

Final Statement of Reasons

for Rulemaking

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS
"HOT SPOTS" FEE REGULATION

Public Hearing Date: September 26, 1996
Agenda Item No.: 96-7-1

California Environmental Protection Agency



Air Resources Board

State of California

AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses**

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FEE REGULATION, FISCAL YEAR 1996-97

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I. GENERAL

On September 26, 1996 the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700-90705, Title 17, California Code of Regulations (CCR). After considering the staff's recommendation, and the public's written comments and testimony, the ARB approved Resolution 96-45, the amendments to the Fee Regulation, sections 90700-90705, Title 17, CCR. As required by Health and Safety Code section 44380, the Fee Regulation is designed to recover the anticipated costs incurred by the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) to implement the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) (Health and Safety Code sections 44300-44394) for the 1996-97 fiscal year.

The Fee Regulation also establishes each district's portion of the State's cost and fee schedules for nine air districts. Each of the remaining twenty five districts is required to adopt a fee rule that provides for the recovery of its portion of the State's cost as well as the district's cost.

At the hearing, the Board considered the staff's recommendation and the public testimony. The Board then approved the proposed amendments with modifications presented by the staff at the hearing, some of which were to conform the proposal to statutory changes resulting from the enactment of AB564 just prior to the hearing, and with additional modifications responding to testimony received.

The following documents, which provide additional information about this rulemaking, are incorporated by reference herein:

- (1) Staff Report: Proposed Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1996-1997, released August 9, 1996.

- (2) Notice of Public Availability of Modified Text, Supporting Documents and Information, available on December 30, 1996.
- (3) Notice of Public Availability of Modified Text, available on March 14, 1997.
- (4) Air Toxics “Hot Spots” Program Facility Prioritization Guidelines, July 1990.

Resolution 96-45 makes the significant changes to the Fee Regulation that are discussed below. These revisions and other non-substantive revisions are discussed in greater detail in the Staff Report made available to the public on August 9, 1996 and, as noted, in the December 30, 1996, Notice of Public Availability of Modified Text. In brief, these changes are:

- 1) Section 90700(b) was modified to conform to changes in section 90702 (a) to be consistent with AB564 as enacted.
- 2) The following modifications and additions were made to section 90701 of the Fee Regulation (Definitions):
 - a) The definitions in section 90701(b) - (e), (j) - (m), (p) - (s), and (t) - (aa) were deleted and the definitions (j) - (y), (ag) - (an) were added to reflect the change in the fee method from one based on a facility’s status to one based primarily on risk.
 - b) The definition of Survey Facility in section (ae) was removed because it was used in the initial phases of the Hot Spots Program to identify those facilities whose emissions could be of concern and is no longer necessary with the maturation of the Program.
 - c) Sections 90701 (j) - (n) were modified to be consistent with AB564 as enacted and reflects the prioritization score at which facilities will now be exempt from certain Hot Spots program fees. The phrase “...or equal to ...,” was deleted from each section.
 - d) Section 90701(ag) added the phrase “...or equal to ...,” to be consistent with AB564 as enacted and reflects the prioritization score at which facilities will now be exempt from certain Hot Spots program fees.
 - e) Sections 90701 (ag)(1) and (3) were deleted to be consistent with AB564 as enacted and reflects exemptions from certain Hot Spots fees.
 - f) The definitions for “Prioritization Score Greater Than Ten (10.0) Facility” in section 90701 (j) and “Tracking Facility” in section 90701 (ag) were modified to

specify that the prioritization procedures must be consistent with the CAPCOA 'Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990.' This document, which is available from the ARB, is incorporated by reference because of its length.

- g) Section 90701 (ao), the definition of "Update Facility," was added to reflect language in AB564 and modified to specify that prioritization procedures be consistent with the CAPCOA document listed above.
 - h) Several clarifying and grammatical changes were made to section 90701, including: removal of the definition of "Guidelines Report" from section 90701 (b) and addition of section 90701 (f), addition of section (d) "Facility Program Category," modification of section (e) "Facility Program Category List," and modification of section (ab) (B).
- 3) The following modifications and additions were made to section 90702 of the Fee Regulation (Facilities Covered):
- (a) Section 90702 (a) was modified to exempt certain facilities as enacted in AB564 and to include facilities subject to reinstatement of that bill.
 - (b) Section 90702 (b) and 90702 (d) were modified to allow districts time to update facility data and to allow time for ARB staff to calculate fees and present them through the public process for the Fee Regulation for fiscal year 1996-97.
 - (c) Modifications were made to section 90702 (b) (1) to specify that the prioritization procedures must be consistent with the CAPCOA "Air Toxics 'Hot Spots' Program Facility Prioritization Guidelines, July 1990." This document, which is available from the ARB, is incorporated by reference because of its length. Revisions were made to change from 0.1 to 1.0 the prioritization score at which facilities would be exempt from certain Hot Spot fees. Then, to be consistent with AB564 as enacted, this level of exemption was changed from 1.0 to 10.0. Procedures to be used when prioritizing facilities were clarified.
 - (d) The phrase "...at an actual receptor..." was removed from section 90702 (b) (2) in order to be consistent with the Emission Inventory Guidelines Report which specifies different procedures regarding choice of receptors for different types of risk assessments, e.g. screening risk assessments and full refined risk assessments.
 - (e) Additions were made to section 90702 (b) (3) - (7) to clarify that de minimis level exemptions are appropriate unless a health risk assessment required by the district is greater than exemption level specified.

