

**Memorandum 98-27****Environment Code: Division 4 — Air Resources: Part 3**

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

Attached to this memorandum is a staff draft of Part 3 of Division 4 of the proposed Environment Code, relating to air resources. A staff draft of conforming revisions and a disposition table showing the relationship between existing code sections and their corresponding proposed Environment Code sections are also attached. Noteworthy aspects of the staff draft are discussed below.

**GENERAL ORGANIZATION**

Part 3 governs the administration and responsibilities of local air pollution control and air quality management districts. Under the existing organization of this material in the Health and Safety Code, the chapters are in no particular order — chapters governing specific districts are interspersed with chapters governing districts generally. The attached draft improves the organization of this material by grouping related chapters into titles, as follows:

**PART 3. AIR POLLUTION CONTROL DISTRICTS****Title 1. Districts Generally****Chapter 1. General Provisions****Chapter 2. Rulemaking****Chapter 3. Hearing Boards****Title 2. Specific Powers And Responsibilities****Chapter 1. Emission Reductions****Chapter 2. Transportation Control Measures****Chapter 3. District Plans To Attain State Ambient Air Quality Standards****Chapter 4. Other Responsibilities****Title 3. Types Of Districts And Councils****Chapter 1. County Air Pollution Control Districts****Chapter 2. Unified Air Pollution Control Districts**

Chapter 3. Regional Air Pollution Control Districts  
Chapter 4. Air Quality Management Districts  
Chapter 5. Basinwide Air Pollution Control Councils

**Title 4. Specific Districts**

Chapter 1. Antelope Valley Air Pollution Control District  
Chapter 2. Bay Area Air Quality Management District  
Chapter 3. Mojave Desert Air Quality Management District  
Chapter 4. Sacramento Metropolitan Air Quality Management District  
Chapter 5. South Coast Air Quality Management District

The use of titles should also help keep the part organized in the future. As new material is added, it will probably be added to the appropriate title, rather than just appended to the end of the part.

**OBSOLETE PROVISIONS**

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

**Repealed Sections**

A few sections refer to other sections of the Health and Safety Code that have been repealed. As noted in the Comments to these sections, references to repealed sections are not continued. See proposed Sections 32951, 33150, 33808, 36001, 36408 & Comments.

**Start Dates**

A number of sections impose duties on state agencies, or change their procedures, beginning on a specified date. These dates have historical relevance, but appear to have no continuing legal effect. These apparently obsolete dates are not continued in the attached draft, but are noted in the corresponding Comments. See proposed Sections 32505, 32802, 32851, 32852, 33452, 33453, 33651, 33850, 34053, 34400, 34600, 35500, 35812, 35913, 36108, 36502 & Comments.

**Deadlines**

A number of sections specify deadlines by which state agencies were to complete some task. These provisions appear to be obsolete, but may have some continuing relevance if an agency has not yet complied with the requirement. Staff Notes to these sections raise this issue and request input on the continued relevance of the deadline provisions. See proposed Sections 32801, 33201, 33550, 33552, 35000, 35003, 35700, 35806, 36057, 36100, 36302.

**Transitional Provisions**

A number of provisions govern organizational transitions that have already occurred. The provisions appear to be obsolete, but may have some continuing relevance. These provisions are identified in Staff Notes. See proposed Sections 35103, 35201, 35202, 35204, 35252, 35403, 35805, 35904, 35954, 36005, 36156.

**Miscellaneous Obsolete Provisions**

A few sections appear to be obsolete for reasons other than those discussed above. See proposed Sections 32750, 32851, 35602, 36001, 36154, 36211.

**MISCELLANEOUS ISSUES**

A number of minor issues have been identified and addressed in Staff Notes. See proposed Sections 32850 (contingent definition), 32951 (duplicate sections), 33100-33151 (location of sections), 34600 (location of section), 35855 (interpretation), 36009 (interpretation), 36100 (interpretation), 36115 (location of section).

Respectfully submitted,

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## DIVISION 4. AIR RESOURCES

### PART 3. AIR POLLUTION CONTROL DISTRICTS

#### TITLE 1. DISTRICTS GENERALLY

#### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. General Powers and Responsibilities

##### **§ 32000. Legislative findings and declaration**

---

32000. The Legislature finds and declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board.

**Comment.** Section 32000 continues former Health and Safety Code Section 40000 without change.

##### **§ 32001. Enumeration of powers**

---

32001. A district shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) To adopt a seal and alter it at its pleasure.
- (d) To take by grant, purchase, gift, devise, or lease, to hold, use, and enjoy, and to lease or dispose of any real or personal property within or without the district necessary to the full exercise of its powers.
- (e) To lease, sell, or dispose of any property, or any interest therein, whenever, in the judgment of the district board, 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 33200.

**Comment.** Section 32001 continues former Health and Safety Code Section 40701 without change.

**§ 32002. Necessary acts**

---

32002. 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.

**Comment.** Section 32002 continues the first paragraph of former Health and Safety Code Section 40702 without change.

**§ 32003. Railroad locomotives**

---

32003. No order, rule, or regulation of any district shall specify the design of equipment, type of construction, or particular method to be used in reducing the release of air contaminants from railroad locomotives.

**Comment.** Section 32003 continues the second paragraph of former Health and Safety Code Section 40702 without substantive change.

**§ 32004. Rules and regulations**

---

32004. (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 district 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 the property of, a significant number of persons or class of persons.

(c)(1) The district rules and regulations shall include a process to approve alternative methods of complying with emission control requirements that provide equivalent emission reductions, emissions monitoring, or recordkeeping.

(2) A district shall allow the implementation of alternative methods of emission reduction, emissions monitoring, or recordkeeping if a facility demonstrates to the satisfaction of the district that those alternative methods will provide equivalent performance. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall not violate other provisions of law.

(3) If a district rule specifies an emission limit for a facility or system, the district shall not set operational or effectiveness requirements for any specific emission control equipment operating on a facility or system under that limit. Any alternative method of emission reduction, emissions monitoring, or recordkeeping proposed by the facility shall include the necessary operational and effectiveness measurement elements that can be included as permit conditions by the district to ensure compliance with, and enforcement of, the equivalent performance requirements of paragraphs (1) and (2). Nothing in this subdivision limits the district's authority to inspect a facility's equipment or records to ensure operational compliance. This paragraph shall apply to existing rules and facilities operating under those rules.

**Comment.** Section 32004 continues subdivisions (a), (b), and (d) of former Health and Safety Code Section 40001 without change.

**§ 32005. Regulations**

---

32005. (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 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.

**Comment.** Section 32005 continues former Health and Safety Code Section 40716 without change.

### **§ 32006. Regulation compliance programs**

---

32006. (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.

**Comment.** Section 32006 continues former Health and Safety Code Section 40730 without change.

## Article 2. General Administration

### **§ 32050. Nature of district**

---

32050. A district is a body corporate and politic and a public agency of the state.

**Comment.** Section 32050 continues former Health and Safety Code Section 40700 without change.

### **§ 32051. Funding**

---

32051. (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 35602 or Section 44223 of the Health and Safety Code 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 Sections 33651 to 33653, inclusive, 33850 to 33852, inclusive, 34053 to 34055, inclusive, 34400 to 34402, inclusive, or 35500 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 San Joaquin Valley Air Quality Management District, if that district is created.

**Comment.** Section 32051 continues former Health and Safety Code Section 40701.5 without substantive change. The San Joaquin Valley Air Quality Management District will be created if the San Joaquin Valley Unified Air Pollution Control District ceases to exist. See 1994 Cal. Stat. ch. 915, § 5(d).

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

---

#### § 32052. Personnel

32052. The district board shall provide for the number of personnel to be employed by the district air pollution control officer and for their duties and the times at which they shall be appointed.

**Comment.** Section 32052 continues former Health and Safety Code Section 40705 without change.

---

#### § 32053. Compensation

32053. The district board shall determine the compensation of, and shall pay from district funds, the air pollution control officer, all other officers and employees, and members of the hearing board, of the district.

**Comment.** Section 32053 continues former Health and Safety Code Section 40706 without change.

---

#### § 32054. Claims

32054. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

**Comment.** Section 32054 continues former Health and Safety Code Section 40707 without change.

---

#### § 32055. Local Government Reorganization Act

32055. The Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, shall not be applicable to the districts.

**Comment.** Section 32055 continues former Health and Safety Code Section 40708 without change.

---

#### § 32056. Inclusion of county in districts

32056. A county may be in two or more districts, but not in two or more county districts.

**Comment.** Section 32056 continues former Health and Safety Code Section 40003 without change.

### Article 3. Air Pollution Control Officer

---

#### § 32100. Appointment by district board

32100. Each district board shall appoint an air pollution control officer for the district.

**Comment.** Section 32100 continues former Health and Safety Code Section 40750 without change.

**§ 32101. Appointment of personnel**

---

32101. Subject to the direction of the district board, the air pollution control officer shall appoint district personnel.

**Comment.** Section 32101 continues former Health and Safety Code Section 40751 without change.

**§ 32102. Observation and enforcement**

---

32102. The air pollution control officer shall observe and enforce all of the following:

(a) This part and Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code.

(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 of the Health and Safety Code.

**Comment.** Section 32102 continues former Health and Safety Code Section 40752 without substantive change.

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

**§ 32103. Vehicle Code enforcement**

---

32103. (a) The air pollution control officer may observe and enforce all provisions of Division 12 (commencing with Section 24000) of the Vehicle Code relating to the emission or control of air contaminants, except Sections 27157, 27157.5, 27158, and 27158.5.

(b) In observing and enforcing 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 the person's control upon the order of the air pollution control officer is guilty of a misdemeanor.

**Comment.** Section 32103 continues former Health and Safety Code Section 40753 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

Article 4. Budget Process

**§ 32150. Budget process**

---

32150. The budget process of any district having an annual budget of fifty million dollars (\$50,000,000) or more as of January 1, 1994, shall be governed by this article. Except as otherwise provided in this article, no such district shall expend any funds during a fiscal year except in accordance with an operating budget submitted to the Legislature and the state board pursuant to this article. This article does not apply to appropriations or other authorizations made to carry out a labor contract entered into by the district board.

**Comment.** Section 32150 continues subdivision (a) of former Health and Safety Code Section 40720 without substantive change.

**§ 32151. Budget contents**

---

32151. Each operating budget submitted to the Legislature shall include, but shall not be limited to, a comprehensive plan of financial operations for the fiscal year detailing all of the following:

- (a) All anticipated expenditures.
- (b) All anticipated sources of income.
- (c) An estimate of proposed revenue changes needed to meet anticipated changes in expenditures.
- (d) Provisions for reserves for the fiscal year.

**Comment.** Section 32151 continues subdivision (b) of former Health and Safety Code Section 40720 without change.

**§ 32152. Preliminary budget**

---

32152. (a) 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.

(b) 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.

(c) 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.

(d) The district shall conduct at least one public workshop on the preliminary budget and fee schedules.

**Comment.** Section 32152 continues subdivision (c) of former Health and Safety Code Section 40720 without change, except that the former subdivision has been divided into subdivisions.

**§ 32153. Final proposed budget**

---

32153. 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.

**Comment.** Section 32153 continues subdivision (d) of former Health and Safety Code Section 40720 without change.

**§ 32154. Submission**

---

32154. The district shall submit its final proposed operating budget to the Legislature and the state board annually by May 15.

**Comment.** Section 32154 continues subdivision (e) of former Health and Safety Code Section 40720 without change.

**§ 32155. Legislative review**

---

32155. 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 Section 32154, and on any comments and recommendations made by the state board pursuant to Section 32156, and may make comments and formal recommendations to the district for revision of the budget.

**Comment.** Section 32155 continues subdivision (f) of former Health and Safety Code Section 40720 without substantive change.

**§ 32156. State board review**

---

32156. The state board shall review the final proposed operating budget submitted by the district pursuant to Section 32154 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.

**Comment.** Section 32156 continues subdivision (g) of former Health and Safety Code Section 40720 without substantive change.

**§ 32157. Changes**

---

32157. 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.

**Comment.** Section 32157 continues subdivision (h) of former Health and Safety Code Section 40720 without change.

**§ 32158. Operative**

---

32158. The final proposed operating budget submitted by the district pursuant to Section 32154 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 Section 32156.

**Comment.** Section 32158 continues subdivision (i) of former Health and Safety Code Section 40720 without substantive change.

**§ 32159. Budget supplement**

---

32159. 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.

**Comment.** Section 32159 continues subdivision (j) of former Health and Safety Code Section 40720 without change.

**§ 32160. Repeal of article**

---

32160. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

**Comment.** Section 32160 continues subdivision (k) of former Health and Safety Code Section 40720 without substantive change.

Article 5. Budget Forecast

**§ 32200. “Three-year budget forecast”**

---

32200. As used in this article, “three-year budget forecast” means a district’s forecast of budget and staff changes proposed for the following fiscal year, and projected for the next two fiscal years.

**Comment.** Section 32200 continues subdivision (a) of former Health and Safety Code Section 40721 without substantive change.

**§ 32201. Three-year budget forecast**

---

32201. Not later than February 1 of each year, each district described in Section 32150 shall prepare and submit to the state board a three-year budget forecast which shall include the preliminary budget for the following fiscal year. The budget forecast shall be based upon a work program which shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. Budget and staff resources shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to any other section may be used to comply with this article.

**Comment.** Section 32201 continues subdivision (b) of former Health and Safety Code Section 40721 without substantive change.

**§ 32202. Review of forecast**

---

32202. (a) The state board, in consultation with the California Environmental Protection Agency, shall review each three-year budget forecast submitted and recommend any modification or revision to the three-year budget forecast that the state board determines to be appropriate.

(b) Following its review, but not later than March 1, the state board shall submit all of the three-year budget forecasts, together with its comments and recommendations, to the districts and to the appropriate policy and fiscal committees of the Legislature, and shall also submit its comments and recommendations to the Governor and to the California Environmental Protection Agency.

(c) The appropriate policy and fiscal committees of the Legislature may hold informational hearings on the three-year budget forecasts submitted by the state board pursuant to subdivision (b). Those legislative committees may make comments and recommendations on modifications or revisions to the three-year budget forecast. The

legislative committees shall submit any such comments and recommendations to the district and the state board.

**Comment.** Section 32202 continues subdivision (c) of former Health and Safety Code Section 40721 without substantive change.

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**§ 32203. Public hearing**

32203. The district may incorporate the recommendations of the state board and the legislative committees into the three-year budget forecast, which the district shall present at a public hearing or workshop held at least 20 days prior to the date of adoption of the work program.

**Comment.** Section 32203 continues subdivision (d) of former Health and Safety Code Section 40721 without change.

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**§ 32204. Reports**

32204. On or before April 1 of each year, the south coast district, as part of the summary required by subdivision (a) of Section 36502, shall report, and any other district that is subject to this article shall report, to the appropriate policy and fiscal committees of the Legislature and to the state board on any actions taken by the district to adopt, amend, or reject comments or recommendations made by the legislative committees and the state board relating to the district's three-year budget forecast and budget.

**Comment.** Section 32204 continues subdivision (e) of former Health and Safety Code Section 40721 without substantive change.

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**§ 32205. Repeal of article**

32205. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

**Comment.** Section 32205 continues subdivision (f) of former Health and Safety Code Section 40721 without substantive change.

## CHAPTER 2. RULEMAKING

### Article 1. General Procedure

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**§ 32300. Purpose**

32300. Prior to adopting any rule or regulation to reduce criteria pollutants, a district shall determine that there is a problem that the proposed rule or regulation will alleviate and that the rule or regulation will promote the attainment or maintenance of state or federal ambient air quality standards.

**Comment.** Section 32300 continues subdivision (c) of former Health and Safety Code Section 40001 without change.

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**§ 32301. Cost-effectiveness**

32301. In adopting any regulation, the district shall consider, pursuant to Section 33253, and make public, its findings related to the cost-effectiveness of a control measure. A district shall make reasonable efforts, to the extent feasible within existing budget

constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals.

**Comment.** Section 32301 continues former Health and Safety Code Section 40703 without substantive change.

#### **§ 32302. Filing rules and regulations with state board**

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32302. A district board shall file with the state board, within 30 days, any rule or regulation the district board adopts, amends, or repeals.

**Comment.** Section 32302 continues former Health and Safety Code Section 40704 without change.

#### **§ 32303. Public hearing**

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32303. (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.

**Comment.** Section 32303 continues former Health and Safety Code Section 40725 without change.

#### **§ 32304. Public hearing**

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32304. (a) The public hearing held pursuant to Section 32303 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.

(b) 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.

(c) 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.

**Comment.** Section 32304 continues former Health and Safety Code Section 40726 without substantive change.

#### **§ 32305. Findings**

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32305. (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 information developed pursuant to Sections 32350 to 32357, inclusive, information in the rulemaking record maintained pursuant to Section 32306, and relevant information presented at the hearing.

(b) As used in this section, the following terms have the following meaning:

(1) “Necessity” means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.

(2) “Authority” means that a provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.

(3) “Clarity” means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

(4) “Consistency” means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

(5) “Nonduplication” means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.

(6) “Reference” means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

**Comment.** Section 32305 continues former Health and Safety Code Section 40727 without substantive change.

#### **§ 32306. Record for rulemaking procedure**

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32306. Every district shall maintain a file of each regulation which shall be deemed to be the record for that rulemaking proceeding. The file shall include all of the following:

(a) Copies of any petitions received by the district from interested persons proposing the adoption, amendment, or repeal of the regulation.

(b) Copies of published notices of proposed adoption, amendment, or repeal of the regulation.

(c) All data and other factual information, any studies or reports, and written comments submitted to the district in connection with the adoption, amendment, or repeal of the regulation.

(d) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(e) The text of regulations as originally proposed, and the modified text of regulations, if any, that were made available to the public prior to the adoption.

**Comment.** Section 32306 continues former Health and Safety Code Section 40728 without change.

## Article 2. Required Analysis

#### **§ 32350. Written analysis**

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32350. (a) In complying with Section 32305, the district shall prepare a written analysis as required by this article. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district’s existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b). The analysis

shall be in a format that minimizes paperwork and, at the option of the district, may be in matrix form.

(b) Within 60 days from the date of a district's publication, pursuant to Section 33451, of the list of regulatory measures proposed for adoption in the following year, any person may inform the district of any existing federal or state air pollution control requirement or guideline or proposed or existing district air pollution control requirement or guideline that applies to the same type of source or equipment in that district as any proposed new or amended district rule or regulation on that district's list of regulatory measures. If any person informs the district of any requirement or guideline that does not apply to the same type of source or equipment, the district shall notify the person to that effect and shall not be required to review that requirement or guideline.

**Comment.** Section 32350 continues subdivisions (a) and (b) of former Health and Safety Code Section 40727.2 without substantive change.

### **§ 32351. Review of elements**

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32351. (a) The analysis prepared pursuant to subdivision (a) of Section 32350 shall compare the elements of each of the identified air pollution control requirements to the corresponding element or elements of the district's proposed new or amended rule or regulation.

(b) Air pollution control requirement elements to be reviewed pursuant to subdivision (a) are all of the following:

- (1) Averaging provisions, units, and any other pertinent provisions associated with emission limits.
- (2) Operating parameters and work practice requirements.
- (3) Monitoring, reporting, and recordkeeping requirements, including test methods, format, content, and frequency.
- (4) Any other element that the district determines warrants review.

**Comment.** Section 32351 continues subdivisions (c) and (d) of former Health and Safety Code Section 40727.2 without substantive change.

### **§ 32352. Identification of differences**

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32352. If one or more elements of a district's proposed new or amended rule or regulation differs from corresponding elements of any existing air pollution control requirement or guideline applicable to the same equipment or source type, the analysis prepared pursuant to subdivision (a) of Section 32350 shall note the difference or differences.

**Comment.** Section 32352 continues subdivision (e) of former Health and Safety Code Section 40727.2 without substantive change.

### **§ 32353. Availability of analysis**

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32353. The public hearing notice given to the state board pursuant to subdivision (b) of Section 32303, and any notice mailed to interested persons, shall include a statement indicating that the analysis required by this article has been prepared, and shall provide the name, address, and telephone number of a district officer from whom copies may be requested. The analysis required by this article shall be provided to the public upon request.

**Comment.** Section 32353 continues subdivision (f) of former Health and Safety Code Section 40727.2 without substantive change.

**§ 32354. Alternative analysis**

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32354. If a district's proposed new or amended rule or regulation does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, or if the proposed new or amended rule or regulation is a verbatim adoption or incorporation by reference of a federal New Source Performance Standard adopted pursuant to Section 111 of the Clean Air Act (42 U.S.C. 7411) or an airborne toxic control measure adopted by the state board pursuant to Sections 31801 to 31805, inclusive, a district may elect to comply with section 32350 by preparing an alternative analysis demonstrating that the proposed new or amended rule or regulation falls within one or more of the categories specified in this section.

**Comment.** Section 32354 continues subdivision (g) of former Health and Safety Code Section 40727.2 without substantive change.

**§ 32355. Effect of analysis**

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32355. Nothing in this article limits the existing authority of districts to determine the form, content, and stringency of their rules and regulations. In implementing this article, it is the intent of the Legislature that the districts retain their existing authority and flexibility to tailor their air pollution emission control requirements to local circumstances.

**Comment.** Section 32355 continues subdivision (h) of former Health and Safety Code Section 40727.2 without substantive change.

**§ 32356. "Proposed"**

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32356. For purposes of this article, a district rule or regulation shall be considered "proposed" if the rule or regulation has been made available to the general public in connection with a request for comments.

**Comment.** Section 32356 continues subdivision (i) of former Health and Safety Code Section 40727.2 without substantive change.

**§ 32357. Cost recovery**

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32357. To the extent that the district board determines that there are additional costs imposed by this article, the district board shall recover those additional costs through the imposition of fees on regulated entities.

**Comment.** Section 32357 continues subdivision (j) of former Health and Safety Code Section 40727.2 without substantive change.

Article 3. Regulation Affecting Air Quality or Emissions Limitations

**§ 32400. Socioeconomic impact analysis**

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32400. 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.

**Comment.** Section 32400 continues the first two sentences of subdivision (a) of former Health and Safety Code Section 40728.5 without change.

**§ 32401. “Socioeconomic impact”**

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32401. For purposes of this article, “socioeconomic impact” means the following:

(a) The type of industries or business, including small business, affected by the rule or regulation.

(b) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.

(c) The range of probable costs, including costs to industry or business, including small business, of the rule or regulation.

(d) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.

(e) The emission reduction potential of the rule or regulation.

(f) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 3 (commencing with Section 33200) of Title 2.

**Comment.** Section 32401 continues subdivision (b) of former Health and Safety Code Section 40728.5 without substantive change.

**§ 32402. Application of article**

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32402. (a) This article 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) This article does not apply to any district with a population of less than 500,000 persons.

(c) Upon the approval by a majority vote of the district board, a county district is not required to include the analysis specified in subdivisions (b) and (d) of Section 32401 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.

**Comment.** Section 32402 (a) continues the last sentence of subdivision (a) of former Health and Safety Code Section 40728.5 without substantive change. Subdivisions (b) and (c) continue subdivisions (c) and (d) of former Health and Safety Code Section 40728.5 without substantive change.

CHAPTER 3. HEARING BOARDS

Article 1. General Provisions

**§ 32500. Hearing board**

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32500. (a) 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 32502, appointed by the district board.

(b) The district board may also appoint one alternate for each member. The alternate shall have the same qualifications, specified in Section 32502, 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.

(c) An alternate shall not hold any of the single member hearings authorized by subdivision (c) of Section 32554, subdivision (c) of Section 32555 of this code, or Section 42351.5, or Section 42359.5 of the Health and Safety Code.

**Comment.** Section 32500 continues former Health and Safety Code Section 40800 without substantive change.

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### **§ 32501. District hearing panel**

32501. Any district board may designate the hearing board appointed by it as the “district hearing panel.” Every provision of every statute and every regulation that relates to hearing boards appointed pursuant to this chapter shall be fully applicable to any district hearing panel that is so designated pursuant to this section.

**Comment.** Section 32501 continues former Health and Safety Code Section 40800.5 without change.

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### **§ 32502. Composition**

32502. A hearing board shall consist of:

(a) One member admitted to the practice of law in this state.

(b) One member who is a professional engineer registered 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.

**Comment.** Section 32502 continues former Health and Safety Code Section 40801 without change.

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### **§ 32503. District population less than 750,000**

32503. If the district board, in the case of a district with a population of less than 750,000, is unable to appoint a person with the qualifications specified in Section 32502 who is willing and able to serve, and for that reason a vacancy exists on the hearing board, the county district board may, in order to fill that vacancy, appoint any person to the hearing board.

**Comment.** Section 32503 continues former Health and Safety Code Section 40802 without substantive change.

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### **§ 32504. Disqualification as member**

32504. No officer or employee of the district, or of the county in the case of a county district, shall be a member of the district hearing board.

**Comment.** Section 32504 continues former Health and Safety Code Section 40803 without change.

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### **§ 32505. Terms**

32505. (a) The terms of the members of a hearing board shall be three years.

(b) In the case of the initial members of a hearing board, two shall serve for a term of one year, two for a term of two years, and one for a term of three years.

**Comment.** Section 32505 continues former Health and Safety Code Section 40804 without substantive change. The reference in the second paragraph to the date after which the initial terms of hearing board members are staggered (January 1, 1974) is obsolete and has not been continued. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 32506. Appointment in regional district**

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32506. Within 30 days after a regional district begins to function and exercise its powers, the regional district board shall appoint a hearing board.

**Comment.** Section 32506 continues former Health and Safety Code Section 40805 without change.

#### **§ 32507. Chairman**

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32507. A hearing board shall select a chairman from its members.

**Comment.** Section 32507 continues former Health and Safety Code Section 40806 without change.

#### **§ 32508. Conduct of hearings**

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32508. (a) A hearing board may adopt rules for the conduct of its hearings. The rules shall be consistent with this division and, so far as practicable, shall conform to the rules for administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

(b) Where a district has two or more hearing boards, the rules shall be the same for all the hearing boards.

**Comment.** Section 32508 continues former Health and Safety Code Section 40807 without substantive change.

#### **§ 32509. Hearing required**

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Except as provided for in Section 42359 of the Health and Safety Code, no abatement order, permit, or variance may be issued, modified, or revoked by a hearing board, unless a public hearing thereon has been held by the hearing board pursuant to this chapter.

**Comment.** Section 32509 continues former Health and Safety Code Section 40808 without change.

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

#### **§ 32510. Representation by county counsel**

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32510. (a) The office of the county counsel may represent both the district and the hearing board on a matter relating to a hearing before the hearing board as long as the same individual attorney does not represent both the district and the hearing board.

(b) This section does not apply to the bay district or the south coast district.

**Comment.** Section 32510 continues former Health and Safety Code Section 40809 without change.

## Article 2. Procedure

### § 32550. Quorum

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32550. Except as provided in Sections 36154 to 36158, inclusive, subdivision (c) of Section 32554, and subdivision (c) of Section 32555, and Sections 42351.5 and 42359.5 of the Health and Safety Code, 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.

**Comment.** Section 32550 continues former Health and Safety Code Section 40820 without substantive change.

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

### § 32551. Rehearing

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32551. 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.

**Comment.** Section 32551 continues former Health and Safety Code Section 40821 without change.

### § 32552. Location of hearing

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32552. Any hearing conducted by a hearing board shall be held in a location readily accessible to the public.

**Comment.** Section 32552 continues former Health and Safety Code Section 40822 without change.

### § 32553. Notice of hearing

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32553. (a) Except as otherwise provided in Sections 32554, 32555, and 32556, 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 32554, 32555, and 32556, 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.

**Comment.** Section 32553 continues former Health and Safety Code Section 40823 without substantive change.

### § 32554. Interim variance

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32554. In case of a hearing to consider an application for an interim variance, as authorized under Section 42351 of the Health and Safety Code:

(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 32553 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.

**Comment.** Section 32554 continues former Health and Safety Code Section 40824 without substantive change.

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

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**§ 32555. 90-day variance or modification of schedule of increments of progress**

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32555. 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 32553 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.

**Comment.** Section 32555 continues former Health and Safety Code Section 40825 without change.

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**§ 32556. Other variances or modification of final compliance date**

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32556. 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.

**Comment.** Section 32556 continues former Health and Safety Code Section 40826 without change.

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**§ 32557. Service of notice**

32557. 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.

**Comment.** Section 32557 continues former Health and Safety Code Section 40827 without change.

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**§ 32558. Testimony and record**

32558. (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.

