 model year motor vehicle within the district be equipped with device or devices certified by the state board to control emission of pollutants from the crankcase or exhaust, the district board may adopt rules and regulations to require the installation of such devices.

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

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

(Added by Stats. 1975, Ch. 957.)

43659. (a) The state board shall annually review the requirement that an exhaust device be installed on every 1955 through 1965 model year light-duty motor vehicle upon initial registration, upon transfer of ownership and registration, or upon registration of a motor vehicle previously registered outside this state, to determine the contribution of that requirement to the maintenance of required ambient air quality standards in those air basins where the requirement is applicable.

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

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

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

(Amended by Stats. 1982, Ch. 664, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2007.5

43660. The state board shall review the requirement that every 1966 through 1970 light-duty motor vehicle be equipped with a certified device to control its exhaust emissions of oxides of nitrogen upon initial registration and upon transfer of ownership and registration,

to determine the contribution of that requirement to the maintenance of ambient air quality standards in the state and the cost effectiveness of that requirement. The state board shall report to the Legislature its findings and recommendations with regard to the requirement not later than January 1, 1984.

(Added by Stats. 1982, Ch. 892, Sec. 1.7.)

43653. Every 1966 or later model year motor vehicle, subject to registration and first sold and registered in this state, shall be equipped with a certified device to control its crankcase emissions and exhaust emissions.

(Added by Stats. 1975, Ch. 957.)

Article 3. Heavy-Duty Motor Vehicles
(Article 3 added by Stats. 1990, Ch. 1453, Sec. 1.)

43700. The Legislature finds and declares all of the following:

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

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

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

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

(Added by Stats. 1990, Ch. 1453, Sec. 1.)

43701. (a) Not later than July 15, 1992, the state board, in consultation with the Bureau of Automotive Repair of the department and the review committee established pursuant to subdivision (c) of Section 44021, shall, after a public hearing, adopt regulations which require that owners or operators of heavy-duty diesel motor vehicles perform regular inspections of their vehicles for excessive emissions of smoke. The inspection procedure, the frequency of inspections, the emission standards for smoke, and the actions the vehicle owner or operator is required to take to remedy excessive smoke emissions shall be specified by the state board. Those standards shall be developed in consultation with interested parties. The smoke standards adopted under this subdivision shall not be more stringent than those adopted under Chapter 5 (commencing with Section 44000).

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2190-2194

(b) Not later than December 15, 1993, the state board shall, in consultation with the State Energy Resources Conservation and Development Commission, and after a public hearing, adopt regulations which require that heavy-duty diesel motor vehicles subject to subdivision (a) utilize emission control equipment and alternative fuels. The state board shall consider, but not be limited to, the use of cleaner burning diesel fuel, or other methods which will reduce gaseous and smoke emissions to the greatest extent feasible, taking into consideration the cost of compliance. The regulations shall provide that any significant modification of the engine necessary to meet these requirements shall be made during a regularly scheduled major maintenance or overhaul of the vehicle's engine. If the state board requires the use of alternative fuels, it shall do so only to the extent those fuels are available. If the state board determines that heavy-duty diesel motor vehicles, or a class of heavy-duty diesel motor vehicles, cannot be modified to achieve lower emissions, as required by this subdivision, in a cost-effective manner, it shall prepare and submit a report of that determination to the Legislature on or before January 1, 1994.

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

(d) The state board shall hold a public hearing by December 31, 1992, to consider adopting regulations for low- emission heavy-duty motor vehicles.

(Amended by Stats. 1992, Ch. 674, Sec. 5. Effective January 1, 1993.)

43702. (a) Any revenues received by the state board from any variance fees imposed upon manufacturers who receive a variance from the standards for the content of diesel fuel adopted by the state board, which apply on and after October 1, 1993, shall be deposited in the Diesel Fuel Trust Fund, which is hereby created in the State Treasury. The money in the trust fund may be expended only upon appropriation by the Legislature in accordance with subdivisions (b) and (c).

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

(c) The state board shall develop and implement, by November 30, 1994, a reimbursement program to include all of the following:

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

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

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

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

(B) Owners of heavy-duty onroad vehicles and offroad agricultural and construction equipment shall be reimbursed for damage not exceeding five hundred fifty dollars ($550) for each claim.

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

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

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

(7) The state board shall not pay any claims until all claims have been reviewed and the state board can make a reasonable estimate of the total amount of valid claims. If the amount exceeds the amount of money in the Diesel Fuel Trust Fund, reimbursement for valid claims shall be prorated in each class specified in paragraph (3).

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

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

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

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

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

(Added by Stats. 1994, Ch. 781, Sec. 2)

## Article 4. Smog Index Decals

43705. (a) There is hereby established a five-year pilot statewide smog index system for light duty vehicles.

(b) Subject to any conditions imposed by any other provision of law, there is hereby established a five-year pilot study in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District for testing a pollution-miles-per-vehicle proposal to reduce air pollution by identifying high-pollution high-mileage vehicles and requiring annual smog checks for those vehicles.

(Added by Stats. 1994, Ch. 1192, Sec. 15.)

43706. (a) The state board shall petition the Federal Trade Commission, pursuant to Part 455 of Title 16 of the Code of Federal Regulations, for a limited exemption from the Federal Trade Commission's Buyer's Guide, to allow this state to incorporate into the Buyer's Guide utilized by motor vehicle dealers in this state, a smog index chart pursuant to subdivision (b) of Section 44254.

(b) Ninety days following approval by the Federal Trade Commission of a petition pursuant to subdivision (a), it shall be unlawful for any motor vehicle dealer licensed by the Department of Motor Vehicles to display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations which includes a smog index chart pursuant to subdivision (b) of Section 44254. Ninety days following the final disapproval by the Federal Trade Commission of a petition pursuant to subdivision (a), it shall be unlawful for any motor vehicle dealer licensed by the Department of Motor Vehicles to display or offer for sale any used vehicle unless there is attached, by a perforated attachment, to the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations, a smog index chart pursuant to subdivision (b) of Section 44254.

(c) Subdivisions (a) and (b) shall not apply to any vehicle sold by either (1) a dismantler after being reported for dismantling pursuant to Section 11520 of the Vehicle Code or (2) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 of the Vehicle Code. Subdivisions (a) and (b) shall also not apply to any vehicle sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(Added by Stats. 1994, Ch. 1192, Sec. 15.)

43707. This article shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this article, and on the January 1 following that date is repealed.

(Added by Stats. 1994, Ch. 1192, Sec. 15.)

## CHAPTER 4. MISCELLANEOUS

(Chapter 4 added by Stats. 1975, Ch. 957.)

### Article 1. Low-Emission Motor Vehicles

(Article 1 added by Stats. 1975, Ch. 957.)

43800. As used in this article, "low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

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

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

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

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

(e) Has been modified from its configuration, as originally certified by the state board, by the use of an emissions retrofit device approved for use on the vehicle, and which reduces the combined emissions of ozone precursor chemicals from the vehicle by at least 30 percent.

(f) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 16.)

43800. As used in this article, "low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

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

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

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

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

(e) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 16.5.)

43801. The Legislature finds and declares that emission of air pollutants from motor vehicles is a major contributor to air pollution within the State of California and, therefore, declares its policy to encourage the development and testing of various types of low-emission motor vehicles, which would contribute substantially to achieving a pure and healthy atmosphere for the people of this state.

(Added by Stats. 1975, Ch. 957.)

43802. Low-emission motor vehicles shall be submitted to the state board for testing to determine if such vehicle meets the standard set forth in Section 43800.

(Added by Stats. 1975, Ch. 957. Repealed by Stats. 1989, Ch. 990, Sec. 2, on date prescribed by Sec. 8. See later operative version added by Stats. 1989, Ch. 990, Sec. 3.)

43802. (a) At the time of certification pursuant to Article 1 (commencing with Section 43100) of Chapter 2 of this part, the state board shall identify those motor vehicles which qualify as low-emission vehicles as defined in Section 39037.05. 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, 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 39037.05 shall be the applicable emission standards for Chapter 2 (commencing with Section 43100) of this part. No later than October 1, 1990, and at least annually thereafter, the state board shall submit a 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 39037.05. 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.

(Repealed and added by Stats. 1989, Ch. 990, Sec. 3. Effective September 29, 1989. Operative on date prescribed by Sec. 8 of Ch. 990.)

43803. 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.

(Amended by Stats. 1989, Ch. 796, Sec. 4.)

43804. (a) If a low-emission motor vehicle meets the requirements of this chapter 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 such 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.

(Amended by Stats. 1989, Ch. 796, Sec. 5.)

43805. The provisions of this chapter 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.

(Added by Stats. 1975, Ch. 957.)

43806. 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.

(Added by Stats. 1991, Ch. 496, Sec. 2.)

## Article 2. Fuel System Evaporative Loss Control Devices

(Article 2 added by Stats. 1975, Ch. 957.)

43820. 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 such a device when first sold. Such 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 such 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.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2009

43821. 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 such a device suitable or unsuitable for the control of motor vehicle air pollution or for the health, safety, and welfare of the public.

(Added by Stats. 1975, Ch. 957.)

43823. The installation of a certified fuel system evaporative loss control device on used motor vehicles shall not be mandated except by statute.

(Added by Stats. 1975, Ch. 957.)

43824. The state board may adopt, by regulation, standards and test procedures for the certification of fuel system evaporative loss control devices on new motor vehicles in the absence of any such federal regulations.

In such case, no new motor vehicle may be sold and registered in this state unless it conforms to such regulations adopted by the state board.

(Added by Stats. 1975, Ch. 957.)

## Article 3. Fuel and Fuel Tanks

(Article 3 added by Stats. 1975, Ch. 957.)

43830. (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.

(c) 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 unless the volatility of the gasoline used in the blend exceeds the applicable standard of the state board.

(d) For the purposes of this section, "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.

(e) 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).

(f) 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 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.

(g) 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 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 II gasoline established by the state board.

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

(Amended by Stats. 1991, Ch. 1194, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2251, 2296

43831. The state board shall establish, by regulation, maximum standards for the degree of unsaturation at a bromine number 30 as established by the American Society for Testing and Materials test D 1159-66, or by an appropriate test determined by the state board, for gasoline sold in the South Coast Air Basin designated by the state board.

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

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2250

43832. The state board may request, from any person who advertises, or causes to be advertised, in any manner or claim that a fuel or fuel additive reduces motor vehicle exhaust

emissions, a report detailing the data which supports the advertiser's claims of emission reduction by that fuel or fuel additive.

The state board may conduct, and may request the Department of Consumer Affairs to assist the state board in, such further investigation as may appear warranted under the circumstances.

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

(Added by Stats. 1975, Ch. 957.)

43833. (a) The state board shall establish criteria for the evaluation of the effectiveness of, and may conduct tests respecting the composition or the chemical or physical properties of, any motor vehicle fuel additive sold, or proposed to be sold, in this state. The tests shall be designed to determine whether the additive will reduce or eliminate from vehicular sources any substance found to affect human health or impair the obtainment of the state board's ambient air quality standards, or whether, in specified fuels, a particular fuel additive would result in a significant and beneficial reduction in vehicular emissions commensurate with the purposes of this division and would not have a deleterious effect upon the operation of any vehicle or any motor vehicle pollution control device which is in general use.

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

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

(Added by Stats. 1975, Ch. 957.)

43834. (a) The state board shall establish standards or criteria for the certification of auxiliary gasoline fuel tank evaporative loss control devices or systems on vehicles which are required, pursuant to this part or the National Emission Standards Act (42 U.S.C., Secs. 1857f-1 to 1857f-7, inclusive), to be equipped with a fuel system evaporative loss control device to prevent as much evaporation of gasoline into the air from auxiliary fuel tanks as is technologically feasible.

(b) For the purpose of this section, and Section 27156.1 of the Vehicle Code, an "auxiliary gasoline fuel tank" is a fuel tank which is designed and intended by its manufacturer for installation on, or which is installed on, a vehicle operating on gasoline and which is connected to the original fuel system, as defined in Section 39032 of this code, but is not a gasoline fuel tank which is added to a certified device on a used vehicle if such certification included the capability of handling evaporation from such a tank.

(Added by Stats. 1975, Ch. 957.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2009

43835. (a) The state board shall, by March 1, 1976, adopt specifications for the fill pipes and openings of motor vehicle fuel tanks to ensure that the size, design, and location of the fill pipe and opening permit adequate access to and interfacing with gasoline-dispensing nozzles for the purpose of vapor control.

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

The state board may exempt from such specifications those classifications of motor vehicles for which the state board determines the specifications are technologically infeasible.

The state board also may waive the provisions of this subdivision for any 1977 model year gasoline-powered motor vehicle, provided that the state board makes a finding, based upon evidence presented by the manufacturer of such vehicle, that inadequate lead time exists for any required vehicle redesign. The state board may make such waiver applicable only to specified body styles of such a vehicle.

(Added by renumbering Section 39068.7 by Stats. 1976, Ch. 1063.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1964, 2235

Article 4. Alcohol Fueled Motor Vehicles
(Article 4 added by Stats. 1980, Ch. 1201.)

43840. (a) The Legislature finds and declares that emission of air pollutants from motor vehicles is a major contributor to air pollution within the State of California and, therefore, declares its policy to encourage the testing of various types of vehicle fuels, which would contribute substantially to the protection and preservation of the public health and well-being.

(b) The Legislature further finds and declares that programs to expand the use of alcohols as substitutes for gasoline and other petroleum-based fuels can offer significant environmental benefits while reducing the nation's dependence on imported crude oil.

(c) The Legislature further finds and declares that pure alcohol fuels burn cleanly and that motor vehicles fueled with alcohol can be modified at reasonable cost to burn alcohol fuels without decreasing efficiency and without creating air quality problems.

(d) It is, therefore, the intent and purpose of the Legislature, to authorize the establishment of a demonstration program in the County of Ventura for the testing of pure alcohol fuels in the county and municipal motor vehicle fleets.

(Added by Stats. 1980, Ch. 1201.)

43841. The Secretary of the Business and Transportation Agency shall reimburse the County of Ventura from funds appropriated for alternative motor vehicle fuels for the cost of conversion of fleet vehicles provided that the state board finds both of the following:

(a) All changes to the vehicles are absolutely necessary for the vehicles to operate on pure alcohol.

(b) The fuel systems of the motor vehicles have been certified pursuant to Section 43006.

(Added by Stats. 1980, Ch. 1201.)

43841.5. The Secretary of the Business and Transportation Agency shall make the reimbursement pursuant to Section 43841 only in the event the County of Los Angeles and the California Energy Commission fail to reach an agreement, on or before December 31, 1980, to conduct a demonstration program similar to that provided in this article, as determined by the secretary, for the testing of alcohol fuels. If the County of Los Angeles and the State Energy Resources Conservation and Development Commission do reach such an agreement by December 31, 1980, no reimbursement shall be made pursuant to this article.

(Added by Stats. 1980, Ch. 1201.)

43843. (a) The state board, in consultation with the State Energy Resources Conservation and Development Commission, shall establish and conduct, until January 1, 1988, an experimental program in which fleet vehicles may utilize gasoline into which methanol has been blended.

(b) In order to participate in the methanol-gasoline experimental vehicle fleet program, all of the following information shall be submitted to the state board for each vehicle proposed for participation in the program:

(1) The make, model, vehicle identification number, and license number of each vehicle.

(2) A description of the fuel to be used in the vehicle.

(3) Evidence that the vehicle's emissions using the methanol-gasoline blend will be no higher than the vehicle's emissions using gasoline which complies with the volatility standard established pursuant to Section 43830. Evidence may be based on emission tests or a combination of emission tests and engineering evaluation.

(4) A description of any modifications to the vehicle necessary to comply with paragraph (3).

(5) A valid certificate of compliance issued pursuant to Section 4000.1, 4000.2, or 4000.3 of the Vehicle Code.

(c) Within 60 days of receipt of a request to participate in the program, the state board, in consultation with the State Energy Resources Conservation and Development Commission, shall approve or deny the request. Approval shall be granted if adequate evidence is provided that use of the fuel will not cause or contribute to an increase in vehicle emissions when using the methanol-gasoline blend.

(d) The state board may periodically test vehicles enrolled in the program for compliance. Failure to meet state emission standards shall not result in imposition of any fine or penalty if there are no violations of Section 27156 of the Vehicle Code, and the vehicle is restored to conform to applicable emission standards at the end of the experimental program.

(e) All of the following records shall be maintained on each vehicle and shall be made available to the state board upon request:

(1) Fuel economy.

(2) Maintenance and repair.

(3) Driveability.

(f) The state board may exempt the vehicles in any fleet participating in the program from the requirements of subdivision (b) until July 1, 1985. The exemption shall be granted if the applicant demonstrates that the evidence required pursuant to paragraph (3) of

subdivision (b) is not available, that there is likelihood that it will become available within the exemption period, and that the facility at which the fleet vehicle is normally refueled does not have provisions for the distribution of more than one type of fuel.

(Added by Stats. 1984, Ch. 1278, Sec. 2.)

43844. Fuels used in vehicles participating in the methanol-gasoline experimental vehicle fleet program shall not be required to comply with the standards established pursuant to Section 43830 or the requirements of subdivision (b) of Section 13440 of the Business and Professions Code, if all of the following conditions are met:

(a) The fuel is dispensed only from a pump operated by a fleet operator whose request to participate has been granted pursuant to subdivision (c) of Section 43843.

(b) The fuel is used only in vehicles participating in the methanol-gasoline experimental vehicle fleet program.

(c) The gasoline used in the blend meets the standards established pursuant to Section 43830.

(Added by Stats. 1984, Ch. 1278, Sec. 3.)

Article 5. Employee Parking

(Article 5 added by Stats. 1992, Ch. 554, Sec. 5. Effective January 1, 1993.)

43845. (a) In any air basin designated as a nonattainment area pursuant to Section 39608, 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.

(Added by Stats. 1992, Ch. 554, Sec. 5. Effective January 1, 1993.)

## CHAPTER 5. MOTOR VEHICLE INSPECTION PROGRAM

(Chapter 5 added by Stats. 1982, Ch. 892, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

### Article 1. General

(Article 1 added by Stats. 1982, Ch. 892, Sec. 2.Repealed as of January 1, 1999, pursuant to Section 44001.)

44000. By the enactment of the 1994 amendments to this chapter made pursuant to the act that added this section, 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. Sec. 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.

(Repealed by Stats. 1994, Ch. 27, Sec. 3. Added by Stats. 1994, Ch. 27, Sec. 4.)

44000.5. (a) The Legislature hereby finds and declares that California has been required by amendments enacted to the Clean Air Act in 1990 (42 U.S.C. Sec. 7401 et seq., as amended by P.L. 101-549), and by regulations adopted by the Environmental Protection Agency, to enhance California's existing vehicle inspection and maintenance program to meet new, more stringent emission reduction targets. Therefore, the 1993 amendments to this chapter are being adopted to implement further improvements in the existing decentralized inspection and maintenance program so that California will meet or exceed the new emission reduction targets.

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

(1) California is recognized as a leader in establishing performance standards for its air quality programs and these standards have been adopted by many other states and countries.

(2) Studies show that a small number of vehicles produce the majority of the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

(3) The concept of periodic testing alone does not act as a sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant percentage of motorists. Gross polluters continue to be driven on the roadways for California.

(4) New technology, known as remote sensing, offers great promise as a cost-effective means to detect vehicles emitting excess emissions as the vehicles are being driven. This type of detection offers many valuable applications, especially it's use between scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles which are gross polluters and targeting those vehicles for repair or other methods of emission reduction.

(5) Independent analysis by the Rand Corporation has concluded that there is no conclusive evidence to demonstrate which test network--centralized, state operated or contracted test-only facilities; or decentralized, privately operated test and repair facilities--is more effective. Furthermore, their study concluded that the test architecture is not the central factor in determining whether an inspection and maintenance program succeeds in achieving sufficient pollution reduction from vehicles.

(6) California continues to seek strict adherence to federal and state performance standards and results-based evaluation that meet it's unique circumstances and which consist of all of the following:

(A) Acceptance of the shared obligation and personal responsibility required to successfully inspect and maintain millions of motor vehicles. Specifically, that obligation begins with this chapter, and extends through those regulators charged with its implementation

and enforcement. Through the enactment of the amendments to this chapter in 1993, the Legislature recognizes and seeks to encourage, through a number of innovative and significant steps, the critical role each California motorist must play in maintaining his or her vehicle's emission control systems in proper working order, in such a way as to continuously meet mandated emission control standards and ensure for California the clean air essential to the health of its citizens, its communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken, tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate future new scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as monitoring of vehicle emissions as vehicles are being driven.

(Added by Stats. 1994, Ch. 1, Sec. 4.)

## CHAPTER 5. MOTOR VEHICLE INSPECTION PROGRAM

(Chapter 5 added by Stats. 1982, Ch. 892, Sec. 2.Repealed as of January 1, 1999, pursuant to Section 44001.)

### Article 1. General

(Article 1 added by Stats. 1982, Ch. 892, Sec. 2.Repealed as of January 1, 1999, pursuant to Section 44001.)

44001. (a) The Legislature hereby finds and declares that California has been required, by the amendments enacted to the Clean Air Act in 1990, and by regulations adopted by the Environmental Protection Agency, to enhance California's existing vehicle inspection and maintenance program to meet new, more stringent emission reduction targets. Therefore, the Legislature declares that the 1994 amendments to this chapter are adopted to implement further improvements in the existing inspection and maintenance program so that California will meet or exceed the new emission reduction targets.

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

(1) California is recognized as a leader in establishing performance standards for its air quality programs and those standards have been adopted by many other states and countries.

(2) Studies show that a minority of motor vehicles produce a disproportionate amount of the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

(3) The concept of periodic testing alone does not act as a sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant percentage of motorists. Gross polluters continue to be driven on the roadways of California.