- (f) Section 90702 (b)(8) was added as one of several ways to exempt facilities from fees and to assess fees provided screening risk levels meet specific criteria and then modified to exempt facilities as enacted in AB564.
 - (g) Section 90702 (c) was added and then removed and section 90702 (c) was modified to reflect the revised exemptions from certain Hot Spots fees.
 - (h) Several clarifying and grammatical changes were also made to section 90702.
- 4) Several revisions were made to section 90703 to reflect the change in the fee method and the date at which facility fee categories are set.
 - 5) Section 90704 (d)(3) was removed, 90704 (e)(1) - (e)(3) and (g)(3) were modified and section 90704 (g)(4) was removed to reflect the change in the fee method from one based on a facility's reporting status to one based primarily on a facility's risk.
 - 6) Section 90704 (e)(3) was modified to identify types of information that must be provided to ARB to document facility risk and complexity.
 - 7) The following modifications and additions were made to section 90704 of the Fee Regulation (State Board Adoption of Fees) to be consistent with AB564 as enacted:
 - a) The phrase "...or equal to ...," was deleted from section 90704 (e)(1) to reflect the prioritization score at which facilities will now be exempt from certain Hot Spots program fees.
 - b) Section 90704 (e)(3) was revised to specify the information about "Update Facilities" that districts are required to provide to the California Air Resources Board.
 - c) Section 90704 (g)(4) was added to provide a mechanism to collect a supplemental fee recovering the administrative costs of processing quadrennial emissions inventory reports for Update Facilities.
 - 8) Section 90704 (f)(1) was modified because Survey facilities were used in the initial phases of the Hot Spots Program to identify facilities whose emissions could be of concern. The section is no longer necessary with the maturation of the Program.
 - 9) Several clarifying and grammatical changes were also made to section 90704.
 - 10) Section 90705 (a) was revised to reflect changes to section (g) to be consistent with AB564 as enacted.

- 11) Several clarifying and grammatical changes to section 90705 (Fee Payment and Collection) were made including clarification of the procedures districts must follow in the event a district does not collect sufficient revenues to recover both the district program cost and the portion of the state costs that the district is required to remit to the State Board for a specific fiscal year.
- 12) In addition to the above modifications, the Authority and Reference citations for Sections 90701, 90702, and 90704 were revised to reflect changes in accordance with AB564 as enacted.
- 13) Table 1 of the Fee Regulation was revised to reflect corrections to facility data, including adjustments to reflect AB564 as enacted.
- 14) Table 2 of the Fee Regulation was modified to reflect changes in each air district's cost to be recovered for the seven air districts again requesting ARB adoption of facility fees. Air district costs to be recovered for the Kern County APCD and the South Coast AQMD were added to Table 2. The Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCD's, and Mendocino County AQMD costs were deleted from Table 2.
- 15) Facility fees in Table 3 of the Fee Regulation were changed to reflect the State's new cost for the new facility program categories, changes in the air district's cost, updated facility counts, facility data corrections, and the provisions of AB564 as enacted for the Imperial, Kern, Lassen, Santa Barbara and Tuolumne County APCDs, the Great Basin Unified APCD and the Mojave Desert, South Coast and Yolo-Solano AQMDs. Facility fees were added for the Kern County APCD and South Coast AQMD. Facility fees for the Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCDs, and Mendocino County AQMD were deleted.
- 16) Flat fees for Survey facilities for all districts in Table 4 were deleted. Flat fees for Industrywide facilities specified by the air districts in Table 4 were updated. Flat fees for Industrywide facilities for the Kern County APCD and South Coast AQMD were added to Table 4. Flat fees for Industrywide facilities for the Calaveras, Mariposa, and Placer County APCDs, San Joaquin Valley Unified APCD, and Mendocino County AQMD were deleted. In addition, flat fees for industrywide facilities were modified to reflect changes in districts' costs to be recovered by Imperial County APCD and Mojave Desert AQMD. Table 4 of the Fee Regulation was modified to reflect adjustments requested by Imperial County APCD.
- 17) Appendix A of the Fee Regulation was revised to reflect a change in the date of the Santa Barbara County APCD's list of air toxic sources from "April 27, 1995" to "September 18, 1996."

The Notice of Public Availability of Modified Text was made available to the public on March 14, 1997, with a deadline for public comment of March 31, 1997. In this document three Facility Program Category definitions were modified for clarity. The modifications are summarized as follows:

The proposed definition for "Risk of 10.0 to Less Than 50.0 Per Million Facility" in Section 90701(n) was modified to clarify the criteria under which a facility would qualify for this Facility Program Category.

The proposed definition for "Tracking Facility" in Section 90701(ag) was modified to clarify the criteria under which a facility would qualify for this Facility Program Category.

The proposed definition for "Update Facility" in Section 90701(ao) was modified to clarify the criteria under which a facility would qualify for this Facility Program Category.

There were no comments received as a result of these modifications.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 90700 through 90705, Title 17, CCR, as approved, after making the modified regulatory language available for public comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider written comments as may be submitted during this period, make such modifications as may be appropriate, and present the regulation to the Board for further consideration if he determines that this is warranted.

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants. Health and Safety Code sections 44391 requires facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. This regulatory fee action will fund district and ARB implementation of this risk reduction effort.

The determinations of the ARB's Executive Officer concerning the cost or savings necessarily incurred in reasonable compliance with the proposed amendments to the Fee Regulation are presented below.

The ARB's Executive Officer has determined that the amended Fee Regulation will impose a mandate upon and create costs to the air districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement to the air districts pursuant to Government Code sections 17500 et seq. and section 6 of Article XIIB of the California Constitution because the air districts have the authority to levy fees sufficient to recover costs of the mandated Program (Health and Safety Code section 44380). These fees are intended to recover the full costs of air district implementation of the Air Toxics Hot Spots Program, including compliance with the amended Fee Regulation. The estimated fiscal year

1996-97 air district costs to implement the amended Fee Regulation are approximately \$387,000.

Pursuant to the amended regulation, some local and State government facilities must pay Hot Spots fees. In accordance with the Health and Safety Code section 44320, these facilities are subject to the Fee Regulation because: 1) they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report incorporated by reference in Title 17, CCR, sections 93300.5, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by an air district and 3) they are not exempted under any of the exemption criteria. The local and State government facilities that are affected by Hot Spots fees are some publicly-owned treatment works (POTWs), universities, hospitals, correctional institutions and laboratories.

