

Final Statement of Reasons

for Rulemaking

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

Public Hearing Date: January 25, 1996
Agenda Item No.: 96-1-4

California Environmental Protection Agency



Air Resources Board

State of California

AIR RESOURCES BOARD

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

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I. GENERAL

On January 25, 1996 the Air Resources Board (ARB) conducted a public hearing to consider the adoption of amendments to the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation), sections 90700-90705, Titles 17 and 26, California Code of Regulations (CCR). After considering the staff's recommendation, and the public's written comments and testimony, the ARB approved Resolution 96-2, the amendments to the Fee Regulation, sections 90700-90705, Titles 17 and 26, CCR. In accordance with Health and Safety Code section 44380, the ARB is required to adopt a regulation to recover the anticipated costs incurred by the ARB and the Office of Environmental Health Hazard Assessment (OEHHA) in implementing the Air Toxics Hot Spots Program (Program). The Fee Regulation requires air pollution control and air quality management districts (air districts) to adopt rules that assess fees upon facilities subject to the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act) to recover their portion of the State's cost and their air district's Program cost. Air districts may request to have a fee schedule established in the State's Fee Regulation provided its Air District Board approved Program costs were submitted to the ARB by April 1, 1995. The approved amendments to the Fee Regulation establish fees for 12 air districts.

In accordance with Government Code section 11346.8(c), the ARB directed the Executive Officer to adopt the modified regulation after making it available for public comment, and also required the Executive Officer to consider written comments regarding the modifications and to present the regulation to the ARB for further consideration, if warranted, in light of the comments received.

The following documents are incorporated by reference herein:

- (1) Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Air Toxics Hot Spots Fee Regulation, released December 8, 1995.
- (2) "Notice of Public Availability of Modified Text", available on March 6, 1996.

- (3) "Notice of Public Availability of Supporting Documents and Information", available on May 1, 1996.

Resolution 96-2 makes the significant changes to the Fee Regulation that are discussed below. These revisions and other non-substantive revisions are discussed in greater detail in the Staff Report made available to the public on December 8, 1995 and, as noted, in the March 6, 1996 Notice of Public Availability of Modified Text. In brief, these changes are:

- 1) Section 90700(b)(1) was modified and sections 90703(c), and 90704(i) were added to establish the basic method which will be used to assess the fees for risk assessments submitted to the State for review after March 31, 1995. Each air district will be billed for the actual costs that OEHHA incurs in its review of individual risk assessments, in accordance with Health and Safety Code section 44361(c).
- 2) The following modifications and additions were made to the definitions in section 90701 of the Fee Regulation:
 - a) Section 90701(h) was updated to modify an existing definition for Facility Program Category. The modification clarifies that the list of facilities includes facility name and identification number. In this same definition, the requirement for air districts to submit a list of Survey facilities was deleted and a provision was added that air districts must supply a list of their State Industrywide facilities.
 - b) Section 90701(i) was modified to delete reference to the small business definition contained in the Fee Regulation. Deleting this reference makes the Fee Regulation consistent with the Emission Inventory Criteria and Guidelines Regulation, which defines small business in section 93301(m).
 - c) The definition for Risk Assessment-State Facility in section 90701(x) was modified to update the specified period of applicability.
 - d) The small business definition in section 90701(ab) was modified to clarify the fee to be assessed facilities that meet the definition by referencing section 90704(g)(2).
 - e) A definition for Standard Industrial Classification (SIC) Code was added as section 90701(ad). An SIC Code is a numerical code which describes a type of business.
 - f) A new definition for State Industrywide facility was added in section 90701(af). The new definition is used in the calculation of the air districts' shares of the State's costs.

- 3) Code references in sections 90701, 90702, 90703, 90704, and 90705 were modified to reflect the new alphanumeric notations as a result of adding new definitions, adding sections, and deleting a section.
- 4) Sections 90702(b)-(d) were added and modifications were made to sections 90703(a); 90704(a); 90704(b)(2), (d)(2), and (h); and sections 90705(a) and (c) to clarify applicability of the regulation. These additions and modifications clarify which facility categories will be used to calculate the air districts' shares of the State's cost, which facilities will be exempted, and which facility categories will be used as the basis for billing. The changes clarify which sections apply to air districts that are adopting their own fee rules and which sections apply to air districts whose fee schedules are included in the State Fee Regulation.
- 5) Section 90703(a)(1) was added to extend the date for which air districts may update their facility counts to December 15, 1995.
- 6) Section 90703(b) was added and section 90704(d)(2) was modified to explain the use of the new State Industrywide Facility category in calculating air districts' shares of State costs. To improve consistency among the air districts, the number of State Industrywide Facilities is used to count facilities that qualify to be included in Industrywide inventories prepared by the air districts, belong to certain Standard Industrial Classifications, and meet other criteria. However, air districts still have the option to use the fees for Industrywide Facilities listed in Table 4 to bill facilities.
- 7) Section 90704(d)(1) was modified to explain the purpose of Table 2 in the regulation. The State costs from Table 1 and the air district costs from Table 2 are used to calculate the facility fees in Table 3.
- 8) Section 90704(d)(3) was modified to update the State costs for review of risk assessments for facilities located in the Santa Barbara County Air Pollution Control District (APCD).
- 9) Section 90704(e)(3) was added to require air districts to document and substantiate changes to facility counts. The air districts are now required to provide the name, facility identification number, previous category of the affected facility, current category of the facility, previous Source Classification Codes of the facility, and current Source Classification Codes of the facility. The air district shall also provide the Standard Industrial Classification Code for facilities being added to the State Industrywide category.
- 10) Section 90704(i), which required the OEHHA to initiate a program of labor-tracking for review of health risk assessments was deleted. This action has been completed.

