

State of California  
AIR RESOURCES BOARD

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

**PUBLIC HEARING TO CONSIDER THE ADOPTION AND AMENDMENTS TO THE EMISSION  
INVENTORY CRITERIA AND GUIDELINES REPORT ADOPTED PURSUANT TO THE  
AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT ACT OF 1987**

Public Hearing Date: July 25, 1996  
Agenda Item: 96-6-1

**I. GENERAL**

The "Staff Report: Initial Statement of Reasons for Proposed Rulemaking" (Staff Report), released on June 7, 1996, is incorporated herein by reference. The "Notice of Public Availability of Modified Text: Proposed Amendments to the Emission Inventory Criteria and Guidelines Report Adopted Pursuant to the Air Toxics 'Hot Spots' Information and Assessment Act of 1987 (February 1997)" is also incorporated herein by reference. The Emission Inventory Criteria and Guidelines Report (Guidelines Report; Guidelines; Report) is also incorporated herein by reference. The Report was approved by the Air Resources Board (ARB; Board) on July 25, 1996, and additional revisions were made available for a 15-day public comment period ending February 21, 1997.

This section describes the regulatory approval process, and includes discussions of the costs and savings impacts, incorporation by reference, and other issues. Section II summarizes the comments received and provides the agency's responses.

A. Chronology of the Regulatory Approval Process

The Air Toxics "Hot Spots" Information and Assessment Act of 1987, Health and Safety Code sections 44300-44394 (Act), established a program whereby specified facilities must prepare and submit air toxics emission inventory plans and reports to their local air pollution control or air quality management districts (districts) by specified dates. The Guidelines Report specifies criteria and guidelines for the facility inventory plans and reports, in accordance with Health and Safety Code section 44342.

Following a public hearing on July 25, 1996, the Board, by Resolution 96-41, approved the adoption and amendments to section 93300.5, Title 17, California Code of Regulations (CCR), and the Guidelines Report, incorporated by reference therein. The amendments include modifications presented for consideration at the hearing and additional modifications as might be appropriate in light of comments received and to conform to statutory changes. AB 564 (Stats 1996, ch. 602) amended a number of Hot Spots statutory provisions. The bill was enacted on September 19, 1996, and became effective January 1, 1997. In accordance with section 11346.8 of the Government Code, the Board

directed the Executive Officer to adopt section 93300.5 and the Report, as approved, after making the modified regulatory language available to the public for comment for a period of at least 15 days, consider any written comments received during this period, make such modifications as may be appropriate in light of the comments received, and present the regulation to the Board for further consideration if he determines that this is warranted. The modified language was made available for a 15-day public comment period, from February 6, 1997, to February 21, 1997.

Resolution 96-41 makes the significant changes to section 93300.5, Title 17, CCR and to the Emission Inventory Criteria and Guidelines Report 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 June 7, 1996, and in the February 6, 1997, Notice of Public Availability of Modified Text. The revisions streamline the program by focusing update reporting on the facilities and substances that pose the greatest health risks, and exempting low-risk facilities from further reporting. Amendments are included to conform with the amended statute under AB 564. The amendments also clarify and improve the Guidelines based upon comments received from the general public, industry, and the districts. In brief, these revisions are as follows:

- exempt low risk facilities from update reporting of emission inventory data under the Hot Spots program;
- streamline update reporting requirements for intermediate and high risk facilities required to report emission inventory data;
- define criteria for evaluating facilities exempted from reporting when changes have occurred that could increase the risk posed by the facility to the public and determining whether additional reporting is appropriate;
- add language to allow integration of Hot Spots reporting requirements with other reporting programs already being conducted by the district, including district permit programs;
- add language to include in the program's requirements, facilities emitting less than 10 tons per year of criteria pollutants that the district identifies as posing a potential public health risk;
- define *de minimis* levels for specific categories of facilities emitting less than 10 tons per year of criteria pollutants which would exempt those facilities from program requirements;
- revise and consolidate Appendix E-I and E-II, which list the classes of facilities emitting less than 10 tons per year of criteria pollutants;
- revise the Appendix A list of substances included in the Hot Spots program and create an A-III list (substances that facilities do not have to report unless the substances are being manufactured at the facility);
- revise identification of data fields to be considered confidential on reporting forms;
- add new reporting formats to reflect a merged toxics and criteria pollutant data base;

- make other amendments to clarify the intent of the requirements.

The 15-day modifications are summarized as follows:

- include and modify section 93300.5, Title 17, CCR. Update the date of the incorporated Report, include public availability information, and add statute references due to AB 564.
- modify the format and date of the Guidelines Report (including appendices); include Appendices B-II and C (previously proposed under separate cover) in the main Report.
- modify the reporting forms and instructions in Appendix B as follows. Make minor changes to increase the width of several data fields to accommodate district needs. Make a minor change to the name and instructions for the additional/optional field for Fraction VOC/PM2.5. Insert the inadvertently omitted Table B-III for Method of Estimate Codes. In Table B-I, correct a district code entry consistent with recent Board-adopted boundaries. Clarify provisions pertaining to confidential and trade secret data on the forms, formats, and the instructions in Appendix B and in section VII.B.(3). In Appendix B-I, make two corrections to conform with the merged toxics and criteria pollutant data reporting system: insert the inadvertently omitted "Mailing State" data field, and correct the units for "Maximum Hourly Emissions" for radionuclides.
- modify the applicability provision regarding facilities identified by the district, to clarify that section II.(E)(3) pertains to facilities posing a potential health concern and refer to specific levels consistent with other sections of the Guidelines. Remove the optional list of factors the districts may use to evaluate facilities.
- modify the Report to conform with the amended Hot Spots statute under AB 564. Amend the applicability, update, and definition sections of the Report (sections II, III, IV, V and X), to conform with the provisions of the revised statute.
- modify the List of Substances (Appendix A) as follows: Move Saccharin from Appendix A-II to Appendix A-III. In Appendix A-I, add individual entries for several substances that are currently reported only as a part of the totals under the chemical groups for Chlorophenols, Fluorocarbons, and Hexachlorocyclohexanes to ensure that the quantities of these individual substances, which have specific health effects values, will be reported separately and properly accounted for in health risk assessments.
- make other minor corrections to Appendix A as follows: In Appendix A-I, add the standard annotation for [PAH, POM] and [POM], respectively, to the group total entries for PAHs and (polychlorinated) Dioxins, for consistency with other substances which are annotated in this way to show that they are substances within the broader classes of Polycyclic Aromatic Hydrocarbons [PAH] and Polycyclic Organic Matter [POM]. In Appendix A-III, correct the spelling of "steroids" on substance 1010 Androgenic (anabolic) steroids. Add asterisk after 7/96 date to clearly indicate new substances added since the last regulation update.
- update the version numbers and dates of several EPA and ASTM source test methods for

fuel and material analysis to reflect the more recent method versions.

- modify the materials incorporated by reference as follows: Under section X and Appendix F, incorporate by reference additional documents: (1) Standard Industrial Classification Manual (1987); (2) specified portions of the United States Environmental Protection Agency Integrated Risk Information System (IRIS) database (software version 1.0, 1992), 1996; (3) California Air Pollution Control Officers' Association (CAPCOA) Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993; and (4) CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990. In Appendix F, update the reference for another document incorporated by reference, the California Environmental Protection Agency, Standards and Criteria Working Group document entitled "California Cancer Potency Factors: Update," memo dated 1994, with attachment updated as of April 4, 1995. Add Appendix G, List of Documents Incorporated by Reference.
  
- make other clarifications and minor corrections as follows:
  - clarify that appropriate health effects values to be used are those as specified in section E(7) of Appendix F (section II.C.(2)(c)(ii), sections IV.A.(3)(a)(i) and (iii), section IV.A.(4)(c)(ii), and sections V.H.(3)(f) and (g)).
  - in Appendix F, clarify the incorporation by reference of Cal/EPA and U.S. EPA IRIS health values, and clarify OEHHA health values.
  - in section I, add and update Table 2, previously in the staff report only, to assist in following section numbering between prior regulation formats and the current Report.
  - clarify the title of section II.A. to include all facilities affected by the section.
  - clarify in sections II.C., II.E., and IV.A. that alternative evaluation applies to facilities subject to district permit programs and clarify resulting reporting requirements.
  - in section II.E. update reference to plan and report submittal date.
  - correct section numbering in section IV.F.
  - in section IV, add explanatory text to introduction, clarify language regarding conditions and qualifications to meet *de minimis* thresholds, clarify provisions regarding Hazardous Air Pollutant (HAP) emissions, clarify language regarding update of emission data, and clarify language regarding district notification of facility designations.
  - in section V.E., add clarifying language regarding update requirements for unprioritized facilities.

- in section V.G., add language clarifying requirements for updated and revised emission inventory data.
- in section X, add several definitions for clarity.
- correct obsolete term "subchapter" in section V.I.(4).
- correct cross-references in sections IV.A.(1)(b), IV.F.(5), V.A., V.I.(6), V.J.(2)(b), V.L.(g) and (h), and VII.D.(1).
- use lower case on the word "section" consistently throughout. Use complete section numbering for clarity throughout, and omit the term "subsection".
- correct typographical grammar error in section IX.D.(3), and correct other minor typographical errors, adjust page numbering and table of contents, and other nonsubstantive changes.

Finally, a number of changes without regulatory effect, under 1 CCR section 100, have also been made in the Report, as indicated in this rulemaking file under the entry titled "Section 100 Changes: 1 CCR Section 100 Changes Without Regulatory Effect." These changes include removing underlines from table and section headers, making minor typographical corrections, removing explanatory annotations, and inserting the actual date of Board adoption into several placeholder date notations.

#### B. Discussion of Costs and Savings Impacts

The Board has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies, except as noted below:

Adoption of the Guidelines Report amendments should result in cost savings to state and local agencies subject to the Act because of reductions in reporting requirements for those affected agencies. The Board has determined a cost savings of approximately \$50,000 to state and local agencies. This represents a savings in compliance costs due to reductions in reporting requirements for local agencies, such as air, water, and solid waste facilities, elementary and secondary schools, general government agencies (e.g. public transit districts, municipal airports and general municipal maintenance agencies), general medical/surgical hospitals, and publicly owned water treatment works, and for state agencies, such as state colleges and universities, correctional institutions, general government agencies, general medical/surgical hospitals, and psychiatric hospitals. The Board has determined that the Guidelines Report amendments will not create costs or savings in federal funding to any state agency or program.

The Board has also determined in accordance with Government Code section 11346.5(a)(8) that adopting the Guidelines Report amendments will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Board has also determined that there will be no additional cost impact, as defined in Government Code section 11346.5(a)(9), but rather a cost savings on private persons or businesses directly affected resulting from adoption of the Guidelines Report amendments. Adoption should result in cost savings to those private persons and businesses subject to the Act because of reductions in reporting requirements for affected facility operators.

The Board has also determined in accordance with Government Code section 11346.5(a)(3) that adoption of the Guidelines Report amendments will not adversely affect small businesses, but rather result in a cost savings for small businesses directly affected resulting from reductions in reporting requirements.

In accordance with Government Code section 11346.3, the Board has determined that adoption of the proposed amendments will not affect the creation or elimination of jobs within the State of California, and will not affect the creation of new businesses or the elimination of existing businesses within California or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the adoption of the Guidelines Report amendments can be found in the Staff Report.

Furthermore, in accordance with Health and Safety Code section 57005(a), the Board, 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.

Finally, the Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose of the Guidelines Report amendments or would be as effective and less burdensome to affected private persons than the Guidelines Report amendments (Government Code section 11346.9(a)(4)). The Act mandates that the guidelines address update procedures for emission inventories, exemption levels and criteria, and classes of facilities that emit less than 10 tons per year of criteria pollutants. The Guidelines Report provides for alternatives to some requirements, such as proposals for alternatives to required source testing, including pooled source testing, and alternatives allowing evaluation of facilities subject to a district permit program, which reduce costs to affected facilities yet result in a comprehensive characterization of emissions as required by the Act.

The Staff Report addresses estimated costs and cost savings to facilities affected by the amendments to the regulations. Facilities may be affected in several ways by the amendments to the regulations: (1) facilities which pose low risk may qualify to be designated by the districts as "low level" facilities for update purposes and be exempted from further reporting requirements, subject to specified reinstatement criteria if the facility's circumstances were to change; (2) remaining facilities may be designated by the districts as "intermediate level" or "high level" facilities for update purposes, and be subject to the streamlined update reporting requirements for these categories.

Many of the facilities that will be exempted from further reporting may meet the definition of small business. Some of the remaining facilities still included in the classes of facilities in Appendix E of the Report may meet the definition of small business. The amendments will streamline reporting

requirements for many of these facilities, resulting in cost savings. For those facilities still incurring costs, alternative requirements have been included in the regulations wherever possible to reduce the costs to small businesses while still meeting the goals of the Act to identify possible hot spot risk. The source testing requirements in Appendix D include less costly alternatives for small businesses. Examples of such alternatives are allowing the use of fuel analysis rather than stack testing for metals and in some cases allowing exemptions from a particular testing requirement. Criteria are included in the Report for using existing test data. The Report also specifies a process and criteria for proposing "pooled" source testing.

### C. Incorporation by Reference

In accordance with Title 1, CCR, Section 20, the Guidelines Report, including its appendices, has been incorporated by reference in Title 17, CCR, section 93300.5. The Guidelines Report is very lengthy and contains a large volume of technical information, including graphical reporting forms and instructions in Appendix B, and the lengthy Appendix C (Facility Guideline Index or Facility "Look-Up" Table). Appendix C is required by the Act to be included in the Guidelines and it provides useful technical information, particularly for facilities reporting for the first time. In addition, the Guidelines Report has been amended to include two tables (Tables 1 and 2) that provide helpful information to affected facilities and districts on how to locate information within the Report and relative to previous versions of the Guidelines, and to quickly determine what portions of the Report pertain to a facility depending on its status within the program. These appendices, forms, and tables are lengthy and would be cumbersome to include in regulatory format.

Also in accordance with the requirements in Title 1 CCR section 20, the following published source test methods for fuel and material analysis have been incorporated by reference in section IX of the amended Report: ASTM methods: D2361-91 amended as of 1991; D3177-89 reapproved as of 1993; E776-87 reapproved as of 1992, E775-87 reapproved as of 1992; D808-91 amended as of 1991; D129-91 amended as of 1991; and United States Environmental Protection Agency (U.S. EPA) methods set forth in SW-846, Test Methods for Evaluating Solid Waste, Third Edition, November 1986: 7196A dated July 1992; 7471A dated September 1994; 7740 dated September 1986; 6010A dated July 1992. It would be both cumbersome and unduly expensive to print in the CCR these lengthy, technically complex procedures.

Also in accordance with the requirements in Title 1 CCR section 20, the published New Source Review rule sections which define "stationary sources" for Kern and Fresno counties have been updated; they continue to be incorporated by reference in section X of the Report. The entire texts of these rules are extensive and technically complex. The definition of stationary source in the cited rules includes subsidiary definitions which are also lengthy and include diagrams. It would be both cumbersome and unduly expensive to print in the CCR these lengthy, technically complex rules.

Also in accordance with the requirements in Title 1 CCR section 20, the California Air Pollution Control Officers Association (CAPCOA) Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990, and the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993, have been incorporated by reference in sections IV and X and in Appendix F of the Report. Each of these documents is lengthy and primarily provides technical information, options for calculational formulas, and procedural guidance to districts for use in

developing their particular facility prioritization and risk assessment procedures in accordance with Health and Safety Code sections 44360(a) and 44360(b). It would be cumbersome to include these lengthy and detailed CAPCOA district guidance documents in the Guidelines Report.

Also in accordance with the requirements in Title 1 CCR section 20, references for some acceptable health effects values for cancer and non-cancer health risk assessment have been incorporated by reference in Appendix F of the Report. The Report specifies that health effects values are subject to review by the Office of Environmental Health Hazard Assessment (OEHHA), and provides the incorporated references as examples of some appropriate health effects values. For cancer risk assessment, the Report references the California Environmental Protection Agency (Cal/EPA), Standards and Criteria Working Group document entitled "California Cancer Potency Factors: Update", memo dated 1994, with attachment updated as of April 4, 1995, available from OEHHA. For non-cancer risk assessment, the Report references the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993, and the United States Environmental Protection Agency (U.S. EPA), Integrated Risk Information System (IRIS) database (Software Version 1.0, 1992), 1996, both available from OEHHA. Each of these documents is lengthy and technically detailed. In addition to the numerical health values, each document contains additional background, explanatory documentation, and data qualifiers and it would be cumbersome and impractical to include them in the regulatory text.

Also in accordance with the requirements in Title 1 CCR section 20, several computer software products have been incorporated by reference. The California Air Toxics Emission Factors (CATEF): A CARB Database, Version 1.2, May 1996, has been incorporated in section IX of the Report. This computer database contains very large data files and contains very technically detailed information. The CATEF database would be lengthy and cumbersome to print as text within the Report. The database features of the computer executable files on the diskette allow for rapid search and sort capabilities that would not be possible from a paper text file. In addition, the complete user's manual and documentation which are routinely provided along with the computer diskette provide valuable guidance in using the CATEF database, but would be cumbersome and impractical to include in the Guidelines Report. Similarly, the U.S. EPA SCREEN3 (96043) model, February 1996, and U.S. EPA ISC3 (95250) model, September 1995, have been incorporated by reference as computer software files, because they provide executable routines with the capability to perform complex calculations and model air dispersion results. The computer software would not retain its executable functionality as text in the Guidelines Report and therefore it would be cumbersome and impractical to include in the regulatory text.

All the documents and software incorporated by reference are available to the public and to local and state agencies upon request directly from ARB or are reasonably available to the affected public from a commonly known or specified source. In addition, the agency has made the Guidelines Report available on the Internet, and has included information on Internet availability within section 93300.5 of the regulations.

#### D. Changes Without Regulatory Effect

Additional technical changes without regulatory effect have also been made to the Guidelines Report. These changes are indicated on the pages included in this rulemaking file under the entry titled "Section 100 Changes: 1 CCR Section 100 Changes Without Regulatory Effect".

These changes remove temporary annotations, renumber pages, delete unnecessary underlining and make similar changes.

Underlined page headers and section titles on a number of pages throughout the Report have been revised to either remove the underline, replace the underline with bold text, or replace the underline with a broken line character, to avoid any potential for confusion in future regulatory updates in which the underline notation may be used to denote changes which add new material.

The actual date of Board adoption has been inserted into several placeholder date notations.

Minor typographical errors have also been corrected as indicated on the revised pages.

One entry in Appendix B-II, Table B-I, the table of County, Air Basin, and District Codes, has been revised to conform with a statutory change which creates the "Antelope Valley Air Pollution Control District", operative July 1, 1997. The "Dis" code and "District Name" field have been revised to reflect the Antelope Valley APCD for county 19 (Los Angeles) in the Mojave Desert Air Basin, to conform with Health and Safety Code section 40106, added by Stats 1996, ch. 542.

#### E. Impact on the Environment

The Board has determined that this regulatory action will not have any significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both criteria and toxic pollutants. Health and Safety Code section 44391 requires facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. The Guidelines Report provisions help to identify such potential significant health risk facilities.

## II. RESPONSE TO COMMENTS RECEIVED

### Received During the 45-Day Comment Period and at the July 25, 1996 Hearing

The Air Resources Board received the written and oral comments listed below during the Notice of Public Hearing 45-day public comment period from industries, agencies, and other interested groups. In the following discussion of comments and responses, the source of the comment is identified by the name shown in parenthesis after each comment.

- (1) June 10, 1996 letter from Lynda Butek, Brithinee Electric, Colton, CA, to Mr. John Dunlap III, Chairman, California Air Resources Board. (Brithinee Electric)
- (2) July 12, 1996 letter from Jeff Sickenger, Environmental Issues Coordinator, Western States Petroleum Association (WSPA), to Dr. Linda Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (WSPA)
- (3) July 19, 1996 letter from Anthony R. Fisher, Ph.D., Senior Advisor, New United Motor Manufacturing (NUMMI), to Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB. (NUMMI)

- (4) July 22, 1996 letter from Karen Gunderson, Manager, Environmental Management, Gencorp Aerojet - General Corporation (Aerojet), to ARB Board Secretary. (Aerojet)
- (5) July 23, 1996 letter from Marc Chytilo, Chief Counsel, Environmental Defense Center, to ARB Board Secretary. (Environmental Defense Center)
- (6) July 23, 1996 letter from Denise M. Jones, Executive Director, and James E. Good, General Counsel, California Mining Association (CMA), to ARB Board Secretary. (California Mining Association)
- (7) July 23, 1996 letter from John Lemmo, Environmental Health Coalition, to ARB Board Secretary. (Environmental Health Coalition)
- (8) July 23, 1996 letter from William B. Walker, M.D., Chair, Environmental Health Committee, California Conference of Local Health Officials, Contra Costa County Health Services Department, to ARB Board Secretary. (Contra Costa County Health Services Department).
- (9) July 25, 1996 letter from James J. Lichter, Analyst, Regulation Review Unit, California Trade and Commerce Agency, to ARB Board Secretary. (CA Trade and Commerce Agency)

In addition, oral testimony was received from the following industries, agencies, and interested groups during the Board hearing:

- (10) Jeff Sickenger, Western States Petroleum Association, oral testimony. (Sickenger, WSPA)
- (11) Denise Jones and James Good, California Mining Association, oral testimony (Jones, Good, California Mining Association)
- (12) John Bobis, Aerojet, oral testimony (Bobis, Aerojet)
- (13) Bill McConaghie, National Paint and Coating Association, oral testimony (McConaghie, National Paint and Coating Association)

Received During the 15-Day Public Comment Period for the February 6, 1997 Notice of Public Availability of Modified Text

Subsequently, comment letters were received during the 15-day public availability comment period on the modified text from the following industries, agencies, and interested groups:

- (1) February 21, 1997 letter from Jeff Sickenger, Environmental Issues Coordinator, Western States Petroleum Association, to Linda Murchison, Ph.D., Chief, Stationary Source Emission Inventory Branch, ARB. (WSPA)

- (2) February 21, 1997 letter from Terri Thomas, Supervisor, Air Toxics Section, Ventura County Air Pollution Control District to ARB's Clerk of the Board. (Ventura County APCD)
- (3) February 21, 1997 letter from Rick Steward and Kevin Tokunaga, Glenn County Air Pollution Control District, received by ARB Board Secretary. (Glenn County APCD)
- (4) February 21, 1997 letter from Denise Jones, Executive Director, and James E. Good, General Counsel, California Mining Association, to ARB's Clerk of the Board. (California Mining Association).
- (5) February 21, 1997 letter from James E. Good, of Gresham, Savage, Nolan and Tilden, LLP, to ARB's Clerk of the Board. (Gresham, Savage et al)

The comments received and the ARB staff's response to them are provided below. Comments received during the 45-day comment period and at the public hearing are included and numbered sequentially in Section A. Comments received during the subsequent 15-day comment period are included and numbered sequentially in Section B.

At the public hearing, one of the board members asked how ARB would handle district determinations regarding exemptions under the Guidelines and whether an appeals process existed. Of particular interest was the scenario in which a citizen disagreed with a district decision to provide an exemption if the citizen believed the exemption was unwarranted. The Board directed staff to evaluate how to deal with such situations and to assess ways of providing coverage of this issue. Staff has considered this matter as directed and has determined that the Guidelines adequately address this issue. A written description of the process ARB will use to evaluate district actions to deny or grant exemptions under the Guidelines follows:

Section IV.A.(5) of the Guidelines provides that districts may deny an exemption from reporting requirements claimed by a facility if the district has good cause to believe the facility may individually or in combination with other facilities pose a potential threat to public health and if facility documentation does not support the claim. This section implements section 44344.4(d) of the Health and Safety Code, added by AB 564 (Stats. 1997, ch. 602, effective January 1, 1997). In the event a district denied an exemption, the denial would be based on the district's assessment that the facility's supporting documentation and other information were not adequate to conclude the facility qualified for the exemption. Likewise, if the district granted an exemption, the exemption would be based on the district's assessment that supporting documentation and other information were adequate to conclude the facility did qualify for the exemption. Because such detailed and site-specific assessments are typically made at the local level, it is most appropriate that decisions to grant or deny exemptions be made by the districts. However, there might arise a situation in which an interested party disagreed with the district's assessment. In this case, the interested party could bring this to the attention of ARB staff, along with documentation and other information supporting their view, and ARB staff would review and evaluate the information. If warranted, ARB would then initiate discussions with the district to ensure proper consideration of all relevant information.

ARB has traditionally played an oversight role regarding district implementation of Hot Spots requirements, including advising districts in implementing the program. In addition, the Guidelines provide for ARB concurrence with a number of district decisions. See, e.g. Guidelines sections III.A.(1), III.B.(1), III.C.(1), IV.A.(1), IV.B.(1), IV.C.(1), IV.F. Additional ARB action may be taken if necessary. For example, Health and Safety Code section 44365 allows ARB to step in if ARB determines that a district's actions do not meet the requirements of the Hot Spots program. Although not explicitly specified in Section IV.A.(5), ARB's oversight role would also apply in the case of district determinations to grant or deny exemptions. Thus, in the unlikely event that a district's actions regarding exemptions were a misuse of the Guidelines provisions, ARB could step in to correct the situation.

**A. COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD AND AT THE PUBLIC HEARING, AND AGENCY RESPONSES:**

BRITHINEE ELECTRIC

1. Comment: Brithinee supports the staff's efforts to streamline the Program, and comments that the 80:20 rule seems to apply: that 20% of the companies probably produce 80% of the emission and it makes sense to focus efforts on the 20%. (Brithinee Electric)

Agency Response to Comment #1: Staff appreciates these comments and notes that the Board approved the proposed streamlining amendments at the July 25, 1996 public hearing, to focus the Program's resources and requirements on the sources of greatest health concern.

