

## PROPOSED REGULATION ORDER

### PROPOSED AMENDMENTS TO THE CALIFORNIA AIR RESOURCES BOARD'S CERTIFIED REGULATORY PROGRAM IN THE CALIFORNIA CODE OF REGULATIONS, TITLE 17, SECTIONS 60000-60007

Note: The pre-existing regulation text is set forth below in normal type. The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The symbol "\*\*\*\*" means that intervening text not proposed for amendment is not shown.

Amend Title 17 California Code of Regulations, Division 3, Chapter 1, Subchapter 1, Article 1, sections 60000, 60002, 60003, 60004, 60005, 60006, and 60007; and adopt sections 60004.1, 60004.2, 60004.3, 60004.4 to read as follows:

#### § 60000. Purpose.

The regulations set forth in this subchapter shall ~~supplement~~implement provisions in the Mulford-Carrell Air Resources Act (Division 26 of the Health and Safety Code), the California Administrative Procedure Act, and the California Environmental Quality Act with regard to meetings and hearings of the state board and the executive officer.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 39000, et seq., Health and Safety Code; Sections 11340, et seq., Government Code; and Section 21080.5, Public Resources Code.

#### § 60001. Scheduling of Meetings.

\*\*\* [no changes]

#### § 60002. Notice.

~~In addition to providing~~CARB shall provide notice of state board meetings and hearings as required by ~~statute~~applicable law (including the notice-related provisions in sections 21092 and 21092.5 of the Public Resources Code and section 11346.4 of the Government Code). ~~Notice shall be mailed given~~ to state and local government agencies having jurisdiction by law with respect to a proposed activity of the state board and to persons who request such notice in writing. -For informational purposes, notice may be provided to newspapers of general circulation, to all persons believed to be interested in the proceeding, and to the State Clearinghouse for circulation to public agencies. Unless otherwise prohibited, notice may be provided electronically in lieu of physical mail.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 21080.5, Public Resources Code; Sections 39002, 41502 and 41650, Health and Safety Code; Sections 11125, 11340.85, and 11346.5, Government Code.

### **§ 6000560003. Staff Reports.**

~~(a) Where a public hearing is required by law the California Administrative Procedure Act, or where the action contemplated may have a significant effect on the environment, a staff report or “Initial Statement of Reasons”, together with the proposed rule, regulation, order, or standard or plan shall be prepared and published by staff of the state board. For rulemaking proceedings governed by the California Administrative Procedure Act (Government Code, section 11340 et seq.), the a staff report, together with the proposed rule or regulation, shall be prepared and published at least 45 days before the date of the public hearing. For all other such proceedings in which CARB elects to prepare a staff report, such as for orders, standards or plans, the staff report shall be published as early as reasonably practicable prior to the proceeding public hearing. Staff reports shall be available for public review and comment and shall be distributed to all governmental agencies having jurisdiction by law over the proposed activity and to persons who have requested such reports.~~

(b) It is the policy of the state board to prepare staff reports in a manner consistent with the environmental protection purposes of the state board's regulatory program and with the goals and policies of the California Environmental Quality Act (CEQA; Public Resources Code Sections 21000 et seq.), and with the California Administrative Procedure Act where the proposed action involves a rulemaking proceeding governed by the California Administrative Procedure Act. This Article sets forth the guidelines for CARB's orderly evaluation of its proposed activities and the preparation of plans or other written documentation, in a manner consistent with the environmental purposes of CARB's regulatory program. ~~All staff reports shall contain a description of the proposed action, an assessment of anticipated significant long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible mitigation measures and feasible alternatives to the proposed action which would substantially reduce any significant adverse impact identified.~~

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code.

### **§ 60004. General Environmental Review Provisions.**

(a) Definitions. As used in this Article, the following definitions shall apply.

- (1) “CARB” means the California Air Resources Board.
- (2) “state board” means the governing body of the California Air Resources Board.

