HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] *(Division 26 repealed and added by Stats. 1975, Ch. 957.)*

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] *(Part 3 added by Stats. 1975, Ch. 957.)*

CHAPTER 6. General Powers and Duties [40700 - 40724.7] *(Chapter 6 added by Stats. 1975, Ch. 957.)*

40700. A district is a body corporate and politic and a public agency of the state.

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

40701. A district shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, to hold, use, and enjoy, and to lease or dispose of any real or personal property within or without the district necessary to the full exercise of its powers.

(e) To lease, sell, or dispose of any property, or any interest therein, whenever, in the judgment of the district board, such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

(f) To cooperate and contract with any federal, state, or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of this division.

(g) To require any owner or operator of any air pollution emission source, except a noncommercial vehicular source, to provide (1) a description of the source, and (2) disclosure of the data necessary to estimate the emissions of pollutants for which ambient air quality standards have been adopted, or their precursor pollutants, so that the full spectrum of emission sources can be addressed equitably pursuant to Section 40910.

(Amended by Stats. 1990, Ch. 1034, Sec. 1.)

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment on those cities that have agreed to have a member on the district board for purposes of Section 40100.5, 40100.6, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

(d) (1) Notwithstanding subdivision (b), expenses of the San Diego County Air Pollution Control District that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment imposed on an equitable per capita basis on each city and county included in the San Diego County Air Pollution Control District by the governing board of the San Diego County Air Pollution Control District created pursuant to Section 40100.6.

(2) At least 30 days before the assessment is imposed, the governing board shall hold a public hearing which shall include data supporting the annual per capita assessment and any schedule that may apply.

(e) This section shall become operative on March 1, 2021.

(Repealed (in Sec. 8) and added by Stats. 2019, Ch. 744, Sec. 9. (AB 423) Effective January 1, 2020. Section operative March 1, 2021, by its own provisions.)

40702. A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions.

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

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

40703. In adopting any regulation, the district shall consider, pursuant to Section 40922, and make available to the public, its findings related to the cost effectiveness of a control measure, as well as the basis for the findings and the considerations involved. 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.

(Amended by Stats. 2000, Ch. 397, Sec. 2. Effective January 1, 2001.)

40704. A district board shall file with the state board, within 30 days any rule or regulation the district board adopts, amends, or repeals.

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

40704.5. (a) Notwithstanding any other provision of law, on and after July 1, 1994, the membership of the governing board of an air quality management district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

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

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

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

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

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

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

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

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

(5) For purposes of paragraphs (1) to (3), inclusive, if any number which is not a whole number results from the application of the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or “three-fourths,” the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(f) This section does not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

(Added by Stats. 1993, Ch. 961, Sec. 8. Effective January 1, 1994. Operative July 1, 1994, by Sec. 10 of Ch. 961.)

40705. The district board shall provide for the number of personnel to be employed by the district air pollution control officer and for their duties and the times at which they shall be appointed.

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

40706. The district board shall determine the compensation of, and shall pay from district funds, the air pollution control officer, all other officers and employees, and members of the hearing board, of the district.

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

40707. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

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

40708. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, shall not be applicable to the districts.

(Amended by Stats. 2003, Ch. 296, Sec. 25. Effective January 1, 2004.)

40709. (a) Every district board shall establish by regulation a system by which all reductions in the emission of air contaminants that 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 that are not otherwise required by any federal, state, or district law, rule, order, permit, or regulation shall be registered, certified, or otherwise approved by the district air pollution control officer before they may be banked and used to offset future increases in the emission of air contaminants. The system shall be subject to disapproval by the state board pursuant to Chapter 1 (commencing with Section 41500) of Part 4 within 60 days after adoption by the district.

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

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

(d) This section does not apply to any district that is not required to prepare and submit a plan for attainment of state ambient air quality standards pursuant to Section 40911 if both of the following apply to the district:

(1) The district is not in a federal nonattainment area for any national ambient air quality standard unless the sole reason for the nonattainment is due to air pollutant transport.

(2) An owner or operator of a source or proposed source has not petitioned the district to establish a banking system.

(Amended by Stats. 2000, Ch. 729, Sec. 5. Effective January 1, 2001.)