The Executive Officer has determined that adoption of the amended Fee Regulation will impose a mandate upon and create costs to some POTWs. POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report, release the specified quantity of at least one of the four criteria pollutants, and are classified by the air district in one of the prescribed Facility Program categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$72,900 for fiscal year 1996-97. The Executive Officer has determined that adoption of the amended regulation will not create cost to, or impose a mandate upon, local school districts.

The Executive Officer has also determined that the amended Fee Regulation will impose costs on affected State agencies. The costs to the ARB to implement and administer the Air Toxics Hot Spots Program, including the amended Fee Regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and sections 90700-90705 of Title 17, CCR. The costs for the ARB to develop and implement the amended Fee Regulation are estimated to be \$152,000. The Office of Environmental Health Hazard Assessment (OEHHA) incurs no implementation cost to develop the Fee Regulation.

Other affected State agencies (e.g., universities, hospitals, correctional institutions, laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these State agencies were estimated to total \$74,600 for fiscal year 1996-97.

The Executive Officer has determined that the amended Fee Regulation will not create costs or savings in federal funding to any State agency or program.

The Board's Executive Officer has determined, pursuant to Government Code 11346.5(a)(3)(B), that the regulation will affect small business. Based on an assessment made, the Executive Officer has determined there is a potential cost impact on private persons or businesses directly affected by the Regulation. The Executive Officer has also determined that adopting these amendments may have a significant, adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the Executive Officer has determined that for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

In considering the proposed amendments, the ARB has determined that no alternative considered by the agency would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover reasonable anticipated costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses in those districts for which ARB is adopting a fee schedule. Additionally, exemptions will relieve lower risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

Furthermore, in accordance with Health and Safety Code section 57005(a), the Executive Officer, after evaluating the alternatives, if any, to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7), and considering whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments, has determined that there is no such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received written and oral comments in connection with the 45-day comment period and written comments during the 15-day comment period for the December 30, 1996 Notice of Public Availability of Modified Text. No comments were received during the 15-day comment period for the March 14, 1997 Notice of Public Availability of Modified Text. The comments received in connection with the 45-day comment are divided into technical data adjustments and general comments. The technical adjustments include air districts providing

corrected facility data, providing documentation, and updating anticipated air district program costs. Under General Comments a list of commenters is set forth below, identifying the date and form of all comments that were timely filed. Following the list is a summary of each objection or recommendation made regarding the proposal, together with an explanation of how the proposed action has been changed to accommodate the objection or recommendation, or the reasons for making no change.

A. Technical Data Adjustments

1. For the purposes of calculating distribution of the State's costs, and facility fees where applicable, the following air districts supplied facility data corrections during the 45-day comment period: the Glenn, Lake, Northern Sonoma, San Diego, Santa Barbara, Tehama, and Ventura County APCDs; Monterey Bay Unified APCD; and the Feather River, Mojave Desert, North Coast Unified, South Coast and Yolo-Solano AQMDs.

Agency Response: The ARB staff made corrections to the facility data as requested by these air districts when justification for the changes and appropriate supporting documentation were provided. These data were used to calculate the distribution of the State's cost and facility fees for fiscal year 1996-97.

2. Several air districts provided additional supporting documentation for their facility data corrections during the 45-day comment period: Northern Sonoma and Tehama County APCDs; Mojave Desert and Yolo-Solano AQMDs.

Agency Response: The ARB staff used this documentation to ensure that facility counts were accurate.

3. During the 45-day comment period, the ARB received written documentation and information regarding updated air district Program costs reflecting a reduced workload as a result of exempting facilities due to AB564 or the flat fees contained in Table 4 from the following districts: the Imperial and Kern County APCD's.

Agency Response: The ARB staff used this updated cost information to calculate facility fees for the air districts.

4. During the 45-day comment period, the Mojave Desert and South Coast AQMD's requested the \$800 flat fee for the Unprioritized Simple category for their districts.

Agency Response: The ARB staff used this flat fee to calculate district facility fees for these air districts.

5. The ARB received additional information which supported an adjustment to district board approved program costs and the flat fees contained in Table 4 from the following districts after

the September 26, 1996 hearing: the Imperial and Kern County APCD's, and the South Coast AQMD.

Agency Response: This additional information was used to calculate facility fees for the air district and made available for public review and comment in the 15-day public comment period for the December 30, 1996, Notice of Public Availability of Modified Text.

6. Comment: Additional documentation was received after the September 26, 1996 hearing from the Glenn County APCD in support of facility counts supplied earlier.

Agency Response: The ARB staff used this documentation to ensure that facility counts were accurate.

B. General Comments Regarding the Proposed Amendments to the Fee Regulation for Fiscal Year 1996-97

Received During the 45-Day Comment Period and at the September 26, 1996 Hearing

The ARB received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period. In the following discussion of comments and responses, the commenter is identified by his or her last name.

- (1) August 12, 1996 letter from Christopher A. Collins, Supervising Air Quality Engineer, Mojave Desert Air Quality Management District, to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (Collins)
- (2) August 12, 1996 letter from Karen B. Kelley, Air Toxics Specialist, Sacramento Metropolitan Air Quality Management District, to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (Kelley)
- (3) August 19, 1996 letter from Robert Clark, District Engineer, North Coast Unified Air Quality Management District to Krista Eley, Air Pollution Specialist, ARB. (Clark)
- (4) August 26, 1996 letter from Brian Shafritz, Engineering Supervisor, Santa Barbara County Air Pollution Control District, to Krista Eley, Air Pollution Specialist, ARB. (Shafritz)
- (5) August 28, 1996 letter from Douglas B. Noecker, Vice-President, Northwestern, Inc., to Richard Bode, Manager, Emission Inventory Methods Section, ARB. (Noecker)
- (6) September 6, 1996 letter from Robert L. Reynolds, Air Pollution Control Officer, Lake County Air Quality Management District to Honorable Board Members, ARB.