(4) New technology, known as remote sensing, offers great promise as a cost-effective means to detect vehicles emitting excess emissions as the vehicles are being driven. This type of detection offers many valuable applications, especially its use between scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles which are gross polluters and targeting those vehicles for repair or other methods of emission reduction.

(5) California continues to seek strict adherence to federal and state performance standards and to results-based evaluations that meet the state's unique circumstances, and which consist of all of the following:

(A) Acceptance of the shared obligation and personal responsibility required to successfully inspect and maintain millions of motor vehicles. Specifically, that obligation begins with this chapter, and extends through those regulators charged with its implementation and enforcement. Through the enactment of the 1994 amendments to this chapter, the Legislature hereby recognizes and seeks to encourage, through a number of innovative and significant steps, the critical role that each California motorist must play in maintaining his or her vehicle's emission control systems in proper working order, in such a way as to continuously meet mandated emission control standards and ensure for California the clean air essential to the health of its citizens, its communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken, tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate future new scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven.

(c) The Legislature further finds and declares that California is, as of the effective date of this section, implementing a number of motor vehicle emission reduction strategies far beyond the effort undertaken by any other state, including all of the following:

(1) California certification standards exceed those of the other 49 states, increasing the cost of a new car to a California consumer by one hundred fifty dollars ($150) or more.

(2) State board regulations mandate increasing availability for sale of low-emission, ultra-low emission, and zero-emission vehicles, including, by 1998, 2 percent; by 2001, 5 percent; and, by 2003, 10 percent zero-emission vehicles.

(3) Effective in 1996, state board regulations mandate the reformulation of gasoline for reduced emissions, at an estimated increased cost to the consumer of 12 to 17 cents per gallon due to refinery modifications and higher production costs.

(4) Cleaner diesel fuel regulations, more stringent than federal standards, took effect in California in October 1993, increasing diesel fuel costs by 4 to 6 cents per gallon.

(5) California law provides for vehicle registration surcharges of up to four dollars ($4) per vehicle in non attainment areas for air quality related projects.

(6) California law taxes cleaner fuels at one-half the rate of gasoline and diesel fuel.

(7) California law provides tax credits for the purchase of low-emission vehicles.

(8) California requires smog checks and repairs whenever a vehicle changes ownership, some 3 million vehicles annually, in addition to the regular biennial tests.

(9) 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.

(10) 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.

(11) 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.

(12) California provides information on vehicle pollution levels to vehicle operators and purchasers, and, in an area subject to the pilot program established pursuant to subdivision (b) of Section 43705, requires annual rather than biennial smog checks for high-emission vehicles that are used extensively.

(d) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 17.)

44001. (a) The Legislature hereby finds and declares that California has been required, by the amendments enacted to the Clean Air Act in 1990, and by regulations adopted by the Environmental Protection Agency, to enhance California's existing vehicle inspection and maintenance program to meet new, more stringent emission reduction targets. Therefore, the Legislature declares that the 1994 amendments to this chapter are adopted to implement further improvements in the existing inspection and maintenance program so that California will meet or exceed the new emission reduction targets.

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

(1) California is recognized as a leader in establishing performance standards for its air quality programs and those standards have been adopted by many other states and countries.

(2) Studies show that a minority of motor vehicles produce a disproportionate amount of the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

(3) The concept of periodic testing alone does not act as a sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant percentage of motorists. Gross polluters continue to be driven on the roadways of California.

(4) New technology, known as remote sensing, offers great promise as a cost-effective means to detect vehicles emitting excess emissions as the vehicles are being driven. This type of detection offers many valuable applications, especially its use between scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles which are gross polluters and targeting those vehicles for repair or other methods of emission reduction.

(5) California continues to seek strict adherence to federal and state performance standards and to results-based evaluations that meet the state's unique circumstances, and which consist of all of the following:

(A) Acceptance of the shared obligation and personal responsibility required to successfully inspect and maintain millions of motor vehicles. Specifically, that obligation begins with this chapter, and extends through those regulators charged with its implementation and enforcement. Through the enactment of the 1994 amendments to this chapter, the Legislature hereby recognizes and seeks to encourage, through a number of innovative and significant steps, the critical role that each California motorist must play in maintaining his or her vehicle's emission control systems in proper working order, in such a way as to continuously meet mandated emission control standards and ensure for California the clean air essential to the health of its citizens, its communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken, tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate future new scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven.

(c) The Legislature further finds and declares that California is, as of the effective date of this section, implementing a number of motor vehicle emission reduction strategies far beyond the effort undertaken by any other state, including all of the following:

(1) California certification standards exceed those of the other 49 states, increasing the cost of a new car to a California consumer by one hundred fifty dollars ($150) or more.

(2) State board regulations mandate increasing availability for sale of low-emission, ultra-low emission, and zero-emission vehicles, including, by 1998, 2 percent; by 2001, 5 percent; and, by 2003, 10 percent zero-emission vehicles.

(3) Effective in 1996, state board regulations mandate the reformulation of gasoline for reduced emissions, at an estimated increased cost to the consumer of 12 to 17 cents per gallon due to refinery modifications and higher production costs.

(4) Cleaner diesel fuel regulations, more stringent than federal standards, took effect in California in October 1993, increasing diesel fuel costs by 4 to 6 cents per gallon.

(5) California law provides for vehicle registration surcharges of up to four dollars ($4) per vehicle in non attainment areas for air quality related projects.

(6) California law taxes cleaner fuels at one-half the rate of gasoline and diesel fuel.

(7) California law provides tax credits for the purchase of low-emission vehicles.

(8) California requires smog checks and repairs whenever a vehicle changes ownership, some 3 million vehicles annually, in addition to the regular biennial tests.

(9) 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.

(10) 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.

(11) 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.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 17.5.)

44001.5. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. A duty of enforcing and administering this chapter is vested in the chief of the bureau who is responsible to the director.

(b) The department shall take those actions consistent with its statutory authority to ensure that the reduction in vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen meet or exceed the reductions required by the amendments enacted to the Clean Air Act in 1990. The department shall endeavor to achieve these vehicle emission reductions as expeditiously as practicable, but not later than the deadlines established by the amendments enacted to the Clean Air Act in 1990.

(c) The department shall also ensure that gross polluters are identified and failed when tested pursuant to this chapter and that vehicles meeting the state standards are protected from being falsely failed.

(d) The department may exercise the emergency rulemaking powers in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code

in order to promptly issue any regulations required to implement the 1994 amendments to this chapter.

(Amended by Stats. 1994, Ch. 27, Sec. 7. Repealed as of January 1, 1999, pursuant to Section 44001.)

44001.6. (a) The bureau shall develop a program for the visual confirmation of motor vehicle odometer operation at smog check stations when loaded mode testing is performed, and for recording any failed tests in the data base established pursuant to Section 44037.1. This program shall require odometer operation to be confirmed only for vehicles registered in San Diego or Ventura County and that are constructed in such a manner as to allow visual confirmation during smog testing. No other odometer inspection shall be required. Smog check stations that follow the program specified by the bureau shall not be liable for any fines, penalties, or license sanctions for any failure to detect odometer tampering or alteration.

(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.

(Added by Stats. 1994, Ch. 1192, Sec. 18.)

44001.7. (a) The bureau shall notify smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District of the target pollution miles for each motor vehicle in the district in which the smog check station is located, and shall provide information to allow each smog check station to determine whether each motor vehicle presented for smog check at the smog check station has exceeded the applicable target pollution miles.

(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.

(Added by Stats. 1994, Ch. 1192, Sec. 19.)

44002. The department shall have the sole and exclusive authority within the state for developing and implementing the motor vehicle inspection program in accordance with this chapter.

For the purposes of administration and enforcement of this chapter, the department, and the director and officers and employees thereof, shall have all the powers and authority granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting the specific requirements imposed by this chapter, shall also comply with all requirements imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

(Amended by Stats. 1990, Ch. 1433, Sec. 14. Repealed as of January I, 1999, pursuant to Section 44001.)

44003. (a) (1) An enhanced vehicle inspection and maintenance program is established in each urbanized area of the state, any part of which is classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and in other areas of the state as provided in this chapter.

(2) A basic vehicle inspection and maintenance program shall be continued in all other areas of the state where a program was in existence under this chapter as of the effective date of this paragraph.

(b) The department may prescribe different test procedures and equipment requirements for those areas described in subdivision (a). Program components shall be operated in all program areas unless otherwise indicated, as determined by the department. In those areas where the biennial program is not implemented and smog check inspections are required to complete the requirements set forth in Sections 4000.1 and 4000.2 of the Vehicle Code, program elements that apply in basic areas, including test equipment requirements for smog check stations, shall apply.

(c) (1) Districts classified as attainment areas may request the department to implement all or part of the program elements defined in this chapter. However, the department shall not implement the program established by Section 44010.5 in any area other than an urbanized area, any part of which is classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm.

(2) Districts that include areas classified as basic program nonattainment areas pursuant to subdivision (a) may, except as provided in paragraph (1), request the implementation in those areas of test procedures and equipment required for enhanced program areas and any other program requirement specified for enhanced program areas.

(Amended hy stats. 1994, Ch.27, sec. 8.)

44004. (a) The motor vehicle inspection program provided by this chapter, when implemented in a district, shall supersede and replace any other program for motor vehicle emission inspection in the district.

However, this chapter shall not apply to any vehicle permanently located on an island in the Pacific Ocean located 20 miles or more from the mainland coast.

(b) The motor vehicle inspection program provided by this chapter shall be in accordance with Sections 4000.1, 4000.2, and 4000.3 of the Vehicle Code.

(Added by stats. 1982, Ch. 892, psych. 2. Repealed as of January 1, 1999, pursuant to section 44001.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2036, 2037, 2038, 2039

44005. (a) The Department of Motor Vehicles shall cooperate with the department in implementing any changes to enhance the program to achieve greater efficiency, cost-effectiveness, and convenience, or to reduce excess emissions in accordance with this chapter.

(b) The program shall provide for inspection of motor vehicles upon initial registration, biennially upon renewal of registration, upon transfer of ownership, upon the citation of a gross polluter pursuant to Section 44081, and as otherwise provided in this chapter.

(Amended by stats. 1994, Ch. 27, Sec. 11. Repealed as of January 1, 1999, pursuant to section 44001.)

Article 2. Program Requirements
(Article 2 added by Stats. 1982, Ch. 892, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44010. The motor vehicle inspection program shall provide for privately operated stations which shall be referred to as smog check stations and are authorized pursuant to Section 44015 to issue certificates of compliance or noncompliance to vehicles which meet the requirements of this chapter.

(Amended by Stats. 1994, Ch. 27, Sec. 12. Repealed as of January 1, 1999, pursuant to Section 44001.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2036, 2037, 2038, 2039

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only stations, in accordance with this chapter, of 15 percent of that portion of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only stations of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(c) The program shall utilize loaded mode dynamometer test equipment, as determined through the pilot demonstration program.

(d) Vehicles in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers.

(e) The department shall implement the program established pursuant to subdivision (a) through a network of privately operated test-only stations established pursuant to contracts to be awarded pursuant to this section.

(f) No person shall be a contractor of the department for test-only stations in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is no more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only stations on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project work force who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only station shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only stations, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only stations on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only stations that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only station 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.

(j) 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 44070.5.

(k) The department shall ensure the effective management of the test-only stations and shall specify in the request for proposal that a manager be present during all hours of station operation.

(l) The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test- only station management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation time line required by this chapter or the Clean Air Act, the Department of

General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) This section shall not be implemented unless the memorandum of agreement described in Section 44081.6 is signed by both the California Environmental Protection Agency and the Environmental Protection Agency.

(p) The department shall implement the program established in this section only in urbanized areas classified by the Environmental Protection Agency as a serious, severe, or extreme non attainment area for ozone or a moderate or serious non attainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(q) 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.

(Added by Stats. 1994, Ch. 29, Sec. 1.)

(1 of 3)

44011. (a) All motor vehicles powered by internal combustion engines which 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 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 or 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(Amended by Stats. 1994, Ch. 27. Amended by Stats. 1995, Ch. 929, Sec. 1.)

44011. (a) Except for the motor vehicles specified in subdivision (c), any motor vehicle powered by an internal combustion engine which is registered within an area designated for program coverage within the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, which has been operated in excess of the applicable target pollution miles for that vehicle, shall be required annually to obtain a certificate of compliance or noncompliance.

(b) Except for the motor vehicles specified in subdivision (c), all other motor vehicles powered by internal combustion engines which are registered within an area designated for

program coverage shall be required biennially to obtain a certificate of compliance or noncompliance.

(c) The following motor vehicles are not required to obtain a certificate of compliance or noncompliance:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 or 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(d) Vehicles that are designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 20. Amended by Stats. 1995, Ch. 929, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037, 2038, 2039

44011. (a) All motor vehicles powered by internal combustion engines which 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 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.7 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Amended by Stats. 1994, Ch. 1192, Sec. 20.5. Amended by Stats. 1995, Ch. 929, Sec. 3.)

44011.1. For purposes of Section 44011, the term"registered within an area designated for program coverage"includes any vehicle registered pursuant to the Vehicle Code in this state when the registered owner's mailing or residence address is not located within this state, or when the address at which the vehicle is garaged is not located within this state.

(Added by Stats. 1993, Ch. 633, Sec. 1 . Effective January 1, 1994. Repealed as of January 1, 1999, pursuant to Section 44001.)

44011.5. Documentation that a motor vehicle is exempt from the requirements of Section 44011 may not be based solely on the owner's statement that the vehicle is in an exempt category. Physical inspection of the vehicle by the department is required unless alternative documentation satisfactory to the department is available.

(Added by Stats. 1988, Ch. 1544, Sec. 25. Repealed as of January 1, 1999, pursuant to Section 44001.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2039

44011.6. (a) (1) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections.

(2) The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles.

However, visual or functional inspection procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those prescribed by the department for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to Section 44013.

(3) The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(b) Any smoke testing procedures or smoke measuring equipment, including any meter that measures smoke opacity or density and any recorder that stores or records smoke opacity or density measurements, used to test for compliance with this section and regulations adopted pursuant to this section, shall produce consistent and repeatable results. The requirements of this subdivision shall be satisfied by the adoption of Society of Automotive Engineers recommended practice J 1667, "Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles."

(c) (1) The smoke test standards and procedures adopted and implemented pursuant to this section shall be designed to ensure that no engine will fail the smoke test standards and procedures adopted under this section when the engine is in good operating condition and is adjusted to the manufacturer's specifications.

(2) In implementing this section, the state board shall immediately adopt procedures that either ensure that there will be no false failures or that ensure that the state board will remedy any false failures without any penalty to the vehicle owner.

(d) The state board shall, by regulation, prohibit the use of heavy-duty motor vehicles which are determined to have excessive smoke emissions or other emissions-related defects, using the test procedure established pursuant to this section.

(e) The state board may issue a citation to the owner or operator for any vehicle in violation of the regulations adopted under this section. The regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (a), may specify that refusal to so submit is a violation of the regulations, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall, within 45 days, correct every deficiency specified in the citation.

(f) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to this section and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for the operation of smog check stations for heavy-duty vehicles pursuant to this subdivision, and only heavy-duty vehicles may be inspected at those stations.

(g) In addition to the corrective action required by this section, the owner of a motor vehicle in violation of the regulations adopted pursuant to this section is subject to a civil penalty of not more than one thousand five hundred dollars($1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. The schedule of reduced civil penalties shall not, however, apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund shall, when appropriated by the Legislature, be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty vehicles pursuant to this section.

(h) Following the adoption of regulations pursuant to this section, the state board and the Department of the California Highway Patrol shall commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol or at other locations selected by the state board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

(i) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to this section fails to take a required corrective action or to pay a civil penalty levied pursuant to subdivisions(g) and (k) in a timely manner. Following notice and opportunity for an administrative hearing pursuant to subdivision (l), the state board may request the Department of the California Highway Patrol to remove the vehicle from service and order the vehicle stored. Upon notification from the state board of payment of any civil penalties imposed under subdivision (g) and storage and related charges, the vehicle shall be released to the owner or designee. Upon release of the vehicle, the owner or designee shall correct every deficiency specified in any citation to that owner with respect to the vehicle.

(j) The state board, in consultation with the department of the California Highway Patrol, shall, within two years of the adoption of regulations pursuant to this section, prepare and submit to the Legislature a report on the smoke emissions enforcement program conducted under this section, including, but not limited to, its assessment of the effectiveness of the program, the impact of the program on the operations of the Department of the California Highway Patrol, and its recommendations for changes in, alternatives to, or termination of, the program.

(k) In addition to the corrective action required by subdivision (e), and in addition to the civil penalty imposed by subdivision (g), the owner of a motor vehicle cited by the state board pursuant to this section shall pay a civil penalty of three hundred dollars ($300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund shall, when appropriated by the Legislature, be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 24617 of the Public Resources Code.

(l) The state board shall adopt regulations that afford an owner cited under this section an opportunity for an administrative hearing. Any owner cited under this section may request an administrative hearing within 45 days following either personal receipt or certified mail receipt of the citation. If the owner fails to request an administrative hearing within 45 days, the citation shall be deemed a final order and not subject to review by any court or agency. If the owner requests an administrative hearing and fails to seek review by administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure within 60 days after the mailing of the administrative hearing decision, the decision shall be deemed a final order and not subject to review by any other court or agency. The 45-day period may be extended by the administrative hearing officer for good cause.

(m) Following exhaustion of the review procedures provided for in subdivision (l), the state board may apply to the Superior Court of Sacramento County for a judgment in the amount of the civil penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(Amended by Stats. 1993, Ch. 578, Sec. 1. Effective January 1, 1994. Repealed as of January 1, 1999, pursuant to Section 44001.)

References at the time of publication (see page iii):

Regulations: 13, CCR, Section 2039, 2180-2187, 2190-2194
17, CCR, sections 60075.1-60075.47

44012. (a) The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced program areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(1) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(2) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(3) For other than diesel-powered vehicles, the Vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(4) For other than diesel-powered vehicles, the Vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any non exhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(5) 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 paragraph (3) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(6) 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 Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(7) A determination is made as to whether the motor vehicle complies with the emission standards for that vehicle’s class and model-year as prescribed by the department.

(8) A determination is made, in the San Diego County Air Pollution Control District and Ventura County Air Pollution Control District regions based on procedures specified by the bureau pursuant to Section 44001.6, that the odometer of the Vehicle is functioning.

(9) A determination is made, in the San Diego County Air Pollution Control District and Ventura County Air Pollution Control District regions, that a vehicle registered and regularly operated in an ozone non attainment area has or has not been operated for more than the applicable target pollution miles.

(b) 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 chapter.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 21.Inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision and on the January 1 following that date is repealed.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037, 2038, 2039

44012. (a) The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(1) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(2) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(3) For other than diesel-powered vehicles, the Vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(4) For other than diesel-powered vehicles, the Vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any non exhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(5) 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 paragraph (3) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(6) 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 Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(7) 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.

(8) 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 chapter.

(b) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 21.5. Operative five years from the date determined pursuant to Section 32 of the act adding this section.)

44013. (a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(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 44012 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 chapter, which procedures

shall be simple, cost-effective, and consistent with Section 44012. 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 chapter, 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.

(d) Maximum emission standards established under this section shall not be adjusted downward based on the installation of an exhaust device.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 22.Inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.)

44013. (a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(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 44012 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 chapter, which procedures shall be simple, cost-effective, and consistent with Section 44012. 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 chapter, 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.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 22.5. Operative five years from the date determined pursuant to Section 32 of the act adding this section.)

44013.5. (a) If the department, in consultation with the state board, determines that substantial demand for emission retrofit devices exists, the department shall develop a program for the certification of emissions retrofit device installations by licensed installers. The department may require installers of emissions retrofit devices to be qualified pursuant to this chapter. The department may assess biennial license fees upon those installers in an amount not to exceed the reasonable cost of administering the emissions retrofit device certification program.

(b) The certification shall be performed at a referee or test-only station and shall be based on a visual inspection of the emissions retrofit device and its installation, and verification of the proper operation of any new or modified components that are a part of the emissions retrofit device, and not on the results of an emissions test.

(c) The department shall develop a program for the identification of retrofitted vehicles at smog check stations and for providing information required for the inspection of those systems to smog check stations.

(d) No emissions retrofit device shall be required to be installed on a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District unless more than one manufacturer is producing the device.

(e) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

(Added by Stats. 1994, Ch. 1192, Sec. 23. Inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.)

44014. (a) Except as otherwise provided in this chapter, the testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check technicians who have qualified pursuant to this chapter.

(b) A smog check station may be licensed by the department as a smog check test-only station and, when so licensed, need not comply with the requirement for onsite availability of current service and adjustment procedures specified in paragraph (3) of subdivision (b) of Section 44030. A smog check technician employed by a smog check test only station shall be qualified in accordance with this section.

(c) A smog check station may also be licensed as a repair-only station, and if so licensed, may perform repairs to reduce excessive emissions on vehicles which have failed the smog 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.

(e) The consumer protection-oriented quality assurance portion of the program, shall be conducted by more than one private entity pursuant to contracts with the department.

(Amended by Stats. 1994, Ch. 27, Sec. 16. Repealed as of January 1, 1999, pursuant to Section 44001.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2038

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Section 44010.5 and this section.

(b) The repair of vehicles at test-only stations shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair which is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only stations of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only station shall not refer a vehicle owner to any particular provider of vehicle repair services.

(d) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(e) The department, by regulation, shall prohibit test-only stations from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only station may charge a fee, established by the department, sufficient to cover the station's cost to perform the tests required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to stations contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) All vehicles identified by a smog check station prior to repairs as gross polluters or as having been tampered with.

(3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(4) Vehicles issued an economic hardship extension in the previous biennial inspection of that vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to,
and receive a certificate of compliance from, a test-only station by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) (1) Gross polluters shall be referred to a test-only facility for a post-repair inspection and retest pursuant to subdivision (g).

Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle which does not have
any defects with its emission control systems or any defects which could lead to damage of its emission control system, as provided in regulations adopted by the department.

(2) The department shall require all vehicles which are tested pursuant to this chapter and found to be gross polluters, or which are found to have been tampered with, to be tested annually at a
test-only station for at least two, but not more than five, consecutive years, as the department determines to be necessary to ensure that the program will comply with Environmental Protection
Agency performance standards.

(Added by Stats. 1994, Ch. 27, Sec. 17. Amended by Stats. 1995, Ch. 982, Sec. 1.)

44014.7. (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 subdivision (d) of Section 44010.5, 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.

(Added by Stats. 1994, Ch. 27, Sec. 18.)

(1 of 3)

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section

43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce
emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(Amended by Stats. 1994, Ch. 27. Amended by Stats. 1995, Ch. 982, Sec. 2)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037, 2038, 2039

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued a hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of

subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit established by the department and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(4) To a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District that has been operated in excess of the applicable target pollution miles for that vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) (1) The certificate of compliance or the certificate of noncompliance shall indicate the odometer reading for the vehicle, or an alternative and higher mileage figure certified by the owner to be accurate pursuant to paragraph (2).

(2) The vehicle owner or operator shall sign a statement appearing on the vehicle inspection report certifying the true mileage of the vehicle to the best of the owner's or operator's knowledge.

(3) If a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, other than an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or an employer-provided carpool or vanpool vehicle, meets the requirements of Section 44012, but has been operated for more than the applicable target pollution miles since its last smog check or fails the visual odometer check specified in Section 44001.6 and paragraph (8) of subdivision (a) of Section 44012, the smog check station shall issue a qualified certificate of compliance or a certificate of noncompliance indicating that the vehicle shall be presented for a smog check at a test-only station or a test and repair station located within the appropriate district after one year rather than in two years.

(4) On and after February 1, 1995, or on and after the date determined pursuant to Section 32 of the act adding this paragraph, whichever is later, the smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District shall report electronically to the Department of Motor Vehicles centralized data base established pursuant to Section 44037.1 the odometer reading for the tested motor vehicle,

whether or not the vehicle has met the requirements of Section 44012, and whether the vehicle has been operated for more than the applicable target pollution miles.

(5) If the determination is made that the vehicle has been operated in excess of the applicable target pollution miles, the vehicle inspection report shall contain a message informing the owner that the mileage limit set by the appropriate district has been exceeded and annual smog inspections are now required.

(h) An economic hardship extension program shall not be issued to a vehicle that was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(i) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Added by Stats. 1990, Ch. 1433, Sec. 18. Amended by Stats. 1994, Ch. 1192, Sec. 24. Amended by Stats. 1995, Ch. 982, Sec. 3.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(5) A vehicle that was issued an economic hardship extension within the last 12 months.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) An emission cost waiver shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. An emission cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of complying with Section 4000.3 of the Vehicle Code. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017.

(2) If the department implements an economic hardship extension program, a one-time economic hardship extension, valid for 12 months, may be issued pursuant to subdivision (e) of Section 44017, upon the request of the vehicle owner, by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable emission limit, as established by the department, and that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected.

(d) No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver or economic hardship extension in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) A certificate of compliance or noncompliance shall be valid for 90 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

(g) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(h) An economic hardship extension shall not be issued to a vehicle that was issued an emission cost in the previous biennial inspection of that vehicle.

(Amended by Stats. 1994, Ch. 1192, Sec. 24.5. Amended by Stats. 1995, Ch. 982, Sec. 4.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037

44016. The department shall, with the cooperation of the state board and after consultation with the motor vehicle manufacturers and representatives of the service industry, research, establish, and update as necessary, specifications and procedures for motor vehicle maintenance and tuneup procedures and for repair of motor vehicle pollution control devices and systems. Licensed repair stations and qualified mechanics shall perform all repairs in accordance with specifications and procedures so established.

(Amended by Stats. 1988, Ch. 1544, Sec. 31. Repealed as of January 1, 1999, pursuant to Section 44001.)

44017. (a) Except as otherwise provided in this section, the cost limit for repairs under the program, including parts and labor, shall be a minimum of four hundred fifty dollars ($450) in all areas where the program operates.

(b) The limit established pursuant to subdivision (a) shall not become operative until the department issues a public notice which declares that the program established pursuant to Section 44010.5 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 article, 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 and later model years, three hundred dollars ($300).

(c) The department shall periodically revise the 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 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 or when the vehicle has been identified as a gross polluter pursuant to Section 44081 and verified as a gross polluter at a test-only station. The cost limits prescribed pursuant to this section, when implemented, shall not be imposed on vehicles identified as gross polluters prior to repairs at a smog check station. However, if there is no evidence of tampering and the vehicle owner has had repairs performed as necessary to bring the vehicle's emissions below the appropriate threshold established for gross polluters, the emission cost waiver provisions shall apply.

(e) A one-time 12-month economic hardship extension from the biennial certificate of compliance requirement may be granted, pursuant to the program established by the department pursuant to Section 44015.3, to consumers who would be subject to repair costs in excess of the extension limit established by the department if the requirements specified in paragraph (2) of subdivision (c) of Section 44015 are met. The economic hardship extension shall constitute neither a certificate of compliance nor a certificate of noncompliance for the purpose of transferring the ownership or the registration of the vehicle. On or before the expiration date of the economic hardship extension, the vehicle shall be brought fully into compliance with all appropriate emission standards as determined by a test in accordance with Section 44012 at a test-only station. The emission cost waiver provisions shall not apply to those vehicles.

(Amended by Stats. 1995, Ch. 982, Sec. 6.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2036, 2037

44017.3. (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 44017 and shall also refer to the exceptions in subdivision (d) of Section 44017.

(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.

(Amended by Stats. 1995, Ch. 982, Sec. 7.)

44017.5. At the earliest possible date, as determined by the Bureau of Automotive Repair, the bureau shall implement at the referee stations, where appropriate, an alternative workday schedule which substitutes Saturday working hours in lieu of another day during the

Monday through Friday workweek, in order to provide for increased availability of referee station services.

(Added by Stats. 1990, Ch. 1324, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44018. (a) The motor vehicle inspection program may include advisory safety equipment maintenance checks, fuel efficiency checks, or both, on the motor vehicle if the department finds that cost-effective methods for conducting those checks exist and that the cost of the inspection to the vehicle owner due to the additional checks would not be increased by more than 10 percent. The department shall specify the equipment to be checked and the procedures for conducting those checks.

(b) Notwithstanding subdivision (a), a motor vehicle sold at retail by a lessor-dealer licensed pursuant to Chapter 3.5 (commencing with Section 11600), or a dealer licensed pursuant to Chapter 4 (commencing with Section 11700), of Division 5 of the Vehicle Code shall not be subject to an advisory safety equipment maintenance check pursuant to this section.

(Amended by Stats. 1985, Ch. 230, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

44019. (a) Every public agency, including, but not limited to, a publicly owned public utility, owning or operating any motor vehicle that is exempt from annual renewal of registration, and is otherwise subject to this chapter, shall obtain for the vehicle a certificate of compliance with the same frequency as is required for vehicles subject to renewal of registration. The cost limitations specified in Section 44017 do not apply to any vehicle owned or operated by a public agency.

(b) Certificates of compliance required by subdivision (a) shall be issued if the vehicle meets the requirements of Section 44012 using a test analyzer system meeting the requirements of the department. Any certificate so issued shall be indexed by vehicle license plate number or vehicle identification number and retained by the public agency for not less than three years, and shall be available for inspection by the department.

(c) Every public agency subject to subdivision (a)shall annually report to the department the number of certificates issued, the number of motor vehicles owned, and the schedule under which the motor vehicles were issued certificates of compliance.

(d) The department may accept proof of compliance with this section other than by a certificate of compliance.

(Amended by Stats. 1989, Ch. 1154, Sec. 10.Repealed as of January 1, 1999, pursuant to Section 44001.)

44020. Notwithstanding any other provision of this chapter, the department may license any registered owner of a fleet of 10 or more motor vehicles subject to this chapter, who so elects, to implement and conduct the tests and to perform necessary service and adjustment on the fleet's vehicles under this chapter, subject to all of the following conditions:

(a) 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 chapter 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.

(b) A license issued under this section is subject to Sections 44035, 44050, and 44072.10, 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. Any person licensed to conduct tests and service and adjustments under this section 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.

(c) 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 chapter.

(d) A fleet owner licensed to conduct tests or make repairs pursuant to this chapter shall issue certificates of compliance for motor vehicles. The cost limits in Section 44017 and the economic hardship extension provisions in this chapter shall not apply to any motor vehicle owned by a fleet owner licensed pursuant to this section.

(e) Notwithstanding subdivision (d), certificates of compliance or noncompliance prepared solely for the disposal or sale of motor vehicles owned by a fleet owner licensed pursuant to this section shall be subject to the cost limits in Section 44017.

(f) The department shall establish initial and renewal license fees, which shall not exceed the reasonable costs of administering this section.

(g) Notwithstanding any other provision of this section, fleets consisting of vehicles for hire or vehicles which accumulate high mileage, as defined by the department, shall go to a test-only station when a smog check certificate of compliance is required. Initially, high mileage vehicles shall be defined as vehicles which accumulate 50,000 miles or more each year. In addition, fleets which do not operate high mileage vehicles may be required to obtain certificates of compliance from the test-only station if they fail to comply with this chapter.

(h) Notwithstanding any other provision of this chapter, the department shall have the authority, by regulation, to require testing of vehicle fleets consistent with regulations adopted by the Environmental Protection Agency, if necessary to meet the emission reduction performance standard established by the agency, as determined by the department.

(Amended by Stats. 1995, Ch. 982, Sec. 8.)

44021. (a) (1) A review committee is hereby created to analyze the effect of the improved inspection and maintenance program established by the 1994 amendments to this chapter on motor vehicle emissions and air quality. The functions of the review committee shall be advisory in nature and primarily pertain to the gathering, analysis, and evaluation of information.

(2) The members of the review committee shall receive no compensation, but shall be reimbursed by the department for their reasonable expenses in performing committee duties. The state board and the department shall provide the review committee with any necessary technical and clerical support in its evaluation and study.

(3) (A) The review committee shall consist of 13 members, nine to be appointed by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. All members shall be appointed to four-year terms, and the Governor shall appoint from among his or her appointees the chairperson of the review committee.

(b) The appointees of the Governor shall include an air pollution control officer from an enhanced program nonattainment area, three public members, an expert in air quality, an economist, a social scientist, a representative of the inspection and maintenance industry, and a representative of stationary source emissions organizations.

(c) The appointees of the Senate Committee on Rules shall include an environmental member with expertise in air quality, and a representative from the inspection and maintenance industry.

(d) The appointees of the Speaker of the Assembly shall include an environmental member with expertise in air quality, and a representative of a local law enforcement agency charged with prosecuting violations of this chapter in an enhanced program non attainment area.

(4) In preparing its evaluations of program effectiveness as provided in paragraph (1), the review committee shall consult with the Department of the California Highway Patrol, the Department of Motor Vehicles, and any other appropriate agencies, as well as the department and the state board, shall schedule and conduct periodic meetings in the performance of its duties, and shall meet and consult with local, state, and federal officials involved in the evaluation of motor vehicle inspection and maintenance programs. At the request of the committee, the department or the state board may, on behalf of the committee, contract with independent entities to assist in the committee's evaluations.

(b) The review committee shall submit periodic written reports to the Legislature and the Governor on the performance of the program and make recommendations on program improvements at least every 12 months. The review committee's reports shall quantify the reduction in emissions and improvement in air quality attributed to the program. Any reports, other than those required by this section, that the review committee is required to provide pursuant to this chapter shall also be transmitted to the Secretary for Environmental Protection and the Secretary for State and Consumer Services.

(c) The review committee shall work closely with all interested parties in preparing the information required by subdivisions (a) and (b) . The review committee shall hold at least one public hearing on its findings and recommendations prior to submitting its reports. The reports shall include statutory language to implement its recommendations, and shall recommend the timeframe for making any changes to the program. The review committee shall seek comments from the department, the department of Motor Vehicles, the Department of the California Highway Patrol, and the state board prior to submitting its reports, and those comments shall be published as an appendix to the report.

(d) The review committee shall participate in the demonstration program authorized by Section 44081.6, as provided by that section.

(Amended by Stats. 1994, Ch. 27, Sec. 23. )

44025. The department shall act as a clearinghouse to provide access to the vendors who possess service information generated by the vehicle manufacturers.

(Added by Stats. 1994, Ch. 27, Sec. 26.)

Article 3. Quality Assurance
(Article 3 added by Stats. 1982, Ch. 892, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44030. (a) The department shall develop standards for the licensing of smog check stations. Tests, service, and adjustment at smog check stations shall be performed by a qualified smog check mechanic.

(b) The licensing standards for smog check stations may include, but are not limited to, requirements for all of the following:

(1) Use of computerized and tamper-resistant testing equipment, including, but not limited to, test analyzer systems meeting the current requirements of the department.

(2) Annual license renewal.

(3) Onsite availability of current emission control system information and service and adjustment procedures.

(Repealed and added by Stats. 1988, Ch. 1544, Sec.37. Repealed as of January 1, 1999, pursuant to Section 44001.)

44030.5. The department shall develop standards for certification of institutions and instructors for purposes of providing training of smog check mechanics. The standards shall include criteria for applications, manuals, textbooks, laboratory equipment, laboratory exercises, hands-on work, examinations, and other matters the department determines necessary for a certified course of instruction.

The standards shall also specify the conditions under which an institution or instructor may be decertified, and under which a decertified institution or instructor may regain certification.

(Amended by Stats. 1988, Ch. 1544, Sec. 38.Repealed as of January 1, 1999, pursuant to Section 44001.)

44031.5. (a) No smog check technician may perform tests or make repairs required by this chapter, 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 44045.5. Passage of the qualification test shall also be required upon each biennial renewal of the smog check technician's license.

(b) The department shall prescribe training and periodic retraining courses for licensed smog check technicians pursuant to Section 44045.6.

(c) Whenever the department determines, through investigation, that a previously qualified smog check technician may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, the department may prescribe for the technician one or more retraining courses which have been certified by the department. The smog check technician may request and be granted a hearing, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, on the department's determination. The request for a hearing shall be submitted within 30 days of the department's notification of its determination. A failure to complete the prescribed retraining course within the time designated by the department, or to request a hearing within 30 days of the department's notification of its determination, shall result in loss of

qualification. Upon a later completion of the prescribed department certified retraining course, the department may reinstate the smog check technician's qualification.

(d) Smog check technicians shall have the option to do hands-on work in lieu of written work in order to successfully complete the department certified training and retraining courses.

(e) The institution administering the department certified training or retraining courses shall issue a certificate of completion to each person who successfully completes the certified courses. The certificate shall be valid for one year.

(f) The department may, by regulation, establish procedures relating to the issuance and use of photo identification cards for licensed technicians.

(Amended by Stats. 1994, Ch. 27, Sec. 28.)

44032. No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smogcheck station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

(Amended by Stats. 1994, Ch. 27, Sec. 29.)

44033. (a) Any facility meeting the requirements established by the department pursuant to this chapter may be licensed as a test-only, test and repair, or repair-only smogcheck station. A licensed smog check station shall display an identifying sign prescribed by the department in a manner conspicuous to the public.

(b) No licensed smog check station shall require, as a condition of performing the test, that any needed repairs or adjustment be done by the person, or at the facility of the person, performing the test.

(c) If a motor vehicle, including a commercial vehicle, is tested at a facility licensed to perform tests and repairs pursuant to this chapter, the facility shall provide the customer with a written estimate pursuant to Section 9884.9 of the Business and Professions Code. The written estimate shall contain a notice to the customer stating that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or 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.

(Amended by Stats. 1994, Ch. 27, Sec. 30)

44034. Annual license fees for smog check stations and biennial license fees for smog check technicians shall be imposed by the department, but shall not exceed the reasonable cost of administering the qualifications and licensing program.

(Amended by Stats. 1994, Ch. 27, Sec. 31.)

44034.1. The department may impose an examination fee, sufficient to recover the reasonable cost of administering, developing, and updating the examination, for initial and biennial renewal smog check technician applicants. Payment of the fee entitles the applicant to be scheduled for an examination. The department may contract for collection of the fee.

(Amended by Stats. 1994, Ch. 27, Sec. 32.)

44035. (a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance inspectors, shall be provided access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items, as defined by the department.

(Amended by Stats. 1994, Ch. 27, Sec. 33.)

44036. (a) The consumer protection-oriented quality assurance portion of the motor vehicle inspection program shall ensure uniform and consistent tests and repairs by all qualified smog check technicians and licensed smog check stations throughout the state, and shall include a number of stations providing referee functions available to consumers.

(b) All licensed smog check stations shall utilize original equipment and replacement parts that are certified by the department. The department shall charge a fee for certification testing of the equipment or the replacement parts. The fee for certification testing of equipment shall be fixed by the department based upon its actual costs of certification testing, shall be calculated from the time that the equipment is submitted for certification testing until the time that the certification testing is complete, and shall in no event exceed ten thousand dollars ($10,000). The fee for certification testing of replacement parts shall be fixed by the department based upon its actual costs of certification testing, shall be calculated from the time that the replacement part is submitted for certification testing until the time that the certification testing is complete, and shall in no event exceed two thousand five hundred dollars ($2,500). The department shall adopt, and may from time to time revise, standards for certification and decertification of the equipment, which may include a device for testing of emissions of oxides of nitrogen. As expeditiously as possible, the department shall adopt equipment standards which shall include a test analyzer system containing all of the following:

(1) A microprocessor to control test sequencing, selection of proper test standards, the automatic pass or fail decision, and the format for the test report and the recorded data file. The microprocessor shall be capable of using a standardized programming language specified by the department.

(2) An exhaust gas analysis portion with an analyzer for hydrocarbons, carbon monoxide, and carbon dioxide which is designed to accommodate an optional oxides of nitrogen analyzer. An oxides of nitrogen analyzer shall be required in the enhanced program areas.

(3) Equipment necessary to perform visual and functional tests of emission control devices required by the department.

(4) A device to accept and record motor vehicle identification information, including a device capable of reading bar code information pursuant to regulations of the state board. The device shall have the ability to identify, with the cooperation of the Department of Motor Vehicles, smog inspections performed on vehicles sold by used car dealers.

(5) A device to provide a printed record of the test process and diagnostic information for the motorist.

(6) A mass storage device capable of storing not less than the minimum amount of program software and data specified by the department.

(7) 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.

(8) A device which provides for the storage of test records on a standardized form of removable media conforming to specifications of the department.

(9) One or more communications ports conforming to the specifications established by the department as necessary to provide real time communication, or communication which 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 Section 44037.1.

(10) An interface capable of monitoring equipment used with loaded mode testing, idle testing, on board diagnostic testing, or other tests prescribed by the department.

(11) 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 non exhaust-related volatile organic compound emissions such as found in fuel system evaporative emissions and crankcase ventilation emissions.

(c) The department shall require all smog check stations to use equipment meeting the requirements of subdivision(b) as soon as possible, but not later than January 1, 1996.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 chapter are equipped with barcode labels. Prior to the imposition of a requirement for equipment meeting the requirements of subdivision (b), every smogcheck station shall use equipment meeting the specifications of the department in effect on January 1, 1988.

(d) The quality assurance portion shall provide for inspections of licensed smog check stations, data collection and forwarding, equipment accuracy checks, operation of referee stations, and other necessary functions. In contracting for services pursuant to subdivision (e) of Section 44014, the department shall prepare detailed specifications and solicit bids from private entities for the implementation of the quality assurance functions.

(e) 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.

(f) (1) 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 proposed specifications and to install the updates in all equipment subject to the updates. During the first 30 days of the six-month period, the manufacturers shall be permitted to review and to comment upon the proposed specifications. However, notwithstanding any other provision of this section, the department may order manufacturers to install software changes in a shorter period of time upon a finding by the department that a previously installed update does not

meet current specifications. A manufacturer's failure to furnish or install software updates as so specified is cause for the department to decertify the manufacturer's test analyzer system or to issue a citation to the manufacturer. The citation shall specify the nature of the violation and may specify a civil penalty not to exceed one thousand dollars ($1,000) for each day the manufacturer fails to furnish or install the specified software updates by the specified period. In assessing a civil penalty pursuant to this subdivision, the department shall give due consideration, in determining the appropriateness of the amount of the civil penalty, to factors such as the gravity of the violation, the good faith of the manufacturer, and the history of previous violations.

(2) The citations shall be served pursuant to subdivision (c) of Section 11505 of the Government Code. The manufacturer may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related procedures under this subdivision shall be conducted in the same manner as proceedings for adjudication of an accusation under that Chapter 5, except as otherwise specified in this article.

(3) If within 30 days from service of the citation, the manufacturer fails to request a hearing, the citation shall be deemed the final order of the department.

(4) Any failure to comply with the final order of the department for payment of a civil penalty, or to pay the amount specified in any settlement executed by the licensee and the Director of Consumer Affairs, is cause for decertification of the manufacturer's test analyzer system.

(Amended by Stats. 1994, Ch. 27, Sec. 34.)

44036.1. The department may require that equipment manufacturers, submitting equipment for certification pursuant to Section 44036, submit proof of financial security, including, but not limited to, insurance sufficient to cover product liability claims, and secured funds for prepaid warranty or service contracts.

(Added by Stats. 1994, Ch. 27, Sec. 35.)

44036.2. (a) To ensure uniform and consistent inspection, tests and repairs by all qualified smog check technicians and licensed smog check stations, and to ensure consumer protection, manufacturers of motor vehicles shall provide, or cause to be provided, all emission control system service information that is necessary to properly inspect, test and repair those vehicles. Unless otherwise provided, that information shall be required for all 1980 and newer model-year vehicles and shall consist of all of the following:

(1) General specifications showing the make, model, and classification of the vehicle.

