

# **Staff Report**

## **Rule 4.8: Further Information**

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## 1.0 Executive Summary

Feather River Air Quality Management District (District) is a bi-county agency that administers local, state, and federal air quality management programs for Yuba and Sutter counties. The District includes the southern portion of Sutter County, which was included in the Sacramento Metro nonattainment area and designated as a moderate, and the Sutter Buttes nonattainment area, which was designated as marginal for the 2015 8-hour ozone national ambient air quality standard (NAAQS) effective August 3, 2018<sup>1</sup>.

The Federal Clean Air Act (CAA) requires nonattainment areas to submit an emissions statement rule within two years of designations becoming final. The emissions statement rule requires that sources of nitrogen oxides and volatile organic compounds submit a statement annually<sup>2</sup>.

Rule 4.8 Further Information was first adopted by the District in 1991. The emissions statement requirements of CAA §182(a)(3)(B) were incorporated into Rule 4.8.

In March 2020, the United States Environmental Protection Agency (US EPA) reviewed the District's Rule 4.8 and determined that the Rule does not meet all of the requirements for emissions statements in the Clean Air Act. The Rule includes director discretion in the request for the statement, and the waiver provision excludes sources less than 10 tons per year from the inventory.

The District has proposed amendments to Rule 4.8 to satisfy the requirements of the CAA. There is no change to District operations from the proposed amendments. Smaller stationary sources that are not under a District permit are reported as area sources in the emission inventory by the District and the California Air Resources Board (CARB). Throughput data or emissions from all permitted stationary sources are collected in the form of a throughput annually per District Rule 4.5 and Rule 9.2. The proposed amendments satisfy the requirements of the CAA and, if adopted by the Board of Directors, shall be submitted to CARB and the US EPA as a revision to the State Implementation Plan (SIP).

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<sup>1</sup> Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776, June 4, 2018 <https://www.govinfo.gov/content/pkg/FR-2018-06-04/pdf/2018-11838.pdf>

<sup>2</sup> CAA section 182(a)(3)(B)

## 2.0 Background

For one or both of the nonattainment areas, the District was designated as nonattainment for the federal 1-hour ozone standard, the 1997 8-hour ozone standard, the 2008 8-hour ozone standard, and the 2015 8-hour ozone standard. The Clean Air Act amendments of 1990 added the emissions statement rule provision.

The emissions statement rule requires that all ozone nonattainment areas have in place a program to require emissions statements from sources of nitrogen oxides (NO<sub>x</sub>) or volatile organic compounds (VOCs).

Rule 4.8 was adopted by the District in August 1991 shortly after the formation of the District from the Yuba and Sutter County air districts. The Rule was amended in 1992. The District's Rule 4.8 was approved in the State Implementation Plan on May 26, 2004<sup>3</sup>.

## 3.0 Legal Mandate:

Section 182(a)(3)(B) of the Clean Air Act (Act) requires all ozone nonattainment areas to have in place a program that requires emissions statements from stationary sources of NO<sub>x</sub> and VOC. Specifically, section 182(a)(3)(B)(i) of the Act requires air agencies to submit to US EPA a SIP revision requiring the owner or operator of each stationary source to report and certify the accuracy of their reported NO<sub>x</sub> and VOC emissions, beginning in 1993 and annually thereafter.

Section 182(a)(3)(B)(ii) of the Act allows air agencies to waive the requirements under subsection (i) for stationary sources emitting less than 25 tons per year of VOC or NO<sub>x</sub> if the State provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the U.S. EPA or other methods acceptable to the U.S. EPA as part of the inventories required under section 182(a)(1) (the base year emissions inventory) and section 182(a)(3)(A) (the periodic emissions inventory).

The emissions statement requirements for the 70 ppb 8-hour ozone standard are described in Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements (83 FR 62998, December 6, 2018). If a nonattainment area has a previously-approved emissions statement rule in force for a previous 8-hour or 1-hour ozone standard covering all portions of the nonattainment area(s) for the 70 ppb 8-hour ozone standard, the existing Rule should be sufficient for the 70 ppb 8-hour ozone standard. If the existing Rule does not meet section 182(a)(3)(B) requirements, a revised or new rule would have to be submitted as part of the current ozone SIP.

