

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

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

Public Hearing Date:	May 22, 2003
Public Availability Date:	July 24, 2003
Deadline for Public Comment:	August 8, 2003

At a public hearing held May 22, 2003, the Air Resources Board (the Board or ARB) considered amending sections 70600 and 70601 of title 17 of the California Code of Regulations (CCR) to make several changes to the existing ozone transport mitigation regulations. These requirements implement section 39610 of the Health and Safety Code and are applicable to upwind districts, i.e., those air pollution control or air quality management districts (districts) that are located in areas that the Board has identified as the origin of transported emissions of ozone or ozone precursors.

The amendments would define, and would require upwind districts to adopt, "all feasible measures" as expeditiously as possible, regardless of the district's attainment status. They would also require some upwind districts to modify their stationary source permitting programs so that their "no net increase" offset thresholds would be as stringent as those of their downwind transport recipients. The amendments were described in detail in the Staff Report (Initial Statement of Reasons for Proposed Rulemaking) released on April 04, 2003, which accompanied the March 25, 2003 Notice of Public Hearing.

The Board's Action and Summary of Proposed Modifications

After the staff presentation and public testimony, and at the conclusion of the public hearing, the Board adopted Resolution 03-9, in which it approved the originally proposed amendments with several modifications. The modifications had been proposed by the staff as a result of comments received during the 45-day public comment period. The Resolution, which is attached to this Notice as Attachment 1, directed the Executive Officer to incorporate the approved modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate after making the modified text available for a supplemental comment period. The staff proposed all of the modifications in a May 22, 2003 document entitled "Changes to the Staff's Original Proposal: Ozone Transport Mitigation Regulations," which was distributed at the public hearing. The text of the proposed modifications to the originally proposed amendments is presented below along with the reasons for the changes. Modifications to the original staff proposal are underlined to indicate new language and the proposed deletions are indicated by ~~strikeout~~. Public comment is invited on the modified text.

Title 17, California Code of Regulations, 70600. Emission Control Requirements.

Definitions

In the definition of "all feasible measures," the term "sources" was replaced with "source categories" in order to effectuate the staff intent that the term "all air pollution sources under a district's authority" be interpreted to require a district's evaluation of source categories, not every source within a particular category.

Also, minor changes were made to the definition to clarify that cost-effectiveness is part of the economic factors that upwind districts would consider when implementing the "all feasible measures" requirement. The districts consider cost-effectiveness of potential measures as part of their ongoing implementation of the California Clean Air Act, as required by section 40926 of the Health and Safety Code. In addition, the definition of "ozone precursors" was amended to reflect a non-substantive edit.

The revised text of section 70600(a)(1) and section 70600(a)(2) is as follows:

"All Feasible Measures" means air pollution control measures, including but not limited to emissions standards and limitations, applicable to all air pollution sources categories under a district's authority that are based on ~~achieve~~ the maximum possible degree of reductions of achievable for emissions of ozone precursors, taking into account technological, social, environmental, energy and economic, ~~and energy~~ factors, including cost-effectiveness.

"Ozone precursors" means oxides of nitrogen and reactive organic gases.

Specific Emission Control Requirements

The term "commensurate with level of contribution" was added for consistency with section 39610 of the Health and Safety Code, which directs the ARB to establish mitigation requirements commensurate with the degree of contribution from the upwind district.

Language was added to clarify the intent of the original proposal that upwind districts are subject to the mitigation requirements regardless of their attainment status. State law specifically requires upwind districts to plan for attainment in both their own district and that of the downwind districts, and, at a minimum, to include in their attainment plan all of the mitigation measures required by the ARB pursuant to section 39610(c) of the Health and Safety Code. The new language "attainment/transport mitigation plans" clarifies that upwind districts, regardless of attainment status, are responsible for compliance with transport mitigation requirements in their triennial update to attainment plans. That is, attainment plans must include a transport mitigation element.

Our proposed modifications to section 70600(b) are as follows:

Districts within the areas of origin of transported air pollutants, as identified in section 70500(c), shall include sufficient emission control measures in their attainment plans for ozone adopted pursuant to ~~part 3, Chapter 10 (commencing with section 40910) of division 26~~ of the Health and Safety Code, ~~Part 3, Division 26, beginning with section 40910~~, to mitigate the impact of pollution sources within their jurisdictions on ozone concentrations in downwind areas commensurate with the level of contribution. An upwind district shall comply with the transport mitigation planning and implementation requirements set forth in this section regardless of its attainment status, unless the upwind district complies with the requirements of section 70601. At a minimum, the attainment/transport mitigation plans for districts within the air basins or areas specified below shall conform to the following requirements:

Implementation

We are proposing to replace the requirement for an annual review of all feasible measures with new language that aligns the adoption and implementation with the triennial plan review process. This change was made in response to comments that an annual review would require excessive district resources and that formalizing review from a transport perspective every three years would achieve comparable results.

