

California Environmental Protection Agency



Air Resources Board

Addendum to the Final Statement of Reasons for Rulemaking

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO
THE AREA DESIGNATIONS FOR STATE AMBIENT AIR QUALITY STANDARDS**

Public Hearing Date: March 25, 2010
Agenda Item No.: 10-10-7
Addendum Prepared: August 25, 2010

I. BACKGROUND

On July 15, 2010, ARB staff submitted the Final Statement of Reasons (FSOR) and a Final Regulation Order amending the area designation criteria (contained in title 17, California Code of Regulations (CCR), sections 70300 through 70306) and the area designations for State ambient air quality standards (contained in title 17, California Code of Regulations (CCR), sections 60200 through 60210) to the OAL for review and approval.

This Addendum to the FSOR for the Proposed Amendments to the Area Designations for State Ambient Air Quality Standards lists, describes, and provides reasoning for the nonsubstantial changes that the Air Resources Board (ARB or the Board) made to the FSOR. The changes made do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provisions. All of these changes were made in response to concerns raised by the Office of Administrative Law (OAL). ARB is submitting this addendum to the FSOR for insertion in the OAL File Number 2010-0715-03S.

II. ADDITIONAL MODIFICATIONS

A. On page 2, Final Statement of Reasons, Section I, GENERAL, Subsection A, Area Designation Criteria Regulations, the following is hereby added in its entirety:

Title 17, California Code of Regulations, section 70301(a)(1) previously provided that “Data for record are those data collected by or under the auspices of the state board or the districts for the purpose of measuring ambient air quality, and which the executive officer has determined comply with the siting and quality assurance procedures established in Part 58, Title 40, Code of Federal Regulations, as they existed on July 1, 1987, or other equivalent procedures.”

This section was changed to “Data for record are those data collected by or under the auspices of the state board or the districts for the purpose of measuring ambient air quality, and which the Executive Officer or his or her delegate has determined comply with the siting and quality assurance procedures established in Part 58, Title 40, Code of Federal Regulations or other equivalent procedures.”

These changes (1) allow delegation of duties and responsibilities by the Executive Officer and (2) delete reference to the July 1, 1987 date. It is the second change which concerned OAL. While the July 1, 1987 version of Part 58, Title 40, Code of Federal Regulations (CFR) was not, and had not been, incorporated by reference pursuant to California Code of Regulations, title 1, section 20, OAL asked that justification and/or explanation for removing reference to the specific July 1, 1987 version be included in a Supplemental FSOR or similar document.

Title 40, CFR, section 58.10, in pertinent part, requires ARB to “...adopt and submit to the Regional Administrator an annual monitoring network plan which shall provide for the establishment and maintenance of an air quality surveillance system...” (40 C.F.R. § 58.10(a)(1) (2006).) Any change to the annual monitoring network plan requires approval of the EPA Regional Administrator. (40 C.F.R. § 58.10(a)(2) (2006).) The annual monitoring network plan must include, inter alia, the site location, sampling and analysis method(s), operating schedules, and identification of sites that are suitable and those that are not suitable for comparison against the annual PM2.5 National Ambient Air Quality Standard (NAAQS). (40 C.F.R. § 58.10(b) (2006).) ARB must perform and submit an assessment of the air quality surveillance system to EPA every 5 years. (40 C.F.R. § 58.10(d) (2006).) Any proposed additions or discontinuations of monitors are subject to EPA approval. (40 C.F.R. § 58.10(e) (2006); 40 C.F.R. § 58.14 (2006).)

In addition to EPA’s above-listed siting requirements, EPA also imposes quality assurance requirements for air monitoring (40 C.F.R. Part 58, Subpart G, Appendix A), requirements for air quality monitoring methodologies (40 C.F.R. Part 58, Subpart G, Appendix C), requirements for the monitoring network design (40 C.F.R. Part 58, Subpart G, Appendix D), and requirements for specific individual monitor placement (40 C.F.R. Part 58, Subpart G, Appendix E). Adherence to the quality assurance criteria contained in 40 C.F.R. Part 58, Subpart G, Appendix A is mandatory (40 C.F.R. § 58.11(a)(1) (2006)), as well as adherence to the air quality monitoring methodologies contained in 40 C.F.R. Part 58, Subpart G, Appendix C (40 C.F.R. § 58.11(b) (2006)), requirements for the monitoring network design contained in 40 C.F.R. Part 58, Subpart G, Appendix D (40 C.F.R. § 58.11(c) (2006)), and requirements for specific individual monitor placement contained in 40 C.F.R. Part 58, Subpart G, Appendix E (40 C.F.R. § 58.11(d) (2006)).

Upon compliance with these mandatory requirements, ARB is required to submit to EPA an annual air monitoring data certification letter to certify data collected at all monitoring stations that meet criteria in appendix A (40 C.F.R. § 58.15(a) (2006)) as well as an annual summary report of all the ambient air quality data collected at monitoring stations

using specified sampling and analysis methods (40 C.F.R. § 58.15(b) (2006).). Once submitted, the data is assumed approved by EPA, unless otherwise advised. Furthermore, if EPA disagrees with the state's location of a monitoring site, EPA may locate and operate an ambient air monitoring site. (40 C.F.R. § 58.60 (2006).)

Therefore, reference to the outdated July 1, 1987 version of 40 CFR Part 58 should be deleted. The siting and quality assurance procedures set forth in Part 58, Title 40, CFR, and as amended by EPA from time to time, are controlling and mandatory. Reference to any specific, dated version of 40 CFR Part 58 is not necessary because ARB is required to comply with the then-effective 40 CFR Part 58. Deletion of the reference to "July 1, 1987" in title 17, CCR, section 70301(a)(1) and (2) is a nonsubstantial change because ARB is required to comply with the then-effective version.

B. Immediately following the above-identified change to Final Statement of Reasons, Section I, GENERAL, Subsection A, Area Designation Criteria Regulations, the following is hereby added in its entirety:

In the 45-day Notice of Proposed Rulemaking, ARB proposed to strike reference to the Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events, (EPA 450/4 86 007), July 1986 from the Exceptional Events section of Appendix 2. OAL disagreed because this document is available on EPA's website, albeit superseded by a 2007 document. ARB hereby withdraws its proposal to amend paragraph 1 under Exceptional Events in Appendix 2, with the exception that ARB's proposal to change "executive officer" to "Executive Officer or his or her delegate" will remain. As a result, this paragraph will read:

"An exceptional event is an event beyond reasonable regulatory control which causes an exceedance of a state standard. An exceptional event must be linked to a specific cause such as an act of nature or unusual human activity. As guidance to the states for determining exceptional events, the federal Environmental Protection Agency (EPA) has published Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events, (EPA-450/4-86-007), July 1986 (the EPA Guideline). The EPA Guideline provide overall criteria for determining whether an event is exceptional with regard to the national standards. The ~~executive officer~~Executive Officer or his or her delegate will use the EPA Guideline as a general basis for reviewing ambient data, but will not be bound by the specific definitions in the EPA Guideline for the various types of exceptional events because those definitions are made on a national basis. In addition, since what may be exceptional in one part of the state may be common in another, each possible event will be evaluated on a case-by-case basis."

III. CONCLUSION

For the foregoing reasons, ARB believes that the above modification does not materially alter the requirements, rights, responsibilities, conditions, prescriptions, or other

regulatory element of any CCR provisions. Therefore, this change is nonsubstantial in nature.