

**RULE 3.25 FEDERAL NEW SOURCE REVIEW  
FOR NEW AND MODIFIED MAJOR PM2.5 SOURCES**

**Adopted July 12, 2017**

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## 100 GENERAL

101 **PURPOSE:** The federal nonattainment New Source Review (NSR) program is a preconstruction permitting program for new major sources and major modifications to existing major sources located in areas classified as nonattainment with the National Ambient Air Quality Standards (NAAQS). The intent of this Rule is to incorporate the federal nonattainment NSR rule requirements from the Clean Air Act (CAA) for PM<sub>2.5</sub> into the Yolo-Solano Air Quality Management District's (District's) Rules and Regulations.

The effective date of this Rule is the date the Rule is approved by EPA.

### 102 APPLICABILITY:

102.1 The provisions of this Rule shall only apply to new and modified sources located in those portions of the District that are designated nonattainment for the federal PM<sub>2.5</sub> NAAQS, as listed in 40 CFR 81.305.

102.2 This Rule shall apply to any stationary source, whose emissions of PM<sub>2.5</sub> or a PM<sub>2.5</sub> precursor constitute a new major source or a major modification, as defined in this Rule. Emission calculations shall be performed as specified in Sections 402 and 403. This Rule shall not apply to sources with a Plantwide Applicability Limit (PAL) as provided in Section 415.

103 **SEVERABILITY:** If any provision, clause, sentence, paragraph, section, or part of this Rule for any reason is judged to be unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Rule.

**200 DEFINITIONS:** For the purposes of this Rule, the terms defined below shall apply. The definitions contained in title 40 CFR 51.165(a)(1), as it exists on July 1, 2017 are hereby incorporated by reference, and shall apply unless the same term is defined below.

201 **CLASS I AREA:** Any area listed as Class I in 40 CFR Part 81 Subpart D, including Section 81.405, or an area otherwise specified as Class I in the legislation that creates a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore.

202 **COMPLETE:** In reference to an application, an application which contains all of the information necessary for processing the application.

- 203 **EMISSION REDUCTION CREDIT (ERC):** Reductions of actual emissions from emission units that have been documented as being real, surplus, quantifiable, permanent and practically enforceable, in accordance with applicable District Rules.
- 204 **INTERNAL EMISSION REDUCTIONS:** Emission reductions which have or will occur at the same major stationary source as the proposed emission increase will occur.
- 205 **MAJOR MODIFICATION:** Any physical change, change in method of operation (including change in fuel), or addition, to a stationary source classified as a major source for PM2.5 or PM2.5 precursor emissions, which results in a significant emissions increase and a significant net emissions increase.
- 206 **MAJOR STATIONARY SOURCE:** A stationary source that emits or has the potential to emit 100 tons per year or more of directly emitted PM2.5, or 100 tons per year or more of a PM2.5 precursor, or a physical change at a non-Major Stationary Source, if the change would constitute a Major Stationary Source by itself.
- Fugitive emissions associated with the emissions unit or stationary source shall not be included in the potential to emit of the emissions unit or stationary source for the purpose of determining whether the source is major unless the source belongs to one of the categories of stationary sources listed in 40 CFR 51.165(a)(1)(iv)(C).
- 207 **PM2.5:** Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns. Gaseous emissions which condense to form PM2.5 shall also be counted as PM2.5.
- 208 **PM10:** Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns. Gaseous emissions which condense to form PM10 shall also be counted as PM10.
- 209 **PERMANENT:** An emission reduction which is federally enforceable for the life of a corresponding increase in emissions.
- 210 **PROJECT:** A physical change in, or change in the method of operation of, an existing stationary source.
- 211 **SHUTDOWN:** The cessation of operation of any air pollution control equipment or process equipment for any purpose.

- 212 **SIGNIFICANT:** A rate of emissions that would equal or exceed any of the following rates:
- 212.1 10 tons per year of direct PM<sub>2.5</sub>, or
  - 212.2 40 tons per year sulfur dioxide emissions, or
  - 212.3 40 tons per year nitrogen dioxide emissions, or
  - 212.4 40 tons per year Volatile Organic Compound (VOC) emissions, or
  - 212.5 40 tons per year of ammonia.
- 213 **STARTUP:** The setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
- 214 **SURPLUS:** The amount of emission reductions that are, at the time of generation or use of an ERC, not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this Rule if those reductions meet all other applicable requirements. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:
- 214.1 The federally-approved California SIP;
  - 214.2 Other adopted state air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that: (1) the Local Air District or the state has included on a legally-required and publicly-available list of measures that are scheduled for adoption by the Local Air District or the State in the future; or (2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;
  - 214.3 Any other source- or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), Best Available Control Technology (BACT), and the Lowest Achievable Emission Rate (LAER); and

214.4 Any regulation or supporting documentation that is required by the federal CAA but is not contained or referenced in 40 CFR Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emissions reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

215 **TEMPORARY SOURCE:** Temporary emission sources such as pilot plants, and portable facilities, which are not operated or located within the District for more than a cumulative total of 90 days of operation in any continuous 12-month period.