(2) The identification, location, and description of all emission control equipment on the vehicle.

(3) The manufacturer's recommended visual and functional inspection procedures for each emissions-related component.

(4) Air injection and evaporative emission purge strategies.

(5) All vehicle manufacturer-specific data stream information, excluding bidirectional control information and reprogramming information unless required by state or federal statute or regulation.

(b) Beginning with the 1998 model year, all emissions-related information required by this section, including diagnostic, service, and training information supplied by vehicle manufacturers to any franchised dealer, shall be provided in an electronic format that is readily accessible, or that can be made readily accessible, to private diagnostic assistance service information vendors or intermediaries if that information is provided or made available in this

format by manufacturers to dealers. In determining the allowable format, the state board shall ensure compatibility with any service information format requirements specified by the Environmental Protection Agency.

(c) (1) The state board shall require motor vehicle manufacturers to provide the service information necessary to comply with this section as a condition of certification.

(2) Should the manufacturer fail to provide the service information necessary to comply with subdivision (a) 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 such time as the manufacturer provides the necessary service information.

(3) The department shall periodically conduct surveys to determine whether the service information requirements are being fulfilled by actual field availability of the information.

(d) 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.

(e) (1) Those 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.

(2) 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.

(f) (1) The information required to be provided under this section 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 201 of the Federal Clean Air Act Amendments of 1990 and such other information including instructions for making emission-related diagnosis and repairs. If any of the emissions-related service information required by this section is provided to the manufacturer's franchised dealers in advance of the specific requirements of this section, 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.

(2) The service information shall be made compatible with computer systems commonly used in the after market repair industry. In addition, the vendor or intermediary may offer the information by other common distribution means when electronic means are unavailable. No information or format will be required in the service information beyond that which is provided by new car manufacturers to franchise dealers.

(g) The provisions of this section that apply with respect to 1994 and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

(Added by Stats. 1994, Ch. 725, Sec. 1.)

44036.3. (a) The department shall direct licensed smog check stations and technicians to private diagnostic assistance service information vendors or intermediaries who possess the electronically formatted information acquired under Section 44036.2, or with any other emissions-related information needed to improve the effectiveness of smog checks.

(b) The provisions of this section that apply with respect to 1994 and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

(Added by Stats. 1994, Ch. 725, Sec. 2.)

44036.5. (a) The department shall set standards for test analyzer system (TAS) calibration gases and shall establish criteria to certify and decertify gas blenders who blend, fill, or sell TAS calibration gases.

(b) On and after January 1, 1990, no person shall blend, fill, or sell any TAS calibration gases unless certified by the department and no person shall use in a TAS calibration gases which are not certified.

(Added by Stats. 1989, Ch. 1154, Sec. 15. Repealed as of January 1, 1999, pursuant to Section 44001.)

44036.8. The data collected by the equipment used by a smog check station, as required by regulations of the Bureau of Automotive Repair, may be used by a licensed smog check station technician or operator when appealing a citation issued by the Bureau of Automotive Repair.

(Amended by Stats. 1994, Ch. 27, Sec. 36.)

44037. (a) The department shall compile and maintain records, using the sampling methodology necessary to ensure their scientific validity and reliability, of tests and repairs performed by qualified smog check technician at licensed smog check stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at the station.

(2) The number of maintenance and repair operations performed on motor vehicles which fail to pass a test conducted pursuant to this chapter.

(3) The correlation between maintenance and repairs recommended by the department pursuant to Section 44016 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 Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, 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.

(Amended by Stats. 1994, Ch. 27, Sec. 37.)

44037.1. (a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network which is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

(1) To provide smog check technicians with immediate access to vehicle-specific information regarding the location of all emission control equipment, pattern failure data, and other vehicle-specific technical information relevant to the efficient identification, diagnosis, and repair of emission problems.

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle in order to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model-year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

(4) Upon a determination that a smog check station or technician has engaged in a pattern of violating this chapter, or that a vehicle failed one or more emissions tests before obtaining a certificate of compliance, to provide the information necessary to identify and contact vehicle owners who obtained certificates from the station or technician, or may have obtained certificates of compliance in violation of this chapter, for purposes of requiring the retesting of their vehicles.

(5) To be compatible with the eventual transition to a fully computerized smog certification program that will not require the use of printed certificates as evidence of compliance.

(6) To be compatible with bar code scanning of vehicles as provided in Section 44041.

(7) To permit ongoing entry of information from each smog check station into the centralized data base to enlarge and improve the data base on a continuous basis.

(8) To be compatible with the department's record keeping and compilation requirements established by Section 44037.

(9) To meet the needs of a remote-sensing program to identify gross polluters, as specified by the department.

(10) To be compatible with a pilot program of annual smog checks for vehicles that exceed target pollution miles.

(11) To permit entry of data on odometer readings during smog checks.

(12) To meet any other needs specified by the department to enhance the benefits of the program through the storage of vehicle-specific information, such as that pertaining to scrap programs and to the referee station program.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and frequency of the data transmittals.

(d) The department may enter into a contract for the design, establishment, or both, of the equipment required by subdivision (a). Any contract entered into pursuant to this subdivision shall not be subject to any restrictions that are applicable to contracts in the Government Code or in the Public Contract Code. The department shall report to the Legislature any action that is taken in accordance with this subdivision.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 25.Inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.)

44037.1. (a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network which is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

(1) To provide smog check technicians with immediate access to vehicle-specific information regarding the location of all emission control equipment, pattern failure data, and other vehicle-specific technical information relevant to the efficient identification, diagnosis, and repair of emission problems.

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle in order to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model-year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

(4) Upon a determination that a smog check station or technician has engaged in a pattern of violating this chapter, or that a vehicle failed one or more emissions tests before obtaining a certificate of compliance, to provide the information necessary to identify and contact vehicle owners who obtained certificates from the station or technician, or may have obtained certificates of compliance in violation of this chapter, for purposes of requiring the retesting of their vehicles.

(5) To be compatible with the eventual transition to a fully computerized smog certification program that will not require the use of printed certificates as evidence of compliance.

(6) To be compatible with bar code scanning of vehicles as provided in Section 44041.

(7) To permit ongoing entry of information from each smog check station into the centralized data base to enlarge and improve the data base on a continuous basis.

(8) To be compatible with the department's record keeping and compilation requirements established by Section 44037.

(9) To meet the needs of a remote-sensing program to identify gross polluters, as specified by the department.

(10) To meet any other needs specified by the department to enhance the benefits of the program through the storage of vehicle-specific information, such as that pertaining to scrap programs and to the referee station program.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and frequency of the data transmittals.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec.25.5. Operative five years from the date determined pursuant to Section 32 of the act adding this section.)

44038. Until implementation of the centralized computer data base required pursuant to Section 44037.1, 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.

(Amended by Stats. 1994, Ch. 27, Sec. 39.)

44039. 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 chapter.

(Amended by Stats. 1988, Ch. 1544, Sec. 49.Repealed as of January 1, 1999, pursuant to Section 44001.)

44040. The department may require certificates of compliance, certificates of noncompliance, emission cost waivers, and an economic hardship extension 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.

(Amended by Stats. 1995, Ch. 982, Sec. 10.)

44041. 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 to all vehicle owners at the time of their vehicle's annual registration renewal. The labels shall contain vehicle identification numbers and other vehicle-specific information, to be determined by the department, which can be recorded by smog check station technicians utilizing the scanning devices required by Section 44036.

(Added by Stats. 1994, Ch. 27, Sec. 41.)

44045.5. (a) This section describes the qualifications to be met by smog check technician applicants effective January 1, 1995. The department shall, by regulation, establish requirements for the licenser of smog check technicians which are necessary to enable the program to meet the applicable emission reduction performance standards, to include, at a minimum:

(1) Either of the following:

(a) 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.

(b) Successful completion of a training program certified by the department under Section 44045.6.

(2) In addition to the requirement in paragraph (1),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.

(3) An examination process that effectively determines whether applicants are all of the following:

(a) Knowledgeable regarding the visual, functional, and exhaust and evaporative emissions inspection and testing procedures specified by the department, including a demonstrated understanding of loaded mode testing principles, purpose, procedures and equipment.

(b) Knowledgeable regarding misfire detection, air injection testing, closed-loop system testing, and generic idle adjustment procedures specified by the department.

(c) Capable of using emissions manuals and tuneup labels to properly identify required emission control systems and components on any vehicle subject to the enhanced program.

(4) Not later than July 1, 1995, the examination shall use state-of-the-art technology, which may include computer simulations or other computer-based examination formats to determine whether applicants can properly identify, diagnose, and repair emission-related problems. The department may contract for the development and administration of this examination.

(b) 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.

(c) The department may establish more than one category or level of licenser, and may provide for the licensing of interns or trainees if those persons do all of their test and repair work under the supervision of a licensed technician.

(d) The department shall require the renewal of smogcheck technician licenses every two years, and shall establish any necessary and appropriate requirements for renewal.

(Added by Stats. 1994, Ch. 27, Sec. 42.)

44045.6. (a) The department shall, by regulation, establish requirements for the training of smog check technicians which are necessary to enable the program to meet the applicable emission reduction performance standards, to include, at a minimum, all of the following:

(1) Criteria for facilities, instructors, equipment, reference materials, and instructional materials.

(2) A detailed outline of lectures and laboratory work.

(3) A final examination and recommended passing score.

(4) In lieu of the requirements in paragraphs (1) to(3), inclusive, the department may accept certification by an established national training institution of training in relevant curricula, including electrical systems, engine performance, and electronic emissions diagnostics.

(b) Training facilities meeting the requirements of subdivision (a) shall be certified by the department to provide smog check training.

(c) The department may require remedial training at a certified training facility or may take disciplinary action, whichever the department determines to be the most appropriate, for any licensed technician who the department determines cannot perform inspections, testing, or repairs as required under the program. The failure to complete the remedial training when required by the department shall be a ground for revocation or suspension of a smog check technician's license under Section 44072.2.

(d) The department may contract to ensure the availability of training and retraining courses required by this chapter whenever these courses are not otherwise available. Charges for courses offered by contractors pursuant to this subdivision shall be borne by course attendees.

(Added by Stats. 1994, Ch. 27, Sec. 43.)

## Article 4. Penalties

(Article 4 added by Stats. 1982, Ch. 892, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44050. (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 Section 44020 has violated this chapter, or any regulation adopted pursuant to this chapter, 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 44051 or 44051.5.

(b) If, upon investigation, the department has probable cause to believe that a qualified smog check technician has violated Section 44012, 44015, 44016, or 44032, or any regulation of the department adopted pursuant to this chapter, 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 subdivision (c) of Section 44031.5.

(2) For a second citation, the smog check technician shall successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5 and the technician shall perform inspections or repairs pursuant to this chapter 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 chapter 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.

(Amended by Stats. 1994, Ch. 27, Sec. 44.)

44050.5. In assessing a civil penalty pursuant to Section 44050 against a person who has not previously been cited for a violation of the same statute or regulation, the department

shall fix the penalty at an amount within the minimum and maximum penalties specified in Section 44051 or 44051.5, as the case maybe, for each violation.

(Added by Stats. 1985, Ch. 703, Sec. 4. Repealed as of January 1, 1999, pursuant to Section 44001.)

44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:

| Section | Short Description of Violation | Civil Penalty | |
|---|---|---|---|
| | | Minimum | Maximum |
| 44002 | Smog check estimates and invoices | $ 50 | $ 500 |
| 44012 | No emission control system inspection, no emissions test, or inspection test procedures | 250 | 1,500 |
| 44014 | Unlicensed smog check station | 250 | 1,500 |
| 44015 | Improper issuance of certificate, including economic hardship extension certificate | 150 | 1,000 |
| 44016 | Failure to follow established repair procedures | 150 | 1,000 |
| 44017 | Cost limit or economic hardship extension requirement | 150 | 1,000 |
| 44031.5 | Test/repair by unlicensed smog check station or nonqualified smog check technician | 250 | 1,500 |
| 44032 | Qualified smog check technician required | 250 | 500 |
| 44033 | Smog check station requirement, test on condition of mandatory repair, written estimate requirements | 250 | 1,500 |
| 44036 | Smog check station certified equipment requirement | 150 | 1,500 |
| 44060 | Sale, transfer, or purchase of certificate, including economic hardship extension certificate, and certificate or economic hardship extension charges | 250 | 1,500 |

(Amended by Stats. 1995, Ch. 982, Sec. 10.)

44051.5. The civil penalty for a violation of the specified sections of Title 16 of the California Code of Regulations is as follows:

| Section | Short Description of Violation | Civil Penalty | |
|---|---|---|---|
| | | Minimum | Maximum |
| 3340.10 | Unlicensed operation of smog check station | $250 | $1,500 |
| 3340.15 | Smog check station general requirements | 100 | 500 |
| 3340.16 | Smog check station equipment and testing procedures | 150 | 1,000 |
| 3340.16.5 | Smog check station equipment and testing procedures | 150 | 1,000 |
| 3340.17 | Smog check station equipment maintenance and calibration | 150 | 1,000 |
| 3340.22 | Smog check station sign requirement | 100 | 500 |
| 3340.22.1 | Sign restrictions | 100 | 500 |
| 3340.23 | Smog check cease operations | 250 | 1,500 |
| 3340.25 | Licensed inspector requirement | 150 | 1,000 |
| 3340.30 | Qualified mechanic's training and certification requirement | 100 | 500 |
| 3340.35 | Certification of compliance and noncompliance requirement | 250 | 1,500 |
| 3340.37 | NOx device/sticker requirement | 100 | 500 |
| 3340.41 | Inspection/test/repair requirement | 150 | 1,000 |
| 3340.41.3 | Invoice requirements | 100 | 500 |
| 3340.42 | Inspection standards, test procedures, and exhaust emissions requirement | 100 | 500 |

(Amended by Stats. 1992, Ch. 674, Sec. 9.Repealed as of January 1, 1999, pursuant to Section 44001.)

44052. (a) When a citation lists more than one violation, the amount of the civil penalty assessed shall be stated separately for each statute and regulation violated.

(b) When a citation lists more than one violation arising from a single motor vehicle inspection or repair, the total penalties assessed shall not exceed two thousand five hundred dollars ($2,500).

(Added by Stats. 1985, Ch. 703, Sec. 7. Repealed as of January 1, 1999, pursuant to Section 44001.)

44053. (a) Any person issued a citation pursuant to Section 44050 may request a hearing in accordance with Chapter 5(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related procedures under this section shall be conducted in the same manner as proceedings for adjudication of an accusation under that Chapter 5, except as otherwise specified in this article.

(b) If, within 30 days from service of the citation, the licensee or fleet owner licensed pursuant to Section 44020 or qualified mechanic fails to request a hearing, the citation shall be deemed the final order of the department.

(c) As it applies to this article, the service required in Section 11505 of the Government Code includes service personally, by registered mail, or by courier with receipt of delivery.

(Amended by Stats. 1991, Ch. 386, Sec. 9. Repealed as of January 1, 1999, pursuant to Section 44001.)

44054. In assessing a civil penalty pursuant to a citation issued pursuant to Section 44050, the director shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of whether any of the following apply to the licensee:

(a) A failure to perform work for which money was received.

(b) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.

(c) The commission of numerous or repeated violations.

(d) A failure to make restitution to customers affected by the licensee's violation.

(Amended by Stats. 1988, Ch. 1544, Sec. 55.Repealed as of January 1, 1999, pursuant to Section 44001.)

44055. (a) Any failure by an applicant for a license or for the renewal of a license, or by any partner, officer, or director thereof, to comply with the final order of the department for the payment of civil penalties, or to pay the amount specified in a settlement executed by the applicant and the Director of the Department of Consumer Affairs, shall result in denial of a license or of the renewal of the license. The department shall not allow the issuance of any certificate of compliance or noncompliance by a licensee until all civil penalties which have become final, or amounts agreed to in a settlement, have been paid by the licensee.

(b) The department may deny an application for the renewal of a test station or repair station license if the applicant, or any partner, officer, or director thereof, has failed to pay any civil penalty in accordance with this article.

(Amended by Stats. 1991, Ch. 386, Sec. 10. Repealed as of January 1, 1999, pursuant to Section 44001.)

44056. (a) Except as otherwise provided in Sections 44051 and 44051.5, any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant

to this chapter, 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. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district.

(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 or noncompliance, an emission cost waiver, or an economic hardship extension, without complying with Section 44015.

(2) Obtains, or attempts to obtain, a certificate of compliance, an emission cost waiver, or an 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 or an economic hardship extension certificate for a vehicle which 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 chapter.

(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 Section 44015 or 44081.

(Amended by Stats. 1995, Ch. 982, Sec. 10.)

44057. A continuing violation of any provision of this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, may be enjoined by the superior court of the county in which the violation is occurring. The action shall be brought by the attorney general in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district. An action brought under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that it shall not be necessary to show lack of an adequate remedy at law or to show irreparable damage or loss.

In addition, if it is shown that the respondent continues, or threatens to continue, to violate any provision of this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

(Added by renumbering Section 44051 by Stats. 1985, Ch. 703, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44058. Any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or by both, in lieu of the imposition of the civil penalties.

(Added by Stats. 1985, Ch. 703, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.

44059. 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 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

(Added by renumbering Section 44052 (as added by Stats. 1986, Ch. 951) by Stats. 1987, Ch. 850, Sec. 23. Repealed as of January 1, 1999, pursuant to Section 44001.)

## Article 5. Financial Provisions

(Article 5 added by Stats. 1982, Ch. 892, Sec. 2. Repealed as of January 1, 1999, pursuant to Section 44001.)

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance, the emission cost waiver, and the economic hardship extension.

(b) Effective not later than January 1, 1996, the certificates, emission 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. In meeting the January 1, 1996, deadline, the department shall ensure that adequate lead time is provided for conversion to an electronic entry type of certificate, emission cost waiver, and economic hardship extension. The department shall ensure that the vehicle owner or operator is provided with a written report, signed by the licensed technician who performed the inspection, of any test performed by a smog check station, including a pass or fail indication, and written confirmation of the issuance of the certificate.

(c) (1) The department shall charge a fee to a smog check station, including a test-only station, and a station providing referee functions, for a vehicle inspected at that station which meets the requirements of this chapter and is issued a certificate of compliance, a certificate of noncompliance, an economic hardship extension, or an emission cost waiver.

(2) The fee charged pursuant to paragraph (1) shall be calculated to recover the costs of the department and any other state agency directly involved in the implementation, administration, or enforcement of the motor vehicle inspection and maintenance program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, which are not otherwise recoverable by fees received pursuant to Section 44034.

(3) Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate, waiver, or extension shall not exceed seven dollars ($7).

(4) Fees collected by the department pursuant to this subdivision shall be deposited in the Vehicle Inspection and Repair Fund. It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds the reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificates, waivers, and extensions.

(d) The sale or transfer of the certificate, waiver, or extension, by a licensed smog check station or test-only station to any other licensed smog check station or to any other person, and the purchase or acquisition of the certificate, waiver, or extension, by any person,

other than from the department, the department's designee, or pursuant to a vehicle's inspection or repair conducted pursuant to this chapter, is prohibited.

(e) Following implementation of the electronic entry certificate under subdivision (b), the department may require the modification of the analyzers and other equipment required at smog check stations to prevent the entry of a certificate which has not been issued or validated through prepayment of the fee authorized by subdivision (c).

(f) The fee charged by licensed smog check stations to consumers for a certificate, waiver, or extension, shall be the same amount that is charged by the department.

(Amended by Stats. 1995 Ch. 982, Sec. 12.)

44061. The fees and penalties collected by the department pursuant to this chapter 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 chapter or in any other law.

(Amended by Stats. 1988, Ch. 1544, Sec. 56.3. Repealed as of January 1, 1999, pursuant to Section 44001.)

44062. The Vehicle Inspection Fund and the Automotive Repair Fund are hereby abolished. The balances in those funds are hereby transferred to the Vehicle Inspection and repair Fund.

All fees collected by the department under this chapter 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.

(Added by Stats. 1988, Ch. 1544, Sec. 56.6. Repealed as of January 1, 1999, pursuant to Section 44001.)

44062.1.(a) The department shall develop and implement either a repair subsidy program or an economic hardship extension program at the same time that the four hundred fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

(Amended by Stats. 1994, Ch. 27. Amended by Stats. 1995, Ch. 982, Sec. 13.)

44062.1. (a) The department shall develop and implement either a repair subsidy program or an economic hardship extension program at the same time that the four hundred

fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

(d) The department shall develop and implement a vehicle retrofit subsidy program not later than one year from the operative date specified in Section 32 of the act adding this subdivision.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 26. Amended by Stats. 1995, Ch. 982, Sec. 14.)

44062.1. (a) The department shall develop and implement either a repair subsidy program or an economic hardship extension program at the same time that the four hundred fifty dollar ($450) minimum cost limit for repairs becomes operative pursuant to subdivisions (a) and (b) of Section 44017.

(b) The department may develop and implement the repair subsidy program as a component of the high polluter repair or removal program pursuant to Article 9 (commencing with Section 44090).

(c) (1) If the repair subsidy program or component is implemented, the department shall not implement the economic hardship extension program pursuant to subdivision (c) of Section 44015 and subdivision (e) of Section 44017.

(2) If the department develops and implements the economic hardship extension program, the department shall not implement the repair subsidy program or component.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Amended by Stats. 1994, Ch. 1192, Sec. 27. Amended by Stats. 1995, Ch. 982, Sec. 15.)

44062.2. (a) The state board shall adopt, by regulation, procedures to establish an emissions credit exchange program whereby persons may contribute to the Vehicle Inspection, Repair, and Retrofit 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 and vehicle retrofit subsidy program specified in Section 44062.1. 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) In federal non attainment areas, the credits established pursuant to subdivision (a) or (b) shall be allowed only for emission reductions that are in excess of the reasonable further progress goals established by Section 182 of the amendments enacted in 1990 to the Clean Air

Act (P.L. 101-549), or in excess of alternative progress goals established in a state implementation plan pursuant to Section 182 of the Clean Air Act.