**Comment.** Section 32558 continues former Health and Safety Code Section 40828 without change.

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**§ 32559. Administration of oaths**

32559. Any member of a hearing board may administer oaths in any hearing in which the member participates as a member of the hearing board.

**Comment.** Section 32559 continues former Health and Safety Code Section 40829 without substantive change.

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**§ 32560. Swearing witnesses**

32560. At any hearing, a hearing board shall require any witness to be sworn before testifying.

**Comment.** Section 32560 continues former Health and Safety Code Section 40830 without change.

## Article 3. Subpoenas

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**§ 32600. Issuance of subpoena**

32600. 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 the person's possession, or under the person's control, material to the hearing.

**Comment.** Section 32600 continues former Health and Safety Code Section 40840 without change.

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**§ 32601. Service**

32601. A subpoena to appear before a hearing board shall be served in the same manner as a subpoena in a civil action.

**Comment.** Section 32601 continues former Health and Safety Code Section 40841 without change.

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**§ 32602. Contempt**

32602. Whenever any person duly subpoenaed to appear and give evidence, or to produce any books and papers, before a hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, the person shall be deemed in contempt, and the hearing board shall report the fact to the superior court of the county in which the hearing is held.

**Comment.** Section 32602 continues former Health and Safety Code Section 40842 without substantive change.

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**§ 32603. Order to show cause**

32603. Upon receipt of a report submitted pursuant to Section 32554, the superior court shall proceed as specified in Section 11455.20 of the Government Code.

**Comment.** Section 32603 continues former Health and Safety Code Section 40843 without substantive change.

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**§ 32604. Jurisdiction**

32604. On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

**Comment.** Section 32604 continues former Health and Safety Code Section 40844 without change.

Article 4. Decisions

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**§ 32650. Announcement of decision**

32650. A hearing board shall announce its decision in writing. Copies of the decision shall immediately be filed with its clerk and mailed to all of the parties or their attorneys.

**Comment.** Section 32650 continues former Health and Safety Code Section 40860 without change.

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**§ 32651. Rehearing**

32651. A hearing board may rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to him.

**Comment.** Section 32651 continues former Health and Safety Code Section 40861 without change.

**§ 32652. Reasons for decision**

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32652. The decision of a hearing board shall include the reasons for the decision.

**Comment.** Section 32652 continues former Health and Safety Code Section 40862 without change.

**§ 32653. Effective date**

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32653. The decision shall become effective upon filing, unless the hearing board orders otherwise.

**Comment.** Section 32653 continues former Health and Safety Code Section 40863 without change.

**§ 32654. Judicial review**

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32654. (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 32650. 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.

**Comment.** Section 32654 continues former Health and Safety Code Section 40864 without substantive change.

**§ 32655. Evidence**

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32655. In any proceeding pursuant to Section 32654, 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.

**Comment.** Section 32655 continues former Health and Safety Code Section 40865 without change.

## TITLE 2. SPECIFIC POWERS AND RESPONSIBILITIES

### CHAPTER 1. EMISSION REDUCTIONS

#### Article 1. General Provisions

##### **§ 32700. Establishment of system**

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32700. (a) Every district board shall establish by regulation a system by which all reductions in the emission of air contaminants which are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions. The system shall provide that only those reductions in the emission of air contaminants which are not otherwise required by any federal, state, or district law, rule, order, permit, or regulation shall be registered, certified, or otherwise approved by the district air pollution control officer before they may be banked and used to offset future increases in the emission of air contaminants. The system shall be subject to disapproval by the state board pursuant to Chapter 1 (commencing with Section 41500) of Part 4 of Division 26 of the Health and Safety Code within 60 days after adoption by the district.

(b) The system is not intended to recognize any preexisting right to emit air contaminants, but to provide a mechanism for districts to recognize the existence of reductions of air contaminants that can be used as offsets, and to provide greater certainty that the offsets shall be available for emitting industries.

(c) Notwithstanding subdivision (a), emissions reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, if those reductions satisfy all criteria established by regulation pursuant to subdivision (a).

**Comment.** Section 32700 continues former Health and Safety Code Section 40709 without substantive change.

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

##### **§ 32701. Certificate**

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32701. Upon receipt of approval and pursuant to Section 32700, a certificate evidencing all approved reductions in the emissions of air contaminants shall be issued to the owner or owners of the emissions source, and 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.

**Comment.** Section 32701 continues former Health and Safety Code Section 40710 without substantive change.

##### **§ 32702. Registration**

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32702. A banking system established pursuant to Section 32700 shall provide for registration of all interests in approved emission reductions. The registry shall be maintained by the district and open to public inspection. Upon payment of any required filing fee, and receipt of the documents required in Section 32703, the district shall

promptly register all interests in approved emission reductions and issue a certificate evidencing 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.

**Comment.** Section 32702 continues subdivision (a) of former Health and Safety Code Section 40711 without substantive change.

### **§ 32703. Transfers**

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32703. Approved emission reductions may be transferred in whole or in part by written conveyance or by operation of law from one person to another. A sale, option, pledge, or other voluntary transfer of approved emission reductions shall be enforceable against third parties provided a copy of the written conveyance or a memorandum describing the transaction, signed by the transferor, is filed with the district. An involuntary transfer of approved emission reductions shall be enforceable against third parties provided the transferee files with the district a certified copy of the document effecting 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.

**Comment.** Section 32703 continues subdivision (b) of former Health and Safety Code Section 40711 without change.

### **§ 32704. Title**

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32704. If there is more than one owner of the source of the approved reductions in emission of air contaminants, initial title to 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.

**Comment.** Section 32704 continues former Health and Safety Code Section 40712 without change.

### **§ 32705. Approval procedure**

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32705. Any system established pursuant to Section 32700 shall contain procedures for the approval of reductions in emissions of air contaminants comparable to district permit procedures established pursuant to Section 42300 of the Health and Safety Code, including, without limitation, procedures for public comment within 30 days after notice of any proposed approval. In the event the district air pollution control officer refuses to register, certify, or otherwise approve an application for a reduction in the emission of air contaminants pursuant to Section 32700, 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.

**Comment.** Section 32705 continues former Health and Safety Code Section 40713 without substantive change.

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

## Article 2. Special Provisions

### § 32750. Nonattainment areas

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32750. Any district which has established a system pursuant to Section 32700 by which reductions in emissions may be banked or otherwise credited to offset future increases in the emissions of air contaminants, or which utilize a calculation method which enables internal emission reductions to be credited against increases in emissions, and as of January 1, 1988, is within a federally designated nonattainment area for one or more air pollutants, shall develop and implement a program which, at a minimum, provides for all of the following:

(a) Identification and tracking of sources possessing emission credit balances accruing from the elimination or replacement of older, higher emitting equipment.

(b) Periodic analysis of the increases or decreases in emissions which occur when credits are used to bring new or modified emission sources into operation.

(c) Procedures for verifying the emission reductions credited to the bank or accruing to internal accounts, and for adjusting of credited emissions based on current district requirements.

(d) Periodic evaluation of the extent to which the system has contributed or detracted from the goal of allowing economic growth and modification of existing facilities, and has contributed to or detracted from the district's progress toward attainment of ambient air quality standards.

(e) Annual publication of the costs, in dollars per ton, of emission offsets purchased for new or modified emission sources, excluding information on the identity of any party involved in the offset transactions. This publication shall specify, for each offset purchase transaction, the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased. Each application to use emissions reductions banked in a system established pursuant to Section 32700 shall provide sufficient information, as determined by the district, to perform the cost analysis. The information shall be a public record.

**Comment.** Section 32750 continues former Health and Safety Code Section 40709.5 without substantive change.

 **Staff Note.** The first paragraph conditions application of the section on whether a district is within a federally designated nonattainment area as of January 1, 1988. The starting date of this condition may be obsolete. The staff would like to receive input on whether reference to this date still serves a useful purpose.

### § 32751. Interdistrict offsets

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32751. (a) Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:

(1) The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 3 (commencing with Section 33200).

(2) The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section 31303.

(b) The district, in which the stationary source to which emission reductions are credited is located, shall determine the type and quantity of the emission reductions to be credited.

(c) The district, in which the stationary source at which there are emission increases to be offset is located, shall do both of the following:

(1) Determine the impact of those emission reductions in mitigation of the emission increases in the same manner and to the same extent as the district would do so for fully credited emission reductions from sources located within its boundaries.

(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source in the other district. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

(d) Any offset credited pursuant to subdivision (a) shall be approved by a resolution adopted by the governing board of the upwind district and the governing board of the downwind district, after taking into consideration the impact of the offset on air quality, public health, and the regional economy. Each district governing board may delegate to its air pollution control officer the board's authority to approve offsets credited pursuant to subdivision (a).

**Comment.** Section 32751 continues former Health and Safety Code Section 40709.6 without substantive change.

### Article 3. Emission Reduction Credits

#### § 32800. Exempt sources

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32800. The Legislature hereby finds and declares all of the following:

(a) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(b) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(c) An increased supply of emission reduction credits is beneficial to local economies.

(d) The purpose of this article is to provide an incentive to generate additional and fully valued emission reduction credits by encouraging emission reductions from these sources without subjecting them to a district permitting process.

**Comment.** Section 32800 continues subdivision (a) of former Health and Safety Code Section 40714.5 without substantive change.

#### § 32801. Exempt sources

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32801. (a) With respect to any emission reduction that occurs on or after January 1, 1991, at a source that was and remains exempt from district rules and regulations, the district shall grant emission reduction credits or marketable trading credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. Emission reduction credits or marketable trading credits issued by the district for those exempt sources may be reduced only when applied to the permitting of other stationary sources as a result of new source review, or in accordance with any applicable requirement of a marketable trading credit program.

(b) Any credits issued by a district pursuant to this section shall meet all of the requirements of state and federal law, including, but not limited to, all of the following requirements:

(1) The credits shall not result in the crediting of air emissions which are already contemporaneously required by an emission control measure in a plan necessary to achieve state and federal ambient air standards.

(2) The credits shall not provide for an additional discount of credits solely as a result of emission reduction credits trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources.

(3) The credits shall not, in any manner, result in double-counting of emission reductions.

(4) The credits shall be permanent, enforceable, quantifiable, and surplus.

**Comment.** Section 32801 continues paragraphs (1) and (2) of subdivision (b) of former Health and Safety Code Section 40714.5 without substantive change.

☞ **Staff Note.** The first subdivision refers to a date after which emission reductions at exempt sources are eligible for emission reduction credits (January 1, 1991). The staff would like to receive input on whether reference to this date still serves a useful purpose.

### § 32802. Application of article

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32802. This article shall apply statewide.

**Comment.** Section 32802 continues subparagraph (D) of paragraph (3) of subdivision (b) of former Health and Safety Code Section 40714.5 without substantive change. The date after which that section has statewide application (January 1, 1999) is obsolete and is not continued. Subparagraphs (A) to (C) of paragraph (3) of subdivision (b) of former Health and Safety Code Section 40714.5, providing for incremental increases to the scope of that section's application, on specified dates, are obsolete and are not continued.

☞ **Staff Note.** The proposed Environment Code will be introduced in the next legislative session. It is the staff's expectation that the new code will be subject to a deferred operative date of January 1, 2001. Therefore, provisions for staggered expansions to the scope of this article, all triggered on or before January 1, 1999, are obsolete.

## Article 4. Military Bases

### § 32850. Definitions

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32850. For the purposes of this article, the following terms have the following meanings:

(a) "Base reuse authority" means the authority recognized pursuant to Section 65050 of the Government Code.

(b) "Military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

**Comment.** Section 32850(a) continues subdivision (b) of former Health and Safety Code Section 40709.7 without substantive change. Note, however, that the definition of "base reuse authority" in Health and Safety Code Section 40709.7 was contingent on whether Government Code Section 65050, listing base reuse entities, was enacted. This section was enacted as specified in the contingency. See 1994 Cal. Stat. ch. 1261, § 6. Consequently, the alternative definition, that would have applied if the contingency had failed, is obsolete and is not continued.

Section 32850(b) continues subdivision (a) of former Health and Safety Code Section 40709.7 without substantive change.

**§ 32851. Application for emission reduction**

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32851. An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base within 180 days of the reduction in emissions if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

**Comment.** Section 32851 continues subdivision (c) of former Health and Safety Code Section 40709.7 without substantive change. The reference to applications on or before June 1, 1995, is obsolete and is not continued.

☞ **Staff Note.** This section's effect is contingent in part on whether the federal government meets certain eligibility requirements on December 31, 1994. It isn't clear whether the reference to this date has continuing relevance. The staff would like to receive input on this point.

**§ 32852. Records**

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32852. Six months from the date that the base closure or realignment decision becomes final 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.

**Comment.** Section 32852 continues subdivision (d) of former Health and Safety Code Section 40709.7 without substantive change. The reference to a July 1, 1995 deadline is obsolete and has not been continued.

**§ 32853. Application for emission reduction**

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32853. (a) A base reuse authority may apply to a district, under the emission reductions banking system established pursuant to Section 32700, for any reductions in emissions related to the termination or reduction of operations at the military base under its jurisdiction.

(b) 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:

(1) The federal government agrees in writing to allow the base reuse authority to apply for and receive the emission reduction credits.

(2) The time period for the federal government to apply for emission reduction credits pursuant to Section 32851 has expired and the federal government has not applied for the credits.

(3) The base reuse authority has, pursuant to other legal means, obtained the authority to acquire the emission reduction credits.

**Comment.** Section 32853 continues subdivision (e) of former Health and Safety Code Section 40709.7 without substantive change.

**§ 32854. Partial retirement of credits**

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32854. The district shall permanently retire the emission reduction credits obtained pursuant to this article by 5 percent to improve air quality.

**Comment.** Section 32854 continues subdivision (f) of former Health and Safety Code Section 40709.7 without substantive change.

**§ 32855. Applicable time periods**

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32855. 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.

**Comment.** Section 32855 continues subdivision (g) of former Health and Safety Code Section 40709.7 without change.

**§ 32856. Ownership**

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32856. After registration, certification, or other approval of the emission reductions by a district air pollution control officer pursuant to subdivision (a) of Section 32700 and this article, the base reuse authority shall be deemed the owner of the emissions source for purposes of the issuance of a certificate pursuant to Section 32701. 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.

**Comment.** Section 32856 continues subdivision (h) of former Health and Safety Code Section 40709.7 without substantive change.

CHAPTER 2. TRANSPORTATION CONTROL MEASURES

Article 1. Transportation Control Plan

**§ 32900. Transportation control responsibility**

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32900. 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 33303, 33304, or 33305.

**Comment.** Section 32900 continues subdivision (a) of former Health and Safety Code Section 40717 without substantive change.

**§ 32901. Plan requirements**

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32901. 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:

(a) The district shall establish the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards.

(b) 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 subdivision (a). 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.

(c) 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:

(1) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to subdivision (a) and has been submitted pursuant to the schedule established under subdivision (b).

(2) If the district determines that the plan does not meet the criteria established pursuant to subdivision (a), 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 subdivision (a). 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 subdivision (a), 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 subdivision (a) and has been resubmitted to the district within 45 days.

(3) If the plan is not submitted pursuant to the schedule established under subdivision (b), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this paragraph does not meet the criteria established under subdivision (a), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(d) 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 subdivision (a), (b), and (c).

**Comment.** Section 32901 continues subdivision (b) of former Health and Safety Code Section 40717 without substantive change.

#### **§ 32902. Sacramento district**

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32902. Section 32901 shall not apply to the Sacramento district. Chapter 4 (commencing with Section 35400) of Title 4 shall govern preparation and enforcement of that plan for transportation control measures for the Sacramento district.

**Comment.** Section 32902 continues subdivision (c) of former Health and Safety Code Section 40717 without substantive change.

#### **§ 32903. Counties of the third class**

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32903. Notwithstanding Section 32901, a district located in a county of the third class shall develop a plan for transportation control measures as follows:

(a) The district, in consultation with the council of governments, shall develop, approve, and adopt criteria under which the plan shall be developed.

(b) 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.

(c) 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 subdivision (a) and has been submitted pursuant to the schedule established under subdivision (b). If the district determines that the plan does not meet the criteria established pursuant to subdivision (a) or if the plan is not submitted pursuant to the schedule

established under subdivision (b), the district shall develop and adopt an alternative plan for transportation control measures.

**Comment.** Section 32903 continues subdivision (d) of former Health and Safety Code Section 40717 without substantive change.

#### **§ 32904. Delegation**

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32904. 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:

(a) 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.

(b) The local agency adopts and implements measures at least as stringent as those in the district plan.

(c) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(d) Multiple site employers with more than one regulated worksite in the district have the option of complying with the district rule and reporting directly to the district. Employers that exercise this option shall be exempt from the local agency trip reduction measure.

**Comment.** Section 32904 continues subdivision (e) of former Health and Safety Code Section 40717 without change.

#### **§ 32905. Revocation of authority**

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32905. A district may revoke an authority granted under this article if it determines that the performance of the local agency is in violation of this article or otherwise inadequate to implement the district plan.

**Comment.** Section 32905 continues subdivision (f) of former Health and Safety Code Section 40717 without substantive change.

#### **§ 32906. “Transportation control measures”**

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32906. For purposes of this article, “transportation control measures” means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing motor vehicle emissions.

**Comment.** Section 32906 continues subdivision (g) of former Health and Safety Code Section 40717 without substantive change.

#### **§ 32907. Effect of article**

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32907. Nothing in this article shall preclude a local agency from implementing a transportation control measure that exceeds the requirements imposed by an air pollution control district or an air quality management district if otherwise authorized by law.

**Comment.** Section 32907 continues subdivision (h) of former Health and Safety Code Section 40717 without substantive change.

## Article 2. Indirect Sources

#### **§ 32950. Indirect sources**

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32950. Any district which proposes to adopt or amend a rule or regulation pursuant to Section 32005 or Sections 32900 to 32907, inclusive, which imposes any requirement on

an indirect source to reduce vehicle trips or vehicle miles traveled, including, but not limited to, any rule or regulation affecting ridesharing or alternative transportation mode strategies, shall, prior to the adoption or amendment of the rule or regulation, do all of the following:

(a) Ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies which are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur. In complying with this subdivision, a district shall make reasonable and feasible efforts to assign responsibility for existing and new vehicle trips in a manner which equitably distributes responsibility among indirect sources.

(b) Ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips which are required to be reduced by other rules or regulations adopted for the same purpose.

(c) Take into account the feasibility of implementing the proposed rule or regulation.

(d) Pursuant to Section 33253, consider the cost effectiveness of the proposed rule or regulation.

(e) Determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources which would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Section 32005 or Sections 32900 to 32907, inclusive.

**Comment.** Section 32950 continues subdivision (a) of former Health and Safety Code Section 40717.5 without substantive change.

### **§ 32951. Delegation**

---

32951. A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to Section 32950. However, if an indirect source subject to the rule or regulation has sites located both within and outside of the jurisdiction of a city or county to which that responsibility has been delegated, the indirect source may elect to be subject to the implementation of that rule or regulation only by the district. Notwithstanding Section 36408, an indirect source which elects to be regulated only by a district pursuant to this section may also elect to include sites under district regulation that would not otherwise be subject to district regulation, and, in that event, shall not be subject to the implementation by a city or county of any requirement contained in that rule or regulation.

**Comment.** Section 32951 continues subdivision (b) of former Health and Safety Code Section 40717.5 without substantive change. The reference to subdivision (b) of former Section 40927 of the Health and Safety Code is obsolete and has not been continued. Section 40927 was repealed by its own terms on January 1, 1997. See 1993 Cal. Stat. ch. 563, § 2.

☞ **Staff Note.** Note that another Health and Safety Code Section 40927 was added by 1994 Cal. Stat. ch. 1192, § 10, without repealing the existing Section 40927. The second Section 40927 is one of the sections with the odd operation contingency discussed in Memorandum 98-22. Fortunately, that Section 40927 has been expressly repealed. See 1996 Cal. Stat. ch. 1154, § 10. The staff does not believe that the history of the second Section 40927 is worth noting in the Comment.

### **§ 32952. Effect of article**

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32952. (a) Nothing in this article constitutes an infringement on the existing authority of counties and cities to plan, control, or condition land use, or on the ability of a city, county,

or other public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

(b) Nothing in this article provides or transfers new authority over land use to a district.

**Comment.** Section 32952 continues subdivision (c) of former Health and Safety Code Section 40717.5 without substantive change.

### Article 3. Private Entities

#### § 33000. Private entities

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33000. No district or other local or regional agency shall impose any requirement on any private entity, including any requirement in any congestion management program adopted pursuant to Section 65089 of the Government Code, except as specifically provided in Section 65089.1 of the Government Code, to reduce shopping trips or to require the imposition of parking charges or the elimination of existing parking spaces at retail facilities.

**Comment.** Section 33000 continues subdivision (a) of former Health and Safety Code Section 40717.6 without change.

#### § 33001. Effect of article

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33001. (a) Notwithstanding Section 33000, nothing in this article shall be construed to prevent a city or county from doing any of the following:

(1) Requiring retailers to make available to customers information concerning alternative transportation systems serving the retail site.

(2) Imposing requirements on new development as a condition of development for the purpose of mitigation pursuant to the California Environmental Quality Act (Division 3 (commencing with Section 21000)).

(3) Enacting requirements on retailers as a result of a voter imposed growth management initiative.

(b) Nothing in this article shall be construed as a limitation on the land use authority of cities and counties.

**Comment.** Section 33001 continues subdivisions (b) and (c) of former Health and Safety Code Section 40717.6 without substantive change.

### Article 4. Intermittent Controls

#### § 33050. Intermittent transportation controls

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33050. (a) Except as provided in Section 33051, every district board which has adopted an emergency episode plan for ozone or oxidant may conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called.

(b) The district board, in cooperation with representatives of industry, transportation, and local governments in the district, shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls. The district board shall prepare and submit to the Legislature within one year a report on the findings from the hearings.

(c) The district board shall incorporate its findings and determinations into the district air quality management plan.

**Comment.** Section 33050 continues subdivisions (a) to (c) of former Health and Safety Code Section 40719 without substantive change.

**§ 33051. Exception**

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33051. Notwithstanding Section 33050, in that portion of the bay district which is subject to the jurisdiction of the Metropolitan Transportation Commission, the commission, at the request of the bay district, shall undertake those duties and responsibilities set forth in Section 33050 that relate to the conduct of hearings and the adoption and implementation of intermittent transportation controls and that relate to making recommended findings and determinations for the bay district for incorporation into the bay district's air quality management plan.

**Comment.** Section 33051 continues subdivision (d) of former Health and Safety Code Section 40719 without substantive change.

Article 5. Event Centers

**§ 33100. Definitions**

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33100. For purposes of this article, the following terms have the following meaning:

(a) "Event center" means a community center, activity center, auditorium, convention center, stadium, coliseum, arena, sports facility, racetrack, pavilion, amphitheater, theme park, amusement park, fairgrounds, or other building, collection of buildings, or facility which is used exclusively or primarily for the holding of sporting events, athletic contests, contests of skill, exhibitions, conventions, meetings, spectacles, concerts, or shows, or for providing public amusement or entertainment.

(b) "Average vehicle ridership" means the total number of attendees arriving in vehicles parking in areas controlled by the event center, divided by the total number of those vehicles parking in areas controlled by the event center.

**Comment.** Section 33100 continues subdivision (a) of former Health and Safety Code Section 40928 without substantive change.

☞ **Staff Note.** Health and Safety Code Section 40928 was originally added to Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code ) (District Plans to Attain State Ambient Air Quality Standards). As a provision governing transportation control measures, it seems more appropriate to locate the section in this chapter. The staff would like to receive input on whether there is any reason not to relocate this section to this chapter.

**§ 33101. Event centers**

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33101. (a) Notwithstanding Sections 32900 to 32907, inclusive, or any provision of this article, or of Chapter 3 (commencing with Section 33200), and to the extent consistent with federal law, no district, or regional or local agency to which a district has delegated the authority to implement transportation control measures pursuant to Sections 32900 to 32907, inclusive, and which is acting pursuant to that delegated authority, shall do either of the following:

(1) Require an event center which achieves an average vehicle ridership greater than 2.20 to implement any transportation control requirements that are intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(2) Require an event center which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement additional transportation control

requirements that are also intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(b) A district, or regional or local agency, may require event centers which achieve an average vehicle ridership greater than 2.20, or which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement approved alternative strategies which will achieve emission reductions that are equivalent to those that would be achieved by the imposition of transportation control requirements intended to reduce vehicle trips or vehicle miles traveled by event center attendees, including, but not limited to, those strategies specified in Section 33102.

**Comment.** Section 33101 continues subdivision (b) of former Health and Safety Code Section 40928 without substantive change.

☞ **Staff Note.** See staff note to Section 33100.

### **§ 33102. Alternative strategies**

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33102. 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:

- (a) Traffic management before and after events.
- (b) Parking management and vehicle flow within parking areas controlled by the event center.
- (c) Reducing the amount of vehicle idling before and after events.
- (d) 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.
- (e) Achieving a designated average vehicle ridership for vehicles which carry persons who are traveling to or from their employment at an event center.
- (f) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle miles traveled by event center attendees.

**Comment.** Section 33102 continues subdivision (c) of former Health and Safety Code Section 40928 without change.

☞ **Staff Note.** See staff note to Section 33100.

## Article 6. Federal Law as Prerequisite

### **§ 33150. General prohibition**

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33150. Notwithstanding Sections 36408, 32900 to 32907, inclusive, 32950 to 32952, inclusive, 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.

**Comment.** Section 33150 continues subdivision (a) of former Health and Safety Code Section 40929 without substantive change. References to former Health and Safety Code Sections 40457 and 40717.1 are obsolete and have not been continued. See 1996 Cal. Stat. ch. 777, §§ 1, 3.

☞ **Staff Note.** Health and Safety Code Section 40929 was originally added to Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code ) (District Plans to Attain State Ambient Air Quality Standards). As a provision governing transportation control measures, it seems more appropriate to locate the section in this chapter. The staff would like to receive input on whether there is any reason not to relocate this section to this chapter.

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**§ 33151. Exception**

33151. (b) Nothing in this article shall preclude a public agency from regulating indirect sources in any manner that is not specifically prohibited by this article, where otherwise authorized by law.

**Comment.** Section 33151 continues subdivision (b) of former Health and Safety Code Section 40929 without substantive change.

☞ **Staff Note.** See staff note to Section 33150.

CHAPTER 3. DISTRICT PLANS TO ATTAIN STATE  
AMBIENT AIR QUALITY STANDARDS

Article 1. General Provisions

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**§ 33200. Legislative intent**

33200. It is the intent of the Legislature in enacting this chapter that districts shall endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. In developing attainment plans and regulations to achieve this objective, districts shall consider the full spectrum of emission sources and focus particular attention on reducing the emissions from transportation and areawide emission sources. Districts shall also consider the cost effectiveness of their air quality programs, rules, regulations, and enforcement practices in addition to other relevant factors, and shall strive to achieve the most efficient methods of air pollution control. However, priority shall be placed upon expeditious progress toward the goal of healthful air.

**Comment.** Section 33200 continues former Health and Safety Code Section 40910 without change. Note that uncodified statutory provisions applicable to former Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code now apply to this chapter. See 1994 Cal. Stat. ch. 189, § 1 (report by State Air Resources Board regarding implementation of this chapter).

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**§ 33201. Time limitation for submission of plan**

33201. (a) Except as provided in subdivision (b), each district which has been designated a nonattainment area for state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide shall prepare and submit a plan for attaining and maintaining the standards to the state board not later than December 31, 1990.

(b) Notwithstanding subdivision (a), any district which is a receptor or contributor of transported air pollutants, as determined by the state board pursuant to subdivision (a) of Section 31303, shall prepare and submit its plan to the state board not later than June 30, 1991.

**Comment.** Section 33201 continues former Health and Safety Code Section 40911 without substantive change.

☞ **Staff Note.** Subdivisions (a) and (b) specify deadlines for the preparation of plans. These deadline provisions may be obsolete. The staff would like to receive input on two questions: (1) Have these deadlines been met? (2) Do the deadlines still serve a useful purpose?

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**§ 33202. Technical assistance from state board**

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33202. (a) The state board shall make technical assistance available to a district, at the district's request, to support attainment planning and air pollutant transport planning and associated analyses. If the state board lacks sufficient resources to make technical assistance available to each district that requests assistance, the state board shall give priority to those districts that have limited financial or technical capabilities.

