

**DRAFT
STAFF REPORT**

Rule 1.3: Emergency Declaration

Date of Proposed Adoption: August 1, 2022

Schedule of Meetings

Public Hearing: August 1, 2022

Feather River AQMD
541 Washington Avenue
Yuba City, California 95991

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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. In times of war, disease or other extraordinary conditions, each state authorizes its governor to declare a state of emergency. Once an emergency has been declared, executive powers expand until the emergency ends. These powers include authority normally reserved for legislatures, such as the ability to suspend existing statutes or effectively create new laws—albeit temporarily and only as needed to respond to the emergency.

For the District, the APCO is granted authority much like the governor acting as the executive branch. The legislative branch would be like the district board while the judicial branch is represented by the Hearing Board providing checks and balances necessary in a democratic and fair process.

Rule 1.3 will allow the Air Pollution Control Officer to issue an executive order during a state or federally declared State of Emergency. Such an executive order will allow operation of equipment necessary to protect public health and/or safety or to facilitate the remediation of an officially declared state or federal State of Emergency or State of War Emergency. After the Board approves Rule 1.3, we will submit it to the California Air Resources Board (CARB) and the U.S. Environmental Protection Agency as an informational item, not for consideration of inclusion into the State Implementation Plan.

2.0 Background

Since the current pandemic began in March 2020, Governor Newsom has issued more than 82 Emergency Executive orders for the state of California, some are county specific and applicable to the Yuba-Sutter area under the jurisdiction of the District. Previous actions have caused the District to respond to alleged violations with Notices of Violations, Compliance Agreements, or Enforcement Discretion as a response of our sources attempting to comply with District rules during the declared state of emergency.

Several other air districts have adopted similar rules including South Coast, Santa Barbara and Antelope Valley. During this pandemic and the last years power crisis, Governor Newsom declared a State of Emergency due to shortages of energy in the State of California. This situation brought to the forefront the need for a rule to allow the District to quickly respond to declared States of Emergency.

Proposed Rule 1.3 is like the South Coast Air Quality Management District (SCAQMD) Rule 118. Appendix A contains additional information about the process and rule in SCAQMD.

3.0 Legal Mandates

The EPA and ARB have adopted ambient air quality standards to determine outdoor pollutant levels considered safe for the public. The standards are health-based and

designed to provide protection for the most sensitive groups. Areas that do not meet the standards are required to adopt control measures to limit emissions of certain pollutants.

Federal Mandate

The Clean Air Act (CAA) requires air districts not attaining the ozone standards to prepare a plan describing how the National Ambient Air Quality Standard (NAAQS) will be met¹. The southern portion of Sutter County is part of the Sacramento Federal Nonattainment Area (SFNA) for ozone. The SFNA was designated as severe nonattainment for the 1997 8-hour Ozone NAAQS and the 2008 8-hour Ozone NAAQS. All temporary Orders would limit emissions as much as possible to ensure the District would not exceed a standard of the CAA and would only be applicable to local rules and regulations.

State Mandate

The California Clean Air Act (CCAA) requires areas designated as nonattainment for ozone to develop a plan to achieve California's ambient air quality standard by the earliest practical date by adopting cost-effective control measures². The SFNA portion of Sutter County is designated as "severe" nonattainment for the state ozone standard. All temporary Orders would limit emissions as much as possible to ensure the District would not exceed a standard of the CCAA and would only be applicable to local rules and regulations.

4.0 Proposed Rule Requirements:

The District is proposing adoption of Rule 1.3. Rule 1.3 does not place additional requirements on any source.

5.0 Socioeconomic Impact:

California Health and Safety Code (HSC) §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 HSC §40728.5 (a). The District's population is estimated to be approximately 170,000, which is well below the 500,000-person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

¹ <http://www.arb.ca.gov/fcaa/fcaa.htm>

² California Health and Safety Code section 40913

6.0 Emission Impacts of the Proposed Rule:

Emission changes resulting from the adoption of Rule 1.3 are difficult to estimate for a number of reasons. One reason is that they are dependent on the executive orders that become necessary under the declared State of Emergency.

The most likely executive order under a power situation is an order liberalizing the number of hours an emergency generator is allowed to operate under a true emergency. It is widely recognized by federal, state, and local rules and policies that emergency generator operation is justifiable under a true blackout situation. Our current rules governing the operation of emergency generators allow for essentially unlimited operations on days when a power outage occurs, whether the blackout is limited to a single business or extends county-wide. So, this rule would only affect those sources that are required to install new generators at facilities who do not currently have permitted backup power. These new installations might generate additional emissions however, the emissions, would be eventually permitted.

Potential additional emissions from the passage of Rule 1.3 are important from two perspectives: additional ozone and additional air toxic exposure. Diesel generators are the most polluting method of generating electrical power and should be used only as a last resort.

A portion of the District is within the Sacramento Federal Nonattainment Area for the national ambient air quality standards for ozone. The new installations of backup power generators during an emergency event would increase emissions within the nonattainment area; however as mentioned above the generators would be eventually permitted after the emergency event. The portion of the District in the Sacramento Federal Nonattainment Area is largely agricultural land with very limited development. The rest of the District is attaining the national ambient air quality standards and emission changes on a temporary basis are not likely to cause an exceedance of the health based ambient air quality standards.

7.0 Estimated Cost Impact:

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 the cost effectiveness of the rule. Cost effectiveness for rulemaking purposes is calculated by dividing the cost of air pollution controls required by the rule by the amount of air pollution reduced.

This rule does not contain requirements for control equipment.

8.0 Environmental Review and Compliance:

The CEQA Guidelines (California Code of Regulations Title 14 Division 6 Chapter 3) exempts actions taken by an agency to prevent or mitigate an emergency. The proposed Rule 1.3 would therefore be exempt under 14 CCR § 15269:

The following emergency projects are exempt from the requirements of CEQA...