WESTERN STATES PETROLEUM ASSOCIATION (WSPA)

2. Comment: WSPA appreciates the staff's efforts in addressing concerns during the development of the amendments and generally supports the staff's proposal. However, WSPA requests specific changes and clarifications, as described in the comments which follow. The first comment is that WSPA supports the language in sections V.H.(3)(f) and (g) suggesting that, in evaluating the Update Summary Form, districts consider whether a newly listed substance or a new or revised health effect value would affect a facility's need for a complete report. For consistency in district interpretation, WSPA requests that the Board add language to section V.H.(3)(f) to specify that newly listed substances are those "for which a health effect value has been established by OEHHA". (WSPA; Sickenger, WSPA)

Agency Response to Comment #2: The staff included language to accomplish this effect in the 15-day modifications. The exact wording differs because the currently available, established health effects values are not entirely "established by OEHHA", but rather are those incorporated by reference into Appendix F: the Cal/EPA memorandum for cancer potency values, and the CAPCOA Revised 1992 Risk Assessment Guidelines and the U.S. EPA IRIS values for non-cancer health effects values. Therefore section V.H.(3)(f) was modified to refer to "an appropriate health effects value as specified in section E(7) of Appendix F" and Appendix F was modified to state that health effects values are subject to "review" by OEHHA, consistent with OEHHA's review of risk assessments in accordance with Health and Safety

3. Comment: WSPA opposes the provisions in sections IV.A.(1)(e) and IV.B.(2) that would keep "de minimis risk sources" in the "Hot Spots" program if they emit specified quantities of federal Hazardous Air Pollutants (HAPs). WSPA explains that if these provisions are intended to help demonstrate equivalency with the federal residual risk program, then these concepts should only be addressed once U.S. EPA defines that program. If the provisions are intended to help districts quantify the aggregate impact of multiple high volume sources, other provisions (such as the reinstatement provisions in sections III and IV) can be used by districts if appropriate. The HAP provisions detract from the risk-based goals of the program and are not appropriate. Further discussion is needed regarding ongoing efforts to integrate the federal program with existing State and local programs. (WSPA; Sickenger, WSPA)

Agency Response to Comment #3: To conform with recent statutory amendments under AB 564, the provisions regarding facilities emitting federal Hazardous Air Pollutants (HAPs) have been revised in several sections of the Report in the 15-day modifications package. As discussed below, the staff believes that these revisions also address the WSPA comments to a large extent, and that the provisions that remain are warranted to protect public health. The HAPs provisions are primarily intended to ensure that sources emitting large volumes of toxic air pollutants, whose emissions may be spread over large geographic areas and consequently expose large numbers of people to elevated risks, will continue to be tracked.

Among the revised sections in the 15-day Report are section IV.A.(1), regarding "low level" category conditions, and sections IV.A.(1)(e) and IV.B.(3), regarding facilities emitting HAPs. Section IV.B.(3) was revised to retain reporting requirements for facilities emitting specified amounts of HAPs only if the facility's prioritization score is greater than 1.0. This revision was necessary to conform with the provisions of AB 564, which exempts facilities from further compliance with the entire "Hot Spots" program if the facility's prioritization score is less than or equal to 1.0. The first sentence of section IV.A.(1) was also revised to conform with these exemption provisions of AB 564, by specifying that facilities that are exempt from further compliance with this regulation under section II.J (implementing AB 564 and added in the 15-day package) are exempt from update reporting requirements under section V of the Report. Section IV.A.(1)(e) was clarified to include the citation for the HAPs and to specify the HAP amounts.

The staff believes these revisions address the commenter's request to a large extent, in that the HAPs criteria no longer cause facilities to be retained in reporting, if the facility's prioritization score is less than or equal to 1.0. It is anticipated that many of the facilities that formerly would have been retained due to the original HAPs provisions, likely have scores less than or equal to 1.0 and therefore, under the revised provisions, will be exempted from further requirements. For the relatively small number of facilities that remain, the staff believes the HAPs provisions are warranted to collect and assess information used to protect public health, as discussed in the next paragraphs.

The remaining facilities for which the HAPs criteria will still cause the facility to be retained in reporting, rather than be exempted as "low level", are the relatively few facilities

with a prioritization score greater than 1.0, and that either (1) conducted a risk assessment that met the conditions for risk assessment results in section IV.A.(1)(b) or (d), or (2) exceeded one of the *de minimis* thresholds specified in section IV.A.(1)(c). Based on the reported data to date, staff believes it is unlikely that a large number of facilities with prioritization scores above 1.0 and the large volumes of HAPs emissions specified by the HAPs criteria, would meet either the risk assessment levels or *de minimis* throughput thresholds. In particular, the *de minimis* thresholds generally specify throughput quantities that are estimated to result in emissions orders of magnitude below the HAPs criteria of 5 tons per year or 12.5 tons per year combined. Therefore, it is unlikely that a large-volume HAP facility would qualify for a "low level" designation under the *de minimis* criteria. However, in the event that a large-volume HAP facility (with a prioritization score above 1.0) met either the risk or *de minimis* criteria, the staff believes the specified magnitudes of HAPs emissions and the implications of these emissions for public health risk are valid grounds to justify retaining the facility in reporting requirements, as discussed further below.

The provisions in sections IV.A.(1)(e) and IV.B.(3) regarding facilities emitting federal HAPs are primarily intended to ensure the ability to continue tracking sources that emit large volumes of toxic air pollutants, whose emissions may be spread over large geographic areas and consequently expose large numbers of people. The provisions are not specifically included to demonstrate equivalency with any future U.S. EPA residual risk program. As WSPA notes, any such demonstration must await U.S. EPA's definition of that program. Rather, as discussed on page 20 of the Staff Report, these amounts of HAP emissions correspond to the amounts specified by the U.S. EPA for facilities to be considered to have the potential to be federal "major sources" of HAPs under rules implementing the federal Clean Air Act Amendments. It is reasonable that facilities which may be recognized as "major sources" of air toxics under federal requirements should not be exempted as "low level" facilities under the proposed amendments. This provision would protect the public by helping to ensure that information from large-volume emitters of toxic chemicals would continue to be tracked. As also discussed on page 20 of the Staff Report, having provisions like these helps in a general way to strengthen California's overall position in working with the U.S. EPA to coordinate California's toxics program with federal requirements and to help demonstrate that California has a comprehensive and effective toxics program.

Likewise, the provisions to continue to track these large-volume sources will generally help districts if they choose to evaluate the aggregate impacts of multiple sources. However, the provisions are also important from a risk-based perspective in evaluating the public health impacts of individual facilities as well, as discussed below.

Facilities emitting these large volumes of toxic air pollutants may represent a situation where emissions disperse and affect large geographic areas and consequently expose large numbers of people. Even if a formal health risk assessment results in a point estimate of risk at the point of maximum impact (PMI) or the maximum exposed individual receptor (MEIR) that is below the significant risk level determined by the district, there may still be large numbers of people in the surrounding population being exposed to elevated levels of risk. This population exposure and population burden of risk is of concern to the public health, in addition to the more commonly discussed point estimates of risk. For example, the Legislative findings section for the "Hot Spots" statute (Health and Safety Code section 44301) refers to sources that "may

expose individuals and population groups to elevated risks of adverse health effects...". The California Air Pollution Control Officers Association (CAPCOA) Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993, also discuss the population excess cancer burden (not just the individual risk).

For these reasons, in establishing the criteria in section IV of the Report for whether a facility qualifies for the "low level" category, the staff included indicators that address both types of impacts--point estimates of risk, and a measure of overall population impacts due to large-volume emitters--in order to ensure that the public health will be adequately protected by maintaining the ability to continue to track the emissions of facilities that exceed these criteria.

In addition, as to using the reinstatement provisions in sections III and IV to require updated information from previously exempted facilities, once the district determines analysis of aggregate impact is appropriate, staff believe that ongoing reporting from high-volume sources will inform the districts in these determinations and that lack of this reporting information could be detrimental to these determinations.

4. Comment: WSPA supports the new language regarding reporting formats and forms in section VII.C.(2) which specifies that information "shall be submitted in an alternative format as approved by the district...". This language resolves WSPA's concern about the cost and administrative burden associated with modifying existing forms. (WSPA; Sickenger, WSPA)

Agency Response to Comment #4: This section clarifies the staff's intent that alternative reporting forms that meet the ARB's specifications are acceptable for use by facilities if approved by the district. The Board approved the language at the July 25, 1996 hearing.

5. Comment: In the Staff Report, delete the second paragraph of section I.B., which discusses ARB's use of the Hot Spots program to "meet the requirements of the federal air toxics program mandated by the federal Clean Air Act". (See comment #3.) (WSPA)

Agency Response to Comment #5: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report, and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

As discussed in the response to comment #3, the primary purpose of the provisions in the Guidelines Report regarding federal HAPs is to ensure the ability to continue tracking sources emitting large volumes of toxic air pollutants, whose emissions may be spread over large geographic areas and consequently expose large numbers of people to elevated risks. The provisions are not specifically included to meet particular requirements of the federal air toxics program. However, as also discussed on page 20 of the Staff Report, including provisions like these helps in a general way to strengthen California's overall position in working with the U.S. EPA to coordinate California's toxics program with federal requirements and to help demonstrate that California has a comprehensive and effective toxics program, of which the "Hot Spots" program is a crucial part. The quote referenced in the comment is consistent with

this overall purpose. The entire sentence (page 2 of the Staff Report) from which the quote is excerpted reads: "The Air Resources Board is also working closely with the United States Environmental Protection Agency to use the "Hot Spots" Program to help demonstrate that California has a comprehensive and effective toxics program and can meet the requirements of the federal air toxics program mandated by the federal Clean Air Act." The sentence is about demonstrating that California has a toxics program that is approvable by U.S. EPA, not that a particular provision of the "Hot Spots" Program is designed to meet federal requirements. The staff therefore believes the Staff Report language is appropriate.

As also discussed in the response to comment #3, the provisions in the Report regarding facilities emitting HAPs have been revised in the 15 day package to conform with statutory changes under AB 564. These revisions have the effect desired by the commenter (of not retaining HAPs-emitting facilities) for any facilities with prioritization scores less than or equal to 1.0. For the remaining facilities, the staff believes the provision to retain these large-volume sources in reporting is warranted to protect public health.

6. Comment: In the Staff Report, modify section I.D.2 with language provided in the comment to add that the amendments will "narrow the circumstances justifying full inventory plans and reports for intermediate level facilities", to help clarify the ARB's basic intent. (WSPA)

Agency Response to Comment #6: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

Staff believes the intent to streamline the reporting requirements for all facilities, including "intermediate level" facilities, is clearly stated in the Staff Report and clearly reflected by the language of the Guidelines Report itself. The phrase at the top of page 6 of the Staff Report, immediately following the suggested phrase requested to be added by the comment, is "streamline the inventory reporting process for other facilities". On page 5 of the Staff Report, under the "Regulatory Objectives" section, the staff has stated that "The proposed, streamlining amendments...would exempt specified facilities which pose a low level of health risks, from further emission inventory reporting....., and the proposed amendments would streamline the requirements for remaining facilities." These sentences pertain to streamlining provisions that have been developed for both "intermediate level" and "high level" facility categories. Because the terminology "intermediate level" and "high level" categorization had not yet been introduced in this section of the Staff Report (the categories are first introduced on page 7 of the Staff Report), staff believes it would have been confusing to use the term "intermediate level" in the general overview sections on page 5 and 6, as suggested by the comment. In addition, page 24-25 of the Staff Report contains a discussion of a number of streamlining provisions for "intermediate level" facilities. Staff believes that the Staff Report clearly conveys the intent to streamline requirements for all facilities, including "intermediate level" facilities.

Most importantly, the actual provisions of the amended Guidelines Report clearly reflect a number of amendments which have the effect of streamlining requirements for "intermediate level" facilities. The staff proposed and the Board approved amendments to

sections V.H.(3)(f) and V.H.(3)(g) regarding the factors districts may consider in reviewing Update Summary Forms to determine whether to require a full update plan and report. Clarifying language specifies that new substances or substances with revised health effects values are considered only if they cause the facility to exceed its current update category. As discussed in the response to comment #2, further clarifying language was added in the 15-day package, in response to concerns raised by the commenter during the 45-day public comment period, that clarifies that the substances indicated are those with existing health effects values.

7. Comment: In the Staff Report, delete the first paragraph on page 8, under section I.E. (bullet #2: "Categories for Update"), which discusses use of the Hot Spots program to demonstrate equivalency with Title III of the Clean Air Act. See comment #3. (WSPA)

Agency Response to Comment #7: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

Staff believes the Staff Report language is appropriate. As discussed in the response to comments #3 and #5, the primary purpose of the provisions in the Guidelines Report regarding federal HAPs is to ensure the ability to continue tracking sources emitting large volumes of toxic air pollutants, whose emissions may be spread over large geographic areas and consequently expose large numbers of people to elevated risks. The provisions are not specifically included to demonstrate equivalency with particular requirements of Title III of the federal Clean Air Act. However, as also discussed on page 20 of the Staff Report, including provisions like these helps in a general way to strengthen California's overall position in working with the U.S. EPA to coordinate California's toxics program with federal requirements and to help demonstrate that California has a comprehensive and effective toxics program, of which the "Hot Spots" program is a crucial part. The sentences referenced in comment #7 are consistent with this overall purpose. The entire paragraph (page 8 of the Staff Report) to which the comment refers reads: "Include provisions to ensure that sources emitting federal Hazardous Air Pollutants (HAPs) in specified quantities, which are related to requirements promulgated by the United States Environmental Protection Agency for federal "major sources" and potentially major sources under Title III of the federal Clean Air Act Amendments of 1990, will continue to be tracked through the "Hot Spots" program. These provisions would help ensure that large-volume emitters of toxic chemicals would continue to be tracked. These provisions would also help ensure that equivalency can be demonstrated for the California toxics program with upcoming federal mandates so as to avoid costly and duplicative, additional federal requirements for facilities in California". As discussed in the response to comments #3 and #5, coordination with the federal program is about demonstrating that California has a toxics program that is approvable by U.S. EPA, not that a particular provision of the "Hot Spots" Program is designed to meet federal requirements. As discussed on page 20 of the Staff Report, the amounts of HAP emissions correspond to the amounts specified by the U.S. EPA for facilities considered to have the potential to be federal "major sources" of HAPs. Therefore it is reasonable that facilities which may be recognized as "major sources" of air toxics under federal requirements should not be exempted as "low level" facilities under the proposed amendments. This provision would protect the public by helping to ensure that information

about large-volume emitters of toxic chemicals would continue to be tracked. The staff therefore believes the Staff Report language is appropriate.

As also discussed in the response to comment #3, the provisions in the Report regarding facilities emitting HAPs have been revised in the 15-day package to conform with statutory changes under AB 564. These revisions have the effect desired by the commenter (of not retaining HAPs-emitting facilities) for any facilities with prioritization scores less than or equal to 1.0. For the remaining facilities, the staff believes the provision to retain these large-volume sources in reporting is warranted in order to be able to collect necessary information to protect public health.

8. Comment: In the Staff Report, revise the last paragraph of section I.E. (bullet #4: "Substances Subject to the Program") with language provided in the comment, to help clarify the intent of the new language in section V.H.(3)(f) and (g). The language would specify that the ARB does not require that emissions of the new substances added to Appendix A-I be quantified until OEHHA health risk values have been developed. (WSPA)

Agency Response to Comment #8: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

Staff believes the Staff Report language is appropriate. As discussed in the response to comments #2 and #6, section V.H.(3) of the Report clarifies the factors districts may consider in reviewing Update Summary Forms to determine whether there is a need to require a complete inventory update plan and report. The factors focus on substances with existing health effects values and changes that would be substantial enough to affect a facility's update categorization. The language was developed to respond to concerns raised by the commenter during development of the amendments. The staff believes the amended language addresses the commenter's concern to minimize burdens on "intermediate level" facilities.

By contrast, further changes implied by the new language requested by the commenter in this comment #8 would have a different effect that the staff believes would not be consistent with the goals of the program to ensure public right-to-know and protection of public health. The Guidelines Report requires that facility operators report emissions of any new substances, at the time that a complete inventory update is required. Under the amended provisions of section V.H.(3), the new substances would not themselves trigger a requirement for a complete update unless there were health effects values and the changes would affect the facility's update category. However, if a complete inventory update is required for other reasons, then that complete update must address the emissions of any new substances that have been added to the "Hot Spots" list since the last inventory report was submitted. This is consistent with the goals of the "Hot Spots" Act for public right-to-know and inclusion of substances on the "Hot Spots" list.

9. Comment: In the Staff Report, delete the entire sections in II.B.1(b)(1) and II.B.3 discussing use of the Hot Spots program to demonstrate Title III equivalency. See comment #3. (WSPA)

Agency Response to Comment #9: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

Staff believes the Staff Report language is appropriate, as discussed in the response to comments #3, 5, and 7. To conform with exemption provisions under AB 564, some revisions were made to the sections of the Report dealing with facilities emitting federal HAPs. The staff believes the provisions that remain are warranted in order to collect information that will help to protect public health.

10. Comment: In the Staff Report, revise the third paragraph of section II.D. (page 32) to say that "In order to minimize the facility operator's costs associated with additional source testing and preparing new emission inventories, the facility operator is not required to quantify emissions of substances for which there are no OEHHA-approved health risk values." This change is necessary for consistency with, and will clarify the intent of, new language in section V.H.(3)(f) and (g). (WSPA)

Agency Response to Comment #10: This comment pertains to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking. It is not a comment regarding the content of the Guidelines Report and therefore does not suggest a change in regulatory language. The staff's response is nonetheless included here for completeness.

Staff believes the Staff Report language is appropriate. As discussed in the response to comments #2, 6, and 8, sections V.H.(3)(f) and (g) of the Report contain language to clarify the factors districts may consider in reviewing Update Summary Forms to determine whether there is a need to require a complete inventory update plan and report. The factors focus on substances with existing health effects values and changes that would be substantial enough to affect a facility's update categorization. The language was developed to respond to concerns raised by the commenter during development of the amendments. The staff believes the amended language addresses the commenter's concern to minimize costs and burden to facility operators.

By contrast, further changes implied by the new language requested by the commenter in this comment #10 would have a different effect that the staff believes would not be consistent with the goals of the program to ensure public right-to-know and protection of public health. The Guidelines Report requires that facility operators report emissions of any new substances, at the time that a complete inventory update is required. As provided by the amended provisions of section V.H.(3), the new substances would not themselves trigger a requirement for a complete inventory update unless there were health effects values and the changes would affect the facility's update category. However, if a complete inventory update is required for other reasons, then that complete inventory update must address the emissions of any new substances that have been added to the "Hot Spots" list since the last inventory report was

submitted. This is consistent with the goals of the Air Toxics "Hot Spots" Information and Assessment Act for public right-to-know and inclusion of substances on the "Hot Spots" list to develop and update information on emissions of air toxics to support other programs including California's Toxic Air Contaminant Identification and Control Program. See, for example, Health and Safety Code sections 44301(e), 44301(f), 44301(g), 44301(h), 44344, and 44364. If the emissions of new substances were not inventoried because a formal health effects value had not yet been approved, even though there was evidence of adverse health effects, the ability of the Board to use the "Hot Spots" data for "identifying, establishing priorities for, and controlling toxic air contaminants", as specified by Health and Safety Code section 44364, could be significantly compromised.

The Board's intent is to add to the "Hot Spots" list under Health and Safety Code section 44321 those substances for which there is potential for adverse public health impacts in California. As discussed on page 31 of the Staff Report, the ARB staff, in consultation with the staff of the Office of Environmental Health Hazard Assessment and with public input, evaluated the substances recently added to the source lists referenced by the "Hot Spots" statute, and proposed to add to Appendix A-I (the list of substances for which emissions must be quantified) only those substances "for which there is information indicating that the substances have adverse health effects and have the potential to become airborne in California." Therefore, only a limited number of substances were added to Appendix A-I.

Finally, it is also the Board's intent that previous information be utilized to the greatest extent feasible when updating emission inventories. Section V.J. of the Emission Inventory Criteria and Guidelines Report contains provisions for the use of previous information, including the use of results of previous source tests, to the greatest extent feasible while also ensuring that the update characterizes the current emissions to within acceptable accuracy. These provisions minimize costs and burden to facility operators in preparing emission inventory updates, while also ensuring that the public health goals of the "Hot Spots" program are accomplished.

#### NEW UNITED MOTOR MANUFACTURING (NUMMI)

11. Comment: NUMMI believes the categorical exclusion of facilities classified as major sources of federal HAPs from "low level" status in section IV.A.(1)(e) is unnecessary, given that under section IV.A.(4) [now IV.A.(5) in the 15-day version] the district has authority to reclassify any "low level" facility it deems appropriate. It seems unreasonable and unjustifiable to burden facilities that present a very low level of health risk to the public with the requirement of generating and filing updated reports where other "low level" facilities are exempt. The HAPs proposal is counter to the intent of the new Air Toxics "Hot Spots" Program to implement a classification system based on health risk assessment. NUMMI recommends removing the "major HAP source" provision. (NUMMI)

Agency Response to Comment #11: As discussed in the response to comments #3, 5, 7, and 9, the provisions regarding facilities emitting HAPs have been revised in the 15-day package to conform with statutory changes under AB 564. As a result, facilities emitting the specified amounts of HAPs will only be retained in reporting requirements if the facility's prioritization

score is greater than 1.0. The revisions have the effect desired by NUMMI (of not retaining HAPs-emitting facilities) if the facility's prioritization score is less than or equal to 1.0. For the remaining facilities, the staff believes the provisions to retain these large-volume sources in reporting is necessary to collect information that will help to protect public health, is consistent with a risk-based approach to the program, and provides greater statewide consistency than would applying the mechanism of section IV.A.(5) [formerly numbered as IV.A.(4)] for district denial of exemptions, that was suggested in the comment as an alternative for this purpose. These considerations are discussed further in the following paragraphs.

The provisions in sections IV.A.(1)(e) and IV.B.(3) regarding facilities emitting specified quantities of Hazardous Air Pollutants are necessary to ensure that sources emitting large volumes of toxic air pollutants, whose emissions may be spread over large geographic areas and consequently expose large numbers of people to elevated risks, will continue to be tracked, in order to accomplish the goals of the Air Toxics "Hot Spots" Program. In addition, including provisions like these also helps to strengthen California's overall position in working with the U.S. EPA to coordinate California's toxics program with federal requirements and to help demonstrate that California has a comprehensive and effective toxics program. In addition, these provisions to continue to track large-volume sources help maintain the ability for the state board and districts to evaluate the aggregate impacts of multiple sources. The provisions are also needed from a risk-based perspective in evaluating the public health impacts of individual facilities as well, as discussed in subsequent paragraphs.

The specified amounts of HAP emissions correspond to the amounts specified by the U.S. EPA for facilities considered to have the potential to be federal "major sources" of HAPs. It is reasonable that facilities which may be recognized as "major sources" of air toxics under federal requirements should not be exempted as "low level" facilities under the Report. This provision would protect the public by helping to ensure that information regarding large-volume emitters of toxic chemicals would continue to be tracked.

Including these specific criteria and consistent requirements for facilities emitting HAPs provides statewide consistency through explicit criteria for facility operators to know in advance what HAPs quantities would be considered by the districts. By contrast, if the Report instead relied solely on districts utilizing the provisions for denying an exemption on a case-by-case basis under section IV.A.(5), as suggested by the comment, there could be less statewide consistency and greater potential to lose the ability to track emissions of some sources of potential risk to public health.

The facilities for which the HAPs criteria will still cause the facility to be retained in reporting (rather than be exempted as "low level"), are the relatively few facilities with a prioritization score greater than 1.0, and that either (1) conducted a risk assessment that showed "low level" risk assessment results, or (2) met one of the *de minimis* throughput thresholds specified in section IV.A.(1)(c). For these facilities, the staff believes the specified large volumes of HAPs emissions and the implications of these emissions for public health risk are valid grounds to justify retaining the facility in reporting requirements.

Facilities emitting these large volumes of toxic air pollutants may represent a situation where emissions disperse and affect large geographic areas and consequently expose large

numbers of people to elevated risk. Even if a formal health risk assessment results in a point estimate of risk at the point of maximum impact (PMI) or the maximum exposed individual receptor (MEIR) that is below the significant risk level determined by the district, there may still be large numbers of people in the surrounding population being exposed to elevated levels of risk. This potential population exposure and population burden of risk could be of concern to the public health, in addition to the results of the point estimates of risk. For example, the Legislative findings section for the "Hot Spots" statute (Health and Safety Code section 44301) refers to sources that "may expose individuals and population groups to elevated risks of adverse health effects...". The California Air Pollution Control Officers Association (CAPCOA) Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993, also discuss the population excess cancer burden (not just the individual risk).

For these reasons, in establishing the criteria in section IV of the Report for whether a facility qualifies for the "low level" category, the staff included indicators that address both types of impacts--point estimates of risk, and a measure of overall population impacts due to large-volume emitters--in order to ensure that the public health will be adequately protected by maintaining the ability to continue to track the emissions of facilities that exceed these criteria.

## AEROJET

12. Comment: Aerojet supports the intent of Guidelines Report amendments for streamlining reporting requirements, and supports the re-codification which incorporates the Report by reference in the CCR. However, Aerojet is concerned about incorporating by reference the CAPCOA Prioritization Guidelines and Risk Assessment Guidelines, which Aerojet believes have not gone through the public review process. Aerojet believes the CAPCOA guidelines were developed in-house and contain unreasonable and other criteria not based on sound science. Aerojet believes the CAPCOA Guidelines have been and are being used as regulatory documents and that incorporating the CAPCOA Guidelines by reference requires compliance with the Administrative Procedure Act. In addition, other documents such as the federal EPA health risk assessment document should be one of the alternatives. (Aerojet; Bobis, Aerojet)

Agency Response to Comment #12: Staff believes all appropriate steps have been taken in this rulemaking to comply with the Administrative Procedure Act requirements for incorporating documents by reference. Reference to incorporation of the CAPCOA Guidelines was included in the Staff Report and the 45-day notice for public comment. The CAPCOA Guidelines themselves were developed through a process that included extensive input and technical expertise from the Office of Environmental Health Hazard Assessment (OEHHA) and the local air pollution control and air quality management districts (districts). In addition, ARB conducted four workshops to discuss Phase II of the Hot Spots streamlining proposals, including amendments to the Guidelines Report.

The manner in which, and stated purpose for which, the CAPCOA Guidelines documents are incorporated by reference in the Report is consistent with the manner in which the CAPCOA Guidelines have been designed to be used. The Report cites the statutory provisions for district implementation, including procedures that have gone through public review as required, and references the CAPCOA Guidelines as providing "some appropriate procedures".

For example, section IV.A.(1)(a) specifies that prioritization is conducted by the district "in accordance with Health and Safety Code section 44360(a) using procedures that have undergone public review" and that "Some appropriate procedures for estimating prioritization scores are presented in..." the CAPCOA Facility Prioritization Guidelines, which is incorporated by reference. Section IV.A.(1)(b) handles the risk assessment procedures similarly.