- 11) Section 90705(d)(1) was modified to extend the time period during which an air district with a State Board adopted fee schedule may carry over a revenue shortfall. The proposed revisions extend the allowed time period from the current one year to a proposed four years. This provision gives the air districts greater flexibility in determining facility fees.
- 12) Table 1 of the Fee Regulation was modified to update the amount that each of the State's 34 air districts must remit to the State to recover the reasonably anticipated costs of the State to administer the Program for fiscal year 1995-96. The cost changes reflect changes in facility numbers among the air districts, facilities qualifying for an exemption, and a decrease in the State's cost.
- 13) Table 2 was updated to reflect costs to be recovered through the Fee Regulation for the 12 districts that requested adoption of facility fees in the State's Fee Regulation. Air district costs to be recovered for the Calaveras and Placer County APCDs were added to Table 2. The Kern County APCD's and South Coast Air Quality Management District's (AQMD) costs were deleted from Table 2.
- 14) Table 3 of the Fee Regulation was subdivided into parts a, b, and c and revised to reflect updated facility fees for the 12 air districts requesting State adoption of facility fees. Fee schedules were added for the Calaveras and Placer County APCDs. Fee schedules were deleted for the Kern County APCD and for the South Coast AQMD. Fee schedules were updated to reflect revised facility counts and costs for the following ten air districts: the Imperial, Lassen, Mariposa, Mendocino, Santa Barbara, and Tuolumne County APCDs; the Great Basin, and San Joaquin Valley Unified APCDs; and the Mojave Desert and Yolo-Solano AQMDs.
- 15) Flat fees specified by the air districts for Survey and Industrywide facilities in Table 4 were updated. Flat fees for the Kern County APCD and South Coast AQMD were deleted. Flat fees for the Calaveras and Placer County APCDs were added. A clarification was added to indicate the State fee for facilities in Table 4.
- 16) Appendix A of the Fee Regulation was updated to delete the toxic inventories of the Monterey Bay Unified APCD and the South Coast AQMD, and modify the title for the Mojave Desert AQMD inventory.
- 17) The method to distribute the State's cost was modified. The June 1995 Staff Report calculated a cost per facility and distributed the State's cost based on updated facility counts received from the air districts in May 1995. This method was modified such that each calculated cost per facility remains unchanged from this distribution. For each exempted facility, the State's cost previously assessed that facility would be subtracted from its air district's cost total in the June 1995 Staff Report.

The Notice of Public Availability of Supporting Documents and Information, available to the public on May 1, 1996, with a deadline for public comment of May 16, 1996, listed additional documentation and information that were received from the air districts. The additional documentation and information were relied upon for this rulemaking. However, none of the supporting documents or information received resulted in revisions to the Fee Regulation.

The ARB has determined that this regulatory action will not have a significant adverse impact on the environment, and should benefit air quality by stimulating a reduction in toxic pollutant emissions. Health and Safety Code section 44390 et seq. requires facilities, judged to pose a potential significant health risk, to lower their emissions below a significance level. This regulatory action will fund implementation of this risk reduction effort.

The ARB's Executive Officer has determined that the amended regulation will create costs to, and impose a mandate upon the air districts with jurisdiction over facilities subject to the Act. However, the mandate does not require State reimbursement pursuant to Government Code sections 17500 et seq. and section 6 of Article XIII B of the California Constitution, because the air districts have the authority to levy fees sufficient to pay for the mandated Program (see Health and Safety Code section 44380 and Title 17, CCR, section 90700-90705). These fees are expected to recover in full the costs of district implementation of the Program, including the administration of the amended regulation. The estimated cost to air districts to implement the amended Fee Regulation for fiscal year 1995-96 is \$610,000.

Pursuant to the amended regulation, some local and State government facilities must pay Hot Spots fees. In accordance with the Health and Safety Code section 44320, these facilities are subject to the Fee Regulation because: 1) they emit or use substances listed in Appendices A, A-1, or A-II of the Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 93300-93355, and release the specified quantity of at least one of the four "criteria pollutants" (total organic gases, particulate matter, nitrogen oxides, or sulfur oxides); and/or 2) they are listed on any current toxics use or toxics air emission survey, inventory, or report released or compiled by an air district.

The Executive Officer has determined that adoption of the amended regulation will create costs to, and impose a mandate upon certain publicly owned treatment works (POTWs); utilities; air and water treatment facilities; and solid waste facilities. The costs of complying with the amended regulation are not reimbursable within the meaning of section 6, Article XIII B, California Constitution, and Government Code section 17500 et seq., because these types of facilities are authorized to levy service charges to cover the costs associated with the mandated program. For fiscal year 1995-96, the estimated total cost to POTWs is \$70,530. The cost to utilities, air and water treatment facilities, and solid waste facilities is estimated to be \$188,355.

The Executive Officer has determined that adoption of the amended regulation will not create costs to, or impose a mandate upon local school districts.