(b) The state board shall develop guidelines for use by the districts to prepare emission inventories, develop monitoring networks, and develop methods for the validation of air quality models.

(c) The state board shall develop and periodically update guidelines for use by the districts to establish equivalent emission reductions for mobile source emission control strategies and transportation control measures.

**Comment.** Section 33202 continues former Health and Safety Code Section 40916 without change.

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**§ 33203. Inter-district cooperation**

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33203. Two or more districts within the same air basin shall cooperate to the extent reasonable and appropriate in developing plan elements of mutual concern. These elements may include, but are not limited to, emission inventories, air quality models, and growth projections.

**Comment.** Section 33203 continues former Health and Safety Code Section 40917 without change.

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**§ 33204. Effect of chapter**

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33204. Nothing in this chapter restricts the authority of the state board or a district to adopt regulations to control suspended particulate matter, visibility reducing particles, lead, hydrogen sulfide, or sulfates, or their precursors.

**Comment.** Section 33204 continues former Health and Safety Code Section 40926 without change.

## Article 2. General Content Requirements

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**§ 33250. State standards**

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33250. (a) Each district plan shall be designed to achieve and maintain the state standards by the earliest practicable date, as determined by the district and subject to the approval of the state board, and in consideration of all relevant factors, including, but not limited to, the following:

- (1) Present and projected maximum ambient pollutant concentration.
- (2) Distribution and frequency of violations.
- (3) Transport contributions.
- (4) Projected emission increases based on industrial, vehicular, or population growth.
- (5) Emission inventory characteristics.
- (6) Anticipated effectiveness of available and potential control measures.

(7) Emission reductions occurring in, or expected to occur in, the district.

(8) In districts where military bases have closed or are scheduled for closure, the reuse plans for the closing base.

(b) Each district plan shall be based upon a determination by the district board that the plan is a cost-effective strategy to achieve attainment of the state standards by the earliest practicable date.

**Comment.** Section 33250 continues former Health and Safety Code Section 40913 without change.

### § 33251. Reduction in emissions

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33251. (a) Each district plan shall be designed to achieve a reduction in districtwide emissions of 5 percent or more per year for each nonattainment pollutant or its precursors, averaged every consecutive three-year period, unless an alternative measure of progress is approved pursuant to Section 31300.

(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 of the Health and Safety Code, reductions in emissions shall be calculated with respect to the actual level of emissions which exist in each district during 1990, as determined by the state board. All reductions in emissions occurring after December 31, 1990, including, but not limited to, reductions in emissions resulting from measures adopted prior to December 31, 1990, shall be included in this calculation.

**Comment.** Section 33251 continues former Health and Safety Code Section 40914 without substantive change.

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

### § 33252. Contingency measures

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33252. Each district plan shall contain contingency measures to be implemented upon a finding by the state board, pursuant to Section 41503.3 of the Health and Safety Code, 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.

**Comment.** Section 33252 continues former Health and Safety Code Section 40915 without substantive change.

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

**§ 33253. Control measures**

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33253. (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.

**Comment.** Section 33253 continues former Health and Safety Code Section 40922 without change.

Article 3. Special Content Requirements

**§ 33300. Upwind and downwind districts**

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33300. 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 31303. Each downwind district’s plan shall contain sufficient measures to reduce emissions originating in the district below the level at which violations of state ambient air quality standards would occur in the absence of the transport contribution.

**Comment.** Section 33300 continues former Health and Safety Code Section 40912 without substantive change.

**§ 33301. Designation of district pollution level**

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33301. For the purposes of Sections 33303, 33304, 33305, and 33306, the designation of a district’s air pollution as “moderate,” “serious,” “severe,” or “extreme” for an area which is a receptor of transported air pollutants shall be based on violations of state ambient air quality standards which would occur without regard to the transport contribution.

**Comment.** Section 33301 continues former Health and Safety Code Section 40921 without substantive change.

**§ 33302. Pollution level definitions**

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33302. (a) For purposes of classifying ozone nonattainment areas pursuant to Sections 33303, 33304, 33305, and 33306, the terms moderate, serious, severe, and extreme shall be defined as follows:

- (1) Moderate .....greater than 0.09 to not more than 0.12 parts per million, inclusive.
- (2) Serious.....0.13 to 0.15 parts per million, inclusive.
- (3) Severe.....0.16 to 0.20 parts per million, inclusive.
- (4) Extreme.....greater than 0.20 parts per million.

(b) For the purposes of classifying carbon monoxide nonattainment areas under Sections 33303 and 33304, the terms moderate and serious shall be defined as follows:

- (1) Moderate.....greater than 9.0 to 12.7 parts per million, inclusive.
- (2) Serious.....greater than 12.7 parts per million.

(c) The state board shall determine the ambient concentration of each nonattainment area consistent with the designation criteria established pursuant to subdivision (e) of Section 31300. Classifications for ozone shall be based upon the calendar years 1989 to 1991, inclusive. Classifications for carbon monoxide shall be based upon the 1989-90 and 1990-91 winter seasons.

**Comment.** Section 33302 continues former Health and Safety Code Section 40921.5 without substantive change.

**§ 33303. Moderate air pollution district**

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33303. (a) Each district with moderate air pollution shall, to the extent necessary to meet the requirements of the plan developed pursuant to Section 33250, include the following measures in its attainment plan:

(1) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from new or modified stationary sources which emit or have the potential to emit 25 tons per year or more of nonattainment pollutants or their precursors. The program shall require the use of best available control technology for any new or modified stationary source which has the potential to emit 25 pounds per day or more of any nonattainment pollutant or its precursors.

(2) The use of reasonably available control technology for all existing stationary sources, except that stationary sources permitted to emit five tons or more per day or 250 tons or more per year shall be equipped with the best available retrofit control technology.

(3) Reasonably available transportation control measures sufficient to substantially reduce the rate of increase in passenger vehicle trips and miles traveled per trip if the district contains an urbanized area with a population of 50,000 or more.

(4) Provisions to develop areawide source and indirect source control programs.

(5) Provisions to develop and maintain an emissions inventory system to enable analysis and progress reporting and a commitment to develop other analytical techniques to carry out its responsibilities pursuant to subdivision (b) of Section 33452.

(6) Provisions for public education programs to promote actions to reduce emissions from transportation and areawide sources.

(b) Any district with moderate air pollution that is not below the pollutant concentrations for a moderate classification pursuant to Sections 33301 and 33302 by December 31, 1997, shall comply with Section 33304 if the state board demonstrates that the additional requirements of Section 33304 will substantially expedite the district's attainment of the state ambient air quality standards. Any actions taken by the state board pursuant to this subdivision are subject to Section 41503.4 of the Health and Safety Code.

**Comment.** Section 33303 continues former Health and Safety Code Section 40918 without substantive change.

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

**§ 33304. Serious air pollution district**

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33304. (a) Each district with serious air pollution shall, to the extent necessary to meet the requirements of the plan adopted pursuant to Section 33250, include the following measures in its attainment plan:

(1) All measures required for moderate nonattainment areas, as specified in Section 33303.

(2) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all new or modified stationary sources which emit, or have the potential to emit, 15 tons or more per year. The program shall require the use of best available control technology for any new or modified stationary source which has the potential to emit 10 pounds per day or more of any nonattainment pollutant or its precursors.

(3) The use of the best available retrofit control technology, as defined in Section 35860, for all existing permitted stationary sources.

(4) Measures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.

(b) Any district with serious air pollution that has not met the criteria for a moderate classification by December 31, 1997, shall comply with Section 33305 if the state board demonstrates that the additional requirements of Section 33305 will substantially expedite the district's attainment of the state ambient air quality standards. Any actions taken by the state board pursuant to this subdivision are subject to Section 41503.4 of the Health and Safety Code.

**Comment.** Section 33304 continues former Health and Safety Code Section 40919 without substantive change.

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

**§ 33305. Severe air pollution district**

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33305. Each district with severe air pollution shall, to the extent necessary to meet the requirements of Section 33250, include the following measures in its attainment plan:

(a) All measures required for moderate and serious nonattainment areas, as specified in Sections 33303 and 33304.

(b) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all new or modified stationary sources which emit, or have the potential to emit, 10 tons or more per year.

(c) 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.

**Comment.** Section 33305 continues former Health and Safety Code Section 40920 without substantive change.

**§ 33306. Extreme air pollution district**

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33306. Each district with extreme air pollution shall, to the extent necessary to meet the requirements of the plan developed pursuant to Section 33250, include the following measures in its attainment plan:

- (a) All measures required for moderate, serious, and severe areas.
- (b) A stationary source control 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.

**Comment.** Section 33306 continues former Health and Safety Code Section 40920.5 without substantive change.

#### Article 4. No-net-increase Program Exclusion

##### **§ 33350. No-net-increase program excluded**

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33350. (a) Notwithstanding Sections 33303, 33304, and 33305, a district that does not have extreme air pollution may elect to not include a no-net-increase permitting program in its attainment plan if all of the following actions are taken:

(1) The governing board of the district finds, at a public hearing, that the no-net-increase permitting program is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date.

(2) Prior to making the finding specified in paragraph (1), the governing board does both of the following:

(A) Reviews an estimate of the growth in emissions, if any, that is likely to occur as a result of the elimination of a no-net-increase permitting program.

(B) Complies with Section 33251 either by having adopted, or having scheduled for adoption, all feasible measures to achieve and maintain state ambient air quality standards, or by the use of an alternative emission reduction strategy.

(3) The governing board of the district submits its finding to the state board, and, within 60 days from the date of the submittal of the finding, the state board makes a determination based on quantifiable and substantial evidence that a no-net-increase permitting program is not necessary to comply with the mitigation requirements established pursuant to Section 31303 and that the no-net-increase permitting program is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date. If the state board does not make any determination within that 60-day period, and the district does not agree to an extension of that time period, the district may make the election authorized by this subdivision.

(b) Nothing in this section shall relieve a district from the obligation to require the use of the best available control technology pursuant to Section 33303, 33304, or 33305.

**Comment.** Section 33350 continues former Health and Safety Code Section 40918.5 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.5 now apply to Section 33350 of the Environment Code. See 1996 Cal. Stat. ch. 1092, § 1:

“It is the intent of the Legislature that this act not affect the mandate on the State Air Resources Board to establish mitigation requirements commensurate with the contribution of upwind emissions to downwind ambient air pollutant levels as provided in Section 39610 of the Health and Safety Code.”

##### **§ 33351. Exclusion of no-net-increase program**

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33351. Following the implementation of Section 33350, both of the following shall occur:

(a) The district governing board's finding pursuant to paragraph (1) of subdivision (a) of Section 33350 shall, by operation of law, become part of the district's attainment plan.

(b) The state board shall, during any subsequent review of the district's attainment plan pursuant to subdivision (a) of Section 41500 of the Health and Safety Code, determine based on quantifiable and substantial evidence whether or not a no-net-increase permitting program is necessary to comply with mitigation requirements established pursuant to Section 31303 or to achieve and maintain state ambient air quality standards by the earliest practicable date. If the state board determines that a no-net-increase permitting program is necessary to comply with those requirements, the district shall then adopt and implement a no-net-increase permitting program pursuant to Section 33303, 33304, or 33305.

**Comment.** Section 33351 continues former Health and Safety Code Section 40918.6 without substantive change. The former paragraphs, which were numbered as paragraphs, have been renumbered as subdivisions.

Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.6 now apply to Section 33351 of the Environment Code. See 1996 Cal. Stat. ch. 1092, § 1:

"It is the intent of the Legislature that this act not affect the mandate on the State Air Resources Board to establish mitigation requirements commensurate with the contribution of upwind emissions to downwind ambient air pollutant levels as provided in Section 39610 of the Health and Safety Code."

#### **§ 33352. Emission reduction offset credits**

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33352. (a) Emission reduction offset credits created pursuant to subdivision (p) of Section 41865 of the Health and Safety Code shall be approved for use by a stationary source in another district if all of the following conditions are met:

(1) The district containing the source providing the offset credits does not have a no-net-increase permitting program in its attainment plan.

(2) The district where the offset credits are to be used is designated as having moderate air pollution.

(3) The district where the offset credits are to be used is located within the same air basin as, or within an air basin that is contiguous to, the air basin in which the district containing the source providing the offsets is located.

(4) The site where the offset credits will be used is located within 200 linear air miles from the source providing the offset credits.

(b) If all of the conditions specified in subdivision (a) are met, the district receiving the offset credit shall do both of the following:

(1) Determine the type and quantity of the emission reductions to be credited.

(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

**Comment.** Section 33352 continues former Health and Safety Code Section 40918.7 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40918.7 now apply to Section 33352 of the Environment Code. See 1996 Cal. Stat. ch. 1092, § 1:

"It is the intent of the Legislature that this act not affect the mandate on the State Air Resources Board to establish mitigation requirements commensurate with the contribution of upwind emissions to downwind ambient air pollutant levels as provided in Section 39610 of the Health and Safety Code."

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

## Article 5. Best Available Retrofit Control Technology

### **§ 33400. Precondition to adoption of rules**

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33400. Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 33303, 33304, 33305, and 33306, or for a feasible measure pursuant to Section 33251, districts shall, in addition to other requirements of this division, do all of the following:

(a) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.

(b) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this subdivision, “cost-effectiveness” means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.

(c) Calculate the incremental cost-effectiveness for the potential control options identified in subdivision (a). To determine the incremental cost-effectiveness under this subdivision, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.

(d) Consider, and review in a public meeting, all of the following:

(1) The effectiveness of the proposed control option in meeting the requirements of this chapter and the requirements adopted by the state board pursuant to subdivision (b) of Section 31303.

(2) The cost-effectiveness of each potential control option as assessed pursuant to subdivision (b).

(3) The incremental cost-effectiveness between the potential control options as calculated pursuant to subdivision (c).

(e) Make findings at the public hearing at which the regulation is adopted stating the reasons for the district’s adoption of the proposed control option or options.

**Comment.** Section 33400 continues subdivision (a) of former Health and Safety Code Section 40920.6 without substantive change.

### **§ 33401. Best available retrofit control technology requirements**

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33401. A district may establish its own best available retrofit control technology requirement based upon consideration of the factors specified in Section 33400 and Section 35860 if the requirement complies with subdivision (c) of Section 32004 and is consistent with this chapter, other state law, and federal law, including, but not limited to, the applicable state implementation plan.

**Comment.** Section 33401 continues subdivision (b) of former Health and Safety Code Section 40920.6 without substantive change.

### **§ 33402. Retirement of marketable emission reduction credits**

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33402. A district shall allow the retirement of marketable emission reduction credits under a program which complies with all of the requirements of Sections 31450 to 31456, inclusive, 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.

**Comment.** Section 33402 continues subdivision (c) of former Health and Safety Code Section 40920.6 without substantive change.

### **§ 33403. Alternatives**

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33403. After a district has established the cost-effectiveness, in a dollar amount, for any rule or regulation adopted pursuant to this article or Section 33251, 33253, 32301, 33303, 33304, 33305, 33400 to 33403, inclusive, or 35860, the district, consistent with subdivision (c) of Section 32004, shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced, including the use of emission reduction credits, for any stationary source that has a demonstrated compliance cost exceeding that established dollar amount.

**Comment.** Section 33403 continues subdivision (d) of former Health and Safety Code Section 40920.6 without substantive change.

## Article 6. Review and Reporting Requirements

### **§ 33450. Violation report**

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33450. (a) Each district that has adopted a plan pursuant to this chapter shall, on or before January 31 of each year, prepare and submit to the state board a report identifying the number of days during the preceding calendar year that air quality in the district violated each state ambient air quality standard for which the district's status is nonattainment.

(b) For any pollutant for which the report indicates that the applicable state ambient air quality standard was not violated during more than three days during the calendar year at any one or more monitoring locations within the district, the district shall not adopt any new or more stringent control measure until after preparation, and approval by the district board, of an analysis that does all of the following:

(1) Assesses the costs and benefits of all additional district, state, and federal regulatory actions that would be necessary to achieve attainment of the applicable state ambient air quality standard, taking into account only the additional costs and benefits attributable to achieving the state standard for the remaining three or fewer days each year.

(2) Includes consideration of all of the socioeconomic impacts specified in Sections 32400 to 32404, inclusive.

(3) Identifies, if the district is an upwind district, the benefits of the additional regulatory actions in the district on the air quality in any downwind district, and identifies the costs attributable to those regulatory actions.

(c) The state board shall review the district analyses prepared pursuant to subdivision (b) to ensure expeditious progress towards attainment in both the district that prepared the analysis and any downwind district and to ensure that any resulting action of the district that prepared the analysis does not adversely affect any downwind district.

**Comment.** Section 33450 continues former Health and Safety Code Section 40930 without change.

**§ 33451. Schedule of regulatory measures**

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33451. (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 Sections 31801 to 31805, inclusive, or Section 33252.

(b) Subdivision (a) does not apply to any modification of existing rules that the district finds and determines is necessary to do either of the following:

(1) Preserve the original intent of the rules, as stated upon their adoption.

(2) Increase opportunities for alternative compliance methodology pursuant to subdivision (c) of Section 32004.

**Comment.** Section 33451 continues former Health and Safety Code Section 40923 without substantive change.

**§ 33452. Progress report**

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33452. (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, and implementing the air pollution control measures contained in the district's plan. Those annual reports shall contain, at a minimum, the proposed and actual dates for the adoption and implementation of each measure.

(b) Once every three years, the district shall assess its progress toward attainment of the state ambient air quality standards. Each triennial assessment shall be incorporated into the district's triennial plan revision prepared pursuant to Section 33453. Each triennial assessment shall contain, at a minimum, both of the following:

(1) 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 31300.

(2) The expected and revised emission reductions for each measure scheduled for adoption in the preceding three-year period.

**Comment.** Section 33452 continues former Health and Safety Code Section 40924 without substantive change. The reference in subdivision (b) to the date on which the triennial update requirement began (December 31, 1994) is obsolete and has not been continued.

**§ 33453. Review of attainment plan**

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33453. (a) At least once every three years, every district shall review and revise its attainment plan to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 33251, and to incorporate new data or projections into the plan, including, but not limited to, the quantity of emission reductions actually achieved in the preceding three-year period and the rates of population-related, industry-related, and vehicle-related emissions growth actually experienced in the district and projected for the future. Upon adoption of each triennial plan revision at a public hearing, the district board shall submit the revision to the state board.

(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, 1999, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997, unless the state board determines, by not later than February 1, 1997, that a comprehensive plan update is unnecessary. 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.

**Comment.** Section 33453 continues former Health and Safety Code Section 40925 without substantive change. The reference in subdivision (a) to the date on which the triennial review requirement began (December 31, 1994) is obsolete and has not been continued.

#### **§ 33454. Nonattainment-transitional district**

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33454. (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 district.

(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 or implementation 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 that determination, the district shall consider air quality trends, the effect of the state's adopted and proposed motor vehicle and area source control programs, turnover of the vehicle fleet, the impact of measures previously adopted by the district, the state board, and the Environmental Protection Agency 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 or implementation 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 to the contingency category.

(d) If a nonattainment-transitional district determines that delaying one or more stationary source control measures will not retard the achievement of the state ozone standard, it may delay that measure.

(e) Subdivisions (c) and (d) shall not apply to any stationary source control measures required by Section 31303. 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 effective immediately. The state board may disapprove any action of the district pursuant to this section within 90 days of the action. 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. Actions taken by the state board pursuant to this subdivision are subject to Section 41503.4 of the Health and Safety Code.

(g) Actions of any district pursuant to subdivisions (c) or (d) shall be reviewed by the district in connection with its next review and revision of its attainment plan pursuant to Section 33453.

**Comment.** Section 33454 continues former Health and Safety Code Section 40925.5 without substantive change.

## CHAPTER 4. OTHER RESPONSIBILITIES

### Article 1. Monitoring Networks

#### **§ 33500. Monitoring network program**

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33500. Every district shall establish and implement supplemental toxic air contaminant monitoring networks to supplement the existing monitoring capacity of the board and the districts as specified in the guidelines developed by the state board pursuant to Section 31807 to 31810, inclusive. The district may establish a schedule of fees to be paid to the district by sources of toxic air contaminants within the district which shall not exceed 50 percent of the costs of establishing and implementing these monitoring networks. Funds for the remaining 50 percent of the costs of establishing and implementing the supplemental toxic air contaminant monitoring networks shall be provided by the state board pursuant to Section 31809. Districts shall not be required to expend any district funds to establish and implement the supplemental toxic air contaminant monitoring program, as determined by Sections 31807 to 31810, inclusive, that are in excess of the amount of state funds provided by the state board for that purpose.

**Comment.** Section 33500 continues subdivision (a) of former Health and Safety Code Section 40715 without substantive change.

#### **§ 33501. Legislative intent**

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33501. It is the intent of the Legislature that the district supplemental toxic air contaminant monitoring program shall supplement existing laws and regulations to protect human health and safety from the adverse effects of toxic air contaminants and shall not limit the existing authority of any state or local agency to identify or control toxic air contaminants.

**Comment.** Section 33501 continues subdivision (b) of former Health and Safety Code Section 40715 without change.

### Article 2. Violation Maps

#### **§ 33550. Responsibility to prepare maps**

---

33550. (a) Not later than January 1, 1990, the state board shall publish maps identifying those cities, counties, or portions thereof which have measured one or more violations of any state or federal ambient air quality standard. The state board shall produce at least one separate map for each pollutant.

(b) A district may prepare the maps required under subdivision (a) for the area within its jurisdiction. If a district chooses to prepare maps, the district shall provide the maps to the state board for review not less than four months prior to the date when the state board is required to publish the maps, and pursuant to a schedule established by the state board for any subsequent maps.

**Comment.** Section 33550 continues subdivisions (a) and (b) of former Health and Safety Code Section 40718 without change.

☞ **Staff Note.** Subdivision (a) specifies a deadline for the preparation of maps. Subdivision (b) specifies a deadline for submission of district-prepared maps to the state board. These deadline provisions may be obsolete. The staff would like to receive input on two questions: (1) Have the maps been prepared as required? (2) Do the deadlines still serve a useful purpose?

#### **§ 33551. Requirements**

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33551. The maps produced pursuant to subdivision (a) of Section 33550 shall be based upon the most recent monitoring results, using the best technological capabilities and the best scientific judgment. The maps produced pursuant to subdivision (a) of Section 33550 shall clearly identify portions of each district which have or have not measured one or more violations of any state or federal ambient air quality standard. The maps shall be representative of the actual air quality in each portion of the district.

**Comment.** Section 33551 continues subdivision (c) of former Health and Safety Code Section 40718 without substantive change.

#### **§ 33552. Criteria**

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33552. The state board shall publish its criteria for preparing the maps pursuant to this article not later than January 31, 1989. To the extent applicable, the state board shall identify any criteria relating to meteorological impact on monitored air quality data; reliability of monitored data; magnitude, frequency, and duration of periods when ambient air quality standards are exceeded; and the area within the district in which the standards are exceeded.

**Comment.** Section 33552 continues subdivision (d) of former Health and Safety Code Section 40718 without substantive change.

☞ **Staff Note.** This section specifies a deadline for the publication of map preparation criteria. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of this section been met? (2) Does the section still serve a useful purpose?

#### **§ 33553. Hearing**

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33553. (a) Any person may petition the state board to hold a public hearing on any proposed, adopted, amended, or revised map. If the petition is granted by the state board, the public hearing may be held at a regularly scheduled public hearing in Sacramento. Notice of the time and place of any hearing shall be given not less than 30 days prior to the hearing by publication in the district pursuant to Section 6061 of the Government Code. If a district includes portions of more than one county, the notice shall be published in each county not less than 30 days prior to the date of the hearing.

(b) The notice shall include a description of the map proposed to be adopted, amended, or repealed and a summary description of the effect of the proposal.

**Comment.** Section 33553 continues subdivision (e) of former Health and Safety Code Section 40718 without substantive change.

#### **§ 33554. Annual review**

---

33554. The state board shall review annually, and as appropriate revise, the maps required by this article, using the criteria developed pursuant to Section 33551.

**Comment.** Section 33554 continues subdivision (f) of former Health and Safety Code Section 40718 without substantive change.

**§ 33555. Effect of article**

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33555. Nothing in this article is intended to prevent a district board from enacting and enforcing rules or regulations designed to prevent interference with or maintenance of state and federal air quality standards, or to prevent significant deterioration of air quality in any area of the district.

**Comment.** Section 33555 continues subdivision (g) of former Health and Safety Code Section 40718 without substantive change.

TITLE 3. TYPES OF DISTRICTS AND COUNCILS

CHAPTER 1. COUNTY AIR POLLUTION CONTROL DISTRICTS

Article 1. General Provisions

**§ 33600. County districts**

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33600. (a) There is continued in existence and shall be, in every county, a county district, unless the entire county is included within the bay district, the Mojave Desert district, the south coast district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district.

(b) If only a part of the county is included within the bay district, the south coast district, the Mojave Desert district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district, there is in that part of the county not included within any of those districts a county district, for which different air quality rules and regulations may be required.

**Comment.** Section 33600 continues former Health and Safety Code Section 40002 without change. The San Joaquin Valley Air Quality Management District will be created if the San Joaquin Valley Unified Air Pollution Control District ceases to exist. See 1994 Cal. Stat. ch. 915, § 5(d).

**§ 33601. Appropriation of funds**

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33601. (a) The board of supervisors of a county in which a county district is functioning may appropriate funds to the county district, which funds shall be deposited in the treasury of the county district.

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

**Comment.** Section 33601 continues subdivision (a) of former Health and Safety Code Section 40101 without change.

**§ 33602. Contract with county**

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33602. A county district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with the county in which the county district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those facilities and services that the county provided to the county district prior to July 1, 1994.

**Comment.** Section 33602 continues subdivision (b) of former Health and Safety Code Section 40101 without change.

**§ 33603. Inclusion in other district**

---

33603. A county district which is included entirely within another district created by special law, or pursuant to Chapter 3 (commencing with Section 34000), shall cease to function and exercise its powers upon the date the other district commences to function and exercise its powers.

**Comment.** Section 33603 continues former Health and Safety Code Section 40102 without substantive change.

**§ 33604. Funds, property, and obligations**

---

33604. (a) When a county district ceases to function and exercise its powers because it is included entirely within a regional district created pursuant to Chapter 3 (commencing with Section 34000), the regional district shall succeed to all the funds, property, and obligations of the county district.

(b) Where the county district is included within two or more 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.

**Comment.** Section 33604 continues former Health and Safety Code Section 40103 without change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 33605. Delegation of authority**

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33605. Notwithstanding any other provision of law, a county may delegate air pollution rulemaking and enforcement duties to a duly created joint powers authority established for air pollution control purposes of which the county is a member.

**Comment.** Section 33605 continues former Health and Safety Code Section 40104 without change.

Article 2. Governing Board

**§ 33650. District board**

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33650. Except as provided in Sections 33651 to 33653, inclusive, a county board of supervisors shall be ex officio the county district board of the county.

**Comment.** Section 33650 continues former Health and Safety Code Section 40100 without substantive change.

**§ 33651. Membership**

---

33651. (a) The membership of the governing board of each county district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. The members of the governing board who are county supervisors shall be selected by the county.

**Comment.** Section 33651 continues subdivisions (a) to (d) of former Health and Safety Code Section 40100.5 without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

#### **§ 33652. Alternative membership**

---

33652. If a district fails to comply with subdivisions (a) and (b) of Section 33651, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(c) The number of those members shall be determined as provided in subdivision (b) of Section 33651 and the members shall be selected pursuant to subdivision (d) of Section 33651.

(d) For purposes of subdivisions (a) and (b), if any number which is not a whole number results from the application of the term “one-third,” “one-half,” or “two-thirds,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 33652 continues subdivision (f) of former Health and Safety Code Section 40100.5 without substantive change.

#### **§ 33653. Application of Sections 33651 and 33652 by population**

---

33653. Sections 33651 and 33652 do not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

**Comment.** Section 33653 continues subdivision (e) of former Health and Safety Code Section 40100.5 without substantive change.

#### **§ 33654. Application of Sections 33651 and 33652 by city consent**

---

33654. (a) Sections 33651 and 33652 shall not apply to a county district if each city in the county consents, by the adoption of an ordinance or resolution, to the exclusion of the county district from the requirements of Sections 33651 and 33652.

(b) Within 60 days from the date of the adoption of an ordinance or resolution by all cities in the county to exclude the county district from the requirements of Sections 33651 and 33652, if requested by a majority of the cities in the county, the county district shall establish an advisory committee consisting of a mayor, or a city council member, from each city in the county. The members shall be selected by the city selection committee.