Therefore, as indicated in the Guidelines Report, the use of the CAPCOA Guidelines is an option, as they are referenced to provide "some appropriate procedures." Other documents such as federal EPA documents may also be appropriate and their use is not precluded by the Report. By making the CAPCOA Guidelines available for use, the Report provides some statewide consistency and at the same time allows districts the flexibility to use different procedures that are consistent with the statutory requirements and have undergone appropriate public process. By properly proposing to incorporate the documents by reference in this rulemaking, the public has an opportunity to comment on the use of these documents for this purpose, and the requirements of the Administrative Procedure Act are met. Moreover, the requirements of 1 CCR 20 to fulfill certain conditions regarding incorporation by reference have also been met (see FSOR Section I.C., the public Notice published on June 7, 1996, and the regulation text.).

#### ENVIRONMENTAL DEFENSE CENTER

13. Comment: Changes to "streamline" the large Hot Spots program have the possibility of being very beneficial through cost savings and improvements in efficiency, but must not give these benefits at the expense of the stated purpose and goal of the program itself. The proposed "streamlining" changes in the Hot Spots program undercut the goals of the program, and roll back the successes of the program to date. The Hot Spots program was established to develop a statewide inventory of site-specific air toxics emissions, assess the risk to public health, and notify the public of any health risks associated with these emissions. Exempting so-called "low risk" facilities from the program would negate these goals. The program would no longer develop and maintain an ongoing list of toxic emissions from these facilities, or assess risks from substances emitted from these facilities in light of the most recent scientific knowledge, or notify the public of these risks. The toxic emissions from so-called "low risk" facilities are still toxic and harmful in absolute terms. There is a growing body of scientific evidence of a zero threshold dose-response relationship for many chemicals on the Hot Spots list. Current research is discovering insidious synergistic toxicity relationships between the chemicals, and that children, elderly, and chemically sensitive individuals are not adequately protected under the current system and 1 per million death rate. Thus, though the "low risk" emissions appear relatively small, this does not exempt them from the stated goals of the Hot Spots program. The proposed changes thus overstep their goal of streamlining. (Environmental Defense Center)

Agency Response to Comment #13: The Board believes the proposed amended Emission Inventory Criteria and Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks. Exemptions for specified low risk facilities from the entire "Hot Spots" program are now required by the recently amended "Hot Spots" statute, due to the passage of

Assembly Bill (AB) 564, which was signed into law by the Governor and chaptered on September 19, 1996. Thus the revised statutory goals of the "Hot Spots" program now explicitly include the exemption of low priority facilities from further compliance with the program.

Conforming amendments have been proposed to the Guidelines Report in the 15-day modifications package. "Low level" criteria were approved by the Board for some additional exemptions from inventory update reporting, based on risk assessment results or *de minimis* throughput levels (in addition to the prioritization score levels specified by AB 564). The Board believes these "low level" conditions and several additional safeguard provisions, all of which are discussed further below, provide a sound basis for balancing the level of public health protection with the need for regulatory relief for facilities posing very low risks to public health.

AB 564 based the "Hot Spots" program exemptions solely on the facility's prioritization score. A prioritization score is an approximate indicator tool originally intended for use by the districts to establish priorities for which facilities needed to conduct formal health risk assessments to better characterize the risk posed by the facility. Based on reported data to date, some facilities with prioritization scores above the AB 564 score threshold have conducted site-specific health risk assessments that demonstrate that the facility's risk levels are low. Therefore, the Board approved additional "low level" conditions set forth in section IV.A. of the Report, to exempt some additional facilities from further compliance with the inventory update reporting requirements of the Report, based on consideration of health risk assessment results and specified *de minimis* throughput thresholds, as well as prioritization score, as an indication of whether facilities may pose a public health risk. The "low level" conditions in section IV.A. specify a total potential cancer risk of less than one (1.0) case per million persons and a total hazard index (H.I.) for each toxicological endpoint of less than 0.1. These "low level" criteria were developed through extensive consultation with the Office of Environmental Health Hazard Assessment (OEHHA), the local air pollution control and air quality management districts (districts), and representatives of industry, health, and environmental groups and the public. As discussed on pages 26-28 of the Staff Report, the "low level" criteria are for the purpose of determining the appropriate level of update reporting required for a facility. The levels are consistent with risk levels used in other federal, state, and local regulatory programs. Therefore, the staff believes these "low level" conditions provide a sound basis for balancing the level of public health protection with the need for regulatory relief for facilities posing very low risks to public health.

As discussed on page 27 of the Staff Report, the Report contains additional safeguard provisions to further ensure that public health will be protected. Provisions are included for a district to deny an exemption for good cause (section IV.A.(5)) or to reinstate an exempted facility (section IV.A.(3)) if circumstances or information change. These provisions were included specifically to ensure flexibility to protect public health in situations where a facility either changes its conditions or the district believes that the facility individually, or in combination with other facilities, may pose significant risk. Section II.E.(3) of the Report also provides a mechanism for districts to bring into the program any facilities that emit less than 10 tons per year of criteria pollutants and that are identified by the district as posing a concern to public health. Section IV.A.(1)(e) prevents facilities from being exempted if they emit

specified large volumes of Hazardous Air Pollutants (HAPs), which may expose large numbers of people to elevated risks. Together these provisions provide sufficient flexibility and safeguards to ensure that facilities can be included in the "Hot Spots" reporting requirements if factors like those raised in the comment (such as the proximity of sensitive individuals or new scientific evidence) indicate that a facility may pose significant risk.

After having collected emission and risk information under the program for several years, a comprehensive inventory now exists that has allowed the Board and districts to make sound decisions regarding which facilities pose the greatest concern and to identify where to best focus the program's efforts and resources. The Board believes the program can best protect the public by concentrating and collecting additional data on facilities that pose the greatest concern. In addition, the aforementioned provisions provide flexibility to ensure that facilities which individually or in combination with other facilities pose concern can be included in the reporting requirements of the program.

The Report still ensures ongoing updates to the toxic emissions from the facilities remaining in the program, which are the facilities that contribute the most to emissions. Facilities in the "high level" category are required to update their emission inventories every four years. Facilities in the "intermediate level" category are required to track activity changes and submit updates if there are significant increases. The "intermediate level" facilities generally submit an Update Summary Form that is reviewed by the districts who determine whether there is a need to require a complete update plan and report (under section V.H.) to adequately characterize the current conditions, considering factors such as substantial changes at the facility, substantial changes in the health effects values of the substances, reductions in the distance to nearby receptors (such as sensitive individuals as mentioned in the comment), and other factors relevant to public health impacts. The Air Resources Board continues to maintain a statewide inventory of site-specific air toxics emissions from the facilities in the program. Facilities that meet the districts' prioritization criteria are still required to conduct health risk assessments to assess the risk to public health, and facilities must still notify the public of any district-identified significant health risks associated with these emissions. The "Hot Spots" statute requires that any new health risk assessments be prepared in accordance with guidelines established by the Office of Environmental Health Hazard Assessment (OEHHA) (Health and Safety Code section 44360). The statute requires the OEHHA guidelines to undergo a process of scientific and public review. Therefore any recently developed scientific evidence regarding risk assessment and toxicity of chemicals can be addressed through this process.

14. Comment: The proposed changes run counter to the benefits that have come from the implementation of the "Hot Spots" program to date. As stated in the Staff Report, this program has resulted in the first and only comprehensive State inventory of air toxics, which has been quite effective in identifying problems and has helped facility operators correct these problems. By exempting facilities whose emissions are relatively low, the ARB would halt the benefits of this program in relation to these facilities. The comprehensive inventory would be hurt by exclusion of pertinent data, and the public would be hurt by the lack of notice as to risk (low, but still measurable), and the facilities would be hurt by missing the ability and incentive to self-correct their emission problems. (Environmental Defense Center)

Agency Response to Comment #14: As discussed in the response to comment #13, exemptions of specified low priority facilities are now required under the recently amended "Hot Spots" statute, due to the passage of AB 564. The 15-day package includes conforming amendments to the Report. The Board believes the proposed amended Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks. The facilities that meet the exemption criteria under the statute and the Report are facilities with low risk, for which there would not have been requirements for public notice of significant risks or requirements for risk reduction through audits and plans under current district practices because district-determined significance levels are higher than the exemption levels. Incentives such as reducing waste and exemption from further reporting still exist for voluntary emission reductions by facilities to reduce their emissions below the "low level" criteria. Therefore, the Board believes that exempting these low risk facilities would not adversely affect the role of the "Hot Spots" program in providing public notification of risk and reduction of risk from significant risk sources. As discussed in the Staff Report and in the response to comment #13, the risk levels developed for the "low level" criteria in section IV.A. are consistent with low or *de minimis* levels used in other federal, state, and local regulatory programs. The additional provisions for district denial of exemptions, reinstatement, and identification of small facilities posing concern add further safeguards to ensure that any high risk facilities will continue to report. As the comment indicated, the "Hot Spots" program has resulted in a comprehensive inventory of air toxic emissions which has provided many benefits. An important benefit is the ability to identify the sources of greatest concern in order to focus the finite resources of the program on those sources posing the greatest public health risk, thereby ensuring the greatest public health benefits within the available resources. Under AB 564, the State program costs were capped and some district fees were also capped. In order to use the available resources most cost effectively to protect public health, staff believes it is prudent to concentrate the collection of additional data on facilities that pose the greatest concern. The Air Resources Board continues to maintain a statewide inventory of site-specific air toxics emissions from the facilities in the program, which are the facilities that contribute most to the emissions. Section V of the Report still requires that "high level" facilities update their emissions and "intermediate level" facilities track changes at the facility to determine if the changes warrant an emission update. Facilities that meet the districts' prioritization criteria are still required to conduct health risk assessments to assess the risk to public health, and facilities must still notify the public of any significant health risks, as specified by the districts, associated with these emissions.

15. Comment: The proposed changes deeply undercut the purpose and benefits of the Hot Spots program without even a large cost savings. The estimated savings to facilities exempted from the program is \$150 per facility. Overall savings from the proposed changes are estimated at a mere \$50,000 every four years. A cost reduction of only \$12,250 per year statewide is not an adequate trade-off for the loss in reporting and ongoing knowledge of emissions.  
(Environmental Defense Center)

Agency Response to Comment #15: As discussed in the response to comments #13 and #14, the staff does not agree that the proposed changes undercut the purpose and benefits of the "Hot Spots" program. Exemptions of specified low priority facilities are now required under the recently amended "Hot Spots" statute, due to the passage of AB 564. The Board believes

the Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks. Furthermore, staff believes that exempting low risk facilities would not adversely affect the role of the "Hot Spots" program in providing public notification of risk and in the reduction of risk from significant risk sources. The data collected provide a sound basis for focussing the finite resources of the program on those sources posing the greatest public health risk, thereby ensuring the greatest public health benefits. Under AB 564, the State program costs were capped and some district fees were also capped. In order to use the available resources most cost effectively to protect public health, staff believes it is prudent to concentrate the collection of additional data on facilities that pose the greatest concern.

While the direct cost savings to individual exempted facilities due to the streamlining amendments to the Guidelines Report have been estimated in the Staff Report to be on the order of \$150, another important consideration is the reduction in the numbers of facilities for which the districts, the Air Resources Board, and the Office of Environmental Health Hazard Assessment (OEHHA) must review and process information. As indicated on page 42 of the Staff Report, the staff estimates that approximately 45-55 percent of the total number of facilities previously in the program will be exempted from reporting requirements based on their low risks. Rather than expending substantial resources to track, review, and process detailed information for so many facilities with low risks, the staff believes the public interest is best served by focussing the resources of these agencies on the remaining facilities that pose the greatest concern, while also providing safeguard provisions for reinstatement, identification of small facilities that pose concern to public health, and district denial of exemptions for good cause if facilities individually or in combination with other facilities pose a potential threat to public health.

Further, as discussed on page 1 of the Staff Report, the amendments to the Guidelines Report represent only one portion of the Board's overall streamlining efforts for the "Hot Spots" program. In September 1996, the Board approved amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1996-1997, which provide exemptions from paying fees for specified facilities posing low public health concern. Fee exemptions are required by the amended "Hot Spots" statute, due to the passage of AB 564. The combined cost savings from the overall program streamlining efforts to exempted facilities is therefore more than the \$150 savings estimated for the Guidelines Report alone. In addition, the State and district program costs have been substantially reduced. As mentioned above, AB 564 imposed specified caps to State costs and some fees.

All of these changes to the "Hot Spots" program combine to provide substantial regulatory relief for California facilities posing low public health concern and substantial program cost savings, while ensuring that remaining resources will be used most cost effectively to protect public health by focussing on the facilities posing the greatest health risks.

16. Comment: The proposed changes are problematic because they would give exempted facilities the responsibility for reporting changes in their emission status. Once exempted, many factors affecting a facility's risk category could change without the knowledge of the ARB or other officials, including emitting more toxic substances or decrease in distance to nearby residents.

There exist powerful incentives which run counter to facilities' admission of changed emission status. The proposed changes will set up conflicts of interest and situations where no one has responsibility for protecting California's air from toxic emissions. (Environmental Defense Center)

Agency Response to Comment #16: As discussed in the response to comments #13 and 14, the passage of AB 564 amended the "Hot Spots" statute to require exemption from the program of specified low priority facilities. AB 564 also established statutory criteria for reinstating exempted facilities if conditions change. The proposed Guidelines Report was revised and made available to the public for a 15-day comment period to conform with the amended statute. AB 564 separated the reinstatement criteria into two categories of responsibility. New Health and Safety Code section 44344.7(a) specifies that a facility shall be reinstated upon notice from the district, based on criteria regarding newly listed substances, establishment of a sensitive receptor within 500 meters, or emission of a substance with increased potency. New Health and Safety Code section 44344.7(b) specifies that a facility is responsible for submitting an update, based on criteria regarding emission of a substance not previously reported, or an increase in emissions exceeding 100 percent of the previous level. Section II.J. of the Report has been added, and section IV.A.(3) has been revised, in the 15-day modifications package, to conform with these statutory provisions. Section IV.A.(3) contains additional criteria for reinstating facility requirements for inventory update reporting (if the facility was not exempted from further compliance under the AB 564 criteria in section II.J.), that take into account other pertinent factors to ensure that facilities no longer qualifying for the "low level" exemption will be reinstated. Sections IV.A.(3)(a)(ii), IV.A.(3)(b), and IV.A.(3)(c) particularly specify procedures for decreases in receptor distance, which was a concern mentioned in the comment, by requiring evaluation to be addressed by both the facility and the district.

Regarding potential disincentives to facilities to report changes, staff believes that the reinstatement criteria provide a reasonable basis for reinstating exempted facilities should they subsequently pose greater risks, and believes that the liability provisions of the "Hot Spots" statute (see Health and Safety Code section 44381) regarding penalties for not reporting or reporting false information discourage evasion of facilities' responsibilities. Provisions are also included in section II.J.(3)(c) and section IV.A.(4) of the Report for facilities subject to district permit programs to be evaluated through the permit evaluation process. In addition, greater integration of the criteria pollutant (smog-precursor) and toxics emission inventory reporting processes is anticipated in most districts, leading to an additional mechanism for districts to track changes in process levels and overall emission rates through annual criteria pollutant updates.

17. Comment: The proposed changes are against the best interests of the citizens of California and the affected facilities, and would gut a program that has been very effective in raising awareness and knowledge about toxic emissions for the meager savings of \$150 per facility. While it is important to operate more efficiently and focus the majority of efforts on the largest emitters, the exemption of 50% of the facilities just because they emit less is not warranted. Small emissions are still toxic emissions and present risk, and must be monitored until their emissions have stopped, either through pressure or voluntary efforts spurred by the Hot Spots program. EDC implores the Air Resources Board to carefully weigh the economic benefits to a

small number of polluters against the potential health effects of these changes. The Board's first responsibility must be to individuals in the public, particularly children, elderly, and chemically sensitive. The proposed revisions fail to adequately protect these populations and should be reconsidered. (Environmental Defense Center)

Agency Response to Comment #17: As discussed in the responses to comments #13 through 16, the "Hot Spots" statute now requires the exemption of specified low priority facilities from the program, and staff believes the proposed streamlining provides the most cost effective approach to protecting public health. The knowledge gained through the program has allowed the identification of facilities that pose the greatest concern to public health and has already spurred voluntary reductions at many facilities and required risk reduction audits and plans for significant risk facilities. These benefits will continue to be realized as facilities that exceed the "low level" criteria continue to report or be tracked, and any facilities that exceed the districts' significant risk levels continue to be required to conduct risk reduction audits and plans to reduce their risk below the significance levels within specified timeframes. Reporting requirements for exempted facilities will be reinstated if the facilities no longer meet the low risk criteria. At this time, it is not practical to expect that all emissions of all toxic substances will be eliminated completely in the state, because nearly every industrial, commercial, institutional, and even residential operation has some potential for emission of toxic substances. However, the amounts and toxicities of these emissions vary widely. For some substances, current scientific data indicate that thresholds exist below which chronic or acute health effects are not expected to occur. These thresholds are reflected in the criteria chosen in the Report. For example, a Hazard Index (H.I.) exceeding 1.0 is generally considered to indicate the potential for adverse effects (with a margin of safety built into the H.I.). The proposed "low level" Hazard Index cutpoint of 0.1 incorporates an additional order of magnitude margin of safety to further ensure adequate protection of all population groups including sensitive individuals. For some other substances, current scientific data do not indicate threshold values, so risk must be managed in the most scientifically and socially acceptable manner feasible.

In addition, section II.E(3) provides that districts may identify certain facilities as posing concern to public health if the district determines that the facility may pose a potential risk to public health exceeding the criteria for "low level" facilities and the district needs additional data to completely evaluate the potential health risk to surrounding receptors. Such a facility would have to submit emission inventory data to the district.

The proposed amendments have been developed through extensive consultation with stakeholders. The Air Resources Board staff has worked closely with the State Office of Environmental Health Hazard Assessment (OEHHA) and other health organizations to ensure that the best available scientific data have been considered, and as discussed previously, the proposed risk levels are consistent with other federal, state, and local regulatory programs. The Board believes the proposed amendments provide a sound balance between the costs and benefits of the program, and maximize the program's effectiveness in protecting public health within the available funding.

## CALIFORNIA MINING ASSOCIATION

18. Comment: CMA supports streamlining the Hot Spots program. However, CMA is extremely concerned about the impact these regulations will have on small and innovative companies in California. CMA objects to the inclusion of section II.E.(3), which CMA believes would empower local air districts to bring under the Hot Spots program small "unique facilities" on an ad hoc and potentially arbitrary basis, without specific criteria to guide district decisions. The provision is a step backwards from the California Environmental Protection Agency (Cal/EPA) Regulatory Improvement Initiative under the Governor's Executive Order W-127-95 regarding "regulatory relief" to reduce the regulatory burden on California business and the economy. The provision is not authorized by law (see response to comment #19), and does not meet standards for regulatory clarity (see response to comment #21). CMA requests that the provision be deleted or reviewed in more detail and amended if needed to provide specific criteria for including these facilities. (California Mining Association; Jones, Good, California Mining Association)

Agency Response to Comment #18: Section II.E.(3) provides a mechanism to ensure that less-than-10 ton per year facilities identified by the districts as posing a public health risk are included in the Hot Spots program, without requiring all facilities in an entire industrial classification statewide to be subject to reporting requirements as well, if there is no information indicating those other facilities may pose a risk. The provision in section II.E.(3) provides a more effective alternative than including multiple additional numeric Standard Industrial Classification (SIC) code classes or multiple additional "Any SIC" process classes in Appendix E, which would otherwise be needed to cover a few facilities of potential concern, but which would also require evaluation of many low risk facilities in those SIC classes unnecessarily. By including the provision in section II.E.(3) for only those facilities identified by the district as posing a public health concern, regulatory requirements on additional facilities are therefore avoided. The provision is therefore entirely consistent with the Regulatory Improvement Initiative's goal of streamlining the program and providing "regulatory relief" to reduce the regulatory burden on facilities. As discussed in more detail in the responses to the following comments #19 and #21, staff believes the proposed provision is authorized by the statute, and the staff has worked with the commenter, as directed by the Board, to revise section II.E.(3) and Appendix E in the 15-day modifications package to include clarifying language and more specific criteria.

19. Comment: The proposed section II.E.(3) is not authorized under the "Hot Spots" statute. The Legislature intended to first review the classes of small facilities that would be brought into the program by ARB. This was done through the report submitted by the Board. While some adjustments of the identified classes may be permissible under Health and Safety Code section 44322(c), the proposal to empower districts to bring into the program still unidentified small facilities without specific criteria or legislative direction as contemplated by section 44322(c) is contrary to legislative intent and not authorized by law. The factors set forth in the paragraph regarding factors the districts may take into account do not satisfy legislative directive and would allow a district to make ad hoc determinations based on prejudgments by district personnel. (California Mining Association; Good, California Mining Association)

Agency Response to Comment #19: The staff disagrees that the provisions of section II.E.(3) are not authorized by the statute and disagrees that these provisions are contrary to legislative intent. Health and Safety Code section 44322(c) requires the Board to identify classes of facilities that emit less than 10 tons per year of criteria pollutants to be included in the "Hot Spots" program and to specify a timetable for their inclusion. Section 44322(c) required the Board to prepare a report to the Legislature on or before July 1, 1990, and the Board submitted this report to the Legislature in June 1990. That is the entire explicit direction that the Health and Safety Code provides as to what should constitute these classes. Because the State Board is required by the statute to implement the overall "Hot Spots" program, it is the Board's responsibility to determine appropriate classes and the Board believes the provisions of section II.E.(3) are consistent with the direction of the statute. Staff has proposed clarifying revisions to the Report in the 15-day package, in response to the commenter's concerns, to further ensure that the provisions contain clear definition, process, and criteria for identifying and including specified less-than-10-ton per year facilities in the "Hot Spots" program.

Section II.E.(3) is essential to ensuring protection of public health while also avoiding unnecessary regulation of facilities not posing public health concern. Appendix E contains the list of classes of facilities emitting less than 10 tons per year of criteria pollutants that are included in the "Hot Spots" reporting requirements. These classes were identified by the Board in 1990, based on analysis of available data from federal, state, and local regulatory agencies, public input, and other available information, regarding classes of sources posing potential public health concern due to amounts and potency of toxic emissions. As indicated in the 15-day modifications package, the staff has defined a class of facilities in Appendix E using an "Any SIC" designation similar to the other "Any SIC" classes previously defined, and has included specific health-based criteria and a written determination process under section II.E.(3) to identify this class of facilities. Working with the commenter, the staff has proposed modifications in the 15-day package to further clarify the criteria as being based on health risk and that what constitutes the risk are levels exceeding the "low level" category criteria in section IV.A of the Report. Section II.E.(3)(c) was added to further clarify that any facility that meets the requirements of section II.E.(3)(a) belongs to the class of facilities listed in Appendix E as "Facilities identified by districts under section II.E.(3)(a)."

In developing the streamlining amendments to the Guidelines Report, the staff evaluated and consolidated the former list of classes in the original Appendix E-I and E-II, and eliminated the former Appendix E-II, by eliminating classes not found to be of public health concern, by defining additional "Any SIC" classes for which there is evidence of concern, and by refining the definitions of categories and portions of categories to focus on those SIC groups and "Any SIC" classes that are of greatest concern. The staff included an "Any SIC" class in Appendix E, similar to other "Any SIC" classes included in Appendix E, that relies on the specific process and criteria under section II.E.(3)(a). These provisions ensure that any facility posing public health concern above the specified levels will be included, while at the same time avoiding the need to mandate that an entire industry type (such as an entire Standard Industrial Classification code group) must be included statewide. Extensive analysis of the available data and extensive public input throughout the development of the proposed Report have been considered by the staff in developing and refining the list of classes in Appendix E.

The comment states that "some adjustments of the identified classes may be permissible under H&SC section 44322(c)". Staff agrees with this comment. The comment does not question other revisions that have been made to consolidate, refine, and revise the list of classes in Appendix E, and does not suggest that these revisions are contrary to the legislative intent or unauthorized by the Act.

All of the revisions to Appendix E, including those to streamline the requirements and allow exclusions for facilities meeting the "low level" criteria, are integrally linked to the overall technical analysis and public consultation process which the staff followed in proposing the revised Appendix E and the need for section II.E.(3). The provisions of section II.E.(3) provide a necessary safeguard to ensure adequate protection of public health while still allowing the streamlining of the other classes included in Appendix E.

These revisions also take into consideration the advancing knowledge of the types and toxicity of hazardous releases among these smaller facilities. Health and Safety Code section 44344 specifies that emission inventory updates be conducted in accordance with procedures established by the state Board and take into consideration improvements in measurement techniques and *advancing knowledge* concerning the types and toxicity of hazardous materials released or potentially released. The Legislature recognized that knowledge would advance concerning facility emissions. Therefore, it is reasonable to interpret that appropriate changes to update the list of classes identified for inclusion under Appendix E, in consideration of advancing knowledge concerning the types and toxicity of releases, are appropriate under the statute. In addition, the Legislature indicated in Section 44301(h) that it is in the public interest to ascertain and measure releases from specific sources that may be exposing people to those releases. This is precisely what the provisions of section II.E.(3) are designed to do.

Likewise, under the statute, Health and Safety Code section 44365(b) makes it clear that districts may establish more stringent criteria and requirements than the State Board's guidelines, and that this program does not limit the authority of districts under any other provision of law to assess and regulate releases of hazardous substances. Health and Safety Code section 44320(b) also authorizes districts to include in the "Hot Spots" program any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district. Therefore, the Legislature recognized the districts' central role in identifying facilities to be evaluated under the Hot Spots program. Section II.E.(3) is consistent with this Legislative perspective.

Based on experience and data from evaluating toxic emissions data collected under this and other programs, along with the associated risks, the staff recognized that there could be facilities that pose risk to the public and that occur in other SICs or that have diverse processes not otherwise listed in Appendix E. It would be unnecessarily burdensome to include an entire numerical SIC class in Appendix E for every conceivable circumstance where a particular facility could pose a risk to public health, when many other facilities within such a numerical SIC group might not pose a concern. Likewise, it would be impractical to include an explicit industrial process type or substance usage value for every conceivable "Any SIC" circumstance where a facility could pose a risk to public health. Instead, after extensive public consultation,

and in order to implement identification of classes appropriate for inclusion in Appendix E, the staff has included the provision regarding facilities identified by the districts under section II.E.(3). As indicated in the 15-day modifications, the staff included an "Any SIC" class in Appendix E, that defines facilities identified by districts under section II.E.(3)(a), which specifies the process and criteria for identifying these facilities based on a written determination of health concern to the public.

