

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

STAFF REPORT

PROPOSED ADOPTION:

REGULATION X RULE 10.8 FEDERAL MAJOR MODIFICATIONS

Prepared by: Matthew Baldwin
Air Quality Engineer

Approved by: David A. Valler, Jr.
Air Pollution Control Officer

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1.0 EXECUTIVE SUMMARY

The Feather River Air Quality Management District (District) holds primary responsibility to implement and enforce air quality regulations for Yuba and Sutter Counties. The United States Environmental Protection Agency (USEPA) has designated portions of the District as “nonattainment” for failure to meet the federal 8-hour ground-level ozone standard. In order to attain the ozone standard, the District must commit to 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). Federal New Source Review reform implemented changes to the Clean Air Act that affect major sources of air pollution. The USEPA requires these amendments to be incorporated into any federally enforceable, SIP approved New Source Review rule. The District proposes Rule 10.8 Federal Major Modifications in order to adopt the federally required amendments into the District’s New Source Review program.

2.0 BACKGROUND

The District’s New Source Review (NSR) program is designed 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.

On December 31, 2002, the USEPA promulgated amendments to the Clean Air Act revising NSR requirements for major stationary source modifications and adding other provisions. The USEPA mandated implementation of these amendments in state and local NSR rules by January 6, 2006. These federal NSR reforms were designed by USEPA to allow major sources of air contaminants greater flexibility to modify existing facilities without triggering NSR requirements, such as Best Available Control Technology (BACT) and offsets. USEPA’s premise was that some facilities delayed modernizing equipment to avoid triggering NSR requirements, that lifting the requirements would encourage facilities to upgrade, and that the upgrades would yield a net air quality benefit.

These amendments were legally challenged by numerous groups, including the California Air Resources Board (CARB), Sacramento Metropolitan Air Quality Management District, South Coast Air Quality Management District, and other state and local agencies. These agencies took the position that: (i) NSR requirements are necessary to improve air quality in California; and (ii) there is no evidence that California facilities have delayed upgrades to avoid NSR requirements. The amendments were partially upheld upon appeal in a decision rendered June 24, 2005.

Following promulgation of NSR Reform in 2002, the California state legislature passed the Protect California Clean Air Act of 2003 (SB 288) on September 22, 2003. The bill prohibits local districts from amending permit applicability and specified NSR requirements in a matter that would make them less stringent than the requirements that existed on December 30, 2002.

Pursuant to the terms and conditions of the Federal CAA, NSR Reform must be implemented by the District. However, SB 288 prevents districts from relaxing their NSR rule. Therefore, draft Rule 10.8 Federal Major Modifications intends to maintain the stringency of the District’s existing NSR program, consistent with the provisions of SB 288, while complying with federal mandates to incorporate NSR Reform requirements into District rules.

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.

The Federal Register (67 FR 80186-80289) require that the District adopt revisions to the District's NSR rules that incorporate federal NSR Reform. These regulations require the District to adopt the reforms that were not vacated or remanded by the court on June 24, 2005. The District must include an exemption for certain federal-only requirements if a modification is not a Federal Major Modification under the federal NSR reforms. Draft Rule 10.8 will bring the District's NSR program in compliance with these requirements.

STATE MANDATES

California Health and Safety (CH&S) Code §§ 40918 and 40919, requires 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 adopt more stringent thresholds. 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 complies with these requirements and Draft rule 10.8 does not make them any less stringent.

Table 3.1 – No Net Increase (offset) Threshold

Pollutant	SFNA portion of FRAQMD*	North FRAQMD
Ozone Precursors (NOx & ROG)	15 tons/year	25 tons/year
PM-10	25 tons/year	25 tons/year

* Broader Sacramento Area is Defined in Title 17 CCR § 70500. This area is equal to the area designated as the SFNA portion of FRAQMD

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.

Draft rule 10.8 meets this mandate. Rule 10.8 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 DRAFT RULE SUMMARY

Draft Rule 10.8 Federal Major Modifications establishes definitions for Federal Major Modifications and Plantwide Applicability Limits and then exempts non-Federal Major Modifications from the federal-only requirements in Rule 10.1 New Source Review.

Table 4.1 summarizes the draft rulemaking by section:

Table 4.1 – Summary of Draft Rule

SECTION NUMBER	DRAFT LANGUAGE
A.1	Sets the purpose of the rule to establish additional definitions and exemptions to be used when processing authorities to construct under rule 10.1 NEW SOURCE REVIEW
A.2	Sets the rule applicability to major stationary source permit applicants.
A.3	Incorporates the District’s standard severability language in case the rule is changed in court.
B.1	Incorporates the terms defined in 40 CFR 60 § 51.165 (a)(1) as the definitions for terms used in Section C of the rule, with the exceptions that “reviewing authority” shall mean the Feather River AQMD, “major stationary source” shall have the same meaning as major source in District Rule 10.1 NEW SOURCE REVIEW, and “significant” shall equal the rate of emissions increase that would equal or exceed the rates specified in District Rule 10.1 D.21.
B.2	Sets the definition of “reviewing authority” as used in 40 CFR § 51.165 (f) to mean the Feather River AQMD.
C.1	Exempts major modifications as defined in District Rule 10.1 D.21 from being classified as federal major modifications if they can be classified as a “Less-than-Significant Emissions Increase” or do not exceed a pre-established “Plantwide Applicability Limit.” This section also references the calculation procedures used to determine a “Less-than-Significant Emissions Increase” and outlines the protocol for establishing a “Plantwide Applicability Limit.”
C.2	Exempts major modifications that do not meet the definition of a federal major modification from the federal only requirements of an alternative siting and benefits analysis.

5.0 IMPACTS OF THE NEW RULE

EMISSION IMPACTS

This draft rule does not implement an emission control measure. The District does not anticipate any emission impacts from the draft 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 draft 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 adoption of Rule 10.8 Federal Major Modifications is an action consisting of adoption of approved federal requirements. As the District has not exercised discretion by modifying federal requirements, it is ministerial in nature and the adoption of Rule 10.8 Federal Major Modifications is 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 10.8 It is necessary for the District to adopt the draft rule to comply with the NSR reform requirements that were published in 40 CFR Part 51.165 and were not vacated or remanded by the federal courts on June 24, 2005 (67 FR 80186)
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 10.8 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 10.8 The District has reviewed the draft rule 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.

FINDING	FINDING DETERMINATION
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 10.8 The draft 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 10.8 The draft 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 10.8 The draft rule implements USEPA's NSR reform requirements that were not vacated or remanded by the federal courts on June 24, 2005 (40 CFR Part 51.165).

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 draft rule does 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 to neighboring air districts. In addition, the notice was published in the Appeal Democrat on July 18, 2006 and posted on the Feather River AQMD website in accordance with Health and Safety Code 42311.

United States EPA (July 13, 2006)

USEPA suggested minor reference changes to draft rule 10.8. These suggestions have been incorporated into the draft rule.

Air Resources Board (July 27, 2006)

CARB did not have any comments to draft rule 10.8.

Public Workshop (August 16, 2006)

Pending