(c) Subdivision (a) shall become inapplicable, and Sections 33651 and 33652 shall apply, if, at any time after the condition prescribed in subdivision (a) has been met, a majority of the cities which contain a majority of the population in the incorporated areas of

the county, as established by the most recent census data, have adopted resolutions requesting the application of Sections 33651 and 33652.

**Comment.** Section 33654 continues former Health and Safety Code Section 40100.7 without substantive change.

### Article 3. Officers and Employees

#### **§ 33700. Ex officio officers and employees of district**

---

33700. (a) All county officers and employees shall be ex officio officers and employees, respectively, of the county district in the county by which they are employed.

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

**Comment.** Section 33700 continues former Health and Safety Code Section 40120 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 33701. Civil service compensation**

---

33701. (a) In fixing compensation to be paid to a person subject to the civil service provisions of this article, the county district board shall provide a salary or wage equal to the salary or wage paid to a county employee for the same quality of service.

(b) This section shall be operative only in a county which is operating under a freeholders' charter which requires that, in the fixing of salaries or wages for persons employed by the county subject to the civil service system of the county, the board of supervisors shall provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered by private persons under similar employment in case such prevailing salary or wage can be ascertained.

**Comment.** Section 33701 continues former Health and Safety Code Section 40121 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 33702. Retirement benefits**

---

33702. (a) All officers and employees of a county district are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3 of the Government Code) to the same extent as employees of the county.

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

**Comment.** Section 33702 continues former Health and Safety Code Section 40122 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 33703. Credit for prior service**

---

33703. If any person is employed by a county district after certification without examination by the civil service commission or similar body because of the person's employment in a position of similar duties by the county or by a city within the county district, the time 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 the person's retirement benefits and salary.

**Comment.** Section 33703 continues former Health and Safety Code Section 40123 without substantive change.

**§ 33704. Appointment powers**

---

33704. 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 33706.

**Comment.** Section 33704 continues former Health and Safety Code Section 40124 without substantive change.

**§ 33705. Promotional examinations**

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33705. 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.

**Comment.** Section 33705 continues former Health and Safety Code Section 40125 without change.

**§ 33706. Certification of eligibility without examination**

---

33706. 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.

**Comment.** Section 33706 continues former Health and Safety Code Section 40126 without change.

Article 4. District Budget Adoption

**§ 33750. Legislative findings**

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33750. 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.

**Comment.** Section 33750 continues former Health and Safety Code Section 40130 without change.

**§ 33751. Budget adoption requirements**

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33751. (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 5 (commencing with Section 36000) of Chapter 5 of Title 4.

**Comment.** Section 33751 continues former Health and Safety Code Section 40131 without substantive change.

CHAPTER 2. UNIFIED AIR POLLUTION CONTROL DISTRICTS

Article 1. General Provisions

**§ 33800. Merger of contiguous districts**

---

33800. 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.

**Comment.** Section 33800 continues former Health and Safety Code Section 40150 without change.

**§ 33801. Agreement to form district**

---

33801. 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.

**Comment.** Section 33801 continues former Health and Safety Code Section 40151 without change.

**§ 33802. Boundaries**

---

33802. 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.

**Comment.** Section 33802 continues former Health and Safety Code Section 40155 without change.

**§ 33803. Zones**

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33803. The unified district board may designate zones within the unified district.

**Comment.** Section 33803 continues former Health and Safety Code Section 40156 without change.

**§ 33804. Appropriation of funds**

---

33804. 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 33801.

**Comment.** Section 33804 continues subdivision (a) of former Health and Safety Code Section 40158 without substantive change.

**§ 33805. Contracting authority**

---

33805. 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.

**Comment.** Section 33805 continues subdivision (b) of former Health and Safety Code Section 40158 without change.

**§ 33806. Appropriations**

---

33806. (a) All appropriations made pursuant to Section 33804 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.

**Comment.** Section 33806 continues former Health and Safety Code Section 40159 without substantive change.

**§ 33807. Effect of inclusion in regional district**

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33807. (a) When a unified district ceases to function and exercise its powers because it is included entirely within a regional district created pursuant to Chapter 3 (commencing with Section 34000), the regional district shall succeed to all the funds, property, and obligations of the unified district.

(b) 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.

**Comment.** Section 33807 continues former Health and Safety Code Section 40161 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 33808. San Joaquin Valley district**

---

33808. Funding of the San Joaquin Valley Unified Air Pollution Control District, or, if the unified district ceases to exist, of the San Joaquin Valley Air Quality Management District if created pursuant to Section 5 of Chapter 915 of the Statutes of 1994, 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.

**Comment.** Section 33808 continues former Health and Safety Code Section 40162 without substantive change. The obsolete reference to former Health and Safety Code Section 41101 is replaced with a reference to Section 5 of Chapter 915 of the Statutes of 1994, which provides for the creation of the San Joaquin Valley Air Quality Management District if the San Joaquin Valley Unified Air Pollution Control District ceases to exist.

☞ **Staff Note.** Section 41101 was repealed in 1994. See 1994 Cal. Stat. ch. 915, § 4. The act that repealed Section 41101 provides for the creation of the San Joaquin Valley Air Quality Management District if the San Joaquin Valley Unified Air Pollution Control District ever ceases to exist. See *id.*, § 5. Substituting a reference to 1994 Cal. Stat. ch 915, § 5 seems to continue the substance of Section 40162 without substantive change.

## Article 2. Governing Board

### § 33850. Composition of board

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33850. (a) The membership of the governing board of each unified district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by a majority of the cities in the district. The members of the governing board who are county supervisors shall be selected by a majority of the counties in the district.

**Comment.** Section 33850 continues subdivisions (a) to (d) of former Health and Safety Code Section 40152 without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

### § 33851. Alternative composition

---

33851. If a district fails to comply with subdivisions (a) and (b) of Section 33850, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total district population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 33850 and the members shall be selected pursuant to subdivision (d) of Section 33850.

(e) For purposes of subdivisions (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 33851 continues subdivision (e) of former Health and Safety Code Section 40152 without substantive change.

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**§ 33852. Application of Sections 33850 and 33851 by inclusion of governing bodies**

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33852. Section 33850 and 33851 do not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

**Comment.** Section 33852 continues subdivision (f) of former Health and Safety Code Section 40152 without substantive change.

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**§ 33853. Application of Sections 33850 and 33851 by city consent**

---

33853. (a) Section 33850 and 33851 do 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 Sections 33850 and 33851.

(b) 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 Sections 33850 and 33851, 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.

(c) Subdivision (a) shall become inapplicable, and Sections 33850 and 33851 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 Sections 33850 and 33851.

**Comment.** Section 33853 continues former Health and Safety Code Section 40152.5 without substantive change.

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**§ 33854. Compensation**

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33854. 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.

**Comment.** Section 33854 continues former Health and Safety Code Section 40154 without change.

### Article 3. Officers and Employees

#### **§ 33900. Ex officio officers and employees**

---

33900. 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.

**Comment.** Section 33900 continues former Health and Safety Code Section 40157 without change.

#### **§ 33901. Treasurer**

---

33901. By the agreement ratified pursuant to Section 33801 or by resolution, a county treasurer of a member county shall be designated and shall act as the unified district treasurer.

**Comment.** Section 33901 continues former Health and Safety Code Section 40160 without substantive change.

## CHAPTER 3. REGIONAL AIR POLLUTION CONTROL DISTRICTS

### Article 1. Creation of Regional Districts

#### **§ 34000. Public hearing**

---

34000. (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.

**Comment.** Section 34000 continues former Health and Safety Code Section 40300 without change.

#### **§ 34001. Notice of hearing**

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34001. 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.

**Comment.** Section 34001 continues former Health and Safety Code Section 40301 without change.

#### **§ 34002. Resolution**

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34002. 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.

**Comment.** Section 34002 continues former Health and Safety Code Section 40302 without change.

**§ 34003. Filing of resolution**

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34003. Upon adoption of a resolution pursuant to Section 34002, the board of supervisors shall file a certified copy of the resolution with the state board.

**Comment.** Section 34003 continues former Health and Safety Code Section 40303 without substantive change.

**§ 34004. Commencement of operations**

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34004. 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.

**Comment.** Section 34004 continues former Health and Safety Code Section 40304 without change.

Article 2. Governing Board

**§ 34050. District board**

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34050. A regional district board is the governing body of the regional district and shall exercise all the powers of the regional district.

**Comment.** Section 34050 continues former Health and Safety Code Section 40320 without change.

**§ 34051. Agreement on composition of board**

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34051. 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.

**Comment.** Section 34051 continues former Health and Safety Code Section 40321 without change.

**§ 34052. Nature of agreement**

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34052. (a) The agreement entered into, pursuant to Section 34051, shall provide one of the following alternatives:

(1) 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.

(2) 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.

(3) A combination of paragraphs (1) and (2).

(b) The agreement shall also provide a procedure for its modification or termination.

**Comment.** Section 34052 continues former Health and Safety Code Section 40322 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions, and the former subordinate subdivisions numbered as paragraphs.

**§ 34053. Composition of board**

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34053. (a) Notwithstanding any other provision of this chapter, 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.

**Comment.** Section 34053 continues subdivisions (a) to (d) of former Health and Safety Code Section 40322.5 without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

#### **§ 34054. Alternative composition**

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34054. If a district fails to comply with subdivisions (a) and (b) of Section 34053, the membership of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population of the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population of the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 34053 and the members shall be selected pursuant to subdivision (d) of Section 34053.

(e) For purposes of subdivisions (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 34054 continues subdivision (e) of former Health and Safety Code Section 40322.5 without substantive change.

#### **§ 34055. Application of Sections 34053 and 34054**

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34055. Sections 34053 and 34054 do not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

**Comment.** Section 34055 continues subdivision (f) of former Health and Safety Code Section 40322.5 without substantive change.

**§ 34056. Terms**

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34056. (a) Members of a newly created regional district board shall serve terms which shall expire on the first day of June of the third year following the year in which they are appointed.

(b) Thereafter, each member appointed by the board of supervisors shall hold office for four years and until the appointment and qualification of the member's successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of the member's successor.

**Comment.** Section 34056 continues former Health and Safety Code Section 40323 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34057. Vacancy**

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34057. Any vacancy on a regional district board shall be filled by appointment in the same manner as the vacating member was appointed.

**Comment.** Section 34057 continues the first paragraph of former Health and Safety Code Section 40324 without substantive change.

**§ 34058. Removal**

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34058. Any member of a regional district board may be removed at any time in the same manner as the member was appointed. If four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

**Comment.** Section 34058 continues the second paragraph of former Health and Safety Code Section 40324 without substantive change.

**§ 34059. Recall**

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34059. If any member of a regional district board is recalled from his or her office as a supervisor, mayor, or city council member, pursuant to Division 11 (commencing with Section 11000) of the Elections Code, his or her office as member of the regional district board shall be vacant.

**Comment.** Section 34059 continues former Health and Safety Code Section 40325 without change.

**§ 34060. Effect of loss of local office**

---

34060. No supervisor, mayor, or city councilman shall hold office on a regional district board for a period of more than three months after ceasing to hold the office of supervisor, mayor, or city councilman, respectively, and that person's membership on the regional district board shall thereafter be considered vacant, except that any mayor who continues to hold office as a city councilman, or any city councilman who continues to hold office as a mayor, shall not be considered to have ceased to hold office under this section.

**Comment.** Section 34060 continues former Health and Safety Code Section 40326 without substantive change.

**§ 34061. Quorum**

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34061. A majority of the members, or the members with a majority of the voting weight, of a regional district board constitutes a quorum for the transaction of business and may act for the regional district board.

**Comment.** Section 34061 continues former Health and Safety Code Section 40327 without change.

**§ 34062. Compensation**

---

34062. Each member of a regional district board shall receive the actual and necessary expenses incurred by the member in the performance of the member's 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.

**Comment.** Section 34062 continues former Health and Safety Code Section 40328 without substantive change.

Article 3. Officers and Employees

**§ 34100. Executive secretary**

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34100. 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.

**Comment.** Section 34100 continues former Health and Safety Code Section 40329 without change.

**§ 34101. Civil service**

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34101. 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.

**Comment.** Section 34101 continues former Health and Safety Code Section 40330 without change.

Article 4. City Selection Committee

**§ 34150. Appointments to board**

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34150. 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 34052.

**Comment.** Section 34150 continues former Health and Safety Code Section 40310 without substantive change.

**§ 34151. Composition of committee**

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34151. 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.

**Comment.** Section 34151 continues former Health and Safety Code Section 40311 without change.

#### **§ 34152. Meetings**

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34152. 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 34052.

**Comment.** Section 34152 continues former Health and Safety Code Section 40312 without substantive change.

#### **§ 34153. Notice of appointments**

---

34153. 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.

**Comment.** Section 34153 continues former Health and Safety Code Section 40313 without change.

#### **§ 34154. Expenses**

---

34154. Members of a city selection committee may be allowed their actual expenses incurred in the discharge of their duties pursuant to this article.

**Comment.** Section 34154 continues former Health and Safety Code Section 40314 without change.

### Article 5. Advisory Council

#### **§ 34200. "Council"**

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34200. As used in this article, "council" means an air pollution control advisory council appointed pursuant to Section 34201.

**Comment.** Section 34200 continues former Health and Safety Code Section 40360 without substantive change.

#### **§ 34201. Appointment by board**

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34201. 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.

**Comment.** Section 34201 continues former Health and Safety Code Section 40361 without change.

#### **§ 34202. Composition of council**

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34202. 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.

**Comment.** Section 34202 continues former Health and Safety Code Section 40362 without change.

### **§ 34203. Compensation**

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34203. Council members shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.

**Comment.** Section 34203 continues former Health and Safety Code Section 40363 without change.

### **§ 34204. Officers**

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34204. The council shall select a chairman and vice chairman and such other officers as it deems necessary.

**Comment.** Section 34204 continues former Health and Safety Code Section 40364 without change.

### **§ 34205. Meetings**

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34205. The council shall meet as frequently as the regional district board or the council deem necessary.

**Comment.** Section 34205 continues former Health and Safety Code Section 40365 without change.

## Article 6. Financial Provisions

### **§ 34250. Authority to borrow**

---

34250. 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.

**Comment.** Section 34250 continues former Health and Safety Code Section 40370 without change.

### **§ 34251. Financial requirements**

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34251. (a) 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.

(b) 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.

**Comment.** Section 34251 continues former Health and Safety Code Section 40371 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

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**§ 34252. County apportionment**

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34252. (a) 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.

(b) Each board of supervisors shall levy an ad valorem tax on the taxable property, but not including intangible personal property, within the county, or that portion thereof, included within the regional district sufficient to secure the amount so apportioned to it. 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.

**Comment.** Section 34252 continues former Health and Safety Code Section 40372 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

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**§ 34253. Tax lien**

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34253. Taxes levied by a board of supervisors for the benefit of a regional district shall be a lien upon all property within 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.

**Comment.** Section 34253 continues former Health and Safety Code Section 40373 without change.

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**§ 34254. Loans by county to district**

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34254. (a) At any time prior to the first receipt by a regional district of revenues from taxation, the counties within the regional district may loan any available money to the regional district for purposes of organization and operation, and such expenditures shall constitute a proper expenditure of county funds.

(b) The regional district board shall add the sums of money so borrowed from the counties to the first amount apportioned by the regional district board pursuant to Section 34251, and shall repay the counties for all money borrowed from the first revenues received from taxation.

**Comment.** Section 34254 continues subdivision (a) of former Health and Safety Code Section 40374 without substantive change.

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**§ 34255. County facilities and services**

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34255. A regional district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with a county or counties in which the regional district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those services that the county or counties provided to the regional district prior to July 1, 1994.

**Comment.** Section 34255 continues subdivision (b) of former Health and Safety Code Section 40374 without change.

**§ 34256. Payments into district treasury**

---

34256. The treasurers of the counties included, in whole or in part, within a regional district shall pay into the regional district treasury all funds held by them to the credit of the regional district.

**Comment.** Section 34256 continues former Health and Safety Code Section 40375 without change.

**§ 34257. District treasurer**

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34257. 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.

**Comment.** Section 34257 continues former Health and Safety Code Section 40376 without change.

**§ 34258. Compliance with budget and tax levy law**

---

34258. 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.

**Comment.** Section 34258 continues former Health and Safety Code Section 40377 without change.

Article 7. Withdrawal of County From Regional District

**§ 34300. Resolution to withdraw**

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34300. (a) 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.

(b) 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.

**Comment.** Section 34300 continues former Health and Safety Code Section 40390 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34301. Effect of withdrawal**

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34301. (a) 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.

(b) The regional district shall continue to function in a manner not inconsistent with the provisions of this division.

**Comment.** Section 34301 continues former Health and Safety Code Section 40391 without change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34302. Notice of intent to withdraw**

---

34302. 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.

**Comment.** Section 34302 continues former Health and Safety Code Section 40392 without change.

## CHAPTER 4. AIR QUALITY MANAGEMENT DISTRICTS

### § 34400. Composition of board

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34400. (a) Notwithstanding any other provision of law, the membership of the governing board of an air quality management district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

**Comment.** Section 34400 continues subdivisions (a) to (d) of former Health and Safety Code Section 40704.5 without substantive change. The reference in subdivision (a) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

### § 34401. Alternate composition

---

34401. If a district fails to comply with subdivisions (a) and (b) of Section 34400, the composition of the governing board shall be determined as follows:

(a) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(b) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(c) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members and one-half shall be county supervisors.

(d) The number of those members shall be determined as provided in subdivision (b) of Section 34400 and the members shall be selected pursuant to subdivision (d) of Section 34400.

(e) For purposes of subdivision (a) to (c), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the

nearest integer, and the number of mayors or city council members decreased to the nearest integer.

**Comment.** Section 34401 continues subdivision (e) of former Health and Safety Code Section 40704.5 without substantive change.

**§ 34402. Application of Sections 34400 and 34401**

---

34402. Sections 34400 and 34401 do not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

**Comment.** Section 34402 continues subdivision (f) of former Health and Safety Code Section 40704.5 without substantive change.

CHAPTER 5. BASINWIDE AIR POLLUTION CONTROL COUNCILS

**§ 34500. Existence and composition**

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34500. (a) 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.

(b) 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.

(c) 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.

**Comment.** Section 34500 continues former Health and Safety Code Section 40900 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

TITLE 4. SPECIFIC DISTRICTS

CHAPTER 1. ANTELOPE VALLEY AIR POLLUTION CONTROL DISTRICT

**§ 34600. Antelope Valley air pollution control district**

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34600. (a) Notwithstanding Section 35804 or any other provision of this part, that portion of the Antelope Valley which is located in northern Los Angeles County shall not be within the south coast district. That territory shall constitute the territory of the Antelope Valley Air Pollution Control District, which is hereby created.

(b) The territory of the Antelope Valley Air Pollution Control District has the following boundaries: The San Bernardino County line to the east, the Kern County line to the north, the San Gabriel Mountains to the south, and the Sierra Nevada Mountains to the west. The south and west boundaries shall coincide with the boundaries of the Southeast Desert Air Basin, as determined in regulations of the state board.

(c) The Antelope Valley Air Pollution Control District shall be governed by a district board consisting of seven members, as follows:

(1) Two members of the City Council of the City of Lancaster appointed by the city council.

(2) Two members of the City Council of the City of Palmdale appointed by the city council.

(3) Two persons appointed by the member of the Board of Supervisors of the County of Los Angeles who represents a majority of the population of the Antelope Valley Air Pollution Control District, one of whom may be that supervisor.

(4) A public member who shall be appointed by the members who have been appointed pursuant to paragraphs (1) to (3), inclusive.

(d) Except as otherwise provided in this section, the Antelope Valley Air Pollution Control District is a county district.

(e) The rules and regulations of the south coast district shall remain in effect in the Antelope Valley Air Pollution Control District until the Antelope Valley Air Pollution Control District board adopts new rules and regulations which supersede them.

(f) This section shall become operative on July 1, 1997.

**Comment.** Section 34600 continues former Health and Safety Code Section 40106 without substantive change. The reference in subdivision (e) to the date after which the rules and regulations of the south coast district apply to the Antelope Valley Air Pollution Control District unless superseded (July 1, 1997) is obsolete and has not been continued.

☞ **Staff Note.** Apparently, the Antelope Valley Air Pollution Control District lies entirely within Los Angeles County and is not part of a regional, unified, or air quality management district. Therefore, pursuant to Health and Safety Code Section 40002(b) (proposed Section 33600(b), the Antelope Valley District is a county district. This explains the placement of this section in this chapter. It is currently in Chapter 2 (commencing with Section 40100) of Part 3 of Division 26 of the Health and Safety Code (containing provisions that are generally applicable to county districts).

## CHAPTER 2. BAY AREA AIR QUALITY MANAGEMENT DISTRICT

### Article 1. General Provisions

#### **§ 34700. Bay Area Air Quality Management District**

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34700. A district, which is called the Bay Area Air Quality Management District, which was formerly known as the Bay Area Air Pollution Control District, is hereby continued in existence within the boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara and those portions of the Counties of Solano and Sonoma within the boundaries of the Bay Area Air Pollution Control District as it existed on January 1, 1976. Any reference to the Bay Area Air Pollution Control District shall be deemed to be a reference to the Bay Area Air Quality Management District.

**Comment.** Section 34700 continues former Health and Safety Code Section 40200 without change.

#### **§ 34701. Authority to continue business and exercise powers**

---

34701. The bay district shall continue to transact business and exercise its powers under this division in the counties, and portions of counties, specified in Section 34700.

**Comment.** Section 34701 continues former Health and Safety Code Section 40201 without substantive change.

#### **§ 34702. Special regulation zones**

---

34702. The bay district board may establish, within the bay district, zones wherein special regulations are warranted. In establishing 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.

**Comment.** Section 34702 continues former Health and Safety Code Section 40230 without change.

**§ 34703. Tax formula zones**

---

34703. The bay district board may establish, within the bay district, zones wherein differing tax formulas may be applied. In establishing 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.

**Comment.** Section 34703 continues former Health and Safety Code Section 40231 without change.

**§ 34704. Compliance with Section 32301**

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34704. In adopting any regulation, the bay district board shall comply with Section 32301.

**Comment.** Section 34704 continues former Health and Safety Code Section 40234 without change.

Article 2. Governing Body

**§ 34750. Bay district board**

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34750. The bay district board is the governing body of the bay district and shall exercise all the powers of the bay district.

**Comment.** Section 34750 continues former Health and Safety Code Section 40220 without change.

**§ 34751. Board of directors**

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34751. The bay district board shall be a board of directors consisting of members appointed pursuant to Section 34753 from each county included, in whole or in part, within the district on the basis of the population of that portion of the county, as determined by the latest estimate prepared by the Population Research Unit of the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code, included within the district.

**Comment.** Section 34751 continues former Health and Safety Code Section 40220.5 without substantive change.

**§ 34752. Appointments by counties**

---

34752. A county with a population of 300,000 or less shall appoint one member of the bay district board; a county with a population of 750,000 or less, but more than 300,000, shall appoint two members of the bay district board; a county with a population of 1,000,000 or less, but more than 750,000, shall appoint three members of the bay district board; and a county with a population of more than 1,000,000 shall appoint four members of the bay district board.

**Comment.** Section 34752 continues former Health and Safety Code Section 40221 without change.

**§ 34753. Composition**

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34753. (a) The members of the bay district board shall be appointed as follows:

(1) For a county entitled to appoint one member of the bay district board, the board of supervisors shall appoint either a member of the board of supervisors or a person from a list submitted to the board of supervisors by the city selection committee of that county.

(2) For a county entitled to appoint two members of the bay district board, the city selection committee of that county shall appoint one member and the board of supervisors shall appoint the other member, which member may either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee.

(3) For a county entitled to appoint three members of the bay district board, two members shall be appointed as provided in paragraph (2) and the third member shall be appointed by the board of supervisors and shall either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee of that county.

(4) For a county entitled to appoint four members of the bay district board, the city selection committee of that county shall appoint two members and the board of supervisors shall appoint the other two members, either one or both of whom may be members of the board of supervisors or persons on the list submitted to the board of supervisors by the city selection committee.

(b) Any member of the bay district board appointed, and any person named on the list submitted to the board of supervisors, by the city selection committee shall be either a mayor or a city councilman of a city in that portion of the county included within the district.

**Comment.** Section 34753 continues former Health and Safety Code Section 40221.5 without change.

**§ 34754. Terms**

---

34754. Each member appointed by the board of supervisors shall hold office for a term of four years and until the appointment and qualification of the member's successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of the member's successor.

**Comment.** Section 34754 continues former Health and Safety Code Section 40222 without substantive change.

**§ 34755. Vacancy**

---

34755. Any vacancy on the bay district board shall be filled by appointment in the same manner as the vacating member was appointed.

**Comment.** Section 34755 continues the first paragraph of former Health and Safety Code Section 40223 without substantive change.

**§ 34756. Removal**

---

34756. Any member of the bay district board may be removed at any time in the same manner as the member was appointed. If four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

**Comment.** Section 34756 continues the second paragraph of former Health and Safety Code Section 40223 without substantive change.

**§ 34757. Recall from local office**

---

34757. If any member of the bay district board is recalled from his or her office as a supervisor, mayor, or city council member, pursuant to Division 11 (commencing with Section 11000) of the Elections Code, his or her office as member of the bay district board shall be vacant.

**Comment.** Section 34757 continues former Health and Safety Code Section 40224 without change.

**§ 34758. Loss of local office**

---

34758. 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 that person's 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.

**Comment.** Section 34758 continues former Health and Safety Code Section 40225 without change.

**§ 34759. Quorum**

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34759. 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.

**Comment.** Section 34759 continues former Health and Safety Code Section 40226 without change.

**§ 34760. Compensation**

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34760. 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.

**Comment.** Section 34760 continues former Health and Safety Code Section 40227 without change.

Article 3. Officers and Employees

**§ 34800. Executive secretary**

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34800. 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.

**Comment.** Section 34800 continues former Health and Safety Code Section 40228 without change.

**§ 34801. Civil service**

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34801. 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.

**Comment.** Section 34801 continues former Health and Safety Code Section 40229 without change.

Article 5. City Selection Committee

**§ 34850. Appointments to board**

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34850. The city selection committee organized in each county within the bay district pursuant to Article 11 (commencing with Section 50270), Chapter 1, Part 1, Division 1, Title 5 of the Government Code shall make the appointments to, and submit recommendations for appointments to, the bay district board as prescribed in Section 34753.

**Comment.** Section 34850 continues former Health and Safety Code Section 40210 without substantive change.

**§ 34851. Composition of committee**

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34851. Where the bay district may transact business and exercise its powers only in a portion of a county, the membership of the city selection committee of such county, for purposes of this chapter, shall consist only of the representatives from those cities within that portion of the county.

**Comment.** Section 34851 continues former Health and Safety Code Section 40211 without change.

**§ 34852. Appointments by mayor**

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34852. With regard to the city selection committee appointment to the bay district board for the City and County of San Francisco, the mayor shall make the appointment.

**Comment.** Section 34852 continues former Health and Safety Code Section 40212 without change.

**§ 34853. Compliance with Section 32301**

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34853. In adopting any regulation, the bay district board shall comply with Section 32301.

**Comment.** Section 34853 continues former Health and Safety Code Section 40234 without substantive change.

Article 4. Advisory Council

**§ 34900. "Council"**

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34900. As used in this article, "council" means the Bay Area Air Quality Management Advisory Council.

**Comment.** Section 34900 continues former Health and Safety Code Section 40260 without change.

**§ 34901. Existence continued**

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34901. There is continued in existence the Bay Area Air Quality Management Council, which was formerly known as the Bay Area Air Pollution Control Advisory Council, which council is appointed by the bay district board, to advise and consult with the bay district board and the bay district air pollution control officer in effectuating the purposes of this division. Any reference to the Bay Area Air Pollution Control Advisory Council shall be deemed to be a reference to the Bay Area Air Quality Management Council.

**Comment.** Section 34901 continues former Health and Safety Code Section 40261 without change.

**§ 34902. Membership**

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34902. (a) 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.

(b) To the extent that suitable persons cannot be found for each of the specified categories, council members may be appointed from the general public.

**Comment.** Section 34902 continues former Health and Safety Code Section 40262 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34903. Term**

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34903. Each council member shall hold office for a term of two years and until the appointment and qualification of the council member's successor.

**Comment.** Section 34903 continues former Health and Safety Code Section 40263 without change.

**§ 34904. Removal**

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34904. Any member of the council may be removed at any time by the majority vote of the bay district board.