The Executive Officer has determined that adoption of the amended regulation will create costs to, and impose a mandate upon other local government agencies and hospitals which must pay fees pursuant to the amended Fee Regulation. However, local government agencies' and hospitals' costs of compliance with the regulation are not reimbursable by the State within the meaning of section 6, Article XIII B, California Constitution, and Government Code section 17500 et seq., because these agencies have the authority to levy assessments sufficient to pay for the mandated Program. The estimated total cost to local government agencies and hospitals is \$63,123 for fiscal year 1995-96.

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

The Executive Officer has determined that the amended regulation will create costs to affected State agencies. The costs of the ARB and the OEHHA to implement and administer the Program including the amended regulation, will be recovered by fees authorized by Health and Safety Code section 44380 and section 90700-90705 of Title 17, CCR. The cost to the ARB to develop and implement the amended Fee Regulation has been estimated to be \$152,000 for fiscal year 1995-96.

Other affected State agencies and facilities (e.g. universities, hospitals, and correctional institutions) that must pay fees pursuant to the amended regulation as emitters of specified pollutants, are able to absorb their costs within existing budgets and resources. Total costs to these State agencies are estimated to be \$117,510 for fiscal year 1995-96.

In developing the proposal, staff determined there is a potential cost impact on private persons or businesses directly affected by the regulation. Based on the results of economic impact analyses, the Executive Officer has determined that overall, California businesses seem able to absorb the costs of the fees without a significant adverse impact on their profitability. Because the amended fees pose only a minor impact on the profitability of businesses, the Executive Officer has determined that there will be neither a noticeable change in employment nor an adverse impact on the ability of California businesses to compete with similar businesses in other states. Moreover, the Executive Officer has determined that the amended fees will not cause creation, expansion, or elimination of California businesses. Nevertheless, for businesses operating with little or no margin of profitability, imposing these fees may result in significant adverse impacts. The Executive Officer has also determined that because the amended fees pose only a minor impact on the profitability of businesses, no changes in consumer prices are expected.

As discussed in the summary of Public Comments and Agency Responses below, the ARB has further determined that no alternative would be more effective in carrying out the purposes for which the regulation was proposed or would be as effective and less burdensome to affected private persons. The statute is clear regarding who must pay fees and what costs the fees are intended to recover. The Fee Regulation contains several fee options which air districts may

employ to lessen the economic burden on facilities. Each option will result in recovery of the costs of implementing and administering the Program as required by law. The Fee Regulation also allows local air districts to adopt a fee rule developed by the air district, provided that the air district's rule will assess a fee against all facilities subject to the Program, and will result in the recovery of the air district's and State's costs associated with the Program. Furthermore, in accordance with Health and Safety Code section 57005(a), the Executive Officer, after evaluating the alternatives, if any, to the proposed amendments submitted to the ARB pursuant to Government Code section 11346.5(a)(7), and considering whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed amendments, has determined that there is no such alternative or combination of alternatives.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The ARB received written and oral comments in connection with the January 25, 1996 hearing and during the March 6, 1996 Notice of Public Availability of Modified Text. No comments were received during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information. A list of commenters is set forth below, identifying the date and form of all comments that were timely filed. The comments are divided into comments received from the air districts updating costs and facility counts and comments received on the proposed amendments to the Fee Regulation. Following the list is a summary of each objection or recommendation made regarding the proposal, together with an explanation of how the proposed action has been changed to accommodate the objection or recommendation, or the reasons for making no change.

A. Comments From Air Districts Updating Facility Counts, Documenting Facility Counts, Updating Anticipated Air District Program Costs, and Documenting De Minimis Levels

The Fee Regulation allowed air districts to update their facility counts based on the status of facilities as of December 15, 1995. The ARB staff also proposed an additional category of facility that could qualify for a fee exemption during the 45-day comment period. All air districts were given the opportunity to update facility counts based on this additional exemption proposal.

The Fee Regulation required air districts to provide documentation in support of facility counts used to distribute the State's cost and calculate facility fees. Some air districts provided this documentation during the 45-Day comment period. Additional documentation and information from air districts that support earlier supplied facility counts or air district Program costs were received after the January 25, 1996 hearing. The documentation and information were made available for the public's review during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information. Additional data that support the de minimis levels

established for boat and ship building and repair and wastewater treatment plants were received from the Bay Area AQMD. These data were also made available for the public's review and comment during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information.

1. Comment: For the purposes of calculating distribution of the State's costs, and facility fees where applicable, the following air districts supplied updates to their facility counts during the 45-day comment period: the Amador, Calaveras, Colusa, El Dorado, Glenn, Imperial, Kern, Lassen, Mendocino, Placer, San Diego, San Luis Obispo, Santa Barbara, Tehama, Tuolumne and Ventura County APCDs; the Great Basin, Monterey Bay, and San Joaquin Valley Unified APCDs; and the Bay Area, Butte County, Lake County, Mojave Desert, North Coast Unified, Northern Sierra, Sacramento Metropolitan, Shasta County, and South Coast AQMDs.

Agency Response: The ARB staff updated all of the facility counts as requested by these air districts and used them to calculate the distribution of the State's cost and facility fees for fiscal year 1995-96.

