TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CRITERIA FOR DESIGNATING AREAS OF CALIFORNIA AS NONATTAINMENT, ATTAINMENT, OR UNCLASSIFIED, AMENDMENTS TO THE AREA DESIGNATIONS FOR THE STATE AMBIENT AIR QUALITY STANDARDS, AND AMENDMENTS TO THE SAN JOAQUIN VALLEY AND SOUTHEAST DESERT AIR BASIN BOUNDARIES

The Air Resources Board (the Board) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to the regulations establishing designation criteria, the regulations designating areas of California as nonattainment, attainment, or unclassified for all pollutants with State ambient air quality standards, and the regulations defining the San Joaquin Valley and Southeast Desert Air Basin boundaries.

DATE: November 16, 1995

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 "L" Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:30 a.m., November 16, 1995, and may continue at 10:00 a.m., November 17, 1995. This item may not be considered until November 17, 1995. Please consult the agenda for the meeting, which will be available at least 10 days before November 16, 1995, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections affected: Proposed amendments to sections 60107, 60109, 60200, 60201, 60202, 60203, 70303, 70303.5, 70304, 70306 and Appendix 2 to sections 70300 through 70306, Title 17, California Code of Regulations (CCR).

Designation Criteria

The California Clean Air Act of 1988 (the Act, Stats. 1988, ch. 1568) significantly revised Division 26 of the Health and Safety Code (HSC) by adding several requirements to assure the attainment and maintenance of the State ambient air quality standards (State standards). HSC section 39607(e) requires the Board to establish and periodically review the designation criteria. These criteria provide the basis for designating areas with respect to the State standards cited in CCR, Title 17, section 70200. The nine pollutants with State standards are: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, suspended particulate matter (PM10), sulfates, lead, hydrogen sulfide, and visibility reducing particles.

Pursuant to HSC section 39607(e), the Board first established designation criteria at a public hearing in June 1989. The Board subsequently amended these criteria in June 1990, May 1992, December 1992, and November 1993. The criteria specify the data to use, the size of the designated area, and the conditions for determining the appropriate designation category.

Based on the Board staff's periodic review of the designation criteria, the Board staff proposes amending Appendix 2 to the designation criteria to include a third type of highly irregular or infrequent event called an **unusual concentration event**. Exceedances affected by an unusual concentration event would be identified only for areas already designated as attainment or unclassified, and such exceedances would be excluded from the area designation process. To identify an exceedance as affected by an unusual concentration event, the Executive Officer would have to find based on relevant information that the impact of the exceedance is limited to the local area, the exceedance is not expected to recur, and the data are not sufficient to support a nonattainment designation. As proposed, an area could retain its attainment or unclassified designation, based on the exclusion of data affected by an unusual concentration event, for up to three consecutive years. If a possible unusual concentration event occurred at any site in the area during the fourth consecutive year, the Board would redesignate the area as nonattainment.

In addition, the Board staff proposes several minor technical revisions to Appendix 2 and to sections 70303, 70303.5, 70304, and 70306. These proposed revisions would not change the current application of the designation criteria. Rather, they would provide clarification of current practices, make the language of the regulations internally consistent, delete obsolete or unnecessary language, and correct grammatical errors. These minor technical revisions are summarized, below:

- Reorganize Appendix 2 to make the procedures easier to follow, revise the current language to clarify the functions of the Executive Officer, and make grammatical corrections.

- Revise section 70303(a)(1) to clarify that only the air quality measurement(s) used in making a nonattainment designation must be representative, not the entire body of data collected in the area.

- Revise sections 70303(b) and (c)(1) to reflect exceedances rather than violations when referring to data affected by highly irregular or infrequent events.

- Revise section 70303(c) to delete the obsolete reference to July 15, 1990, as the first date to request a nonattainment-transitional designation for pollutants other than ozone and correct grammar.

- Revise sections 70303(c)(1) and (2) to clarify that each site in an area is considered individually in determining whether the area qualifies for the nonattainment-transitional designation for pollutants other than ozone.

- Revise section 70303.5 to make the language of the regulations internally consistent by referring to the State Board rather than the Board.

- Revise section 70304(c) to delete the redundant reference to the State Board with respect to the Screening Procedure for Determining Attainment Designations for Areas with Incomplete Air Quality Data.