(Reynolds)

- (7) September 10, 1996 letter from Benjamin W. Shaw, Senior Manager Air Toxics Team, South Coast Air Quality Management District, to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (Shaw)
- (8) September 13, 1996 letter from W. J. McConachie, Private Citizen, to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (McConachie)
- (9) September 20, 1996 letter from Craig D. Anderson, Principal Environmental Engineer, Solar Turbines to Patricia Hutchens, ARB Board Secretary. (Anderson)
- (10) September 20, 1996 letter from Paul Kronenberg, Executive Director, Chemical Industry Council of California to Patricia Hutchens, ARB Board Secretary. (Kronenberg)
- (11) September 23, 1996 letter from Peter F. Hess, President, the California Air Pollution Control Officers Association to Patricia Hutchens, ARB Board Secretary. (Hess)
- (12) September 23, 1996 letter from Wayne Morgan, Air Pollution Control Officer, North Coast Unified Air Quality Management District to John D. Dunlap, III, Chairman of the Air Resources Board. (Morgan)
- (13) September 24, 1996 letter from Millie M. Yamada, Chairperson, California Aerospace Environmental Association to Patricia Hutchens, ARB Board Secretary. (Yamada)
- (14) September 24, 1996 letter from James J. Lichter, Analyst Regulation Review Unit, California Trade and Commerce Agency to Patricia Hutchens, ARB Board Secretary. (Lichter)
- (15) September 24, 1996 letter from Victor Weisser, President, California Council for Environmental and Economic Balance to Association to John D. Dunlap, III, Chairman of the Air Resources Board. (Weisser)
- (16) September 25, 1996 letter from Richard J. Smith, Deputy Director, San Diego County Air Pollution Control District to Patricia Hutchens, ARB Board Secretary. (Smith)

Oral Testimony Presented at the September 26, 1996 Hearing of the Air Resources Board

(20) Jeff Sickenger, Western States Petroleum Association, oral testimony. (Sickenger)

(21) Randy Brummett, Brummett Associates, oral testimony. (Brummett)

Comments Concerning the Proposed Amendments in General:

1. Comment: Supports the proposed amendments to the Fee Regulation for fiscal year 1996-97. (McConachie)

Agency Response: The ARB appreciates this comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing.

2. Comment: The staff of ARB and OEHHA are to be applauded for their efforts to control and reduce their costs under the Hot Spots Program. At the same time we want to make sure the program is sufficiently funded to provide needed support to the local districts and their customers. (Anderson)

Agency Response: The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. These amendments included significant reductions in state costs to administer the Air Toxics Hot Spots Program. The state has been able to reduce costs because many Program tasks have been completed or are nearing completion. Although there will be a reduction in support to the local districts and our other clients we believe ARB and OEHHA staff can serve our clients satisfactorily.

3. Comment: Generally supports the proposed amendments to the Fee Regulation because it continues the trend of reducing the state fee portion of the Hot Spots Program. (Kronenberg)

Agency Response: The ARB appreciates the comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. These amendments included significant reductions in state costs to administer the Air Toxics Hot Spots Program.

4. Comment: Fees should be revised to incorporate the volume of releases as part of the indices and the indices should be more workload related than risk related. (Kronenberg)

Agency Response: The ARB staff disagrees with this comment and responds as follows. In accordance with Health and Safety Code section 44380 (a) (3), fees are to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that facility by the district. The volume of emissions is already incorporated into the calculations of both prioritization scores and risk assessments. Volume is only one factor among many that are taken into account when estimating the potential cancer and

non-cancer health risks. In addition, the prioritization scores and risk assessments are direct measures of the level of priority assigned by the district. ARB staff believe the revised facility categorization system based on risk with a workload component is a significant step that reflects changes in the Hot Spots Program and all available information that has been collected by the districts and ARB.

5. Comment: Supports the amendments to the Fee Regulation for the next year and appreciates the agency's willingness to work with the local districts and feel that the staff have done a good job in responding to our concerns. (Hess)

Agency Response: The ARB appreciates the comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. The amendments to the Fee Regulation were developed through a public process that included numerous meetings and public workshops with air districts and other stakeholders.

6. Comment: Suggest several clarifications to the proposed Fee Regulation text including the following: clarify that the note at the top of page I-1 is an editorial note and not part of the regulation, remove the definition "Air Toxics Hot Spots Emission Inventory Criteria and Guidelines Report" and add the definition "Guidelines Report" to be consistent throughout the Regulation, and change "which" to "that" in section 90704 (g) (2), 90705 (c), and (d). (Lichter)

Agency Response: The ARB staff incorporated these suggestions into the amendments to the Fee Regulation for fiscal year 1996-97 approved by ARB at the September 26, 1996 hearing.

7. Comment: Supports the ARB's proposed amendments to the Fee Regulation for Fiscal Year 1996-97 as they will significantly reduce the state costs for the program as this program transitions to a maintenance mode. We particularly support the process they have used to obtain input from all interested parties. (Weisser)

Agency Response: ARB appreciates this comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. The amendments to the Fee Regulation included significant reductions in state costs to administer the Air Toxics Hot Spots Program and were developed through a public process that included numerous meetings and public workshops with air districts and other stakeholders.

8. Comment: Generally supports adoption of the proposed Fee Regulation. (Smith)

Agency Response: The ARB approved the amendments to the Fee Regulation for

fiscal year 1996-97 at the September 26, 1996 hearing.

9. Comment: We view staff's proposed changes as another significant step forward toward an equitable maintenance mode that focuses on true hot spot facilities. (Sickenger)

Agency Response: ARB appreciates this comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. These amendments included removing facilities which pose little or no health risks from the Fee Regulation thereby focusing on facilities with greater health risks.

10. Comment: The July 12th deadline is unrealistic and should be moved to December 30, 1996 so industry has a chance to respond in order to do a couple of things. (Brummett)

Agency Response: The proposed regulation specifies a July 12th deadline in order for ARB staff to receive the district facility data that are needed to calculate the fees for the Fee Regulation for fiscal year 1996-97. The deadline was set in July so that staff would be able to present the fees to the public in the July 1996 Staff Report and further present the fees through meetings with air districts and interested stakeholders before the September hearing.