**Comment.** Section 34904 continues former Health and Safety Code Section 40264 without change.

**§ 34905. Vacancy**

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34905. 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.

**Comment.** Section 34905 continues former Health and Safety Code Section 40265 without change.

**§ 34906. Expenses**

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34906. Council members shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.

**Comment.** Section 34906 continues former Health and Safety Code Section 40266 without change.

**§ 34907. Chairman and vice chairman**

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34907. The council shall select a chairman and vice chairman and such other officers as it deems necessary.

**Comment.** Section 34907 continues former Health and Safety Code Section 40267 without change.

**§ 34908. Meetings**

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34908. The council shall meet as frequently as the bay district board or the council deem necessary, but not less than four times a year.

**Comment.** Section 34908 continues former Health and Safety Code Section 40268 without change.

Article 6. Financial Provisions

**§ 34950. Authority to borrow**

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34950. 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.

**Comment.** Section 34950 continues former Health and Safety Code Section 40270 without change.

**§ 34951. Financial requirements**

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34951. (a) 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.

(b) 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.

(c) 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.

**Comment.** Section 34951 continues former Health and Safety Code Section 40271 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34952. Tax levy**

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34952. (a) 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.

(b) Each board of supervisors shall levy an ad valorem tax on the taxable property, but not including intangible personal property, within the county, or that portion thereof, included within the 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.

**Comment.** Section 34952 continues former Health and Safety Code Section 40272 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 34953. Tax lien**

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34953. 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.

**Comment.** Section 34953 continues former Health and Safety Code Section 40273 without change.

**§ 34954. Payments into district treasury**

---

34954. 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.

**Comment.** Section 34954 continues former Health and Safety Code Section 40274 without change.

**§ 34955. District treasurer**

---

34955. The bay district treasury shall be in the custody of the county treasurer of a county within the bay district designated by the bay district board, and that treasurer shall be the bay district treasurer.

**Comment.** Section 34955 continues former Health and Safety Code Section 40275 without change.

**§ 34956. Compliance with budget and tax levy law**

---

34956. 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.

**Comment.** Section 34956 continues former Health and Safety Code Section 40276 without change.

Article 7. Transportation Control Measures

**§ 35000. Adoption procedure**

---

35000. 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:

(a) 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.

(b) 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 subdivision (a). 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.

(c) 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 subdivision (a). 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 subdivision (a), 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 subdivision (a), or if the plan is not submitted pursuant to the schedule established under subdivision (b), the bay district shall develop and adopt a plan to control emissions from transportation sources.

(d) 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 subdivision (a), the plan for transportation control measures shall also be revised, adopted, and enforced according to the procedure established pursuant to subdivisions (a), (b), and (c).

**Comment.** Section 35000 continues subdivision (a) of former Health and Safety Code Section 40233 without substantive change.

☞ **Staff Note.** Subdivisions (a) and (b) specify deadlines for the preparation of certain materials. These deadline provisions may be obsolete. The staff would like to receive input on two questions: (1) Have these deadlines been met? (2) Do the deadline provisions still serve a useful purpose?

### **§ 35001. Delegation of functions**

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35001. (a) 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.

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

**Comment.** Section 35001 continues subdivisions (b) and (c) of former Health and Safety Code Section 40233 without substantive change.

**§ 35002. “Transportation control measures”**

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35002. For purposes of this article, “transportation control measures” means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for purposes of reducing motor vehicle emissions.

**Comment.** Section 35002 continues subdivision (d) of former Health and Safety Code Section 40233 without substantive change.

**§ 35003. Effectiveness report**

---

35003. The bay district and the commission shall report, not later than June 30, 1991, to the Legislature on the effectiveness of this article.

**Comment.** Section 35003 continues subdivision (e) of former Health and Safety Code Section 40233 without substantive change.

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

Article 8. Other Responsibilities

**§ 35050. Odor-causing substances**

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35050. Except as provided in Section 41705 of the Health and Safety Code, 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.

**Comment.** Section 35050 continues former Health and Safety Code Section 40232 without change.

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

CHAPTER 3. MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT

Article 1. General Provisions

**§ 35100. Legislative findings and declarations**

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35100. The Legislature finds and declares as follows:

(a) The Mojave Desert region has serious air pollution problems caused by the transport of air pollution from upwind districts and by the operation of growing numbers of motor

vehicles and numerous stationary sources, and atmospheric and meteorological conditions which are conducive to the formation of a variety of air pollutants.

(b) To effectively control air pollution within the region pursuant to the requirements of state and federal law, it is necessary to establish an institutional structure which reflects the demographic and political makeup of the region.

(c) To successfully achieve required improvements in air quality and the protection of existing levels of air quality within the region, there is a need for greater coordination between air quality management decisions and the land use and transportation decisions of local governments in the region.

(d) To successfully develop and implement a comprehensive program for the attainment and maintenance of state and federal ambient air quality standards, local governments in the region must be delegated additional authority and responsibility from the state, particularly with respect to reducing motor vehicle emissions and expanding the use of cleaner burning alternative fuels.

**Comment.** Section 35100 continues former Health and Safety Code Section 41200 without change.

### **§ 35101. Creation**

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35101. (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 and the County of Riverside that 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 that currently includes the area requesting inclusion and specifying the area to be included. All territory included within the Mojave Desert district shall be contiguous.

**Comment.** Section 35101 continues former Health and Safety Code Section 41210 without change.

### **§ 35102. Responsibilities**

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35102. 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.

**Comment.** Section 35102 continues former Health and Safety Code Section 41211 without change.

### **§ 35103. Commencement of operations**

---

35103. 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.

**Comment.** Section 35103 continues former Health and Safety Code Section 41212 without change.

☞ **Staff Note.** This section provides the date on which the district commenced operations. This provision may be obsolete. The staff would like to receive input on whether the section continues to serve a useful purpose.

## Article 2. Governing Body

### § 35150. Composition of board

---

35150. (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) One public member who shall be appointed by a majority of the Mojave Desert district governing board for a term of two years and who shall be a resident of an incorporated city or a supervisorial district that lies in whole or in part within the Mojave Desert district.

(4) Upon the incorporation of any new city within the boundaries of the Mojave Desert district, the city council of that city shall appoint one member of the city council to the Mojave Desert district board.

(5) If a district submits a resolution of inclusion pursuant to subdivision (c) of Section 35101, one or more members of the county board of supervisors or of a city council from the area to be included shall be appointed to the Mojave Desert district board, pursuant to agreement between the county board of supervisors or the city council, or both, and the Mojave Desert district board.

(6) At the time of the appointment of a member of the city council of a newly incorporated city to the Mojave Desert district board, as specified in paragraph (4), or upon making an agreement to appoint a member from an area included in the Mojave Desert district pursuant to paragraph (5), the Mojave Desert district board may revise the remaining membership of the Mojave Desert district board, as previously constituted, by adding or removing one or more members of the board of supervisors of a county having territory in the district, adding or removing one or more members of the city councils of previously incorporated cities within the district, or both.

(b) The city council or a board of supervisors appointing a member may appoint an alternate who shall be an elected official and who shall be a resident of an incorporated city or a supervisorial district that lies in whole or in part within the Mojave Desert district.

(c) As used in this section, “city” means any city, town, or municipal corporation incorporated under the laws of this state.

**Comment.** Section 35150 continues former Health and Safety Code Section 41220 without substantive change.

### § 35151. Chairperson

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35151. The Mojave Desert district board shall elect a chairperson every year from its membership. No member shall serve more than two consecutive terms as chairperson.

**Comment.** Section 35151 continues former Health and Safety Code Section 41221 without change.

### § 35152. Voting

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35152. Voting by the Mojave Desert district board on the adoption of all items on its agenda shall be by rollcall. Unless any board member objects, a substitute rollcall may be

used on any agenda item. For purposes of this requirement, any consent calendar is a single item.

**Comment.** Section 35152 continues former Health and Safety Code Section 41222 without change.

### Article 3. Officers and Employees

#### § 35200. Staff

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35200. (a) The Mojave Desert district board shall employ the necessary staff to carry out its powers and duties.

(b) The Mojave Desert district board shall appoint an air pollution control officer (APCO) to direct the staff, subject to the direction and policy of the Mojave Desert district board.

**Comment.** Section 35200 continues former Health and Safety Code Section 41260 without change.

#### § 35201. Transfer of employees from former district

---

35201. 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.

**Comment.** Section 35201 continues former Health and Safety Code Section 41261 without change.

☞ **Staff Note.** The first sentence of this section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this sentence has any continued usefulness.

#### § 35202. Transfer of employees from former district

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35202. 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.

**Comment.** Section 35202 continues former Health and Safety Code Section 41263 without change.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

#### § 35203. Status and benefits of transferred employees retained

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35203. 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.

**Comment.** Section 35203 continues former Health and Safety Code Section 41265 without change.

#### **§ 35204. Status of transferred employees**

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35204. 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.

**Comment.** Section 35204 continues former Health and Safety Code Section 41266 without change.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

#### **§ 35205. County retirement benefits**

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35205. All officers and employees of the Mojave Desert district, other than members of the Mojave Desert district board, are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

**Comment.** Section 35205 continues former Health and Safety Code Section 41264 without change.

#### **§ 35206. Legal counsel**

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35206. The Mojave Desert district shall appoint a legal counsel who is admitted to the practice of law in this state.

**Comment.** Section 35206 continues former Health and Safety Code Section 41262 without change.

#### **§ 35207. Professional assistance**

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35207. The Mojave Desert district may contract for any professional assistance that may be necessary or convenient for the exercise of its powers and duties.

**Comment.** Section 35207 continues former Health and Safety Code Section 41267 without change.

## Article 4. Financial Provisions

### § 35250. Schedule of fees

---

35250. The Mojave Desert district may adopt a schedule of fees, levied on permitted and other sources of air pollution to recover its costs of implementing this chapter, pursuant to Section 42311 of the Health and Safety Code and Chapter 7 (commencing with Section 44220) of Part 5 of Division 26 of the Health and Safety Code.

**Comment.** Section 35250 continues former Health and Safety Code Section 41240 without substantive change.

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

### § 35251. Financial assistance programs

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35251. Pursuant to Section 35302, the district may undertake programs which may include, but are not limited to, financial assistance to fleet operators for the purchase, conversion, or operation of low-emission motor vehicles, financial or other assistance to encourage the sale and distribution of cleaner burning fuels, and financial assistance or other incentives for the purchase and operation of ridesharing vehicles.

**Comment.** Section 35251 continues former Health and Safety Code Section 41241 without substantive change.

### § 35252. Transfer from former district

---

35252. 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.

**Comment.** Section 35252 continues former Health and Safety Code Section 41242 without change.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

### § 35253. Borrowing and indebtedness

---

35253. 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.

**Comment.** Section 35253 continues former Health and Safety Code Section 41243 without change.

### § 35254. Issuance of warrants

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35254. Upon adoption of a resolution by the Mojave Desert district board to implement the procedure to issue warrants pursuant to Sections 35255 to 35266, 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.

**Comment.** Section 35254 continues former Health and Safety Code Section 41244 without substantive change.

**§ 35255. Treasurer**

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35255. 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.

**Comment.** Section 35255 continues former Health and Safety Code Section 41245 without change.

**§ 35256. Controller**

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35256. 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.

**Comment.** Section 35256 continues former Health and Safety Code Section 41246 without change.

**§ 35257. Warrants for payment of salaries and expenses**

---

35257. 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.

**Comment.** Section 35257 continues former Health and Safety Code Section 41247 without change.

**§ 35258. Separate payroll warrants**

---

35258. 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.

**Comment.** Section 35258 continues former Health and Safety Code Section 41248 without change.

**§ 35259. Warrants for payment of claims**

---

35259. 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.

**Comment.** Section 35259 continues former Health and Safety Code Section 41249 without change.

**§ 35260. Form of warrants**

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35260. The form of the warrants shall be prescribed by the Mojave Desert district board and approved by the treasurer.

**Comment.** Section 35260 continues former Health and Safety Code Section 41250 without change.

**§ 35261. Financial reports**

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35261. 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.

**Comment.** Section 35261 continues former Health and Safety Code Section 41251 without change.

**§ 35262. Retirement data to county**

---

35262. 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.

**Comment.** Section 35262 continues former Health and Safety Code Section 41252 without change.

**§ 35263. Document retention**

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35263. All warrants, vouchers, and supporting documents shall be kept by the Mojave Desert district.

**Comment.** Section 35263 continues former Health and Safety Code Section 41253 without change.

**§ 35264. Payment of warrants**

---

35264. 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.

**Comment.** Section 35264 continues former Health and Safety Code Section 41254 without change.

**§ 35265. Official bond of officers**

---

35265. 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.

**Comment.** Section 35265 continues former Health and Safety Code Section 41255 without change.

**§ 35266. Financial data to county auditor**

---

35266. 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.

**Comment.** Section 35266 continues former Health and Safety Code Section 41256 without change.

Article 5. General Powers and Duties

**§ 35300. Rules and regulations**

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35300. (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 33250, 33251, and 33252.

(c) The rules, regulations, and resolutions of the San Bernardino County Air Pollution Control District shall remain in effect and shall be enforced by the Mojave Desert district, until superseded or amended by the Mojave Desert district board.

**Comment.** Section 35300 continues former Health and Safety Code Section 41230 without substantive change.

**§ 35301. Public hearing regarding regulations**

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35301. Notice of the time and place of a public hearing of the Mojave Desert district board to adopt, amend, or repeal any rule or regulation relating to an air quality objective shall be given not less than 30 days prior to the hearing and shall be published in each county in the Mojave Desert district in accordance with Section 6066 of the Government Code. The period of notice shall commence on the first day of publication.

**Comment.** Section 35301 continues former Health and Safety Code Section 41223 without change.

**§ 35302. Motor vehicle fleets**

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35302. (a) After a public hearing, the Mojave Desert district may adopt regulations to require operators of public and commercial fleet vehicles, when adding vehicles to, or replacing vehicles in, an existing fleet or when purchasing vehicles to form a new fleet, to purchase low-emission motor vehicles, and to require, to the maximum extent feasible or appropriate, that those vehicles be operated on a cleaner burning alternative fuel.

(b) For purposes of this section, “motor vehicle fleet” means 10 or more vehicles under common ownership or operation.

**Comment.** Section 35302 continues former Health and Safety Code Section 41231 without change.

**§ 35303. Public education, marketing, and related programs on transportation control**

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35303. The Mojave Desert district shall conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation control measures.

**Comment.** Section 35303 continues former Health and Safety Code Section 41232 without change.

**§ 35304. Regulation of indirect and areawide sources**

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35304. The Mojave Desert district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources pursuant to Section 32005.

**Comment.** Section 35304 continues former Health and Safety Code Section 41233 without substantive change.

CHAPTER 4. SACRAMENTO METROPOLITAN AIR QUALITY  
MANAGEMENT DISTRICT

Article 1. General Provisions

**§ 35400. Legislative findings and declarations**

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35400. The Legislature finds and declares as follows:

(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.

**Comment.** Section 35400 continues former Health and Safety Code Section 40950 without change.

#### **§ 35401. Creation of district**

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35401. (a) There is hereby created the Sacramento Metropolitan Air Quality Management District.

(b) The boundaries of the Sacramento district shall include all of the County of Sacramento and, pursuant to Section 35404, 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.

**Comment.** Section 35401 continues former Health and Safety Code Section 40960 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 35402. Primary responsibility for air quality**

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35402. 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.

**Comment.** Section 35402 continues former Health and Safety Code Section 40961 without change.

#### **§ 35403. Commencement of operations**

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35403. The Sacramento district shall commence operation on July 1, 1989, and on that date shall assume the authority, functions, employees, and responsibilities of the Sacramento County Air Pollution Control District.

**Comment.** Section 35403 continues former Health and Safety Code Section 40962 without change.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

#### **§ 35404. Inclusion of other counties**

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35404. (a) The Sacramento district board may, by resolution, include all or a portion of the County of Placer within the Sacramento district, upon receipt of a resolution from the board of supervisors of the county requesting inclusion and specifying the portion of the county to be included in the Sacramento district. All territory included within the Sacramento district shall be contiguous.

(b) The inclusion of any county, or portion thereof, in the Sacramento district shall become effective on the July 1 immediately following the adoption of the resolution of inclusion by the Sacramento district board.

(c) A copy of the resolution of inclusion shall be transmitted by the Sacramento district board to the board of supervisors and to the state board.

**Comment.** Section 35404 continues former Health and Safety Code Section 40963 without change.

**§ 35405. Effect of chapter on local land use authority**

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35405. This chapter does not constitute an infringement on the existing authority of local governments to plan or control land use, and nothing in this chapter provides or transfers new authority over such land use to the Sacramento district.

**Comment.** Section 35405 continues former Health and Safety Code Section 41015 without change.

**§ 35406. Effect of chapter on City of Sacramento**

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35406. This chapter does not limit or restrict any authority of the City of Sacramento to adopt and implement any transportation system improvement program or air quality improvement program. The Sacramento district and the City of Sacramento may enter into a contract to implement any such program.

**Comment.** Section 35406 continues former Health and Safety Code Section 41016 without change.

Article 2. Definitions

**§ 35450. Application of definitions**

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35450. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 35450 restates the substance of the introductory clauses of former Health and Safety Code Sections 40951-40953.

**§ 35455. “Best available control technology”**

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35455. “Best available control technology” has the meaning provided in Section 35855.

**Comment.** Section 35455 continues former Health and Safety Code Section 40951 without substantive change.

**§ 35460. “Best available retrofit control technology”**

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35460. “Best available retrofit control technology” has the meaning provided in Section 35860.

**Comment.** Section 35460 continues former Health and Safety Code Section 40952 without substantive change.

**§ 35465. “Strategy”**

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35465. “Strategy” means the Sacramento district air quality improvement strategy.

**Comment.** Section 35465 continues former Health and Safety Code Section 40953 without substantive change.

## Article 3. Governing Body

### § 35500. Composition of board

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35500. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 35404, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

(c)(1) The membership of the Sacramento district board shall include (A) one or more members who are mayors or city council members, or both, and (B) one or more members who are county supervisors.

(2) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(d) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(e) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the 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.

**Comment.** Section 35500 continues former Health and Safety Code Section 40980 without substantive change. The reference in paragraph (1) of subdivision (c) to the date on which the membership requirement began (July 1, 1994) is obsolete and has not been continued.

### § 35501. Chairperson

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35501. 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.

**Comment.** Section 35501 continues former Health and Safety Code Section 40981 without change.

## Article 4. Sacramento Metropolitan Air Quality Coordinating Council

### § 35550. Establishment of council

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35550. 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.

**Comment.** Section 35550 continues former Health and Safety Code Section 41040 without change.

## Article 5. Financial Provisions

### § 35600. Fees on air pollution sources

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35600. 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.

**Comment.** Section 35600 continues subdivision (a) of former Health and Safety Code Section 41080 without change.

### § 35601. Contracts for county facilities and services

---

35601. 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.

**Comment.** Section 35601 continues subdivision (b) of former Health and Safety Code Section 41080 without change.

### § 35602. Surcharge on motor vehicle registration fees

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35602. (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 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.

**Comment.** Section 35602 continues former Health and Safety Code Section 41081 without substantive change. The provisions, in subdivision (b), governing surcharges before December 31, 1990, are obsolete and have not been continued.

**§ 35603. Financial incentive programs**

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35603. Pursuant to Section 35602, 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.

**Comment.** Section 35603 continues former Health and Safety Code Section 41082 without substantive change.

Article 6. General Powers and Duties

**§ 35650. Rules and regulations**

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35650. (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 32301.

**Comment.** Section 35650 continues former Health and Safety Code Section 41010 without substantive change.

**§ 35651. Motor vehicle fleets**

---

35651. (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.

**Comment.** Section 35651 continues former Health and Safety Code Section 41011 without change.

**§ 35652. Commute alternatives**

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35652. 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.

**Comment.** Section 35652 continues former Health and Safety Code Section 41012 without change.

**§ 35653. Indirect sources**

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35653. The Sacramento district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources.

**Comment.** Section 35653 continues former Health and Safety Code Section 41013 without change.

**§ 35654. Transportation emission control measures**

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35654. The Sacramento district may conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation emission control measures.

**Comment.** Section 35654 continues former Health and Safety Code Section 41014 without change.

Article 7. Air Quality Improvement Strategy

**§ 35700. Adoption of strategy**

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35700. 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.

**Comment.** Section 35700 continues former Health and Safety Code Section 41060 without change.

☞ **Staff Note.** This section specifies a deadline for adoption of a strategy. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

**§ 35701. Enforcement**

---

35701. The strategy shall provide for the enforcement of regulations adopted pursuant to Section 35651 or 35653 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.

**Comment.** Section 35701 continues former Health and Safety Code Section 41061 without substantive change.

**§ 35702. Cleaner fuels**

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35702. (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.

**Comment.** Section 35702 continues former Health and Safety Code Section 41062 without change.

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**§ 35703. Transportation system management**

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35703. 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.

**Comment.** Section 35703 continues former Health and Safety Code Section 41063 without change.

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**§ 35704. Contracts for analyses**

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35704. 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.

**Comment.** Section 35704 continues former Health and Safety Code Section 41064 without change.

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**§ 35705. Public education**

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35705. The strategy shall include a public education program designed to achieve effective implementation of all feasible transportation system management measures.

**Comment.** Section 35705 continues former Health and Safety Code Section 41065 without change.

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**§ 35706. Nonattainment area plans**

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35706. 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.

**Comment.** Section 35706 continues former Health and Safety Code Section 41066 without change.

## CHAPTER 5. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

### Article 1. General Provisions

#### **§ 35800. Short title**

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35800. This chapter shall be known and may be cited as the “Lewis-Presley Air Quality Management Act.”

**Comment.** Section 35800 continues former Health and Safety Code Section 40400 without change.

#### **§ 35801. Legislative findings and declaration**

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35801. 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.

**Comment.** Section 35801 continues former Health and Safety Code Section 40402 without change.

**§ 35802. Further legislative findings and declarations**

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35802. The Legislature further finds and declares that the south coast district shall take a leadership role to sponsor, coordinate, and promote projects which increase the use of clean-burning fuels in the transportation and stationary source sectors, and that it is the intent of the Legislature that the district establish voluntary programs to accelerate the utilization of clean-burning fuels within the South Coast Air Basin.

**Comment.** Section 35802 continues former Health and Safety Code Section 40404 without change.

**§ 35803. Further legislative findings and declarations**

---

35803. The Legislature further finds and declares that the south coast district, in fulfilling its directive to require the use of best available control technology for new sources, and in consideration of the state policy to promote and encourage the use of solar energy systems, shall make reasonable efforts to incorporate solar energy technology into its air quality management plan in applications where it can be shown to be cost-effective.

**Comment.** Section 35803 continues former Health and Safety Code Section 40404.5 without change.

**§ 35804. Creation**

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35804. There is hereby created the South Coast Air Quality Management District in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended.

**Comment.** Section 35804 continues former Health and Safety Code Section 40410 without change.

**§ 35805. Commencement of district operation**

---

35805. 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.

**Comment.** Section 35805 continues former Health and Safety Code Section 40416 without change.

☞ **Staff Note.** This section provides the date on which the district commenced operations. This provision may be obsolete. The staff would like to receive input on whether the section continues to serve a useful purpose.

**§ 35806. Sensitive zone**

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35806. (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.

**Comment.** Section 35806 continues former Health and Safety Code Section 40410.5 without change.

☞ **Staff Note.** Subdivision (c) specifies a deadline for adoption of regulations. Subdivision (d) specifies a deadline for the submission of a report to the Legislature. These deadlines may be obsolete. The staff would like to receive input on two questions: (1) Were the requirements met? (2) Do the deadline provisions still serve a useful purpose?

#### **§ 35807. Inclusion of Santa Barbara or Ventura Counties**

---

35807. (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.

**Comment.** Section 35807 continues former Health and Safety Code Section 40411 without change.

#### **§ 35808. District as exclusive local agency**

---

35808. 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.

**Comment.** Section 35808 continues former Health and Safety Code Section 40412 without change.

**§ 35809. Request for inclusion in district**

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35809. 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).

**Comment.** Section 35809 continues former Health and Safety Code Section 40413 without change.

**§ 35810. Effect of chapter on local land use authority**

---

35810. 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.

**Comment.** Section 35810 continues former Health and Safety Code Section 40414 without change.

**§ 35811. Power of local agency to adopt stricter controls**

---

35811. (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.

**Comment.** Section 35811 continues former Health and Safety Code Section 40449 without change.

**§ 35812. Authority of county**

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35812. Except as provided in Section 35811 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 with respect to the control of air pollution in that part of the county included within the south coast district.

**Comment.** Section 35812 continues former Health and Safety Code Section 40450 without substantive change. The reference to the date after which an included county loses air pollution control authority (February 1, 1977), is obsolete and has not been continued.

## Article 2. Definitions

### § 35850. Application of definitions

---

35850. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

**Comment.** Section 35850 restates the substance of the introductory clauses of former Health and Safety Code Sections 40405-40408.

### § 35855. “Best available control technology”

---

35855. (a) “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.

**Comment.** Section 35855 continues former Health and Safety Code Section 40405 without change.

☞ **Staff Note.** It isn’t clear whether subdivision (b) is intended as an elaboration on the meaning of “lowest achievable emission rate” as used in this section, or is intended as a more generally applicable rule of construction. The only other uses of the term in this chapter occur in subdivisions (a) and (d) of Health and Safety Code Section 40440.11, where the term is qualified as follows: “the lowest achievable emission rate pursuant to federal law.” This suggests that federal law controls the definition of the term as used in that section. The staff would appreciate input on this issue.

### § 35860. “Best available retrofit control technology”

---

35860. “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.

**Comment.** Section 35860 continues former Health and Safety Code Section 40406 without change.

### § 35865. “Electric plant”

---

35865. “Electric plant” means an electric plant as defined in Section 217 of the Public Utilities Code, whether publicly or privately owned or operated.

**Comment.** Section 35865 continues former Health and Safety Code Section 40407 without change.

### § 35870. “Electronic or computer data storage”

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35870. “Electronic or computer data storage” means paperless record retention utilizing optical, electronic, magnetic, micrographic, or photographic media or other similar

technology capable of accurately producing or reproducing data in accordance with minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

**Comment.** Section 35870 continues former Health and Safety Code Section 40407.5 without change.

**§ 35875. “Plan”**

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35875. “Plan” means the south coast district air quality management plan.

**Comment.** Section 35875 continues former Health and Safety Code Section 40408 without change.

Article 3. Governing Body

**§ 35900. Composition of Board**

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35900. The south coast district shall be governed by a district board consisting of 12 members appointed as follows:

- (a) One member appointed by the Governor, with the advice and consent of the Senate.
- (b) One member appointed by the Senate Committee on Rules.
- (c) One member appointed by the Speaker of the Assembly.
- (d) 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:
  - (1) A member of the board of supervisors of the county making the appointment.
  - (2) 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.
- (e) 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.
- (f) 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 (b) of Section 35902. The member appointed shall be either a mayor or a member of the city council of a city in the western region.
- (g) 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 subdivision (f). These cities shall organize as a city selection committee for the purposes of subdivision (b) of Section 35902. The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.

**Comment.** Section 35900 continues subdivision (a) of former Health and Safety Code Section 40420 without substantive change.

**§ 35901. Qualifications of members**

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35901. (a) 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.

(b) 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.

(c) 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.

(d) 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 (b) or shall be a public member. No such member appointed may be a locally elected official.

(e) All members shall be residents of the district.

**Comment.** Section 35901 continues subdivisions (b) to (d) and subdivisions (g) and (h) of former Health and Safety Code Section 40420 without substantive change.

**§ 35902. Appointments**

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35902. (a) 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.

(b) 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.

**Comment.** Section 35902 continues subdivisions (e) and (f) of former Health and Safety Code Section 40420 without change.

**§ 35903. Mayors' designated representatives**

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35903. 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.

**Comment.** Section 35903 continues former Health and Safety Code Section 40421.5 without change.

**§ 35904. Terms**

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35904. (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 (b) of Section 35902, 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.

**Comment.** Section 35904 continues subdivisions (a) and (b) of former Health and Safety Code Section 40422 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40422 now apply to Section 35904 of the Environment Code. See 1988 Cal. Stat. ch. 741, § 5:

For the purposes of allocating terms, pursuant to subdivision (b) of Section 40422 of the Health and Safety Code, resulting from the addition of a 12th seat to the governing board of the South Coast Air Quality Management District by the amendment to Section 40420 of the Health and Safety Code by this act, the members appointed pursuant to paragraphs (6) and (7) of subdivision (a) of Section 40420 shall classify themselves by lot so that the term of one expires January 15, 1990, and the term of the other expires January 15, 1992.

