

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

STAFF REPORT

PROPOSED AMENDMENTS:

REGULATION X RULE 10.1 NEW SOURCE REVIEW

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1.0 EXECUTIVE SUMMARY

The Feather River Air Quality Management District's (District) New Source Review (NSR) program was established in February 1993 to ensure that construction and operation of new and modified sources does not interfere with progress towards attainment of the National and State Ambient Air Quality Standards. Because portions of the District have been designated as nonattainment for failure to meet the federal 8-hour ground-level ozone standard, the United States Environmental Protection Agency (USEPA) requires the District to implement measures to reduce sources of ozone and its precursors. The District makes its commitment to reduce pollution through the State Implementation Plan (SIP). The SIP is federally enforceable through USEPA and the Federal Clean Air Act (CAA). A New Source Review, or Preconstruction Review, is required as part of the State Implementation Plan (SIP).

The purpose of the proposed amendments to Rule 10.1 are to address concerns brought up by a review by the California Air Resources Board, to differentiate different state and federal requirements, and to submit only those federally enforceable portions to be approved by USEPA for inclusion in the SIP.

2.0 BACKGROUND

From May through August 2005, the California Air Resources Board (ARB) conducted a review of the District's air quality program. The ARB reviewed the District's New Source Review Rule (Rule 10.1) and made recommendations for improvement to improve clarity and address inconsistencies. The findings were summarized in their report "Feather River Air Quality Management District Program Review" prepared by the ARB Stationary Source Division October 2007.

A summary of their recommendations can be found in Appendix B of the above referenced report.

3.0 LEGAL MANDATES

FEDERAL MANDATE

The District has multiple designations regarding attainment of the air quality standards set forth by the USEPA. The southern portion of Sutter County has been designated as a serious nonattainment area for the federal 8-hour ozone standard. This portion of Sutter County, along with Sacramento, Yolo, and portions of Placer, El Dorado and Solano Counties are incorporated into the Sacramento Federal Nonattainment Area (SFNA). In addition a portion of the Sutter Buttes (portions above 2000 feet elevation) in Sutter County is designated as a basic nonattainment for the federal ozone standard. Section 173 of Title I of the Federal Clean Air Act Amendments of 1990 requires permitting authorities to establish a permitting program for reviewing applications for construction of new sources or modification of existing sources of air pollutants. A New Source Review, or Preconstruction Review, is required as part of the State Implementation Plan (SIP) under 40 Code of Federal Regulations (CFR) Part 51 Subpart 1 to ensure that the construction or modification of a source will not cause violations of the State's control strategy or interfere with attainment or maintenance of ambient air quality standards. 40 CFR Part 51 also requires the District to adopt a permitting program that requires the application of BACT for any net increase in emissions at a major stationary source, and Lowest Achievable Emission Rate (LAER) for a new stationary source or modification to an existing stationary source that results in a significant emission increase.

STATE MANDATES

California Health and Safety (CH&S) Code §§ 40918 and 40919, require that the District’s permitting program be designed to achieve no net increase in emissions of nonattainment pollutants from stationary sources with emissions exceeding specified thresholds. Furthermore, Title 17, § 70600 requires ozone non-attainment Districts in the Broader Sacramento Area to adopt more stringent thresholds. The Broader Sacramento Area is Defined in Title 17 CCR § 70500. This area is equal to the area designated as the SFNA portion of FRAQMD. The thresholds applicable to the District are outlined in Table 3.1. CH&S Code §§ 40918 and 40919 also require the District’s permitting program to require the use of BACT for any new or modified stationary source which has a potential to emit greater than or equal to the thresholds listed in Table 3.2 for nonattainment pollutants. District rule 10.1 New Source Review as amended on June 7, 2004 complies with these requirements.

