REVISIONS TO CAPCOA-ARB PROTOCOL, SECTION III
Adopted by CAPCOA November 7, 1986

III. PROCESSING AIR POLLUTION CONTROL DISTRICT RULES AND REGULATIONS

This section describes agreements and procedures for the participatory process between the ARB and the districts in the development of district regulations. Draft rules are defined herein as rules in the formative stages; proposed rules are those formatted for public hearing and adoption. A collaborative exchange of information and ideas amongst the districts, EPA, ARB, CAPCOA committees and affected parties is encouraged to assure maximum effectiveness of the rule development process.

The following section outlines procedures to maximize the value of ARB's oversight role to provide information and comments on rules as they are being developed.

Draft Rules

It is the intention of ARB and CAPCOA to alleviate mutual concerns where possible before the district staffs present rules to their governing boards. ARB review of draft rules (e.g., before they are offered at workshops) may improve the process because the ARB's concerns on subsequent proposed and adopted rules will more likely be minimal or nonexistent. The ARB and CAPCOA agree to the following procedure:

1. Draft rules prepared by districts will be submitted directly to the ARB's Technical Support Division, General Projects Section, as soon as possible but not later than 30 days prior to a workshop or notice of public hearing where there is no workshop, (i.e., at least 60 days prior to public hearing). Where the districts are not able to meet the 30 day requirement, ARB shall be notified verbally. ARB will comment as promptly as possible but may not be able to meet the districts shorter time frame.

The ARB's responsibility is to assure these rule minimally conform to (1) SIP requirements, (2) CAA requirements, and (3) requirements of state law. ARB's suggestions for improvements to the rules should also be provided at this time.

2. The ARB will telephone the districts if significant comments are anticipated and follow up with written comments prior to the district workshop. Comments will specify which modifications are required and which are recommended for clarity or to improve the rule.

3. All written comments by the ARB regarding the adequacy of draft rules will be provided by the Executive Officer or his designee and will be the official ARB staff position.

Proposed Rules

1. Proposed rules prepared by districts along with copies of hearing notices will be submitted directly to the ARB's Technical Support Division, General Projects Section, as soon as possible but no later than the time the districts publish 30 day notices of public hearing to meet the requirements of state and federal law. If the proposed rule is identical to the draft rule, and no unresolved conflicts have been identified, the district will so note, and ARB will not be expected to respond or comment.

2. To assist in the review the districts will provide the following to ARB:

a) Revisions to rules, marked to show specific language changes, or other aids to identification of the proposed modifications.
b) Reasons for proposed rule amendments and/or staff reports or other information prepared on the proposed changes.
c) Analyses of emission changes related to proposed changes and how those emissions changes will affect the SIP, if available.

3. The ARB will evaluate proposed rules to determine if previous ARB comments have been considered and if the proposed rules minimally conform to SIP requirements, CAA requirements and requirements of state law.

4. The ARB will telephone the districts outlining their concerns within 14 days of receipt by the ARB's Technical Support Division, General Projects Section and followed by written comments at least 7 days prior to the public hearing, limited to specific conflicts with the CAA, SIP or state law. Comments of lesser impact, and changes recommended for clarity or to improve the rule, etc., will be separately noted. If such comments would affect rule approvability, the ARB shall commit to appearing at local public hearings in support of the rule revisions recommended.

If the rules do not minimally conform with SIP, CAA, or state law requirements, the ARB will be prepared to present the necessary arguments at the local public hearings. Where the ARB is unable to participate in a hearing regarding substantive conflicts, letters shall be submitted to both the district staff and the district board clerk, at least 7 days prior to the public hearing. Such letters shall be treated as official policy statements of the ARB and signed by either the ARB Executive Officer or a Deputy Executive Officer.

5. The ARB will endeavor to testify at local public hearings, regarding comments of lesser impact, when requested by the affected district. In any case in which ARB expects to testify or otherwise participate, the district staff will be notified at least 5 days in advance.

Adopted Rules

1. The districts will submit adopted rules, hearing notices and, if available, evaluations of rule impacts to ARB's Technical Support Division, General Projects Section, to coordinate final review for approval and submittal to EPA. The districts shall inform ARB if adverse comments were received at the hearing which adopted the rule.

2. Within 60 days, ARB will complete its final review of rules for consistency with SIP, CAA, and state law requirements and inform the district of its finding. If rules are not approvable, the ARB will inform the districts in writing why the rule is not being submitted to EPA and recommend a course of action. If necessary, appropriate conflict resolution procedures will be initiated (see Section II).

If rules are approvable in accordance with the requirements of the Clean Air Act, they are submitted to EPA as a SIP revision as part of ARB quarterly submittals. (In case a rule needs to be received by EPA to satisfy an EPA deadline, the rule is submitted as soon as possible.) Districts will be notified of approved rules which are not appropriate for inclusion in the SIP, e.g., rules for attainment of state ambient air quality standards only. These will not be submitted to EPA as SIP revisions.

3. Once received, EPA processes rules for approval or disapproval with proposed actions published in the Federal Register. ARB staff will support districts in disputes with EPA over rules which ARB approves. Upon receipt of an EPA Federal Register notice on a district rule, the ARB will notify districts of EPA's rulemaking actions, with copies of the applicable Federal Register. Districts and ARB may respond independently or jointly to EPA's rulemaking.