11. Comment: The Fee Regulation seems to change every year and we would like it to be adopted for several years. (Brummett)

Agency Response: With the enactment of AB 564 and the change to a risk-based fee method, there will be a transition period in the coming fiscal year as more facilities are exempted from fees. Therefore, if the Fee Regulation were to be adopted for several years, facilities would not have the opportunity to update their priority scores or health risk assessments, and thus their fees, on an annual basis. However, not revisiting the Fee Regulation annually would decrease staff time for all stakeholders. ARB staff will evaluate this option in developing future amendments to the Fee Regulation.

Comments Concerning Fees:

12. Comment: Fee levels for facilities that are determined to be high risk may be based on old emissions data that have not been finalized by the air districts and we believe these facilities should be given a credit against future years if the finalized data results in a recategorization. (Kronenberg)

Agency Response: It is the ARB's policy to use the most current data received from the air districts by the July 12, 1996 deadline in the Fee Regulation when determining fee levels. The districts are responsible for sending the necessary supporting information to the ARB to

identify the appropriate Program Category for the facility, and then, in accordance with Health and Safety Code section 44362 (a), to approve the final risk assessment. The Facility Program Categories of all facilities statewide are based on the information available at the time of the deadline. It is not possible to give a credit to a facility because the funds collected each fiscal year are used by the State and air districts to implement their respective programs based on district and State determined costs for the program. These costs are determined for the applicable fiscal year prior to adoption of the Fee Regulation in accordance with Health and Safety Code 44380. In addition, any credit for a particular facility would have to be made up by further billing to all other facilities.

13. Comment: Fee indices in the Staff Report should indicate the amount of fees that go to OEHHA and the amount of fees that go to ARB so that the focus of activities is clear. (Kronenberg)

Agency Response: In the July 1996 Staff Report, Appendix III delineates the proposed state costs for the Program and the costs associated for the Program tasks of OEHHA and ARB. The proportion of state costs in Appendix III for OEHHA tasks is approximately 57%.

14. Comment: Supports the proposed changes to the Air Toxic Hot Spots Fee Regulation. We have been working with ARB staff for some time in an effort to base the fees directly on the quantity and toxicity of hazardous air pollutants emitted rather than on the number of different processes occurring at a facility. (Yamada)

Agency Response: The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. The amendments to the Fee Regulation included a new fee categorization method that is primarily risk-based with a work load component which is consistent with Health and Safety Code section 44380 (a) (3).

15. Comment: A facility's fees should not increase substantially simply because other facilities are removed from the Hot Spots Program. Fees should only be based on changes at the facility that require further action for which there is an associated state or district cost. (Sickenger)

Agency Response: Fees are based on overall program costs, including costs for activities that are associated with multi-facility work, such as database management and fee regulation development. However, the ARB staff does not anticipate that fees will increase substantially due to fewer facilities in the Program because the total program cost will decrease simultaneously as more tasks are completed. Nevertheless, an individual facility fee may increase compared to prior years if the facility is in a high risk category or has otherwise moved to a different category and is now in a different relative position compared to other facilities in the Program.

Comments Concerning District Costs and Implementation:

16. Comment: It is not clear what the “Anticipated District Costs” in Table 2 of the Fee Regulation represent. (Shafritz)

Agency Response: The Anticipated District Costs in Table 2 represent district costs minus the cost recovered by the flat fees described in section 90704 (f), as described in the footnote in Table 2. ARB has modified this footnote and will evaluate additional changes during the development of the Fee Regulation for fiscal year 1997-98 to determine if Table 2 should be further modified.

17. Comment: Request your consideration of a language change in section 90700 (b) of the Fee Regulation: “Each district with jurisdiction over facilities meeting the criteria set forth in section 90702 (a) (1), (a) (2), and (a) (3) ~~shall~~ may annually collect from the operator of each such facility and each operator shall pay, upon district request, fees which shall provide the following:...” (Reynolds)

Agency Response: The ARB staff responds as follows. Health and Safety Code section 44380 (a) (2) requires each air district to adopt a fee schedule which recovers the costs of the district and which assesses a fee upon the operators of every facility subject to the Program. A district may request ARB to adopt a fee schedule for the district if the district meets specified requirements. Under Health and Safety Code section 44380 (a) (3), in adopting its own fee schedule an air district must base fees on toxic emissions and priority level to the maximum extent practicable. If a district had no district program costs and no subject facilities or had a surplus from the year before to completely fund program costs, then an annual fee collection might not be necessary. Otherwise annual fee collection is required under ARB regulations.

18. Comment: Request your consideration of a language change in the Fee Regulation that would allow district discretion to define a facility as a State Industrywide Facility. (Reynolds)

Agency Response: A mechanism already exists in the Fee Regulation to allow air districts to identify a facility as a State Industrywide Facility provided the facility has not prepared an Individual Plan and Report in accordance with Health and Safety Code sections 44340, 44341, or 44344 and the district submits documentation for approval by the Executive Officer of the State Board, verifying that the facility meets the definition in Health and Safety Code section 44323. This promotes consistency statewide.

19. Comment: Request your consideration of removing the requirement in section 90704 (f) of the Fee Regulation that only after an Industrywide facility has previously been assessed and has paid the specified flat fee in Table 4 of the Fee Regulation, can the district waive the fee. (Reynolds)

Agency Response: A mechanism was previously added to section 90704 (f) (1) of the Fee Regulation to allow flexibility for assessing Industrywide facilities within the limits of the Air Toxics Hot Spots Act. This section provides that districts may waive fees after an Industrywide

facility has previously been assessed and has paid the specified flat fee in Table 4 of the Fee Regulation if the district determines there are insignificant costs with respect to the facility. This is therefore one option, and other mechanisms exist to exempt facilities or waive fees, such as de minimis exemptions. In addition, facilities that qualify as State Industrywide are assessed a \$15 state costs and many of these industrywide facilities may qualify for low risk or low priority score exemptions. Removing section 90704 (f)(1) would only decrease the number of options available.