Table 3.1 – No Net Increase (offset) Threshold

Pollutant	SFNA portion of FRAQMD	North FRAQMD
Ozone Precursors (NOx & ROG)	10 tons/year	25 tons/year
PM-10	25 tons/year	25 tons/year

Table 3.2 – BACT Thresholds

Pollutant	SFNA portion of FRAQMD	North FRAQMD
Ozone Precursors (NOx & ROG)	10 pounds/day	25 pounds/day
PM-10	25 pounds/day	25 pounds/day

Chapter 4.5, Protect California Air Act of 2003 Requirements: In an effort to minimize the potential impact of federal NSR reform, the state legislature passed the Protect California Air Act of 2003 (SB288). The Act (CH&S Code § 42500 through 42507) is intended to minimize the impact of the relaxation of the federal new source review program on air quality in California. The Act prohibits districts from making revisions to their SIP approved NSR rules in existence on December 30, 2002 that would result in weakening their rules. These revisions include but are not limited to, revisions to rule applicability, changing the definition of modification so that NSR is not triggered or triggered at a higher level of emission increases, or relaxing BACT, air quality analysis, and public participation requirements. The Act does permit districts to deviate from these requirements under specified conditions.

The proposed amendments to Rule 10.1 meet this mandate. Rule 10.1 does not relax the requirements to obtain a permit and undergo NSR analysis; does not relax the requirement to apply BACT to a new or modified emission unit; does not relax the requirements or thresholds for performing an air quality impact analysis as required by Rule 10.1 G; does not relax the requirements for monitoring, recordkeeping, and reporting; does not relax the requirement for regulating any air pollutant; and does not relax any requirement for public participation.

4.0 PROPOSED RULE SUMMARY

Table 4.1 summarizes the proposed rulemaking by section:

Table 4.1 – Summary of Proposed Amendments

SECTION NUMBER	PROPOSED LANGUAGE
10.1 A	Added recommended language in A.1 to incorporate review of applicable District rules into the purpose of the rule.
10.1 B	Include EPA recommended language that allows for federal requirements not yet incorporated into the rule to be applicable to a source when an application is deemed complete.
10.1 D	<p>The definitions for Best Available Control Technology and Emissions Unit have been modified as recommended by ARB to improve clarity. Additionally, the definition for Halogenated Hydrocarbon has been deleted and incorporated into the definition of Reactive Organic Gases. The definition for Reactive Organic Gases has been modified to be consistent with the ARB definition. The definition for Offset has been clarified as recommended by ARB.</p> <p>The definitions for Actual Emissions, Actual Emission Reductions, Effected Pollutants, Complete Application, Control Efficiency, Cost Effective, Daily Emission Limitation, Historic Actual Emissions, Historic Potential Emission, Impact Analysis, Major Stationary Source, Major Modification, Non-Attainment Pollutant, Non-Permitted Emissions, Potential To Emit, Precursor, Proposed Emissions, Shutdown, and Stationary Source have been modified as suggested by EPA.</p> <p>The definition for Real, Surplus, Permanent, Quantifiable, and Enforceable, has been separated into five definitions. Each definition has been modified as suggested by EPA.</p>
10.1 E	The sections describing requirements and thresholds for Best Available Control Technology and Offsets have been modified as suggested by EPA and CARB to improve clarity between the different attainment portions of the District, differentiate state and federal requirements, and add a provision for alternative siting.
10.1 F	This section has been modified as suggested by EPA to include actual to potential provisions for determining a major modification, while retaining the potential to potential provisions for determining an emissions change in regards to offsets. Additionally, these sections have been modified such that sources cannot net out of BACT for new or modified emissions units.
10.1 G	This section has been modified to update rule references and incorporate federal requirements as suggested by EPA.
10.1 H	This section has been modified as suggested by EPA to improve clarity and to address approval issues into the SIP.
10.1 I	This section has not been modified.

5.0 IMPACTS OF THE NEW RULE

EMISSION IMPACTS

These proposed amendments do not implement additional measures for new or existing stationary sources. The District does not anticipate any emission impacts from the proposed rule.

SOCIOECONOMIC IMPACT

California Health and Safety Code § 40728.5 requires, in part, that:

“Whenever a district intends to propose the adoption, amendment or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent that data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.”