216 **YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT (DISTRICT):** The local air pollution control agency and Reviewing Authority.

### 300 STANDARDS

301 **LOWEST ACHIEVABLE EMISSION RATE (LAER):** The applicant shall propose equipment which meets the LAER for PM<sub>2.5</sub>.

302 **EMISSION OFFSETS:** The applicant shall provide ERCs or internal emission reductions in accordance with the following:

302.1 For a new major stationary source, the quantity of ERCs or internal emission reductions required shall be the product of:

- a. the sum of the (Potential To Emit) PTE of all emissions units, including fugitive emissions, and
- b. the offset ratio of 1:1.

302.2 For a major modification, the quantity of ERCs or internal emission reductions required shall be the product of:

- a. the sum of the difference between the potential to emit after the modification and the actual emissions before the modification for each emissions unit, including fugitive emissions, and
- b. the offset ratio of 1:1.

303 **STATEWIDE COMPLIANCE:** The applicant shall demonstrate that each existing Major Stationary Source owned or operated by the applicant in the State of California is in compliance with all applicable emission limitations and standards

under the CAA or is in compliance with an expeditious compliance schedule which is federally enforceable.

304 **ANALYSIS OF ALTERNATIVES:** Per U.S. Code 7502(c)(5), the applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. This requirement is functionally equivalent to the requirements of Division 13 of the Public Resources Code (California Environmental Quality Act-CEQA).

305 **VISIBILITY:** The applicant shall submit a determination of whether the Project impacts visibility at any Class I area. Such determination shall follow the procedure included in the Federal Land Managers' Air Quality Related Values Work Group Phase I Report—Revised (2010), Natural Resource Report NPS/NRCC/NRR—2010/232 (Guidance).

If the determination made using the Initial Screening Criteria provided in the Guidance exceeds the “annual emissions over distance factor,” the applicant shall submit a full evaluation of the visibility impacts from the Project performed in accordance with the Guidance.

306 **AMBIENT AIR QUALITY STANDARDS:** The Air Pollution Control Officer (APCO) may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of the new or modified stationary source and verify that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of the PM2.5 NAAQS. In making this determination the APCO shall take into account the mitigation of emissions through offsets pursuant to this Rule and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on an air quality analysis, offset ratios greater than the requirements of Section 302.

307 **ENFORCEMENT:** Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Rule, any changes to the application as required by the APCO, or with the terms of its Authority to Construct, shall be subject to enforcement action.

308 **COMPLIANCE:** Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

309 **RELAXATION IN ENFORCEABLE LIMITATIONS:** At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit a pollutant, then the requirements of this Rule shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

#### 400 ADMINISTRATIVE REQUIREMENTS

401 **VISIBILITY:** In cases where the Project exceeds the “annual emissions over distance factor” provided in the Initial Screening Criteria section of the Guidance, and a full visibility evaluation is required to be submitted in accordance with Section 305 herein, the District shall consult with the Federal Land Manager (FLM) to ascertain the FLM’s determination as to whether the Project will impact a Class I Federal area.

The District shall include the FLM’s determination in its rationale for approval or denial of a Project. In the event the District deviates from the FLM’s determination regarding a Project, the rationale for the deviation shall be included in the Notification of the Project per Section 412 herein.

402 **MAJOR MODIFICATION CALCULATIONS:** The provisions set out in this Section shall be used to determine if a proposed Project will result in a major modification to an existing major stationary source. These provisions shall not be used to determine the quantity of offsets required for a Project subject to the requirements of this Rule.

402.1 Except as otherwise provided in Section 403, a Project is a major modification for PM<sub>2.5</sub> if it first causes a significant emissions increase and additionally causes a significant net emissions increase.

402.2 The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the Project, according to Subsections 402.3 through 402.5. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source is contained in the definition of *Net Emissions Increase* (40 CFR 51.165(a)(1)(vi)). Regardless of any such preconstruction projections, a major modification results if the Project causes a significant emissions increase and a significant net emissions increase.



- 402.3 **Actual-to-Potential-to-Emit Applicability Test for Projects that Only Involve Existing Emissions Units.** The owner or operator of a major polluting facility may elect to use the emissions unit's potential to emit, in tons per year, to determine if a significant emissions increase is projected to occur.
- 402.4 **Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.** A significant emissions increase is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
- 402.5 **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase is projected to occur if the sum of the difference between the PTE from each new emissions unit following completion of the Project and the baseline actual emissions of these units before the Project equals or exceeds the significant amount for that pollutant.
- 402.6 **Hybrid Test for Projects that Involve Multiple Types of Emissions Units.** A significant emissions increase is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Subsection 402.3, 402.4, or 402.5, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

403 **PROJECTS WHICH RELY ON A PROJECTED ACTUAL EMISSIONS TEST:** The provisions of this Section shall apply to existing emissions units located at a major stationary source of PM<sub>2.5</sub> or PM<sub>2.5</sub> precursor emissions, other than a source with a Plant-wide Applicability Limit (PAL) permit, if the owner or operator has determined that the Project is not a major modification, but has a projected emission increase of at least 50% of the amount that is a "Significant Emission Increase," as defined in 40 CFR 51.165(a)(1)(xxvii); and the owner or operator elects to use the methods specified in Subsections 402.3 through 402.6 to calculate emission increases from the Project.