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

9.0 Required Findings:

The California Health and Safety Code, Division 26, Air Resources, requires local Districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain 6 findings that the District must make when developing, amending, or repealing a rule. These findings and their definitions are listed in the following table.

FINDING	DEFINITION	REFERENCE
Authority	A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions.	California Health and Safety Code, Sections 40000, 40001, and 40702 are provisions of law that provide air districts with the authority to adopt these proposed rules.
Necessity	The District has demonstrated that a need for the rule, or for rule amendment or repeal.	It is necessary for districts to adopt these amendments to better respond to State and/or Federal Declarations of emergency to protect the public during an emergency event. Examples: funeral homes, emergency power
Clarity	The rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it.	There is no indication, at this time, that the proposed rule is written in such a manner that it cannot be easily understood by persons affected by the rule.
Consistency	This rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The rule is consistent with applicable statutory requirements and is consistent with other air districts in California.

Non-Duplication	The rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the district.	The proposed rule does not impose requirements that duplicate existing laws or regulations.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	The proposed rule is consistent with the provisions of the CAA and the HSC.

10.0 Rule Analysis

Health and Safety Code Section 40923, Publication of Regulatory Measures List

This section requires that APCDs publish a list of regulatory measures tentatively scheduled for consideration during the following year. In addition, the section indicates that the district shall not propose a regulatory measure for consideration during any year that is not contained in the district’s most recently published list unless earlier consideration is necessary to satisfy federal requirements, to abate a substantial endangerment to public health or welfare, or to comply with Section 39666 or 40915. The District’s published list for 2022 did not include Rule 1.3. However, the purpose of Rule 1.3 is to allow the APCO to abate a substantial endangerment to public health or welfare during a declared State of Emergency. Therefore, the Rule 1.3 proposal is consistent with Section 40923.

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

Comparison of Proposed Rule 1.3 and Feather River AQMD Rules and Regulations

District Rules and Regulations	Does proposed rule conflict or contradict any provisions?
Regulation 1 – General Provisions	No
Regulation 2 – Open Burning	No

Regulation 3 – Prohibition – Stationary Emission Sources	No
Regulation 4 – Stationary Emission Sources Permit System and Registration	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	No
Regulation 10 – New Source Review	No
Regulation 11 – Air Toxic Control Measure	No

Comparison of Proposed Rules and other Federal and State Regulations

Health and Safety Code Section 40727.2, requires the APCD to identify all existing federal, state, and local air pollution control requirements that apply to the same equipment or source category as the rule proposed for adoption or modification by the District. Proposed Rule 1.3 is administrative in nature and does not prescribe air pollution control requirements. Therefore, there is no comparison to be made with federal, state, or local air pollution control requirements.

11.0 References

Rule 118 – Emergencies – South Coast Air Quality Management District
Adopted 12/7/95

Rule 107 – Emergencies – Santa Barbara County Air Pollution Control District
Adopted 4/19/01

Rule 118 – Emergencies – Antelope Valley Air Quality Management District
Adopted 12/7/95, readopted 7/1/97, Amended 8/19/97, readopted 1/1/02,
amended 5/17/05

APPENDIX A

SCAQMD EXAMPLE

Under the provisions of Rule 118, the SCAQMD has issued several Executive Orders to alleviate the power shortage and its associated State of Emergency. The SCAQMD Executive Order 01-01, issued January 26, 2001, suspended applicable sections of the internal combustion rule (1110.2), Toxic New Source Review rule (1401), and the New Source Review rule (1303), and permit conditions limiting hours of operation of internal combustion engines or prohibiting operation during an actual or imminent power blackout at essential public services, provided that:

- such engines operate only during an imminent or actual blackout within the utility service area where the facility is located is ordered by CAISO; or
- such engine is operated when the facility is directly affected by a blackout associated with weather or other conditions beyond the control of the facility; and
- each engine does not operate for more than 500 hours in any one year; and
- the engine operator uses diesel fuel not exceeding 15 ppm sulfur, or cleaner fuel, when reasonably available, in replacing existing supplies of fuel.

Executive Order 01-01 also indicated that essential public services were defined as follows:

- sewage treatment facilities which are publicly owned or operated.
- prisons and jails.
- police facilities.
- firefighting facilities.
- K-12 schools.
- hospitals and other healthcare facilities.
- construction and operation of a landfill gas control or processing facility.
- potable water delivery operations.
- public transit.
- switchboard and dispatch centers for emergency (911) operations; and
- critical military defense operations.

SCAQMD Executive Order 01-04, issued February 13, 2001, suspended any permit conditions limiting operations of peaking turbines which were imposed to limit carbon monoxide emissions pursuant to New Source Review, provided that:

1. The peaking turbine is operated only at the request of CAISO to avoid or limit blackouts or maintain essential reserve margins.
2. The facility operator pays to the South Coast Air Quality Management District a mitigation fee of \$1.10 per pound for any emissions more than those otherwise authorized by the permit; such payment shall be made on a quarterly basis, and District staff shall deposit such funds in an account to be used only for purposes of mitigation of such emissions.

3. If the facility operates any peaking unit subject to this Order more than 1500 hours in any one calendar year, the facility shall install appropriate carbon monoxide controls as determined by the Executive Officer on an expeditious schedule, as determined by the Executive Officer in consultation with the CAISO and California Energy Commission.
4. The facility maintains records demonstrating compliance with the terms of this order and submits such records to the Executive Officer upon request.

The SCAQMD Executive Orders mentioned above are examples of the types of orders the District might issue under Rule 1.3. All orders have an end date and are considered temporary considerations based on state and/or federal emergencies.