- Revise section 70306(b) to delete the obsolete reference to May 1, 1990, as the first date to request a change in an area designation or submit information for consideration in the annual review of the area designations.

Area Designations

Based on the designation criteria, HSC section 39608 requires the Board to designate areas as attainment, nonattainment, or unclassified for each of the nine pollutants with State standards set forth in CCR, Title 17, section 70200. The Board approved the original area designations required by HSC section 39608 in June 1989. The HSC requires the Board to review the area designations annually and update them as new information becomes available. The area designations comprise CCR, Title 17, sections 60200 through 60209.

Based on this year's annual review, the Board staff proposes to change the ozone designations for Northern Sonoma County (unclassified to attainment) and Mono County (nonattainment-transitional to nonattainment); the carbon monoxide designations for Sutter County (unclassified to attainment), Inyo County (unclassified to attainment), the Sacramento County Portion of the Census Bureau Urbanized Area (nonattainment to nonattainment-transitional), and the city of Calexico (unclassified to nonattainment); and the nitrogen dioxide designation for the South Coast Air Basin (nonattainment to attainment). In addition, if the Board adopts the proposed amendments to Appendix 2 of the designation criteria, the Board staff proposes not to change the ozone designation for Inyo County (currently designated as unclassified).

San Joaquin Valley and Southeast Desert Air Basin Boundaries

HSC section 39606(a) requires the Board to divide the State into air basins, based on similar meteorological and geographic conditions. Whenever practicable, the air basin boundaries should consider political boundary lines.

The San Joaquin Valley and Southeast Desert Air Basins share a common boundary line which bisects Kern County. Several areas currently included in the Kern County portion of the San Joaquin Valley Air Basin actually are more consistent (in terms of air quality, meteorology, and topography) with areas in the Southeast Desert Air Basin. For this reason, the Board staff proposes these areas be included within the Southeast Desert Air Basin. Specifically, the Board staff proposes changing the Kern County portion of the San Joaquin Valley and Southeast Desert Air Basin boundaries so that the Kern River Valley and Cummings Valley are included in the Southeast Desert Air Basin.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the potential environmental and economic impacts of the proposal. The Staff Report is entitled "Proposed Amendments to the Designation Criteria and to the Area Designations for State Ambient Air Quality Standards, Proposed Amendments to the San Joaquin Valley and Southeast Desert Air Basin Boundaries, and Maps of Area Designations for the State and National Ambient Air Quality Standards." Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990. The

Board staff has compiled a record which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact person, identified immediately below.

Further inquiries regarding this matter should be directed to Rich Bradley, Technical Support Division, P.O. Box 2815, Sacramento, CA 95812, (916) 322-6076.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed amendments are presented below.

Overall Impacts of the Proposed Amendments

The proposed amendments to the designation criteria, the area designations, and the San Joaquin Valley/Southeast Desert Air Basin boundaries by themselves do not contain requirements for action. Subsequent requirements for action may result after additional steps, such as plan preparation and approval, are taken. The designation criteria provide a set of rules for the Board to follow in determining the appropriate designation status for the various pollutants for each area of the State. The area designations themselves are labels that describe the healthfulness of the air quality in each area. Finally, the air basin boundaries define areas with similar characteristics and air quality. Because these regulations by themselves contain no requirements for action, they have no direct economic impact, and the following general determinations are appropriate:

The Executive Officer has determined that adoption of the proposed amendments will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies, except as discussed, below (refer to the section on Proposed Amendments to the Area Designations).

The Executive Officer also has determined, in accordance with Government Code section 11346.5(a)(8), that adoption of the proposed amendments will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other States. Finally, the Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected as a result of adopting the proposed amendments.

In accordance with Government Code section 11346.3, the Executive Officer has determined that adoption of the proposed amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

Finally, the Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the proposed regulation action will not affect small business, because by themselves, they contain no requirements for action and, therefore, have no direct economic impact.

Before taking final action on the proposed amendments to the regulations, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons than the proposed action (Government Code section 11346.14(b)).