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<sup>3</sup> 69 FR 29880

## 4.0 Proposed Rule Requirements

The amendments would make the following changes:

- Remove the APCO discretion at the start of the section paragraph
- Allow the sources to submit operational data or emissions
- Remove the reference to the ARB's Emission Inventory Turn Around Document
- Require emission factors used to be US EPA approved

The CAA does not allow for director discretion under the emissions statement section except to implement the waiver in Section 182(a)(3)(B)(ii). The beginning of the first sentence in paragraph B in Rule 4.8, which said, "Upon the request of the APCO and as directed by the APCO," was removed. US EPA determined this statement was director discretion. The word "annually" was added to this paragraph to require the statement on an annual basis rather than upon request by the APCO.

The statement "or operational data allowing the District to calculation emissions" was added to the second paragraph of the Rule. The majority of permitted stationary sources in the District report operational data such as hours operated or fuel used rather than actual emissions. The record-keeping and reporting requirements are a condition of the permit to operate in accordance with Rule 4.5, and the submittal of this information to the District is also required in Rule 9.2.

The reference to the CARB's Emission Inventory Turn Around Document was removed. The District staff could not find this document on CARB's website. The reporting requirements for each source are specified in their permit to operate and contain the information needed to calculate the annual total and daily max emissions. The requirement for emission factors to be also approved by the US EPA was also added to the Rule.

The proposed changes will not have any impact on the information collected and reported by the District. Permitted stationary sources were already submitting annual emissions or throughput data per Rule 4.5 and Rule 9.2. Smaller stationary sources that are not under a Permit to Operate are reported in the area source emission inventory prepared by the District and CARB.

## 5.0 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 §4072.5(a). The District’s population is estimated to be approximately 167,000<sup>4</sup>, which is below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

## 6.0 Emission Impacts of Proposed Rule

There are no emission impacts from the proposed amendments to Rule 4.8. This Rule requires the submittal of emissions or operational data to allow the District to calculate emissions.

## 7.0 Estimated Cost Impact

The HSC §40703 requires the District, in the process of the adoption of any rule or regulation, to consider and make public its findings related to cost effectiveness of the Rule.

There is no expected cost impact of the proposed amendments. There are no sources that have been granted the waiver. The amendment to the Rule requires the submittal of emissions or operational data to calculate emissions, which is consistent with the requirements of Rule 4.5 and Rule 9.2. The District already collects annually throughput data on every permitted stationary source. Thus, there is no change to existing practices by the proposed amendments. The sources are already required to collect and report the data as part of their permit conditions.

## 8.0 Environmental Review and Compliance:

The amendments of Rule 4.8 are categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15307 and 15308 of the State CEQA guidelines, and no exceptions to these exemptions apply as this action is taken by a regulatory agency for the protection of a natural resource. California Public Resources Code (Section 21159) requires an environmental analysis of the reasonably foreseeable methods of compliance. The District has concluded that no reasonably foreseeable adverse environmental impacts will be caused by adoption of the proposed Rule.

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<sup>4</sup> <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html>

## 9.0 Required Findings:

California Health and Safety Code (HSC) §40727(a) required that prior to adoption or amending a rule or regulation, an air district’s Board must make findings of necessity, authority, clarity, consistency, nonduplication, and reference. The findings must be based on the following:

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

The table below describes each finding and the basis for making the finding:

<b>Required Finding</b>	<b>Finding Determination</b>
<p><b>Necessity:</b> The District must find that the rulemaking demonstrates a need exists for the Rule of for its amendment or repeal. [HSC§40727(b)(1)]</p>	<p>It is necessary for the District to adopt the proposed amendments in order to meet the requirements of the Federal Clean Air Action section 182(a)(3)(B).</p>
<p><b>Authority:</b> 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. [HSC §40727(b)(3)]</p>	<p>The District is authorized to adopt rules and regulations by HSC §40001, 40702, 40919, 41010, and 42300.</p>
<p><b>Clarity:</b> The District must find that the Rule is written or displayed do that its meaning can be easily understood by the persons directly affected by it. [HSC §40727(b)(3)]</p>	<p>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.</p>
<p><b>Consistency:</b> The Rule is in harmony with and not in conflict with or contradictory to existing statutes, court decisions, or state or federal regulations. [HSC 40727(b)(4)]</p>	<p>The Proposed Rule does not conflict with and is not contradictory to existing statutes, court decisions, or state or federal regulations.</p>
<p><b>Non-Duplication:</b> 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. [HSC §40727(b)(5)]</p>	<p>The Proposed Rule does not impose requirements that duplicate existing laws or regulations.</p>