40709.5. Any district which has established a system pursuant to Section 40709 by which reductions in emissions may be banked or otherwise credited to offset future increases in the emissions of air contaminants, or which utilize a calculation method which enables internal emission reductions to be credited against increases in emissions, and as of January 1, 1988, is within a federally designated nonattainment area for one or more air pollutants, shall develop and implement a program which, at a minimum, provides for all of the following:

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

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

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

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

(e) Annual publication of the costs, in dollars per ton, of emission offsets purchased for new or modified emission sources, excluding information on the identity of any party involved in the offset transactions. This publication shall specify, for each offset purchase transaction, the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased. Each application to use emissions reductions banked in a system established pursuant to Section 40709 shall provide sufficient information, as determined by the district, to perform the cost analysis. The information shall be a public record.

(Amended by Stats. 1992, Ch. 612, Sec. 3. Effective January 1, 1993.)

40709.6. (a) Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:

(1) The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 10 (commencing with Section 40910).

(2) The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section 39610.

(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).

(Amended by Stats. 1996, Ch. 771, Sec. 1. Effective January 1, 1997.)

40709.7. (a) For the purposes of this section, "military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

(b) For the purposes of this section, "base reuse authority" means the authority recognized pursuant to Section 65050 of the Government Code.

(c) An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base by June 1, 1995, or within 180 days of the reduction in emissions, whichever occurs later, if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

(d) Not later than July 1, 1995, or six months from the date that the base closure or realignment decision becomes final, whichever occurs last, the district shall request and attempt to obtain all records maintained by a military base that are necessary to quantify emission reductions, including, but not limited to, records on the operation of any equipment that emits air contaminants, provided that the district either waives the payment of direct costs to obtain the records or enters into an agreement with the appropriate entity of the federal government or the base reuse authority for the payment of the direct costs to obtain the records. The district shall maintain these records.

(e) (1) A base reuse authority may apply to a district, under the emission reductions banking system established pursuant to Section 40709, for any reductions in emissions related to the termination or reduction of operations at the military base under its jurisdiction.

(2) The district shall quantify and bank the emission reductions for a closing or realigning military base within 180 days of a request by a base reuse authority and payment of any applicable fees, if one of the following events has occurred:

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

(B) The time period for the federal government to apply for emission reduction credits pursuant to subdivision (c) has expired and the federal government has not applied for the credits.

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

(f) The district shall permanently retire the emission reduction credits obtained pursuant to this section by 5 percent to improve air quality.

(g) The baseline for quantifying emission reductions shall be the date that the base closure or realignment decision becomes final. The two-year period ending on the date that the base closure or realignment decision was made shall be used to determine average emissions from the military base unless this two-year period is not representative of normal operations, in which case an alternative, consecutive, two-year period that is within the five years prior to the baseline date may be used, as determined by the district.

(h) After registration, certification, or other approval of the emission reductions by a district air pollution control officer pursuant to subdivision (a) of Section 40709 and this section, the base reuse authority shall be deemed the owner of the emissions source for purposes of the issuance of a certificate pursuant to Section 40710. Upon receipt of the certificate, or other approval, the base reuse authority may use, sell, or otherwise dispose of the emission reduction credits as determined by the base reuse authority, provided that the credits may only be used for base reuse within the jurisdiction of the district.

(Amended by Stats. 2000, Ch. 890, Sec. 21. Effective January 1, 2001.)

40710. Upon receipt of approval and pursuant to Section 40709, a certificate evidencing all approved reductions in the emissions of air contaminants shall be issued to the owner or owners of the emissions source, and such reductions shall continue to be banked until they have been used according to district regulations. The owner or owners of such approved reductions have the exclusive right to use them and to authorize their use. Certificates evidencing ownership of approved reductions issued by a district shall not constitute instruments, securities, or any other form of property.

(Amended by Stats. 1980, Ch. 692.)

40711. (a) A banking system established pursuant to Section 40709 shall provide for registration of all interests in approved emission reductions. The registry shall be maintained by the district and open to public inspection. Upon payment of any required filing fee, and receipt of the documents required in subdivision (b), the district shall promptly register all interests in approved emission reductions and issue a certificate evidencing such ownership. The district may adopt by rule or regulation a schedule of fees for the issuance of certificates to cover the cost of confirming emission reductions and operating an emission reduction registry.