☞ **Staff Note.** Subdivision (b) governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this subdivision has any continued usefulness.

**§ 35905. Loss of local office**

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35905. Notwithstanding subdivision (a) of Section 35904, 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 section.

**Comment.** Section 35905 continues subdivision (c) of former Health and Safety Code Section 40422 without substantive change.

**§ 35906. Removal**

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35906. 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.

**Comment.** Section 35906 continues subdivision (d) of former Health and Safety Code Section 40422 without change.

**§ 35907. Meetings**

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35907. 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.

**Comment.** Section 35907 continues former Health and Safety Code Section 40423 without change.

**§ 35908. Quorum**

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35908. (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.

**Comment.** Section 35908 continues former Health and Safety Code Section 40424 without change.

**§ 35909. Voting**

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35909. 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.

**Comment.** Section 35909 continues former Health and Safety Code Section 40424.5 without change.

**§ 35910. Chairman**

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35910. 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.

**Comment.** Section 35910 continues former Health and Safety Code Section 40425 without change.

**§ 35911. Compensation**

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35911. 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.

**Comment.** Section 35911 continues former Health and Safety Code Section 40426 without change.

**§ 35912. Political Reform Act**

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35912. (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.

**Comment.** Section 35912 continues former Health and Safety Code Section 40426.5 without change.

**§ 35913. Conflict of interest**

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35913. (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 decisionmaking 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 shall become operative on July 1, 1988.

**Comment.** Section 35913 continues former Health and Safety Code Section 40426.7 without substantive change. Former subdivision (e) provided that the section only applies to persons who are employees or board members with the south coast district on or after July 1, 1988. This provision is obsolete and has not been continued.

#### **§ 35914. Offices**

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35914. 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.

**Comment.** Section 35914 continues former Health and Safety Code Section 40427 without change.

#### **§ 35915. Advisory council**

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35915. 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.

**Comment.** Section 35915 continues former Health and Safety Code Section 40428 without change.

### Article 4. Officers and Employees

#### **§ 35950. Staff**

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35950. (a) The south coast district board shall employ the necessary staff to carry out its program throughout the south coast district.

(b) The south coast district board shall appoint an executive officer to direct the staff, subject to the direction and policy of the south coast district board.

(c) The staff shall also be available to serve those portions of a county not included within the south coast district where the county is only partly included within the south coast district.

**Comment.** Section 35950 continues subdivisions (a) to (c) of former Health and Safety Code Section 40480 without change.

#### **§ 35951. Executive officer**

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35951. The executive officer shall be appointed solely on the basis of the executive officer's administrative and executive abilities and qualifications. The executive officer and

designated deputies shall serve at the pleasure of the south coast district board, and shall receive such compensation as is determined by the south coast district board.

**Comment.** Section 35951 continues former Health and Safety Code Section 40481 without substantive change.

#### **§ 35952. Delegation of duties to executive officer**

---

35952. (a) The south coast district board may delegate duties to the executive officer as it deems appropriate. The executive officer shall perform and discharge, under the direction and control of the south coast district board, the powers, duties, purposes, functions, and jurisdiction vested in the south coast district board and delegated pursuant to this section.

(b) Any power, duty, purpose, function, or jurisdiction which the south coast district board may lawfully delegate is conclusively presumed to have been delegated to the executive officer unless it is shown that the south coast district board, by affirmative vote recorded in its minutes, specifically has reserved the particular power, duty, purpose, function, or jurisdiction for its own action.

**Comment.** Section 35952 continues former Health and Safety Code Section 40482 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 35953. Legal counsel**

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35953. The south coast district shall appoint a legal counsel who is admitted to the practice of law in this state.

**Comment.** Section 35953 continues former Health and Safety Code Section 40483 without change.

#### **§ 35954. Personnel of Southern California Air Pollution Control District**

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35954. (a) In the appointment of persons to the south coast district staff, the south coast district board shall employ the personnel of the Southern California Air Pollution Control District.

(b) On February 1, 1977, all employees of the Southern California Air Pollution Control District shall be employed by the south coast district and shall be entitled to similar positions on the south coast district staff. Except as otherwise provided in this article, they shall have permanent merit system employee status and shall perform the similar duties for the south coast district as for the Southern California Air Pollution Control District.

**Comment.** Section 35954 continues former Health and Safety Code Section 40484 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

#### **§ 35955. Retirement**

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35955. All officers and employees of the south coast district, other than members of the south coast district board, are entitled to the benefits of the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3 of the Government Code).

**Comment.** Section 35955 continues former Health and Safety Code Section 40485 without change.

**§ 35956. Status of former Southern California Air Pollution Control District employees**

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35956. (a) When any person is employed by the south coast district, whose immediate prior employer was the Southern California Air Pollution Control District, for the purpose of, but not limited to, retirement benefits, salary rates, seniority, and all fringe benefits, all the person's time of employment with that district, and the person's time of employment, if any, with the county, a county district, or both, whose authority, functions, and responsibilities have been assumed by that district if 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.

(b) Upon transfer to the south coast district, employees shall retain all their accumulated sick leave, vacation, and retirement benefits.

**Comment.** Section 35956 continues former Health and Safety Code Section 40486 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 35957. Professional assistance**

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35957. 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.

**Comment.** Section 35957 continues former Health and Safety Code Section 40489 without change.

**§ 35958. Contracts with cities or counties**

---

35958. The south coast district may enter into a contract with any city or county included, in whole or in part, within the south coast district to perform air pollution control functions for the south coast district, and the city or county may perform such functions for the south coast district pursuant to the contract.

**Comment.** Section 35958 continues subdivision (d) of former Health and Safety Code Section 40480 without change.

Article 5. Financial Provisions

**§ 36000. Apportionment to counties**

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36000. (a) Upon adoption of its budget for the next fiscal year, the south coast district board shall apportion the amount that each county included within the south coast district shall pay to finance the operation of the south coast district in that fiscal year.

(b) The apportionment to a county shall, as determined by the south coast district board, be that proportion of the amount that the population of the portion of the county included within the south coast district bears to the total population of the south coast district, either as determined from the latest federal decennial census or as determined from the latest annual population estimate by the Department of Finance made pursuant to subdivision (g) of Section 13073.5 of the Government Code.

**Comment.** Section 36000 continues former Health and Safety Code Section 40520 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

**§ 36001. Increase in apportionment**

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36001. (a) Excluding any increase in apportionments due to increases in the salaries or wages and fringe benefits to the south coast district employees, the apportionment levied on a county, for the 1977-78 fiscal year, by the south coast district board shall not exceed by more than 15 percent the apportionment levied on that county by the Southern California Air Pollution Control District for the 1976-77 fiscal year.

(b) For the 1978-79 fiscal year, and each fiscal year thereafter, the percentage increase in the county apportionments may not exceed the percentage increase in the California Consumer Price Index as specified in Section 2212 of the Revenue and Taxation Code, or the percentage increase in the total county property tax revenues for the counties included, in whole or in part, within the south coast district, whichever is greater.

(c) The limitations specified in subdivisions (a) and (b) shall not apply to increases in apportionments resulting from the termination of federal or state allocations to the south coast district, if the south coast district board votes to continue the programs financed with those funds.

**Comment.** Section 36001 continues former Health and Safety Code Section 40521 without substantive change. The reference in subdivision (a) to subdivision (a) of former Health and Safety Code Section 40488 is obsolete and is not continued. Former Section 40488 was repealed in 1980. See 1980 Cal. Stat. ch. 521, § 1.

 **Staff Note.** Subdivision (a) and the first clause of the first sentence of subdivision (b) appear to be obsolete. The staff would like to receive input on whether these provisions have any continued usefulness. If subdivision (a) is to be preserved, the obsolete reference to former Health and Safety Code Section 40488 will need to be studied more carefully to determine whether elimination of the reference to that section disturbs the meaning of subdivision (a).

**§ 36002. Fee schedule for approval of air contaminant emission control plans**

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36002. The south coast district board may adopt a fee schedule for the approval of plans for the control of emissions of air contaminants, if the plans are required by a district rule or regulation, to cover the costs of review, planning, inspection, and monitoring related thereto. To the extent that provisions of the plans are enforceable against the person required to submit the plan, an annual fee may be charged to cover the costs of annual review, inspection, and monitoring related thereto. Every person required to submit a plan, including, notwithstanding Section 6103 of the Government Code, a person that is a publicly owned public utility, shall pay the fees required by the schedule. The fees may not exceed the estimated reasonable cost of planning, monitoring, and enforcing the plans for which the fee is charged. A noticed public workshop shall be held at least 30 days prior to any meeting of the south coast district board at which the levying or revision of the fees is scheduled for hearing. Supporting data on the actual or estimated costs required to provide the service for which the fee is charged shall be made available at the workshop.

**Comment.** Section 36002 continues former Health and Safety Code Section 40522 without change.

**§ 36003. Fee schedule for areawide or indirect sources of emissions**

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36003. (a) In addition to any other fees authorized by this article, the south coast district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the south coast district to recover the costs of district programs related to these sources.

(b) The south coast district shall not, however, impose any fee under this section for either of the following:

(1) Wildland vegetative management burning, as described in subdivision (c) of Section 30115.

(2) Emergency incident training necessary for the protection of the community and public safety personnel.

**Comment.** Section 36003 continues former Health and Safety Code Section 40522.5 without substantive change.

#### **§ 36004. Fee limitation**

---

36004. The total amount of fees collected by the south coast district in any fiscal year shall not exceed the amount of fees collected by the district in the 1993-94 fiscal year, except that the amount may be adjusted annually in the 1994-95 fiscal year and subsequent fiscal years to reflect any increase in the California Consumer Price Index for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations. This limitation shall not affect or limit the fees which may be imposed and collected pursuant to a state or a federal mandate imposed on or after January 1, 1994.

**Comment.** Section 36004 continues former Health and Safety Code Section 40523 without change.

#### **§ 36005. Succession to real property**

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36005. All interests in real property held in the name of the Southern California Air Pollution Control District shall become the property of the south coast district on February 1, 1977, and the south coast district shall succeed as of that date to the interest and liability of that district in any leases.

**Comment.** Section 36005 continues former Health and Safety Code Section 40524 without change.

☞ **Staff Note.** This section governs a transition that has already occurred and therefore may be obsolete. The staff would like to receive input on whether this section has any continued usefulness.

#### **§ 36006. Indebtedness**

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36006. 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.

**Comment.** Section 36006 continues former Health and Safety Code Section 40526 without change.

#### **§ 36007. Treasurer**

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36007. (a) 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.

(b) The treasurer shall keep an account of all receipts and disbursements.

**Comment.** Section 36007 continues former Health and Safety Code Section 40527 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

### **§ 36008. Controller**

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36008. 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.

**Comment.** Section 36008 continues former Health and Safety Code Section 40528 without change.

### **§ 36009. Payment of salaries and expenses**

---

36009. 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.

**Comment.** Section 36009 continues former Health and Safety Code Section 40529 without change.

☞ **Staff Note.** This section is difficult to understand. The staff believes that the following language captures its meaning:

- (a) By resolution, the south coast district board may pay the salaries and expenses of the district by either or both of the following means:
  - (1) Warrants drawn on the treasurer.
  - (2) Checks drawn on a bank.
- (b) Warrants or checks drawn pursuant to subdivision (a) shall be drawn against all south coast district funds in the treasury or bank, except funds for debt service.

The staff would like to receive input on whether the above language does capture the meaning of Section 40529, without altering its substance. If so, the staff proposes replacing the text of Section 40529 with the above language.

### **§ 36010. Separate payroll warrants or checks**

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36010. 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.

**Comment.** Section 36010 continues former Health and Safety Code Section 40530 without change.

### **§ 36011. Payroll procedure**

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36011. (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.

**Comment.** Section 36011 continues former Health and Safety Code Section 40531 without change.

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**§ 36012. Payment of claims**

36012. 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.

**Comment.** Section 36012 continues former Health and Safety Code Section 40532 without change.

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**§ 36013. Form of warrants**

36013. The form of the warrants shall be prescribed by the south coast district board and approved by the treasurer.

**Comment.** Section 36013 continues former Health and Safety Code Section 40533 without change.

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**§ 36014. Production of reports**

36014. Except as specified in Section 36007, 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.

**Comment.** Section 36014 continues former Health and Safety Code Section 40534 without substantive change.

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**§ 36015. Retirement data**

36015. 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.

**Comment.** Section 36015 continues former Health and Safety Code Section 40535 without change.

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**§ 36016. Retention of documents**

36016. All warrants, checks, vouchers, and supporting documents shall be kept by the south coast district if the procedure authorized under this article is implemented.

**Comment.** Section 36016 continues former Health and Safety Code Section 40536 without change.

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**§ 36017. County treasurer as district treasurer**

36017. 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.

**Comment.** Section 36017 continues former Health and Safety Code Section 40537 without change.

#### **§ 36018. Bonds**

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36018. (a) 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.

(b) 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.

(c) 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.

**Comment.** Section 36018 continues former Health and Safety Code Section 40538 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 36019. County auditor as district auditor**

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36019. (a) If the auditor of the south coast district is a county auditor, the auditor shall be provided, upon the auditor's 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.

(b) The form of the listing and statement shall be as prescribed by the south coast district board and approved by the county auditor.

**Comment.** Section 36019 continues former Health and Safety Code Section 40539 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

#### **§ 36020. Authority to issue warrants**

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36020. 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.

**Comment.** Section 36020 continues former Health and Safety Code Section 40540 without change.

### Article 6. Rulemaking Procedures

#### **§ 36050. Public workshop required**

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36050. Whenever the south coast district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, the south coast district shall conduct one or more public workshops.

**Comment.** Section 36050 continues subdivision (a) of former Health and Safety Code Section 40440.7 without change.

**§ 36051. Notice of public workshop**

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36051. (a) Notice of the time and place of the first workshop shall be given not less than 75 days prior to the meeting at which the south coast district board will consider the proposed rule or regulation by publication in each county in the south coast district pursuant to Section 6061 of the Government Code and by mail to every person who filed a written request for notice of proposed regulatory action with the south coast district and any person the south coast district believes to be interested in attending the workshop.

(b) The notice shall include at least the following:

(1) A description of the air quality objective to be discussed.

(2) A statement that the workshop is being held for the purposes of soliciting information and suggestions from the public on achieving the air quality objective.

(3) A request for submittal of any documents, studies, and reports that may be relevant to the subject of the workshop, and the name, address, and telephone number of the district officer or employee to whom they should be sent.

(4) A list of supporting information and documents, including a preliminary staff report, prepared by the south coast district or at its direction, and other materials relevant to the subject of the workshop that are available, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

**Comment.** Section 36051 continues subdivisions (b) and (c) of former Health and Safety Code Section 40440.7 without change.

**§ 36052. Comments received at public workshop**

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36052. If the south coast district thereafter proposes the adoption, amendment, or repeal of a rule or regulation that was the subject of a workshop, the south coast district shall respond to all written comments submitted during the workshop in preparing the environmental assessment on the proposed rule or regulation.

**Comment.** Section 36052 continues subdivision (d) of former Health and Safety Code Section 40440.7 without change.

**§ 36053. Time and place of public workshop**

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36053. 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.

**Comment.** Section 36053 continues subdivision (e) of former Health and Safety Code Section 40440.7 without change.

**§ 36054. Relation to Section 33451**

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36054. A workshop or other meeting shall not constitute consideration of a “regulatory measure” within the meaning of Section 33451.

**Comment.** Section 36054 continues subdivision (g) of former Health and Safety Code Section 40440.7 without substantive change.

**§ 36055. Effect of Sections 36050-36054**

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36055. (a) The requirements of Sections 36050 to 36054, inclusive, 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.

(b) Sections 36050 to 36054, inclusive, are not intended to change, and shall not be construed as changing, any entitlement or protection conferred by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

**Comment.** Section 36055 continues subdivisions (f) and (h) of former Health and Safety Code Section 40440.7 without substantive change.

#### **§ 36056. Assessment of socioeconomic impact**

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36056. (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 33253.
- (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 3 (commencing with Section 33200) of Title 2.

**Comment.** Section 36056 continues subdivisions (a) and (b) of former Health and Safety Code Section 40440.8 without substantive change.

#### **§ 36057. Review of methodology**

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36057. (a) 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.

(b) 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.

(c) 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.

**Comment.** Section 36057 continues subdivision (c) of former Health and Safety Code Section 40440.8 without substantive change.

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

### **§ 36058. Notice of public hearing**

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36058. (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 32303, 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 32303, 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.

**Comment.** Section 36058 continues subdivisions (a) and (b) of former Health and Safety Code Section 40440.5 without substantive change.

### **§ 36059. Contents of notice of public hearing**

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36059. In addition to the summary description of the effect of the proposal, as required by subdivision (b) of Section 32303, the notice shall include the following:

(a) 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.

(b) A list of supporting information, documents, and other materials relevant to the proposed rule or regulation, prepared by the south coast district or at its direction, any environmental assessment, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

(c) A statement that a staff report on the proposed rule or regulation has been prepared, and the name, address, and telephone number of the district officer or employee from whom a copy of the report may be obtained. Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulation, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule or regulation, an environmental assessment, exhibits, and draft findings for consideration by the south coast district board pursuant to Section 32303. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

**Comment.** Section 36059 continues subdivision (c) of former Health and Safety Code Section 40440.5 without substantive change.

**§ 36060. Supplemental workshops**

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36060. Regardless of whether a workshop was previously conducted on the subject of the proposed rule or regulation, the south coast district may conduct one or more supplemental workshops prior to the public hearing on the proposed rule or regulation.

**Comment.** Section 36060 continues subdivision (d) of former Health and Safety Code Section 40440.5 without change.

**§ 36061. Changes in text of proposed rule or regulation**

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36061. If the south coast district board makes changes in the text of the proposed rule or regulation that was the subject of notice given pursuant to Sections 36058 and 36059, further consideration of the rule or regulation shall be governed by Section 32304.

**Comment.** Section 36061 continues subdivision (e) of former Health and Safety Code Section 40440.5 without substantive change.

**§ 36062. Effect of Sections 36058-36061**

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36062. Sections 36058 to 36062, inclusive are not intended to change, and shall not be construed as changing, any entitlement or protection conferred by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

**Comment.** Section 36062 continues subdivision (f) of former Health and Safety Code Section 40440.5 without substantive change.

Article 7. Plan

**§ 36100. Adoption and revision**

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36100. No later than January 31, 1979, the south coast district board shall adopt a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin. The plan shall be revised and adopted by the south coast district board by January 31, 1982, according to a schedule consistent with subdivision (a) of Section 36108. The plan revisions shall be compiled by the south coast district board, with the cooperation of the state board and the Department of Transportation, and the active participation of the Southern California Association of Governments and the counties and cities within the South Coast Air Basin.

**Comment.** Section 36100 continues subdivision (a) of former Health and Safety Code Section 40460 without substantive change.

☞ **Staff Note.** (1) The staff is assuming that the plan referred to in this article is the “plan” as defined in Health and Safety Code Section 40408 (see proposed Section 35875), the “south coast district air quality management plan.” If this is not correct then the unqualified use of the term “plan” in this article is problematic.

(2) This section specifies a deadline for adoption of a plan. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

**§ 36101. Responsibility of Southern California Association of Governments**

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36101. 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.

**Comment.** Section 36101 continues subdivision (b) of former Health and Safety Code Section 40460 without change.

#### **§ 36102. Local agency coordination**

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36102. 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.

**Comment.** Section 36102 continues former Health and Safety Code Section 40464 without change.

#### **§ 36103. Southern California Association of Governments**

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36103. 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 36108, 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 Section 36100. Each agency shall prepare and submit all necessary documentation, including that of public and intergovernmental involvement.

**Comment.** Section 36103 continues former Health and Safety Code Section 40465 without substantive change.

#### **§ 36104. Responsibility of south coast district**

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36104. (a) 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.

(b) In consultation with the south coast district board, the Southern California Association of Governments, and other appropriate local agencies, the state board shall provide the emissions reductions attributed to technological vehicular source control strategies included in the plan.

**Comment.** Section 36104 continues subdivision (c) of former Health and Safety Code Section 40460 without substantive change. The second, unnumbered) paragraph of the subdivision has been numbered as a subdivision.

#### **§ 36105. Effect of plan adoption**

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36105. Upon adoption by the state board, the plan and future revisions shall be the air quality management plan and, as submitted to the Environmental Protection Agency, the federally required state implementation plan for the South Coast Air Basin. Notwithstanding any other provision of this division, the state implementation plan for the air basin shall only include those provisions necessary to meet the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

**Comment.** Section 36105 continues subdivision (d) of former Health and Safety Code Section 40460 without change.

#### **§ 36106. Basinwide air pollution control plan**

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36106. The plan, as adopted and revised by the south coast district board, shall be in lieu of the basinwide air pollution control plan required pursuant to Chapter 2 (commencing with Section 41600) of Part 4 of Division 26 of the Health and Safety Code.

**Comment.** Section 36106 continues former Health and Safety Code Section 40461 without substantive change.

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

#### **§ 36107. Primary ambient air quality standards**

---

36107. (a) The plan and subsequent revisions shall contain deadlines for compliance with the federally mandated attainment of primary ambient air quality standards. The plan and subsequent revisions shall contain deadlines and schedules to achieve the state ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies, including, but not limited to, the best available control technology, indirect source controls, and transportation control measures, and the use of cleaner burning alternative fuels. The plan and subsequent revisions shall contain deadlines and schedules to achieve the federal secondary ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies.

(b) The plan and subsequent revisions shall ensure that future growth and development in the South Coast Air Basin and within the sensitive zone established pursuant to subdivision (a) of Section 35806 are, to the maximum extent feasible, consistent with the goal of achieving and maintaining those air quality standards. The revisions to the plan shall identify the resources necessary to carry out its provisions, including enforcement costs and the effect of its provisions on energy resources.

**Comment.** Section 36107 continues former Health and Safety Code Section 40462 without substantive change.

#### **§ 36108. Biennial review of plan**

---

36108. (a) The plan shall be formally reviewed every two years by the agencies responsible for preparing plan revisions. In the event of revisions, the compliance 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.

**Comment.** Section 36108 continues former Health and Safety Code Section 40463 without substantive change. The reference in subdivision (a) to the date on which the biennial review requirement began (1992) is obsolete and has not been continued.

### **§ 36109. Public hearings**

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36109. (a) The south coast district board shall adopt plan revisions, pursuant to subdivision (a) of Section 36108, 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.

**Comment.** Section 36109 continues former Health and Safety Code Section 40466 without substantive change.

### **§ 36110. Presubmission discussion**

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36110. 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 36108, 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.

**Comment.** Section 36110 continues former Health and Safety Code Section 40467 without substantive change.

**§ 36111. Limitation of state board requirements**

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36111. 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.

**Comment.** Section 36111 continues former Health and Safety Code Section 40468 without change.

**§ 36112. State board review**

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36112. (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 of the Health and Safety Code 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.

**Comment.** Section 36112 continues former Health and Safety Code Section 40469 without substantive change.

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

**§ 36113. Assistance of state board**

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36113. 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.

**Comment.** Section 36113 continues former Health and Safety Code Section 40469.5 without change.

**§ 36114. Role of Southern California Association of Governments**

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36114. The Southern California Association of Governments shall participate in the joint agency review and conflict resolution processes established by Sections 36108, 36110, and 36112 insofar as the processes relate to plan elements for which the Southern California Association of Governments has plan development responsibility.

**Comment.** Section 36114 continues former Health and Safety Code Section 40470 without change.

**§ 36115. Failure to adopt or approve plan**

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36115. If the plan is not adopted or approved in compliance with the schedule set forth in Section 36108, 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.

**Comment.** Section 36115 continues former Health and Safety Code Section 40442 without substantive change.

☞ **Staff Note.** The decision to move this section to this article is based on the staff's assumption that the "plan" referred to in this article is the "plan" as defined in Health and Safety Code Section 40408 (see proposed Section 35875), i.e. the "south coast district air quality management plan."

Article 8. Variances

**§ 36150. Rules and regulations**

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36150. (a) In accordance with the purposes of this chapter as set forth in Section 35801, the south coast district board shall establish rules and regulations for the granting of variances by the hearing board from Section 41701 of the Health and Safety Code or from any standards for the discharge of air contaminants that the south coast district may adopt. The south coast district board shall not limit the opportunity for any person to petition for a variance or for the hearing board to hear and grant variances beyond the limitations expressly stated in Section 42350 of the Health and Safety Code.

(b) The rules and regulations shall include a schedule of fees, which shall be based upon the number of sources to which the variances apply and the extent that 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 the rules and regulations, including,

notwithstanding 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.

**Comment.** Section 36150 continues former Health and Safety Code Section 40500 without substantive change.

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

### **§ 36151. Limitation on fees**

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36151. (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 36150 and 36206 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 of the Health and Safety Code.

**Comment.** Section 36151 continues former Health and Safety Code Section 40500.1 without substantive change.

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

### **§ 36152. Limitation on granting of variances**

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36152. (a) Notwithstanding Section 36150, the south coast district board may prohibit the granting of variances by the hearing board from the provisions of a market-based incentive program adopted pursuant to Sections 31450 to 31456, inclusive that establish procedures for assessing emissions during periods when monitoring or reporting systems are not operating as required.

(b) The south coast district board may prohibit the granting of variances by the hearing board from the minimum federal requirements for new source performance standards, or for national emissions standards for hazardous air pollutants, under Sections 7411 and 7412 of Title 42 of the United States Code, unless the district rule at issue is more stringent than the federal requirement. The south coast district board shall not prohibit the granting of such a variance if the petitioner for the variance has obtained a waiver from the Environmental Protection Agency of the federal requirement at issue and the variance would be consistent with the waiver.

**Comment.** Section 36152 continues former Health and Safety Code Section 40500.5 without substantive change.

### § 36153. Hearing board

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36153. (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 32500) of Chapter 3 of Title 1. 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 of Division 26 of the Health and Safety Code, with respect to the granting of variances or the appeal of decisions.

**Comment.** Section 36153 continues former Health and Safety Code Section 40501 without substantive change.

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

### § 36154. Composition of hearing board

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36154. The south coast district board shall appoint a hearing board with the following membership and qualifications:

(a) One member admitted to the practice of law in this state, with two or more years of practice, preferably with litigation experience.

(b) 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).

(c) 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.

(d) Two public members.

**Comment.** Section 36154 continues subdivision (a) of former Health and Safety Code Section 40501.1 without substantive change. The introductory paragraph of former Health and Safety Code Section 40501.1 provided for the retirement of the sitting hearing board and appointment of a new board, by July 1, 1992. This provision is obsolete and has not been continued.

### § 36155. Appointments to hearing board

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36155. 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.

**Comment.** Section 36155 continues subdivision (b) of former Health and Safety Code Section 40501.1 without change.

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#### **§ 36156. Terms**

36156. 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.

**Comment.** Section 36156 continues subdivision (c) of former Health and Safety Code Section 40501.1 without change.

☞ **Staff Note.** The first sentence of this section governs a transition that has already occurred and appears to be obsolete. The staff would like to receive input on whether this sentence has any continued usefulness.

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#### **§ 36157. Temporary board members**

36157. 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.

**Comment.** Section 36157 continues subdivision (d) of former Health and Safety Code Section 40501.1 without change.

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#### **§ 36158. Hearing board funding**

36158. 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 36450.

**Comment.** Section 36158 continues subdivision (e) of former Health and Safety Code Section 40501.1 without substantive change.

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#### **§ 36159. Single-member hearings**

36159. (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 of the Health and Safety Code, interim variances pursuant to Section 42351 of the Health and Safety Code, short variances and modifications of a schedule of increments of progress of a duration not to exceed 60 days pursuant to Section 32555, interim authorizations pursuant to Section 42351.5 of the Health and Safety Code, and modifications of variances pursuant to Section 42356 of the Health and Safety Code 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 any of the following persons:

(1) Any person who, in person or through a representative, appeared at the single-member hearing

(2) Any person who informed the air pollution control officer of the nature of the person's concern prior to the hearing

(3) Any person who for good cause was unable to do either (1) or (2).

