

Updated Informative Digest

ADOPTION OF AMENDMENTS TO THE OZONE TRANSPORT MITIGATION REGULATIONS

Sections Affected

Amendments to title 17, sections 70600 and 70601, California Code of Regulations (CCR).

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 contain 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. Another issue is whether upwind districts would continue to meet their mitigation responsibilities, once they have reached the State ozone standard within their own jurisdiction. Currently, upwind districts are implementing “all feasible measures” to attain the State ozone standard in their own district; however there is no mechanism that would require them to continue to pursue “all feasible measures” to mitigate transport impacts once they reach attainment. Finally, the near-term, minimum BARCT requirements mentioned above have been fully implemented for a number of years and the regulations need to be updated.

Description of Regulatory Action

The amendments modify section 70600 to define, and require upwind districts to adopt, “all feasible measures” as expeditiously as possible, regardless of the upwind district’s attainment status. The amendments also require some upwind districts to modify their stationary source permitting rules in order to have equivalent offset thresholds as those of their downwind transport recipients. The offset requirements are applicable to districts located in the Broader Sacramento Area and the Bay Area Air Quality Management District. These districts are required to amend their new source review rules to reflect a 10 ton per year offset threshold applicable to ozone precursors by December 31, 2004. In addition, the amendments delete the dates and percentages for BARCT requirements that have already been complied with by upwind districts.

The amendments modify section 70601 to extend the limitation procedure that now exists for the BARCT requirement to the “all feasible measures” requirement. The limitation procedure allows an upwind district to demonstrate, as part of its attainment plan, that a measure is not needed in the downwind district or an alternative compliance strategy is as effective as the requirements specified in section 70600. Section 70601 was also amended to add an additional option to the limitation procedure that allows an upwind district, as part of its attainment plan, to demonstrate that the most recent transport assessment shows that the district’s transport impact is inconsequential. The limitation

procedure is also referred to as the “exception” procedure because it allows “exceptions” to the requirements specified in section 70600 of the regulations.

At a public hearing on May 22, 2003, the Board approved the proposed amendments to the ozone transport mitigation regulations with certain modifications to the originally proposed language. These modifications were suggested by the ARB staff in response to public comments received after the release of the proposed regulations on April 4, 2003. Following is a summary of the modifications:

Section 70600

(a) Definitions

1. In subsection (a)(1) two changes were made to the definition of “all feasible measures.” The first change was to clarify that cost-effectiveness is included in the definition of "all feasible measures." The second change was the substitution of the term source categories for the term sources in the definition. The reason for this was to clarify the intent that the originally proposed terminology “all air pollution sources under a district’s authority” be interpreted as to require a district's evaluation of source categories, not every source within a particular category.
2. A non-substantive change was made to the definition of ozone precursors in subsection (a)(2) by adding an “s” to the word “mean” and changing the first letter in the word “ozone” from upper case to lower case.

(b) Specific Requirements

1. The term "commensurate with level of contribution" was added to section 70600(b) for consistency with section 39610 of the H&SC, which directs the ARB to establish mitigation requirements commensurate with the degree of contribution from the upwind district.
2. Language was also added to specify that upwind districts are subject to the mitigation requirements regardless of their ozone attainment status. State law specifically requires upwind districts to plan for attainment in both their own district and that of the downwind districts, and to also at a minimum, include in their attainment plan all of the mitigation measures required by ARB. The term “mitigation plans” clarifies that upwind districts that attain the standard in their own district are still required to comply with the transport mitigation requirements as part of the triennial planning process.

(c) Implementation

1. Deleted the originally proposed requirement for an annual review of “all feasible measures and added new language that aligned implementation with the triennial planning process.

Section 70601

1. New language was added to subsection (c) to clarify that the procedure that allows a district to demonstrate that an equally effective emissions reduction strategy may substitute as an alternative to “all feasible measures” must be based upon the best available scientific information, including air quality modeling. This language clarifies that the use of air quality models is allowed. Previous language implied that the use of air quality modeling analyses was allowed, but was not explicitly stated.

The Board in its resolution of approval also made the following directives:

1. The Executive Officer should work with districts, industry, and the public to pursue scientific approaches to improve ozone transport assessments and to develop methods to assess transport of particulate matter and its precursors;
2. The Executive Officer should continue to work with the California Air Pollution Control Officers Association on transport issues and to report back to the Board next year on the implementation of the ozone transport mitigation regulations;
3. The Executive Officer should include an evaluation of the effectiveness of the ozone transport mitigation regulations in conjunction with the triennial transport assessments; and
4. The Executive Offer should continue to work closely with the districts to address the issue of the availability of offsets.

After considering the comments received as a result of the Public Notice of Availability of Modified Text, which was released to the public for comment beginning July 24, 2003, the Executive Officer determined that non-clarifying changes are not warranted. The Executive Officer issued Executive Order G-03-061 adopting the regulation, which is incorporated by reference herein.