(b) Approved emission reductions may be transferred in whole or in part by written conveyance or by operation of law from one person to another. A sale, option, pledge, or other voluntary transfer of approved emission reductions shall be enforceable against third parties provided a copy of the written conveyance or a memorandum describing the transaction, signed by the transferor, is filed with the district. An involuntary transfer of approved emission reductions shall be enforceable against third parties provided the transferee files with the district a certified copy of the document effecting such transfer or a memorandum describing the nature of such transfer. Notwithstanding any other provision of law, conflicting interests in approved emission reductions shall rank in priority according to the time of filing with the district.

(Amended by Stats. 1980, Ch. 692.)

40712. If there is more than one owner of the source of the approved reductions in emission of air contaminants, initial title to such approved reductions shall be deemed held by such co-owners in the same manner as they hold title to the source of such reductions at the time such reductions are approved by the district air pollution control officer.

(Added by Stats. 1979, Ch. 1111.)

40713. Any system established pursuant to Section 40709 shall contain procedures for the approval of reductions in emissions of air contaminants comparable to district permit procedures established pursuant to Section 42300, including, without limitation, procedures for public comment within 30 days after notice of any proposed approval. In the event the district air pollution control officer refuses to register, certify, or otherwise approve an application for a reduction in the emission of air contaminants pursuant to

Section 40709, such applicant may, within 30 days after receipt of the notice of refusal, request the hearing board of the district to hold a hearing on whether the application was properly refused.

(Added by Stats. 1979, Ch. 1111.)

40714.5. (a) The Legislature hereby finds and declares all of the following:

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

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

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

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

(b) (1) With respect to any emission reduction that 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.

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

(A) 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.

(B) 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.

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

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

(3) This subdivision applies statewide in any area not otherwise excluded under subdivision (d) of Section 40709.

(Amended by Stats. 2000, Ch. 729, Sec. 6. Effective January 1, 2001.)

40715. (a) Every district shall establish and implement supplemental toxic air contaminant monitoring networks to supplement the existing monitoring capacity of the board and the districts as specified in the guidelines developed by the state board pursuant to Section 39668. The district may establish a schedule of fees to be paid to the district by sources of toxic air contaminants within the district which shall not exceed 50 percent of the costs of establishing and implementing these monitoring networks. Funds for the remaining 50 percent of the costs of establishing and implementing the supplemental toxic air contaminant monitoring networks shall be provided by the state board pursuant to subdivision (c) of Section 39668. Districts shall not be required to expend any district funds to establish and implement the supplemental toxic air contaminant monitoring program, as determined by Section 39668, that are in excess of the amount of state funds provided by the state board for that purpose.

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

(Added by Stats. 1987, Ch. 1219, Sec. 2.)

40716. (a) In carrying out its responsibilities pursuant to this division with respect to the attainment of state ambient air quality standards, a district may adopt and implement regulations to accomplish both of the following:

(1) Reduce or mitigate emissions from indirect and areawide sources of air pollution.

(2) Encourage or require the use of 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.

(Amended by Stats. 1996, Ch. 777, Sec. 2. Effective January 1, 1997.)

40717. (a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.

(b) A district which has entered into an agreement with a council of governments or a regional agency to jointly develop a plan for transportation control measures shall develop the plan in accordance with all of the following:

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

(2) The council of governments or regional agency, in cooperation with the district and any other person or entity authorized by the council of governments or regional agency, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established under paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and procedures for monitoring the effectiveness of and compliance with the measures in the plan. The council of governments or regional agency shall submit the plan to the district for its adoption according to a reasonable schedule developed by the district in consultation with the council of governments or regional agency.

(3) Upon receipt of the plan submitted by the council of governments or regional agency, the district shall review and approve or disapprove the plan in the following manner:

(A) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2).

(B) If the district determines that the plan does not meet the criteria established pursuant to paragraph (1), the district shall return the plan to the council of governments or regional agency with comments which identify the reasons the plan does not meet the criteria established pursuant to paragraph (1). Within 45 days, the council of governments or regional agency shall review the district's comments, revise the plan to meet the criteria established under paragraph (1), and resubmit the plan to the district. The district shall review and approve the revised plan if it meets the criteria established by the district pursuant to paragraph (1) and has been resubmitted to the district within 45 days.

(C) If the plan is not submitted pursuant to the schedule established under paragraph (2), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this subparagraph does not meet the criteria established under paragraph (1), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(4) Whenever the district revises its establishment of the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards, the plan shall be revised, adopted, and enforced in accordance with paragraphs (1), (2), and (3).