2. Comment: The Fee Regulation requires air districts to provide documentation supporting their facility counts used for distributing the State's cost and calculating fees. The following air districts supplied this documentation, or additional documentation supporting facilities qualifying for an exemption, during the 45-day comment period: the Colusa, El Dorado, Glenn, Imperial, Mariposa, Modoc, Placer, San Diego, San Luis Obispo, Siskiyou, Tehama, Tuolumne and Ventura County APCDs; the Monterey Bay, and San Joaquin Valley Unified APCDs; and the Butte County, Lake County, Mojave Desert, North Coast Unified, Shasta County, and South Coast AQMDs.

Agency Response: The ARB staff used this documentation to ensure that facility counts were accurate and that the appropriate facilities were granted an exemption.

3. Comment: The San Joaquin Valley Unified APCD supplied an updated air district Program cost reflecting a reduced workload as a result of exempting facilities.

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

4. Comment: The ARB received additional documentation and information which support earlier supplied facility counts after the January 25, 1996 hearing. The documentation and information were received from the following air districts: the Bay Area, Feather River, Northern Sierra, South Coast, and the Yolo-Solano AQMDs; the Calaveras, El Dorado, Kern, Northern Sonoma, Santa Barbara and Siskiyou County APCDs; and the Great Basin and Monterey Bay Unified APCDs.

Agency Response: These documents and information were made available for public review and comment during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information. All additional documentation and information are included in the rulemaking record.

5. Comment: The ARB also received additional written documentation and information which support earlier supplied material regarding District Board approved program costs, information supporting program costs, or justification for the flat fees contained in Table 4 of the Fee Regulation from the following air districts after the January 25, 1996 hearing: the Imperial, Placer, and Tuolumne County APCDs; the San Joaquin Valley Unified APCD; and the Yolo-Solano AQMD.

Agency Response: These documents and information were made available for public review and comment during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information. All additional documentation and information are included in the rulemaking record.

6. Comment: Additional data in support of the de minimis levels established for boat and ship building and repair facilities and wastewater treatment facilities were received from the Bay Area AQMD after the January 25, 1996 hearing.

Agency Response: These data were made available for public review and comment during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information, and are included in this rulemaking record.

B. General Comments Regarding the Proposed Amendments to the Fee Regulation for Fiscal Year 1995-96

The ARB received the written and oral comments listed below during the Notice of Public Hearing 45-day comment period and the March 6, 1996 Notice of Public Availability of Modified Text 15-day comment period. No comments were received during the May 1, 1996 Notice of Public Availability of Supporting Documents and Information. In the following discussion of comments and responses, the commenter is identified by his or her last name and with a numeral if multiple comments were received from the same commenter.

Written Comments Received During the 45-Day Comment Period and the March 6, 1996 Notice of Public Availability of Modified Text 15-Day Comment Period

- (1) December 4, 1995 letter from Mr. Douglas B. Noecker, Vice-President, Northwestern Fine Architectural Woodwork, to Ms. Genevieve A. Shiroma, Chief, Air Quality Measures Branch, ARB. (Noecker)

- (2) December 12, 1995 letter from The League of Women Voters of Sacramento, to California Air Resources Board. (League)
- (3) December 27, 1995 letter from Peter Hess, President, California Air Pollution Control Officers Association to Mr. James D. Boyd, Executive Officer, ARB. (Hess)
- (4) January 3, 1996 letter from Mr. Robert L. Reynolds, Air Pollution Control Officer, Lake County Air Quality Management District, to Ms. Genevieve A. Shiroma, Chief, Air Quality Measures Branch, ARB. (Reynolds)
- (5) January 19, 1996 letter from Mr. Jeff Sickenger, Environmental Issues Coordinator, Western States Petroleum Association to Ms. Genevieve A. Shiroma, ARB. (Sickenger)
- (6) January 22, 1996 letter from Mr. Greg Adams, Tri-TAC Air Committee Co-Chair and Mr. Ed Torres, CASA Air Committee Chair, to ARB Secretary, ARB. (Adams & Torres)
- (7) January 23, 1996 letter from Ms. Helen Whitney, Chair, Lake County Air Quality Management District to Mr. John D. Dunlap, III, Chairman and Honorable Board Members, ARB. (Whitney)
- (8) January 24, 1996 letter from Mr. Ed Romano, Air Pollution Control Officer, Glenn County Air Pollution Control District, to ARB Board Secretary. (Romano)
- (9) March 21, 1996 letter from Mr. A. V. Scala, Lieutenant, Civil Engineer Corps, United States Navy, to ARB Board Secretary. (Scala)

Oral and Written Testimony Presented at the January 25, 1996 Hearing of the Air Resources Board

- (10) Ms. Bonnie Holmes, Legislative Director, Sierra Club California, written testimony. (Holmes)
- (11) Mr. Manuel Cunha, Nisei Farmers League, oral testimony. (Cunha)
- (12) Mr. Benjamin Shaw, South Coast Air Quality Management District, oral testimony. (Shaw)
- (13) Mr. David Arrieta, Western States Petroleum Association, oral testimony. (Arrieta)

General Comments Received During the 45-Day Comment Period and the January 25, 1996 Hearing

1. Comment: The Program should be reviewed in terms of how well it is implementing the primary directive to "protect/inform." (Noecker)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State and air districts' costs associated with the Hot Spots Program. However, the ARB staff agrees with this comment and responds as follows. The ARB staff routinely reviews the Program's tasks and costs to look for additional streamlining measures and assesses how well the Program is being implemented. The intent of the two-phased approach to streamlining, approved by the ARB at the January 25, 1996 hearing, is to look for additional ways to streamline the reporting requirements and look for additional cost cutting measures.