20. Comment: Request your consideration of a language change in the Fee Regulation that would allow district discretion to determine the need to invoice for 2588 specific fees. (Reynolds)

Agency Response: ARB staff disagree with this comment and incorporate Response 17 herein.

21. Comment: Request your consideration of a language change in the Fee Regulation that would allow district discretion to determine the required information contained on the fee collection invoice and specifically delete the reference to an invoice number and the statement: The California Health and Safety Code section 44380 requires the collection of fees from facilities subject to the requirements of the Air Toxics Hot Spots Information and Assessment Act of 1987. (Reynolds)

Agency Response: The information listed in section 90705 (a) (1) of the Fee Regulation is necessary to provide accurate record keeping and to inform facilities of basic information regarding their invoice. This provision was originally added to the Fee Regulation in fiscal year 1994-95 and has not been amended since.

22. Comment: We request that ARB modify the proposed Fee Regulation so that it is not mandatory for a district to add the industrywide facility costs to fee calculations for the non-industrywide facility costs, as long as the district agrees to pay the State out of existing district funds. (Shaw)

Agency Response: The Fee Regulation allows flexibility in identifying industrywide facility costs, and thus it is not mandatory for industrywide facility costs to be added to the costs for non-industrywide facilities. The calculations are described in Appendix IV, part C. 4. of the Staff Report.

23. Comment: Efforts to move forward with the proposed regulation as quickly as possible could preclude the air district from the opportunity to review the detailed calculations used by staff to arrive at the final recommended cost allocations. (Smith)

Agency Response: The ARB staff provided district staff the detailed information as requested and worked with them to explain the districts' shares. The Notice of Public Availability of Modified Text available December 30, 1996, provided all interested parties the opportunity to comment on changes presented at the September 26, 1996, hearing and on the calculations used to arrive at the cost allocations. No additional comments were received

regarding district review of calculations.

24. Comment: The district is concerned about differences in approaches in calculating prioritization scores and risks potentially resulting in an inequitable distribution of state costs among the air districts. (Smith)

Agency Response: The California Air Pollution Control Officers Association guidelines (CAPCOA guidelines), incorporated by reference in the Fee Regulation, provide the framework for determining the prioritization scores and performing health risk assessments, and also include some flexibility on how districts use them. The districts may decide on the method within that framework, and the CAPCOA guidelines provide overall statewide consistency.

Comments Concerning Facility Program Categories:

25. Comment: The hazard index should not be used to determine a facility's program category. (Collins)

Agency Response: ARB staff disagrees with this comment. ARB staff has discussed this issue with the Office of Environmental Health Hazard and Assessment (OEHHA) and OEHHA has determined that hazard indices represent true health issues and should remain a part of this categorized tier under this regulation. A hazard index is an indicator of non-cancer health effects and represents the level of exposure to a toxic pollutant divided by a reference exposure level of non-cancer health effects at which no adverse health effects are anticipated. Hazard Indices can represent both chronic or acute adverse health effects. Examples include: reproductive toxicity, liver toxicity, central nervous system effects, cardiovascular system effects, blood disorders, immune system effects, and skin, eye, and respiratory irritation. In accordance with Health and Safety Code section 44380, fees are to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district. The hazard index is one measure by which priority may be assigned.

26. Comment: A facility with a hazard index of one or greater should be dropped to a lower fee category if the district determines the source is not significant. (Kelley)

Agency Response: The ARB staff disagrees with this comment. ARB staff revised the fee methodology to base fees primarily on health effects of air toxics emissions, including cancer and non-cancer health effects. ARB staff has discussed this issue with OEHHA and OEHHA has determined that health indices represent true health effects. A health index of one or greater represents an exposure at which actual non-cancer health effects can occur and thus the categorization using hazard indices is appropriate. Districts determine whether a health risk assessment indicates there is a significant risk for purposes of notification or risk reduction. For purposes of Facility Program Categorization, use of the hazard index and certain threshold

criteria assures statewide consistency.

However, ARB staff did revise the hazard index to be consistent with the ARB's Risk Management Guidelines for New and Modified Sources of Air Toxic Pollutants by amending the Fee Regulation to include facilities with a hazard index equal to one in the definition of "Tracking Facility," a lower fee category.

27. Comment: Request that the ARB staff use the most current prioritization data when categorizing facilities to allocate State costs. (Anderson)

Agency Response: It is ARB's policy to use the most current prioritization scores as long as the necessary information is received from the air districts by the July 12, 1996 deadline in the Fee Regulation.

28. Comment: Recommend that, before the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1997-98 is proposed, ARB staff reconsider its definition(s) of small business and provide a more complete justification for the definition(s) it proposes to use. (Lichter)

Agency Response: This comment is not specifically directed at the proposed amendments to the Fee Regulation for fiscal year 1996-97. However, the ARB staff responds as follows. The definition of small business in the Fee Regulation was developed during the fiscal year 1993-94 regulatory process with involvement from the air districts, industry and the public. ARB staff will work with the commenter and evaluate the definition in developing amendments to the Fee Regulation for fiscal year 1997-98.

29. Comment: I would like to see some sort of incentive for the districts, especially South Coast AQMD, to reprioritize facilities based on current chemical usage. (Brummett)

Agency Response: Health and Safety Code section 44344.6, enacted as part of AB564, requires air districts to reprioritize facilities within 90 days following the approval of the facilities emission inventory report. ARB staff have an ongoing dialogue with the South Coast AQMD staff to develop an efficient process for their Fee Program, including submittal of necessary information for reprioritization.