(c) Subdivision (b) shall not apply to the Sacramento district. Chapter 10 (commencing with Section 40950) shall govern preparation and enforcement of that plan for transportation control measures for the Sacramento district.

(d) Notwithstanding subdivision (b), a district located in a county of the third class shall develop a plan for transportation control measures as follows:

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

(2) The council of governments shall develop and adopt a plan for transportation control measures which meets the criteria established by the district, and shall submit the plan to the district for its review and adoption according to a reasonable schedule developed by the district in consultation with the council of governments.

(3) Upon receipt of the plan submitted by the council of governments, the district shall review and approve the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2). If the district determines that the plan does not meet the criteria established pursuant to paragraph (1) or if the plan is not submitted pursuant to the schedule established under paragraph (2), the district shall develop and adopt an alternative plan for transportation control measures.

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

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

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

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

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

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

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

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

(Amended by Stats. 1993, Ch. 1029, Sec. 2. Effective January 1, 1994.)

40717.5. (a) Any district that proposes to adopt or amend a rule or regulation pursuant to Section 40716 or 40717, which imposes any requirement on an indirect source to reduce vehicle trips or vehicle miles traveled, including, but not limited to, any rule or regulation affecting ridesharing or alternative transportation mode strategies, shall, prior to the adoption or amendment of the rule or regulation, do all of the following:

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

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

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

(4) Pursuant to Section 40922, consider the cost effectiveness of the proposed rule or regulation.

(5) Determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Section 40716 or 40717.

(b) A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to subdivision (a). However, if an indirect source subject to the rule or regulation has sites located both within and outside of the jurisdiction of a city or county to which that responsibility has been delegated, the indirect source may elect to be subject to the implementation of that rule or regulation only by the district. Notwithstanding Section 40454, an indirect source that elects to be regulated only by a district pursuant to this subdivision may also elect to include sites under district regulation that would not otherwise be subject to district regulation, and, in that event, shall not be subject to the implementation by a city or county of any requirement contained in that rule or regulation.

(c) (1) Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan, control, or condition land use, or on the ability of a city, county, or other public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

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

(Amended by Stats. 2000, Ch. 890, Sec. 22. Effective January 1, 2001.)

40717.6. (a) No district or other local or regional agency shall impose any requirement on any private entity, including any requirement in any congestion management program adopted pursuant to Section 65089 of the Government Code, except as specifically provided in Section 65089.1 of the Government Code, to reduce shopping trips or to require the imposition of parking charges or the elimination of existing parking spaces at retail facilities.

(b) Notwithstanding subdivision (a), nothing in this section shall be construed to prevent a city or county from doing any of the following:

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

(2) Imposing requirements on new development as a condition of development for the purpose of mitigation pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

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

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

(Amended by Stats. 2006, Ch. 538, Sec. 400. Effective January 1, 2007.)

40717.8. (a) For purposes of this section, the following terms have the following meaning:

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

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

(b) (1) Notwithstanding Section 40717, or any other provision of this chapter, and to the extent consistent with federal law, no district, or regional or local agency to which a district has delegated the authority to implement transportation control measures pursuant to Section 40717, and which is acting pursuant to that delegated authority, shall do either of the following:

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

(B) Require an event center which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement additional transportation control requirements that are also intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

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

(c) A district or regional or local agency may impose requirements on any event center, without permitting that event center to implement alternative strategies to achieve equivalent emissions reductions, for any of the following purposes:

(1) Traffic management before and after events.

(2) Parking management and vehicle flow within parking areas controlled by the event center.

(3) Reducing the amount of vehicle idling before and after events.

(4) Implementing marketing or education programs designed to educate attendees on mass transit or other alternative transportation methods for transit to and from the event center.

(5) Achieving a designated average vehicle ridership for vehicles which carry persons who are traveling to or from their employment at an event center.

(6) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle miles traveled by event center attendees.

(Added by renumbering Section 40928 by Stats. 1998, Ch. 485, Sec. 108. Effective January 1, 1999.)

40717.9. (a) Notwithstanding Section 40454, 40457, 40717, 40717.1, or 40717.5, or any other provision of law, a district, congestion management agency, as defined in subdivision (b) of Section 65088.1 of the Government Code, or any other public agency shall not require an employer to implement an employee trip reduction program unless the program is expressly required by federal law and the elimination of the program will result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation purposes.