Therefore, we propose to delete the following language from the originally proposed regulatory language in section 70600(c):

- ~~(1) By November 1 of each year, each district subject to the requirements set forth in section 70600(b), shall, in consultation with the downwind districts, review the list of control measures identified in its most recently approved attainment plan and make an initial finding as to whether the list of control measures meets the requirements of section 70600(b). Once the district has made the initial finding, the district shall:~~
 - ~~(A) issue a public notice describing the basis of the initial finding and provide for public comment on the initial finding for a period of at least 30 days;~~
 - ~~(B) review the public comments and make a final finding;~~
 - ~~(C) by December 31 of each year, submit, concurrent with the submittal of a progress report to the state board required under Health and Safety Code section 40924(a), a final finding as to whether the list of control measures continues to include the measures required by section 70600(b) and, if not, a listing of measures that will be added;~~

- ~~(2) Within 60 days of submittal, the state board shall review the final finding and public comments and notify the district if additional measures must be added to the list of control measures.~~
- ~~(3) Within 180 days of receiving notification by the state board, the district shall, as appropriate, update the rulemaking calendar required pursuant to Health and Safety Code section 40923.~~

We propose to add the following language to section 70600(c):

- (1) Prior to revising its attainment/transport mitigation plan pursuant to section 40925 of the Health and Safety Code, each district subject to the requirements set forth in section 70600(b) shall, in consultation with the downwind districts, review the list of control measures in its most recently approved attainment plan and make a finding as to whether the list of control measures meets the requirements of section 70600(b). The district shall include the finding in its proposed triennial plan revision.
- (2) If the ARB determines that a district's plan does not satisfy the requirements of section 40912 of the Health and Safety Code and this regulation, the Board and the district shall follow the procedures specified in section 41503.2 of the Health and Safety Code for addressing plan deficiencies.

Title 17, Section 70601, Procedure for Limiting Application of All Feasible Measures and Best Available Retrofit Control Technology

We are proposing to clarify that the exception procedure that allows a district to demonstrate an equally effective emission reduction strategy as an alternative to "all feasible measures," set forth in section 70601, must be based upon the best available scientific information, including air quality modeling. This was implied in the existing language but was not explicitly stated.

Therefore, we propose to modify section 70601 as follows:

A district may exclude one or more sources from the requirement to apply all feasible measures, best available retrofit control technology, or both, as transport mitigation pursuant to section 70600 provided that the district plan prepared pursuant to part 3, chapter 10 (commencing with section 40910) of division 26 of the Health and Safety Code and approved by the Board pursuant to part 4, chapter 1 (commencing with section 41500) of division 26 of the Health and Safety Code demonstrates that:

- (a) emissions from the source, because of its location, do not contribute to ozone violations in any downwind area; or
- (b) emissions reductions from the source are not needed to attain the ozone standard in any downwind area; or
- (c) the district is implementing an alternative emissions reduction strategy pursuant to section 40914 of the Health and Safety Code and demonstrates, based on the best available scientific evidence, including but not limited to air quality modeling analyses, that the strategy will be at least as effective and as expeditious as the transport mitigation requirements specified in section 70600; or
- (d) the most recent transport assessment demonstrates that the district's transport impact is inconsequential.

Comments and Subsequent Action

By this notice, the modifications to the originally proposed regulations are being made available for public comment prior to final action by the Board's Executive Officer. The full text of the modified regulatory language is attached to Resolution 03-9. This public notice is also on the Internet at: <http://www.arb.ca.gov/regact/trans03/trans03.htm>. For further information concerning the proposed revisions, please contact Gayle Sweigert, Manager, Air Quality Analysis Section, at (916) 322-6923.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to amend sections 70600 and 70601 of title 17, CCR, and to make such other conforming modifications as may be appropriate, after making the modified regulatory language available to the public for a period of fifteen (15) days; provided that the Executive Officer considers such written comments as may be submitted during the period, makes such modifications as may be appropriate in light of the comments received, and presents the regulation to the Board for further consideration if she determines that this is warranted.

Written comments on the modifications approved by the Board and explained above may be submitted by postal mail, electronic mail, or facsimile as follows:

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

Facsimile submissions are to be transmitted to: (916) 322-3928.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you have special language needs, please contact the Regulations Coordinator Alexa Malik at (916) 322-4011 or by email at amalik@arb.ca.gov. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Attachment