Comments Concerning Risk Assessments:

30. Comment: Screening risk assessments should not have to be reviewed by OEHHA because of the time and cost involved and the simplicity of emission changes. (Clark)

Agency Response: This comment is not directed at the amendments to the Fee

Regulation for fiscal year 1996-97 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff disagrees with the comment and responds as follows. In accordance with Health and Safety Code section 44361(a), districts must submit health risk assessments to OEHHA for review. There are two basic types of risk assessments specified in the Emission Inventory Criteria and Guidelines Report. Regardless of the specific type of risk assessment, they are subject to OEHHA review under section 44361 (a). However, in order to help make the process of reviewing screening risk assessments more efficient and less costly, there is an ongoing dialogue between ARB, OEHHA and interested districts to develop streamlined procedures for implementation of this section.

31. Comment: OEHHA should commit to completing SB 1731 work. (Kronenberg)

Agency Response: This comment is not specifically directed toward amendments to the Fee Regulation. However, the ARB staff responds as follows. Health and Safety Code section 44360 (b) (2), added by SB 1731, requires OEHHA to establish risk assessment guidelines for the Air Toxics Hot Spots Program using a specified public review process. OEHHA is committed to work on the risk assessment guidelines, a multi-volume series, as follows. The draft "Technical Support Document for the Determination of Acute Toxicity Exposure Levels for Airborne Toxicants" is being revised in response to public comments. It is to be submitted to the public for comments and to the Scientific Review Panel for review by July 1997. The draft "Technical Support Document for Exposure Assessment and Stochastic Analysis" is undergoing public review. The comment period closes March 10, 1997. Workshops were held on February 4, 1997 (Sacramento) and February 6, 1997 (El Monte). The exposure document will be revised and submitted to the Scientific Review Panel by July 1997. OEHHA is proposing to finalize the above documents this year. The remaining documents are tentatively scheduled to be submitted for public review and workshops by July 1997.

32. Comment: Screening risk assessments should not have to be reviewed by OEHHA. (Morgan)

Agency Response: The ARB staff disagree with this comment and incorporates its Response to 30 herein.

33. Comment: The results of a screening risk assessments should be allowed for the purpose of determining the State facility fee rather than just providing an exemption. (Morgan)

Agency Response: The fiscal year 1996-97 Fee Regulation allows the use of screening risk assessments as one of several ways to assess facility fees, not just exempt them, provided that a health risk assessment was not originally required by the district.

34. Comment: There seems to be some verbiage regarding health risk revision and I don't think that from an industry basis this is doable or cost-effective. Companies should be able to reprioritize based on recent data. (Brummett)

Agency Response: This comment is not specifically directed at the amendments to the Fee Regulation for fiscal year 1996-97 which deals only with assessing fees sufficient to recover the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff responds as follows. There are no specified requirements to update risk assessments in either the Fee Regulation or the Emission Inventory Criteria and Guidelines Report, which provides that facilities update their emission inventories every four years in accordance with Health and Safety Code section 44344. It is ARB's policy to use the risk data, submitted by the districts, which is based on the most recent approved emission inventory, to determine a facility's fee categorization. ARB is currently developing tools to make the risk assessment update and review process as efficient as possible and thereby less costly. These tools include an update form and a software program for facilities to more easily perform risk assessments.

Comments Concerning Exemptions:

35. Comment: Exempting facilities from the Fee Regulation that are really minor and lowering the cost of the overall program are to be commended. (Noecker)

Agency Response: The ARB appreciates the comment and responds as follows. The ARB approved the amendments to the Fee Regulation for fiscal year 1996-97 at the September 26, 1996 hearing. These amendments included removing facilities which pose little or no health risks from the Fee Regulation and significant reductions in state costs to administer the Air Toxics Hot Spots Program.

36. Comment: The proposed Fee Regulation reflects significant progress toward the goal of risk-based fees and provisions to exempt low risk sources from further program involvement. (Reynolds)

Agency Response: The ARB approved the proposed amendments to the Fee Regulation at the September 26, 1996 hearing. These amendments included removing facilities which pose little or no health risks from the Fee Regulation.

Received During the Public Comment Period for the December 30, 1996 Notice of Public Availability of Modified Text

- (1) Postmarked December 23, 1997 letter from unknown party to State of California, Air Resources Board. (Anonymous)
- (2) January 6, 1997 letter from Ed Torres, Air Quality and Special Projects Manager, County Sanitation Districts of Orange County, California to

Patricia Hutchens the ARB Board Secretary. (Torres)

- (3) January 13, 1997 letter from Jeff Sickenger, Environmental Issues Coordinator, Western State Petroleum Association to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (Sickenger)
- (4) January 14, 1997 letter from R.L. Matteis, Executive Vice President, California Grain and Feed Association to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (Matteis)

Comments Concerning Proposed Amendments in General:

1. Comment: Expressing disagreement with government as an institution. (Anonymous)

Agency Response: This comment is not specifically directed at the amendments to the Fee Regulation for fiscal year 1996-97 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program and therefore no response is required.

2. Comment: The Western State Petroleum Association (WSPA) suggests that ARB postpone final adoption of the Fee Regulation so that it can be evaluated in tandem with amendments to the Inventory Guidelines in order to ensure consistency between the documents and AB 564. (Sickenger)

Agency Response: The ARB staff disagrees with this comment and respond as follows. The Fee Regulation for fiscal year 1996-97 must be implemented in a timely matter in order to allow air districts time to notify and bill facilities appropriately. Since air districts often receive more current emissions data as a result of billing, delaying the final adoption of the Fee Regulation for fiscal year 1996-97 could also delay the ARB receiving data to accurately determine the Fee Regulation for the fiscal year 1997-98. Nevertheless, ARB staff is working to develop the Fee Regulation and the Emission Inventory Criteria and Guidelines Report on a parallel track to ensure consistency and the ARB staff will work to ensure that there will be consistency between the documents.

3. Comment: The California Feed and Grain Association (CFGGA) suggest that ARB postpone final adoption of the Fee Regulation so that it can be evaluated in tandem with amendments to the Inventory Guidelines in order to ensure consistency between the documents and AB 564. (Matteis)

Agency Response: The ARB staff disagrees with this comment and incorporate the Response to Comment 2 herein.