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

(Added by renumbering Section 40929 by Stats. 1998, Ch. 485, Sec. 109. Effective January 1, 1999.)

40718. (a) Not later than January 1, 1990, the state board shall publish maps identifying those cities, counties, or portions thereof which have measured one or more violations of any state or federal ambient air quality standard. The state board shall produce at least one separate map for each pollutant.

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

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

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

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

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

(f) The state board shall review annually, and as appropriate revise, the maps required by this section, using the criteria developed pursuant to subdivision (c).

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

(Added by Stats. 1988, Ch. 1225, Sec. 1.)

40719. (a) Except as provided in subdivision (d), every district board which has adopted an emergency episode plan for ozone or oxidant may conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called.

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

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

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

(Added by renumbering Section 40716 (as added by Stats. 1988, Ch. 160) by Stats. 1990, Ch. 216, Sec. 77.)

40720. (a) Each marine terminal in the state shall operate in a manner that does not cause trucks to idle or queue for more than 30 minutes while waiting to enter the gate into the marine terminal.

(1) Any owner or operator of a marine terminal that operates in violation of this subdivision is subject to a two hundred fifty dollar ($250) fine per vehicle per violation.

(2) Marine terminals in the state shall be monitored by the district with jurisdiction over that terminal to ensure compliance with this subdivision.

(3) Citations for violations of this subdivision shall be issued by the applicable district, and shall include the truck license plate number or other unique identifier, which may include, but is not limited to, the cargo container number, the name of the marine terminal and port at which the violation occurred, and the date and time of the violation.

(4) Any action taken by the marine terminal to assess, or seek reimbursement from, the driver or owner of a truck for a violation of this subdivision shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(5) Any owner or operator of a marine terminal or port, or any agent thereof, who takes any action intended to avoid or circumvent the requirements of this subdivision or to avoid or circumvent the reduction of emissions of particulate matter from idling or queuing trucks is subject to a seven hundred fifty dollar ($750) fine per vehicle per violation, including, but not limited to, either of the following actions:

(A) Diverting an idling or queuing truck to area freeways or alternate staging areas, including, but not limited to, requiring a truck to idle or queue inside the gate of a marine terminal.

(B) Requiring or directing a truckdriver to turn on and off an engine on a truck while that truck is idling or queuing.

(6) The owner or operator of a marine terminal does not violate this subdivision by causing a truck to idle or queue for more than 30 minutes while waiting to enter the gate into the marine terminal, if the delay is caused by acts of God, strikes, or declared state and federal emergencies, or if the district finds that an unavoidable or unforeseeable event caused a truck to idle or queue and that the terminal is in good faith compliance with this section.

(7) Failure to pay a fine imposed pursuant to paragraph (1) or (5) shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(b) (1) Subdivision (a) does not apply to any marine terminal that provides, as determined by the district, two continuous hours of uninterrupted, fully staffed receiving and delivery gates two hours prior to and after, peak commuter hours each day, at least five days per week.

(2) For the purposes of this subdivision, “peak commuter hours” shall be those hours determined by the district, in consultation with the owners and operators of the marine terminals within the jurisdiction of each district and any labor union that is represented at those marine terminals. The district shall notify the marine terminals of the final determination of the peak commuter hours.

(c) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 65 hours, five days per week, if that marine terminal is located at a port that processes less than 3 million containers (20-foot equivalent units (TEUs)) annually.

(d) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 70 hours, five days per week, if that marine terminal is located at a port that processes more than 3 million containers (20-foot equivalent units (TEUs)) annually.

(e) The district shall determine the necessary level of monitoring and enforcement commensurate with the level of the truck idling or queuing problem existing within its jurisdiction.

(f) For the purposes of this section, “marine terminal” means a facility that meets all of the following criteria:

(1) Is located at a bay or harbor.

(2) Is primarily used for loading or unloading containerized cargo onto or off of a ship or marine vessel.

(3) Contains one or more of the following:

(A) Piers.

(B) Wharves.

(C) Slips.

(D) Berths.

(E) Quays.

(4) Is located at a port that processes 100,000 or more containers (20-foot equivalent units (TEUs)) annually.

(g) Notwithstanding paragraph (1) of subdivision (a), if a marine terminal implements a scheduling or appointment system for trucks to enter the terminal, the terminal shall be subject to a fine pursuant to subdivision (a) only for a truck that makes use of the system and that idles or queues for more than 30 minutes while waiting to enter the gate into the terminal, commencing from the start of the appointment or the time the truck arrives, whichever is later. The scheduling or appointment system shall meet all of the following requirements:

(1) Provide appointments on a first-come-first-served basis.