Furthermore, it would not be prudent to eliminate section II.E.(3) and the class in Appendix E, because the alternatives would be far less effective and more burdensome. These alternatives are (1) potentially high risk facilities would not be identified, tracked, and reported, and (2) multiple additional classes would need to be listed. These additional classes would have to be over-broad, even narrowing the definition based on best available data, and would include numerous low risk facilities. The inclusion of section II.E.(3) thus provides an essential safeguard for protecting public health while balancing the need to streamline the requirements and eliminate regulation of facilities not of concern, by tailoring the identification of these additional facilities to meet the criteria of higher risk facilities.

As already mentioned, working with the commenters as directed by the Board at the July 25, 1996 hearing, the staff modified the section in response to the commenter's concerns, and made the clarifying modifications available to the public in the 15-day package, including removing the factors set forth at page 10 (one of the subjects of this comment). The modifications clarify and strengthen the criteria, definition, and procedures in section II.E.(3) and Appendix E. The modified section II.E.(3) contains specific and objective regulatory criteria, definition, and procedures for ensuring that these provisions are applied to facilities that pose risk to public health, consistently with provisions and risk levels that require other facilities to be included in the "Hot Spots" program. The modified section II.E.(3) clearly indicates that: (1) the district must make a written determination of the basis for including a facility; (2) the facility must pose a "risk to public health" or emissions from the facility are identified "as being of health concern to the community"; and (3) specific regulatory criteria are included to define the risk to public health as levels "exceeding the levels for prioritization score, cancer or non-cancer risk, or *de minimis* levels specified in section IV.A. for 'low level' facilities". These criteria provide the districts clear guidance for identifying facilities of concern.

The staff believes that section II.E.(3) and the corresponding class defined in Appendix E are essential to ensuring adequate protection of public health in addressing facilities that pose risk, without requiring inclusion of other entire classes of facilities statewide, within which many individual facilities would not be of concern and could thus face unnecessary regulatory burden.

The staff made these modifications after taking into account the commenter's concerns and all relevant information, including concerns by health officials and environmental organizations raised during the development of the Report that there be a mechanism to ensure that facilities posing health risk to the community can be identified and brought into "Hot Spots" reporting and right-to-know provisions. The staff believes that the revised section II.E.(3) provides this mechanism to ensure identification of such facilities, consistently and comparably to other facilities included in the "Hot Spots" program. The revisions make it clear that the basis for

including a facility is a public health concern, not merely a noise or nuisance complaint, or an unusual type of operation. The revisions also make it clear that the district must make a written determination detailing the health concern, to ensure accountability and statewide consistency. The revisions further ensure statewide consistency by specifying criteria for the levels of concern as being those exceeding the "low level" category criteria of section IV.A., which are used for all other facilities as a consistent basis for determining inclusion in the "Hot Spots" reporting requirements.

20. Comment: The proposed section II.E.(3) establishes an unfair evaluation criterion for small facilities, regarding use of the phrase "in combination with other facilities", which is not applied to larger facilities. The language could cause a small facility with insignificant emissions to be included as a result of a neighboring facility's emissions. The proximity of "other facilities" is ignored and could be interpreted as a neighboring facility or all facilities emitting a given contaminant in the same air basin. The Program has been applied to date on a facility-by-facility basis. CAPCOA risk assessment guidelines focus on individual facility emissions. Facilities previously included were not evaluated with respect to their neighbor's emissions, so the proposal establishes an unfair criterion for small facilities. (California Mining Association; Good, California Mining Association )

Agency Response to Comment #20: Staff disagrees with this comment. The provision regarding "in combination with other facilities" is used in evaluating both larger and smaller facilities in the Report and does not establish an unfair evaluation criteria for small facilities. Rather it could be inconsistent with other Report provisions if the phrase was not included in section II.E.(3) for smaller facilities. It would be inconsistent to eliminate this phrase for evaluating facilities that emit less than 10 tons per year of criteria pollutants (under Appendix E and section II.E.(3)), because this same phrase or the equivalent concept is included in the Report in evaluating other sized facilities. This same phrase "in combination with other facilities" is used explicitly in section IV.A.(5) regarding the district determination for denying an exemption for a "low level" facility. Here, the provision applies to evaluation of any size facility. The equivalent concept is also used in the reinstatement criteria in section IV.A.(3)(a)(v), in which the "proximity of other facilities and sources of toxic emissions" is included as a factor the district may take into account in determining good cause to expect a facility no longer qualifies for an exemption as a "low level" facility. Here again, the provision applies to the evaluation of any size facility. Including the phrase "in combination with other facilities" in section II.E.(3)(a)(i) in evaluating the public health impacts of facilities emitting less than 10 tons per year of criteria pollutants is therefore entirely consistent with the standards that apply throughout the Report for evaluating impacts of all sizes of facilities.

While the statute directs each facility operator to inventory that facility's site-specific emissions, the Legislative findings in Health and Safety Code section 44301(d) also clearly state that "[t]hese releases may create localized concentrations or air toxics 'hot spots' where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area" (emphasis added).

The provisions of the Guidelines Report are consistent both with statutory requirements and with the Legislature's recognition that facilities' emissions can contribute to cumulative health risks in combination with other sources in the area. The provisions in section II.E.(3)(a)(i), section IV.A.(3)(a)(v), and section IV.A.(5) of the Report allow, but do not require, districts to consider cumulative health risks to which a particular facility contributes in determining whether the facility should be included in or excused from the reporting requirements. Because the Report includes streamlining provisions that would exempt facilities from further reporting, it is essential that criteria for exemptions and inclusions are structured in a way that maintains the district's ability to track the emissions of facilities that contribute to "hot spots" that the district has identified. The criterion regarding "in combination with other facilities" is essential to ensure that the districts and the State Board do not lose this ability to adequately assess the cumulative health risks contemplated by Health and Safety Code section 44301(d).

As to the focus of the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, these Guidelines include methodologies for assessing risk to populations as well as individuals, through methods such as subcensus tract analysis and the mapping of isopleths and zones of impact. The methods in CAPCOA's Guidelines can be applied to the analysis of the combined impacts of multiple facilities contributing to a given receptor or population group. The provisions of the Guidelines Report thus ensure that essential emission data for facilities contributing to localized "hot spots" will be available to state and local programs to evaluate cumulative risks.

These provisions do not change the requirement for each facility operator to inventory their own site-specific emissions. However, it helps ensure that essential data will be available to the districts and the State Board to implement effective risk management strategies in their respective programs. As indicated by Health and Safety Code section 44301(g), the Air Toxics "Hot Spots" program was established in part to support such strategies with additional information.

Regarding the interpretation of what proximity is relevant, common practice dictates the evaluation of neighboring facilities, not an entire air basin. The criteria in section II.E.(3) regarding "in combination with other facilities" is the same as used in section IV.A.(5) and the equivalent concept as used in section IV.A.(3)(v) regarding "proximity of other facilities and sources of toxic emissions," all of which follow from the Legislative findings in Health and Safety Code section 44301(d) regarding "these releases may create localized concentrations or air toxics 'hot spots' where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area." Staff believes it is clear from these provisions under the "Hot Spots" program, that the intent is to include neighboring facilities that contribute to elevated or "hot spot" risks at a given receptor location (individual or population group). The intent is not to focus on every facility emitting a given contaminant in an entire air basin, but rather to identify and focus on facilities that are contributors to an identified localized area where people are exposed to elevated levels of risk, such as levels exceeding the conditions established by section IV of the Report.

As a matter of common practice, the proximities of concern may be determined from the results of analysis methods such as the "zone of impact" methods described in the CAPCOA Revised 1992 Risk Assessment Guidelines for evaluating the geographic area affected by a facility (see for example page III-14 of the CAPCOA Guidelines). Isopleths (lines enclosing regions of equal impact) in which the excess risk level is above a particular elevated level of concern would be drawn around facilities that impact a given receptor location of concern. Modeling and risk assessment experience shows that the isopleths of risk fall off rapidly with distance from an emission source, so as a matter of common practice, only facilities in a limited vicinity of a given receptor location contribute substantially to the elevated risk levels, and *de minimis* principles would be applied to eliminate consideration of facilities that do not substantially contribute.

21. Comment: Section II.E.(3) does not provide sufficient regulatory clarity to satisfy either the statute or the requirements of the California Administrative Procedure Act (APA). The statute requires legislative approval of specified classes of facilities to be included. Section II.E.(3) designates no such specified class. The APA requires that not only must a regulation be authorized by law, but it also must have clarity (Govt. Code section 11349.1). "Clarity" is defined in Govt. Code section 11349 as "...written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The above factors do not provide clear meaning to small operators. (California Mining Association)

Agency Response to Comment #21: As also discussed in the response to comments #19 and #20, the staff proposed clarifying modifications in the 15-day package. Staff believes that the provisions of section II.E.(3) and Appendix E are consistent with the direction of the statute and that the provisions contain clear definition, process, and criteria for identifying and including specified less than 10 ton per year facilities into the "Hot Spots" program. Health and Safety Code section 44322(c) requires the Board to identify classes of facilities that emit less than 10 tons per year of criteria pollutants to be included in the "Hot Spots" program and to specify a timetable for their inclusion. Section 44322(c) required the Board to prepare a report to the Legislature on or before July 1, 1990, and the Board submitted this report to the Legislature in June 1990. That is the entire explicit direction that the Health and Safety Code provides as to what should constitute these classes. Because the State Board is required by the statute to implement the overall "Hot Spots" program, it is the Board's responsibility to determine appropriate classes. In the past, Appendix E classes were limited to certain SIC codes. However, with additional knowledge and experience gained from implementing the program, the Board believes it is now appropriate to include a new class of facilities in Appendix E based on district determination of potential concern to public health. The staff proposed to define a class of facilities in Appendix E using an "Any SIC" class designation similar to the other "Any SIC" classes previously defined, and has included specific health-based criteria and a written determination process under section II.E.(3) to identify this class of facilities. Working with the commenters, the staff proposed modifications in the 15-day package to further clarify the criteria as being based on health risk and that what constitutes the risk are levels exceeding the "low level" category criteria in section IV.A of the Report. The detailed criteria of section IV.A for the "low level" category provide "specific objective criteria" for inclusion of facilities in this "Any SIC" class, as requested by the comment. The "Any SIC" class in Appendix E clearly defines a class that includes "facilities

identified by districts under section II.E.(3)(a)", which in turn specifies a written determination process and health-based criteria on which the determination must be based. These criteria are consistent with criteria used to evaluate all facilities for inclusion or exemption under other provisions throughout the Guidelines Report. These criteria rely on commonly used measures of health impact--including prioritization score, risk assessment levels, and stated *de minimis* throughput levels--that are already in wide use under the overall program provisions of the "Hot Spots" program. Prioritization scores are based on methodologies that have been established in accordance with Health and Safety Code section 44360(a) and have undergone a public hearing. Risk assessment methodologies are based on methodologies established in accordance with Health and Safety Code section 44360(b). Prioritization scores and risk assessment methodologies are based on documents including the CAPCOA Facility Prioritization Guidelines and the CAPCOA Revised 1992 Risk Assessment Guidelines, which have been publicly available for many years and are incorporated by reference into the Guidelines Report to serve as the basis for making the category designations that determine inclusion, exemption, and reporting requirements for all facilities under the Report.

Therefore, the revised Appendix E and section II.E.(3) contain specific and objective regulatory criteria, definition, and procedures for ensuring that these provisions are applied to facilities that pose risk to public health, consistently with provisions and risk levels that require other facilities to be included in the "Hot Spots" program. These provisions have been developed and adopted by the State Board through a full public regulatory process in accordance with the Administrative Procedure Act.

As discussed in previous responses, staff has developed the provisions of section II.E.(3) and the class of facilities defined in Appendix E which refers to section II.E.(3), based on experience, technical expertise, public input, and analysis of data regarding toxic emissions and associated risks, and the staff believes these provisions are essential to ensuring adequate protection of public health in addressing facilities that pose risk, without requiring inclusion of possibly numerous other classes of facilities, within which many individual facilities might not be of concern and would thus face unnecessary regulatory burden.

22. Comment: The proposed section II.E.(3) is bad policy, particularly in view of the Governor's regulatory relief program. The proposal could impose unwarranted burdens on small mine operators by allowing ad hoc, retroactive impositions of costly compliance requirements, without identified air quality benefits. Any such policy deserves in-depth review as to its benefits and impacts, and the development of specific criteria for its application, rather than the one-half page discussion or rationale set forth in the Staff Report. (California Mining Association; Good, California Mining Association)

Agency Response to Comment #22: As discussed in the response to comments #18 through 21, section II.E.(3) is a key component of the Board's streamlining amendments, that provides a mechanism that ensures protection of public health while avoiding imposing regulatory burden on additional facilities. It is therefore entirely consistent with the Governor's regulatory relief program. Section II.E.(3) provides a mechanism to ensure that less-than-10 ton per year facilities identified by the districts as posing a public health risk would be included in the program so that they may be further evaluated, without requiring all facilities in an entire

industrial classification to be brought into the program statewide. The provision in section II.E.(3) provides a more effective alternative than including multiple additional numeric Standard Industrial Classification (SIC) code classes or multiple additional "Any SIC" process classes in Appendix E, which would be needed to cover the facilities of concern, but which could then also include evaluation of many low risk facilities unnecessarily. By including the provision in section II.E.(3), the staff thus avoided imposing regulatory requirements on additional facilities. The provision is therefore consistent with the Governor's regulatory relief goals.

As discussed in the previous responses, the staff has worked with the commenter, as directed by the Board at the July 25, 1996 hearing, to revise section II.E.(3) and Appendix E in the proposed 15-day revisions to include further clarifying language and more specific criteria to ensure clear definition, process, and criteria, and to address the commenter's concern regarding possible misinterpretation of the provision leading to any potential for "ad hoc" inclusion of small mine operators just because they conduct "unique" types of operations.

None of the provisions of the Report would impose "retroactive" compliance requirements. Section II.E.(3)(b) contains clear requirements for district notice and subsequent plan submittal by facilities, which provide adequate timeframes consistent with provisions for all other facilities.

All of the proposed revisions to Appendix E, including the streamlining provisions, which eliminate or narrow the requirements for some former classes and which allow exclusions for facilities meeting the "low level" criteria, are integrally linked to the overall technical analysis and extensive public consultation process which the staff followed in proposing the revised Appendix E and the need for section II.E.(3). The provisions of section II.E.(3) are necessary to ensure inclusion of facilities posing risk to public health while allowing other streamlining provisions to be made. The proposals for streamlining revisions to Appendix E and the need for section II.E.(3) were discussed at numerous public consultation workshops and at numerous teleconferences with representatives of affected industry, environmental, and health groups, as a part of the development of the proposed Report. As members of the interested public, representatives of the California Mining Association were notified of all of these workshops and teleconferences. Also, additional explanation is provided through these responses to comment.

The provisions of section II.E.(3) thus provide a necessary safeguard to ensure adequate protection of public health while still allowing the streamlining of the other classes included in Appendix E.

#### ENVIRONMENTAL HEALTH COALITION

23. Comment: The "Hot Spots" program has proven to be a vital public information tool. Although the Environmental Health Coalition (EHC) recognizes the efforts of the ARB to streamline reporting for intermediate and high level facilities, EHC strongly opposes the proposal for complete exemptions from further reporting for "low level" facilities because this widespread exemption would countermand the public's right to know about air toxics.  
(Environmental Health Coalition)

Agency Response to Comment #23: The Board believes the proposed amended Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks. Exemptions for specified low priority facilities from the entire "Hot Spots" program are now required by the amended "Hot Spots" statute, due to the passage of AB 564, which was signed into law by the Governor and chaptered on September 19, 1996. Conforming amendments to the Report were proposed in the 15-day modifications package. Additional "low level" criteria were approved by the Board for some additional exemptions from inventory update reporting, based on risk assessment results or *de minimis* throughput levels (in addition to the prioritization score levels specified by AB 564). As already discussed in previous responses (see for example the response to comment #13) and on pages 26-28 of the Staff Report, these criteria have been developed through extensive public consultation and are consistent with risk levels in other federal, state, and local regulatory programs. In addition, a number of additional provisions are included in the Report to ensure further safeguards to public health, including provisions for a district to deny an exemption for good cause, to identify small facilities that pose concern to public health, and to reinstate exempted facilities if circumstances change.

The proposed amended Report still preserves the public right-to-know benefits for facilities remaining in the program. The Report still ensures ongoing updates to the toxics emission information from facilities remaining in reporting, which are the facilities that contribute the most to emissions. The ARB continues to maintain a statewide inventory of these facilities. Facilities that meet the districts' prioritization criteria are still required to conduct health risk assessments to assess the risk to public health, and facilities must still notify the public of any significant health risks associated with these emissions. Facilities with risks low enough to meet the criteria for "low level" designation will not meet the districts' current significant risk levels for public notification. Additional safeguard provisions such as district denial of exemptions for good cause and identification of facilities under section II.E.(3) further help to ensure that any significant risk facilities will not be exempted from their responsibilities for public notification. In addition, section IV.A.(1) of the Report specifies that facilities must have completed their previous emission inventory and all other applicable requirements of the program before qualifying to be designated as "low level", so that facility information will be available for additional evaluation as warranted.

24. Comment: "Low level" facilities may cumulatively or individually pose significant risks. The purpose of the "Hot Spots" program is to identify, inventory, and publicly disclose all air toxics hot spots. But the Report states the purpose of the amendments is to limit emission reporting efforts to only those facilities "which pose the greatest 'hot spot' concern". It is destructive to the "Hot Spots" program to completely exempt low level facilities from update reporting because they are not currently the "greatest" concern. (Environmental Health Coalition)

Agency Response to Comment #24: As discussed in the response to comment #23, the amended "Hot Spots" statute, under AB 564, requires the exemption of specified low priority facilities from the entire "Hot Spots" program. The "low level" criteria approved by the Board are set at levels that are consistent with other federal, state, and local regulatory programs and are designed to ensure that "low level" facilities would not normally have risk levels that would be considered significant risks as established by the districts or be considered "hot spots".

A number of additional safeguard provisions are included in the Report to further ensure protection of public health, including provisions for a district to deny an exemption for good cause, to identify small facilities that pose concern to public health under section II.E.(3), and to reinstate exempted facilities if circumstances change. Each of these safeguard provisions includes criteria that allow consideration of whether the facility individually, or cumulatively in combination with other facilities, poses significant risks.

Through the "Hot Spots" program, a comprehensive data base has been developed that provides a basis for sound decisions as to which facilities pose significant risk. "Low level" facilities would be exempted from update reporting because the data indicate they do not pose a public health risk. The Board believes the Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks.

25. Comment: The Report allows for denial of an exemption if a low level facility poses cumulative or other significant risks. However the provision allows the districts to merely consider risks posed by an otherwise low level facility. There is no affirmative duty for the district to require documentation or deny the exemption even if there is "good cause to believe" there are risks associated with the otherwise "low-level" facility. EHC would like the requirement for impact documentation and exemption denial to be mandatory, since if there is "good cause to believe" then granting an exemption is against the letter and intent of the "Hot Spots" Act. It is unacceptable that if the district does require the facility to document its emissions and health impacts, the district may nevertheless grant an exemption even if the documentation does not support the claim for exemption. (Environmental Health Coalition)

Agency Response to Comment #25: As discussed in the response to comment #24, the "low level" criteria themselves are set at levels designed to ensure that "low level" facilities would be below current district significance levels, and a number of additional safeguard provisions are included to further ensure protection of public health on a more case-by-case basis, including consideration of whether the facility individually, or in combination with other facilities, may pose significant risks. A number of site-specific conditions, such as receptor distance, can affect the risk posed by any particular facility. In the same way, an even greater number of conditions can affect the cumulative risks posed by multiple facilities contributing to an elevated risk. Denial of exemptions to all facilities, based on an elaborate and technically complicated set of conditions would be impractical and difficult to implement. Contrary to mandated denial, the proposed provision in section IV.A.(5) allows the districts, who are most familiar with their industries and the site-specific conditions, to identify the particular circumstances and facilities using specified factors to identify emissions that may be of concern. The tools, procedures, and policies for addressing cumulative risk are less well developed at this time than those for addressing individual facility risks. In keeping with the Legislative intent expressed in Health and Safety Code section 44301 to consider cumulative impacts, the provisions in section IV.A.(5) allow the districts to take into account cumulative effects of multiple facilities as part of the determination of "good cause". However, the staff believes it would be premature at this time to set forth mandatory criteria and requirements, particularly for cumulative impacts, which would need to be very complex to address all cases and could be changed considerably with advancing knowledge and tools.

By allowing district discretion to deny an exemption, the Guidelines Report provides for situations that may differ on case-by-case basis, while still specifying the factors and criteria which will guide the district's decisions.

The "Hot Spots" program is a State-mandated program that requires local districts to implement many of its provisions, in accordance with State guidelines. Under the statute, the districts review and approve the facilities' emission inventory plans and reports, approve the facilities' health risk assessments, and set significant risk levels. Therefore, it is appropriate to provide flexibility and discretion to districts in making certain site-specific determinations, including the denial of exemptions for "good cause" to expect the facility no longer qualifies for an exemption as a "low-level" facility.

26. Comment: Program reinstatement triggers must not depend on facility self-reporting. Under the proposal, local districts must rely on exempted facility operators to self-monitor and self-report when there have been changes that would trigger re-entry. But the thousands of exempted facilities have no incentive to self-report and may have incentive to avoid re-entry. Reinstatement would be required upon receipt of a notice from the district, or a facility is responsible for notifying the district if it no longer qualifies as "low level", and receptor distance monitoring is a shared responsibility. Considering the greatly reduced revenues to operate the program, it is unrealistic to expect the district to monitor exempted facilities and they will rely on exempted facilities to self-monitor. This is not a reliable or consistent way of operating a comprehensive inventory program, especially when there are serious public health risks involved. (Environmental Health Coalition)

Agency Response to Comment #26: The Board believes the Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks. The passage of AB 564 amended the "Hot Spots" statute, and consequently amended the inventory program, by requiring exemption from the program of specified facilities posing low risk. AB 564 also established criteria for reinstating exempted facilities if conditions change. The Guidelines Report was revised in the 15-day package to conform with the amended statute. AB 564 separated the reinstatement criteria into two categories of responsibility. Health and Safety Code section 44344.7(a) specifies that a facility shall be reinstated upon notice from the district, based on criteria regarding newly listed substances, establishment of a sensitive receptor within 500 meters, or emission of a substance with increased potency. Health and Safety Code section 44344.7(b) specifies that a facility is responsible for submitting an update, based on criteria regarding emission of a substance not previously reported, or an increase in emissions exceeding 100 percent of the previous level. Section II.J. of the Report has been added, and section IV.A.(3) has been revised, in the 15-day package, to conform with these statutory provisions.

Section IV.A.(3) contains additional criteria for reinstating a facility into inventory update reporting if the facility was not exempted from the entire program under the AB 564 criteria in section II.J. These criteria take into account other pertinent factors to ensure that facilities that no longer qualify for the "low level" exemption will be reinstated. Sections IV.A.(3)(a)(ii), IV.A.(3)(b), and IV.A.(3)(c) ensure that decreases in receptor distance, as mentioned in the comment, are required to be addressed by both the facility and the district.

Regarding potential disincentives to facilities to report changes, staff believes that the reinstatement criteria provide a reasonable basis for reinstating exempted low risk facilities should they subsequently pose greater risks, and believes that the liability provisions of the "Hot Spots" statute (see Health and Safety Code section 44381) regarding penalties for not reporting or reporting false information discourage evasion of facilities' responsibilities.

Provisions are also included in section II.J.(3)(c) and section IV.A.(4) of the Report for facilities subject to district permit programs to be evaluated through the permit evaluation process. In addition, greater integration of the criteria pollutant (smog-precursor) and toxics emission inventory reporting processes is anticipated in most districts, leading to an additional mechanism for districts to track changes in process levels and overall emission rates through annual criteria pollutant updates conducted under other programs.

27. Comment: Integrity of the Air Toxics "Hot Spots" program will be lost. The program was designed to create and maintain a comprehensive inventory of air toxics emissions and the risks associated with their sources. If the program is cut back drastically by exempting low level facilities (nearly half of all facilities) it will not be possible to meet the comprehensive inventory goal of the program. Further, it will be difficult to assess cumulative risks associated with multiple sources. (Environmental Health Coalition)

Agency Response to Comment #27: The statutory goals of the program have been revised by the passage of AB 564. The passage of AB 564 amended the "Hot Spots" statute to require exemption from the program of specified low priority facilities. Having previously collected comprehensive inventory and risk data now allows the Board and districts to make sound decisions as to which facilities are of greatest concern to public health and to identify significant risk facilities. "Low level" facilities will be exempted from update reporting because the data indicate they do not pose a significant public health risk under current district-determined significance levels. The Board believes the Guidelines Report provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks, in accordance with the revised statute.

Regarding assessment of cumulative risks, as discussed in previous responses, the Board has included a number of additional safeguard provisions in the Report to further ensure protection of public health, including provisions for a district to deny an exemption for good cause, to identify small facilities that pose concern to public health, and to reinstate exempted facilities if circumstances change. Each of these safeguard provisions includes criteria that allow consideration of whether the facility individually, or in combination with other facilities, poses significant risks. The Report also includes provisions that prevent large-volume facilities that emit specified quantities of Hazardous Air Pollutants with prioritization scores above one from being exempted as "low level" facilities, in part to help ensure that districts do not lose the ability to track large volume sources that may expose large numbers of people to elevated risks and that may contribute to cumulative impacts. All of these provisions contribute to the goal of maintaining appropriate data to support assessments of cumulative impacts to population near potential hot spots.

28. Comment: Exempting low level facilities is an environmental justice issue. Air toxics emissions and low level sources disproportionately affect low-income communities and communities of color. Most individual and cumulative air toxics burdens in the San Diego area are suffered by the same community, which is characterized by a high concentration of low-income and Latino residents. Exemption of low level facilities would mean these already disproportionately impacted people would be surrounded by facilities that emit toxic substances but do not report their emission inventory updates to the district. This *de facto* dismantling of the program is especially distressing in light of a recent California Environmental Protection Agency (Cal/EPA) report that indicated the "Hot Spots" program provides the greatest benefits to lower income neighborhoods. The impacts of exempting thousands of low level facilities will be felt most in lower income communities, increasing their already disproportionate environmental burdens. (Environmental Health Coalition)

Agency Response to Comment #28: As discussed in the previous responses, the "Hot Spots" statute itself was amended by the passage of AB 564 to require the exemption of specified low priority facilities. Low level facilities would be exempt from update reporting because the data indicate they do not pose a significant risk under current district-determined significance levels. These provisions are applied to all facilities, based on prioritization scores or risks, independent of the location or income of the community. Risk assessments take into account proximity to the nearest receptor. If a facility poses a high risk at the nearest receptor, it is not exempted under the proposal. The Board has included additional safeguard provisions in the Report to further ensure protection of public health, including provisions for a district to deny an exemption for good cause, to identify small facilities that pose concern to public health under section II.E.(3), and to reinstate exempted facilities if circumstances change. Each of these safeguard provisions allows consideration of whether the facility individually, or in combination with other facilities, poses significant risks.