(b) A staff report for a proposed regulation, or other state action for which a staff report is prepared under section 60003, shall include an environmental analysis if the regulation or other state action is considered a “project” under subsection (c) of this section and no exemptions apply. The environmental analysis shall be a separate chapter of, or appendix to, the staff report and shall be prepared in accordance with the requirements of Public Resources Code section 21080.5; California Code of Regulations, title 14, sections 15250-15253; and CARB's certified regulatory program as implemented through this subchapter. In developing the environmental

analysis, CARB shall determine whether the proposed project may have a significant effect on the environment, and shall prepare the appropriate environmental analysis to prepare as follows:

(1) If CARB determines that there is substantial evidence (as set forth in California code of Regulations, section 15064) that any aspect of the project, either individually or cumulatively, may have a significant effect on the environment, CARB shall do one of the following:

(A) Prepare an Impact Environmental Analysis pursuant to section 60004.2, if CARB determines a new analysis is required;

(B) Rely upon or tier (as set forth in California Code of Regulations, title 14, Section 15152) from a prior Impact Environmental Analysis, if CARB determines a previous analysis remains applicable to and adequate for the project; or

(C) Prepare a supplemental Impact Environmental Analysis pursuant to section 60004.3, if CEQA Guidelines section 15162 applies and CARB determines a previous Impact Environmental Analysis remains applicable to the project and the addition of supplemental information would make the environmental analysis adequate as revised.

(2) If CARB determines that there is no substantial evidence that any aspect of the proposed project may cause a significant effect on the environment, CARB shall do one of the following:

(A) Prepare an Environmental Analysis Finding No Impacts pursuant to section 60004.1., if CARB determines a new analysis is required;

(B) Rely upon a prior Impact Environmental Analysis or Environmental Analysis Finding No Impacts, if CARB determines a previous analysis remains applicable to and adequate for the project; or

(C) Prepare a supplemental Environmental Analysis Finding No Impacts pursuant to section 60004.3, if CEQA Guidelines section 15162 applies and CARB determines a previous Environmental Analysis Finding No Impacts remains applicable to the project and the addition of supplemental information would make the environmental analysis adequate as revised.

(3) If CARB determines that a certified Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts requires minor changes or additions to the information contained in the previous document and CEQA Guidelines section 15162 does not apply, CARB may prepare an addendum to the Impact Environmental Analysis or to the Environmental Analysis Finding No Impacts pursuant to 60004.4.

(c) The term “project” has the same meaning as set forth in California Code of Regulations, title 14, section 15378. The following activities do not constitute a “project”:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making;

(3) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, pursuant to California Code of Regulation, title 14, section 15378(b)(4);

(4) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment;

(5) Approval of planning documents that contain no commitment to a course of action by the state board, including planning documents discussing actions to be taken by other agencies that do not require CARB approval and where CARB lacks authority to require such actions to be taken;

(6) “Ministerial Projects” as defined in California Code of Regulations, title 14, section 15268, including activities for which by law CARB exercises little to no discretionary authority to alter or modify the project to address environmental impacts and CARB’s role is limited to determining conformity to fixed, objective standards. This includes but is not limited to:

A. Approval of those air district-submitted State Implementation Plans which CARB by law may not unilaterally modify; and

B. Certification of vehicles, engines, or other components under established regulatory standards.

(7) CARB activities that otherwise do not qualify as a “project” per Public Resources Code 21065 and California Code of Regulations, title 14, section 15378.

(d) Review for Exemption. The following subsections provide examples of activities which generally do not meet the definition of a project, or that fall within exempt classes under CEQA. In addition to the exemptions set forth below, all other exemptions set forth under CEQA shall also apply to any CARB activities which may qualify for such exemptions. Unless the provisions of California Code of Regulations, title 14, section 15300.2 apply, no environmental analysis is generally required for the following projects and activities:

(1) Projects that are within the “Common Sense Exemption” in California Code of Regulations, title 14, section 15061(b)(3), including but not limited to:

A. Assembly Bill 32 (Nuñez, Stats. 2006) Cost of Implementation Fee; and

B. Mandatory Greenhouse Gas Reporting regulation (MRR), California Code of Regulations, title 17, section 95100 et seq.

(2) Activities that are within the Class 1 exemption (California Code of Regulations, title 14, section 15301) for existing facilities, replacement or reconstruction, new

construction or conversion of small structures, and minor alterations to land; the Class 2 exemption (California Code of Regulations, title 14, section 15302) for replacement or reconstruction of existing structures or facilities exemptions; the Class 3 exemption (California Code of Regulations, title 14, section 15303) for new construction or conversion of small structures; the Class 4 exemption (California Code of Regulations, title 14, section 15304) for minor alterations to land; and/or the Class 11 exemption (California Code of Regulations, title 14, section 15311) for accessory structures, including but not limited to:

A. Grants for clean transportation projects (electric vehicle chargers and/or hydrogen charging stations, electric vehicles and/or hydrogen-fueled vehicles);

B. Approvals incentivizing construction of new vehicle charging or fueling stations; and

C. Grants for community air monitoring projects that involve minor construction or alterations to land.

(3) Activities that are within the Class 6 exemption (California Code of Regulations, title 14, section 15306) for information collection; the Class 14 exemption (California Code of Regulations, title 14, section 15314) for minor addition to schools; and/or the Class 22 exemption (California Code of Regulations, title 14, section 15322) for educational or training programs involving no physical changes to the area, including but not limited to:

A. Grants for community engagement projects and community air monitoring projects (that may involve minor construction or minor alterations to land).

(4) Activities that are within the Class 7 exemption (California Code of Regulations, title 14, section 15307) for actions taken for protection of natural resources.

(5) Activities that are within the Class 8 exemption (California Code of Regulations, title 14, section 15308) actions taken for protection of the environment where the activity involves procedures for protection of the environment.

(6) Activities that are within the Class 21 exemption (California Code of Regulations, title 14, section 15321) enforcement actions, including but not limited to:

A. CARB enforcement actions for violations of federal law, state law, CARB regulations, or district regulations.

(7) Feasibility or planning studies for possible future actions which CARB has not approved, adopted or funded, as set forth in California Code of Regulations, title 14, section 15262.

(e) For projects subject to the rulemaking proceedings under the California Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may, after it approves of the project, delegate to the Executive Officer to carry out changes in the proposed regulatory

language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with this section 60004.

(f) Notice of Exemption. CARB may prepare and file a Notice of Exemption with the Secretary of Natural Resources Agency and/or the State Clearinghouse when it approves or determines to carry out a project exempt from CEQA.

(g) Tiering. CARB may tier its environmental analyses using the principles set forth in California Code of Regulations, title 14, section 15152, and other tiering-related provisions in CEQA.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 21080, 21080.5, Public Resources Code; California Code of Regulations, title 14, sections 15061, 15062, 15063, 15268, 15300-15333; 15352, 15378; *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal. 5th 937; *Save Tara v. City of W. Hollywood* (2008) 45 Cal. 4<sup>th</sup> 116.

### **§ 60004.1. Environmental Analysis Finding No Impacts.**

(a) Contents. The Environmental Analysis Finding No Impacts shall contain:

(1) A brief description of the proposed project; and

(2) Either:

(A) An explanation demonstrating that the CARB's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment, or

(B) Mitigation measures, if any, included in the project to avoid potentially significant effects that the project might have on the environment.

(b) Public Review. CARB shall provide a public review period for the proposed No Impacts Environmental Analysis of at least 30 days, consistent with California Code of Regulations, title 14, section 15073, unless a shorter period is approved by the State Clearinghouse under California Code of Regulations, title 14, Section 15105(d). Public comment on either (1) a sufficiently-related change to proposed regulatory text or additional documents and/or information as set forth in section 11346.8(c) of the California Government Code, or (2) a change to a plan previously released for public comment, shall be limited to the effect of that change only, and shall not address aspects of the regulatory text or plan as originally released for public comment.