(d) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Amended by Stats. 1994, Ch. 1192, Sec. 28.)

44062.2. (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 Section 44062.1. 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.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

(Added by Stats. 1994, Ch. 1192, Sec. 28.5.)

44063. (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.

(Added by Stats. 1994, Ch. 27, Sec. 50.)

## Article 6. Public Information

(Article 6 added by Stats. 1984, Ch. 1591, Sec. 3. Repealed as of January 1, 1999, pursuant to Section 44001.)

44070. (a) The department shall develop within the Bureau of Automotive Repair, 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 chapter. 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.

(Amended by Stats. 1988, Ch. 1544, Sec. 57.Repealed as of January 1, 1999, pursuant to Section 44001.)

44070.5. (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.

(Added by Stats. 1994, Ch. 27, Sec. 51.)

44071. 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 44060.

(Amended by Stats. 1988, Ch. 1544, Sec. 57.5. Repealed as of January 1, 1999, pursuant to Section 44001.)

Article 7. Denial, Suspension, and Revocation
(Article 7 added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072. Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.1. The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:

(a) Fails to meet the qualifications established by the bureau pursuant to Articles 2 (commencing with Section 44010)and 3 (commencing with Section 44030) and the regulations adopted for the issuance of the license applied for.

(b) Was previously the holder of a license issued under this chapter, which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited.

(e) Has acted in the capacity of a licensed person or firm under this chapter without having a license therefor.

(f) Has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of a crime substantially related to the qualifications, functions, and duties of the license holder in question, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the plea or verdict of guilty, or dismissing the accusation or information.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.2. The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the license holder in question.

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(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 chapter.

(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 chapter relating to the particular activity for which he or she is licensed.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.3. A plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction within the meaning of this article. The director may order the license suspended or revoked or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.4. The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

(a) Imposing probation upon terms and conditions to be set forth by the director.

(b) Suspending the license.

(c) Revoking the license.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.5. Upon the effective date of any order of suspension or revocation of any license governed by this chapter, the licensee shall surrender the license to the director.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.6. The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against, the licensee, or to render a decision suspending or revoking the license.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.7. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (f) of Section 44072.2, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.8. When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.9. After suspension of the license upon any of the grounds set forth in this article, the director may reinstate the license upon proof of compliance by the applicant with all provisions of the decision as to reinstatement. After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the effective date of revocation.

(Added by Stats. 1991, Ch. 386, Sec. 11. Repealed as of January 1, 1999, pursuant to Section 44001.)

44072.10. (a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, may, pending a hearing conducted pursuant to subdivision (f), temporarily suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (f), based upon reasonable evidence of any of the following:

(1) Fraud.

(2) Tampering.

(3) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

(4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

(b) 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.

(c) The department shall issue a citation to a smogcheck 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 this section, temporarily suspend any smogcheck station's or technician's license for not more than 60 days.

(d) 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:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

(e) Once a license has been revoked for a smog check station or technician under subdivision (a), (c), or (d), the license shall not be reinstated for any reason. A hearing shall be held and a decision issued within 60 days after the date on which the notice of the temporary suspension was provided unless the time for the hearing has been extended, or the right to a hearing has been waived, by the licensee.

(f) The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or by court order.

(g) The department shall adopt, by regulation, procedures to ensure that any affected licensee is provided adequate notice and opportunity to be heard prior to issuing an order temporarily suspending a license under this section.

(Added by Stats. 1994, Ch. 27., Sec. 52.)

44072.11. (a) 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 44072.10.

(b) 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 44072.1 or on evidence that the station or technician is not in compliance with any of the requirements of subdivision (a).

(Added by Stats. 1994, Ch. 27, Sec. 53.)

## Article 8. Gross Polluters

(Article 8 added by Stats. 1992, Ch. 972, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

44080. The Legislature finds and declares as follows:

(a) California's air is the most polluted in the nation and the largest source of that pollution is automobiles.

(b) California has the most stringent new car emission standards in the nation as well as a vehicle inspection (smog check) program that result in most cars producing very little pollution.

(c) A small percentage of automobiles cause a disproportionate and significant amount of the air pollution in California.

(d) These gross polluters are primarily vehicles in which the emission control equipment has been disconnected or which are very poorly maintained.

(e) New technologies, such as remote sensing, can identify gross polluters on the roads, enabling law enforcement authorities to stop, inspect, and cite vehicles with disconnected emission control equipment, and can promote the development of incentives for the repair of other high-emitting vehicles.

(f) Requiring owners to reconnect emission control equipment and developing incentives for needed maintenance on high-emitting vehicles may be cost-effective methods to reduce emissions and help achieve air quality standards in many districts.

(Added by Stats. 1992, Ch. 972, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

44081. (a) (1) 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 Section 44081.6.

(2) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

(b) The department shall, by regulation, establish a program for the out-of-cycle testing and repair of vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(1) 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 citation as a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(2) procedures for issuing citations 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 citation shall provide that, unless the vehicle is brought to a designated test-only station for emissions testing within 30 days, the owner will be subject to a civil penalty of five hundred dollars ($500) to be imposed and 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. The regulations may authorize a penalty increasing at the rate of five dollars ($5) per day up to the five hundred dollars ($500) maximum.

(3) Procedures for the testing of vehicles cited as gross polluters by a designated test-only facility to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(4) 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 within 30 days or be subject to a civil penalty of five hundred dollars ($500) imposed and collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership, whichever occurs first. The regulations may authorize a penalty increasing at the rate of five dollars ($5) per day up to the five hundred dollars ($500) maximum, and may authorize impoundment of a vehicle after the maximum penalty has accrued. No vehicle cited as a gross polluter that has not received a certificate of compliance shall be registered in California. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any penalty revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle Inspection and Repair Fund. If the ownership of the vehicle is transferred, the penalty provided for in this subdivision shall be waived if the vehicle is brought into compliance.

(5) A procedure for notifying the Department of Motor Vehicles of citations issued, so that the Department of Motor Vehicles may provide effective enforcement of the penalty for noncompliance. The Department of Motor Vehicles shall cooperate with, and implement the requirements of, the department in that regard, by regulation.

(6) The department may adopt any other regulations necessary for the effective implementation of this section, as determined by the department.

(c) Upon the request of the department, the Department of the California Highway Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the stopping of vehicles and traffic management, and (2) the issuance of citations to gross polluters. The department shall reimburse the Department of the California Highway Patrol for its costs of providing those services. The Department of Transportation and affected local agencies shall provide necessary assistance and cooperation to the department in the operation of the program.

(d) There shall be no repair cost limit imposed pursuant to Section 44017 for any repairs that are required to be made under the roadside auditing program, except as provided in subdivision (d) of Section 44017.

(Repealed by Stats. 1994, Ch. 27, Sec. 54. Added by Stats. 1994, Ch. 27, Sec. 55.)

44081.5. (a) The review committee shall design, in cooperation with the department, the state board, and the Environmental Protection Agency, and the department shall conduct, one or more pilot programs to evaluate the gross polluter program authorized in Section 44081. Any such pilot programs shall be conducted on a sufficient scale and with a large enough number of vehicles to provide adequate data to project emission benefits from statewide implementation.

(b) The review committee shall contract with an academic or research institution to conduct an evaluation of the pilot program. The amending of the contract shall not be subject to any restrictions in the Government Code or the Public Contract Code. The evaluation shall provide projections of emission benefits from statewide implementation not later than December 1, 1994.

(c) The department shall implement the findings of the pilot program for the purpose of establishing an effective out-of-cycle testing program pursuant to Section 44081.

(Added by Stats. 1994, Ch. 1, Sec. 51.)

44081.6. (a) The California Environmental Protection Agency, the state board, and the department, in cooperation with, and with the participation of, the Environmental Protection Agency, shall jointly undertake a pilot demonstration program to do all of the following:

(1) Determine the emission reduction effectiveness of alternative loaded mode emission tests compared to the IM240 test.

(2) Quantify the emission reductions, above and beyond those required by Environmental Protection Agency regulation or by the biennial test requirement, achievable from a remote sensing-based program that identifies gross polluting and other vehicles and requires the immediate repair and retest of those gross polluting vehicles at a test-only station established by this chapter.

(3) Determine if high polluting vehicles can be identified and directed to test-only stations using criteria other than, or in addition to, age and model year, and whether this reduces the number of vehicles which would otherwise be subject to inspection at test-only stations.

(4) Qualify emission reductions above and beyond those that are required by the regulations of the Environmental Protection Agency, achievable from other program enhancements pursuant to this chapter.

(5) Determine the extent to which the capacity of the test-only station network established pursuant to Section 44010.5 needs to be expanded to comply with Environmental Protection Agency performance standards.

(b) The California Environmental Protection Agency shall enter into a memorandum of agreement with the Environmental Protection Agency to establish the protocol for the pilot demonstration program. The memorandum of agreement shall ensure, to the extent possible, that the Environmental Protection Agency will accept the results of the pilot demonstration program as the findings of the Administrator of the Environmental Protection Agency. The pilot demonstration program shall be conducted pursuant to the memorandum of agreement.

(c) The review committee established pursuant to Section 44021 shall review the protocol for the pilot demonstration program, as established in the signed memorandum of agreement, and recommend any modification that the review committee finds to be appropriate for the pilot demonstration program. Any such modification shall become effective only upon the written agreement of the California Environmental Protection Agency and the Environmental Protection Agency.

(d) The department shall contract, on behalf of the committee, with an independent entity to ensure quality control in the collection of data pursuant to the pilot demonstration program. The department shall also contract, on behalf of the committee, for an independent analysis of the data produced by the pilot demonstration program.

(e) Any contract entered into pursuant to this section shall not be subject to any restrictions that are applicable to contracts in the Government Code or in the Public Contract Code. The department shall report to the Legislature any action that is taken in accordance with this subdivision.

(f) To the extent possible, the pilot demonstration program shall be conducted using equipment, facilities, and staff of the state board, the department, and the Environmental Protection Agency.

(g) The pilot demonstration program shall provide for, but not be limited to, all of the following:

(1) For the purposes of this section, any vehicle subject to the inspection and maintenance program may be selected to participate in the pilot demonstration program regardless of when last inspected pursuant to this chapter.

(2) Registered owners of vehicles selected to participate in the pilot demonstration program shall make the vehicle available for testing within a time period and at a testing

facility designated by the department. If necessary, the department shall increase the capacity of the existing referee network in the area or areas where the pilot demonstration program will be operating, in order to accommodate the convenient testing of selected vehicles.

(3) If the department finds that a vehicle is emitting excessive emissions, the vehicle owner shall be required to make necessary repairs within the existing cost limits and return to a testing facility designated by the department. The vehicle owner shall have additional repairs made if the repairs are requested and funded by the department. The department shall also fund the cost of any necessary repairs if the owner of the vehicle has, within the last two years, already paid for emissions-related repairs to the same vehicle in an amount at least equal to the existing cost limits, in order to obtain a certificate of compliance or an emission cost waiver.

(4) Vehicle owners that fail to bring the vehicle in for inspection or fail to have repairs made pursuant to this section shall be subject to citation. The citation shall provide that, unless the vehicle is brought to a designated testing facility for testing, or repair facility for repairs, within 15 days of notice of the requirement, the owner will be subject to a civil penalty of five dollars ($5) a day, not to exceed two hundred fifty dollars ($250), to be imposed at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. All penalties shall be collected by the Department of Motor Vehicles pursuant to this subdivision and shall be deposited into the Vehicle Inspection and Repair Fund by the Department of Motor Vehicles.

(h) The Department of Motor Vehicles, the Department of Transportation, local agencies, and the state board shall provide necessary support for the program established pursuant to this section.

(i) As soon as possible after the effective date of this section, the department and the state board shall develop, implement, and revise as needed, emissions test procedures and emissions standards necessary to conduct the pilot demonstration program.

(Added by Stats. 1994, Ch. 27, Sec. 56.)

44084. In addition to other programs authorized in this article, a district may, on or after March 1, 1993, establish programs to identify gross polluters and other high-emitting vehicles whose emissions could be reduced by repair, using remote sensors or other methods, and to provide financial incentives to encourage the repair or scrapping of these vehicles as a method of reducing mobile source emissions for the purposes of Section 40914. The programs authorized by this section are not intended to impose additional emission reduction requirements, but instead are intended to provide more cost-effective alternative methods to meet existing requirements.

(Added by Stats. 1992, Ch. 972, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

44085. Districts may establish procedures to generate marketable emission reduction credits from programs established pursuant to Sections 44083 and 44084. Emission reduction credits generated pursuant to this section may be used to meet or offset transportation control requirements, average vehicle ridership reductions, or other mobile source emission requirements, as determined by the district.

(Added by Stats. 1992, Ch. 972, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

44086. Each district shall, in establishing, reviewing, or updating the plan required by Chapter 10(commencing with Section 40910) of Part 3, consider the relative cost-effectiveness of the programs authorized in this article compared to other control measures under consideration.

(Added by Stats. 1992, Ch. 972, Sec. 1. Repealed as of January 1, 1999, pursuant to Section 44001.)

## Article 9. Repair or Removal of High Polluters
(Added by Stats. 1994, Ch. 28, Sec. 2.)

44090. For purposes of this article, the following terms have the following meaning:

(a) "Account" means the High Polluter Repair or Removal Account created pursuant to subdivision (a) Section 44091.

(b) "High polluter" means a high-emission motor vehicle, including, but not limited to, a gross polluter.

(Added by Stats. 1994, Ch. 28, Sec. 2.)

44091. (a) The High Polluter Repair or Removal Account is hereby created in the Vehicle Inspection and Repair Fund. All money deposited in the account pursuant to this article and paragraphs (1) and (2) of subdivision (b) of Section 4000.7 of the Vehicle Code shall be available, upon appropriation by the Legislature, to the department and the state board to establish and implement a program for the repair or replacement of high polluters pursuant to this article and Article 10 (commencing with Section 44100).

(b) The department may accept donations or grants of funds from any person for purposes of the program and shall deposit that money in the account. Donations, grants, or other commitments of money to the account may be dedicated for specific purposes consistent with the uses of the account, including, but not limited to, purchasing higher emitting vehicles for the purpose of achieving the emission reductions required by the M-1 strategy of the 1994 state implementation plan (SIP).

(c) The funds which are available in the account in any fiscal year for a particular area that is subject to an inspection and maintenance program shall be determined by calculating the percentage of vehicles registered in that area to the total number of vehicles registered in areas that are subject to inspection and maintenance programs. That percentage shall be the percentage of the total funds allocated to the program in that fiscal year which are available for that particular area.

(d) During any fiscal year, the percentage of money in the account expended for repair assistance, removal and related administration costs, shall be set by the department and, shall be available for the following purposes in the following amounts:

(1) Until the emission reductions required by the M-1 strategy of the 1994 SIP are achieved, 50 percent of the funds deposited in the account pursuant to paragraphs (1) and (2) of subdivision (b) of Section 4000.7 of the Vehicle Code that are allocated to the south coast district area pursuant to subdivision (c), plus all other money deposited in the account and dedicated to achieving the emission reductions required by the M-1 strategy of the 1994 SIP, shall be available to the state board for the purposes described in subdivision (b) of Section

44104. All emission reductions achieved by using the funds described in this paragraph shall be credited to the M-1 strategy. Funds allocated for purposes of this paragraph that are unused in any fiscal year shall be carried over to achieve the M-1 emission reduction objectives in subsequent years.

(2) Funds appropriated pursuant to subdivision (a) of Section 44104 shall be available to the state board for the purpose of performing the rulemaking, vehicle testing, and other technical work required to implement the program described in Article 10 (commencing with Section 44100).

(3) The balance of this portion of the account shall be available to the department for repairing or removing high-emitting vehicles, and shall be apportioned based on the relative cost-effectiveness of repair or removal, as determined by the department.

(e) In no case shall the funding available in any subsequent fiscal year to the department for repairing or removing high-emitting vehicles under the inspection and maintenance program be less than the amount made available from the Vehicle Inspection and Repair Fund for that purpose in the 1995-96 fiscal year.

(Added by Stats. 1994, Ch. 28, Sec. 2. Amended by Stats. 1995, Ch. 929, Sec. 4.)

44092. The high-polluter repair or removal program shall be designed to repair or remove motor vehicles registered in this state that are subject to an inspection and maintenance program and are producing high levels of emissions as a result of their use in this state.

(Added by Stats. 1994, Ch. 28, Sec. 2. Amended by Stats. 1995, Ch. 929, Sec. 5.)

44093. (a) The repair of high polluters under the program shall be designed to offer repair cost assistance to qualified low-income motor vehicle owners for vehicles that are in need of repairs to obtain a certificate of compliance, as determined by the department.

(Added by Stats. 1994, Ch. 28, Sec. 2.)

44094. (a) Participation in the high polluter repair or removal program specified in this article and Article 10 (commencing with Section 44100) shall be voluntary and shall be available to the owners of high polluters that are registered in an area that is subject to an inspection and maintenance program, have been registered for at least 24 months in the district where the credits
are to be applied and, are presently operational, and meet other criteria, as determined by the department.

(b) The program shall provide for both of the following:

(1) As to the repair of a high polluter, payment to the owner of up to 80 percent of the total cost of repair, as determined by the department, but the payment shall not exceed four hundred fifty dollars ($450).

(2) As to the removal of a high polluter, the program shall be subject to Article 10 (commencing with Section 44100).

(c) The department may authorize participation in the program based on a reasonable estimate of the future revenues that will be available to the program.

(Added by Stats. 1994, Ch. 28, Sec. 2. Amended by Stats. 1995, Ch. 929, Sec. 6.)

Article 10. Accelerated Light-Duty Vehicle Retirement Program
(Article 10 added by Stats. 1995, Ch. 929, Sec. 7.)

44100. The Legislature hereby finds and declares as follows:

(a) Emission reduction programs based on market principles have the potential to provide equivalent or superior environmental benefits when compared to existing controls at a lower cost to the citizens of California than traditional emission control requirements.

(b) Several studies have demonstrated that a small percentage of light-duty vehicles contribute disproportionately to the on-road emissions inventory. Programs to reduce or eliminate these excess emissions can significantly contribute to the attainment of the state' s air quality goals.

(c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new motor vehicle standards by bringing more low-emission vehicles into the on-road fleet earlier.

(d) The California State Implementation Plan for Ozone (SIP), adopted November 15, 1994, and submitted to the Environmental Protection Agency, calls for added reductions in reactive organic gases (ROG) and oxides of nitrogen (NOx) from light-duty vehicles by the year 2010. One of the more market-oriented approaches reflected in the SIP, known as the M-1 strategy, calls for accelerating the retirement of older light-duty vehicles in the South Coast Air Quality Management District to achieve the following emission reductions:

Emissions, TPD (tons per day)

| Year | (ROG+NOx) |
|---|---|
| 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 article. Nothing in this paragraph restricts the Department of Consumer Affairs from selecting qualified contractors to operate or administer any program specified pursuant to this chapter.

(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 44105.

44101. Not later than June 30, 1997, the state board shall adopt, by regulation, a statewide program to commence in 1997 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 article 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 44104.5.

(h) Satisfies the attributes described in subdivision (e) of Section 44100.

44102. (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 chapter, particularly the provisions relating to gross polluters in Article 8 (commencing with Section 44080) and the repair or removal of high polluters in Article 9 (commencing with Section 44090).

(b) Insofar as practicable, these programs shall be seamless to the participants and the public.

44103. Notwithstanding any other provision of law, the program shall also do all of the following:

(a) Enable the resale of impounded vehicles into the retirement program, consistent with the acceptance criteria of this program.

(b) Authorize the Department of Motor Vehicles, at the request of persons engaged in the purchase and retirement of vehicles under the program, to send notices to vehicle owners who are candidates for the sale of vehicles under the program describing the opportunity to participate in the program. The Department of Motor Vehicles may recover all costs of those notifications from the requesting party or parties.

(c) Allow the issuance of nonrevivable junk certificates for vehicles retired under the program, which shall allow program vehicles to be scrapped only for parts, except those parts identified pursuant to subdivision (a) of Section 44120.

44104. (a) Funds shall be available to the state board from the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091. Those funds shall be used to perform the rulemaking, vehicle testing, and other technical work necessary to achieve the objectives set forth in Sections 44101 and 44104.5. Those administrative expenditures shall not exceed a total of three million dollars ($3,000,000) over the first three years of the program.

(b) Funds available to the state board pursuant to paragraph (1) of subdivision (d) of Section 44091 shall be used to purchase and retire mobile source emission reduction credits resulting from the retirement of light-duty vehicles pursuant to this article for the purpose of achieving the emission reductions required by the M-1 strategy of the 1994 SIP. If offers from authorized private scrapping entities are deemed, by the department, consistent with the criteria set forth in Section 44101, to be noncompetitive in cost-effectiveness, in terms of dollars per ton of emissions reduced, the department shall directly purchase vehicles from owners in order to achieve the greatest reduction in emissions at the least cost. If these

purchases, in turn, are deemed by the department to be not cost-competitive, in terms of dollars per ton of emissions reduced, with other strategies identified by the state board, the department shall use the funds to pursue other more cost-effective strategies identified by the state board. All emission reduction credits purchased with the funds described in this paragraph shall be retired and credited to the M-1 strategy of the 1994 SIP.

(c) This article shall not create an obligation on the part of any state or local agency to expend money, incur substantial administrative costs, or purchase credits to meet the M-1 requirements of the 1994 State Implementation Plan until the Director of Finance certifies that there are sufficient funds in the High Polluter Repair or Removal Account for purposes of the article.

(d) This article shall not create an obligation to use existing funds that are currently used to meet other air quality mandates, including funds collected pursuant to Sections 44223, 44225, 44227, and 44243, for purchasing credits to satisfy the M-1 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.