The Report still ensures ongoing updates to the toxic emissions from the facilities remaining in the program, which contribute the most to emissions. The Air Resources Board continues to maintain a statewide inventory of site-specific air toxics emissions from the facilities in the program. Facilities that meet the districts' prioritization criteria are still required to conduct health risk assessments to assess the risk to public health, and facilities must still notify the public of any significant health risks associated with these emissions.

In addition, the Report includes criteria to monitor exempted facilities and reinstate exempted facilities into update reporting if circumstances warrant. Provisions are also included for facilities to be evaluated through district permit programs. Greater integration of the criteria pollutant (smog-precursor) and toxics emission inventory reporting processes is anticipated in most districts, leading to an additional mechanism for districts to track changes in process levels and overall emission rates through annual criteria pollutant updates.

After having collected emission and risk information for several years, a comprehensive inventory now exists that has allowed the Board and districts to make sound decisions regarding which facilities pose the greatest concern and to identify where to best focus the program's efforts and resources. Staff believes the program can best protect the public by concentrating and continuing data collection for facilities that pose the greatest concern. In addition, the aforementioned provisions provide flexibility to ensure that facilities which individually or in

combination with other facilities pose concern can be included in the reporting requirements of the program.

29. Comment: The AB 2588 program performs an essential role in monitoring air toxics emissions by requiring regular reporting from thousands of facilities statewide. It provides an incentive for facilities to reduce their emissions and provides important data to communities that suffer high cumulative risks. Exemptions will be destructive to the program and side-step right-to-know. The re-entry triggers provide an incentive to not self-report and no disincentive to minimize unavoidable emission increases. The amendments weaken the program and EHC urges ARB to reject the proposal to exempt "low level" facilities. (Environmental Health Coalition)

Agency Response to Comment #29: The Board disagrees with this comment, as the Board does not believe the amendments to the Report will be destructive to the Program. As discussed in the previous responses, the "Hot Spots" statute was amended by AB 564 to require exemptions of low priority facilities and to include reinstatement triggers. The amended Report conforms with these statutory provisions. The Board believes that public health can best be protected by concentrating and continuing data collection for facilities that pose the greatest concern, along with flexibility provided by additional safeguard provisions to ensure that facilities will be included in reporting if they individually or in combination with other facilities pose high risks. Criteria are included to monitor exempted facilities and reinstate update reporting if circumstances warrant. The Board believes that the reinstatement criteria provide a reasonable basis for reinstating exempted facilities should they subsequently pose greater risks, and staff believes that non-reporting or reporting of false information are discouraged through the liability and penalty provisions of the "Hot Spots" statute. Provisions are included for facilities to be evaluated under district permit programs, and greater integration of the criteria pollutant and toxics emission inventory reporting processes is anticipated to lead to an additional mechanism for districts to track changes in process levels.

#### CONTRA COSTA COUNTY HEALTH SERVICES DEPARTMENT

30. Comment: The Contra Costa County Health Services Departments has supported the Air Toxics "Hot Spots" program as filling important public health gaps, and specifically supports the staff's proposals (1) to allow districts to include facilities not otherwise listed in Appendix E that the district reasonably believes may pose a threat to public health either individually or in combination with other facilities [section II.E.(3)--stated in the letter as section II.E.(4) ]; and (2) to include provisions for facilities emitting large volumes of federal Hazardous Air Pollutants (HAPs) to not be exempted as "low level" facilities [section IV.A.(1)(e)]. (Contra Costa County Health Services Department)

Agency Response to Comment #30: The Board approved these provisions at the July 25, 1996 public hearing. The provisions in section II.E.(3) and Appendix E are an important mechanism that allows districts to collect information from and evaluate smaller facilities identified by the district as posing concern to public health, while avoiding imposing requirements on all facilities within an entire industrial category statewide. This provision is consistent with the

Board's streamlining goal of focussing the Program on the sources of greatest concern. See responses to comments #17 through 22. The provisions in sections IV.A.(1)(e) and IV.B.(3) regarding facilities emitting federal Hazardous Air Pollutants (HAPs), ensure the ability to continue tracking these sources emitting large volumes of toxic HAPs, whose emissions may be spread over large geographic areas and consequently expose large numbers of people to elevated risks. Some modifications to these provisions have been included in the 15-day package for further clarification or to conform with the recent statutory amendments under AB 564. However, the basic intent and effectiveness of each has been retained. See responses to comments #3, 5, 7, 9, and 11.

#### CALIFORNIA TRADE AND COMMERCE AGENCY

31. Comment: The proposed regulation text, 17 CCR 93300.5, was not included in the Staff Report. Based on a July 22 telephone conversation with ARB staff, the Regulation Review Unit (RRU) of the California Trade and Commerce Agency understands that this missing regulation text will be included in the 15-day modifications package. RRU also notes that the section was incorrectly referred to as 93330.5 on pages 4, 5, 7, 10 and 13 of the Staff Report. (California Trade and Commerce Agency)

Agency Response to Comment #31: The proposed regulation text, 17 CCR 93300.5, has been included in the 15-day package as specified. Staff notes that at the time of the printing of the Staff Report, section 93300.5 had not yet been added to the CCR. The Board approved the addition of section 93300.5 with the Regulatory Improvement Initiative action at the May 30, 1996 hearing, and it became operative on September 21, 1996.

The staff acknowledges the propagation of the typographical error on the section number in the Staff Report. The correct section number has been used in the Report in the 15-day modifications package.

32. Comment: RRU believes that the changes from the April 1996 Guidelines to the May 1996 Guidelines are not clearly indicated as required by Government Code section 11346.2(a)(3) and 1 CCR 20(b). This will increase compliance costs for businesses not able to quickly and easily identify new requirements. Some of the changes are listed in Table 1 of the Staff Report, but Table 1 appears only in the Staff Report, not the May 1996 Guidelines report itself, which will be the document incorporated by reference. Moreover, Table 1 has the following deficiencies:
- (1) There is no indication of the proposed changes in structure of the appendices. (Based on a telephone conversation with ARB staff, RRU is aware that the 15-day modifications will propose that all appendices should be bound together with the main report as they were in the April 1996 Guidelines.)
  - (2) There is no mention of the new Appendix F.
  - (3) A reviewer cannot know the contents of the deleted section 308(d) without referring to the prior April 1996 Guidelines.
  - (4) The construction of the new section III from earlier sections 305.5, 306.6, and 309 is unclear. (California Trade and Commerce Agency)

Agency Response to Comment #32: In response to the comment, the former Table 1 from the Staff Report has been included as Table 2 in the Guidelines Report itself, which is the document incorporated by reference, in the 15-day modifications package. The inclusion of the new Table 2 has been indicated with a note at the end of the Table. Table 2 has been revised in the 15-day package to address the deficiencies noted by the comment in the former Table 1 of the Staff Report. As indicated in the comment, all appendices are proposed to be bound together with the main report, in the 15-day modifications package, as they were in the April 1996 Guidelines. The new Appendix F has been added to Table 2 (as has the new Appendix G, added in the 15-day package). A footnote has been added to Table 2 to specify the contents of the deleted section 308(d). The section III entries have been expanded to clearly indicate the construction of section III from earlier sections 305.5, 306.5, and 309. In addition, for ease in using Table 2 either to compare from the prior CCR or April 1996 Guidelines sections to the May 1996 Guidelines sections, or to compare in the reverse direction, entries have been included in sequential order both by the CCR/April 1996 section numbering as well as by the May 1996 section numbering.

33. Comment: Thirty-two substances have been added to Appendix A-I, Substances for Which Emissions Must Be Quantified. They are identified only by an add date of 7/96. They are not clearly indicated as required by GC section 11346.2(a)(3) and 1 CCR 20(b). This may result in businesses being out of compliance solely because they were unaware of the additions to Appendix A-I. Appendix Note 3, page A-21 states that the add date is "The date the Board approved addition of the substance to the original list." An add date of 7/96 may be consistent with the July 25, 1996, Board hearing but seems inconsistent with the May 1996 Guidelines report title. (California Trade and Commerce Agency)

Agency Response to Comment #33: In response to the comment, the staff has revised Appendix A-I in the 15-day modifications package. An asterisk has been added after the 7/96 add date of each of the new substances, and a footnote has been added on the first several pages and last page of Appendix A-I and with the end notes at the end of Appendix A, explaining that "The notation '7/96 \*' indicates most recently added substances." The add date of 7/96 is used because it is consistent with the use of the month and year of the July 25, 1996, Board hearing at which the addition of the new substances was approved, as indicated in Note 3, which states that the add date is "The date the Board approved addition of the substance to the original list." This is consistent with the previous add dates in Appendix A, which reflect the same convention of citing the Board hearing date. The original choice of using the hearing date was made when the list of substances was first updated in 1990 and staff believes it provides the most useful date to be referenced because the hearing date is the date cited in the key regulatory notices and Board records regarding the regulatory action. For example, the Notice of Public Hearing, the Notice(s) of Public Availability of Modified Text, the Board's Resolution, and the Board's transcript all refer to or are based on the Board hearing date. Staff believes that choosing the Board hearing date as the add date on the Appendix A list of substances provides a useful indicator to interested persons because they could readily link the update action to the Board's hearing date to obtain key regulatory documents. The ultimate title of the May 1996 Guidelines report has been revised to reflect the date when the Board adopted the final regulatory package for submittal to the Office of Administrative Law. This date too can be readily linked to the Board hearing date through the Executive Order.

Staff believes that the Board hearing date therefore provides an effective and appropriate indicator of the regulatory history.

34. Comment: The staff proposes to incorporate numerous documents by reference into the May 1996 Guidelines report, which is proposed to be incorporated by reference into the California Code of Regulations, creating a "three-level" regulatory document structure that can potentially increase compliance costs for businesses, although ARB claims that all such documents are readily available. RRU recommends that ARB staff add a section XI or Appendix G and explicitly list all documents, with complete current citations, incorporated by reference at the "third level," to enable businesses and interested parties to more easily identify all pertinent documents that may contain requirements to which they may be subject in attempting to comply with the proposed regulation. (California Trade and Commerce Agency)

Agency Response to Comment #34: In response to the comment, a new Appendix G has been added to the Emission Inventory Criteria and Guidelines Report in the 15-day modifications package, which explicitly lists all the incorporated by reference documents with complete current citations. Further information about document availability is available via the Internet, as specified in 17 CCR 93300.5.

35. Comment: Appendix E refers to SIC codes but is unclear as to exactly how these codes are defined. RRU recommends that a definition be added to section X to indicate that SIC codes are as defined in the *Standard Industrial Classification Manual 1987* as published by the U.S. Office of Management and Budget. (California Trade and Commerce Agency)

Agency Response to Comment #35: In response to the comment, the requested SIC definition has been added to section X of the Report in the 15-day modifications package.

36. Comment: Appendix E uses brackets, [ ], to "...indicate an SIC formerly used by the Executive Office of the President, Office of Management and Budget, which has been reassigned." RRU recommends that all such instances be deleted and replaced with the current 1987 SIC code. If ARB wants to retain any of those earlier codes, it should indicate why this is necessary and provide the reference that defines the earlier codes. (California Trade and Commerce Agency)

Agency Response to Comment #36: The SIC codes that appear within brackets in Appendix E are SIC codes that have been reassigned to newer codes as shown within the Office of Management and Budget (OMB) 1987 classification manual, but the older codes may still be in use by some facilities and districts in California. During the development of Appendix E, the staff analyzed data for facilities reporting under programs such as ARB's criteria pollutant (smog-precursor) emission inventory and found that the older SIC codes are still in use by some facilities throughout the State. Although updating of these older SIC codes has been recommended by the ARB staff to districts and facilities in inventory guidance letters, staff is not aware of a formal requirement for facilities to update their SIC codes for purposes of emission reporting. Thus, for some facilities the older SIC code is the code by which that facility is identified and known by the facility operator and by the district staff. Therefore, the

ARB staff believed it was necessary to cite the older codes, as well as the new codes, in Appendix E to ensure that all facilities within a particular type of class identified for inclusion in Appendix E (based on assessment of the potential for adverse public health risks) would be included. Citing the older codes was necessary to provide sufficient notice and clarity regarding required compliance to operators of facilities that might still be using the older SIC codes, and to their districts, who have the primary responsibility for ensuring that all affected facilities have submitted information and who must identify all facilities to include in an industrywide inventory prepared by the district. It would not be prudent to delete these codes, because facilities still using these codes could be inadvertently eliminated from "Hot Spots" requirements, yet pose equivalent public health risks and perform essentially the same function as other facilities that have been identified for inclusion based on potential health concern but that use the more current codes.

To clarify the need for these older, bracketed codes in Appendix E, the staff has revised Note (2)i in the Notes to Appendix E, in the 15-day modifications version of the Guidelines Report, to clearly indicate that these are codes that have "been reassigned by OMB, but may still be in use by some facilities."

#### NATIONAL PAINT AND COATING ASSOCIATION

37. Comment: The National Paint and Coating Association (NPCA) is concerned that risk assessments are too complicated for small autobody paint shops to perform. NPCA wonders whether autobody shops meet the general exclusion in Appendix E. NPCA is also concerned that "Hot Spots" fees in some districts are too high for small autobody paint shops, and wonders how much leeway districts have in assessing fees. (McConaghie, National Paint and Coating Association)

Agency Response to Comment #37: Autobody paint shops are generally addressed by the districts through industrywide emission inventories and risk assessments, which are prepared by the districts, under Health and Safety Code section 44323. Industrywide facilities are not required to prepare their own individual inventories or risk assessments. Risk assessments for autobody paint shops will be prepared by each district as industrywide sources in accordance with Health and Safety Code section 44323. The ARB and CAPCOA have worked together to prepare Industrywide Risk Assessment Guidelines to promote statewide consistency in the industrywide risk assessments prepared by the districts. Nevertheless, individual facilities may choose to prepare their own health risk assessments for submittal to the district.

Autobody paint shops are a class included in Appendix E of the Guidelines Report. The General Exclusion provision of Appendix E would not exclude the entire class of autobody shops a priori. However, as specified by the General Exclusion, if the district has sufficient information to determine that given facilities within the class meet the "low level" conditions specified in the exclusion, such facilities can be excluded from the requirements of Appendix E.

"Hot Spots" fees are established each fiscal year under the Air Toxics "Hot Spots" Fee Regulation. While staff believes the issues regarding fees raised in the comment are outside the scope of the rulemaking notices for the Guidelines Report, the fees aspect will be included here

for completeness. At the July 25, 1996, hearing, the Board also clarified that comments concerning "Hot Spot" fees should be directed to the comment period for the Fee Regulation, which was noticed in a separate rulemaking action. For Fiscal Year 1996-97 the State fee assessed to industrywide facilities is limited to \$15. However, districts may also charge a district industrywide fee which would be added to the state industrywide fee. Districts program costs that help to determine appropriate fees are established by the district boards. It is appropriate for the commenter to work with the district on issues regarding district fees.

## B. COMMENTS RECEIVED DURING THE 15-DAY PERIOD, AND AGENCY RESPONSES:

### WESTERN STATES PETROLEUM ASSOCIATION (WSPA)

1. Comment: WSPA expresses a general comment that the regulations need to clearly and carefully communicate ARB's intent to minimize the potential for arbitrary, ineffective and unnecessarily costly implementation at state and local levels. (WSPA)

Agency Response to Comment #1: The staff believes the Guidelines Report effectively communicates the Board's goal and intent to streamline the Program to focus the Program's resources and requirements on the sources of greatest health concern. Through extensive outreach and consultation with districts, OEHHA, affected industries, environmental and health groups, and other interested groups and parties, the staff has sought to develop streamlined and less costly requirements while adequately protecting public health. As described in the Staff Report, numerous sections of the Guidelines Report have been amended to streamline the emission reporting requirements and minimize costs for affected facilities. Likewise, the staff has sought to promote statewide consistency whenever feasible, within the statutory framework which allows districts to establish more stringent criteria and requirements for approval of emission inventories and for requiring the preparation and submission of health risk assessments (Health and Safety Code section 44365(b)). As discussed under the responses to comments received from the commenter during the 45-day public comment period (see Section A, responses #2 through 11), the staff has made additional modifications, included in the 15-day version, that further clarify the Board's intent to focus updates and reinstatement on substances with health effects values, in response to prior comments by the commenter. We believe the Report effectively communicates the Board's streamlining intent regarding areas of concern to the commenter, as addressed in more detail in the following comments and responses.

2. Comment: Since the July 1996 hearing, there have been several major developments, including the following: signing of Executive Order W-137-96 which requires Cal/EPA agencies to implement the recommendations developed by Cal/EPA's Risk Assessment Advisory Committee (RAAC); passage of AB 564; release of draft OEHHA guidelines on Exposure Assessment and Stochastic Analysis and announcement of three additional documents which will include both new and revised health effects values; and issuance of Cal/EPA management memorandum (December 9, 1996) specifying requirements for economic analysis

with the adoption of regulations. WSPA is concerned that the potential impacts of implementing OEHHA's proposed risk assessment methodologies and new/revised health effects values in the Hot Spots program have not been sufficiently identified and analyzed, particularly in light of Executive Order W-137-96 and the December 9 memorandum.

Agency Response to Comment #2: The comment addresses the proposed OEHHA risk assessment guidelines, some parts of which are in draft and some parts of which are still being developed. Because the OEHHA risk assessment guidelines have not yet been issued or published, they cannot be incorporated by reference into the Guidelines Report at this time. See 1 CCR 20(c) (specifying conditions that must be met to incorporate a document by reference). The Report does not require the proposed OEHHA risk assessment guidelines to be used by facilities for purposes of determining reporting requirements and exemptions. Section IV.A.(1)(b) and Appendix F of the Report clearly incorporate by reference the CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, October 1993, as appropriate risk assessment procedures that may be used for purposes of determining reporting requirements and exemptions. It is also not possible to incorporate by reference the proposed OEHHA guidelines at this time because the guidelines are not currently available. The final sentence of Appendix F, section (E)(7), which states that the CAPCOA Risk Assessment Guidelines will be superseded by OEHHA Guidelines, indicates that OEHHA's Guidelines will supersede the CAPCOA guidelines, in accordance with Health and Safety Code section 44360. This will be accomplished through a full regulatory public process, that will incorporate by reference the final OEHHA guidelines when they become available. When the OEHHA guidelines are formally incorporated by reference through this rulemaking process, they will have regulatory effect for purposes of the Guidelines Report. The regulatory process includes opportunity for public comment on any proposed incorporation by reference.

Although final OEHHA Risk Assessment Guidelines are not yet available, the staff does not believe it is prudent to delay implementation of the Report and the numerous emission inventory streamlining provisions included in the Report. The streamlining proposals provide valuable savings to affected facilities, such as provisions for many facilities to be exempted from further inventory reporting, streamlined requirements and options for remaining facilities to fulfill reporting requirements, the streamlined list of substances, allowing the use of emission factors to substitute for costly source testing, and many other proposed amendments which provide valuable savings to facilities. These streamlining provisions can be implemented now, because risk assessment procedures may be based on the currently available CAPCOA Risk Assessment Guidelines.

Many of the commenter's concerns regarding implementation of Executive Order W-137-96, the December 9, 1996 Cal/EPA memorandum, and the recommendations of the Risk Assessment Advisory Committee (RAAC), appear to be beyond the scope of the proposed amendments. Nevertheless for the convenience of the reader of this Final Statement of Reasons, the Executive Order, Cal/EPA memorandum, and recommendations section of the RAAC document are included as references for this rule-making. The RAAC recommendations primarily pertain to establishing various long-term processes and working groups to address emerging methods and issues, and to ensure on-going input and forums for improved consistency among agency practices and improved coordination among stakeholders.

Executive Order W-137-96 directs Cal/EPA agencies and boards to initiate a process and plans to implement the RAAC recommendations-by January 1, 1999; to take steps to enhance uniformity in risk assessment practice; to convene a task force and report on implementation plans by June 30, 1997. The timing of establishing these processes begins in mid-1997 and continues through January 1, 1999. The staff believes it would not be prudent or practical, in light of recent statutory changes under AB 564, to delay implementation of the streamlining amendments to the Guidelines Report (such as allowing exemptions from further reporting), in order to wait for the results of the risk assessment practice evaluation process which is just being initiated now by the Executive Order and which is anticipated to continue over a several-year timeframe.

As already indicated, it is the staff's intent to propose in the future, once the OEHHA Risk Assessment Guidelines are completed, that the Board amend the Guidelines Report through a public regulatory process, to incorporate the final OEHHA Guidelines as the designated risk assessment procedures under Health and Safety Code section 44360(b). It is appropriate that the regulatory amendment process address the considerations initiated by the RAAC and the Executive Order when they are implemented, and at that time consider the economic impact analysis as applicable in accordance with the December 9, 1996 memorandum.

3. Comment: Also in light of the new developments mentioned in comment #2, facilities may face arbitrary and inconsistent implementation of the AB 2588 program. It is critical that ARB, OEHHA, industry and other stakeholders continue to work together to establish a comprehensive AB 2588 program that focuses only on substances which clearly impact human health and which carry a compliance cost commensurate with their human health benefit.  
(WSPA)

Agency Response to Comment #3: As discussed in the response to comment #2, the OEHHA risk assessment guidelines are not yet completed and thus can not be required by the Guidelines Report to be used as the basis for determining inventory reporting requirements or exemptions. The Report incorporates by reference the existing CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines. The CAPCOA guidelines provide a consistent basis for all facilities to use for purposes of determining inventory reporting categories, requirements, and exemptions under the Report.

When the OEHHA risk assessment guidelines are final, any new risk assessments that are conducted must use the new OEHHA risk assessment guidelines, in accordance with Health and Safety Code section 44360. As discussed in the response to comment #2, the Risk Assessment Advisory Committee (RAAC) recommendations, and the Executive Order W-137-96, which directs Cal/EPA agencies and boards to initiate a process to implement the RAAC recommendations, establish various long-term processes and working groups to address emerging methods and issues and to ensure on-going input and forums for improved consistency among agency practices and improved coordination among stakeholders in the risk assessment area.

As already indicated, it is the staff's intent to propose in the future, once the OEHHA Risk Assessment Guidelines are completed, that the Board amend the Guidelines Report through a

public regulatory process, to incorporate the final OEHHA Guidelines as the designated risk assessment procedures under Health and Safety Code section 44360(b). It is appropriate that the regulatory amendment process at that time address aspects of the RAAC and the Executive Order that have been implemented.

4. Comment: Implementation issues regarding the role of the proposed OEHHA risk assessment guidelines in the Hot Spots program should be resolved prior to the adoption of the 15-day package. Because the interaction of the Guidelines Report with OEHHA's Guidelines will inevitably create new economic burdens on businesses subject to the Hot Spots program, a new economic impact analysis should be prepared taking into account OEHHA's proposed risk assessment guidelines. (WSPA)

Agency Response to Comment #4: As discussed in the responses to comments #2 and 3, the OEHHA risk assessment guidelines are not yet completed and are not required by the Guidelines Report to be used as the basis for determining inventory reporting requirements or exemptions. The Report incorporates by reference and allows use of the existing CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines as a consistent basis for all facilities for purposes of determining inventory reporting categories, requirements, and exemptions under the Report.

When the OEHHA risk assessment guidelines are final, any new risk assessments that are conducted must use the new OEHHA risk assessment guidelines, in accordance with Health and Safety Code section 44360. As discussed in the response to comment #2, the Risk Assessment Advisory Committee (RAAC) recommendations, and the Executive Order W-137-96, which directs Cal/EPA agencies and boards to initiate a process to implement the RAAC recommendations, establish various long-term processes and working groups to address emerging methods and issues and to ensure on-going input and forums for improved consistency among agency practices and improved coordination among stakeholders in the risk assessment area. The timing of establishing these processes begins in mid-1997 and continues through January 1, 1999. The staff believes it would not be prudent or practical, in light of recent statutory changes under AB 564, to delay implementation of the streamlining amendments to the Guidelines Report (such as allowing exemptions from further reporting), in order to wait for the results of the risk assessment practice evaluation process which is just being initiated now by the Executive Order and which is anticipated to continue over a several-year timeframe.

As already indicated, it is the staff's intent to propose in the future, once the OEHHA Risk Assessment Guidelines are completed, that the Board amend the Guidelines Report through a public regulatory process, to incorporate the final OEHHA Guidelines as the designated risk assessment procedures, under Health and Safety Code section 44360(b). It is appropriate that the regulatory amendment process at that time address the considerations being initiated now by the RAAC and the Executive Order, along with consideration of economic impact analysis as applicable in accordance with the December 9, 1996 memorandum.

5. Comment: The term "appropriate health effects value" in section II.C.(2)(c)(ii) of the Report is ambiguous and could be interpreted with respect to Appendix F as expecting facility operators to derive an appropriate health effect value for every substance. WSPA requests that ARB clarify its intent that this refers only to substances with approved health effects values. (WSPA)

Agency Response to Comment #5: For purposes of clarification regarding section II.C.(2)(c)(ii), it is not the Board's intent to expect that facility operators derive health effects values for every substance. Rather it is the Board's intent to refer to only substances with already established health effects values. Appendix F incorporates by reference the sources for these established health effects values: the Cal/EPA memorandum for cancer potencies, and the CAPCOA Revised 1992 Risk Assessment Guidelines and the U.S. EPA IRIS values for non-cancer health effects. The Board's intent to refer only to substances with established health effects values was also demonstrated on page 21 of the Staff Report for reinstatement criteria. The exact wording was subsequently modified at the July 25, 1996 hearing to respond to previous requests by the commenter to clarify this reference throughout all the sections of the Report where those criteria occur. The change also corrected use of the terminology "approved by OEHHA", because current established health values are not formally "approved" by OEHHA. Rather they are derived from the particular sources incorporated by reference into Appendix F and are subject to OEHHA's review as part of the OEHHA risk assessment review in accordance with Health and Safety Code section 44360.