(c) Consideration and Approval. The state board shall consider the proposed Environmental Analysis Finding No Impacts, together with any timely-submitted comments raising significant environmental issues regarding the environmental analysis received during the noticed public review period, prior to approval of the proposed project. The state board shall approve the proposed Environmental Analysis Finding No Impacts only if it finds on the basis of the whole record, including the comments, that there is no substantial evidence that the proposed project would have a significant or potentially significant effect on the environment. Approval by the state

board of a proposed project subject to an Environmental Analysis Finding No Impacts shall occur on the date of the board meeting in which the state board approves or approves for adoption the project, consistent with California Code of Regulations, title 14, section 15352(a). The state board may, but is not required to, respond to public comments received on an Impact Environmental Analysis Finding No Impacts.

(d) Notice of Decision. CARB shall file a notice of decision with the Secretary of Natural Resources Agency after deciding to approve the project. The contents shall be consistent with the requirements of CEQA Guidelines section 15075(b).

(e) Executive Officer Authority. As specified in section 60004(e), for projects subject to the rulemaking proceedings under the California Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may, after it approves of the project pursuant to subsection (c) above, delegate to the Executive Officer to carry out changes in the proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review, consistent with section 60004.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code; California Code of Regulations, title 14, sections 15073, 15105, 15073.5, 15162, 15252; *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016), 1 Cal. 5th 937.

## **§ 60004.2. Impact Environmental Analysis.**

(a) Contents. The Draft and Final Impact Environmental Analyses shall contain the following:

(1) A description of the project;

(2) A description of the applicable environmental and regulatory setting for the project;

(3) A discussion and consideration of environmental impacts and feasible mitigation measures which could minimize significant adverse impacts identified;

(4) A discussion of cumulative and growth-inducing impacts, and any mandatory findings of significance per California Code of Regulations, title 14, section 15065; and

(5) A discussion of a reasonable range of alternatives to the proposed project, which could feasibly attain most of the project objectives but could avoid or substantially lessen any of the identified significant impacts.

(b) Public Review Period.

(1) Public Notice. CARB shall provide public notice of the availability of a draft Impact Environmental Analysis at the same time it sends a notice of completion to the Office of Planning and Research. The public notice shall include the information set forth in section 21092(b)(1) of the Public Resources Code.

(2) Public Comment. CARB shall make the draft Impact Environmental Analysis available for public review and public comment for 45 days. Comments shall be submitted as

provided in the notice; comments not submitted as provided in the notice are not validly submitted, and may be, but are not required to be, responded to by the state board. Public comment on a sufficiently-related change to proposed regulatory text as set forth in section 11346.8(c) of the California Government Code, or on a change to a plan previously released for public comment, shall be limited to the effect of that change only, and shall not address aspects of the regulatory text or plan as originally released for public comment.

(3) Response to Public Comment. CARB shall evaluate comments on environmental issues received during the noticed comment period and shall respond as follows:

(A) Comments received during the noticed public comment period regarding environmental impacts that may result from the proposed project shall be considered, and a written response shall be prepared where required by section 15088 of title 14 of the California Code of Regulations.

(B) The state board may, but is not required to, respond to late comments made outside the noticed comment period.

(C) When responding to a comment raising significant environmental impacts from a public agency, a written proposed response shall be provided to that agency at least 10 days prior to certifying an Impact Environmental Analysis.

(D) The response to comment may be prepared in the form of (1) a revision to the draft Impact Environmental Analysis, (2) a separate section in or attachment to the Final Impact Environmental Analysis, or (3) a separate response to comments document.

(E) The response to comment shall include the following:

1. Comments and recommendations concerning significant environmental issues received during the noticed public review period on the draft Impact Environmental Analysis, either verbatim or in summary;

2. A list of persons, organizations, and public agencies commenting on the draft Impact Environmental Analysis during the noticed public review period; and

3. The responses to significant environmental issues raised during the noticed public review period.

(4) Distribution to State Agencies. CARB will use the State Clearinghouse to distribute copies of the draft Impact Environmental Analysis to state agencies for review.

(5) Preparation of Final Impact Environmental Analysis. CARB shall prepare a final Impact Environmental Analysis, which may include the responses to comments as provided in (b)(3)(E) above, and shall include any other information added by CARB, as necessary.

(6) Hearings. Hearings by the state board are encouraged, but not required by this



subchapter. If a state board hearing is held, the state board may vote on a resolution that directs staff to make direct changes or prepare written responses to environmental comments, and in such case shall direct staff to schedule a subsequent hearing for the state board's consideration of the final proposal for approval.