44104.5. (a) The regulations adopted pursuant to subdivision (a) of Section 44101 shall include a plan to guide the execution of the first two years of the program, to assess the results, and to formulate recommendations. The plan shall also verify whether the light-duty vehicle scrapping program included in the state implementation plan adopted on November 15, 1994, can reasonably be expected to yield the required emissions reductions at reasonable cost-effectiveness. Scrapping of any vehicles under this program for program development or testing or for generating emission reductions to be credited against the M-1 strategy of the 1994 SIP may proceed before the state board adopts the regulations pursuant to subdivision (a) of Section 44101 or the plan required by this subdivision. The emission 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 44101. 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.

(b) 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:

(1) The number of vehicles scrapped or repaired by model year.

(2) The measured emissions of the scrapped or repaired vehicles tested during the report period, using suitable inspection and maintenance test procedures.

(3) 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.

(4) Administrative and testing costs for the program.

(5) 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.

(6) 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.

(7) Assessments of whether the M-1 strategy of the 1994 SIP can reasonably be expected to yield the required emission reductions.

(c) 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 Article 9 (commencing with Section 44090) and this article 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) Identification of procedures for distinguishing the emission reductions attributed to scrapping for the purpose of generating emission reductions credits and scrapping that occurs or would have occurred as a result of the inspection and maintenance program managed by the Department of Consumer Affairs and other programs.

(2) A projection of the emissions reductions and cost-effectiveness that might be realized by scrapping or repairing light-duty vehicles through the year 2010, considering changes expected in the vehicle fleet and likely impacts of scrapping or repair on the mix and emissions of vehicles.

(3) A comparison of the effectiveness of scrappage, repair, or upgrade to other programs for light-duty vehicles.

(4) A recommended scrapping program, or other more cost-effective means, for continuing to achieve the emissions reductions required by the M-1 strategy of the 1994 State Implementation Plan, considering likely emission reductions in the attainment year costs, cost-effectiveness,, issues of monitoring and verification, and status of the Environmental Protection Agency's approval of the state' s 1994 SIP.

44105. 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."

44106. 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.

44107. 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.

44109. 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.

44115. The program shall ensure that vehicle purchase transactions are convenient to vehicle owners, including advance screening to reasonably assure that vehicles qualify for the program.

44120. Vehicle disposal under the program shall be consistent with appropriate state board guidance and provisions of the Vehicle Code dealing with vehicle disposal and parts reuse, and shall do both of the following:

(a) Allow for trading, sale, and resale of the vehicles between licensed auto dismantlers or other appropriate parties to maximize the salvage value of the vehicles through the recycling, sales, and use of parts of the vehicles, consistent with the Vehicle Code and appropriate state board guidelines.

(b) Set aside and resell to the public any vehicles with special collector interest. No emission reduction credit shall be generated for vehicles that are resold to the public. Vehicles acquired for their collector interest shall be properly repaired to meet minimum established vehicle emission standards before reregistration, unless the vehicle is sold with a nonrepairable vehicle certificate or a nonrevivable junk certificate.

44121. 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.

44122. 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.

## CHAPTER 6. USED DIRECT IMPORT VEHICLES

(Heading of Chapter 6 amended by Stats. 1989, Ch. 859, Sec. 5.)

44200. For purposes of this chapter, "used direct import vehicle" means any 1975 or later model-year direct import vehicle not required to be certified as a new direct import vehicle pursuant to this part.

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

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

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

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

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

(Amended by Stats. 1989, Ch. 859, Sec. 6.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2047, 2048

44201. The state board shall adopt, by regulation, a certification program for used direct import vehicles. The state board shall issue a certificate of conformance to each used direct import vehicle which meets the requirements of this program.

(Amended by Stats. 1989, Ch. 859, Sec. 7.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2047, 2048

44202. A used direct import vehicle which was not registered in this state prior to the adoption of regulations adopted pursuant to Section 44201, may not be registered in this state unless it has received a certificate of conformance from the state board, except as provided in Section 44210.

(Amended by Stats. 1989, Ch. 859, Sec. 8.)

44203. The certification program established pursuant to Section 44201 shall require all of the following components:

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

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

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

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

(Amended by Stats. 1989, Ch. 859, Sec. 9.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 2047, 2048

44204. The state board may perform a confirmatory test of the vehicle's emissions prior to issuance of a certificate of conformity.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, sections 1960.1, 2047, 2048

44205. 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) Record keeping 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.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2047

44207. 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 44205 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.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2048
17, CCR, sections 60040-60053

44208. 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.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

44209. Any person who falsifies any test record or report which has been submitted to any other person, the department, or the state board pursuant to this chapter is subject to punishment by a fine of not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000), by imprisonment for not more than five years, or by both the fine and imprisonment.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2048

44210. The requirements of Section 44202 do not apply to any motor vehicle having a certificate of conformity issued by the federal Environmental Protection Agency pursuant to the federal Clean Air Act (42 U.S.C. Section 7401, et seq. )and originally registered in another state by a person who was a resident of that state for at least one year prior to the original registration, who subsequently establishes residence in this state and who, upon

registration of the vehicle in California, provides evidence satisfactory to the department of Motor Vehicles of that previous residence and registration.

(Added by Stats. 1985, Ch. 1138, Sec. 2.)

## CHAPTER 7. DISTRICT FEES TO IMPLEMENT THE CALIFORNIA CLEAN AIR ACT

(Chapter 7 added by Stats. 1990, Ch. 1705, Sec. 1.)

44220. 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 41081, in order to ensure that districts, and, in the South Coast Air Quality Management 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.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44223. (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).

(Amended by Stats. 1992, Ch. 427, Sec. 107.)

44225. On and after April 1, 1992, a district may increase the fee established under Section 44223 to up to four dollars ($4). A district may increase the fee only if the following conditions are met:

(a) A resolution providing for both the fee increase and a corresponding program for expenditure of the increased fees 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 is adopted and approved by the governing board of the district.

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

(c) An increase in fees established 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).

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44225.1. (a) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District may, upon a majority vote of the governing board of the district, increase the fee established under Section 44225 by one dollar ($1) for the purpose of implementing the pilot program established pursuant to subdivision (b) of Section 43705 of the Legislature.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Added by Stats. 1994, Ch. 1192, Sec. 29.)

44227. Upon request of a district, the Department of Motor Vehicles shall collect the fees established pursuant to Sections 44223 and 44225 upon renewal of the registration of any motor vehicle subject to this part and registered in the district, except those vehicles which are expressly exempted under the Vehicle Code from the payment of registration fees.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44229. (a) After deducting all administrative costs it incurs through collection of fees pursuant to Section 44227, the Department of Motor Vehicles shall distribute the revenues to districts which shall use the fees to reduce air pollution from motor vehicles and to carry out related planning, monitoring, enforcement, and technical studies necessary for implementation of the California Clean Air Act of 1988. Fees collected by the department of Motor Vehicles pursuant to this chapter shall be distributed to districts based upon the amount of fees collected from motor vehicles registered within each district.

(b) The Department of Motor Vehicles may annually expend not more than the following percentages of the fees collected pursuant to Section 44227 on administrative costs:

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

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

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

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44231. After consulting with the Department of Motor Vehicles on the feasibility thereof, a district board may exempt from all or part of the fee any category of low-emission motor vehicle.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44233. Not more than 5 percent of the fees distributed to any district pursuant to Section 44229, or distributed by a district to any other public agency pursuant to this chapter, shall be used by the district or other public agency for administrative costs.

(Amended by Stats. 1991, Ch. 807, Sec. 2.)

44235. A district shall not use fees established under Sections 44223 and 44225 for the purpose of establishing or maintaining the district as a direct provider of carpool, vanpool, or other ridesharing or transit services. However, a district may use these funds to enter into, and implement, agreements with agencies which directly provide carpool, vanpool, or other ridesharing or transit services to provide these services.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44236. A district may allocate funds raised by fees established under Sections 44223 and 44225 to meet the requirements of Section 65089 of the Government Code, if those requirements are in compliance with, and necessary for the implementation of, the California Clean Air Act of 1988.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44236.1. (a) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District may use fees established under Section 44225.1 to enter into an agreement with any appropriate state agency for the purposes of implementing the pilot program established pursuant to subdivision (b) of Section 43705.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

(Added by Stats. 1994, Ch. 1192, Sec. 30.)

44237. A district may use fees established under Sections 44223 and 44225 to enter into an agreement with a council of governments, regional agency, or local agency to carry out Section 40717.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvened to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919:

(1) The implementation, support, and enforcement of the regionwide employer-based trip reduction regulation adopted by the bay district, and other local agency trip-reduction ordinances and programs which do not duplicate the regionwide trip-reduction regulation adopted by the bay district. As used in this paragraph, "implementation" includes review of employer-based trip reduction plans submitted by a school district.

(2) The purchase or lease of clean fuel buses for school districts and transit operators.

(3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.

(4) The implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."

(5) Implementation of rail-bus integration and regional transit information systems.

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

(7) Implementation of a smoking vehicles program.

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

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

(B) This paragraph shall become inoperative on January 1, 1998, unless a later enacted statute deletes or extends that date.

(c) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

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

(e) 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 (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section 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 this section by any designated entity.

(Amended by Stats. 1995, Ch. 950, Sec. 2.)

44241.5 The bay district board shall hold an annual public hearing to review the expenditure of revenues received by the bay district pursuant to Section 44241 to determine their effectiveness in improving air quality.

(Added by Stats. 1995, Ch. 950, Sec. 3.)

(a) Any agency which receives funds pursuant to Section 44241 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 Section 44241.

(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 40233 and 40717.

(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 40233 and 40717, 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.

(d) Any agency which receives funds pursuant to Section 44241 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 (e) of Section 44241. 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.

(Added by Stats. 1991, Ch. 807, Sec. 4. Amended by Stats. 1995, Ch. 950, Sec. 4.)

44243. 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 44229, for expenditure in the following manner:

(a) (1) Thirty cents ($0.30) of every dollar subvened 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 authorized by, or necessary to implement, the Clean Air Act Amendments of 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(2) Funds allocated pursuant to paragraph (1) shall also be used to provide technical assistance to cities receiving funds pursuant to subdivision (b). That technical assistance shall include, but not be limited to, workshops and direct assistance to individual cities on how to develop and implement programs to reduce air pollution from motor vehicles.

(b) (1) Forty cents ($0.40) of every dollar subvened shall be distributed by the district to cities and counties located in the south coast district, based upon their prorated share of population, to be used to implement programs to reduce air pollution from motor vehicles which are authorized by, or necessary to implement, the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3. No city or county may receive funds pursuant to this subdivision unless, on or before April 1, 1992, or, for a newly incorporated city, within 90 days of the date of incorporation, the city or county has adopted and transmitted to the south coast district an ordinance which does all of the following:

(A) Expresses support for the adoption of motor vehicle registration fees to be used to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(B) Expressly requires all fee revenues distributed to the city or county pursuant to this subdivision or subdivision (c) to be spent to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(C) Establishes an air quality improvement trust fund into which all fee revenues distributed to the city or county shall be deposited, and out of which expenditures shall be made to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

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

(c) Thirty cents ($0.30) of every dollar subvened shall be deposited by the district in an account to be used, pursuant to Section 44244, to provide grants to fund projects for the exclusive purpose of reducing air pollution from motor vehicles that are authorized by, or necessary to implement, the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(Amended by Stats. 1995, Ch. 812, Sec. 1.)

44244. (a) There is hereby created a regional Mobile Source Air Pollution Reduction Review Committee. The committee shall be comprised of one representative from each of the following agencies:

(1) The south coast district.

(2) The Southern California Association of Governments.

(3) The San Bernardino Associated Governments.

(4) The Los Angeles County Transportation Commission.

(5) The Orange County Transportation Commission.

(6) The Riverside County Transportation Commission.

(7) The state board.

(8) A regional ride sharing agency selected by the other members of the committee.

(b) Fees allocated pursuant to subdivision (c) of Section 44243 shall be used to provide grants for projects to be funded pursuant to a work program developed and adopted by The committee and approved by the south coast district board in the following manner:

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

(2) Upon adoption of the work program, the work program shall be submitted to the south coast district board which, within 60 days, may approve the work program by majority vote of the full south coast district board. If the south coast district board fails to approve the work program within 60 days of receiving it, the work program shall be deemed disapproved. If the south coast district board disapproves the work program, it shall be returned to the committee which shall amend, readopt, and resubmit the work program to the south coast district board for approval or disapproval.

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

(d) On or before July 1, 1993, the committee shall prepare, adopt, and make available to the public clear and concise written guidelines and procedures under which projects proposed for funding under the work program will be reviewed and recommended for funding. The guidelines shall specify that only those projects that include, but are not limited to, the adoption and implementation of transportation control measures, transportation demand management programs, clean fuel and clean vehicle programs, and research and monitoring programs, incompliance with the Clean Air Act Amendments of 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3, and that result in direct and tangible reductions in vehicular air pollution, shall be funded pursuant to the work program.

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

(Amended by Stats. 1994, Ch. 721, Sec. 1.)

44244.1. (a) Any agency which receives fee revenues pursuant to Section 44243 or 44244 shall, at least once every two years, be subject to an audit of each program or project funded. The audit shall be conducted by an independent auditor selected by the south coast 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 44243 and 44244.

(b) Upon completion of an audit conducted pursuant to subdivision (a), the south coast 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 revenues from the fees received by the agency were spent for the reduction of air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988) or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(c) If, after reviewing the audit, the south coast district determines that the revenues from the fees may have been expended in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3, the district shall do all of the following:

(1) Notify the agency of its determination.

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

(3) After the public hearing, if the district determines that the agency has expended the revenues from the fees in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3, the district shall withhold these revenues from the agency in an amount equal to the amount which was inappropriately expended. Any revenues withheld pursuant to this paragraph shall be redistributed to the other agencies or, upon approval of the district board, to entities specified in the work programs developed by the mobile source advisory committee, to the extent the district determines that they have complied with this chapter.

(d) Any agency which receives fee revenues pursuant to Section 44243 or 44244 shall expend the funds within one year of the program or project completion date.

(Amended by Stats. 1992, Ch. 427, Sec. 108.)

44245. The state board shall report to the Legislature on or before December 31, 1992, on the air pollution reduction programs funded pursuant to this chapter. The report shall include, but not be limited to, an analysis of the use of vehicle registration fees for air pollution programs, the efficacy and results of the programs funded by the fees and any conclusions and recommendations by the state board.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

44246. (a) For each school district that is required to submit a trip reduction plan to a district classified as having severe air pollution pursuant to Section 40920, The district to which the school district's trip reduction plan is submitted shall not enforce collection of any fee imposed upon the school district upon submission of the plan or for review of the plan, but shall, instead, recover that amount from funds collected by the district pursuant to Sections 44223 and 44225.

(b) For each school district that is required to submit a trip reduction plan to the bay district, the bay district shall not enforce collection of any fee imposed upon the school district upon submission of the plan or for review of the plan, but shall, instead, recover that amount from funds collected by the bay district pursuant to Section 44241.

(c) (1) For each school district that is required to submit a trip reduction plan to the south coast district, the south coast district shall not enforce collection of any fee imposed upon the school district upon submission of the plan or for review of the plan, but shall, instead, recover that amount from funds collected by the south coast district pursuant to subdivision (c) of Section 44243.

(2) Notwithstanding subdivision (d) of Section 44244, the south coast district shall annually calculate the amount necessary to recover the cost of school district plan reviews, and

the Mobile Source Air Pollution Reduction Review Committee shall allocate that amount to the south coast district from the funds collected pursuant to subdivision (c) of Section 44243.

(d) This section shall become operative July 1,1994.

(e) This section shall remain in effect only until January 1, 1999, and on that date shall be repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

(Added by Stats. 1993, Ch. 1293, Sec. 3. Section operative July 1, 1994, by its own provisions. Repealed as of January 1, 1999, by its own provisions.)

44247. Local agencies imposing vehicle registration fees for air pollution programs pursuant to this chapter shall report to the state board on their use of the fees and the results of the programs funded by the fees and shall cooperate with the state board in the preparation of its report. These reports shall be submitted according to a schedule adopted by the state board to ensure compliance with the reporting requirements of Section 44245.

(Added by Stats. 1990, Ch. 1705, Sec. 1.)

## PART 6. AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT

(Part 6 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384. Note: Sections 44380 and 44384 became operative Jan. 1, 1988.)

### CHAPTER 1. LEGISLATIVE FINDINGS AND DEFINITIONS

(Chapter 1 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44300. This part shall be known and may be cited as the Air Toxics "Hot Spots" Information and Assessment Act of 1987.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44301. 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 UnitedStates 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 along-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.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44302. The definitions set forth in this chapter govern the construction of this part.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44303. "Air release" or "release" means any activity that may cause the issuance of air contaminants, including the actual or potential spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the ambient air and that results from the routine operation of a facility or that is predictable, including, but not limited to, continuous and intermittent releases and predictable process upsets or leaks.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44304. "Facility" means every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential air releases of a hazardous material.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1,1988, by Section 44384.)

44306. "Health risk assessment" means a detailed comprehensive analysis prepared pursuant to Section 44361 to evaluate and predict the dispersion of hazardous substances in the environment and the potential for exposure of human populations and to assess and

quantify both the individual and populationwide health risks associated with those levels of exposure.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44307. "Operator" means the person who owns or operates a facility or part of a facility.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44308. "Plan" means the emissions inventory plan which meets the conditions specified in Section 44342.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44309. "Report" means the emissions inventory report specified in Section 44341.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

## CHAPTER 2. FACILITIES SUBJECT TO THIS PART

(Chapter 2 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44320. This part applies to the following:

(a) Any facility which manufactures, formulates, uses, or releases any of the substances listed pursuant to Section 44321 or any other substance which reacts to form a substance listed in Section 44321 and which releases or has the potential to release total organic gases, particulates, or oxides of nitrogen or sulfur in the amounts specified in Section 44322.

(b) Except as provided in Section 44323, any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district. A district may, with the concurrence of the state board, waive the application of this part pursuant to this subdivision for any facility which the district determines will not release any substance listed pursuant to Section 44321 due to a shutdown or a process change.

(Amended by Stats. 1989, Ch. 1254, Sec. 7.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90700-90703, 90704, 93303, 93306

44321. For the purposes of Section 44320, the state board shall compile and maintain a list of substances that contains, but is not limited to, all of the following:

(a) Substances identified by reference in paragraph(1) of subdivision (b) of Section 6382 of the Labor Code and substances placed on the list prepared by the National Toxicology

Program issued by the United States Secretary of Health and Human Services pursuant to paragraph (4) of Section 262 of Public Law 95-622 of 1978. For the purposes of this subdivision, the state board may remove from the list any substance which meets both of the following criteria:

(1) No evidence exists that it has been detected in air.

(2) The substance is not manufactured or used in California, or, if manufactured or used in California, because of the physical or chemical characteristics of the substance or the manner in which it is manufactured or used, there is no possibility that it will become airborne.

(b) Carcinogens and reproductive toxins referenced in or compiled pursuant to Section 25249.8, except those which meet both of the criteria identified in subdivision (a).

(c) The candidate list of potential toxic air contaminants and the list of designated toxic air contaminants prepared by the state board pursuant to Article 2 (commencing with Section 39660) of Chapter 3.5 of Part 2, including, but not limited to, all substances currently under review and scheduled or nominated for review and substances identified and listed for 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).

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90700-90702, 93307, 93308, 93334, 93335

44322. This part applies to facilities specified in subdivision (a) of Section 44320 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.

(Amended by Stats. 1989, Ch. 1254, Sec. 8.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 90702, 90703, 93303-93305, 93308

44323. A district may prepare an industrywide emissions inventory and health risk assessment for facilities specified in subdivision (b) of Section 44320 and subdivisions(a) and (b) of Section 44322, and shall prepare an industrywide emissions inventory for the facilities specified in subdivision(c) of Section 44322, in compliance with this part for any class of facilities that the district finds and determines meets all of the following conditions:

(a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.

(b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.

(c) The majority of the class is composed of small businesses.

(d) Releases from individual facilities in the class can easily and generically be characterized and calculated.

(Amended by Stats. 1989, Ch. 1254, Sec. 9.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93304, 93306

44324. This part does not apply to any facility where economic poisons are employed in their pesticidal use, unless that facility was subject to district permit requirements on or before August 1, 1987. As used in this section,"pesticidal use" does not include the manufacture or formulation of pesticides.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44325. Any solid waste disposal facility incompliance with Section 41805.5 is in compliance with the emissions inventory requirements of this part.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

## CHAPTER 3. AIR TOXICS EMISSION INVENTORIES

(Chapter 3 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44340. (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 44342.

(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 44322 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 44342.

(2) The plan is designed to produce, from the list compiled and maintained pursuant to Section 44321, 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 Section 44361. The source of all emissions shall be displayed or described.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93300, 93301, 93303-93307, 93310-93315, 93320, 93321-93324, 93330-93340, 93345-93347

44341. 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.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93300-93301, 93303-93306, 93310-93315, 93320-93324,93330-93340,93345-93347

44342. 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 44340 and which shall include at least all of the following:

(a) 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 44321.

(b) 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.

(c) 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.

(d) Appropriate testing methods, equipment, and procedures, including quality assurance criteria.

(e) 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.

(f) Specification of the reporting period required for each hazardous material for which emissions will be inventoried.

(g) Specifications for the collection of useful data to identify toxic air contaminants pursuant to Article 2 (commencing with Section 39660) of Chapter 3.5 of Part 2.

(h) Standardized format for preparation of reports and presentation of data.

(i) 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).

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.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93300, 93301, 93303-93307, 93310-93315, 93320-93324,93330-93340,93345-93347

44343. The district shall review the reports submitted pursuant to Section 44341 and shall, within 90 days, review each report, obtain corrections and clarifications of the data, and notify the state Department of Health Services, the Department of Industrial Relations, and the city or county health department of its findings and determinations as a result of its review of the report.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1,1988, by Section 44384.)