It is anticipated that at some future time, once the proposed OEHHA Risk Assessment Guidelines are completed and the health effects values in them undergo an OEHHA "approval" process, the Report can be amended to incorporate the final OEHHA Guidelines. It may then be appropriate that the terminology in section II.C.(2)(c)(ii), Appendix F, and other parallel sections of the Report could be revised to refer specifically to substances with OEHHA-established health effects values.

6. Comment: The term "potential threat" to public health in section II.J.(1)(a) as a criterion for districts to consider in denying an exemption seems to violate the intent of AB 564 to exempt facilities with prioritization scores less than or equal to 1. WSPA recommends either deleting the section or replacing the term "potential" with "substantial". (WSPA)

Agency Response to Comment #6: Section II.J. was added after the July 25, 1996 hearing to conform with AB 564. The language in section II.J.(1)(a) follows Health and Safety Code section 44344.4(d), added by AB 564, which reads "Notwithstanding subdivision (a) and section 44344.7, if a district has good cause to believe that a facility may pose a potential threat to public health and that the facility therefore does not qualify for an exemption..." (emphasis added). The use of the terminology "potential threat" is therefore entirely consistent with AB 564, and the use of this provision to deny an exemption, even when the prioritization score may be equal to or less than 1, is also entirely consistent with AB 564. The section II.J.(1)(a) is necessary to conform with the amended statute under AB 564. In addition, the use of the term "potential" in describing estimates of health risk is accepted practice in risk science, because measures of risk are inherently based on probability, which are measures of the "chance" and therefore the "potential" of the adverse effect occurring.

7. Comment: Section II.J.(3)(a)(i) requires reinstatement into the Hot Spots program if a new substance is added to the Appendix A list, whether or not the substance has an approved health effects value. AB 2588 is a risk-based program, and risk cannot be evaluated for substances without a health effect value, so source testing and emission inventory costs are not justified. WSPA recommends that the section be revised to refer to "a newly listed substance with an approved health effect value as specified in section 7 of Appendix F." (WSPA)

Agency Response to Comment #7: Staff believes this has been accomplished by amendments made elsewhere in the 15-day modifications to the Report, as described below.

In section IV.A.(3)(a)(i), the reinstatement criteria for reinstating a facility into update reporting requirements, have been revised in the 15-day version to refer to only those substances with "an appropriate health effects value as specified in section E(7) of Appendix F." This change to the reinstatement criteria for update reporting was made by the staff in response to prior requests by the commenter regarding this concept during the development of the Report and during the 45-day public comment period. Therefore, because only substances with health effects values must be evaluated under the reinstatement criteria for reporting requirements, the commenter's desired effect is accomplished.

In addition, this section was added to conform to statutory changes. Section II.J. was added after the July 25, 1996 hearing to conform with AB 564. The language in section II.J.(3)(a)(i) reflects Health and Safety Code section 44344.7(a)(1) added by AB 564. The provision is therefore entirely consistent with AB 564, and section II.J.(3)(a)(i) is necessary to conform with the amended statute under AB 564.

8. Comment: Section II.J.(3)(a)(iii) requires reinstatement into the program if a health effect value is increased. As with the previous comment #7, this should be limited only to cases where the increase in health effect value would substantially affect the facility's classification (low, intermediate, high). WSPA recommends the section be revised to refer to the health effects values in section E(7) of Appendix F and to specify that the district has good cause to believe the increase would cause the facility to move into a higher prioritization category. (WSPA)

Agency Response to Comment #8: Similarly to the response to comment #7, the staff believes amendments made elsewhere in the 15-day modifications to the Report have accomplished this effect in practice.

Section II.J. was added after the July 25, 1996 hearing to conform with AB 564. The language in section II.J.(3)(a)(iii) reflects Health and Safety Code section 44344.7(a)(3) added by AB 564. The provision is therefore consistent with AB 564, and section II.J.(3)(a)(iii) is necessary to conform with the amended statute under AB 564. Note that in section IV.A.(3)(a)(iii), the reinstatement criteria for reinstating a facility into update reporting requirements, have been revised in the 15-day version to refer to only those substances with "an appropriate health effects value as specified in section E(7) of Appendix F and the district determines the health effects value indicates the facility no longer qualifies as a 'low level'

facility...". This change to the reinstatement criteria for update reporting was made by the staff in response to prior requests by the commenter regarding this concept during the development of the Report and during the 45-day public comment period. Therefore the staff has accomplished the effect requested by the commenter in practice by making the change recommended by the commenter to the provisions in section IV.A.(3)(a)(iii) for reinstatement into update reporting requirements. The effect desired by the commenter will be accomplished in practice, because only substances with health effects values for which there is an increase above the "low level" category are included in the reinstatement criteria for reporting requirements.

9. Comment: See same issue on section IV.A.(4)(ii) as in comment #5. WSPA requests that ARB clarify its intent that use of the term "appropriate health effects value" refers only to substances with approved health effects values. (WSPA)

Agency Response to Comment #9: As discussed in the response to comment #5, for purposes of clarification regarding section IV.A.(4)(ii), it is not the Board's intent to expect that facility operators derive health effects values for every substance. Rather it is the Board's intent to refer to only substances with already established health effects values for the purpose of determining reporting requirements and exemptions. Appendix F incorporates by reference the sources for these established health effects values: the Cal/EPA memorandum for cancer potencies, and the CAPCOA Revised 1992 Risk Assessment Guidelines and the U.S. EPA IRIS values for non-cancer health effects.

10. Comment: See same issue regarding the terminology "appropriate health effects value" in section V.H.(3)(f) and (g) as in comment #5. (WSPA)

Agency Response to Comment #10: As discussed in the response to comment #5, for purposes of clarification regarding section V.H.(3)(f) and (g), it is not the Board's intent to expect that facility operators derive health effects values for every substance. Rather it is the Board's intent to refer to only substances with established health effects values for the purpose of determining reporting requirements and exemptions. Appendix F incorporates by reference the sources for these established health effects values: the Cal/EPA memorandum for cancer potencies, and the CAPCOA Revised 1992 Risk Assessment Guidelines and the U.S. EPA IRIS values for non-cancer health effects.

11. Comment: Section IX.A. modifies the test methods for several Appendix A substances. The ARB should include a policy memo in an Appendix to the Report indicating that it is not ARB's intent for local districts to require new source testing based solely on the fact that new test methods have been adopted. (WSPA)

Agency Response to Comment #11: Section IX.A. was revised to update the version of several U.S. EPA and ASTM test methods, previously incorporated by reference, to cite the most recent version of each as currently incorporated by reference. The revisions reflected in each of the most recent versions are not significant changes to the methods, and therefore would not

trigger a requirement for a new source test (assuming the previous source test was conducted correctly). Rather, updates to the method versions are included to ensure that, if a new source test is required for other reasons (such as a major change to the facility's operation or equipment such that the previous test conditions no longer apply), then the most recent version of the test method is to be used when the new test is conducted. These provisions are included in section V.J. of the Report. Section V.J.(2) of the Report specifies that previous source test results can be used to fulfill update requirements provided that the previous test met applicable requirements, except that section V.J.(3) specifies that a previous test could not be used if (a) there has been a major change at the facility, (b) there have been certain violations, or (c) "the previous source test data submitted by the facility has been determined by the district or ARB Executive Officer to be invalid or inadequate to accurately assess emissions for the tested process(es)." The ARB has determined that none of the method changes included in section IX.A. are substantial enough to invalidate the previous source test data submitted using the earlier versions of the test methods, under section V.J.(3)(c), as long as the prior test correctly followed the procedures in the previous test method that was in effect at the time the test was conducted.

In response to a previous inquiry by the commenter, the ARB provided a letter confirming that revisions made at the September 26, 1996 hearing to several ARB-adopted test methods would not trigger a retest requirement (assuming the prior test was conducted correctly). A copy of that December 11, 1996 letter from Linda C. Murchison, Chief, Stationary Source Emission Inventory Branch, ARB to Jeff Sickenger, Environmental Issues Coordinator, Western States Petroleum Association, is included as a document relied upon for this rule-making package.

12. Comment: The definition of "Hazard Index" in Section X.(12) incorporates by reference the Revised 1992 CAPCOA Air Toxics "Hot Spots" Program Risk Assessment Guidelines, October 1993. This reference raises policy questions about the forthcoming OEHHA risk assessment guidelines. It is not clear whether the OEHHA guidelines will supplement or replace the health effects values and methodology in the CAPCOA guidelines, and whether the Hot Spots guidelines and regulations will have to be reopened after issuance of the OEHHA guidelines. (WSPA)

Agency Response to Comment #12: As also discussed in the responses to comments #2, 3, and 4, the proposed OEHHA risk assessment guidelines are not final at this time and therefore have not been incorporated by reference into the Report and are not required to be used for purposes of determining the reporting requirements, exemptions, and associated values in the Guidelines Report. The Report incorporates by reference the CAPCOA Revised 1992 Risk Assessment Guidelines as an appropriate basis for risk assessment procedures and definitions used for these purposes in the Report. As also discussed in the response to comment #5, the health effects values are those from three sources incorporated by reference in Appendix F of the Report. The Guidelines Report, dated as of the date of Board adoption, is itself incorporated by reference into Title 17 of the California Code of Regulations (section 93300.5). Any substantive revisions to the Report, including future incorporation of the OEHHA risk assessment guidelines once they are issued, would be made in accordance with the Administrative Procedure Act and would include a full public regulatory hearing process.

Issues such as those raised by the commenter regarding the role of the OEHHA guidelines would be addressed in the public process for such a future regulatory action. Definitive policy statements regarding the future use of the still-draft OEHHA guidelines are not possible or appropriate at this time, and are outside the scope of this rule making.

Note that when the OEHHA risk assessment guidelines are completed, health risk assessments conducted under Health and Safety Code section 44360 will be required to be conducted in accordance with OEHHA's guidelines. Current use of the incorporated CAPCOA guidelines in the ARB's Guidelines Report, for purposes of determining inventory reporting requirements and exemptions, is separate and distinct from future use of OEHHA's Guidelines.

There are already provisions in several sections of the Report regarding newly listed substances and substances with more potent health effects values, and their use in determining reporting requirements, exemptions, and other provisions. For example, several of these criteria have been discussed in the responses to preceding comments, and are included in the Report in sections pertaining to reinstatement criteria (section IV. A.(3)), district permit program evaluations (section IV.A.(4)), and review of the Update Summary Form (section V.H.(3)). As indicated by these sections and by the provisions in section V.J. allowing the use of previously submitted data and previous source tests, the ARB's intent is to allow continued use of previously submitted data to the greatest extent feasible as long as the previous data still adequately characterizes the prioritization category and public health impacts of the facility. At the same time, the provisions also ensure that if new data are required to be submitted or new tests are required to be conducted for other reasons (such as a major change at the facility requiring new testing or new prioritization at its quadrennial update cycle), then the most current health effects data and test methods available at the time will be used when updating the inventory, prioritization score, or risk assessment. Ensuring that the most current data are used when an update is required is prudent to protect public health and is consistent with Health and Safety Code section 44344, which specifies that quadrennial updates "shall take into consideration improvements in measurement techniques and advancing knowledge concerning the types and toxicity of hazardous materials released or potentially released."

As already indicated, once the OEHHA Risk Assessment Guidelines are completed, amendment of the Guidelines Report to incorporate by reference the final OEHHA Guidelines would occur through a public regulatory process, in accordance with the Administrative Procedure Act. In addition, if there were any updates to health effects values at a subsequent future date, for example after the new OEHHA Risk Assessment Guidelines were in place for some time, including the updated health values in ARB's Guidelines Report would need to be accomplished through a public regulatory process in accordance with the Administrative Procedure Act to incorporate by reference any revised OEHHA Risk Assessment Guidelines into the Guidelines Report.

13. Comment: Facilities whose risk assessments used the CAPCOA guidelines should not be required to revise their risk assessments in accordance with the OEHHA guidelines. (WSPA)

Agency Response to Comment #13: The Guidelines Report does not require a facility to revise its prior health risk assessment to use the OEHHA risk assessment guidelines for purposes of determining the inventory reporting requirements, exemptions, and associated values in the Report. As discussed in the responses to comments #2, 3, 4, and 12, the proposed OEHHA risk assessment guidelines are not final at this time and therefore have not been incorporated by reference into the Report and are not required to be used for purposes of determining the reporting requirements in the Report. The Report incorporates by reference the CAPCOA Revised 1992 Risk Assessment Guidelines as an appropriate basis for risk assessment procedures and definitions used for these purposes in the Report.

Note, however, that when the OEHHA risk assessment guidelines are completed, Health and Safety Code section 44360 requires that any future health risk assessments which are required to be conducted must be conducted in accordance with OEHHA's final risk assessment guidelines. This would be a separate provision and would supersede the current provision regarding use of the incorporated CAPCOA risk assessment guidelines in the ARB's Guidelines Report, for purposes of determining inventory reporting requirements and exemptions.

As already indicated, it is the staff's intent to propose in the future, once the OEHHA risk assessment guidelines are completed, that the Board amend the Guidelines Report to incorporate the final OEHHA guidelines as the designated risk assessment procedures. Any such proposed amendments would be handled through a public regulatory process in accordance with the Administrative Procedure Act. Issues relating to the use of the OEHHA risk assessment guidelines for purposes of determining reporting provisions in the Guidelines Report would be addressed as a part of that public process. However, once risk assessment guidelines are adopted by OEHHA, new health risk assessments will be prepared and reviewed using the OEHHA guidelines, in accordance with Health and Safety Code section 44360.

14. Comment: It is difficult to comment on the proposed Inventory (Report) amendments without definitive policy statements addressing the OEHHA risk assessment guideline issues raised in comments #12 and 13. (WSPA)

Agency Response to Comment #14: As also discussed in the responses to comments #2, 3, 4, 12, and 13, the proposed OEHHA risk assessment guidelines are not final at this time and therefore have not been incorporated by reference into the Report and are not required to be used for purposes of determining the reporting requirements, exemptions, and associated values in the Guidelines Report. The Report incorporates by reference the CAPCOA Revised 1992 Risk Assessment Guidelines as an appropriate basis for risk assessment procedures and definitions used for these purposes in the Report. As also discussed in the response to comment #5, the health effects values are those from three sources incorporated by reference in Appendix F of the Report. The Guidelines Report, dated as of the date of Board adoption, is itself incorporated by reference into Title 17 of the California Code of Regulations (section 93300.5). Revisions to the Report, including future incorporation of the OEHHA risk assessment guidelines once they are issued, would be made in accordance with the

Administrative Procedure Act and would include a full public regulatory process. Issues such as those raised by the commenter regarding the role of the OEHHA guidelines in ARB's Guidelines Report would be addressed in the public process for such a future regulatory action. Definitive policy statements regarding the future use of the still-draft OEHHA guidelines are not possible or appropriate at this time, and are outside the scope of this rule making.

15. Comment: The definition of "Prioritization Score" in section X.(16) incorporates by reference the CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990. As in the previous comments #12, 13, and 14, this reference raises policy questions about the forthcoming OEHHA risk assessment guidelines. The OEHHA guidelines propose to revise and add new health effects values for substances, which could affect a facility's prioritization score. With the inclusion of health effects values for more substances and stochastic methods, WSPA believes the prioritization process needs to be revised to better reflect risk assessment results. WSPA recommends that ARB defer adoption of the Inventory Guidelines until these issues can be addressed by ARB, OEHHA, and industry. (WSPA)

Agency Response to Comment #15: As also discussed in the responses to comments #2-4, and #12-14, the proposed OEHHA risk assessment guidelines are not final at this time and therefore have not been incorporated by reference into the Report and are not required to be used for purposes of determining the reporting requirements, exemptions, prioritization scores, and associated values in the Guidelines Report. The Report incorporates by reference the CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990 as the basis for prioritization procedures and definitions used for these purposes in the Report. Likewise, the statutory revisions under AB 564 specifically define prioritization score and require the use of a method consistent with the CAPCOA Facility Prioritization Guidelines as approved by ARB. As also discussed in the response to comment #3, the health effects values are those from the three sources incorporated by reference in Appendix F of the Report. The Guidelines Report, dated as of the date of Board adoption, is itself incorporated by reference into Title 17 of the California Code of Regulations (section 93300.5). Any substantive revisions to the Report, including future incorporation of the OEHHA risk assessment guidelines once they are issued, would be made in accordance with the Administrative Procedure Act and would include a full public regulatory process in which ARB, OEHHA, industry and any other interested parties could participate. Issues such as those raised by the commenter would be addressed in the public process for such a future regulatory action.

Future inclusion of stochastic methods for conducting formal health risk assessments would not be anticipated to affect the procedures for calculating prioritization scores, because the score calculation procedures rely on the CAPCOA Air Toxics "Hot Spots" Program Facility Prioritization Guidelines, July 1990, which uses point estimates of risk in its calculations.

In addition, as already indicated, if there were any updates to health effects values at a subsequent future date, for example after the new OEHHA Risk Assessment Guidelines were in place for some time, including the updated health values in ARB's Guidelines Report would need to be accomplished through a public regulatory process in accordance with the Administrative Procedure Act to incorporate by reference any revised OEHHA Risk Assessment Guidelines into the Guidelines Report.

The staff believes it would not be prudent or practical, in light of recent statutory changes under AB 564, to delay the implementation of all of the other valuable streamlining amendments to the Guidelines Report, in order to wait for the proposed OEHHA risk assessment guidelines to be completed. The streamlining amendments provide valuable savings to affected facilities, such as provisions for many facilities to be exempted from further inventory reporting, streamlined requirements and options for remaining facilities to fulfill reporting requirements, the streamlined list of substances, allowing the use of emission factors to substitute for costly source testing, and many other amendments which provide valuable savings to facilities. These streamlining provisions can be implemented now, with referenced prioritization and risk assessment procedures based on currently available CAPCOA guidelines.

16. Comment: Page B-II-1 of Appendix B-II seems to imply that districts are mandated to use the new Hot Spots reporting forms. Based on our previous discussions about the burden of "re-tooling" computer programs, language was added to section VII.C.(2) to clarify that districts have the option to use existing forms. The language on page B-II-1 should convey the same message. (WSPA)

Agency Response to Comment #16: As the comment itself indicates, the text of the Report is already clear that the specific forms in Appendix B-II are only one option for reporting. Section VII.C.(1) specifies that reporting must use basic data reporting elements and formats and makes reference to Appendix B-I. Section VII.C.(2) specifies that reporting can be done electronically or via paper media and makes reference to section VII.C.(1) and to Appendix B-I as the source of the basic data elements and formats that define what must be reported. Section VII.C.(2) makes reference to the paper forms in Appendix B-II as the "state board's reporting forms" and clearly states that "the required information shall be submitted in an alternative format as approved by the district and which meets the state board's specifications in Appendix B-I." It is not necessary and could be confusing to repeat the same language of some portions of section VII.C.(2) or of section VII.C. in its entirety in Appendix B-II. The purpose of Appendix B-II is to set forth the state board's forms and the instructions for those particular forms. The requirements regarding use of the basic formats and other alternatives are more appropriately addressed in the text of the Report (section VII), because the full context and full text of the requirements are included in the text of the Report. Rather than repeating excerpts of the requirements from the text of the Report, page B-II-1 of Appendix B-II instead more appropriately makes reference to all applicable sections (section V, VII, and VIII) to ensure that the reader consults all applicable sections of the text for a complete specification of requirements and alternatives.

17. Comment: As in the preceding comments, it is difficult to comment on section (E)(7) of Appendix F in light of OEHHA's work on health effects values and new risk assessment methodologies. ARB should not adopt the proposed Inventory Guidelines amendments until interaction issues have been resolved. This section states that "some appropriate health effects values" are available in the Cal/EPA Potency Factors Update, some are contained in the CAPCOA Risk Assessment Guidelines, and some are located in U.S. EPA's IRIS database, all of which are incorporated by reference. The last sentence states that the CAPCOA guidelines

will be superseded by the OEHHA guidelines. Ad hoc incorporation of health effect values will create inconsistency in the risk assessment and risk management process. Availability of new risk assessment guidelines in the near term could lead to uncertainty and burden for the regulated community and the public. Also, additional clarification is needed regarding the statement that all health effects values are subject to review by OEHHA. Presumably, facilities will not be responsible for developing health risk values for substances that do not have OEHHA-approved health effects values. What is less clear is whether OEHHA will allow different facilities to use multiple values for the same substance. This ambiguity could lead to inconsistent risk assessment and risk management and continual reworking of emission inventories and risk assessments. (WSPA)

Agency Response to Comment #17: In addition to the discussion below, please see responses to comments #2-5, 9, 10, and 12-15. The OEHHA Risk Assessment Guidelines are currently under development and are not incorporated into or required to be used for purposes of the inventory reporting requirements and exemptions in the Guidelines Report. The sentence at the end of Appendix F section (E)(7) is an informational statement. The staff believes it would not be prudent or practical, in light of statutory changes under AB 564, to delay implementation of valuable streamlining amendments to the Guidelines Report (such as allowing exemptions from further update reporting, and the streamlined list of substances), in order to wait for the OEHHA risk assessment guidelines to be completed. These streamlining provisions can be implemented now, and the referenced prioritization and risk assessment procedures can be based on the currently available CAPCOA guidelines. Any future revision to incorporate the OEHHA guidelines into the ARB Guidelines Report would be accomplished through a full public regulatory process with participation by the regulated community and the public.

Health effects values to be used are incorporated by reference in Appendix F. As discussed in the response to comment #5, it is not the Board's intent that facility operators derive health effects values for every substance. The Board's intent is to refer to only substances with established health effects values. The terminology "subject to review by OEHHA" has been used at this time in accordance with Health and Safety code section 44361 which requires OEHHA to review health risk assessments and provide comments to the districts.

Appendix F incorporates by reference sources for the specific, established health effects values to be used. Appendix F states that cancer potency values are those from the specified Cal/EPA memorandum for cancer potencies. Non-cancer health effects values are those from the CAPCOA Revised 1992 Risk Assessment Guidelines and the U.S. EPA IRIS values for non-cancer health effects. The "subject to review by OEHHA" provision will ensure that in the case of any occurrences of multiple values for the same substance among these references, OEHHA will consistently identify the appropriate value to be used.

#### VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

18. Comment: Section II.J exempts facilities from further compliance if they have prioritization scores less than or equal to 1. Section IV.A.(1)(a) designates facilities as "low level" for update purposes if they have prioritization scores less than or equal to 1 and are denied exemption under section II.J. It is not clear how designation as a low level facility fits with the

requirement to document emissions in section II.J.(1)(b). (Ventura County APCD)

Agency Response to Comment #18: Designation of a "low level" facility under section IV.A.(1) for exemption from update reporting requirements would be considered separately from the requirement to document emissions in section II.J.(1)(b), the purpose of which is to support denial of an exemption from further compliance with the entire regulation under section II.J.(1). Section II.J. and section IV.A. have different purposes and both reflect modifications in the 15-day revisions to conform with statutory changes under AB 564, as discussed in more detail below.

Section II.J. was added in the 15-day revisions to conform with the statutory changes under AB 564. The provisions of AB 564, which added Health and Safety Code (H&SC) section 44344.4, exempt a facility from further compliance with the entire Air Toxics "Hot Spots" program, if the prioritization scores for cancer and noncancer health effects are both equal to or less than one, except that H&SC section 44344.4(d) provides for denial of an exemption if the district has good cause to believe the facility may pose a potential threat to public health and not qualify for an exemption. The district may require the facility to document the facility's emissions and health impacts and may deny the exemption if the documentation does not support the claim for exemption. Section II.J.(1) and sections II.J.(1)(a) and (b) follow from and are consistent with these provisions.

Section IV. A.(1) of the Report was also modified in the 15-day revisions to conform with these statutory changes under AB 564. Section IV addresses the designation of update reporting categories and exemptions from further update reporting under the Guidelines Report, for facilities that remain in the "Hot Spots" program, and is based on prioritization scores, risk assessment results, and other criteria. The first sentences under section IV.A.(1) were modified to make clear that facilities exempted under section II.J from further compliance with the entire regulation (and by statute from the entire program), are exempt from inventory update requirements under section V, for consistency with AB 564. However, in addition to this statutory exemption based solely on prioritization score, the Board's streamlining proposals recognize additional criteria that allow exemptions from further update reporting under the Guidelines Report. The Board's streamlining proposals were developed through extensive consultation with the districts, OEHHA, industry, health and environmental organizations, and other interested parties, and recognized that some facilities with prioritization scores above 1 may have conducted health risk assessments that demonstrate that the public health risk is below specified levels, or certain types of facilities may have throughput levels that pose *de minimis* levels of risk to the public. Section IV.A.(1) allows these additional indicators of public health risk to be used in determining the appropriate level of inventory reporting requirements for facilities, rather than relying solely on prioritization score as the only criterion for exempting a facility from update reporting requirements.

Therefore, there could be cases where a facility with a prioritization score above 1 would not be exempted from further compliance with the entire "Hot Spots" program under section II.J. (reflecting AB 564), but would be designated as a "low level" facility under section IV.A.(1) and would be exempt from update reporting requirements under the Board's proposed streamlining measures. The first sentences under section IV.A.(1) were modified to clarify that, in such cases, facilities that are not exempt under section II.J. may still qualify to be designated

as "low level" facilities and be exempted from update reporting requirements.

The provisions in section II.J.(1)(a) and (b), regarding district denial of an exemption and documentation of the facility's emissions and health impacts, pertain to exemption of facilities from further compliance with the entire regulation under section II.J.(1), based solely on the prioritization score criteria in section II.J.(1), consistent with the AB 564 provisions for exemption from further compliance with the entire program. Section II.J.(1)(b) would therefore be considered separately from the provisions regarding the designation of facilities as "low level" for update reporting purposes under section IV.A.(1).

If a district were to deny a facility's claim for exemption from further compliance with the entire regulation, based on documentation required under section II.J.(1)(b), the facility would therefore still be in the "Hot Spots" program. The next step would be to separately evaluate the provisions for designation of the facility's update category based on the criteria in section IV. Conversely, if the documentation submitted under section II.J.(1)(b) supported the facility's claim for exemption under section II.J.(1), then the facility would be exempt from further compliance with the entire regulation. Section IV.A.(1) clearly states that such a facility that is exempt from further compliance with the regulation under section II.J. is exempt from update requirements under section V, so no further evaluation is needed regarding the facility's update reporting requirements.