(c) Consideration and Certification of Final Impact Environmental Analysis and Project Approval.

(1) Prior to approving a project, the state board shall consider the Final Impact Environmental Analysis and certify that:

(A) the Final Impact Environmental Analysis has been completed in compliance with the certified regulatory program and CEQA;

(B) the Final Impact Environmental Analysis was presented to the state board and the state board reviewed and considered the information contained in the Final Impact Environmental Analysis prior to approving the project; and

(C) the Final Impact Environmental Analysis reflects the state board's independent judgment and analysis.

(2) After considering the Final Impact Environmental Analysis and any responses to comments prepared by the staff of the state board and certifying the Final Impact Environmental Analysis, the state board may decide whether or how to approve or carry out the project. The state board shall not decide to approve or carry out a project for which an Impact Environmental Analysis was prepared unless either:

(A) The project as approved will not have a significant effect on the environment, or

(B) CARB has eliminated or substantially lessened all significant effects on the environment where feasible; and determined that no feasible alternatives or mitigation measures are available that would substantially lessen any remaining significant adverse effect that the activity may have on the environment, and that any remaining significant effects on the environment found to be unavoidable are acceptable due to overriding considerations.

(3) Approval by the state board of a proposed project subject to an Impact Environmental Analysis shall occur on the date of the board meeting in which the state board approves or approves for adoption the project, consistent with California Code of Regulations, title 14, section 15352(a).

(d) Notice of Decision. The state board shall file a notice of decision with the Secretary of Natural Resources Agency after deciding to approve the project. The contents shall be consistent with the requirements of CEQA Guidelines section 15094(b). A courtesy copy of the Notice of Decision may also be filed with the State Clearinghouse.

(e) Executive Officer Authority. As specified in section 60004(e), for projects subject to the rulemaking proceedings under the California Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may delegate to the Executive Officer to carry out changes in regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review, consistent with section 60004.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code; California Code of Regulations, title 14, sections 15082, 15087, 15088, 15088.5, 15090, and 15092.

**§ 60004.3. Supplemental Impact Environmental Analysis and Supplemental Environmental Analysis Finding No Impacts.**

(a) General. A Supplemental Impact Environmental Analysis may be prepared where any of the circumstances set forth in section 15162(a) of title 14 of the California Code of Regulations exist. A Supplemental Environmental Analysis Finding No Impacts may be prepared where provided by section 15162(b) of title 14 of the California Code of Regulations.

(b) Contents. The Supplemental Impact Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts shall contain only the information necessary to make the previous environmental analysis adequate for the project as revised.

(c) Public Review. A Supplemental Impact Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts shall be given the same kind of notice and public review as is given to a draft Impact Environmental Analysis as specified in section 60004.2(b) or 60004.1(b), respectively.

(d) Consideration and Approval. Before deciding to approve the project, the state board shall consider the Supplemental Impact Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts, along with the previous environmental analysis as revised by the Supplemental Impact Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts. Approval by the state board of a proposed project subject to a Supplemental Impact Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts shall occur on the date of the board meeting in which the state board approves or approves for adoption the project, consistent with California Code of Regulations, title 14, section 15352(a). To the extent this subsection requires actions to be undertaken by the state board, those requirements shall not apply where the relevant actions are instead undertaken by the Executive Officer under delegation from the state board to carry out changes in regulatory language pursuant to Government Code section 11346.8(c). The requirements for such actions are specified in sections 60004(e), 60004.1(e), 60004.2(e), 60004.3(f), and 60004.4(e), as applicable.

(e) Notice of Decision. The state board shall file a notice of decision with the Secretary of Natural Resources Agency after deciding to approve the project. The contents shall be consistent with the requirements of CEQA Guidelines section 15094(b). A courtesy copy of the Notice of Decision may also be filed with the State Clearinghouse.