(e) If a decision is contested under subdivision (d), the matter shall be reheard by the full board within 10 days of the decision. The clerk of the hearing board shall notify the petitioner, the executive officer, and all members of the public who appeared at the hearing of any contest of a decision. The notice shall be in writing and sent by first-class mail, postage prepaid, to the address supplied by the person who appeared, unless the right to the notice is affirmatively waived on the record.

**Comment.** Section 36159 continues former Health and Safety Code Section 40501.3 without substantive change. The numbered list, in former subdivision (d), of persons who may contest a hearing, has been tabulated as paragraphs. The second sentence of former subdivision (d) is continued without substantive change in subdivision (e).

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

#### **§ 36160. Fee revenues**

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36160. The revenues from the schedule of fees adopted by the south coast district board for the filing of applications for variances shall be collected by the hearing board at the time that the application is filed. Each county hearing board appointed pursuant to subdivision (a) of Section 36153 shall be reimbursed from these fees for its cost in administering the rules and regulations for the issuance of variances established by the south coast district board. The revenues from these fees shall be transmitted by the hearing board to the south coast district board at such time as the south coast district board may prescribe.

**Comment.** Section 36160 continues former Health and Safety Code Section 40502 without substantive change.

#### **§ 36161. Factors relevant to grant of variance**

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36161. The south coast district hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 42352 of the Health and Safety Code, shall consider, in addition to any other relevant factors, both of the following:

(a) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider whether or not the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.

(b) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful

business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

**Comment.** Section 36161 continues subdivision (a) of former Health and Safety Code Section 40503 without substantive change.

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

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**§ 36162. Petitioner a small business**

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36162. (a) As used in this section, “small business” means a business that is independently owned and operated and meets all of the following criteria:

- (1) The number of employees is 10 or less.
- (2) The total gross annual receipts are five hundred thousand dollars (\$500,000) or less.
- (3) Emits not more than four tons per year of any nonattainment air contaminant or its precursor.

(b) If the petitioner is a small business, the hearing board shall consider the factors specified in Section 36161 in the following manner:

(1) 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.

(2) 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.

(3) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall 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.

**Comment.** Section 36162 continues subdivision (b) of former Health and Safety Code Section 40503 without substantive change.

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**§ 36163. Petitioner a public entity**

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36163. 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.

**Comment.** Section 36163 continues subdivision (c) of former Health and Safety Code Section 40503 without change.

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**§ 36164. Reduction of emissions by persons granted variances**

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36164. The south coast district shall work with those persons granted variances to reduce emissions of air contaminants from their operations.

**Comment.** Section 36164 continues former Health and Safety Code Section 40504 without change.

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**§ 36165. Assistance to small businesses**

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36165. 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.

**Comment.** Section 36165 continues former Health and Safety Code Section 40505 without change.

## Article 9. Permits

### § 36200. Rules and regulations

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36200. (a) In accordance with the purposes of this chapter as set forth in Section 35801, the south coast district board shall adopt rules and regulations for the issuance by the south coast district board of permits authorizing the construction, alteration, replacement, operation, or use of any article, machine, equipment, or other contrivance for which a permit may be required by the south coast district board.

(b) The rules and regulations shall include a schedule of fees for the filing of applications for permits and for the modification, revocation, extension, or annual renewal of permits. All applicants, including, notwithstanding Section 6103 of the Government Code, an applicant that is a publicly owned public utility, shall pay the fees required by the rules and regulations.

**Comment.** Section 36200 continues former Health and Safety Code Section 40506 without substantive change.

### § 36201. Consolidated permits

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36201. (a) The south coast district shall establish a consolidated permit that serves as (1) an authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) an authority to operate or use that article, machine, equipment, or contrivance.

(b) The district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, operated, or used in the manner required by the consolidated permits.

**Comment.** Section 36201 continues former Health and Safety Code Section 40506.1 without substantive change.

### § 36202. Certification program

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36202. The south coast district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by district rules as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) Full district review of a sample of permit applications prepared by certified private environmental professionals to determine whether or not district requirements for preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

- (1) Knowingly or negligently submitted false data as part of a permit application.
- (2) Prepared any permit application in a manner contrary to district requirements.
- (3) Prepared a permit application where the person has a financial conflict of interest as defined in guidelines to be adopted by the district.

**Comment.** Section 36202 continues former Health and Safety Code Section 40506.2 without change.

#### **§ 36203. Order granting permit**

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36203. The south coast district board, in making any order granting a permit, may specify the time during which the order shall be effective and may require the payment of fees established by the south coast district board.

**Comment.** Section 36203 continues former Health and Safety Code Section 40507 without change.

#### **§ 36204. Petition for hearing**

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36204. Any person may petition the south coast district board to hold a public hearing on any application to issue or renew a permit.

**Comment.** Section 36204 continues former Health and Safety Code Section 40509 without change.

#### **§ 36205. Fee revenue**

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36205. The revenues from the schedule of fees for the filing of applications for permits shall be collected by the south coast district board at the time that the application is filed.

**Comment.** Section 36205 continues former Health and Safety Code Section 40508 without change.

#### **§ 36206. Fees**

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36206. (a) The Legislature finds and declares as follows:

(1) Total fees collected by the south coast district must continue to be capped in order to prevent the imposition of undue financial burdens upon regulated sources.

(2) There is a need to provide for greater flexibility in establishing and amending fees within the total fee cap to ensure a fair apportionment of fee payment responsibilities.

(3) Fees based solely on the quantity of emissions created by a source should not be indexed to the emission potential, or to a percentage of emissions trading units, as that term is used in Sections 31450 to 31456, inclusive, and Section 36300, held by that source so as to prevent payments of those fees from decreasing if emissions decline.

(4) Before making any individual fee increase in excess of the percentage increase of the California Consumer Price Index for the preceding calendar year, findings of fact should be made, supported by relevant information in the public record, that the fee increase is necessary and will provide an equitable apportionment of fee payment responsibilities, and the increase should be phased in to avoid sudden adverse impacts on regulated sources.

(b) The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto. Every person applying for a variance or a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule.

(c)(1) The fees may be varied in accordance with the quantity of emissions and the effect of those emissions on the ambient air quality within the south coast district.

(2) The fees shall not be indexed to the potential emissions from, or to a percentage of the emissions trading units, as that term is used in Sections 31450 to 31456, inclusive, and Section 36300, held by, any source.

(d) Subject to the limits established by this section and Sections 36151 and 36004 and the requirements of Section 36207, this section shall not prevent the district from establishing or amending an individual permit renewal or operating permit fee applicable to a class of sources to recover the reasonable district costs of permitting, planning, enforcement, and monitoring which that class will cause to district programs. In establishing the fee applicable to a class of sources, the district may consider the impact on air quality of the emissions from that class.

**Comment.** Section 36206 continues former Health and Safety Code Section 40510 without substantive change.

#### **§ 36207. Fee increases**

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36207. In addition to the limits on total fee collections established by Sections 36151 and 36004, the south coast district board shall not increase any existing permit fee by a percentage greater than any percentage increase in the California Consumer Price Index for the preceding calendar year, unless the board complies with both of the following requirements:

(a) The district board shall make a finding, based upon relevant information in a rulemaking record, that the fee increase is necessary and will result in an apportionment of fees that is equitable. This finding shall include an explanation of why the fee increase meets the requirements of this section and Section 36206.

(b) The fee increase shall be phased in over a period of at least two years.

**Comment.** Section 36207 continues former Health and Safety Code Section 40510.5 without change.

#### **§ 36208. Charges for notice**

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36208. The south coast district board may establish an annual charge, in an amount not to exceed the annual estimated cost of sending notices required by this division, and individual charges, in amounts not to exceed the cost of sending notice on a one-time basis and the cost of duplicating and mailing any document furnished pursuant to this chapter.

**Comment.** Section 36208 continues former Health and Safety Code Section 40510.7 without change.

#### **§ 36209. CPI limit on fee increases**

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36209. The south coast district board may increase its fee schedule to generate sufficient revenues to pay for any district costs associated with the implementation of Section 66796.53 of the Government Code or Section 41805.5 of the Health and Safety Code.

**Comment.** Section 36209 continues former Health and Safety Code Section 40511 without substantive change.

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

**§ 36210. Surcharge fees**

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36210. (a) The south coast district board may impose a fee surcharge based on a formula associated with quantity of emissions and the effect of these emissions on ambient air quality within the south coast district to generate sufficient revenues to pay for any of its costs associated with the development and implementation of Section 36406.

(b) The total amount of funds collected from these surcharge fees shall not exceed five hundred thousand dollars (\$500,000) in each of the first two fiscal years of the development or implementation of Section 36406. All surcharge fees received by the south coast district pursuant to this section shall be deposited in a clean fuels and transportation control measures account which shall be established and maintained by the south coast district.

(c) In subsequent fiscal years, the total amount of funds collected from these surcharge fees shall not exceed 25 percent of the amount of fees received the previous fiscal year from registered motor vehicle owners pursuant to Section 9250.11 of the Vehicle Code. The surcharge fees received by the south coast district pursuant to this section shall be used to pay for the initial costs incurred by the Department of Motor Vehicles to implement the motor vehicle fee program established by Section 9250.11 of the Vehicle Code.

(d) All fees received by the south coast district pursuant to Section 9250.11 of the Vehicle Code shall be deposited in the clean fuels and transportation control measures account and shall be used solely for transportation and vehicular-related program activities within the program established by this section. Not more than 2 1/2 percent of the funds in the account shall be used for the south coast district administrative costs.

**Comment.** Section 36210 continues former Health and Safety Code Section 40512 without substantive change.

**§ 36211. Water treatment facility**

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36211. (a) Any public utility owned by a municipal corporation within the south coast district shall provide public notice, pursuant to subdivision (b), before submitting to the board of the south coast district any application for a permit to construct or operate any facility, machine, or contrivance which would be used for water treatment and would emit toxic air contaminants.

(b) A public utility specified in subdivision (a) shall mail, post, deliver, or use any other practical method to notify all residents and persons who own property within 330 feet of the property containing the proposed facility, machine, or contrivance. The notice shall include a description of the proposed facility, machine, or contrivance and an explanation of the right to petition the south coast district board to hold a hearing pursuant to Section 36204.

(c) This section only applies to any facility, machine, or contrivance on which construction began subsequent to May 24, 1985.

**Comment.** Section 36211 continues former Health and Safety Code Section 40515 without substantive change.

 **Staff Note.** Subdivision (c) is probably obsolete. However, the staff recognizes the possibility that some construction projects may have begun before 1985 but still be incomplete. In such a case, this section would not apply. The staff would appreciate any input on the likelihood that any projects still fall within the exception provided in subdivision (c).

**§ 36212. Expedited permit review for clean fuel technology projects**

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36212. The south coast district shall establish expedited permit review and project assistance mechanisms for facilities or projects which are directly related to research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies.

**Comment.** Section 36212 continues subdivision (a) of former Health and Safety Code Section 40516 without change.

**§ 36213. Mechanisms of expedited review**

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36213. The mechanisms established pursuant to Section 36212 shall include all of the following:

(a) The issuance of consolidated permits, serving the purpose of both the permit to construct and the permit to operate, to expedite the permitting process.

(b) 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.

(c) 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:

(1) Facilities that may emit significant amounts of toxic air contaminants.

(2) Facilities that require public notice.

(3) 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).

(d) The development and implementation of postconstruction enforcement procedures to ensure that new and modified sources are constructed according to permit requirements.

(e) 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.

**Comment.** Section 36213 continues subdivision (b) of former Health and Safety Code Section 40516 without substantive change.

**§ 36214. “Clean fuel”**

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36214. For the purposes of Sections 36212 and 36213, “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.

**Comment.** Section 36214 continues subdivision (c) of former Health and Safety Code Section 40516 without substantive change.

Article 10. Implementation of Plans

**§ 36250. Rules and regulations**

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36250. (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 35810, 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 32301.

**Comment.** Section 36250 continues former Health and Safety Code Section 40440 without substantive change.

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#### **§ 36251. Nonvehicular source emission limitations**

36251. The south coast district board shall adopt revised and updated nonvehicular source emission limitations for inclusion in the state's implementation plan.

**Comment.** Section 36251 continues former Health and Safety Code Section 40443 without change.

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#### **§ 36252. Air pollution emergency plan**

36252. The south coast district board shall adopt the necessary rules and regulations to implement the Air Pollution Emergency Plan developed by the state board.

**Comment.** Section 36252 continues former Health and Safety Code Section 40444 without change.

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#### **§ 36253. Cooperation of other public entities**

36253. (a) 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.

(b) 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.

**Comment.** Section 36253 continues former Health and Safety Code Section 40441 without substantive change. The former unnumbered paragraphs have been numbered as subdivisions.

## Article 11. Market-based Incentive Program

### **§ 36300. Market-based incentive program**

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36300. (a) A market-based incentive program adopted pursuant to Sections 31450 to 31456, inclusive, in the south coast district shall achieve emission reductions across a spectrum of sources by allowing for trading of emissions trading units for quantifiable reductions in emissions from a significant number of different sources, including mobile, area, and stationary, which are within the district's jurisdiction or which the district is authorized to include in a market-based emissions trading program.

(b) The program may be, but is not required to be, initiated with only a limited number of sources, but, as soon as practical after adoption of the initial program, the district shall amend the program to allow the trading of reductions among the sources initially included in the program and mobile, area, and other stationary sources.

(c) The intent of this section is to allow, not to require, the trading of reductions among a variety of sources. Nothing in this section confers any new authority on the district to regulate mobile, indirect, or areawide sources or to require those sources to participate in a market-based incentive program.

**Comment.** Section 36300 continues former Health and Safety Code Section 40440.1 without substantive change.

### **§ 36301. Implementation of Sections 36302-36306**

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36301. In addition to, and notwithstanding the requirements of, Sections 31450 to 31456, inclusive, the requirements of section 36302 to 36305, inclusive, shall be implemented as part of the south coast district's market-based incentive program, the Regional Clean Air Incentives Market, also known as RECLAIM.

**Comment.** Section 36301 continues the introductory clause of subdivision (a) of former Health and Safety Code Section 40440.2 without substantive change.

### **§ 36302. Progress report**

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36302. (a) On or before July 1, 1998, the south coast district staff shall provide to the south coast district board a progress report based on the annual audits specified in Section 36304. The progress report shall meet all of the following requirements:

(1) The data in the report for the nitrogen oxides RECLAIM program shall be aggregated by three-digit SIC code and facility emission rate to the extent feasible. The categories of emission rates shall be under 4, 4 to 10, inclusive, 11 to 100, inclusive, and over 100 tons per year.

(2) The data in the report for the sulfur oxides RECLAIM program shall be aggregated by three-digit SIC code only to the extent feasible.

(3) In preparing the report, the south coast district shall publish in an appendix all final data and model outputs, except that it shall keep confidential any facility-specific information that is obtained by either the south coast district, or any independent contractor retained by the south coast district, in the course of preparing the report.

(4) Any publication of the data obtained from facilities by the south coast district shall be in aggregate form only, as specified in Sections 36301 to 36305, inclusive. The south coast district board shall make the raw data available to the public.

(b) The south coast district board shall receive public comment on the progress report.

(c) The south coast district shall not lower the emission threshold for mandatory participation in the RECLAIM program for nitrogen oxides and sulfur oxides from the

threshold that was established on October 15, 1993, until the progress report is completed and a public hearing on the report has been held, unless the south coast district board finds, after a public hearing, that there will be no adverse environmental or economic effects resulting from a lowered emission threshold.

**Comment.** Section 36302 continues paragraph (a)(1) of former Health and Safety Code Section 40440.2 without substantive change.

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

### **§ 36303. Advisory committee**

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36303. On or before July 1, 1997, an advisory committee shall be selected by the south coast district board. The advisory committee shall serve for a maximum of one year, or until the report required by Section 36305 is made to the south coast district board, whichever is later. The advisory committee shall be composed of the following members:

(a) One representative from each of the following:

(1) A facility that participates in one or both of the market-based incentive programs and emits more than 100 tons of nitrogen oxides or sulfur oxides annually.

(2) A facility that emits from 11 to 100 tons, inclusive, of nitrogen oxides or sulfur oxides annually.

(3) A facility that emits less than 10 tons of nitrogen oxides or sulfur oxides annually.

(b) One representative from the south coast district staff, one representative from the state board, and one representative from the Environmental Protection Agency.

(c) One representative from a financial institution.

(d) One representative from an academic institution.

(e) One representative from a market commodities or securities trading institution.

(f) One representative from an economic analysis research institution.

(g) Two representatives from environmental organizations.

(h) One representative from each of the investor-owned energy utilities serving the south coast district, and one representative from a municipal energy utility representing the City of Los Angeles.

(i) One representative from a technical contractor specializing in installation and certification of emissions monitoring equipment.

(j) One representative from an oil company.

(k) One representative from the aerospace industry.

**Comment.** Section 36303 continues paragraph (a)(2) of former Health and Safety Code Section 40440.2 without substantive change.

### **§ 36304. Assessment of audit findings**

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36304. In addition to any other information required by Section 31454, the south coast district shall annually perform a detailed assessment of the program audit findings specified in paragraph (1) of subdivision (b) of south coast district Rule 2015, as adopted October 15, 1993.

**Comment.** Section 36304 continues paragraph (a)(3) of former Health and Safety Code Section 40440.2 without substantive change.

**§ 36305 Peer review**

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36305 The advisory committee shall conduct a peer review of the progress report to the south coast district board required pursuant to Section 36302. 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.

**Comment.** Section 36305 continues paragraph (a)(4) of former Health and Safety Code Section 40440.2 without substantive change.

Article 12. Best Available Control Technology

**§ 36350. Public hearing required**

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36350. 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.

**Comment.** Section 36350 continues former Health and Safety Code Section 40440.10 without change.

**§ 36351. More stringent federal requirement**

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36351. 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.

**Comment.** Section 36351 continues subdivision (a) of former Health and Safety Code Section 40440.11 without change.

**§ 36352. Effect on other pollutants**

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36352. 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.

**Comment.** Section 36352 continues subdivision (b) of former Health and Safety Code Section 40440.11 without change.

**§ 36353. More stringent than existing guideline**

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36353. 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:

(a) Identify one or more potential control alternatives that may constitute the best available control technology, as defined in Section 35855.

(b) Determine that the proposed emission limitation has been met by production equipment, control equipment, or a process that is commercially available for sale, and has achieved the best available control technology in practice on a comparable commercial operation for at least one year, or a period longer than one year if a longer period is reasonably necessary to demonstrate the operating and maintenance reliability, and costs, for an operating cycle of the production or control equipment or process.

(c) Review the information developed to assess the cost-effectiveness of each potential control alternative. For purposes of this subdivision, “cost-effectiveness” means the annual cost, in dollars, of the control alternative, divided by the annual emission reduction potential, in tons, of the control alternative.

(d) Calculate the incremental cost-effectiveness for each potential control option. To determine the incremental cost-effectiveness under this subdivision, the district shall calculate the difference in the annual dollar costs, divided by the difference in the annual emission reduction between each progressively more stringent control alternative, as compared either to the next less expensive control alternative, or to the current best available control technology, whichever is applicable.

(e) Place the best available control technology revision for a source category proposed under this section on the calendar of a regular meeting agenda of the south coast district board, for its acceptance or further action, as the board determines.

**Comment.** Section 36353 continues subdivision (c) of former Health and Safety Code Section 40440.11 without substantive change.

#### **§ 36354. More stringent than federal requirement**

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36354. If the proposed control option is more stringent than the lowest achievable emission rate for a source category pursuant to federal law, the south coast district shall not establish an emission limit for best available control technology that is conditioned on the use of a particular control option unless the incremental cost-effectiveness value of that option is less than the district’s established incremental cost-effectiveness value for each pollutant. Notwithstanding any other provision of law, the south coast district shall have the discretion to revise incremental cost-effectiveness value for each pollutant, provided it holds a public hearing pursuant to Section 36350 prior to revising the value.

**Comment.** Section 36354 continues subdivision (d) of former Health and Safety Code Section 40440.11 without substantive change.

#### **§ 36355. Limitation on subsequent changes**

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36355. After the south coast district determines what is the best available control technology for a source, it shall not change that determination for that application for a period of at least one year from the date that an application for authority to construct was determined to be complete by the district. For major capital projects in excess of ten million dollars (\$10,000,000), after the applicant has met and conferred with the south coast district in a preapplication meeting, the south coast district executive officer may approve existing best available control technology for the project, for a longer time period as long as the final design is consistent with the initial, preliminary project design presented in the preapplication meeting.

**Comment.** Section 36355 continues subdivision (e) of former Health and Safety Code Section 40440.11 without change.

## Article 13. Transportation Controls

### **§ 36400. Emergency limitation**

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36400. Pursuant to its authority under Section 36252 to implement the Air Pollution Emergency Plan of the state board, the south coast district board may adopt rules and regulations to limit the operation of motor vehicles within the south coast district during the period when an air pollution emergency has been called as defined by that plan. 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.

**Comment.** Section 36400 continues former Health and Safety Code Section 40445 without substantive change.

### **§ 36401. Intermittent transportation controls**

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36401. (a) The south coast district board shall conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the south coast district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called pursuant to the authority of the south coast district under Section 36252 to implement that plan.

(b) The south coast district board shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls in cooperation with representatives of industry, transportation, and local governments in the south coast district.

(c) The south coast district board shall incorporate its findings and determinations into the south coast district air quality management plan.

**Comment.** Section 36401 continues former Health and Safety Code Section 40445.5 without substantive change.

### **§ 36402. Motor vehicle inspection**

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36402. If requested by the state board, the south coast district board may assist in the administration and enforcement of any state statute establishing an inspection program for motor vehicles with respect to their air pollution emissions and their air pollution control devices or systems and any rules and regulations adopted pursuant to such a statute.

**Comment.** Section 36402 continues former Health and Safety Code Section 40446 without change.

### **§ 36403. Motor vehicle pollution control devices**

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36403. The south coast district board may request the state board to investigate the emission reduction capabilities of any motor vehicle pollution control devices which have not been previously tested by the state board.

**Comment.** Section 36403 continues former Health and Safety Code Section 40447 without change.

### **§ 36404. Authority to regulate transportation**

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36404. Notwithstanding any other provision of law, the south coast district board may adopt regulations that do all of the following:

(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 30185, 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 subdivision 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 subdivision, 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 subdivision 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 to Section 25633 of the Business and Professions Code.

**Comment.** Section 36404 continues former Health and Safety Code Section 40447.5 without substantive change. Note that subdivisions (a) and (c) of former Health and Safety Code Section 40447.5 erroneously refer to those subdivisions as paragraphs. These references have been corrected.

#### **§ 36405. Authority to regulate diesel fuel composition**

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36405. (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.

**Comment.** Section 36405 continues former Health and Safety Code Section 40447.6 without change.

**§ 36406. Clean-burning fuels program**

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36406. (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 36250 to reduce traffic congestion, air pollution, and motor vehicle fuel consumption.

**Comment.** Section 36406 continues former Health and Safety Code Section 40448.5 without substantive change.

**§ 36407. Requirements for adoption of program**

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36407. (a) Prior to adopting the program specified in subdivision (b) of Section 36406 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 36406 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.

**Comment.** Section 36407 continues former Health and Safety Code Section 40448.5.1 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 40448.5.1 now apply to Section 36407 of the Environment Code. See 1995 Cal. Stat. ch. 609, § 1 (legislative findings and declarations).

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#### **§ 36408. Trip reduction plans prohibited**

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36408. (a) Notwithstanding Section 32005, Sections 32900 to 32907, inclusive, or Section 32952, 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.

**Comment.** Section 36408 continues former Health and Safety Code Section 40454 without substantive change. The reference in former Health and Safety Code Section 40454 is obsolete and has not been continued. Section 40457 was repealed in 1996. See 1996 Cal. Stat. ch. 777, § 1.

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#### **§ 36409. Effect of Section 40454 on local agencies**

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36409. Notwithstanding Section 32904, 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 36408, unless required by the federal Clean Air Act.

**Comment.** Section 36409 continues former Health and Safety Code Section 40455 without substantive change.

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#### **§ 36410. Parking charges to employees**

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36410. Except as provided in Section 43845 of the Health and Safety Code, the south coast district shall not require any employer to charge its employees for parking.

**Comment.** Section 36410 continues former Health and Safety Code Section 40456 without substantive change.

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

### **§ 36411. Ridesharing**

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36411. (a) Rules 1501 and 1501.1 adopted by the south coast district are void.

(b) Rule 2202 adopted by the south coast district shall be amended in the following manner:

(1) The worksite employee threshold shall be raised to 250. On January 1, 1998, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before June 1, 1998, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 100 employee threshold not later than June 1, 1998. If the emission reductions have been met, the worksite employee threshold shall be raised to 500 on or before June 1, 1998. Prior to raising the threshold, the state board, after a public hearing, shall determine that sufficient funds are available to achieve a reasonable likelihood of success in accomplishing equivalent emission reductions for employers from 250 to 500.

(2) If the worksite threshold is increased to 500 pursuant to paragraph (1), then on June 1, 1999, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before January 1, 2000, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 250 employee threshold not later than January 1, 2000. If the emission reductions are not sufficient to replace the emission reductions that would have been achieved by employers exempted pursuant to paragraph (1), the district may restore the 100 employee threshold. If the emission reductions have been met, Rule 2202 shall be suspended.

(3) If Rule 2202 is suspended pursuant to paragraph (2), on January 1, 2001, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before June 1, 2001, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 500 employee threshold not later than June 1, 2001. If the emission reductions are not sufficient to replace the emission reductions that would have been achieved by employers exempted pursuant to paragraph (2), the district may restore the 250 employee threshold. If the emission reductions are not sufficient to replace the emission

reductions that would have been achieved by employers exempted pursuant to paragraph (1), the district may restore the 100 employee threshold. If the emission reductions have been met, Rule 2202 shall be repealed and adopted as a backup measure to the alternative measures not later than June 1, 2001.

(4) If Rule 2202 is repealed pursuant to paragraph (3), the Southern California Association of Governments shall annually report to the south coast district on the effectiveness of voluntary rideshare efforts. The south coast district shall, using the data provided by the Southern California Association of Governments, and other sources, determine if the alternative measures are achieving equivalent emission reductions. If there is a shortfall in emission reductions, the south coast district may implement, only to the extent needed to make up the shortfall, the backup Rule 2202.

(5) Nothing in this section is intended to prevent an early replacement and repeal of Rule 2202. The south coast district shall replace Rule 2202 as soon as possible with alternative direct light-duty mobile source emission reduction measures, other than new vehicle emission standards or reformulated fuel standards.

**Comment.** Section 36411 continues former Health and Safety Code Section 40458 without change.

## Article 14. Aid to Small Businesses

### **§ 36450. Office of public advisor and small business assistance**

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36450. (a) The south coast district shall maintain an office of public advisor and small business assistance to provide administrative and technical services and information to small businesses and the public. The executive officer shall appoint the public advisor.

(b) The office shall facilitate and encourage compliance by small businesses with the rules and regulations of the south coast district, assist small businesses in applying for permits and variances, and facilitate the participation of small businesses in the development of rules and regulations and in other proceedings of the south coast district. The office shall provide information on the economic impact of the rules and regulations of the south coast district on small businesses in the south coast district. The office shall make available to small businesses information regarding alternative processes, cleaner fuels and solvents, and low-cost financing for air pollution control equipment. Upon receiving findings and recommendations from the public advisor, the south coast district board shall endeavor to coordinate compliance schedules with the availability to small businesses of financing for pollution control equipment and other measures to reduce emissions.

(c) The office shall assure effective communication with interested groups and the public through means such as maintaining a staffing level adequate to respond to requests for its services and providing toll-free telephone lines. The office shall facilitate effective participation by all interested groups and the public in the development of rules and regulations and the plan and in the discharge of other responsibilities of the south coast district by assuring that, consistent with the express requirements of this chapter, Sections 32303 to 32402, inclusive, Chapter 3 (commencing with Section 32500) of Title 1, and Chapter 3 (commencing with Section 33200) of Title 2, timely and complete notice of all proceedings of the south coast district board and the hearing board is disseminated to all interested groups and the public. Upon request, the office shall advise interested groups and the public as to effective ways of participating in these proceedings, provide more extensive information on any item on an agenda, and make referrals to sources of expert advice and assistance on the district staff and elsewhere. Upon request, the office shall obtain and make available the public record of any aspect of, or particular action taken at,

these proceedings. The office shall recommend to the south coast district board and the hearing board additional measures to assure open consideration and public participation in all proceedings.

(d) As used in this section:

(1) "Public" has the same meaning as "person," as defined in Section 30380.