44344. Except as provided in Section 44391, emissions inventories developed pursuant to this chapter shall be updated every four years, in accordance with the procedures established by the state board. Those updates shall take into consideration improvements in measurement

techniques and advancing knowledge concerning the types and toxicity of hazardous material released or potentially released.

(Amended by Stats. 1993, Ch. 1041, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93307, 93330

44344.3. (a) A facility shall be granted an exemption by a district from further compliance with this part after meeting all of the following criteria:

(1) The facility was required to comply with this part only as a result of its particulate matter emissions.

(2) The facility has participated in, utilized data derived from, or is eligible to utilize data derived from, approved pooled source testing.

(3) The facility has submitted an emissions inventory plan and report that was subsequently accepted and approved.

(4) The facility has been designated by the district as a low priority facility under the guidelines set forth pursuant to this part for facility prioritization, and facility emissions do not present a significant health risk as specified in subdivision (b) of Section 44362.

(5) The facility handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock.

(b) Subdivision (a) does not apply to a facility that, because of information provided pursuant to Section 44344.7, is reclassified as an intermediate or high priority facility by the district.

(c) The operator of a facility that has been granted an exemption pursuant to this section shall biennially submit a statement to the district for the district's review, with a copy of the most recent emissions inventory for the facility, indicating that, except as to matters for which an emissions inventory update has been or will be submitted pursuant to Section 44344.7, there has been no significant change in facility operations or activities. The district shall not impose any fee upon the operator with regard to the submission of the statement.

(Added by Stats. 1993, Ch. 1037, Sec. 1.)

44344.5. 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.

(Added by Stats. 1993, Ch. 1037, Sec. 2.)

44344.7. The operator of a facility exempted pursuant to subdivision (a) of Section 44344.3 shall submit an emissions inventory update for those sources and substances for which a change in activities or operations has occurred, as follows:

(a) The facility emits a newly listed substance.

(b) A sensitive receptor has been established or constructed on or after January 1, 1994, within 500 meters of the facility.

(c) The facility emits a substance for which the potency factor has increased.

(d) The facility has begun emission of a listed substance not included in the previous emissions inventory.

(Added by Stats. 1993, Ch. 1037, Sec. 3.)

44345. (a) On or before July 1, 1989, the state board shall develop a program to compile and make available to other state and local public agencies and the public all data collected pursuant to this chapter.

(b) In addition, the state board, on or before March 1, 1990, shall compile, by district, emissions inventory data for mobile sources and area sources not subject to district permit requirements, and data on natural source emissions, and shall incorporate these data into data compiled and released pursuant to this chapter.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93330, 93345

44346. (a) If an operator believes that any information required in the facility diagram specified pursuant to subdivision (b) of Section 44342 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) Subject to this section, the district shall protect from disclosure any trade secret designated as such by the operator, if that trade secret is not a public record.

(c) Upon receipt of a request for the release of information to the public which includes information which the operator has notified the district is a trade secret and which is not a public record, the following procedure applies:

(1) The district shall notify the operator of the request in writing by certified mail, return receipt requested.

(2) The district shall release the information to the public, but not earlier than 30 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 30-day period, the operator obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the district of that action.

(d) This section does not permit an operator to refuse to disclose the information required pursuant to this part to the district.

(e) Any information determined by a court to be a trade secret, and not a public record pursuant to this section, shall not be disclosed to anyone except an officer or employee of the district, the state, or the United States, in connection with the official duties of that officer or employee under any law for the protection of health, or to contractors with the district or the state and its employees if, in the opinion of the district or the state, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect the health and safety of the employees of the contractor.

(f) Any officer or employee of the district or former officer or employee who, by virtue of that employment or official position, has possession of, or has access to, any trade secret subject to this section, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it is guilty of a misdemeanor. Any contractor of the district and any employee of the contractor, who has been furnished information as authorized by this section, shall be considered an employee of the district for purposes of this section.

(g) Information certified by appropriate officials of the United States as necessary to be kept secret for national defense purposes shall be accorded the full protections against disclosure as specified by those officials or in accordance with the laws of the United States

(h) As used in this section, "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 section.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 93321, 93322, 93339

## CHAPTER 4. RISK ASSESSMENT

(Chapter 4 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44360. (a) Within 90 days of completion of the review of all emissions inventory data for facilities specified in subdivision (a) of Section 44322, but not later than December 1, 1990, the district shall, based on examination of the emissions inventory data and in consultation with the state board and the State Department of Health Services, prioritize and then categorize those facilities for the purposes of health risk assessment. The district shall designate high, intermediate, and low priority categories and shall include each facility within the appropriate category based on its individual priority. In establishing priorities pursuant to this section, the district shall consider the potency, toxicity, quantity, and volume of hazardous materials released from the facility, the proximity of the facility to potential receptors, including, but not limited to, hospitals, schools, day care centers, worksites, and residences, and any other factors that the district finds and determines may indicate that the facility may pose a significant risk to receptors. The district shall hold a public hearing prior to the final establishment of priorities and categories pursuant to this section.

(b) (1) Within 150 days of the designation of priorities and categories pursuant to subdivision (a), the operator of every facility that has been included within the highest priority category shall prepare and submit to The district a health risk assessment pursuant to Section 44361. The district may, at its discretion, grant a 30-day extension for submittal of the health risk assessment.

(2) Health risk assessments required by this chapter shall be prepared in accordance with guidelines established by the Office of Environmental Health Hazard Assessment. The office shall prepare draft guidelines which shall be circulated to the public and the regulated community and shall adopt risk assessment guidelines after consulting with the state board and the Risk Assessment Committee of the California Air Pollution Control Officers Association and after conducting at least two public workshops, one in the northern and one in the southern part of the state. The adoption of the guidelines is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The scientific review panel established pursuant to Section 39670 shall evaluate the guidelines adopted under this paragraph and shall recommend changes and additional criteria to reflect new scientific data or empirical studies.

(3) The guidelines established pursuant to paragraph(2) shall impose only those requirements on facilities subject to this subdivision that are necessary to ensure that a required risk assessment is accurate and complete and shall specify the type of site-specific factors that districts may take into account in determining when a single health risk assessment maybe allowed under subdivision (d). The guidelines shall, in addition, allow the operator of a facility, at the operator's option, and to the extent that valid and reliable data are available, to include for consideration by the district in the health risk assessment any or all of the following supplemental information:

(A) Information concerning the scientific basis for selecting risk parameter values that are different than those required by the guidelines and the likelihood distributions that result when alternative values are used.

(B) Data from dispersion models, microenvironment characteristics, and population distributions that may be used to estimate maximum actual exposure.

(C) Risk expressions that show the likelihood that any given risk estimate is the correct risk value.

(D) A description of the incremental reductions in risk that occur when exposure is reduced.

(4) To ensure consistency in the use of the supplemental information authorized by subparagraphs (A), (B),(C), and (D) of paragraph (3), the guidelines established pursuant to paragraph (2) shall include guidance for use by the districts in considering the supplemental information when it is included in the health risk assessment.

(c) Upon submission of emissions inventory data for facilities specified in subdivisions (b) and (c) of Section 44322, the district shall designate facilities for inclusion within the highest priority category, as appropriate, and any facility so designated shall be subject to subdivision (b). In addition, the district may require the operator of any facility to prepare and submit health risk assessments, in accordance with the priorities developed pursuant to subdivision (a).

(d) 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.

(e) Nothing contained in this section, Section 44380.5, or Chapter 6 (commencing with Section 44390) shall be interpreted as requiring a facility operator to prepare a new or revised health risk assessment using the guidelines established pursuant to paragraph (2) of subdivision (a) of this section if the facility operator is required by the district to begin the preparation of a health risk assessment before those guidelines are established.

(Amended by Stats. 1992, Ch. 1162, Sec. 1.)

44361. (a) 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 State Department of Health Services for review and, within 180 days of receiving the health risk assessment, the State Department of Health Services 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.

(b) For the purposes of complying with this section, the State Department of Health Services may select a qualified independent contractor to review the data and findings relating to health effects. The State Department of Health Services 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:

(1) Be performed in a manner consistent with guidelines provided by the State Department of Health Services.

(2) Be reviewed by the State Department of Health Services for accuracy and completeness.

(3) Be submitted by the State Department of Health Services to the district in accordance with this section.

(c) The district shall reimburse the State Department of Health Services or the qualified independent contractor designated by the State Department of Health Services pursuant to subdivision (b), within 45 days of its request, for its actual costs incurred in reviewing a health risk assessment pursuant to this section.

(d) If a district requests the State Department of Health Services to consult with the district concerning any requirement of this part, the district shall reimburse the State Department of Health Services, within 45 days of its request, for the costs incurred in the consultation.

(e) Upon designation of the high priority facilities, as specified in subdivision (a) of Section 44360, the state Department of Health Services shall evaluate the staffing requirements of this section and may submit recommendations to the Legislature, as appropriate, concerning the maximum number of health risk assessments to be reviewed each year pursuant to this section.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44362. (a) Taking the comments of the State Department of Health Services into account, the district shall approve or return for revision and resubmission and then approve, the health risk assessment within 180 days 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.

(b) 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 Section 44361 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 subdivision, 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.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44363. (a) Commencing July 1, 1991, 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 44360 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.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44364. 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 3.5 (commencing with Section 39650) of Part 2.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44365. (a) 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.

(b) This part does not prevent any district from establishing more stringent criteria and requirements than are specified in this part for approval of emissions inventories and requiring the preparation and submission of health risk assessments. Nothing in this part limits the authority of a district under any other provision of law to assess and regulate releases of hazardous substances.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44366. (a) 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 41510.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

## CHAPTER 5. FEES AND REGULATIONS

(Chapter 5 added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44380. (a) The state board shall adopt a regulation which does all of the following:

(1) Sets forth the amount of revenue which The district must collect to recover the reasonable anticipated cost which will be incurred by the state board and the Office of Environmental Health Hazard Assessment to implement and administer this part.

(2) Requires each district to adopt a fee schedule which recovers the costs of the district and which assesses a fee upon the operator of every facility subject to this part. A district may request the state board to adopt a fee schedule for the district if the district's

program costs are approved by The district board and transmitted to the state board by April 1 of the year in which the request is made.

(3) Requires any district that has an approved toxics emissions inventory compiled pursuant to this part by August 1 of the preceding year to adopt a fee schedule, as described in paragraph (2), which imposes on facility operators fees which are, to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emissions inventory and the level of priority assigned to that source by the district pursuant to Section 44360.

(b) Commencing August 1, 1992, and annually thereafter, the state board shall review and may amend the fee regulation.

(c) The district shall notify each person who is subject to the fee of the obligation to pay the fee. If a person fails to pay the fee within 60 days after receipt of this notice, the district, unless otherwise provided by district rules, shall require the person to pay an additional administrative civil penalty. The district shall fix the penalty at not more than 100 percent of the assessed fee, but in an amount sufficient in its determination, to pay the district's additional expenses incurred by the person's noncompliance. If a person fails to pay the fee within 120 days after receipt of this notice, the district may initiate permit revocation proceedings. If any permit is revoked, it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee to cover administrative costs of reinstating the permit.

(d) Each district shall collect the fees assessed pursuant to subdivision (a). After deducting the costs to The district to implement and administer this part, the district shall transmit the remainder to the Controller for deposit in the Air Toxics Inventory and Assessment Account, which is hereby created in the General Fund. The money in the account is available, upon appropriation by the Legislature, to the state board and the Office of Environmental Health Hazard Assessment for the purposes of administering this part.

(Amended by Stats. 1992, Ch. 375, Sec. 1.)

44380.1. A facility shall be granted an exemption by a district from paying a fee in accordance with Section 44380 if all of the following criteria are met:

(a) The facility primarily handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock.

(b) The facility was required to comply with this part only as a result of its particulate matter emissions.

(c) The fee schedule adopted by the district or the state board for these types of facilities is not solely based on toxic emissions weighted for potency or toxicity.

(Added by Stats. 1993, Ch. 1037, Sec. 4.)

44380.5. In addition to the fee assessed pursuant to Section 44380, a supplemental fee may be assessed by The district, the state board, or the Office of Environmental Health Hazard Assessment upon the operator of a facility that, at the operator's option, includes supplemental information authorized by paragraph (3) of subdivision (b) of Section 44360 in a health risk assessment, if the review of that supplemental information substantially increases the costs of reviewing the health risk assessment by the district, the state board, or the office. The supplemental fee shall be set by the state board in the regulation required by subdivision (a) of Section 44380 and shall be set in an amount sufficient to cover the direct costs to review the information supplied by an operator pursuant to paragraph (3) of subdivision (b) of Section 44360.

(Added by Stats. 1992, Ch. 1162, Sec. 2.)

44381. (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, regulation, or requirement issued or adopted pursuant to this part, is subject to a civil penalty of not less than five hundred dollars ($500) or more than ten thousand dollars($10,000) for each day that the information, report, or statement is not submitted, or that the violation continues.

(b) Any person who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this part is subject to a civil penalty of not less than one thousand dollars ($1,000) or more than twenty-five thousand dollars ($25,000) per day for each day that the information remains uncorrected.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44382. Every district shall, by regulation, adopt the requirements of this part as a condition of every permit issued pursuant to Chapter 4 (commencing with Section 42300) of Part 4 for all new and modified facilities.

(Added by Stats. 1987, Ch. 1252, Sec. 1. Operative July 1, 1988, by Section 44384.)

44384. Except for Section 44380 and this section, all provisions of this part shall become operative on July 1, 1988.

(Added by Stats. 1987, Ch. 1252, Sec. 1.)

## CHAPTER 6. FACILITY TOXIC AIR CONTAMINANT RISK REDUCTION AUDIT AND PLAN

(Chapter 6 added by Stats. 1992, Ch. 1162, Sec. 3.)

44390. For purposes of this chapter, the following definitions apply:

(a) "Airborne toxic risk reduction measure" or"ATRRM" means those in-plant changes in production processes or feedstocks that reduce or eliminate toxic air emissions subject to this part. ATRRM's may include:

(1) Feedstock modification.

(2) Product reformulations.

(3) Production system modifications.

(4) System enclosure, emissions control, capture, or conversion.

(5) Operational standards and practices modification.

(b) Airborne toxic risk reduction measures do not include measures that will increase risk from exposure to the chemical in another media or that increase the risk to workers or consumers.

(c) "Airborne toxic risk reduction audit and plan"or "audit and plan" means the audit and plan specified in Section 44392.

(Added by Stats. 1992, Ch. 1162, Sec. 3.)

44391. (a) Whenever a health risk assessment approved pursuant to Chapter 4 (commencing with Section 44360)indicates, in the judgment of the district, that there is a significant risk associated with the emissions from a facility, the facility operator shall conduct an airborne toxic risk reduction audit and develop a plan to implement airborne toxic risk reduction measures that will result in the reduction of emissions from the facility to a level below the significant risk level within five years of the date the plan is submitted to The district. The facility operator shall implement measures set forth in the plan in accordance with this chapter.

(b) The period to implement the plan required by subdivision (a) may be shortened by the district if it finds that it is technically feasible and economically practicable to implement the plan to reduce emissions below the significant risk level more quickly or if it finds that the emissions from the facility pose an unreasonable health risk.

(c) A district may lengthen the period to implement the plan required by subdivision (a) by up to an additional five years if it finds that a period longer than five years will not result in an unreasonable risk to public health and that requiring implementation of the plan within five years places an unreasonable economic burden on the facility operator or is not technically feasible.

(d) (1) The state board and districts shall provide assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing risk reduction methods, and developing and applying risk reduction techniques.

(2) Risk reduction audits and plans for any industry subject to this chapter which is comprised mainly of small businesses using substantially similar technology may be completed by a self-conducted audit and checklist developed by the state board. The state board, in coordination with the districts, shall provide a copy of the audit and checklist to small businesses within those industries to assist them to meet the requirements of this chapter.

(e) The audit and plan shall contain all the information required by Section 44392.

(f) The plan shall be submitted to the district, within six months of a district's determination of significant risk, for review of completeness. Operators of facilities that have been notified prior to January 1, 1993, that there is a significant risk associated with emissions from the facility shall submit the plan by July 1, 1993. The district's review of completeness shall include a substantive analysis of the emission reduction measures included in the plan, and the ability of those measures to achieve emission reduction goals as quickly as feasible as provided in subdivisions (a) and (b).

(g) The district shall find the audit and plan to be satisfactory within three months if it meets the requirements of this chapter, including, but not limited to, subdivision (f). If the district determines that the audit and plan does not meet those requirements, the district shall remand the audit and plan to the facility specifying the deficiencies identified by the district. A facility operator shall submit a revised audit and plan addressing the deficiencies identified by the district within 90 days of receipt of a deficiency notice.

(h) Progress on the emission reductions achieved by the plan shall be reported to the district in emissions inventory updates. Emissions inventory updates shall be prepared as required by the audit and plan found to be satisfactory by The district pursuant to subdivision (g).

(i) If new information becomes available after the initial risk reduction audit and plan, on air toxics risks posed by a facility, or emission reduction technologies that may be used by a facility that would significantly impact risks to exposed persons, the district may require the plan to be updated and resubmitted to the district.

(j) This section does not authorize the emission of a toxic air contaminant in violation of an airborne toxic control measure adopted pursuant to Chapter 3.5 (commencing with Section 39650) or in violation of Section 41700.

(Amended by Stats. 1993, Ch. 1041, Sec. 2.)

44392. A facility operator subject to this chapter shall conduct an airborne toxic risk reduction audit and develop a plan which shall include at a minimum all of the following:

(a) The name and location of the facility.

(b) The SIC code for the facility.

(c) The chemical name and the generic classification of the chemical.

(d) An evaluation of the ATRRM's available to the operator.

(e) The specification of, and rationale for, the ATRRMs that will be implemented by the operator. The audit and plan shall document the rationale for rejecting ATRRMs that are identified as infeasible or too costly.

(f) A schedule for implementing the ATRRMs. The schedule shall meet the time requirements of subdivision (a) of Section 44391 or the time period for implementing the plan set by the district pursuant to subdivision (b) or (c) of Section 44391, whichever is applicable.

(g) The audit and plan shall be reviewed and certified as meeting this chapter by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor registered pursuant to Section 25570.3.

(Added by Stats. 1992, Ch. 1162, Sec. 3.)

44393. The plan prepared pursuant to Section 44391 shall not be considered to be the equivalent of a pollution prevention program or a source reduction program, except insofar as the audit and plan elements are consistent with source reduction, as defined in Section 25244.14, or subsequent statutory definitions of pollution prevention.

(Added by Stats. 1992, Ch. 1162, Sec. 3.)

44394. Any facility operator who does not submit a complete airborne toxic risk reduction audit and plan or fails to implement the measures set forth in the plan as set forth in this chapter is subject to the civil penalty specified in subdivision (a) of Section 44381, and any facility operator who, in connection with the audit or plan, knowingly submits any false statement or representation is subject to the civil penalty specified in subdivision (b) of Section 44381.

(Added by Stats. 1992, Ch. 1162, Sec. 3.)

## PART 9. HALOGENATED REFRIGERANTS

(Part 9 added by Stats. 1991, Ch. 874, Sec. 1.)

44470. (a) The Legislature finds and declares the following:

(1) For the first time in human history, the use and disposal of certain manmade products are actively destroying a layer of the earth's atmosphere without which human life cannot continue to exist.

(2) These products, known as chlorofluorocarbons and halons, have already begun to deplete the ozone layer which protects human and other life forms from cancer-causing ultraviolet radiation. Above California, the ozone shield has been depleted about 3 percent over the last 20 years.

(3) On January 1, 1989, a 24-nation agreement (the Montreal Protocol) became effective, calling for the reduction in use of most CFCs and halons, and the Environmental Protection Agency has issued regulations designed to freeze production of these products at current levels.

(4) The Montreal Protocol was amended in 1990 calling for a reduction of CFC manufacturing to 50 percent of 1986 levels by 1995, further reduction to 15 percent of 1986 levels by 1997, and complete elimination by the year 2000. Due to the severity of the ozone depletion problem, however, this phaseout schedule is to be reviewed in 1992 with the objective of accelerating it still further.

(5) It is essential to the health and safety of all Californians to take such steps as are necessary to further decrease and halt the destruction of the ozone layer by CFCs and halons.

(b) The Legislature further finds and declares the following:

(1) CFCs and halons contribute actively to global warming trends which could dramatically affect the economy and stability of California, including the flooding of coastal 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 phase out 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, except as otherwise specified in subdivision (b) of Section 44473.

(Added by Stats. 1991, Ch. 874, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2500

44471. (a) 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.

(b) 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.

(Added by Stats. 1991, Ch. 874, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2500

44472. (a) On and after January 1, 1993, and prior to January 1, 1994, not more than 90 percent of the new 1993 model year or later motor vehicles equipped with vehicle air-conditioners which are certified for sale, sold, or offered for sale in this state shall utilize CFC-based products described in subdivision (a) of Section 44471.

(b) On and after January 1, 1994, and prior to January 1, 1995, not more than 75 percent of the new 1994 model year or later motor vehicles equipped with vehicle air-conditioners which are certified for sale, sold, or offered for sale in this state shall utilize those CFC-based products.

(c) On or after September 1, 1994, not more than 10 percent of all model year 1995 vehicles shall utilize those CFC-based products.

(d) On and after January 1, 1995, no person or business shall certify for sale, sell, or offer to sell a new 1995 or later model year motor vehicle equipped with a vehicle air-conditioner utilizing those CFC-based products.

