

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE OZONE TRANSPORT MITIGATION REGULATIONS

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the ozone transport mitigation regulation.

DATE: May 22, 2003

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Central Valley Auditorium, Second Floor
1001 I Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 22, 2003 and may continue at 8:30 a.m., May 23, 2003. This item may not be considered until May 23, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before May 22, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact ARB's Clerk of the Board at (916) 322-5594, or sdorias@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 17, California Code of Regulations (CCR), sections 70600 and 70601.

Background

The goal of the California Clean Air Act (CCAA or Act) is to attain health-based air quality standards by the earliest practical date. The Act requires that each air pollution or air quality management district (district) not attaining the State standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide develop and implement an air quality plan designed to achieve those standards. For ozone, one of California's most persistent and serious air quality problems, the Act specifically recognizes that districts need to mitigate the impact of pollutants that they generate and transport downwind.

The movement of air pollutants from one air basin to another is referred to as "transport." The Act, in Health and Safety Code section 39610, directs the Board to

identify transport couples, to assess the relative contribution of upwind emissions on downwind ozone concentrations to the extent permitted by available data, and to establish mitigation requirements.

In 1990, ARB adopted both the transport identification regulation and the transport mitigation regulations. The transport identification regulation, which is set forth in title 17, CCR, section 70500, lists each "transport couple" identified by the Board. The transport couple includes the upwind air basin or planning area and the downwind receptor area. The transport mitigation regulations, set forth in title 17, CCR, sections 70600 and 70601, establish the emission control requirements applicable to districts located in the upwind areas identified in section 70500(c).

The current mitigation regulations contains two key provisions. First, the application of best available retrofit control technology (BARCT) must be utilized on existing stationary sources. At a minimum, BARCT was to be applied to those sources that represented 75% of the 1987 actual reactive hydrocarbon and oxides of nitrogen emissions inventory for permitted stationary sources by January 1, 1994. This provision has been fully implemented. The second requirement is that upwind districts include sufficient measures in their ozone attainment plan to mitigate their impact on specified downwind areas. The second requirement is a long-term goal that relies on the availability of modeled attainment demonstrations for the State ozone standard.

The original mitigation regulations also included a requirement that accelerated the implementation of the "no net increase" permitting requirements for new and expanding stationary sources already required under the CCAA. However, changes made to the Act in 1992 amended the original "no net increase" permitting requirements that applied to all new and expanding stationary sources for all but extreme ozone nonattainment areas. In its place, moderate, serious, and severe ozone nonattainment areas were allowed to permit incrementally smaller stationary sources without mitigating, or fully offsetting, their air quality impacts. The "no net increase" permitting requirements were subsequently removed from the mitigation regulations in 1993 to be consistent with the changes made to the CCAA.

In 2001, the Board raised questions about the continuing effectiveness of current mitigation requirements, which have remained unchanged since 1993. The Board directed staff to develop regulatory proposals to strengthen the transport mitigation requirements. One issue raised by the Board is that some upwind districts have less stringent "no net increase" permitting requirements under the Act than their downwind neighbors. There is a need for upwind and downwind districts to take equivalent actions to mitigate new emission increases. Second, district compliance with mitigation requirements is presently reviewed every three years as part of the triennial review of attainment plans. There is a need to provide a more timely and structured review process that ensures that upwind districts are doing all they can to reduce emissions to achieve State standards in both upwind and downwind areas. Finally, the ARB staff has determined that the near-term, minimum BARCT

requirements mentioned above have been fully implemented for a number of years and the regulations should be updated to reflect this.

Proposed Amendments

Based upon staff review of the ozone transport mitigation regulations and the consideration of air district and public input on strategies considered, the ARB staff is proposing the following amendments to the ozone transport mitigation regulations: (1) require that upwind districts have the same “no net increase” permitting thresholds as their downwind districts; (2) add requirements to ensure that upwind districts are adopting and implementing “all feasible measures” as expeditiously as possible; (3) delete outdated BARCT requirements; and (4) expand the existing provision that allows a limitation on the application of BARCT to include “all feasible measures” and take into account updated transport assessments. These changes would amend sections 70600 and 70601, title 17, CCR and are summarized below.