<p><b>Reference:</b> 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. [HSC §40727(b)(6)]</p>	<p>References to statutes are noted where applicable.</p>
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## 10.0 Rule Analysis:

California Health and Safety Code Section 40727.2 requires a written analysis comparing the proposed rules with existing federal regulations, state regulations, and any other AQMD existing or proposed rules and regulations that apply to the same source type.

Comparison of proposed amendments to Rule 4.8 and Feather River AQMD Rules and Regulations

<b>District Rules and Regulations</b>	<b>Does the proposed rule conflict or contradict any provisions?</b>
Regulation 1 – General Provisions	No
Regulation 2 – Open Burning	No
Regulation 3 – Prohibition – Stationary Emissions Sources	No
Regulation 4 – Stationary Emission Sources Permit System and Registration Rule 4.5 – Conditional Approval The APCO may issue an Authorization to Construct or a Permit to Operate, subject to conditions which will bring the operation of any article, machine, equipment or other contrivance within the permit standards of these regulations, in which case the conditions shall be specified in writing. Commencing work under such an Authorization to Construct, or operation under such a Permit to Operate, shall be deemed acceptance of all the conditions so specified. The APCO shall issue an Authority to Construct or a Permit to Operate with revised conditions upon receipt of a new application, if the applicant demonstrates that the facility, article, machine, equipment, or other contrivance can operate within the permit standards under the revised conditions.	No
Regulation 5 – Hearing Board Procedures	No
Regulation 6 – Variances	No
Regulation 7 – Fees	No
Regulation 8 – Penalties and Abatement	No
Regulation 9 – Enforcement Procedures: RULE 9.2 – Records and Reports:	No



Air Pollution monitoring records and such fuel composition data as deemed necessary shall be recorded, compiled and submitted on forms furnished by the Air Pollution Control Officer.	
Regulation 10 – New Source Review	No
Regulation 11 – Air Toxic Control Measure	No

## Comparison of Proposed Rules and other Federal and State Regulations

California Health and Safety Code (HSC) section 40701(g) grants to local air districts authority

*“To require any owner or operator of any air pollution emission source, except a noncommercial vehicular source, to provide (1) a description of the source, and (2) disclosure of the data necessary to estimate the emissions of pollutants for which ambient air quality standards have been adopted, or their precursor pollutants, so that the full spectrum of emission sources can be addressed equitably pursuant to Section 40910 .”*

HSC § 39607 (b)(1) directs the CARB to

*“Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not limited to, the contribution of natural sources, mobile sources, and area sources of emissions, including a separate identification of those sources not subject to district permit requirements, to the extent feasible and necessary to carry out the purposes of this chapter. The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose.”*

And HSC § 39607.1 (b) states that:

*(1) The state board, in consultation with districts, shall establish a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source.*

*(2) The state board shall require a stationary source to report to the state board its annual emissions of criteria pollutants and toxic air contaminants using the uniform statewide system of annual reporting developed pursuant to paragraph (1).*

*(c) With the report required pursuant to paragraph (2) of subdivision (b), the state board may require, as appropriate, a stationary source to provide relevant facility-level emissions data.”*

Section 182(a)(3)(B) of the Clean Air Act (Act) requires all ozone nonattainment areas to have in place a program that requires emissions statements from stationary sources of NOx and VOC. Specifically, section 182(a)(3)(B)(i) of the Act requires air agencies to

submit to US EPA a SIP revision requiring the owner or operator of each stationary source to report and certify the accuracy of their reported NO<sub>x</sub> and VOC emissions, beginning in 1993 and annually thereafter.

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The amendments to Rule 4.8 will not conflict with existing Federal and State Regulations.