(2) Provide appointments that last at least 60 minutes and are continuously staggered throughout the day.

(3) Not discriminate against any motor carrier that conducts transactions at the marine terminal in scheduling appointments.

(4) Not interfere with a double transaction once inside the gate.

(5) Not turn away or fine a motor carrier if that motor carrier misses an appointment.

(Amended by Stats. 2004, Ch. 580, Sec. 1. Effective January 1, 2005.)

40723. (a) It is the intent of the Legislature that, when an air district establishes best available control technology or lowest achievable emission rate requirements based in part on vendor representations, the requirements be achievable for the applicable source category.

(b) Upon the request of any owner or operator of equipment that is subject to best available control technology or lowest achievable emission rate requirements, the district shall review whether the applicable requirements have been achieved and whether the requirements should be required for the source category or source if the owner or operator demonstrates that all of the following conditions are true:

(1) The owner or operator purchased equipment that was subject to or intended by the manufacturer or vendor to satisfy federal, state, or local air district rules or permitting requirements that impose best available control technology or lowest achievable emission rate requirements.

(2) An express warranty was provided to the owner or operator by the manufacturer or vendor that the equipment would achieve the best available control technology or lowest achievable emission rate requirements, or any specified emission rate or standard intended to satisfy those requirements.

(3) The owner or operator made a reasonable effort, for a reasonable period of time, to operate the equipment in accordance with the operating conditions specified by the equipment manufacturer or vendor.

(4) The equipment failed to meet the best available control technology or lowest achievable emission rate requirements covered by the warranty provided by the equipment manufacturer or vendor.

(5) The applicable best available control technology or lowest achievable emission rate requirements were established primarily on the basis of the representations and data provided by the equipment manufacturer or vendor.

(c) (1) If, after conducting a review pursuant to subdivision (b), the district determines that the applicable best available control technology or lowest achievable emission rate requirements are not achievable by a source, the district shall revise those requirements to a level achievable by that source.

(2) If, after conducting a review pursuant to subdivision (b), the district determines that the applicable best available control technology or lowest achievable emission rate requirements are not achievable by a source category, the district shall revise those requirements to a level achievable by that source category.

(d) This section shall be implemented in a manner consistent with applicable federal and state statutes, regulations, and requirements for the establishment of best available control technology and lowest achievable emission rate requirements.

(Added by Stats. 2000, Ch. 501, Sec. 1. Effective January 1, 2001.)

40724. (a) Each district that is designated as a serious federal nonattainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation requiring best available control measures (BACM) for sources for which those measures are applicable and best available retrofit control technology (BARCT) to reduce air pollutants from sources for which that technology is applicable for agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and for fugitive emissions from those agricultural practices a manner similar to other source categories by the earliest feasible date, but not later than January 1, 2006. The rule or regulation shall also include BACM and BARCT to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard. Each district that is subject to this subdivision shall comply with the following schedule with respect to the rule or regulation imposing BACM and BARCT:

(1) On or before September 1, 2004, notice and hold at least one public workshop for the purpose of accepting public testimony on the proposed rule or regulation.

(2) On or before July 1, 2005, adopt the final rule or regulation at a noticed public hearing.

(3) On or before January 1, 2006, commence implementation of the rule or regulation.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

(Added by Stats. 2003, Ch. 479, Sec. 4. Effective January 1, 2004.)

40724.5. (a) By the earliest feasible date, but no later than January 1, 2007, each district that is designated a moderate federal nonattainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, and that is not subject

to the requirements of Section 40724, shall adopt and implement control measures necessary to reduce emissions from agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and from fugitive emissions in a manner similar to other source categories from those activities by the earliest feasible date. Control measures adopted and implemented pursuant to this section shall also be implemented by the district to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard.

(b) A district is not required to adopt and implement control measures pursuant to this section if it determines in a public hearing that agricultural practices do not significantly cause or contribute to a violation of state or federal standards.

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

(e) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(Added by Stats. 2003, Ch. 479, Sec. 5. Effective January 1, 2004.)

