



**Airlines for America®**

*We Connect the World*

March 20, 2017

California Air Resources Board - Clerk of the Board

submitted electronically to: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Comments on 2016 Air Quality Management Plan for Ozone and PM2.5 for the South Coast Air Basin and the Coachella Valley and 2016 State Strategy for the State Implementation Plan

On behalf of our members, Airlines for America® (“A4A”)<sup>1</sup> thanks the California Air Resources Board (“CARB” or “State Board”) for providing this opportunity to comment on the 2016 Air Quality Management Plan for Ozone and PM2.5 for the South Coast Air Basin (“Final AQMP”) and the 2016 State Strategy for the State Implementation Plan (“State SIP Strategy”).

We have commented extensively on the Draft AQMP, the State SIP Strategy, and other state documents setting out policies that inform and complement the AQMP and SIP, including the Sustainable Freight Action Plan and the Mobile Source Strategy. At every opportunity we have affirmed that we fully support the effort of both the South Coast and the State to develop a coherent, sensible approach to attaining compliance with National Ambient Air Quality Standards (“NAAQS”) and recognize the need to set forth a viable strategy at both the State and District level for reducing emissions of both fine particulate matter (“PM2.5”) and ozone (requiring reductions in emissions of ozone precursors, including oxides of nitrogen (“NOx”)). We reiterate and reaffirm that support here.

At the same time, we raised many issues in our previous comments that we will not reiterate here. We are compelled, however, to strongly object to the District Board’s decision, taken without providing the public sufficient notice and opportunity to comment, to amend measure MOB-04 – Emissions Reductions at Commercial Airports (“MOB-04”) by adding a sentence directing District Staff to develop an Indirect Source Rule (“ISR”) for commercial airports. We respectfully request that the State Board decline to endorse the District Board’s improper action and strike the final sentence of MOB-04 as amended. At a minimum, the State Board should clarify that MOB-04 is not intended to preclude consideration of other, alternative mechanisms to the ISR in the MOB-04 stakeholder process or to preclude District Staff from presenting such alternatives to the District Board for its consideration.<sup>2</sup>

---

<sup>1</sup> A4A is the principal trade and service organization of the U.S. airline industry. A4A’s members are: Alaska Airlines, Inc.; American Airlines Group; Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co.; Air Canada, Inc. is an associate member.

<sup>2</sup> With respect to the State SIP Strategy, we note that CARB’s log of comments on the document posted on its website (<https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=statesip2016>) affirms that CARB did receive A4A’s comments, which addressed both the State SIP Strategy and the associated Draft Environmental Analysis. However, CARB’s “Response to Comments on the Draft Environmental Analysis for the Proposed 2016 State Strategy for the State Implementation Plan” ([https://www.arb.ca.gov/planning/sip/2016sip/2016statesip\\_RTC.pdf](https://www.arb.ca.gov/planning/sip/2016sip/2016statesip_RTC.pdf)) does not acknowledge receipt of or provide any responses to A4A’s comments.

### Background on the District Board's Action

The District Board closed the public hearing on the Final AQMP at its meeting on February 3, 2017. It was only after the hearing was closed that the public was notified of a proposal to amend MOB-04 to require development of an indirect source rule.<sup>3</sup> A motion to formally consider amending MOB-04 was made at the District Board's March 3, 2017, meeting which read: "Change proposed MOB-04 to read as follows: Undertake a stakeholder process and draft for our consideration an indirect source rule for commercial airports within the South Coast Basin by February 1, 2019 to control emissions of NOx, PM2.5, lead, and diesel particulate matter from non-aircraft sources."<sup>4</sup> The motion passed on a 7-6 vote. District Staff implemented this action by retaining proposed MOB-04 in its entirety and simply adding the following sentence at the end: "This measure seeks to undertake a stakeholder process and draft for Governing Board consideration an indirect source rule for commercial airports within the South Coast Basin by February 1, 2019 to control emissions of NOx, PM2.5, lead, and diesel particulate matter from non-aircraft sources."<sup>5</sup>

The proposal to amend MOB-04 to require the development of an ISR came after a multiyear public process in which stakeholders, District Staff and the District Board had opportunity to discuss options for addressing emissions at commercial airports. As a result of this process, District Staff developed and proposed MOB-04, which called for District Staff, with input from a public stakeholder workgroup, to quantify actions already undertaken at airports, identify other actions that may be taken and "develop mechanisms to implement this measure." The concept of an ISR had arisen in this context, with many stakeholders expressing doubt that the District had authority to implement such a regulation and many opposing the concept as bad policy. Had District Staff proposed that MOB-04 should be structured to identify an ISR as a preferred or expected outcome of the process, we and other stakeholders would have vigorously opposed the measure, and provided more detailed input regarding the legal and policy infirmities of an ISR approach for airports. Instead, we and other stakeholders expressed (in comments on the Draft AQMP) support for and willingness to participate constructively in implementing MOB-04 as originally conceived. Then, after closing off public debate and without prior notice, the District Board arbitrarily dictated that the ISR would be the central objective of MOB-04. While the District Board has suggested that MOB-04 as amended is a "logical outgrowth" of what had been proposed to the public, the record plainly establishes that, in fact, the District Board's amendment fundamentally changed the meaning of MOB-04 as it had been proposed.