Comments Concerning Fees:

4. Comment: The County Sanitation Districts of Orange County (CSDOC) disagree with the proposed changes to Table 3 of the proposed amendments because the changes will retain the current state funding for the Fee Regulation while reducing the number of facilities subject to fees, thereby shifting the cost to the facilities remaining in the Fee Regulation. CSDOC fees will increase 30% in one year. (Torres)

Agency Response: The ARB staff disagrees and responds as follows. Table 3 of the Fee Regulation includes fees by district for each risk-based category. The fees represent district plus state costs. Health and Safety Code section 44380 requires that the State Board recover the reasonable anticipated cost to implement and administer the Hot Spots Program and that these fees be assessed to the facilities subject to the Program. The fiscal year 1996-97 state costs to administer the Hot Spots Program are approximately 26% lower than in fiscal year 1995-96. AB 564 required that many facilities from the lowest fee category be exempted from fees, and the current program costs reflect the minimal level of work associated with the remaining facilities. Therefore, state costs have significantly decreased, which works to offset the reduced number of facilities subject to fees.

5. Comment: The CSDOC does not believe it was the intent of AB 564 to shift state costs for the Fee Regulation from one class of facility to another. (Torres)

Agency Response: The ARB staff disagrees with this comment and responds as follows. The ARB staff interpret this comment as referring to the change from a fee method based on the status of a facility in the Air Toxic Hot Spots Program to a fee method that is primarily based on the risk presented by a facility's air toxic emissions. AB564 specifically exempts certain facilities from paying fees based on a facility's prioritization score. A low score generally corresponds to a low risk. Thus, AB564 confirms the method change by reflecting risk-based categories in the enacted language. In addition, in accordance with Health and Safety Code section 44380, fees are to be, to the maximum extent practicable, proportionate to the extent of the releases identified in the toxics emission inventory and the level of priority assigned to that source by the district. Because data have been collected through the Hot Spots Program for a number of years, sufficient data are now available for this purpose. ARB staff believe the revised facility categorization system based primarily on risk is a significant step forward and reflects a maturing program.

6. Comment: The WSPA suggest that the proposed fee schedule should include fees for "update" facilities. (Sickenger)

Agency Response: The ARB staff disagrees with this comment and responds as follows. It is clearly indicated in the language of section 90704 (g) (4) of the Fee Regulation, newly added pursuant to the provisions of section 44344.4 (b) of the Health and Safety Code, that the operator of an Update Facility may be assessed a district fee no higher than \$125, except as specified.

7. Comment: The CFGA comments that the Fee Regulation does not make it clear that the Update Facility processing fee of up to \$125 can only be collected in years when inventory updates are filed. (Matteis)

Agency Response: The ARB staff disagree with this comment and respond as follows. In accordance with AB 564, the language of section 90704 (g) (4) of the Fee Regulation was added to indicate that the operator of an Update Facility may be assessed a district fee no higher than \$125 to cover the direct cost to the district to review the facility's quadrennial emission inventory update, except as specified. AB 564 does not prohibit a district from collecting quadrennial fees over several years. Nevertheless, ARB staff will evaluate the procedures specified for collecting fees in connection with updates when developing amendments to the Fee Regulation for fiscal year 1997-98.

8. Comment: The CGFA comments that the Fee Regulation does not make it clear that in the event that a district justifies a fee higher than \$125 for the Update Facilities, these higher fees can only be used to offset the costs of processing the update. (Matteis)

Agency Response: The ARB staff disagrees with this comment and responds as follows. The language of section 90704 (g) (4) of the Fee Regulation already clearly indicates that a district may assess a higher fee to review quadrennial emission inventory updates if it adopts written findings that the costs for processing the emission inventory update exceed \$125.

Comments Concerning Facility Program Categories:

9. Comment: The WPSA believe that the definition of "Update Facility" needs to be clarified to indicate that facilities whose prioritization scores for cancer and non-cancer health effects are both equal to or less than one are exempt from the Fee Regulation. (Sickenger)

Agency Response: To comply with AB 564, the language "or 44344.4 (a)" was added to section 90702 (a) of the proposed Fee Regulation to indicate that all facilities whose prioritization scores for cancer and non-cancer health effects are both equal to or less than one are exempt from the entire Fee Regulation under that section. Thus, the definition for Update Facility contained in the Fee Regulation is defined as facilities whose prioritization scores are both less than or equal to ten since the facilities with prioritization scores equal to or less than one are already excluded. However, ARB staff have modified the definition of "Update Facility" in section 90701 (ao) to explicitly exclude facilities with prioritization score equal to or less than one in the Notice of Public Availability of Modified Text, March 1997.

10. Comment: The CFGA believe that the definition of "Update Facility" needs to be clarified to indicate that facilities whose prioritization scores for cancer and non-cancer health effects were both equal to or less than one are not included. (Matteis)

Agency Response: The ARB staff incorporate the Response to Comment 9 herein.

Comments Concerning Risk Assessments:

11. Comment: The WSPA believe that the language which specifies evaluation of health risks “at an actual receptor” should be retained. (Sickenger)

Agency Response: The ARB staff disagrees with this comment and responds as follows. It was not the intent of ARB staff, in removing the phrase “at an actual receptor”, to change the CAPCOA Risk Assessment Guidelines regarding evaluation of health risks. Rather, the language “at an actual receptor” was removed from the Fee Regulation in order to be consistent with the Emission Inventory Criteria and Guidelines Report (Inventory Guidelines) which specifies different procedures regarding choice of receptors for screening risk assessments and full refined risk assessments. The Inventory Guidelines specify that a screening risk assessment evaluate risk at the point of maximum impact and that a full refined risk assessment evaluate risk at an actual receptor. Thus, pertaining to risk assessments, the Fee Regulation is referring to risk assessment results in general, to accommodate the Inventory Guidelines which include different types of risk assessments.

12. Comment: The CFGA believe that the removal of the language which specifies evaluation of health risks “at an actual receptor” should be retained. (Matteis)

Agency Response: The ARB staff disagrees with this comment and incorporate the Response to Comment 11 herein.