New Source Review Permitting Requirements

ARB staff is proposing to require equal New Source Review (NSR) “no net increase” thresholds for sources in upwind and downwind areas. The goal of the NSR permitting program is to maintain air quality progress while accommodating economic growth and expansion. This is achieved by offsetting growth in emission increases from new and expanding stationary sources with emission reductions not otherwise required by law, and is known as the concept of “no net increase.”

In several cases, upwind areas have less stringent permitting requirements under the Act than their downwind neighbors. Currently, a district’s “no net increase” threshold (i.e., the quantity of emissions that makes a source subject to it) is specified by the Act, based on its nonattainment classification for the State ozone standard. Areas classified as moderate have a "potential to emit" threshold of 25 tons per year, areas classified as serious have a threshold of 15 tons per year, and areas classified as severe have a threshold of 10 tons per year. Areas classified as extreme, which includes only the South Coast Air Basin, have no threshold; that is, all sources are subject to the “no net increase” requirement.

The ARB staff proposal that “no net increase” thresholds for upwind districts be as stringent as those that exist for their downwind districts would help ensure that both upwind and downwind neighbors are taking comparable actions to mitigate emissions from new and expanding stationary sources.

The proposed amendments would affect the Bay Area Air Quality Management District (BAAQMD) and the five districts located in the Broader Sacramento Area. They would be required to amend their “no net increase” thresholds from 15 tons per year to 10 tons per year by December 31, 2004. This will result in these districts achieving the same “no net increase” threshold levels as their downwind neighbor, the San Joaquin Valley Air Pollution Control District.

ARB staff is not proposing that districts upwind of the South Coast be included in this permitting requirement because of South Coast's classification of extreme. As noted, there is no threshold for an extreme area due to the severity of its air quality problem. The unique status of this downwind area, combined with the localized nature of the transport impacts from the upwind areas of Santa Barbara and Ventura, make the applicability of this concept inappropriate in this case.

No changes are proposed to the thresholds for applying best available control technology (BACT), which are also part of the NSR programs.

All Feasible Measures

ARB staff is also proposing to add language requiring the implementation of "all feasible measures" as expeditiously as practicable. Under the CCAA, districts that are not attaining the State ozone standard are required to include every feasible measure in the triennial update to each district's ozone attainment plan. Also, districts have broad responsibility under the CCAA to reduce their emissions in both the upwind and downwind areas. Health and Safety Code section 40912 requires districts responsible for transport to provide for the attainment and maintenance of the State ozone standard in both the upwind and downwind district.

The goal of this proposed change is to provide for a more timely review process that, in combination with the requirements of the CCAA, ensures that upwind districts are responsible for reducing their emissions to achieve the State ozone standard in the downwind districts. The proposed amendments would: (1) add a requirement to the transport mitigation regulations that districts adopt all feasible measures as expeditiously as practical, (2) add an annual review, a consultation and public comment forum, and a reporting process for the implementation of "all feasible measures" between three-year planning cycles, (3) add a definition of "all feasible measures" and "ozone precursors," (4) expand the limitation procedure currently provided for BARCT adoption to allow the same alternative compliance path for "all feasible measures," and (5) add an additional option to the alternative compliance path that allows districts to demonstrate in their attainment plan that their transport impact is inconsequential.

Best Available Retrofit Technology

ARB staff is proposing to delete outdated language concerning BARCT requirements. The current mitigation regulation contains requirements for the application of BARCT to permitted stationary sources that represent 75% of the 1987 actual reactive hydrocarbon and nitrogen oxides emissions inventory for permitted stationary sources by 1994. The purpose of this requirement was to accelerate the application of BARCT to permitted stationary sources. This requirement has been fully implemented for a number of years, and is now obsolete. No other changes are proposed to the existing requirement for BARCT on existing stationary sources.