(Added by Stats. 1991, Ch. 874, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2500

44473. (a) Manufacturers of all motor vehicle models described in Section 44472 shall submit quarterly records and an annual report to the state board detailing the percentage of new models certified for sale, sold, or offered for sale in California with CFC-alternative mobile air-conditioning systems not using the CFC-based products enumerated in subdivision (a) of Section 44471. Compliance with Section 44472 shall be based on the total number of new motor vehicle models with non-CFC-based vehicle air-conditioners certified for sale, sold, or offered for sale versus the total number of new motor vehicle models with vehicle air-conditioners certified for sale, sold, or offered for sale in California each year.

(b) Each of the deadlines set forth in Section 44472 may be extended for a period of not more than two years upon a determination by the state board that chemical or technological alternatives to CFC-based products are not yet available and insufficient supply, or that manufacturers of new motor vehicles require additional time to redesign vehicle air-conditioning systems.

(c) The state board shall adopt regulations by March 1, 1992, providing for the enforcement of this part.

(Added by Stats. 1991, Ch. 874, Sec. 1.)

References at the time of publication (see page iii):

Regulations: 13, CCR, section 2500

44474. Any person or business that violates this part is liable for a civil penalty of five hundred dollars ($500)per incident, not to exceed five thousand dollars ($5,000) per day.

(Added by Stats. 1991, Ch. 874, Sec. 1.)

## UNCODIFIED PROVISIONS

Note: Significant amendments to Division 26 of the Health and Safety Code were enacted by the California Clean Air Act of 1988, Stats. 1988, Ch. 1568. The statute contains the following uncodified section:

SECTION 1. (a) This act shall be known as the California Clean Air Act of 1988.

(b) The Legislature finds and declares as follows:

(1) That the State Air Resources Board has adopted ambient air quality standards, based upon the recommendation of the State Department of Health Services, and that attainment of these health-based standards is necessary to protect public health, particularly of children, older people, and those with respiratory diseases.

(2) That it is therefore in the public interest that these standards be attained at the earliest practicable date.

(3) That the basin wide air pollution control plans to attain and maintain the state standards which were prepared by air pollution control districts and air quality management districts and the basin wide coordinating councils and implemented under the supervision of the state board have achieved progress, but are in need of revision to more accurately reflect changes in emission sources, technology, energy availability, and forecasts of population and economic growth, and that the requirements for preparation of the plans and deadlines for attainment should reflect the nature and extent of the air pollution problems of each region.

(4) That most urban areas of the state have not attained federal ambient air quality standards by August 31,1988, as required by federal law, and that Congress has not extended the deadlines or removed the requirements for sanctions, and does not appear likely to resolve these issues in a timely manner.

(5) That in order to ensure the future health and welfare of the people of the State of California, and the state's environment and economy, are protected despite lack of action or direction from the federal government, it is necessary for the state of California to develop and implement its own program to attain air quality standards through the application of best available control technology and operating methods, improved motor vehicle maintenance and inspection, control of indirect and areawide sources of emissions, the required use of cleaner burning fuels, the implementation of stricter new vehicle emission standards and warranty requirements, the design and implementation of transportation control and vehicle fleet management measures, and the incorporation of air quality considerations into local land use planning decisions.

(c) It is, therefore, the intent of the Legislature, in enacting this act, that the state board and the districts, to the maximum extent practicable, shall coordinate activities required under this act with similar activities undertaken pursuant to federal law.

**SECOND UNCODIFIED PROVISION**

SECTION 1. (a) On or before December 31, 1995, the State Air Resources Board shall prepare and submit a report to the Governor and the Legislature which identifies requirements established under Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code for the preparation and submittal of air pollution control district and air quality management district plans to achieve state ambient air quality standards, and similar requirements established under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) for the preparation and submittal of district plans for the achievement of federal ambient air quality standards.

(b) The report shall identify any inconsistencies in state and federal deadlines for the preparation and submittal of plans, any duplication or overlap in the state and federal planning processes, and related data collection and inventory requirements. The report shall make recommendations for changes in state law to harmonize the two planning processes, to reduce duplication and paperwork for districts while ensuring the timely preparation and submittal of plans and the achievement and maintenance of California's air quality standards by the earliest practicable date, consistent with Division 26 (commencing with Section 39000) of the Health and Safety Code.

(c) It is the intent of the Legislature that the report required by this section, and the recommendations contained therein, be performed in a manner that does not in any manner diminish or weaken California's efforts for the achievement of state ambient air quality standards.

(Added by Stats. 1994, Ch. 189, Sec. 1.)

HEALTH AND SAFETY CODE
DIVISION 1. ADMINISTRATION OF PUBLIC HEALTH
Article 9. Air Sanitation

425. The State Department of Health Services shall submit to the State Air Resources Board recommendations for ambient air quality standards reflecting the relationship between the intensity and composition of air pollution and the health, illness, irritation to the senses, and the death of human beings.

(Amended by Stats. 1977, Ch. 1252, Sec. 185, Effective July 1, 1978.)

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS
Chapter 6.5. Hazardous Waste Control
Article 8. Enforcement

25180.1. For purposes of this chapter, "permit" includes matters deemed to be permits pursuant to subdivision (c) of Section 25198.6.

(Amended by Stats. 1992, Ch. 113, Sec. 1. Effective July 1, 1992.)

25180.7.(a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended.

(b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or

threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars ($5000) or more than twenty-five thousand dollars ($25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

(Added November 4, 1986, by initiative Proposition 65, Sec. 4. Effective January 1, 1987, by Sec. 8 of Prop. 65. Note: Sec. 7 of Prop. 65 provides for direct amendment by 2/3 vote of the Legislature.)

25189.5. (a) The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly disposing or causing the disposal of any hazardous waste, or who reasonably should have known that he or she was disposing or causing the disposal of any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(c) Any person who knowingly transports or causes the transportation of hazardous waste, or who reasonably should have known that he or she was causing the transportation of any hazardous waste, to a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(d) Any person who knowingly treats or stores any hazardous waste at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(e) The court shall also impose upon a person convicted of violating subdivision (b), (c), or (d) a fine of not less than five thousand dollars ($5,000) or more than one hundred thousand dollars ($100,000) for each day of violation except as further provided in this subdivision. If the act which violated subdivision (b), (c), or (d) caused great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b), (c), or (d) may be punished by imprisonment in the state prison for up to 36

months, in addition to the term specified in subdivision (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

(f) For purposes of this section, except as otherwise provided in this subdivision, "each day of violation" means each day on which a violation continues. In any case where a person has disposed or caused the disposal of any hazardous waste in violation of this section, each day that the waste remains disposed of in violation of this section and the person has knowledge thereof is a separate additional violation, unless the person has filed a report of the disposal with the department and is complying with any order concerning the disposal issued by the department, a hearing officer, or court of competent jurisdiction.

(Amended by Stats. 1991, Ch. 886, Sec. 8. Note: Text of subd. (e) originated in subd. (d) as added Nov. 4, 1986, by initiative Proposition 65. Sec. 7 of Prop. 65 provides for direct amendment by 2/3 vote of the Legislature.)

25192. (a) All civil and criminal penalties collected pursuant to this chapter or Chapter 6.6 (commencing with Section 25249.5) shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Hazardous Substance Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7 to such person.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the local health officer to enforce the provisions of this chapter pursuant to Section 25180. If investigation by the local police department or sheriffs office or California Highway Patrol led to the bringing of the action, the local health officer shall pay a total of forty percent of his portion under this subdivision to said investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this provision, division of payment among the eligible agencies shall be in the discretion of the local health officer.

(b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

(c) Any amounts deposited in the Hazardous Substance Account pursuant to this section shall be included in the computation of the state account rebate specified in Section 25347.2.

(Amended November 4, 1986, by initiative Proposition 65, Sec. 5. Effective January 1, 1987, by Sec. 8 of Prop. 65. Note: Sec. 7 of Prop. 65 provides for direct amendment by 2/3 vote of the Legislature.)

Article 8.6. Development of Hazardous Waste Management Facilities on Indian Country

25198.1. As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Indian country" has the same meaning as set forth in Section 1151 of Title 18 of the United States Code.

(b) "Tribe" means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe as defined herein, which is recognized as eligible for special programs and services provided by the United States to Indians because of

their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume 53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

(c) "Hazardous waste" has the same meaning as set forth in Sections 25117 and 25117.9.

(d) "Hazardous waste facility" has the same meaning as set forth in Section 25117.1.

(e) "Operator" means a person who operates a hazardous waste facility.

(f) "Owner" means a person who owns a hazardous waste facility.

(g) "Secretary" means the Secretary for Environmental Protection.

(h) "State" means the State of California and any agency or instrumentality thereof.

(i) "Siting" means the physical suitability of a location proposed for a hazardous waste facility.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.2. (a) Upon receipt of a written request from any tribe considering a proposal to construct each hazardous waste facility in that tribe's Indian country within this state, the secretary shall convene negotiations for purposes of reaching a cooperative agreement pursuant to this article, which will define the respective rights, duties, and obligations of the state and the tribe concerning the approval, development, and operation of the facility. In convening the negotiations, the secretary shall consult with the Department of Toxic Substances Control, the State Water Resources Control Board, the appropriate California regional water quality control board, the State Air Resources Board, and the appropriate air pollution control district or air quality management district.

(b) This article does not apply to any facility located on Indian country within the state if it meets all of the following requirements:

(1) The facility is owned and operated solely by a tribe.

(2) All hazardous waste accepted by the facility is generated by that particular tribe.

(3) The United States Environmental Protection Agency has approved the facility.

(Added by Stats. 1991. Ch. 805. Sec. 3.)

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 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 hazardous waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, post closure, liability, enforcement, and other regulatory provisions applicable to a hazardous 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.

(3) This chapter, Chapter 6.6 (commencing with Section 25249.5), Chapter 6.8 (commencing with Section 25300), and Chapter 6.95 (commencing with Section 25500).

(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 hazardous 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 25198.5. shall constitute a "project" as defined in Section 21065 of the Public Resources Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources 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.

(Amended by Stats. 1992, Ch. 427, Sec. 101. Effective January 1, 1993.)

25198.4. (a) A tribe shall be eligible for technical assistance to the extent feasible, from the agencies specified in subdivision (b) of Section 25198.3, for the design, establishment, and implementation of a permit system, cooperative monitoring programs, a tribal enforcement system, and implementation of any other regulatory requirement.

(b) Each cooperative agreement shall provide for reasonable compensation to relevant state agencies for costs and expenses incurred by the state in connection with technical assistance provided to the tribe for the regulatory activities provided in this article, including, but not limited to, monitoring, enforcement, permitting, review, and other activities described in this article, and the reviews required by Section 25198.3, on a nondiscriminatory basis when compared with similar services to similar projects outside of Indian country.

(c) Each cooperative agreement shall provide for the sharing of appropriate data and other information between any tribal regulatory body, any federal agency, the owner or operator, and applicable state agencies, including, but not limited to, all monitoring data collected respecting the hazardous waste facility. The agreement shall provide for confidentiality of privileged, proprietary, or trade secret information.

(d) Each cooperative agreement shall include a dispute resolution mechanism for addressing issues of contract interpretation arising out of the cooperative agreement.

(e) The parties to a cooperative agreement executed pursuant to this article may mutually agree to modifications of time periods for actions which are required by this article, except the time periods provided for public notice, review, and comment shall not be eliminated or reduced.

(f) Each cooperative agreement shall require the relevant state agencies to provide detailed comments regarding completeness within 30 days after receiving copies of applications filed for tribal and applicable federal permits with respect to the deficiencies, if any, of the application with respect to the state standards identified in Section 25198.3. The failure of any of these state agencies to provide those comments within that period shall be deemed a finding of completeness of the respective applications.

(g) Each cooperative agreement shall provide for reasonable access by state agency personnel to Indian country governed by a tribe which has executed a cooperative agreement pursuant to this article for purposes of assistance with permit application review, inspection, and monitoring of operation of a hazardous waste facility. The cooperative agreement shall also provide for reasonable access for purposes of permit application review and inspection, to the extent the state can provide that access, by tribal regulatory authorities to transfer stations, or similar facilities, located outside of Indian country and handling waste to be transferred to tribal lands.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.5. (a) Each cooperative agreement shall require the public agencies specified in subdivision (b) of Section 25198.3 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 25198.3.

(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 Public Resources Code, and any regulations adopted pursuant to those sections.

(b) Each cooperative agreement shall provide that the tribal or federal permits issued for the hazardous 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.

(Amended by Stats.1992, Ch.427, Sec.102. Effective January 1,1993.)

25198.6. (a) Nothing in this article shall limit or expand, or be construed to limit or expand, the jurisdiction of any state agency specified in subdivision (b) of Section 25198.3 or any tribal agency with respect to any hazardous waste facility located in Indian country, including, but not limited to, the enforcement powers and procedures available to the state or any tribe with respect to those facilities to the extent not preempted by federal law, including, but not limited to, powers and procedures contained in state or tribal statutes or regulations.

(b) The cooperative agreement shall provide that the state may exercise its enforcement powers over any hazardous waste facility project on Indian country where a cooperative agreement has been executed, subject to all of the following requirements:

(1) A violation or threatened violation of any standard or requirement set forth in Section 25198.3, or its functional equivalent in the cooperative agreement, or any condition set forth in a cooperative agreement or permit for the facility, has occurred or is occurring. For purposes of this paragraph, "threatened violation" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(2) The violation or violations have been brought to the attention of the tribe and to the owner and operator of the hazardous waste facility through written notice from the appropriate agency. The notice shall identify the specific violation or violations which are occurring or have occurred and a specific corrective or enforcement action or range of actions, including sufficient penalties. The notice shall include a specific and reasonable timeframe in which to take appropriate corrective or enforcement action.

(3) The tribe, after receiving the notice, has failed to take the action or actions, or to take other reasonable action to abate or correct the violation or violations, in a reasonable time.

(c) The functionally equivalent provisions of tribal or federal permits, as determined sufficient pursuant to Section 25198.3, together with any cooperative agreement approved pursuant to this article, shall collectively be deemed to constitute permits issued under state law for all purposes of enforcing state law.

(d) Notwithstanding subdivision (b), each of the public agencies specified in subdivision (b) of Section 25198.3 may immediately exercise its enforcement powers over any hazardous waste facility project on Indian country where a cooperative agreement has been executed, if, in the judgment of the public agency, immediate state action is required to avoid an imminent and substantial threat to public health and safety or to the environment. The state shall notify the tribe prior to taking any action pursuant to this subdivision.

(Amended by Stats. 1992, Ch. 113, Sec. 2. Effective July 1, 1992.)

25198.7. (a) The cooperative agreement shall provide that the state or tribe may bring an appropriate civil action in a court of competent jurisdiction to enforce the terms of the cooperative agreement as a contract, and shall not limit the availability to either party of any remedy at law or in equity otherwise available under California law.

(b) The cooperative agreement shall require that the tribe waive its sovereign immunity from any action brought by the state in any court otherwise having jurisdiction over the subject matter, and that the state shall waive its sovereign immunity from any action brought by the tribe, in any court otherwise having jurisdiction over the subject matter, to enforce the terms of the cooperative agreement.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.8. A cooperative agreement executed pursuant to this article shall be executed for the express benefit of the citizens of this state.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.9. Any person may commence a civil action on the person's own behalf against any of the public agencies specified in subdivision (b) of Section 25198.3, or against the secretary, who is alleged to have approved or certified the sufficiency of any cooperative agreement or permit in violation of this article. No action may be commenced under this section more than 60 days after the agency or secretary has approved or certified the sufficiency of any cooperative agreement or permit under this article.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

## Chapter 6.6. Safe Drinking Water and Toxic Enforcement Act of 1986

25249.5. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity.

No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity.

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec.8 of Prop. 65.)

25249.7. Enforcement.

(a) Any person violating or threatening to violate Section 25249.5 or Section 25249.6 may be enjoined in any court of competent jurisdiction.

(b) Any person who has violated Section 25249.5 or Section 25249.6 shall be liable for a civil penalty not to exceed $2500 per day for each such violation in addition to any other penalty established by law. Such civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California or by any district attorney or by any city attorney of a city having a population in excess of 750,000 or with the consent of the district attorney by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if (1) the action is commenced more than sixty days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and any city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator, and (2) neither the Attorney General nor any district attorney nor any city attorney or prosecutor has commenced and is diligently prosecuting an action against such violation.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.8 List of Chemicals Known to Cause Cancer or Reproductive Toxicity.

(a) On or before March 1,1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d) .

(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required.

(d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(e) In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.9. Exemptions from Discharge Prohibition.

(a) Section 25249.5 shall not apply to any discharge or release that takes places less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(b) Section 25249.5 shall not apply to any discharge or release that meets both of the following criteria:

(1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.10. Exemptions from Warning Requirement.

Section 25249.6 shall not apply to any of the following:

(a) An exposure for which federal law governs warning in a manner that preempts state authority.

(b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.11. Definitions.

For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than ten employees in his business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 4010.1.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

(Added I November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.12. Implementation.

The Governor shall designate a lead agency and such other agencies as may be required to implement the provisions of this chapter including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement the provisions of this chapter and to further its purposes.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

25249.13. Preservation Of Existing Rights, Obligations, and Penalties.

Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

(Added November 4, 1986, by initiative Proposition 65. Effective January 1, 1987, by Sec. 8 of Prop. 65.)

## Chapter 6.95. Hazardous Materials Release Response Plans and Inventory
### Article 1. Business and Area Plans

25503.3. On or before January 1, 1994, the office shall, in consultation with the administering agencies, in accordance with Section 25503.1, adopt by regulation a single comprehensive hazardous material reporting form for businesses to submit to administering agencies for purposes of Section 25509. The form shall include a section for additional information which may be requested by the administering agency. The regulations shall also specify criteria for sharing data electronically. On or before two years after the effective date of those regulations, and annually thereafter, each administering agency shall require businesses to use this form when complying with Section 25509.

(Added by Stats. 1992, Ch. 684, Sec. 2. Effective January 1, 1993.)

25507.3. The California Environmental Protection Agency may request any business to submit the information required to be submitted in the toxic chemical release form specified in subsection (g) of Section 11023 of Title 42 of the United States Code, or a simplified

version of that form, except that the form shall not be required of any retail business, any business which has fewer than 10 employees, or any business which manufactures, processes, or otherwise uses a toxic chemical in an amount less than the applicable threshold amount specified in subsection (f) of Section 11023 of Title 42 of the United States Code. The California Environmental Protection Agency shall use this information to collect adequate standardized quantitative data for use in multimedia applications, such as pollution prevention.

(Added by Stats. 1992, Ch. 684, Sec. 3. Effective January 1, 1993.)

## DIVISION 37. REGULATION OF ENVIRONMENTAL PROTECTION

57000. Definitions; Environmental protection programs; Report to Governor and Legislature

(a) For purposes of this division, the following terms have the following meaning:

(1) "Agency" means the California Environmental Protection Agency.

(2) "Secretary" means the Secretary for Environmental Protection.

(b) On or before December 31, 1997, the agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs which implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decision-making and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(c) On and after December 31, 1998, the agency, and each board, department, and office within the agency, shall submit a yearly report to the Governor and Legislature, as part of the budget process, reporting on the extent to which they have attained their performance objectives, and on their continuous quality improvement efforts.

(d) Nothing in this section shall be interpreted to abrogate any collective bargaining agreement or interfere with any established employee rights.

(e) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectives using the views of the persons and organizations specified in paragraph (1).

(3) Process for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

(Added by Stats. 1993, Ch. 418, Sec. 5.)

57001. Fee accountability program

(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 the 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 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 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) of Division 26).

(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 recovery 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.

(Added by Stats. 1993, Ch. 418, Sec. 5.)

57002. Survey of agencies

The agency shall conduct a study by surveying state, regional, and local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations to determine how much revenue is derived from fines and penalties and to what purposes that revenue is directed. The study should include a review of the extent to which those finds are used to support state, regional, and local agency operations.

(Added by Stats. 1993, Ch. 418, Sec. 5.)

57003. Adoption of risk assessment guidelines or policies; Public workshops

(a) Before a board, department or office within the agency adopts chemical risk assessment guidelines or policies for evaluating the toxicity of chemicals or prepares a health evaluation of a chemical that will be used in the regulatory process of another board department, or office, the board, department, or office shall first convene a public workshop at which the guidelines, policies, or health evaluation may be discussed. The public workshop shall be designed to encourage a constructive dialogue between the scientists employed by the board, department, or office that prepared the proposed guidelines or policies or health evaluation and scientists not employed by that board, department, or office and to evaluate the degree to which the proposed guidelines or policies of health evaluation are based on sound scientific methods, knowledge, and practice. Following the workshop, the agency shall revise the guidelines, policies, or health evaluation, as appropriate, and circulate it for public comment for a period of at least 30 days.

(b) In any case where the guidelines, policies, or health evaluations described in subdivision (a) are proposed, or are being prepared, pursuant to a statutory requirement that specifies a procedure or a time period for carrying out the requirement, the requirements of subdivision (a) do not authorize a delay or a postponement in carrying out the statutory requirement.

(Added by Stats. 1993, Ch. 418, Sec. 5.)

57004. Advisory committee; Review of policies, methods, and guidelines

(a) On or before June 30, 1994, the Director of Environmental Health Hazard Assessment shall convene an advisory committee consisting of distinguished scientists not employed by the boards, departments, and offices within the agency, to conduct a comprehensive review of the policies, methods, and guidelines followed by the boards, departments, and offices for the identification and assessment of chemical toxicity.

(b) The purpose of this comprehensive review shall be to make recommendations to the Director of Environmental Health Hazard Assessment and the secretary concerning whether or not any changes should be made to ensure that the state's policies, methods, and guidelines for the identification and assessment of chemical toxicity are based upon sound scientific knowledge, methods, and procedures employed by the state and those employed by

the National Academy of Sciences, the Environmental Protection Agency, and other similar bodies.

(Added by Stats. 1993, Ch. 418, Sec. 5.)

57005. (a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

(Added by Stats. 1993, Ch. 418, Sec. 5. Amended by Stats. 1995, Ch. 938, Sec. 72.4.)