---

<sup>3</sup> See Minutes of the District Board's Monthly Meeting, February 3, 2017, at 18-19 (available here: <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-mar3-001.pdf?sfvrsn=4>).

<sup>4</sup> The text of the motion adopted by the District Board is available here: <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/2016aqmpamend.pdf?sfvrsn=6>.

<sup>5</sup> We have consistently emphasized in comments on the AQMP and other related state programs and policies that the State and District must acknowledge the limitations on their authority to regulate aviation sources. As such, limiting the potential scope of an ISR to "non-aircraft sources" is a crucial qualifier; however, we note again that to the degree any regulatory action unduly impinges on the ability of airport ground support equipment ("GSE") to support safe and efficient air transportation, such regulatory action also is outside the scope of State and District authority.

The State Board Should Disapprove the District Board's Improper Action or, at a Minimum, Clarify that MOB-04 will not Preclude Development and Consideration of Alternatives to an ISR

The District Board did not comply with State public notice and comment requirements when it amended MOB-04 to require the development of the ISR. See, e.g., Cal. H&S Code § 40725 (requiring air districts to afford 30-day public comment period before adopting or amending air control measures); *id.* § 40726 (prohibiting district from amending proposed rule after comment period is closed if the amendment would “significantly affect the meaning of the proposed rule or regulation”); see also *id.* § 40440.5(a), (e); *id.* § 40466; Pub. Res. Code § 21166 (requiring further environmental impact review for substantial project changes). In addition, EPA regulations implementing the procedural requirements of the Clean Air Act require the State to provide 30 days’ notice and opportunity for comment on all proposed SIP revisions. 40 C.F.R. § 51.102(a), (d). We respectfully submit the State Board should not approve MOB-04 as amended for three reasons. First, the State Board cannot approve a District Board plan that does not meet the requirements of the Clean Air Act. See, e.g., Cal. H&S Code § 41650(a). Second, the State Board itself has provided insufficient public notice and opportunity to comment as to whether the State Board should approve MOB-04 as amended. The District Board took its action just over two weeks ago and MOB-04 as amended has been available to the public for a few days.<sup>6</sup> As such, the public has not been provided sufficient notice and opportunity to comment on MOB-04 as amended to support a decision by this Board to approve the measure. See, e.g., 40 C.F.R. § 51.102.<sup>7</sup> Finally, approving MOB-04 as amended would endorse a process in which many stakeholders were asked to participate and did in fact participate in good faith for many months, and expressed support for the results of that public process, only to have the District Board dictate an arbitrary outcome at the eleventh hour.

For these reasons, we strongly urge the State Board decline to approve the final sentence of MOB-04 (reflecting the District Board’s improper amendment of the measure).

At a minimum, however, we ask that the State Board clarify that MOB-04 is not intended to preclude District Staff from considering mechanisms other than an ISR. As it appears in the Final AQMP, MOB-04 directs District Staff to both (1) undertake a public process, with the support of a working group, to “develop mechanisms” to implement the measure and (2) “undertake a stakeholder process and draft for Governing Board consideration an indirect source rule.” This is potentially confusing. Accordingly, we respectfully ask that, at a minimum, the State Board clarify that MOB-04 as amended is not intended to preclude consideration of other, alternative mechanisms to the ISR in the MOB-04 stakeholder process or to preclude District Staff from presenting such alternatives to the District Board for its consideration.

---

<sup>6</sup> To our knowledge, the Final AQMP incorporating the amendment of MOB-04 was not made available until March 14, 2017. Until that final language was available it was not clear how District Staff would implement the amendment as it may have been interpreted to require striking MOB-04 as originally proposed in its entirety and replacing it with a single sentence directing development of an ISR.

<sup>7</sup> We also note that the administrative record does not provide sufficient basis for concluding that MOB-04 as amended is necessary to reduce NO<sub>x</sub>, PM<sub>2.5</sub>, lead and diesel particulate levels. The emissions reductions expected to be achieved by this measure are not quantified anywhere in the Final AQMP and, as such, there is no basis for evaluating whether an ISR will be effective and achieve required reductions.

Again, we appreciate the opportunity to comment on the Final AQMP and SIP Strategy.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tim", with a large, stylized initial "P" at the top.

Timothy A. Pohle  
Senior Managing Director, Environmental Affairs