40724.6. (a) On or before July 1, 2005, the state board shall review all available scientific information, including, but not limited to, emissions factors for confined animal facilities, and the effect of those facilities on air quality in the basin and other relevant scientific information, and develop a definition for the source category of a “large confined animal facility” for the purposes of this section. In developing that definition, the state board shall consider the emissions of air contaminants from those sources as they may affect the attainment and maintenance of ambient air quality standards.

(b) Not later than July 1, 2006, each district that is designated as a federal nonattainment area for ozone as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility, as defined by the state board pursuant to subdivision (a), to obtain a permit from the district to reduce, to the extent feasible, emissions of air contaminants from the facility.

(c) A district may require a permit for a large confined animal facility with actual emissions that are less than one-half of any applicable emissions threshold for a major source in the district for any air contaminant, including, but not limited to, fugitive emissions in a manner similar to other source categories, if prior to imposing that requirement the district makes both of the following determinations in a public hearing:

(1) A permit is necessary to impose or enforce reductions in emissions of air pollutants that the district show cause or contribute to a violation of a state or federal ambient air quality standard.

(2) The requirement for a source or category of sources to obtain a permit would not impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

(d) The rule or regulation adopted pursuant to subdivision (b) shall do all of the following:

(1) Require the owner or operator of each large confined animal facility to submit an application for a permit within six months from the date the rule or regulation is adopted by the district that includes both of the following:

(A) The information that the district determines is necessary to prepare an emissions inventory of all regulated air pollutants emitted from the operation, including, but not limited to, precursor and fugitive emissions, using emission factors approved by the state board in a public hearing.

(B) An emissions mitigation plan that demonstrates that the facility will use reasonably available control technology in moderate and serious nonattainment areas, and best available retrofit control technology in severe and extreme nonattainment areas, to reduce emissions of pollutants that contribute to the nonattainment of any ambient air quality standard, and that are within the district's regulatory authority.

(2) Require the district to act upon an application for permit submitted pursuant to paragraph (1) within six months of a completed application, as determined by the district.

(3) Require the owner or operator to implement the plan contained in the permit approved by the district, and establish a reasonable period, of not more than three years, after which each permit shall be reviewed by the district and updated to reflect changes in the operation or the feasibility of mitigation measures. The updates required by this paragraph are not required to be submitted for inclusion into the state implementation plan.

(4) Establish a reasonable compliance schedule for facilities to implement control measures within one year of the date on which the permit is approved by the district, and shall provide for 30 days' public notice and comment on any draft permit.

(e) Prior to adopting a rule or regulation pursuant to subdivision (b), a district shall, to the extent data are available, perform an assessment of the impact of the rule or regulation. The district shall consider the impacts of the rule or regulation in a public hearing, and make a good faith effort to minimize any adverse impacts. The assessment shall include all of the following:

(1) The category of sources affected, including, but not limited to, the approximate number of affected sources, and the size of those sources.

(2) The nature and quantity of emissions from the category, and the significance of those emissions in adversely affecting public health and the environment and in causing or contributing to the violation of a state or federal ambient air quality standard.

(3) The emission reduction potential.

(4) The impact on employment in, and the economy of, the region affected.

(5) The range of probable costs to affected sources and businesses.

(6) The availability and cost-effectiveness of alternatives.

(7) The technical and practical feasibility.

(8) Any additional information on impacts that is submitted to the district board for consideration.

(f) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Sections 40703, 40727, and 40728.5.

(h) A permitholder may appeal any district determination or decision required by this section pursuant to Section 42302.1, in addition to any other applicable remedy provided by law.

(i) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Sections 40724 and 40724.5.

(j) Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise

affect adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

(Amended by Stats. 2004, Ch. 183, Sec. 219. Effective January 1, 2005.)

40724.7. (a) A district that is designated as being in attainment for the federal ambient air standard for ozone shall adopt a rule or regulation as described in Section 40724.6 shall fulfill both of the following conditions:

(1) The regulation shall be adopted not later than July 1, 2006, unless a district board makes a determination in a public hearing, based on substantial scientific evidence in the record, that large confined animal facilities will not contribute to a violation of any state or federal ambient air quality standard.

(2) The regulation may not be submitted for inclusion in the state implementation plan.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Section 40703, 40727, and 40728.5.

(d) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Section 40724.

(e) The rule or regulation adopted by a district pursuant to this section is not required to be submitted for inclusion into the state implementation plan.

(Added by Stats. 2003, Ch. 479, Sec. 7. Effective January 1, 2004.)