Proposed Amendments to the Designation Criteria

Although the proposed amendments to the designation criteria will not have a direct economic impact, the Executive Officer has determined that the proposed amendments to Appendix 2 of the designation criteria may indirectly result in some economic benefits to the districts and local businesses. Maintaining an area's attainment or unclassified designation based on the exclusion of exceedances affected by an unusual concentration event would serve to delay the consequences of a nonattainment designation. In this situation, the district might for a time, avoid costs associated with developing and implementing an attainment plan. Similarly, local businesses might avoid the costs incurred by complying with resulting, required emission control measures. In addition, businesses operating nonvehicular sources that emit at least 500 tons per year of the nonattainment pollutant or its precursors would avoid increased permit fees that might have been assessed. The economic benefit from a delay in designation as nonattainment would be temporary, if subsequent data showed that a nonattainment designation was appropriate. Nevertheless, potential adverse economic impacts would be identified at the time the nonattainment designation was proposed.

Proposed Amendments to the Area Designations

The proposed amendments to the area designations will not have any direct adverse economic impacts because they do not, by themselves, require any regulatory action. The area designations are labels which define the healthfulness of air quality in each area of the State. Although the proposed amendments to the area designations will not have any direct economic impacts, the Executive Officer has determined that the proposed amendments to redesignate the city of Calexico in Imperial County as nonattainment for the State carbon monoxide standards may indirectly result in some adverse economic impacts. These indirect adverse economic impacts would result from the planning requirements specified in State law and are described, below.

Pursuant to State law (HSC section 40911), a district with an area designated as nonattainment for ozone, carbon monoxide, nitrogen dioxide, or sulfur dioxide is required to prepare and submit an attainment plan to the Air Resources Board. Designating the city of Calexico as nonattainment for the State carbon monoxide standards would invoke the planning requirement for carbon monoxide for the first time in this area. (If the Board does not adopt the proposed nonattainment designation for the city of Calexico, this area will remain designated as unclassified for the State carbon monoxide standards with no concomitant planning requirements.) The development and implementation of an attainment plan might require additional district staff to evaluate the problem, develop an acceptable control strategy, and

enforce emission control measures. The costs incurred by the districts in connection with the planning process are not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code because the statute does not mandate a new program or higher level of service of an existing program within the meaning of section 6 of Article XIIIB of the California Constitution. In addition, districts have the authority to levy fees sufficient to cover their costs for planning, enforcement, and other district programs (see HSC sections 40510, 40522, 41512.5, 42311, and 44223).

In addition to the potential indirect economic impacts on the district, the Executive Officer has determined that adopting the proposed nonattainment designation for the city of Calexico might result in some indirect adverse economic impacts on local businesses. Businesses would be affected differently, depending on the control measures identified in the attainment plan. Because all emission control measures are not "equal," the costs to businesses for implementing the control measures undoubtedly will vary. This cost differential will be considered in the planning process, under the requirements of HSC section 40910:

> "Districts shall also consider the cost-effectiveness of their air quality programs, rules, regulations, and enforcement practices in addition to other relevant factors, and shall strive to achieve the most efficient methods of air pollution control."

In developing their attainment plans, the districts complete cost-effectiveness analyses to determine which emission control measures will be the most effective. Those measures that are most cost-effective generally are implemented first, lessening the overall economic impact on local businesses. However, in contrast, businesses with sources that are the most cost-effective to control usually will be the first to incur costs.

In addition to the emission control measures specified in an attainment plan, the State Board may, under State law (HSC section 39612), require districts with areas designated as nonattainment to impose additional permit fees. These fees would apply to nonvehicular sources authorized by district permits to emit 500 tons per year or more of a nonattainment pollutant or its precursors. If new sources that would be permitted to emit 500 tons per year or more locate in the area while it was designated as nonattainment, they may be subject to these fees. This provision of State law becomes inoperative on July 1, 1997, and is repealed as of January 1, 1998, unless a later enacted statute deletes or extends these dates.

Under HSC sections 44223 and 44225, districts (except the Sacramento district) with areas designated by the Board as nonattainment for any pollutant emitted by motor vehicles may levy a fee of up to $4.00 on motor vehicles registered within the district. Districts levying this fee also must adopt programs for reducing air pollution from motor vehicles and for related activities to implement the California Clean Air Act of 1988.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, November 15, 1995, or received by the Board Secretary at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39606, 39607, and 39608 of the HSC. The amendments to the regulations are proposed to implement, interpret, and make specific sections 30606, 39607, 39608, and 40925.5 of the HSC.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael N. Scheible

for James D. Boyd
Executive Officer

Date: September 19, 1995