COMPARABLE FEDERAL REGULATION

There are no comparable federal regulations for the adoption of “all feasible measures” in upwind, intrastate transport areas. Although there are comparable federal regulations for NSR programs, more health-protective programs for NSR are required under the CCAA in Health and Safety Code sections 40918-40920 than under the federal Clean Air Act and United States Environmental Protection Agency's (U.S. EPA) implementing regulations. State requirements have more stringent permitting thresholds and technology requirements than federal NSR requirements and have been incorporated into the federally required State Implementation Plan (SIP) approved by the U.S. EPA. The stringent State NSR provision, therefore, replaces federal NSR requirements. The proposed transport mitigation requirements affect existing State NSR requirements to enable the ARB and the districts to comply with CCAA transport requirements.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The ARB staff has prepared a Staff Report for the proposed regulatory action. This "Initial Statement of Reasons" (ISOR), includes a summary of the potential environmental and economic impacts of the proposal, environmental justice considerations, and supporting technical documentation. The staff report is entitled: “Initial Statement of Reasons for Rulemaking, Proposed 2003 Amendments to Ozone Transport Mitigation Regulations.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be obtained from the ARB's Public Information Office, Environmental Services Center, 1001 “I” Street, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to our scheduled hearing (May 22, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquires concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Merrin Bueto, Air Pollution Specialist, at (916) 322-6013 or via email at mbueto@arb.ca.gov, or Gayle Sweigert, Manager, Air Quality Analysis Section, Planning and Technical Support Division, (916) 322-6923 or via email at gsweiger@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator,

(916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. The material is available for inspection upon request to the contact persons.

If you are a person with disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/trans03/trans03.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

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

The proposed requirements for an annual review, consultative and public comment period, and reporting requirements for the adoption of all feasible measures are not anticipated to impose significant additional costs on local and state agencies, since both local and state agencies can absorb the costs within the existing budget. If the proposed amendments will impose a mandate upon, and create costs to, the air districts responsible for transport, reimbursements from the state to the districts are not required pursuant to Government Code sections 17500 et seq., and section 6 of article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to pay for the mandated program upon permitted stationary sources which emit the pollutants (Health and Safety Code section 42311).

Although the proposed regulatory action will not result in a significant increase in costs to the State, future regulations may be necessary to achieve or maintain the proposed standards. When the districts propose to adopt such regulations, any associated costs will be examined in accordance with statutory requirements and justified by the benefit to human health, public welfare, or the environment.

The Executive Officer has also determined that the proposed regulatory action for NSR requirements may affect businesses wanting to expand in the Bay Area and Broader Sacramento area. These businesses may potentially be subject to stricter thresholds if

they chose to modify their operations; however, any costs associated with the stricter thresholds are anticipated to be minimal.

Furthermore, the Executive Officer's initial assessment is that the proposed regulatory action will not adversely affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. Although the NSR requirements may impose stricter thresholds, there is no indication that these businesses will be unable to operate. A full assessment of the economic impact of the proposed regulatory action can be found in the Staff Report (ISOR).

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. However, it may affect the ability of some California businesses to compete with businesses in other states, or on representative private persons due to the costs associated with the districts' adoption and implementation of "all feasible measures."

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Because the adoption of "all feasible measures," does not mandate the implementation of specific technologies and districts have flexibility in their individual rulemaking, the ARB has determined that there are no cost impacts that a representative private person or business would necessarily incur until a district adopts and implements a "new" feasible measure. At that time, the districts must conduct a socio-economic impact analysis and determine the impacts on business. Only those businesses located within the areas of origin of transported air pollutants, as identified in section 70500(c), may be affected by the incorporation of "all feasible measures." Additionally, upwind districts are already required under the CCAA to implement and adopt "all feasible measures."

California business should be able to absorb any costs of the proposed regulatory action without significant adverse impacts on their profitability. Some businesses would potentially experience a greater reduction in their profitability than others; however, the impact should remain absorbable.

Finally, the Executive Officer has also determined that the proposed regulatory action may affect small business.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than 12:00 noon, May 21, 2003, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to trans03@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon, May 21, 2003.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than 12:00 noon, May 21, 2003.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY

This regulatory action is proposed under that authority granted in sections 39600, 39601 and 39610(b) of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39610, 40912, 40913, 40921 and 41503 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantive or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications related to "all feasible measures," BARCT, and stationary source permitting programs if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action.

In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, Environmental Services Center, 1001 "I" Street, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date:

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web site at www.arb.ca.gov.