The primary goals of the Program are to collect information and protect public health. This is being accomplished through the health risk assessment and public notification processes and risk reduction measures if required. As required by statute, the ARB makes the statewide toxic emission database available to the public. Health and Safety Code section 44363 requires air districts to prepare annual reports describing the risk priority assigned facilities, and the potential cancer and noncancer risks the facilities pose. Through these mechanisms the public is kept informed and their health protected.

2. Comment: What percent of the public is receiving information, becoming more knowledgeable, and altering decisions based on the information? (Noecker)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff incorporates its response to Comment 1 herein, and responds as follows. Although much information is available to the public, the ARB does not have information on hand that indicates the percent of the public that is being informed.

3. Comment: What is the cost of the project? (Noecker)

Agency Response: The State's cost for fiscal year 1995-96, as described in the Staff Report, is \$2,804,000. However, modifications made at the January 25, 1996 public hearing, that were approved by the ARB, reduced the State's cost to \$2,654,151.

4. Comment: Industries monitored for emissions by an air district should be removed from the Program. (Noecker)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff disagrees with this comment and responds as follows. As required by statute, air districts collect the toxic emission data from facilities in their air district. This information is forwarded to the State for compilation into a statewide database that is made available to the public. The Emission Inventory Criteria and Guidelines Regulation, Title 17, CCR, sections 9300-93355, lists specific criteria to be met for a facility to be removed from the Program. Only if these criteria are met can a facility be removed from the Program. Phase II of ARB's streamlining efforts regarding the Program will also assess removal of facilities from Program requirements.

5. Comment: The amount of programs, fees, forms and information the state, county, city and federal governments have forced upon the business owners has become redundant and burdensome. (Noecker)

Agency Response: The ARB staff disagrees with this comment. The State and air districts work together in implementing the Program. As specified by statute, the ARB and the air districts each have specific Program tasks to complete that are not duplicative. The Hot Spots Program is unique to the State of California. Because there is no parallel federal requirement, the Program does not duplicate any federal program.

For Phase II, the ARB has also undertaken major streamlining efforts that are assessing ways to further simplify and reduce the number of forms that businesses use to report their emissions updates. In Phase II ARB is also assessing ways to eliminate reporting requirements for many facilities.

In addition, in developing the amendments to the Fee Regulation the ARB staff is required to conduct an economic impact analysis. This analysis indicated that most businesses seem to be able to absorb the cost of the fees without significant impact on their profitability. The analysis also indicated that assessing the fees should not hinder a business' ability to compete with similar businesses in other states or affect the creation or elimination of jobs or businesses within the State.

6. Comment: We support the regulation and reduction of ambient toxic air pollutants and full disclosure of pollution data. (League)

Agency Response: The ARB approved the proposed amendments to the Fee Regulation at the January 25, 1996 hearing. The comments regarding reduction of air pollutants and disclosure of data are not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Program. However, the ARB staff responds as follows. The Program results in reduction of ambient toxic air pollutants through risk reduction measures for high risk facilities.

In addition, ARB regulations and the Act provide for release of air emission data that are public records and for public notification where required.

7. Comment: The State agency in California responsible for air pollution control should be strengthened and sufficiently funded. (League)

Agency Response: The Fee Regulation approved at the January 25, 1996 hearing provides for recovery of State and air district costs anticipated for implementing the Program for fiscal year 1995-96.

8. Comment: The League provided other general comments regarding air quality and hazardous waste issues. (League)

Agency Response: These comments are not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program.

9. Comment: We appreciate the opportunity to work with staff and provide input into the process. (Hess, Adams & Torres, Cunha, Arrieta)

Agency Response: The amendments to the Fee Regulation were developed through a public process that included numerous meetings and public workshops with air districts, and all other stakeholders.

10. Comment: Sources with little significant risk should not have to carry any financial or recordkeeping burden under this Program. (Hess)

Agency Response: The ARB staff agrees with this Commenter. At the January 25, 1996 hearing the ARB approved a two-phased approach to streamline the Program. Phase I of this effort, the amendments to the Fee Regulation for fiscal year 1995-96, provides fee exemptions for low risk facilities as this commenter suggests. The ARB staff will consider reducing the recordkeeping requirements for low risk facilities as part of Phase II.

11. Comment: We support the Phase I recommendation, the amendments to the Fee Regulation for fiscal year 1995-96. (Hess, Sickenger, Adams & Torres, Cunha, Shaw, Arrieta)

Agency Response: The ARB approved the amendments to the Fee Regulation for fiscal year 1995-96 at the January 25, 1996 hearing.

12. Comment: In Phase II the Program should be down-sized in order to minimize the impact on sources that really have little or no risk. (Hess)

Agency Response: The ARB staff agrees with this Commenter. The effort to further minimize the impact on low risk facilities will be considered in Phase II.

13. Comment: We trust you will consider our previously provided recommendations as we move forward with the Hot Spots Program. (Hess)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff appreciates recommendations previously provided regarding the Program and will use them in assessing additional streamlining measures in Phase II, along with input from the public and interested parties.