However, districts with a population of less than 500,000 persons are exempt from the provisions of CH&S § 40728.5 (a). The District’s population is estimated to be approximately 155,679, below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

COST IMPACTS

California Health and Safety Code Section 40703 requires that all air quality districts consider and make public findings relating to the cost effectiveness of implementing an emission control measure.

The proposed rule does not implement an emission control measure and therefore is not subject to the cost effectiveness mandate. Also, staff does not anticipate an additional need for staff resources upon adoption of the rule.

6.0 ENVIRONMENTAL REVIEW AND COMPLIANCE

The proposed amendments for Rule 10.1 New Source Review consist of clarifying existing District, state and federal requirements. As the District has not exercised discretion by modifying federal requirements, it is ministerial in nature and the proposed amendments to Rule 10.1 New Source Review are statutorily exempt from CEQA pursuant to Section 15268 of the state CEQA Guidelines.

7.0 REQUIRED FINDINGS

California Health and Safety Code Section 40727 (a) requires that prior to adopting or amending a rule or regulation, an air district’s board must make findings of necessity, authority, clarity, consistency, non-duplication and reference. The findings must be based on the following:

1. Information presented in the District’s written analysis, prepared pursuant to CH&S § 40727.2;
2. Information contained in the rulemaking records pursuant to CH&S § 40728; and
3. Relevant information presented at the Board’s hearing for the rule.

The table below describes the finding and the basis for making the finding.

Table 7.1

FINDING	FINDING DETERMINATION
Necessity: The District must find that the rulemaking demonstrates a need exists for the rule or for its amendment or repeal. (CH&S § 40727 (b)(1))	Rule 10.1 It is necessary for the District to adopt the proposed amendments in order to receive approval from the EPA and for submittal into the ozone non-attainment SIP.
Authority: The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule. (CH&S § 47027(b)(2))	Rule 10.1 The District is authorized to adopt rules and regulations by CH&S § 40001, 40702, 40919, 41010, and 42300.
Clarity: The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it. (CH&S § 40727(b)(3))	Rule 10.1 The District has reviewed the proposed amendments and determined that they can be easily understood by the affected industry. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule.
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations. (CH&S § 40727(b)(4))	Rule 10.1 The proposed rule does not conflict with and are not contradictory to existing statutes, court decisions, or state or federal regulations.
Non-Duplication: The District must find that either: 1) The rule does not impose the same requirements as an existing site or federal regulation; or 2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District. (CH&S § 40727(b)(5))	Rule 10.1 The proposed rule duplicates federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District.
Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule. (CH&S § 40727(b)(6))	Rule 10.1 The proposed amendments are intended to clarify existing law. References to statutes are noted where applicable.

8.0 COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

California Health and Safety Code Section 40727.2 requires districts to prepare a written analysis (may be in the form of a matrix) that identifies all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting BACT, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the District. In addition, the analysis shall identify any other District rule or regulation that applies to the same equipment or source type.

Under CH&S § 40727.2(g), the District finds that the proposed amendments do not strengthen or impose new emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements; therefore complies with CH&S Code § 40727.2.

9.0 PUBLIC NOTICE

The notice for this rule adoption was mailed to all permitted sources and a notice of the hearing was published in the Appeal Democrat on February 27, 2009. Subsequently, a second notice was mailed to all permitted sources and published on August 28, 2009 to allow for public comment. To date, no comments have been received from the second notice.

A public workshop to discuss the proposed amendments was conducted on February 20, 2009. A notice of the workshop was mailed to all permitted sources and interested parties. Two members of the public attended the workshop. No significant comments were received during the workshop.

The proposed amendments were sent to the Air Resources Board and the Environmental Protection Agency on February 12, 2009. Significant Comments were received. The hearing scheduled for April 6, 2009 was continued to June 1, 2009. Additional significant comments from EPA and verbal comments from CARB were received which included approvability issues. The hearing was subsequently continued to August 3, 2009, and to October 5, 2009 to address those comments.