



Air Transport Association

September 26, 2007

BY ELECTRONIC SUBMITTAL

Clerk of the Board
California Air Resources Board
1001 I. Street
Sacramento, California 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

RE: Revised Proposed 2007 State Strategy for California State Implementation Plan for the Federal 8-Hour Ozone and PM 2.5 Standards

Dear California Air Resources Board:

I write on behalf of the Air Transport Association of America, Inc. (ATA)¹ to comment on the Revised Proposed State Strategy for California's State Implementation Plan for the Federal 8-hour Ozone and PM2.5 Standards, including ARB's proposed approval of a modified version of the South Coast Air Quality Management District's 2007 Plan (Revised SIP Proposal).² ATA is the principal trade and service organization of the U.S. scheduled airline industry, and regularly comments on regulatory developments that may affect its member airlines.

As a preliminary – but important – matter, ARB has not provided sufficient notice and opportunity to comment in this proceeding. The substance of the Revised SIP Proposal was not made available until Friday, September 21, 2007, when documents entitled “Revised Staff Proposal,” “Staff Report – Proposed 2007 State Implementation Plan for the South Coast Air Basin – PM2.5 Annual Average and 8-Hour Ozone National Ambient Air Quality Standards,” “Technical and Clarifying Modifications to April 26, 2007 Revised Draft Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan and May 7, 2007 Revised Draft Appendices A through H” (“Technical Modifications”) and other materials were posted on ARB's website (all documents available at

¹ The members of the Association are: ABX Air, Alaska Airlines, Aloha Airlines, American Airlines, ASTAR Air Cargo, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, FedEx Corporation, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; associate members are: Air Canada, Air Jamaica, and Mexicana de Aviación.

² Available at <http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm>

<http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm>). Providing a mere five full days (including a Saturday and Sunday) for regulated parties to review, digest and comment on these materials is insufficient in both practical and legal terms.³ Accordingly, ATA reserves the right to provide more detailed comments in the future. In addition, ATA reserves the right to raise different or additional issues at a later time, including in response to any proposed regulations implementing the SIP, comments to ARB upon consideration of local air district SIP strategies, and comments to the U.S. Environmental Protection Agency (EPA) concerning its review of these or other proposed California SIP provisions.

ATA previously has provided detailed comments on both the Draft 2007 Air Quality Management Plan (Draft Plan) issued by the South Coast Air Quality Management District (SCAQMD)⁴ and the Proposed SIP (released April 26, 2007).⁵ In addition, ATA has submitted extensive comments on the off-road diesel engine “regulation adopted by the Air Resources Board in July 2007,” referenced in Section 2, page 10 of the Revised Staff Proposal.⁶ All of these comments are incorporated herein by reference. In these comments, ATA provides (*inter alia*) extensive analysis of federal preemption and ARB’s and SCAQMD’s lack of authority to impose SIP measures that regulate airlines and airport ground support equipment owned and operated by airlines (including SCAQMD measures MOB-01, EGM-02, and EGM-03 identified in the Revised SIP Proposal “for further review,” *see* Revised Staff Report at 19-20). In addition, for the reasons set forth in those comments, various statements regarding state and local authority to regulate aircraft set forth in the Technical Modifications document (particularly under the “Possible Federal Actions” heading on the eighteenth unnumbered page) are either incomprehensible or inaccurate. Moreover, these statements are contradicted in other documents issued as part of the Revised SIP Proposal, where ARB recognizes that aircraft are under exclusive federal jurisdiction. *See, e.g.*, Staff Report at 28.

³ *See, e.g., Ober v. United States EPA*, 84 F.3d 304, 312 (9th Cir. 1996) (noting public comment requirements of the SIP approval process).

⁴ *See* Letter from T. Pohle (ATA) to J. Casmassi (SCAQMD) re Draft 2007 Air Quality Management Plan (December 1, 2006) (available at www.aqmd.gov/aqmp/07aqmp/draft/Comment_Ltrs/Dec06/AirTransportAssociation.pdf).

⁵ *See* Letter from T. Pohle (ATA) to Clerk of the Board, Air Resources Board re: Draft California State Implementation Plan (June 20, 2007) (copy attached).

⁶ *See* Letter from T. Pohle (ATA) to Clerk of the Board, Air Resources Board (July 25, 2007) re Comments on Proposed Regulation for In-Use Off-Road Diesel Vehicles) (available at http://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=ordiesl07&comment_num=1097&virt_num=308)

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Please contact me at 202-626-4216 if you have any questions or would like additional information in connection with any of the points raised in these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim", with a large, stylized initial "T" and "P" that overlap.

Timothy Pohle
Managing Director – U.S. Environmental Affairs
& Associate General Counsel
Air Transport Association of America, Inc.