14. Comment: Development of the de minimis values has added a measure of sanity and fairness to the inclusion of tiny sources in the Program. (Reynolds, Whitney)

Agency Response: The ARB approved the amendments to the Fee Regulation at the January 25, 1996 hearing. These amendments included fee exemptions for certain categories of facilities based on de minimis levels.

15. Comment: It should be included in the Staff Report that local air districts adopting their own fee rule may collect state fees in any manner they choose provided the net fee owed the State is collected. It should also be made clear that small businesses would be charged only once and that the amount of fee be established by the air district. (Reynolds)

Agency Response: The ARB staff agrees with this commenter. However, this comment was received after publication of the staff report. Health and Safety Code section 44380 allows a district to adopt its own fee regulation that recovers the air district and State cost. In adopting its own fee regulation an air district must base fees on toxic emissions and risk priority to the extent practical, if it has an approved toxic emission inventory. If an approved toxic emission inventory does not exist, an air district can establish a method which is equitable and workable in their air district and may incorporate exemptions that are appropriate as long as the air district recovers costs as required. At the hearing the ARB staff reiterated that an air district can adopt its own fee regulation using its own method.

16. Comment: A state fee exemption for small/tiny businesses should be included until Phase II. This would allow time to work out a more realistic and reasonable de minimis for all affected Standard Industrial Classification codes. (Reynolds)

Agency Response: The ARB staff agrees with commenter. Fee exemptions for a number of low risk small businesses were included in the amendments to the Fee Regulation. The ARB staff acknowledges, however, that not all small businesses qualified for a fee exemption. The ARB staff will work to determine if additional de minimis categories could be specified during the Phase II streamlining effort.

17. Comment: The Western States Petroleum Association (WSPA) recommends that the ARB change the fee calculation methodology from the existing program category system to a direct fee-for-service system in fiscal year 1996-97. Some tasks should be covered by general fund monies. (Sickenger, Arrieta)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff believes this recommendation to be appropriate for use in assessing the Phase II streamlining measures. Nevertheless, it should be noted that reasonable anticipated costs incurred by the State in implementing the Program are to be recovered through assessing fees on facilities. Basing fees entirely on a fee for service basis does not fulfill the requirements of Health and Safety Code section 44380(a)(3) which specifies that fees are to be based on health risk priority and toxic emissions to the maximum extent practicable. To recover Program costs through a funding mechanism other than fees would require a legislative change to the statute. However, an amendment to the Fee Regulation for fiscal year 1995-96 now requires air districts to reimburse the OEHHA on a fee-for-service basis for risk assessment review. This provision is in accordance with Health and Safety Code section 44361(c).

18. Comment: The ARB should provide direction to the local air districts in implementing the streamlining measures developed during the 1993 regulatory update process. (Sickenger)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff responds as follows. ARB staff works closely with the air districts and has given guidance to the air districts in implementing the streamlined emission reporting requirements. However, the streamlining measures adopted by the State do not preclude an air district from requiring additional emission reporting.

19. Comment: The WSPA recommends that the ARB and the OEHHA include guidance for local districts on uniform application of the new risk assessment and risk reduction guidelines to affected facilities. (Sickenger)

Agency Response: These comments are not directed at the amendments to the Fee Regulation for fiscal year 1995-96 which deal only with assessing fees sufficient to defray the State's and air districts' costs associated with the Hot Spots Program. However, the ARB staff responds as follows. It is the intent of the ARB and OEHHA to assist air districts and stakeholders in understanding and utilizing the new risk assessment guidelines and the risk reduction guidelines.

20. Comment: Current proposals to impose fees and other program requirements on facilities with a prioritization score of 0.1, a cancer risk of one per million and/or a hazard index of 0.1 will not focus the Program on facilities that pose a significant risk to public health. (Sickenger)

Agency Response: The ARB staff disagrees with this comment. The intent of the Phase I exemptions was to quickly exempt facilities from fees that clearly do not constitute or contribute to an air toxic hot spot. In Phase II ARB staff will assess whether more exemptions for facilities that do not present a significant risk to the public would be appropriate.

21. Comment: Continued incremental development of fee exemption levels for selected facility classes is clearly not in the best interest of all Hot Spots Program stakeholders. (Sickenger)

Agency Response: The ARB staff disagrees with this commenter. Development of exemption levels for selected facility classes is intended to reduce the burdens on small businesses in complying with Program requirements. Setting specific de minimis levels saves many small businesses the cost of preparing complete emission inventory reports to determine if they would qualify for an exemption. Setting these levels also could contribute to reducing the workload for air districts. This clearly is providing financial relief to many small businesses.

22. Comment: All facilities that are below district action levels should benefit from substantial reduction of program costs and administrative burdens. (Sickenger)

Agency Response: The ARB staff agrees with this commenter and notes that facilities that did not qualify for a fee exemption in Phase I will realize a 19 percent reduction in their State Program cost compared to fiscal year 1994-95. Nevertheless, facilities that release listed substances, even if they are below air district action levels for public notification or health risk assessment preparation, may still be appropriately included in the Program and be subject to Program requirements.

23. Comment: The WSPA's recommendations should provide an equitable framework for achieving the maintenance mode for the Program in a reasonable timeframe. (Sickenger)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However the ARB staff believes the WSPA's comments are appropriate for use as we look for additional streamlining measures in Phase II.