(2) "Proceedings" means any hearing, workshop, conference, or meeting which is held or conducted by the south coast district board, the hearing board, any committee of either board, or district staff, at which attendance by the public is allowed or required.

**Comment.** Section 36450 continues former Health and Safety Code Section 40448 without substantive change.

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### § 36451. Legislative finding and declaration

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36451. The Legislature hereby finds and declares all of the following:

(a) It is necessary to increase the availability of financial assistance to small businesses which are subject to the rules and regulations of the south coast district, in order to minimize economic dislocation and adverse socioeconomic impacts.

(b) It is in the public interest that a portion of the funds collected by the south coast district from violators of air pollution regulations be allocated for the purpose of guaranteeing or otherwise reducing the financial risks of providing financial assistance to small businesses which face increased borrowing requirements in order to comply with air pollution control requirements.

(c) Public agencies and private lenders have a variety of methods available for providing financing assistance to small businesses and other employers, including taxable bonds, composite or pooled financing instruments, loan guarantees, and credit insurance, which could be utilized in combination with the penalties collected by the south coast district to expand the availability and reduce the cost of financing assistance.

(d) The California Pollution Control Financing Authority has funds set aside from previous bond issues, which could be used to guarantee the issuance of bonds or other financing for small businesses for the purchase and installation of pollution control equipment.

(e) The Office of Small Business in the Trade and Commerce Agency, through the regional small business development corporations, has the ability to provide state loan guarantees and technical assistance to small businesses needing financial assistance.

(f) The Job Training Partnership Division of the Employment Development Department makes funds available for job training programs, including funds for dislocated workers, through the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(g) It is the policy of the state that the Job Training Partnership Division of the Employment Development Department, in cooperation with the districts and the state board, are encouraged to provide job training programs for workers who, as determined by the department or the local private industry council, have been laid off or dislocated as a result of actions resulting from air quality regulations.

(h) It is the policy of the state that the California Pollution Control Financing Authority, the Office of Small Business in the Trade and Commerce Agency, and other state agencies implementing small business assistance programs, in cooperation with the districts and the state board, are encouraged to provide technical and financial assistance to small businesses to facilitate compliance with air quality regulations.

**Comment.** Section 36451 continues former Health and Safety Code Section 40448.6 without change.

**§ 36452. Financial assistance**

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36452. (a)(1) The south coast district shall annually allocate to the fund established pursuant to subdivision (b) not less than one million dollars (\$1,000,000) of the funds received from civil and criminal penalties, out-of-court settlements, or other sources, for 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.

**Comment.** Section 36452 continues former Health and Safety Code Section 40448.7 without change.

**§ 36453. Small business technical and compliance assistance**

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36453. (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.

**Comment.** Section 36453 continues former Health and Safety Code Section 40448.8 without change.

## Article 15. Monitoring and Reporting Requirements

### **§ 36500. Monitoring requirements**

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36500. For the purpose of complying with emissions monitoring requirements, the south coast district shall allow sources the option of using an electronic or computer data storage system. The district may require the electronic or computer data storage system to have the same degree of signal path security as with existing strip chart recorder systems.

**Comment.** Section 36500 continues former Health and Safety Code Section 40440.3 without change.

### **§ 36501. Reporting and forecasting**

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36501. (a) The south coast district shall use the Pollutant Standards Index developed by the Environmental Protection Agency and shall report and forecast pollutant levels daily for dissemination in the print and electronic media.

(b) Using existing communication facilities available to it, the south coast district shall notify all schools in the South Coast Air Basin whenever any federal primary ambient air quality standard is predicted to be exceeded.

(c) Whenever it becomes available, the south coast district shall disseminate to schools, amateur adult and youth athletic organizations, and all public agencies operating parks and recreational facilities in the south coast district the latest scientific information and evidence regarding the need to restrict exercise and other outdoor activities during periods when federal primary air quality standards are exceeded.

(d) Once every two months and annually, the south coast district shall report on the number of days and locations that federal and state ambient air quality standards were exceeded and the number of days and locations of these occurrences.

**Comment.** Section 36501 continues former Health and Safety Code Section 40451 without change.

**§ 36502. Report on regulatory activities**

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36502. The south coast district shall submit an annual report to the state board and the Legislature summarizing its regulatory activities for the preceding calendar year. The report shall include:

(a) A summary of each major rule and rule amendment adopted by the south coast district board. The summary shall include emission reductions to be accomplished by each rule or regulation; the cost per ton of emission reduction to be achieved from each rule or regulation; other alternatives that were considered through the environmental assessment process; the cost per ton of comparable emission reductions that could have been achieved from each alternative; a statement of the reason why a given alternative was chosen; the conclusions and recommendations of the district's socioeconomic analysis, including any evaluations of employment impacts; and the source of funding for the rule or regulation. For the purposes of this subdivision, a major rule or rule amendment is one that is intended to significantly affect air quality or which imposes emission limitations.

(b) The number of permits to operate or to construct, by type of industry, that are issued and denied, and the number of permits to operate that are not renewed.

(c) Data on emission offset transactions and applications, by pollutant, during the previous fiscal year, including an accounting of the number of applications for permits for new or modified sources that were denied because of the unavailability of emission offsets.

(d) The district's forecast of budget and staff increases proposed for the following fiscal year, and projected for the next two fiscal years. Budget and staff increases shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to Section 42311.1 of the Health and Safety Code 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 Section 36503 and Section 42311.1 of the Health and Safety Code. The response shall include proposed statutory changes needed to implement the recommendations.

(g) The results of the clean fuels program as specified in Section 36406. This element of the report shall be submitted biennially.

**Comment.** Section 36502 continues former Health and Safety Code Section 40452 without substantive change. The reference in the introductory paragraph to the date on which the annual reporting requirement began (April 1, 1991) is obsolete and has not been continued.

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

**§ 36503. Performance audit**

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36503. (a) Every three years, the south coast district board shall contract with an independent auditor to conduct a performance audit that will assess all of the following:

(1) Whether the objectives of proposed, new, or ongoing programs established by the Legislature or another authorizing body, are being, or will be, achieved.

(2) The effectiveness of the individual programs and activities of the south coast district.

(3) Whether the south coast district has complied with the laws, rules, and regulations applicable to the program.

(4) Whether there exist alternatives for carrying out the south coast district program that might yield desired results more effectively and efficiently, albeit at lower or higher cost.

(b) The performance audit shall include an assessment of policies, procedures, and productivity, as feasible, and shall make recommendations for changes that would enable the south coast district to meet its statutory mandates in a cost-effective manner.

(c) Prior to entering into a contract pursuant to subdivision (a), the district shall draft a request for proposals to be issued to qualified independent firms, which shall be reviewed by the Legislative Analyst prior to issuance.

**Comment.** Section 36503 continues former Health and Safety Code Section 40453 without substantive change. The reference in subdivision (a) to the date on which the performance audit requirement began (July 1, 1991) is obsolete and has not been continued.

## CONFORMING REVISIONS

CONFORMING REVISIONS . . . . .	1
Com. Code § 9302 (amended). Filing required to perfect security interest . . . . .	1
Gov't Code § 15335.2 (amended). Technical and financial assistance to small businesses . . . . .	2
Gov't Code § 31468 (amended). District . . . . .	2
Gov't Code § 65926 (amended). Air pollution control district . . . . .	4
Health & Safety Code provisions . . . . .	5
Pub. Res. Code § 60030 (amended). Merger between city and county solid waste management operations . . . . .	5
Veh. Code § 9250.2 (amended). Surcharge for Sacramento Metropolitan Air Quality Management District. . . . .	6

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### **Com. Code § 9302 (amended). Filing required to perfect security interest**

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SEC. \_\_\_\_ . Section 9302 of the Commercial Code is amended to read:

9302. (1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party under Section 9305.
- (b) A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under Section 9304 or in proceeds for a 10-day period under Section 9306.
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle or boat required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9313.
- (e) A security interest of a collecting bank (Section 4210) or arising under the divisions on sales and leases (see Section 9113) or covered in subdivision (3) of this section.
- (f) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
- (g) A security interest in a deposit account. Such a security interest is perfected:
  - (i) As to a deposit account maintained with the secured party, when the security agreement is executed.
  - (ii) As to a deposit account not described in subparagraph (i), when notice thereof is given in writing to the organization with whom the deposit account is maintained.
- (h) A security interest in investment property that is perfected without filing under Section 9115 or 9116.
- (i) A security interest in or claim in or under any policy of insurance including unearned premiums. Such interest shall be perfected when notice thereof is given in writing to the insurer.

(2) If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to any of the following:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this division for filing of the security interest.

(b) The provisions of the Vehicle Code which require registration of a vehicle or boat, or provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach; but during any period in which collateral is inventory, the filing provisions of this division (Chapter 4 (commencing with Section 9401)) apply to a security interest in that collateral.

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subdivision (2) of Section 9103).

(d) The provisions of the ~~Health and Safety Code~~ Environment Code which require registration of all interests in approved air contaminant emission reductions (~~Sections 40709 to 40713, inclusive, of the Health and Safety Code~~) (Chapter 1 (commencing with Section 32700) of Title 2 of Part 3 of Division 4 of the Environment Code).

(4) Compliance with a statute or treaty described in subdivision (3) is equivalent to the filing of a financing statement under this division and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this division.

**Comment.** Section 9302 is amended to substitute reference to the Environment Code provisions that replaced former Sections 40709 to 40713 of the Health and Safety Code.

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**Gov't Code § 15335.2 (amended). Technical and financial assistance to small businesses**

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SEC. \_\_\_\_. Section 15335.2 of the Government Code is amended to read:

15335.2. The Office of Small Business shall, to the maximum extent feasible operating pursuant to this chapter and ~~Article 4 (commencing with Section 40440) of Chapter 5.5 of Part 3 of Division 26 of the Health and Safety Code~~ Article 14 (commencing with Section 36450) of Chapter 5 of Title 4 of Part 3 of Division 4 of the Environment Code, provide technical and financial assistance to small businesses to facilitate compliance with environmental requirements and regulations.

**Comment.** Section 15335.2 is amended to substitute reference to the Environment Code provisions that replaced the small business assistance provisions of former Article 4 (commencing with Section 40440) of Chapter 5.5 of Part 3 of Division 26 of the Health and Safety Code.

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**Gov't Code § 31468 (amended). District**

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SEC. \_\_\_\_. Section 31468 of the Government Code is amended to read:

31468. (a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the

officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the Constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905 of the Government Code.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

(h) "District" also includes the South Coast Air Quality Management District, a new public agency created on February 1, 1977, pursuant to ~~Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code~~ Chapter 5 (commencing with Section 35800) of Title 4 of Part 3 of Division 4 of the Environment Code.

(1) Employees of the South Coast Air Quality Management District shall be deemed to be employees of a new public agency occupying new positions on February 1, 1977. On that date, those new positions are deemed not to have been covered by any retirement system.

(2) No retirement system coverage shall be effected for an employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, unless and until the employee shall have elected whether to become a member of the retirement association established in accordance with this chapter for employees of Los Angeles County or the retirement association established in accordance with this chapter for employees of San Bernardino County. The election shall occur before January 1, 1980. Any such employee who fails to make the election provided for herein shall be deemed to have elected to become a member of the retirement association established in accordance with this chapter for the County of Los Angeles.

(3) The South Coast Air Quality Management District shall make application to the retirement associations established in accordance with this chapter for employees of Los Angeles County and San Bernardino County for coverage of employees of the South Coast Air Quality Management District.

(4) An employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, and who has not terminated employment before January 1, 1980, shall be covered by the retirement association elected by the employee pursuant to paragraph (2). That coverage shall be effected no later than the first day of the first month following the date of the election provided for in paragraph (2).

(5) Each electing employee shall receive credit for all service with the South Coast Air Quality Management District. However, the elected retirement association may require, as a prerequisite to granting that credit, the payment of an appropriate sum of money or the transfer of funds from another retirement association in an amount determined by an

enrolled actuary and approved by the elected retirement association's board. The amount to be paid shall include all administrative and actuarial costs of making that determination. The amount to be paid shall be shared by the South Coast Air Quality Management District and the employee. The share to be paid by the employee shall be determined by good faith bargaining between the district and the recognized employee organization, but in no event shall the employee be required to contribute more than 25 percent of the total amount required to be paid. The elected retirement association's board shall not grant that credit for that prior service unless the request for that credit is made to, and the required payment deposited with, the elected retirement association's board no earlier than January 1, 1980, and no later than June 30, 1980. The foregoing shall have no effect on any such employee's rights to reciprocal benefits under Article 15 (commencing with Section 31830).

(6) An employee of the South Coast Air Quality Management District who commenced employment with the district after December 31, 1978, shall be covered by the retirement association established in accordance with this chapter for employees of San Bernardino County. That coverage shall be effected as of the first day of the first month following the employee's commencement date.

(7) Notwithstanding paragraphs (2) and (4) above, employees of the South Coast Air Quality Management District who were employed between February 1, 1977, and December 31, 1978, and who terminate their employment between February 1, 1977, and January 1, 1980, shall be deemed to be members of the retirement association established in accordance with this chapter for the employees of Los Angeles County commencing on the date of their employment with the South Coast Air Quality Management District.

(i) "District" also includes any nonprofit corporation which operates one or more museums within a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, pursuant to a contract between the corporation and the board of supervisors of the county, and which has entered into an agreement with the board and the county setting forth the terms and conditions of the corporation's inclusion in the county's retirement system.

(j) "District" also includes any economic development association funded in whole or in part by a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, and which has entered into an agreement with the board of supervisors and the county setting forth the terms and conditions of the association's inclusion in the county's retirement system.

(k) "District" also includes any special commission established in the Counties of Tulare and San Joaquin as described by Section 14087.31 of the Welfare and Institutions Code, pursuant to a contract between the special commission and the county setting forth the terms and conditions of the special commission's inclusion in the county's retirement system with the approval of the board of supervisors and the board of retirement.

**Comment.** Section 31468 is amended to substitute reference to the Environment Code provisions that replaced former Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code.

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**Gov't Code § 65926 (amended). Air pollution control district**

SEC. \_\_\_\_ . Section 65926 of the Government Code is amended to read:

65926. "Air pollution control district" means any district created or continued in existence pursuant to the provisions of Part 3 (commencing with Section 4000) of ~~Division 26 of the Health and Safety Code~~ 32000) of Division 4 of the Environment Code.

**Comment.** Section 65926 is amended to substitute reference to the Environment Code provisions that replaced former Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code. Note that, prior to amendment, this section erroneously referred to Section 4000 of the Health and Safety Code.

### **Health & Safety Code provisions**

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☞ **Staff Note. (1)** There are several sections of earlier parts of Division 4 of the proposed Environment Code that refer to sections that have been included in Part 3. See proposed Environment Code §§ 30140, 30195, 30220, 30320, 30395, 30410, 30440, 30485, 31107, 31300, 31302, 31450, 31452-31455, 31753, 31809, 32150. Conforming changes to these sections will be made in the revised draft of this division.

(2) There are several sections of later parts of Division 26 of the Health and Safety Code that refer to sections that have been included in Part 3 of Division 4 of the proposed Environment Code. See Health & Safety Code §§ 41500, 41503, 41503.1, 41503.3, 41503.5, 41703, 41712, 41865, 42308, 42311, 42351, 42359, 42359.5, 42363, 42450, 42705, 43000.5, 44084, 44086, 44220, 44237, 44241, 44241, 44242, 44243, 44243.5, 44244, 44244.1. Conforming changes to these sections will be made later, when these provisions are incorporated into the Environment Code.

### **Pub. Res. Code § 60030 (amended). Merger between city and county solid waste management operations**

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SEC. \_\_\_\_ . Section 60030 of the Public Resources Code is amended to read:

60030. (a) Any merger of county and city solid waste management operations pursuant to this division shall be subject to the provisions contained in that certain agreement between the city, county, and Stationary Engineers Local 39 International Union of Operating Engineers, AFL-CIO, dated December 11, 1992.

(b) Unless otherwise provided in the agreement specified in subdivision (a), all officers and employees of the city and the county who, as of the date of formation of the district, have solid waste management responsibilities shall be ex officio officers and employees, respectively, of the district, shall, unless otherwise provided by the governing board, perform, without additional compensation, for the district those duties that they performed for the city or the county, and, to the extent appropriate, the provisions of Sections ~~40121, 40122, 40123, and 40125 of the Health and Safety Code~~ 33701, 33702, 33703, and 33705 of the Environment Code, with regard to the officers and employees of a county air pollution control district, shall apply to the officers and employees of the district.

(c) The Director of Public Works of Sacramento County shall be the chief administrative officer of the district and shall be responsible for the proper and efficient administration of the district. In addition to the other powers and duties delegated by the governing board, the chief administrative officer shall have the power to do all of the following:

(1) Under the policy direction of the governing board, to plan, organize, and direct all district activities.

(2) To authorize expenditures within the designations and limitations of the approved budget.

(3) To make recommendations to and requests of the governing board concerning all of the matters that are to be performed by the governing board.

(4) To have charge of, handle, or have access to any property of the district.

**Comment.** Section 60030 is amended to substitute reference to the Environment Code provisions that replaced former Sections 40121, 40122, 40123, and 40125 of the Health and Safety Code.

**Veh. Code § 9250.2 (amended). Surcharge for Sacramento Metropolitan Air Quality Management District**

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SEC. \_\_\_\_\_. Section 9250.2 of the Vehicle Code is amended to read:

9250.2. The department shall, if requested by the Sacramento Metropolitan Air Quality Management District pursuant to Section ~~41081 of the Health and Safety Code~~ 35602 of the Environment Code, impose and collect a surcharge on the registration fees for every motor vehicle registered in that district, not to exceed either of the following amounts, whichever is applicable, as specified by the governing body of that district:

(a) For each motor vehicle registered in that district whose registration expires on or after December 31, 1989, and prior to December 31, 1990, two dollars (\$2).

(b) For each motor vehicle registered in that district whose registration expires on or after December 31, 1990, not to exceed four dollars (\$4).

**Comment.** Section 9250.2 is amended to substitute reference to the Environment Code provision that replaced former Section 41081 of the Health and Safety Code.

## DISPOSITION OF EXISTING LAW

**Note.** This table shows the disposition of sections in the Health and Safety Code, in effect on January 27, 1998, that are to be repealed in connection with the Environment Code legislation. For further detail, see the Comment to the appropriate section in the attached staff draft.

### HEALTH AND SAFETY CODE

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
40000	32000	40201	34701
40001(a)	32004(a)	40210	34850
40001(b)	32004(b)	40211	34851
40001(c)	32300	40212	34852
40001(d)	32004(c)	40220	34750
40002	33600	40220.5	34751
40003	32056	40221	34752
40100	33650	40221.5	34753
40100.5(a)-(d)	33651	40222	34754
40100.5(e)	33653	40223(1st ¶)	34755
40100.5(f)	33652	40223(2d ¶)	34756
40100.7	33654	40224	34757
40101(a)	33601	40225	34758
40101(b)	33602	40226	34759
40102	33603	40227	34760
40103	33604	40228	34800
40104	33605	40229	34801
40106	34600	40230	34702
40120	33700	40231	34703
40121	33701	40232	35050
40122	33702	40233(a)	35000
40123	33703	40233(b)-(c)	35001
40124	33704	40233(d)	35002
40125	33705	40233(e)	35003
40126	33706	40234	34704
40130	33750	40234	34853
40131	33751	40260	34900
40150	33800	40261	34901
40151	33801	40262	34902
40152(a)-(d)	33850	40263	34903
40152(e)	33851	40264	34904
40152(f)	33852	40265	34905
40152.5	33853	40266	34906
40154	33854	40267	34907
40155	33802	40268	34908
40156	33803	40270	34950
40157	33900	40271	34951
40158(a)	33804	40272	34952
40158(b)	33805	40273	34953
40159	33806	40274	34954
40160	33901	40275	34955
40161	33807	40276	34956
40162	33808	40300	34000
40200	34700	40301	34001

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
40302	34002	40412	35808
40303	34003	40413	35809
40304	34004	40414	35810
40310	34150	40416	35805
40311	34151	40420(a)	35900
40312	34152	40420(b)	35901(a)
40313	34153	40420(c)	35901(b)
40314	34154	40420(d)	35901(c)
40320	34050	40420(e)-(f)	35902
40321	34051	40420(g)	35901(d)
40322	34052	40420(h)	35901(e)
40322.5(a)-(d)	34053	40421.5	35903
40322.5(e)	34054	40422(a)-(b)	35904
40322.5(f)	34055	40422(c)	35905
40323	34056	40422(d)	35906
40324(1st ¶)	34057	40423	35907
40324(2d ¶)	34058	40424	35908
40325	34059	40424.5	35909
40326	34060	40425	35910
40327	34061	40426	35911
40328	34062	40426.5	35912
40329	34100	40426.7	35913
40330	34101	40426.7(e)	Omitted
40360	34200	40427	35914
40361	34201	40428	35915
40362	34202	40440	36250
40363	34203	40440.1	36300
40364	34204	40440.10	36350
40365	34205	40440.11(a)	36351
40370	34250	40440.11(b)	36352
40371	34251	40440.11(c)	36353
40372	34252	40440.11(d)	36354
40373	34253	40440.11(e)	36355
40374(a)	34254	40440.2(a)(1)	36302
40374(b)	34255	40440.2(a)(2)	36303
40375	34256	40440.2(a)(3)	36304
40376	34257	40440.2(a)(4)	36305
40377	34258	40440.2(a)(intro.)	36301
40390	34300	40440.3	36500
40391	34301	40440.5(a)-(b)	36058
40392	34302	40440.5(c)	36059
40400	35800	40440.5(d)	36060
40402	35801	40440.5(e)	36061
40404	35802	40440.5(f)	36062
40404.5	35803	40440.7(a)	36050
40405	35855	40440.7(b)-(c)	36051
40405(intro.)	35850	40440.7(d)	36052
40406	35860	40440.7(e)	36053
40406(intro.)	35850	40440.7(f)	36055(a)
40407	35865	40440.7(g)	36054
40407(intro.)	35850	40440.7(h)	36055(b)
40407.5	35870	40440.8(a)-(b)	36056
40407.5(intro.)	35850	40440.8(c)	36057
40408	35875	40441	36253
40408(intro.)	35850	40442	36115
40410	35804	40443	36251
40410.5	35806	40444	36252
40411	35807	40445	36400

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
40445.5	36401	40504	36164
40446	36402	40505	36165
40447	36403	40506	36200
40447.5	36404	40506.1	36201
40447.6	36405	40506.2	36202
40448	36450	40507	36203
40448.1	36407	40508	36205
40448.5	36406	40509	36204
40448.6	36451	40510	36206
40448.7	36452	40510.5	36207
40448.8	36453	40510.7	36208
40449	35811	40511	36209
40450	35812	40512	36210
40451	36501	40515	36211
40452	36502	40516(a)	36212
40453	36503	40516(b)	36213
40454	36408	40516(c)	36214
40455	36409	40520	36000
40456	36410	40521	36001
40458	36411	40522	36002
40460(a)	36100	40522.5	36003
40460(b)	36101	40523	36004
40460(c)	36104	40524	36005
40460(d)	36105	40526	36006
40461	36106	40527	36007
40462	36107	40528	36008
40463	36108	40529	36009
40464	36102	40530	36010
40465	36103	40531	36011
40466	36109	40532	36012
40467	36110	40533	36013
40468	36111	40534	36014
40469	36112	40535	36015
40469.5	36113	40536	36016
40470	36114	40537	36017
40480(a)-(c)	35950	40538	36018
40480(d)	35958	40539	36019
40481	35951	40540	36020
40482	35952	40700	32050
40483	35953	40701	32001
40484	35954	40701.5	32051
40485	35955	40702(1st ¶)	32002
40486	35956	40702(2d ¶)	32003
40489	35957	40703	32301
40500	36150	40704	32302
40500.1	36151	40704.5(a)-(d)	34400
40500.5	36152	40704.5(e)	34401
40501	36153	40704.5(f)	34402
40501.1(a)	36154	40705	32052
40501.1(b)	36155	40706	32053
40501.1(c)	36156	40707	32054
40501.1(d)	36157	40708	32055
40501.1(e)	36158	40709	32700
40501.3	36159	40709.5	32750
40502	36160	40709.6	32751
40503(a)	36161	40709.7(a)	32850(b)
40503(b)	36162	40709.7(b)	32850(a)
40503(c)	36163	40709.7(c)	32851

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40709.7(d)	32852	40727.2(a)-(b)	32350
40709.7(e)	32853	40727.2(c)-(d)	32351
40709.7(f)	32854	40727.2(e)	32352
40709.7(g)	32855	40727.2(f)	32353
40709.7(h)	32856	40727.2(g)	32354
40710	32701	40727.2(h)	32355
40711(a)	32702	40727.2(i)	32356
40711(b)	32703	40727.2(j)	32357
40712	32704	40728	32306
40713	32705	40728.5(a)(1st-2d snt.)	32400
40714.5	32800	40728.5(a)(last snt.)	32402(a)
40714.5(b)(1)-(2)	32801	40728.5(b)	32401
40714.5(b)(3)(A)-(C)	Omitted	40728.5(c)-(d)	32402(b)-(c)
40714.5(b)(3)(D)	32802	40730	32006
40715(a)	33500	40750	32100
40715(b)	33501	40751	32101
40716	32005	40752	32102
40717(a)	32900	40753	32103
40717(b)	32901	40800	32500
40717(c)	32902	40801	32502
40717(d)	32903	40802	32503
40717(e)	32904	40803	32504
40717(f)	32905	40804	32505
40717(g)	32906	40805	32506
40717(h)	32907	40806	32507
40717.5(a)	32950	40807	32508
40717.5(b)	32951	40808	32509
40717.5(c)	32952	40809	32510
40717.6(a)	33000	40820	32550
40717.6(b)-(c)	33001	40821	32551
40718(a)-(b)	33550	40822	32552
40718(c)	33551	40823	32553
40718(d)	33552	40824	32554
40718(e)	33553	40825	32555
40718(f)	33554	40826	32556
40718(g)	33555	40827	32557
40719(a)-(c)	33050	40828	32558
40719(d)	33051	40829	32559
40720(a)	32150	40830	32560
40720(b)	32151	40840	32600
40720(c)	32152	40841	32601
40720(d)	32153	40842	32602
40720(e)	32154	40843	32603
40720(f)	32155	40844	32604
40720(g)	32156	40860	32650
40720(h)	32157	40861	32651
40720(i)	32158	40862	32652
40720(j)	32159	40863	32653
40720(k)	32160	40864	32654
40721(a)	32200	40865	32655
40721(b)	32201	40900	34500
40721(c)	32202	40910	33200
40721(d)	32203	40911	33201
40721(e)	32204	40912	33300
40721(f)	32205	40913	33250
40725	32303	40914	33251
40726	32304	40915	33252
40727	32305	40916	33202

<b>Health &amp; Safety Code</b>	<b>Env't Code</b>	<b>Health &amp; Safety Code</b>	<b>Env't Code</b>
40917	33203	41061	35701
40918	33303	41062	35702
40918.5	33350	41063	35703
40918.6	33351	41064	35704
40918.7	33352	41065	35705
40919	33304	41066	35706
40920	33305	41080(a)	35600
40920.5	33306	41080(b)	35601
40920.6(a)	33400	41081	35602
40920.6(b)	33401	41082	35603
40920.6(c)	33402	41200	35100
40920.6(d)	33403	41210	35101
40921	33301	41211	35102
40921.5	33302	41212	35103
40922	33253	41220	35150
40923	33451	41221	35151
40924	33452	41222	35152
40925	33453	41223	35301
40925.5	33454	41230	35300
40926	33204	41231	35302
40928(a)	33100	41232	35303
40928(b)	33101	41233	35304
40928(c)	33102	41240	35250
40929(a)	33150	41241	35251
40929(b)	33151	41242	35252
40930	33450	41243	35253
40950	35400	41244	35254
40951	35455	41245	35255
40951(intro.)	35450	41246	35256
40952	35460	41247	35257
40952(intro.)	35450	41248	35258
40953	35465	41249	35259
40953(intro.)	35450	41250	35260
40960	35401	41251	35261
40961	35402	41252	35262
40962	35403	41253	35263
40963	35404	41254	35264
40980	35500	41255	35265
40981	35501	41256	35266
41010	35650	41260	35200
41011	35651	41261	35201
41012	35652	41262	35206
41013	35653	41263	35202
41014	35654	41264	35205
41015	35405	41265	35203
41016	35406	41266	35204
41040	35550	41267	35207
41060	35700		