(f) Executive Officer Authority. As specified in 60004(e), for projects subject to the rulemaking proceedings under the Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may, after it approves of the project pursuant to subsection (d) above, delegate to the Executive Officer to carry out changes in the proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review, consistent with section 60004.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code; California Code of Regulations, title 14, sections 15162 and 15163; *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, Cal. Supreme Court, Case No. S214061 (September 19, 2016), 1 Cal. 5<sup>th</sup> 937.

**§ 60004.4. Addendum to an Impact Environmental Analysis or Environmental Analysis Finding No Impacts.**

(a) General. An addendum may be prepared where the circumstances set forth in section 15164 of title 14 of the California Code of Regulations exist.

(b) Contents. The Addendum to a certified Impact Environmental Analysis or an adopted Environmental Analysis Finding No Impacts shall contain only the information necessary to update the information contained in the previous document.

(c) An Addendum need not be circulated for public review but can be included in or attached to the certified Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts.

(d) Consideration and Approval. Before deciding to approve the project, the state board shall consider the Addendum with the final Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts prior to making a decision on the project. Approval by the state board of a proposed project subject to an Addendum shall occur on the date of the board meeting in which the state board approves or approves for adoption the project, consistent with California Code of Regulations, title 14, section 15352(a). To the extent this subsection requires actions to be undertaken by the state board, those requirements shall not apply where the relevant actions are instead undertaken by the Executive Officer under delegation from the state board to carry out changes in regulatory language pursuant to Government Code section 11346.8(c). The requirements for such actions are specified in sections 60004(e), 60004.1(e), 60004.2(e), 60004.3(f), and 60004.4(e).

(e) Executive Officer Authority. As specified in section 60004(e), for projects subject to the rulemaking proceedings under the California Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may delegate to the Executive Officer to carry out changes in regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review, consistent with section 60004.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code. California Code of Regulations, title 14, sections 15064, 15162, 15164, and 15300.4.

**§ 60005. Administrative Record.**

(a) Procedure for Developing and Public Review of Administrative Record. CARB shall prepare and keep an administrative record of the proceedings during which an environmental analysis is prepared.

(b) Contents. For a rulemaking item, the rulemaking record as specified in section 11347.3 of the California Government Code will generally also constitute the CEQA administrative record for that item under section 21167.6 of the California Public Resources Code. The administrative record for a non-rulemaking item shall generally include all documents relied upon by the state board in making its decision on the project. The administrative record shall include external studies and any internal communications that were actually relied upon for decision-making by the state board, information submitted to CARB, and any other information required by law to be considered by the state board in making its decision. However, notwithstanding the above, and to the extent consistent with section 21167.6 of the Public Resources Code, the administrative record need not include any documents that are privileged or otherwise not relied upon by the state board in making its decision on the project, including, without limitation, documents that:

- (1) Would cause CARB to abrogate its attorney-client privileges or work product doctrine;
- (2) Are currently subject to the deliberative process privilege; or
- (3) Constitute administrative drafts of environmental documents, working drafts or papers concerning environmental documents, draft staff reports, internal staff-level emails or similar correspondence, and other preliminary documents.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code; Section 11347.3, Government Code.

~~§ 60006. Environmental Alternatives.~~

~~Any action or proposal for which significant adverse environmental impacts have been identified during the review process shall not be approved or adopted as proposed if there are feasible mitigation measures or feasible alternatives available which would substantially reduce such adverse impact. For purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors, and consistent with the state board's legislatively mandated responsibilities and duties.~~

~~Note: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code.~~

~~§ 60007. Response to Environmental Assessment.~~

~~(a) If comments are received during the evaluation process which raise significant environmental issues associated with the proposed action, the staff shall summarize and respond to the comments either orally or in a supplemental written report. Prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue.~~

~~(b) Notice of the final action and the written response to significant environmental issues raised~~

~~shall be filed with the Secretary of the Resources Agency for public inspection.~~

~~Note: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Section 21080.5, Public Resources Code.~~

§ ~~60003~~60006. Quorum.

\*\*\* [no changes]

§ ~~60004~~60007. Record of Proceedings.

\*\*\* [no changes]

§60008. Local District Amendment of Regulations Adopted by State Board.

\*\*\* [no changes]

\*\*\*\*\*