24. Comment: We support the Phase II amendments/concepts which will further streamline reporting requirements and applicability criteria. (Adams & Torres, Cunha, Arrieta)

Agency Response: The ARB approved the two-phased approach for streamlining the Program at the January 25, 1996 hearing. Phase II of the streamlining process will be completed for implementation in fiscal year 1996-97.

25. Comment: The Tri-TAC supports the proposed amendments which eliminate fees for certain POTWs and supports fee exemptions for facilities with low cancer risks and health hazard indices. (Adams & Torres)

Agency Response: The ARB approved these amendments at the January 25, 1996 hearing.

26. Comment: The ARB should play an active role in causing a version of the Phase I exemption list to be included in the air quality districts which have chosen not to implement the State's fee Program structure. (Adams & Torres)

Agency Response: The ARB staff disagrees with this comment. Only those air districts which have requested ARB adoption of facility fee schedules are required to implement the same Phase I exemptions in determining facility fees. It is appropriate for air districts to have the option of incorporating these same exemptions or exemptions that are appropriate for the facilities in their air district as long as the air districts recover State and air district Program costs. An air district may also choose to not exempt facilities from paying fees. Requiring all air districts to adopt the same exemptions in their air district's fee rule would most likely require amendment of local fee rules.

27. Comment: We support the proposed two-phased approach. (Whitney)

Agency Response: The ARB approved the two-phased approach to streamline the Program at the January 25, 1996 hearing.

28. Comment: State agencies often force an urban program on rural areas without consideration for the opportunities or problems that result. (Whitney)

Agency Response: The ARB staff disagrees with this comment. The Air Toxics Hot Spots Program is required by a State law to be implemented in all air districts whether it is predominately an urban or rural air district. By law the ARB must implement its responsibilities for the Program in all air districts. These responsibilities include the requirement to adopt a Fee Regulation that recovers the State's costs from all facilities in all air districts subject to the Act.

29. Comment: We support the inclusion of de minimis levels to exempt small facilities with insignificant toxic risk to the public. (Romano)

Agency Response: The ARB approved the amendments to the Fee Regulation at the January 25, 1996 hearing. These amendments included fee exemptions for small facilities based on de minimis throughputs or usages.

30. Comment: In fiscal year 1996-97 fees for the Program should be based on toxic emissions rather than criteria pollutant emissions. (Romano)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff believes this comment is appropriate for use in assessing the amendments to the Fee Regulation for fiscal year 1996-97.

31. Comment: In fiscal year 1996-97 the ARB should change how facilities that do not pose a "significant risk" to the public are included in the Program. (Romano)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, although this commenter does not define "significant risk", the ARB staff agrees with this commenter. Implementing the Phase II streamlining efforts for fiscal year 1996-97 will include amendments to the Emission Inventory Criteria and Guidelines Regulation, including consideration of ways reduce the reporting requirements for lower risk facilities. The ARB staff will also assess additional fee exemptions or reduced fees for lower risk facilities in the amendments to the Fee Regulation for fiscal year 1996-97.

32. Comment: Further progress must be made in fiscal year 1996-97 in implementing CAPCOA suggestions. (Romano)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff believes CAPCOA's suggestions are appropriate to use in assessing further streamlining of the Program and reducing costs in Phase II. The Phase II concepts for further streamlining of the Program were approved by the ARB at the January 25, 1996 hearing.

33. Comment: By exempting facilities from the Program you are stripping the Program of the ability to fully assess cumulative impacts to local residents. (Holmes)

Agency Response: The ARB staff disagrees with this comment. The Phase I amendments to the Fee Regulation include exemptions from fees only and do not exempt facilities from complying with other requirements of the Program. Also, the statute does not require the State or air districts to assess cumulative impacts of facility releases on local residents.

34. Comment: We do not fully understand the impacts on the program of the fee reductions that you are considering today or the impacts at the district level. We are concerned the Phase I fee reductions may have adverse effects on ongoing efforts to carry out the Hot Spots Program requirements. (Holmes)

Agency Response: The ARB staff disagrees with this comment. Although the ARB is reducing its cost to operate the Program, we are able to do this because many Program tasks have been completed or are nearing completion during this fiscal year. The ARB's intent is to maintain essential Program elements so that we can continue to monitor facilities posing a potential health risk. The reasons that we are able to reduce our costs are detailed in the Staff Report. The State's cost reductions do not impair air districts' implementation of the Program. Each air district is required to recover its Program cost by assessing fees on facilities in the air district.

35. Comment: In Phase II the ARB should consider not only ways to streamline program requirements, but ways to strengthen the program. (Holmes)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff believes this comment appropriate for use as the Phase II streamlining measures are assessed.

36. Comment: In Phase II the ARB staff should look at expediting community notification, expanding notification requirements and expanding the Program to consider cumulative risk. (Holmes)

Agency Response: This comment is not directed at the amendments to the 1995-96 Fee Regulation which deal only with assessing fees sufficient to defray State and air districts' costs associated with the Hot Spots Program. However, the ARB staff responds as follows. As required by statute, air districts have the primary responsibility for requiring businesses to notify the public. Each air district determines the notification level and the procedures to fulfill the public notification requirements. Current statute allows air districts to consider a number of factors, including cumulative risk, in making these determinations.