19. Comment: Related to the statements in comment #18, would facilities have to be denied exemption under section IV.A.(5)? (Ventura County APCD)

Agency Response to Comment #19: As discussed in the response to comment #18, designation of a "low level" facility under section IV.A. for purposes of exemption from update reporting requirements would be considered separately from the provisions in section II.J. regarding exemption from further compliance with the entire regulation. A district's evaluation regarding denial of an exemption under section IV.A.(5) would be considered separately from section II.J. and on its own merits under the criteria included in section IV.A.(5) and relative to the exemption criteria in section IV.A.(1).

As discussed in the response to comment #1, section II.J. and section IV.A. have different purposes and both reflect modifications in the 15-day revisions to conform with statutory changes under AB 564. Section II.J. follows Health and Safety Code section 44344.4, which addresses exemptions from further compliance with the entire "Hot Spots" program and which is based on consideration solely of prioritization scores. Section IV designates the update reporting categories for facilities that remain in the "Hot Spots" program, and is based on prioritization scores, risk assessment results, and other criteria.

If a district were to deny a facility's claim for exemption from further compliance with the entire regulation, based on documentation required under section II.J.(1)(b), the facility would therefore still be in the "Hot Spots" program. The next step would be to separately evaluate the provisions for designation of the facility's update category based on the criteria in section IV. Facilities could either be denied an exemption from update reporting requirements or not denied the exemption depending on the criteria and evaluation specified under section IV.A.(5). The

evaluation under section IV.A.(5) would be independent of section II.J. Under the provisions of section IV.A.(5), the district may require the facility to document its emissions and health impacts in order to evaluate whether there is good cause for the district to deny the claim for exemption from update reporting requirements under section IV.A.(1). The evaluation would be based on the criteria in sections IV.A.(1) and IV.A.(5).

Conversely, if the documentation submitted under section II.J.(1)(b) supported the facility's claim for exemption under section II.J.(1), then the facility would be exempt from further compliance with the entire regulation. As discussed above, section II.J follows Health and Safety Code section 44344.5, added by AB 564, which exempts a facility from further compliance with the entire "Hot Spots" program. Section IV.A.(1) has been modified to conform with AB 564 and states that facilities that are exempt under section II.J. are exempt from update requirements under section V, so no further evaluation is needed regarding the facility's update category or reporting requirements.

20. Comment: Related to the statements in comment #18, the Report does not specify which update category facilities would fall into if they are denied exemption under section IV.A.(5). (Ventura County APCD)

Agency Response to Comment #20: Section IV provides detailed criteria for designating whether a facility is a "low level", "intermediate level", "high level", or "not yet prioritized" facility for purposes of update reporting category. Sections IV.A., IV.B., and IV.C. provide detailed criteria to determine these categories based on prioritization score or health risk assessment levels for cancer risk or noncancer risk. If the district determines that there is good cause to deny a facility's claim for exemption as a "low level" facility based on documentation of the facility's emissions and health impacts, or documentation of the changes in emissions expected to occur as a result of particular changes affecting the facility, as required to be submitted under section IV.A.(5), the documented health impacts then provide the basis for the district to assign the facility to the appropriate update category as defined by the criteria in sections IV.A., IV.B. and IV.C.

21. Comment: The Ventura County APCD is concerned that the timing of prioritizing facilities that are reinstated after being exempt or that submit updated emission inventories is unclear, in relation to district practice and in relation to the requirement to reprioritize facilities within 90 days of receipt of the update report. The Report states that the district is allowed 90 days to prioritize these facilities from the date of receipt of the emission inventory update, but the phrase "receipt of the emission inventory update" is not defined, and, while the first paragraph of section V.E.(2) seems to say the 90 day clock does not start if the district has notified the facility operator of needed corrections, the final sentence appears to negate the preceding sections by simply stating that districts shall reprioritize facilities within 90 days of receipt of the update report. (Ventura County APCD)

Agency Response to Comment #21: The purpose of section V.E. is to designate a facility's update reporting category and associated reporting requirements in the presumably uncommon event that there have been delays in having a district approve the facility's emission inventory

report or prioritize a facility, beyond the timeframes normally indicated by statute for these processes. These contingency provisions for this purpose in section V.E. do not alter the statutory "Hot Spots" timeframes for district review and approval of emission inventory reports or for prioritizing facilities based on their emission reports. Rather, these contingency provisions in section V.E. were included primarily in response to concerns raised by the regulated community and others that there be a mechanism included to ensure the timely completion of the process needed for the designation of a facility as a "low level", "intermediate level", or "high level" update category and for assigning the facility's update reporting requirements, using default assignments if necessary, so the update reporting requirements can be known with certainty by the facility. As discussed on page 25 of the Staff Report, the proposed default category assignments are structured so as to provide incentives both to affected facilities and to the districts to move expeditiously toward appropriate prioritization assignments.

As indicated above, the proposed use of default category assignments and contingency timeframes that are included in section V.E. do not alter the normally specified timeframes for review, approval, and prioritization processes as established within the Health and Safety Code for purposes of the overall "Hot Spots" program. As clearly indicated by the first sentence under each of section V.E.(1) and V.E.(2), these sections apply if a facility's approved inventory report "has not been prioritized by the district under Health and Safety Code section 44360(a)". Health and Safety Code section 44360(a) specifies that "within 90 days of completion of the review of all emissions inventory data for facilities specified in subdivision (a) of Section 44322, but not later than December 1, 1990, the district shall ... prioritize and then categorize those facilities for the purposes of health risk assessment." The contingency provisions in section V.E. of the Report are included for the purpose of designating update reporting categories and associated reporting requirements under the Guidelines Report. The timeframes under Health and Safety Code section 44360(a) govern the processes for districts to prioritize facilities submitting inventory plans (not updates to already prioritized facility reports) for other purposes of the "Hot Spots" program.

In addition, statutory amendments under AB 564 recently added Health and Safety Code section 44344.6, which specifies that a "district shall redetermine a facility's prioritization score, or evaluate the prioritization score as calculated and submitted by the facility, within 90 days from the date of receipt of a quadrennial emissions inventory update pursuant to Section 44344 or subdivision (b) of section 44344.4, within 90 days from the date of receipt of an emissions inventory update submitted pursuant to section 44344.7, or within 90 days from the date of receiving notice that a facility has completed the implementation of a plan prepared pursuant to section 44392." To conform with the AB 564 amendments, several sections of the Guidelines Report have also been revised as shown in the 15-day package. Section II.J.(5) was added to the applicability section II of the Report, and the last sentence was added to section V.E., to conform with the 90 day timeframe under AB 564 for "Hot Spots" reprioritization provisions.

The last sentence of section V.E. therefore was added to ensure that the Report conforms with the AB 564 timeframes for certain "Hot Spots" program requirements. The sentence does not negate the provisions in the preceding sections V.E.(1) and V.E.(2), because those sections apply only in the event that a facility has not yet been prioritized by the district under the

provisions and timeframes of Health and Safety Code section 44360(a). Sections V.E.(1) and (2) provide contingency timeframes and default update category assignments only for purposes of designating update categories under the Guidelines Report.

*For purposes of the "Hot Spots" program prioritization process, the provisions of Health and Safety Code (H&SC) sections 44360(a) and 44344.6 specify the events that trigger starting of the 90 day clock (section V.E follows from H&SC section 44344.6). The districts implement these provisions and determine the meaning of the phrase "receipt of an emission inventory update" according to whether the information is submitted under section 44360(a) or 44344.6. For purposes of designating inventory update categories, the contingency provisions under section V.E.(1) and V.E.(2) of the Report clearly specify that the 90 day clock (or 180 day clock for report review) begins with the "receipt of the request", with each "request" clearly defined within sections V.E.(1) and (2). Therefore, these sets of provisions (under sections 44360(a) and 44344.6) pertain to different circumstances and different purposes.*

22. Comment: Related to comment #21, Ventura County APCD has considered reports "received" when first submitted by the facility operator, even if corrections are needed. This allows the facility operator to be in compliance with applicable deadlines for report submittal. If the new 90 day clock for prioritization is deemed to start at this point, Ventura County APCD might be forced to change this practice and consider reports "received" only when an approvable report is submitted, putting facilities that make an honest effort to comply in violation of the report submittal deadline. Ventura County APCD believes the 90 day clock should be stopped when corrections to a report are requested by a district. (Ventura County APCD)

Agency Response to Comment #22: As discussed in the response to comment #21, several different provisions are being addressed here, with differing purposes and differing timeframes. The districts implement the provisions of Health and Safety Code sections 44360(a) and 44344.6 regarding prioritization and reprioritization for purposes of the "Hot Spots" program prioritization process. Districts have latitude to determine the appropriate practice regarding considering reports "received" when first submitted by the facility operator, allowing facility operators to be in compliance with applicable deadlines for report submittal and ensuring equal treatment of facilities, as desired by the commenter.

As discussed in the response to comment #21, the contingency timeframes and default requirements specified under sections V.E.(1) and V.E.(2) apply only in (presumably uncommon) circumstances of delays in which the facility has not yet been prioritized by the district under the provisions and timeframes of Health and Safety Code section 44360(a). Sections V.E.(1) and (2) apply only for the purpose of designating the update reporting category and default inventory reporting requirements.

23. Comment: Three different cutoff dates are used in the Guidelines Report for different designations. The use of multiple dates is confusing and creates potential problems with fee assessment. It is important that dates for determining program requirements and fees be coordinated. For example, a facility assigned to a particular Facility Program Category prior to January 1, 1997, based on data the district was required to submit to the ARB in July 1996,

may become exempt from the Program based on new prioritization scores developed during the course of the fiscal year and the district would be unable to collect fees from that facility. Similar situations may occur in future years with facilities initially prioritized and determined to be exempt between April 1 of one year and January 1 of the following year. (Ventura County APCD)

Agency Response to Comment #23: Three key dates contained in the Guidelines Report are important for facility categorization and reporting: January 1, April 1, and August 1. The Guidelines Report has always specified that facilities which commence operation or increase emissions on or before January 1 of a given year shall submit an emission inventory plan by the following August 1. The proposed modifications to the Guidelines Report include the provision that facilities which demonstrate prioritization scores  $\leq 1$  on or before January 1 of a given year are exempt from reporting requirements for that and subsequent years. The date was chosen to be consistent with the January 1 date already established in the Guidelines Report.

Further, the Guidelines Report specifies that facilities designated by the district by April 1 of a given year as "low level", "intermediate level", or "high level" are subject to the respective reporting requirements by August 1 of that year. The Fee Regulation requires districts to provide to the Air Resources Board by April 1 of a given year a Facility Program Category List which lists facilities by program category. April 1 was chosen for the Guidelines Report to be consistent with the Fee Regulation.

If the risk assessment or prioritization score for a particular facility changes midway through a fiscal year, the revised value will be used in the following fiscal year to assign a Program Category. Districts collect fees from facilities based on information available April 1 prior to the applicable fiscal year.

In the particular example cited, the facility's status as of April 1, 1996, submitted by the district in July 1996, applies and the facility would still be subject to fees under the fiscal year 1995-1996 Fee Regulation. Although a unique situation occurred with the passage of AB 564, which became effective on January 1, 1997, and provided for exemptions of certain facilities from the "Hot Spots" program, the implementing provisions in section II.J. of the Guidelines Report establish timeframes for districts to make the necessary determinations for the exemptions and for ARB concurrence provisions. The Fee Regulation for Fiscal Year 1996-1997 anticipated the passage of AB 564 and requested districts to provide appropriate facility status information to reflect facility program categories, and excluded exempted facilities from estimates of revenues to be collected.

24. Comment: Language regarding the status of facilities with prioritization scores less than or equal to 1 that emit potentially major amounts of federal Hazardous Air Pollutants (HAPs) is confusing, because there seems to be no "low level" or "high level" designation for these facilities in either section IV.A.(1)(e) or section IV.B.(3). (Ventura County APCD)

Agency Response to Comment #24: There is no "low level" or "high level" designation in these sections for these particular facilities-emitting HAPs because facilities with prioritization scores less than or equal to 1 (no matter what their HAPs emission amounts) are exempt from further compliance with the entire regulation under the applicability provisions of section II.J.(1).

As discussed in the response to comment #18, section II.J. was added in the 15-day amendments to conform with the statutory revisions under AB 564, which exempt facilities from further compliance with the entire "Hot Spots" program if they have prioritization scores less than or equal to one. The first sentence of section IV.A.(1) was also changed in the 15-day amendments to conform with these statutory provisions of AB 564 by further clarifying that facilities exempt from further compliance with the regulation under section II.J are exempt from update reporting requirements. Therefore, section IV.A.(1)(e) no longer pertains to facilities with prioritization scores less than or equal to 1, because these facilities are already exempted from the entire regulation under section II.J. Likewise, section IV.B.(3) was changed in the 15-day amendments to conform with AB 564 by clarifying that it applied only to facilities that have prioritization scores greater than 1 (and are therefore still subject to the regulation) and emit the specified quantities of HAPs.

25. Comment: Under section IV.A.(1)(b) of the Guidelines Report, facilities with risk assessments showing risks of <1 per million and hazard indices <0.1 at an actual receptor are exempt from reporting requirements. The Fee Regulation does not require facilities with risk assessments showing risks <1 and hazard indices <0.1 to pay fees, but the phrase "at an actual receptor" was deleted. There is an inconsistency between the two regulations because the phrase "at an actual receptor" is included only in the Guidelines Report, and the district believed the Report was going to be amended to ensure consistency. (Ventura County APCD)

Agency Response to Comment #25: The Guidelines Report and the Fee Regulation intentionally differ regarding use of this phrase, because the context and provisions of each differ. The Guidelines Report specifies the use of two different types of risk assessments: a full refined risk assessment and a screening risk assessment. The two risk assessments are explicitly used for different purposes, and risk is evaluated differently between the two types. The full refined risk assessment requires risk to be evaluated at an actual receptor, while the screening risk assessment requires risk to be evaluated at the point of maximum impact. By contrast, the phrase "at an actual receptor" is not included in the Fee Regulation because the provisions of the Fee Regulation are not explicit as to which type of risk assessment may be used to obtain risk results. The phrase "at an actual receptor" was therefore removed from the Fee Regulation to accommodate the use of both risk assessment types in setting fees. This ensures the fullest coordination and consistency between the fee and reporting requirements.

## GLENN COUNTY AIR POLLUTION CONTROL DISTRICT

26. Comment: What are the implications of the Statewide Portable Equipment Registration Program (Health and Safety Code sections 41750-41755) on the air districts regarding AB 2588 "Hot Spots" reporting, recordkeeping, fees, and implementation for registered portable equipment, and in particular will the State assess, evaluate, and collect the fees or are the districts responsible for fee recovery under AB 2588? (Glenn County APCD)

Agency Response to Comment #26: While staff believes the issue of fees raised in the comment is outside the scope of the 15-day comment period on the Guidelines Report, the fees aspect will be included for completeness in the agency's response to the comment regarding the overall impacts of these two programs relative to each other. (Note that in a separate rulemaking, the Board has approved changes to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 1996-1997. This comment was not submitted during the public comment periods for the Fee Regulation rulemaking.) As discussed in more detail in the following paragraphs, both the Statewide Portable Equipment Registration Program and the Air Toxics "Hot Spots" Program are state-mandated programs, which also require the local air pollution control and air quality management districts (districts) to implement or enforce a number of provisions. The Board believes that, because the two programs are separate state-mandated programs distinct in scope and intent, it is the duty of the Board to attempt to harmonize the programs to the fullest extent possible. Accordingly, the Board does not believe that, with regard to the districts' duty to recover fees, the registration of portable equipment substantively changes the Air Toxics "Hot Spots" program applicability or requirements for facilities that include such registered portable equipment. As discussed below, "Hot Spots" provisions apply if the facility at which the equipment operates is subject to the "Hot Spots" program and if the use of the equipment is a routine and predictable operation of the facility. Facilities subject to the Air Toxics "Hot Spots" Fee Regulation are subject to "Hot Spots" fees, and districts are responsible for recovery of those fees. Likewise, facilities subject to the Guidelines Report are subject to its reporting requirements, and districts are responsible for implementing those requirements.

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 established a public right-to-know program, which requires specified facility operators to quantify and report the air emissions from all routine and predictable operations at their facility of specifically listed toxic substances; to assess the public health impacts and risks of those emissions; to notify those exposed to any potentially significant risks; to conduct audits and implement risk reduction plans to reduce any significant risks to below the significance levels within specified timeframes; and to pay fees to recover the state and district costs of implementing the state-mandated program. Under the "Hot Spots" statute, the State Board and the Office of Environmental Health Hazard Assessment must prepare various guidelines to implement the program, such as criteria and guidelines for preparing emission inventories, guidelines for assessing health risk, and a regulation for collecting state and certain district fees. Under the statute, the local air districts must review and approve the facilities' emission inventory plans and reports; prioritize the facilities for purposes of preparing health risk assessments; review and approve risk assessments; specify notification procedures and significant risk levels; adopt a fee schedule to recover district costs; and review facilities' risk reductions audits and plans. Under the "Hot Spots" emission inventory regulations, as interpreted by the State Board, the "Hot Spots" program addresses all sources within a subject facility that emit listed toxics during routine and predictable operations at the facility. Both permitted and unpermitted

sources located within the facility property are included. In addition, some types of mobile sources are also included, as discussed in more detail below.

The ARB provided interpretation and guidance regarding mobile sources which are subject to the "Hot Spots" program in a September 12, 1989 interpretation letter from Gary Agid, Chief, Emission Inventory Branch, ARB, to all districts. A copy of the letter is included as a document relied upon for this rulemaking package. The following cases are addressed in Attachment I, item #1 of the letter:

- (1) Tailpipe emissions from sources that meet the Vehicle Code definition of "motor vehicle" (such as automobiles, trucks, buses, motorcycles, tractors, and forklifts) are not included in the facility's Hot Spots reporting requirements; however, dust emissions from motor vehicle activities at a facility must be reported, and the districts may require activity data regarding the usage of such vehicles at the facility.
- (2) Emissions from mobile sources not meeting the "motor vehicle" definition that operate and stay within the facility property (such as cranes and generators) must be reported.
- (3) For other non-motor vehicle mobile sources that are periodically located within the facility property (such as aircraft and trains), the districts may require the reporting of site-specific activity data regarding the usage of these sources in order to support area and mobile source estimates required by the statute to be developed by the ARB.

In item #7 of the same September 12, 1989 letter, the ARB provided interpretation and guidance regarding equipment that is temporarily located at a facility site. The letter stated that "If the facility is subject to the [Hot Spots] Act, the emissions from such temporary equipment must be reported if the operations are routine and predictable. The facility operator should estimate the amount of time the equipment is used at the site during the reporting year."

These provisions regarding moveable sources are consistent with the intent of the "Hot Spots" Act to ensure public right-to-know regarding emissions of air toxics from all routine and predictable operations from an entire facility, if that facility is subject to the "Hot Spots" applicability criteria. These provisions would not be substantively changed by the registration of portable equipment under the Statewide Portable Equipment Registration Program and its implementing regulations.

The Statewide Portable Equipment Registration Program was established pursuant to the directions of AB 531. The ARB staff has proposed adoption of the Portable Equipment Registration Program to implement AB 531. The program would allow for the statewide registration of specified types and sizes of portable equipment. The registration would be voluntary in most cases; however, once the equipment is so registered, districts would be prohibited from permitting, registering, or otherwise regulating the equipment. However, districts would be responsible for fully enforcing the statewide registration program as adopted by the Air Resources Board.

The Air Toxics "Hot Spots" and Portable Equipment Registration programs address two distinct legislative concerns. The "Hot Spots" program addresses the assessment of air toxic substances. In contrast, the Portable Equipment Registration Program is intended to develop

uniform and consistent statewide regulation for portable equipment, while achieving necessary and feasible emission reductions that protect the public health and welfare. The Legislature expressly enacted the registration statute to address the burdens that owners and operators were experiencing because of different emission standards, limitations, and other permit conditions that different districts have imposed on such equipment which moves throughout the state. It was the intent of the Legislature to preempt the districts from the further regulation of this equipment to the extent that such regulations imposed, among other things, inconsistent emission standards, limitations, and operational controls that directly affect the operation and performance of such equipment.

It was not the Legislature's intent to relieve the facilities at which such portable equipment is operated from the duties and obligations of the Air Toxics "Hot Spots" Act. The Portable Equipment Program and the Air Toxics "Hot Spots" Program represent separate and distinct state-mandated programs. The "Hot Spots" statute requires the district to implement the statute's provisions regarding review and approval of facilities emission inventory plans and reports and risk assessments, and other implementation provisions regarding public notification and assessing fees, as discussed in the preceding paragraphs. The Board believes that implementing these "Hot Spots" provisions by the districts does not constitute "otherwise regulating" the portable equipment within the meaning of the Portable Equipment Program, and would therefore not be prohibited under the Portable Equipment Program. The Board believes that these "Hot Spots" provisions are not an area of regulation intended to be captured under AB 531. First of all, legislative history does not indicate an intent to preempt "Hot Spots" program requirements. Furthermore, it would be incongruous to assess "Hot Spots" fees for some portable equipment and not to assess fees for similar or identical equipment, based on the registration status of such equipment. In addition, the effectiveness of the Air Toxics "Hot Spots" Program in protecting public health and fulfilling its public right-to-know provisions could be compromised if assessment and reporting of the contribution of portable equipment to the toxic emissions impacts of a facility within which the portable equipment operated on a routine and predictable basis, and which would otherwise be subject to "Hot Spots" applicability provisions, were not addressed.

The determination of whether particular portable equipment would be subject to "Hot Spots" reporting depends on the following:

- (1) whether the facility at which the equipment operates is a "facility", as defined under Health and Safety Code section 44304, and meets applicability criteria to be subject to the "Hot Spots" program. (For example, if a portable drilling rig drills a water well at a farm that does not meet the definition of a facility under the "Hot Spots" program, the emissions of the portable drilling rig are not subject to "Hot Spots" reporting requirements); and
- (2) whether the use of the portable equipment at a subject facility constitutes a routine and predictable operation at the facility. It is clear that the intent of the "Hot Spots" statute was to address routine and predictable operations and emission releases, not emergency releases. Health and Safety Code (H&SC) sections 44301(b) and 44301(e) refer to "routinely releases" and "routine toxic chemical releases", respectively. H&SC section 44340(c)(2) requires that the inventory plan must produce "a comprehensive characterization of the full range of hazardous materials that are

released, or that may be released, to the surrounding air from the facility. .... Data shall be collected or calculated for all continuous, intermittent, and predictable air releases." Consistent with these provisions, the Guidelines Report exempts certain uses that are not routine and predictable. For example, section VIII.D.(6) exempts use of products for minor maintenance and repair of process and industrial equipment, but clearly states that "Minor maintenance and repair shall not include maintenance and repair which is routinely scheduled or which is due to predictable process upsets." Conversely, if the use of registered portable equipment occurs at a facility subject to the "Hot Spots" program and its operation is routine or predictable for that reporting year, then the emissions from the portable equipment usage must be included in the facility's "Hot Spots" emission inventory report.

The Guidelines Report sets forth an option which allows an alternative process to evaluate facilities and changes in their emissions through the permit review process, if the facility is subject to a district permit program. Sections II.C.(1)(c) and II.C.(2) for new and modified facilities, section II.E.(2)(d) for less than 10 ton per year facilities, and sections II.J.(3)(c) and IV.A.(4) for reinstated facilities, all contain provisions related to alternatives for facilities subject to district permit programs. Several of these follow directly from the amended "Hot Spots" statute under AB 564, which added provisions to the statute for alternative evaluations for facilities subject to district permit programs. Portable equipment that has opted into the Statewide Portable Equipment Registration Program would not itself be subject to district permit programs, so changes in these specific pieces of equipment within a facility would not meet the criteria for the alternative evaluation under the permit process. However, the provisions of these sections of the Guidelines Report could nonetheless be applied to the evaluation of changes in other sources within a facility that are subject to a district permit program, and the assessment must still meet all the stated criteria, including evaluation of the aggregate effect of all sources within the entire facility (see, for example, the criteria in section IV.A.(4)(c)(iii) of the Report), including registered and unregistered portable equipment. The potential toxic emissions and associated health impacts from any portable equipment within the facility would therefore still be required to be included in the overall evaluation, when using the alternative option for facilities subject to district permit program.

Fees under the Air Toxics "Hot Spots" program for fiscal year 1996-1997 are set forth in the Air Toxics "Hot Spots" Fee Regulation and apply to facilities subject to the "Hot Spots" Program fee provisions. State fees are determined using the methodology in the State's Fee Regulation, based on categories defined by prioritization scores and risk assessment results for the facility, which include any contributions from portable equipment that meets the "Hot Spots" applicability provisions. Similarly, the districts' fees, which are required by the "Hot Spots" statute to be recovered by either the State's Fee Regulation or district-adopted fee regulations, are determined using the methodologies in the applicable State or district fee regulation. Fees assessed to a facility would include any contributions to emissions, prioritization scores, or risk results from registered and unregistered portable equipment that meets the "Hot Spots" applicability provisions. For the reasons set forth above, the Portable Equipment Registration Program provisions do not alter the "Hot Spots" fee provisions.

CALIFORNIA MINING ASSOCIATION  
AND  
GRESHAM, SAVAGE, NOLAN AND TILDEN, LLP \*

\* *NOTE:* The letters from these two organizations were virtually identical, so their comments are addressed together here.

27. Comment: Section II.E.(3) applies the emission inventory requirements to facilities that emit less than 10 tons per year of criteria pollutants, not in a class specifically listed in Appendix E, if a local air district includes them as "posing concern to public health". Section II.E.(3) is of concern because it would empower local air districts to bring under the Air Toxics "Hot Spots" Program small mine operators on an ad hoc and potentially arbitrary basis, without adequate objective criteria to guide their decisions. Specifically, it is requested that section II.E.(3) be deleted or, alternatively, be amended to provide for specific ARB or local air district regulatory criteria for the inclusion of such facilities. Suggested language is included as an attachment to the comment letter. At a minimum, to ensure statewide consistency, there should be a requirement for ARB concurrence with a local district's decision. There are other provisions for such ARB concurrence throughout the regulation. (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #27: The staff disagrees that section II.E.(3) empowers local air districts to bring facilities into the "Hot Spots" program on "an ad hoc and potentially arbitrary basis, without adequate objective criteria to guide their decisions." The revised section II.E.(3) contains specific and objective regulatory criteria, definition, and procedures for ensuring that these provisions are applied to facilities that pose risk to public health, consistently with provisions and risk levels that require other facilities to be included in the "Hot Spots" program, as discussed in more detail below. The staff believes that section II.E.(3), and the class of facilities defined in Appendix E which refers to section II.E.(3), are essential to ensuring adequate protection of public health in addressing facilities that pose risk, without requiring inclusion of entire classes of facilities statewide, within which many individual facilities would not be of concern but would face unnecessary regulatory burden as a result of being included under the regulation. Staff therefore believes it might not be prudent to eliminate section II.E.(3). Also, staff believes it is not warranted to add a new requirement for formal ARB concurrence and district board regulation as proposed in the suggested language attached to the comment letter, for the reasons discussed in the following paragraphs. Staff also believes it would be inconsistent to eliminate the phrase "in combination with other facilities" as requested in the suggested language for the facilities emitting less than 10 tons per year of criteria pollutants, because this same concept is applied in evaluating other sizes of facilities, as discussed further in the response to comment #29. In response to the commenters' concerns, the staff has made several revisions in the 15-day package to clarify and strengthen the criteria, definition, and procedures in section II.E.(3) and Appendix E, as discussed further below.