37. Comment: The amendments to the Fee Regulation are creating problems for the South Coast AQMD. With the Fee Regulation coming seven months into a fiscal year, I'm faced with making Program cuts. (Shaw)

Agency Response: The ARB staff disagrees with this commenter. The South Coast AQMD is adopting its own fee rule for fiscal year 1995-96 and is not required to incorporate the State's exemptions into their fee rule. This air district's fee rule is required to recover its Program costs as well as their portion of the State's cost.

38. Comment: In Phase II when looking at the Fee Regulation please consider that in the SCAQMD we have about 30 percent of the work yet to go and the Fee Regulation funds the resources to complete the program. (Shaw)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. However, the ARB staff believes this commenter's suggestion is appropriate for assessing the amendments to the Fee Regulation for fiscal year 1996-97. However, it should be noted that the South Coast AQMD is required by law to recover its costs for implementing the Program.

39. Comment: The Program is ready to be put into the maintenance mode situation. We would like to see the Program costs moved to a direct fee for service as much as possible. (Arrieta)

Agency Response: The ARB staff disagree with this commenter. The ARB staff has agreed to investigate the State's cost for the Program at a maintenance mode level. However, considerable work remains to be completed before the Program can operate at the maintenance level. Regarding the second portion of this comment, moving the fee structure to a direct fee for service will not fulfill the requirements of Health and Safety Code section 44380(a)(3), which specifies that fees be based on toxic emissions and health risk priority to the maximum extent practicable. However, an amendment to the Fee Regulation for fiscal year 1995-96 now requires air districts to reimburse the OEHHA on a fee-for-service basis for risk assessment review. This provision is in accordance with Health and Safety Code section 44361(c).

40. Comment: The Program should focus on the truly significant facilities. (Arrieta)

Agency Response: This comment is not directed at the amendments to the Fee Regulation for fiscal year 1995-96. Although the commenter does not define what a truly significant facility is, the ARB staff believes this comment appropriate for use as the Phase II streamlining measures are developed.

Comments Received During the March 6, 1996 Notice of Public Availability of Modified Text

41. Comment: The classification of low priority facilities should be made on a simple, low cost basis, for the benefit of all facilities as well as the State. (Scala)

Agency Response: This comment is not directed at the amendments proposed in the March 6, 1996 Notice of Public Availability of Modified Text. However, the ARB staff agrees with this comment and responds as follows. The exemptions from the Fee Regulation for low priority facilities are designed to be simple and to be determined by the facility or the air district at a low cost. Prioritization scores, which were used to determine low priority facilities, were already available for the majority of non-industrywide facilities. Therefore, determining facilities qualifying for this exemption type was done at little or no cost to air districts, the State, and facilities. For facilities not yet prioritized the ARB staff determined simple de minimis throughput and/or usage levels for five types of facilities. By establishing these levels, the facilities will save the costs associated with preparing complete emission inventories to determine if they qualify for an exemption. The ARB staff also committed to determine if more de minimis levels could be established during the Phase II streamlining effort.

42. Comment: The analysis to determine each facility's true risk and whether the facility is low risk will require considerable assets. This will act to keep the cost level. (Scala)

Agency Response: This comment is not directed at the amendments proposed in the March 6, 1996 Notice of Public Availability of Modified Text. However, the ARB staff disagrees with this comment and responds as follows. The ARB staff, working with air districts, analyzed available data to determine appropriate exemption levels based on risk. These analyses were done

without any increased Program costs. Furthermore, for each facility exempted, as described in the Staff Report, the State reduced its cost in kind. Therefore, none of the State's cost associated with the exempted facilities was redistributed and facilities not qualifying for a fee exemption will have a 19 percent reduction in their State cost. The approved amendments reduce the State's Program by over \$1.5 million compared to last year.

43. Comment: When the lower priority facilities are excluded from fees the remaining facilities will pay larger fees to cover the total State cost. (Scala)

Agency Response: This comment is not directed at the amendments proposed in the March 6, 1996 Notice of Public Availability of Modified Text. However, the ARB staff disagrees with this comment, incorporates its Response to Comment 42 herein, and responds as follows. Rather than redistributing its cost among facilities not qualifying for an exemption, the State reduced its Program. As a result of this, the State's total cost and the State cost per facility is reduced compared to fiscal year 1994-95.

44. Comment: Exempting low priority facilities is a commendable goal, but criteria other than risk should be used. (Scala)

Agency Response: This comment is not directed at the amendments proposed in the March 6, 1996 Notice of Public Availability of Modified Text. Although the ARB staff agrees that exempting low priority facilities is a desirable goal, the ARB staff disagrees with the remainder of this comment and responds as follows. At the January 25, 1996 hearing the ARB approved the amendments to the Fee Regulation including the amendments to exempt low priority facilities based on potential health risk. One of the goals of the Program is to determine if a facility's emissions pose potential health risks. Therefore, information regarding potential risk is readily available from most air districts, can be easily applied at a low cost, and is consistent with the goals of the Program. The Commenter offers no alternative criteria that exemptions could be based on.

45. Comment: Criteria for exempting facilities that do not lower the administrative burden to the State will result in higher fees for the remaining facilities. (Scala)

Agency Response: This comment is not directed at the amendments proposed in the March 6, 1996 Notice of Public Availability of Modified Text. However, the ARB staff disagrees with this comment, incorporates its Response to Comment 42 herein, and responds as follows. The criteria for exempting facilities were developed because they were simple and easy to apply without an increased administrative burden for the State or the air districts. Establishing the exemptions did not result in increased costs for the State.