Working with the commenters, as directed by the Board at the July 25, 1996 hearing, the staff modified section II.E.(3) and made the clarifying modifications available in the 15-day package, to clearly indicate that: (1) the district must make a written determination of the basis for including a facility; (2) the facility must pose a "risk to public health" or emissions from

the facility are identified "as being of health concern to the community"; and (3) specific regulatory criteria are included to define the risk to public health as levels "exceeding the levels for prioritization score, cancer or non-cancer risk, or *de minimis* levels specified in section IV.A. for 'low level' facilities".

The staff made these modifications after taking into account the commenters' concerns and all relevant information, including concerns by health officials and environmental organizations raised during the development of the Report that there be a mechanism to ensure that facilities that pose health risk to the community can be identified and brought into "Hot Spots" reporting and right-to-know provisions. The staff believes that the revised section II.E.(3) provisions ensure that such a mechanism exists to ensure identification of such facilities, consistently and comparably to other facilities included in the "Hot Spots" program. The revisions make it clear that the basis for including a facility is a public health concern; this was a clarification requested by the commenters, to ensure that public health be the basis for the decisions, not merely a noise or nuisance complaint, or an unusual type of operation, for example. The revisions also make it clear that the district must make a written determination detailing the health concern, to ensure accountability and promote statewide consistency. The revisions will ensure statewide consistency by specifying criteria for the levels of concern as being those exceeding the "low level" category criteria of section IV.A., which are used for all other facilities as a consistent basis for determining levels above which there is a basis for inclusion in the "Hot Spots" reporting requirements.

Section II.E.(3) is essential to ensuring protection of public health while also avoiding unnecessary regulation of facilities not posing public health concern. Appendix E contains the list of classes of facilities emitting less than 10 tons per year of criteria pollutants that are included in the "Hot Spots" reporting requirements. The staff has included an "Any SIC" class in Appendix E, similar to other "Any SIC" classes included in Appendix E, that relies on the specific process and criteria under section II.E.(3)(a) to ensure that any facility posing public health concern above the specified levels will be included, while at the same time avoiding the need to mandate that an entire industry type (such as an entire Standard Industrial Classification code group) must be included. Extensive analysis and public input have been considered by the staff in developing the list of classes in Appendix E, and in modifying the list in the recent streamlining amendments to further refine the list of classes. Data reported under the former Appendix E-I and Appendix E-II lists have been evaluated, and the former Appendix E-I and E-II lists have been consolidated, eliminating classes not found to be of public health concern and including classes for which there is evidence of concern. The list has further been refined to focus on those SIC groups or portions of SIC groups, and those "Any SIC" classes that are of greatest concern, defined as narrowly as feasible based on the available data on public health impacts. However, based on experience and data from evaluating toxic emissions and associated risks, the staff recognized that there could be other facilities that pose risk to the public and that occur in other SICs or that have diverse processes not otherwise listed in Appendix E. It would be unnecessarily burdensome to include an entire numerical SIC class in Appendix E for every circumstance where a particular facility could pose a risk to public health, when many other facilities within such a numerical SIC group did not pose a concern. Likewise, it would be impractical to include an explicit industrial process type or substance usage value for every "Any SIC" circumstance where a facility could pose a risk to public health. Instead, after extensive public consultation, the staff included an "Any SIC" class in

Appendix E that defines facilities identified by districts under section II.E.(3)(a), which includes the specific process and criteria for identifying these facilities based on a written determination of health concern to the public. Therefore, the inclusion of section II.E.(3) provides a necessary safeguard for protecting public health while balancing the need to eliminate regulation of facilities not of concern. It would not be prudent to eliminate section II.E.(3) and the class in Appendix E, because the alternatives would be less effective and more burdensome. These alternatives are: (1) potentially high risk facilities would not be identified, tracked, and reported, and (2) multiple additional classes would need to be listed. These additional classes would have to be over-broad, even narrowing the definition based on best available data, and would include multiple low risk facilities.

Regarding the request for ARB concurrence, the staff believes it is not warranted to add a new requirement for ARB concurrence with the district's determination and decision to include a facility under section II.E.(3) of the Report. The "Hot Spots" statute requires the ARB to establish criteria and guidelines for facilities and districts to use in preparing and reporting emission inventories. These guidelines ensure statewide consistency by establishing the minimum criteria for all districts to use. However, Health and Safety Code section 44365(b) makes it clear that districts may establish more stringent criteria and requirements, and that this does not limit the authority of districts under any other provision of law to assess and regulate releases of hazardous substances. Health and Safety Code section 44320(b) also authorizes districts to include in the "Hot Spots" program any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.

The other instances of ARB concurrence language that are cited in the comment as being included in the Guidelines Report, all pertain to ARB concurrence either in exempting facilities from further requirements (section II.J.(1) and section IV.A.(1)) or in allowing alternatives and ensuring consistent minimum application of criteria for compliance with specified reporting requirements (section IV.D.(2)). In each of these other instances, the provisions for ARB concurrence ensure statewide consistency in meeting minimum stringency statewide. None of these other instances of concurrence establish any precedent for ARB concurrence with a district's decision to include additional facilities in the program.

As noted in the November 25, 1996 letter from Michael Scheible, ARB Deputy Executive Officer, to James E. Good, of Gresham, Varner, Savage, Nolan and Tilden, the staff has taken into account all relevant information, including concerns expressed by the local health officers and environmental groups about a new requirement for ARB concurrence with district determinations, especially since they had worked closely with ARB staff at public consultation meetings on the development of this section. The ARB staff does not propose to add language to require ARB concurrence with district determinations that individual facilities may pose potential risk to public health. Instead, the ARB staff has clarified the section to identify what constitutes a potential risk to public health, and has added specific criteria for districts to use in identifying appropriate facilities. In addition as stated in the letter, the ARB staff will coordinate with the districts in making these determinations to assure statewide consistency in application of the criteria and, if an issue arose in any particular instance, would be willing to help resolve it.

Regarding the request to modify regulatory language to eliminate the phrase "in combination with other facilities", the ARB staff believes it would be inconsistent to eliminate this phrase for evaluating facilities that emit less than 10 tons per year of criteria pollutants (under Appendix E and section II.E.(3)), because this same phrase or the equivalent concept is used in evaluating other sized facilities. As discussed further in the response to comment #29, this same phrase is used in section IV.A.(5) regarding the district determination for denying an exemption for a "low level" facility (of any size), and the same concept is used in section IV.A.(3)(a)(v) in the reinstatement criteria regarding consideration of the proximity of other facilities and sources of toxic emissions. In addition, as discussed in responses to 45-day comments #20, 24, 27, 28, and 29, evaluation of releases of a facility "in combination with other facilities" is appropriate in terms of public health protection and is in keeping with the purpose of the statute as stated by the Legislature in Health and Safety Code section 44301.

28. Comment: The regulation (addressing section II.E.(3)) is not authorized by the statute. The intent of Health and Safety Code (H&SC) section 44322(c) was for the Legislature to first review the proposed classes of small facilities that would be brought into the Program. This was done through the report submitted by the ARB. While some adjustments of the identified classes may be permissible under H&SC section 44322(c), the proposal to empower local districts to bring small, unidentified facilities into the program without specific legislative direction is contrary to legislative intent and not authorized by law. Basing the decision on an "initial assessment" of the facility's emissions leading to a prioritization score, to indicate risk, reverses the order of prioritization not occurring until completion of the emission inventory, under H&SC section 44360(a). (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #28: The staff disagrees with the comment that the provisions of section II.E.(3) are not authorized by the statute. Health and Safety Code section 44322(c) requires the Board to identify classes of facilities that emit less than 10 tons per year of criteria pollutants to be included in the "Hot Spots" program and to specify a timetable for their inclusion. The Board was to prepare a report to the Legislature on or before July 1, 1990. The Board fulfilled this requirement by submitting the report to the Legislature in June 1990. That is the entire explicit direction that the Health and Safety Code provides as to what should constitute these classes. The State Board is the agency required by statute to implement the "Hot Spots" program. The Board codified the classes identified in the 1990 report in Appendix E of the emission inventory and criteria guidelines regulation (originally sections 93300-93355 of Title 17 of the California Code of Regulations, now Appendix E of the Guidelines Report). As already discussed in the response to comment #27, the Guidelines Report defines a class of facilities in Appendix E using an "Any SIC" designation similar to the other "Any SIC" classes previously defined, and includes specific health-based criteria and a written determination process under section II.E.(3) to identify this class of facilities. Working with the commenters, modifications in the 15-day package further clarify the criteria as being based on health risk and specify that what constitutes threshold criteria of risk are levels exceeding the "low level" category criteria in section IV.A of the Report. Section II.E.(3)(c) was also added to further clarify that any facility that meets the requirements of section II.E.(3)(a) belongs to the class of facilities listed in Appendix E as "Facilities identified by districts under section II.E.(3)(a)."

As already discussed in the response to comment #27, the streamlining amendments consolidate the former list of classes in the original Appendix E-I and E-II and eliminate the former Appendix E-II, by eliminating classes not found to be of public health concern, by defining additional "Any SIC" classes for which there is evidence of concern, and by refining the definitions of categories and portions of categories to focus on those SIC groups and "Any SIC" classes that are of greatest concern. The 15-day modifications package includes an "Any SIC" class in Appendix E, similar to other "Any SIC" classes included in Appendix E, that relies on the specific process and criteria under section II.E.(3)(a). These provisions ensure that any facility posing public health concern above the specified levels and identified by the district using the procedures in section II.E.(3) will be included, while at the same time avoiding the need to mandate that an entire industry type (such as an entire Standard Industrial Classification code group) must be included statewide. Extensive analysis of the available data and extensive public input throughout the development of the proposed Report have been considered by the staff in developing and refining the list of classes in Appendix E.

The commenters state that "some adjustments of the identified classes may be permissible under H&SC section 44322(c)". Staff agrees with this comment.

All of the revisions to Appendix E, including those to streamline the requirements and allow exclusions for facilities meeting the "low level" criteria, are integrally linked to the overall technical analysis and public consultation process which the staff followed in proposing the revised Appendix E and the need for section II.E.(3). As discussed in the response to comment #27, the provisions of section II.E.(3) provide a necessary safeguard to ensure adequate protection of public health while still allowing the streamlining of the other classes included in Appendix E.

Based on experience and data from evaluating toxic emissions data collected under this and other programs, along with the associated risks, there could be individual facilities that pose risk to the public and that occur in SICs or that have diverse processes not otherwise listed in Appendix E. It would be unnecessarily burdensome to include an entire numerical SIC class in Appendix E for every conceivable circumstance where one particular facility could pose a risk to public health, when many other facilities within such a numerical SIC group would not pose a concern. Likewise, it would be impractical to include an explicit industrial process type or substance usage value for every conceivable "Any SIC" circumstance where a facility could pose a risk to public health. Determinations of whether a particular facility might pose a concern are best made at the district level. However, even though determinations are made regarding particular individual facilities, these facilities all share common characteristics--they all pose a concern to public health and they all exceed specified prioritization, risk or *de minimis* criteria. Therefore, it is appropriate to treat them as a class. After extensive public consultation, the staff included an "Any SIC" class in Appendix E that defines facilities identified by districts under section II.E.(3)(a), which includes the specific process and criteria for identifying these facilities based on a written determination of health concern to the public. It would not be prudent to eliminate section II.E.(3) and the class in Appendix E, because the alternatives would be either that potentially high risk facilities would not be identified, tracked, and reported, or that multiple additional classes would need to be listed. These additional classes would have to be over-broad, even narrowing the definition based on best available data, and would include numerous low risk facilities. The inclusion of section II.E.(3) provides an

essential safeguard for protecting public health while balancing the need to streamline the requirements and avoid regulation of facilities not of concern.

The staff disagrees with the comment that the provisions of section II.E.(3) reverse the order of the prioritization process under Health and Safety Code section 44360(a). Section II.E.(3) establishes criteria for districts to identify facilities for inclusion into the "Hot Spots" program based on a written district determination that there is a reasonable basis for determining that the facility poses potential public health risk above the specified levels. In order to have sufficient information on which to base its initial determination, the district will collect and evaluate preliminary emission inventory data based on the facility's operations and based on the district's experience, expertise, knowledge, and ability to evaluate the facility's emissions and the potential health impacts of those emissions. This will be evaluated along with any other available information upon which the district will base its initial determination. If the district makes the specified written determination under section II.E.(3) and the facility is thus included in the "Hot Spots" program, the facility will then prepare an emission inventory plan and report (or will be included in an industrywide inventory prepared by the district), as indicated under section II.E.(3)(b), to report actual emissions data. The district will then prioritize the facility based on this emission inventory data under Health and Safety Code section 44360(a), just as it does for all other facilities included in the "Hot Spots" program.

29. Comment: The regulation (addressing section II.E.(3)) establishes an unfair evaluation criterion for small facilities, regarding use of the phrase "in combination with other facilities", which is not applied to larger facilities and is not authorized by the statute. The language could include a small facility with insignificant emissions as a result of a neighboring facility's significant emissions, thus establishing an unfair evaluation criteria for small facilities, not applied to larger facilities. The Program has been applied on a facility basis. CAPCOA risk assessment guidelines focus on individual facility emissions. The statute provides only for criteria and guidelines for emission inventory plans on a "site-specific" basis. (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #29: Staff disagrees with this comment. The provision regarding "in combination with other facilities" is used in evaluating both larger and smaller facilities and therefore does not establish an unfair evaluation criteria for small facilities.

It would be inconsistent to eliminate this phrase for evaluating facilities that emit less than 10 tons per year of criteria pollutants (under Appendix E and section II.E.(3)), because this same phrase or the equivalent concept is included in evaluating other sized facilities. This same phrase "in combination with other facilities" is used explicitly in section IV.A.(5) regarding the district determination for denying an exemption for a "low level" facility. This provision applies to evaluation of any size of facility. The equivalent concept is used in the reinstatement criteria in section IV.A.(3)(a)(v), in which the "proximity of other facilities and sources of toxic emissions" is included as a factor the district may take into account in determining there is good cause to expect a facility no longer qualifies for an exemption as a "low level" facility. Again, this provision applies to the evaluation of any size of facility. Including the phrase "in combination with other facilities" in section II.E.(3)(a)(i) in evaluating the public health impacts of facilities emitting less than 10 tons per year of criteria pollutants is

therefore entirely consistent with the standards that apply throughout the Report for evaluating the impacts of all sizes of facilities.

While the statute directs each facility operator to inventory that facility's site-specific emissions, the Legislative findings in Health and Safety Code section 44301(d) also clearly state that "[t]hese releases may create localized concentrations or air toxics "hot spots" where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area" (emphasis added). Therefore, the provisions of the Guidelines Report are consistent both with the statutory requirements, which require each facility operator to inventory that facility's site-specific emissions, and with the statutory recognition that facilities' emissions can contribute to cumulative health risks in combination with other sources in the area. The provisions in section II.E.(3)(a)(i), section IV.A.(3)(a)(v), and section IV.A.(5) of the Report allow, but do not require, districts to consider such cumulative health risks to which a particular facility contributes in determining whether the facility should be included in or excused from the reporting requirements of the Guidelines Report. Because the Report now includes provisions that would exempt facilities from further reporting, it is essential that the criteria for exemptions and inclusions are structured in a way that maintains the district's ability to track emissions of facilities that contribute to "hot spots" that the district has identified. The criterion regarding "in combination with other facilities" is essential to ensure that the districts and the State Board do not lose this ability to adequately assess the cumulative health risks contemplated by Health and Safety Code section 44301(d).

The CAPCOA Air Toxics "Hot Spots" Program Revised 1992 Risk Assessment Guidelines, include methodologies for assessing risk to populations and individuals, such as subcensus tract analysis and the mapping of isopleths and zones of impact, that can be applied to the analysis of the combined impacts that multiple facilities contribute to a given receptor or population group. The provisions of the Guidelines Report ensure that essential emission data for facilities contributing to localized "hot spots" will be available to state and local programs to evaluate cumulative risks.

These provisions do not change the requirement for each facility operator to inventory that facility's own site-specific emissions. However, the provisions help ensure that essential data will be available to the districts and the State Board to implement effective risk management strategies in their respective programs. As indicated by Health and Safety Code section 44301(g), the Air Toxics "Hot Spots" program was established in part to support such strategies with additional information.

30. Comment: The Regulation (addressing section II.E.(3)) does not provide sufficient clarity to satisfy either the statute or the requirements of the California Administrative Procedure Act (APA). The statute requires legislative approval of specified classes of facilities to be included. Section II.E.(3) designates no such particular class. The APA requires that not only must a regulation be authorized by law, but it also must have clarity (Govt. Code section 11329.1). "Clarity" is defined in Govt. Code section 11349 as "...written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The above

factors do not provide clear meaning to small operators. There should be specific objective criteria for the inclusion in the Program of small facilities not within the classes listed in Appendix E, adopted either by the ARB or by the local air district. (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #30: As also discussed in the response to comments #27 and 28, the staff believes that the provisions of section II.E.(3) are consistent with the statute and that, as discussed below, the provisions contain clear definition, process, and criteria for identifying and including specified less than 10 ton per year facilities in the "Hot Spots" program. Health and Safety Code section 44322(c) requires the Board to identify classes of facilities that emit less than 10 tons per year of criteria pollutants to be included in the "Hot Spots" program and to specify a timetable for their inclusion. The Board was to prepare a report to the Legislature on or before July 1, 1990. The Board fulfilled this requirement by submitting the report to the Legislature in June 1990. That is the entire explicit direction that the Health and Safety Code provides as to what should constitute these classes. The State Board is the agency required by statute to implement the "Hot Spots" program. The Board codified the classes identified in the 1990 report in Appendix E of the emission inventory criteria and guidelines regulation (originally sections 93300-93355 of Title 17 of the California Code of Regulations, now Appendix E of the Guidelines Report). As already discussed in the response to comment #27, the Report defines a class of facilities in Appendix E using an "Any SIC" class designation similar to the other "Any SIC" classes previously defined, and includes specific health-based criteria and a written determination process under section II.E.(3) to identify this class of facilities. Working with the commenters, the staff proposed modifications in the 15-day package to further clarify the criteria as being based on health risk and that what constitutes the risk are levels exceeding the "low level" category criteria in section IV.A of the Report. The detailed criteria of section IV.A for the "low level" category provide "specific objective criteria" for inclusion of facilities in this "Any SIC" class, as requested by the commenters. The "Any SIC" class in Appendix E is written to clearly define a class that includes "facilities identified by districts under section II.E.(3)(a)", which in turn clearly specifies a written determination process and specifies clear health-based criteria on which the determination must be based. These criteria are entirely consistent with criteria used to evaluate all facilities for inclusion or exemption under other provisions throughout the Guidelines Report, as already discussed in the responses to comments #27, 28, and 29. These criteria rely on commonly used measures of health impact--including prioritization score, risk assessment levels, and stated *de minimis* throughput levels--that are already in wide use under the overall program provisions of the "Hot Spots" program. Prioritization scores are based on methodologies that have been established in accordance with Health and Safety Code section 44360(a) and have undergone a public hearing. Risk assessment methodologies are based on methodologies established in accordance with Health and Safety Code section 44360(b). Prioritization scores and risk assessment methodologies are based on documents including the CAPCOA Facility Prioritization Guidelines and the CAPCOA Revised 1992 Risk Assessment Guidelines, which have been publicly available for many years and are incorporated by reference into the Guidelines Report to serve as the basis for making category designations that determine inclusion, exemption, and reporting requirements for all facilities under the Report.

Under Health and Safety Code section 44320, any facility which manufactures, formulates, uses, or releases any of the substances listed pursuant to section 44321 (now Appendix A of the Guidelines Report) may be subject to Hot Spots reporting requirements. Provisions specifying applicability of section 44320 to particular facilities now appear in ARB's Guidelines Report. Section I.B of the Guidelines Report explains how to use the Report and points to Table 1 for locating information. Table 1, section A.1, explains that to determine whether a facility is subject to Hot Spots reporting requirements, one should refer to section II (Applicability) and also to Appendix E (for classes of smaller facilities). Thus, one way a facility operator would know whether reporting requirements might apply would be to look at section II. Subsection E of section II specifies applicability for "Facilities Emitting Less Than 10 Tons Per Year of Criteria Pollutants," and subsection (3) of subsection II.E specifies applicability for "Facilities Emitting Less Than 10 Tons Per Year of Criteria Pollutants and Identified By the District As Posing Concern to Public Health." This subsection describes the process by which a district would identify such a facility. A second way a facility operator would know whether reporting requirements might apply would be to look at Appendix E. Appendix E is titled "Requirements for Classes of Facilities Emitting Less Than 10 Tons Per Year of Criteria Pollutants." Listed under "Any SIC" (Standard Industrial Classification Code) in Appendix E is the class of "Facilities identified by districts under section II.E.(3)(a)." By referring back to section II.E.(3)(a), the operator would know that facilities emitting less than 10 tons per year of criteria pollutants and identified by a district as posing concern to public health are subject to Hot Spots reporting requirements. Thus, the Guidelines Report is clear that facilities which manufacture, formulate, use or release a listed substance and also emit less than 10 tons per year of criteria pollutants may be subject to Hot Spot reporting requirements. If the facility belongs to a class listed in Appendix E, the facility is subject to reporting requirements. To determine whether the facility actually belongs to the class listed in Appendix E and thus must submit an emission inventory plan under section II.E.(3)(b), the district would evaluate facility data to determine whether emissions could result in a potential risk to public health exceeding specified criteria and make a written determination to that effect. Not until the district made this determination would the facility be required to submit an emission inventory report. When the facility submitted its emission inventory report, the district would prioritize the facility according to the criteria in section IV. This process precisely mirrors the process for other facilities subject to Hot Spots reporting requirements.

Therefore, the revised Appendix E and section II.E.(3) contain specific and objective regulatory criteria, definition, and procedures for ensuring that these provisions are applied to facilities that pose risk to public health, consistently with provisions and risk levels that require other facilities to be included in the "Hot Spots" program. These provisions have been developed and adopted by the State Board through a full public regulatory process in accordance with the Administrative Procedure Act.

As already discussed in the response to comments #27 and 28, staff has developed the provisions of section II.E.(3) and the class of facilities defined in Appendix E which refers to section II.E.(3), based on experience, technical expertise, public input, and analysis of data regarding toxic emissions and associated risks, and the staff believes these provisions are essential to ensuring adequate protection of public health in addressing facilities that pose risk, without requiring inclusion of possibly numerous other classes of facilities, within which many

individual facilities would not be of concern and would thus face unnecessary regulatory burden.

31. Comment: The regulation (addressing section II.E.(3)) is also unclear in that the proximity of "other facilities" is ignored. This could be interpreted equally as meaning a neighboring facility, or all facilities emitting a given contaminant in the same air basin. (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #31: The staff disagrees with this comment and believes the Report is clear that the intent is to include neighboring facilities, not an entire air basin. As discussed in the response to comment #29, the criteria in section II.E.(3) regarding "in combination with other facilities" is the same as used in section IV.A.(5) and the equivalent concept as used in section IV.A.(3)(v) regarding "proximity of other facilities and sources of toxic emissions," which follow from the Legislative findings in Health and Safety Code section 44301(d) regarding "these releases may create localized concentrations or air toxics 'hot spots' where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area." Staff believes it is clear from these provisions under the "Hot Spots" program, that the intent is to include evaluations, when appropriate, of neighboring facilities that may contribute to elevated or "hot spot" risks at a given receptor location (individual or population group). The intent is not to focus on every facility emitting a given contaminant in an entire air basin, but rather to identify and focus on facilities that are contributors to an identified localized area where people are exposed to levels of risk, such as those established by section IV of the Report.

As a matter of common practice, the proximities of concern would be determined from the results of analysis methods such as the "zone of impact" methods described in the CAPCOA Revised 1992 Risk Assessment Guidelines for evaluating the geographic area affected by a facility (see for example page III-14 of the CAPCOA Guidelines). Isopleths (lines enclosing regions of equal impact) in which the excess risk level is above a particular elevated level of concern would be drawn around facilities that impact a given receptor location of concern. Modeling and risk assessment experience shows that the isopleths of risk fall off rapidly with distance from an emission source, so as a matter of common practice, only facilities in a limited vicinity of a given receptor location contribute substantially to the elevated risk levels, and *de minimis* principles would be applied to eliminate consideration of facilities that do not substantially contribute.

32. Comment: The regulation should be amended to include specific language that (1) requires state board concurrence in district determinations under section II.E.(3); (2) requires adoption of a regulation by the district governing board (or the state board) to implement section II.E.(3); (3) deletes regulatory language specifying evaluation of releases "individually or in combination with other facilities"; and (4) deletes regulatory language specifying identification of "emissions from the facility as being of particular health concern to the community" as a criterion that may be used for district determinations under section II.E.(3). (California Mining Association and Gresham, Savage, et al.)

Agency Response to Comment #32: As discussed in response to comment #27 of the 15-day comments (ARB concurrence), #27, 29, 31 of the 15-day comments and #20, 24, 27, 28, and 29 of the 45-day comments (evaluation in combination with other facilities), and #27, 28 and 30 of the 15-day comments and #17, 18, 19, 20, 21, 22, 23, 24, 25, and 28 of the 45-day comments (emissions of particular health concern to the community), staff disagrees with this comment. In addition, regarding an amendment to require adoption of a district or ARB regulation implementing section II.E.(3), this is unnecessary and would be duplicative of existing regulations in the Guidelines Report. Staff believes the criteria and procedures as modified in the 15-day version implementing section II.E.(3) are specific and provide sufficient clarity to facilities and districts to determine whether emissions of particular facilities are of concern and to evaluate information regarding the facilities to determine whether or not reporting requirements should apply. See also response to comment #30.