- 403.1 Before beginning actual construction of the Project, the owner or operator shall document and maintain a record of the following information:
- a. A description of the Project;
  - b. Identification of the emissions unit(s) whose emissions of PM<sub>2.5</sub> or PM<sub>2.5</sub> precursors could be affected by the Project; and

- c. A description of the applicability test used to determine that the Project is not a major modification for PM2.5 or PM2.5 precursors, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (B)(3) of the definition of *Projected Actual Emissions* and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- 403.2 If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subsection 403.1 to the APCO. Nothing in this Paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the APCO before beginning actual construction, except such owner or operator may be subject to the requirements of District Rules 3.1 and 3.4, including the requirement to obtain an Authority to Construct, or other applicable requirements.
- 403.3 The owner or operator shall monitor the emissions of PM2.5 or PM2.5 precursors that could increase as a result of the Project and that are emitted by any emissions unit identified in Subsection 403.1.b; and calculate and maintain a record of the annual emissions (in tons per year (TPY) on a calendar year basis) for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the Project increases the design capacity or PTE of PM2.5 or a PM2.5 precursor at such emissions unit.
- 403.4 If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the APCO within 60 days after the end of each calendar year during which records must be generated under Subsection 403.3, setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- 403.5 If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the APCO if the annual emissions, in TPY, from the Project identified in Subsection 403.1.b exceed the Baseline Actual Emissions by a Significant amount for PM2.5, and if such emissions differ from the Projected Actual Emissions (prior to exclusion of the amount of emissions under the definition of *Projected Actual Emissions*) as documented and maintained pursuant to Subsection 403.1.b. Such report shall be submitted to the APCO within 60 days after the end of such year. The report shall contain the following:

- a. The name, address, and telephone number of the major stationary source;
- b. The annual emissions, as calculated pursuant to Subsection 403.3; and
- c. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

403.6 The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the APCO or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

403.7 A “reasonable possibility” under this Section occurs when the owner or operator calculates the Project to result in either:

- a. A projected actual emissions increase of at least 50 percent of the amount that is a “Significant Emissions Increase,” as defined in this Rule (without reference to the amount that is a significant net emissions increase), for PM2.5; or
- b. A projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (B)(3) of the definition of *Projected Actual Emissions*, sums to at least 50 percent of the amount that is a Significant Emissions Increase, as defined in this Rule (without reference to the amount that is a significant net emissions increase), for PM2.5 or a PM2.5 precursor.
- c. For a Project for which a reasonable possibility occurs exclusively within the meaning of Subsection 403.7.b, the provisions of Subsections 403.2 through 403.5 do not apply to the Project.

403.8 Records required for compliance with this Section shall be made available to District personnel or to the general public upon request.

#### **404 OFFSET REQUIREMENTS:**

404.1 Pollutant-specific emissions shall be offset with federally enforceable ERCs or with internal emission reductions.

404.2 ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.

404.3 Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and

- a. The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or
- b. The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

**405 OFFSET TIMING:**

405.1 Except as provided by 405.2, the decrease in actual emissions used to generate ERCs or internal emission reductions must be federally enforceable at the time of ATC issuance and shall occur no later than the commencement of operation of the new or modified major stationary source.

405.2 Where the new emission unit is a replacement for an emission unit that is being shut down in order to provide the necessary offsets, the APCO may allow up to 180 calendar days for shakedown or commissioning of the new emission unit before the existing emission unit is required to cease operation.

**406 EMISSION REDUCTION REQUIREMENTS:**

406.1 Internal emission reductions or ERCs used to satisfy an offset requirement shall be:

- a. Real, surplus, permanent, quantifiable, and federally enforceable; and
- b. Surplus at the time of issuance of the Authority to Construct containing the offset requirements.

406.2 Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend, or cancel their Authority to Construct or Permit to Operate, to reflect their new reduced PTE, including practicably enforceable conditions to limit their PTE.

406.3 Emission reductions must be obtained from the same federal PM2.5 nonattainment area, except the APCO may allow emission reductions from another nonattainment area if the following conditions are met:

- a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and
- b. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

- 406.4 The use of ERCs shall not provide:
- a. Authority for, or the recognition of, any pre-existing vested right to emit any PM2.5;
  - b. Authority for, or the recognition of, any rights that would be contrary to applicable law; or
  - c. An exemption to a stationary source from any emission limitations established in accordance with federal, state, or county laws, rules, and regulations.

407 **RESTRICTIONS ON TRADING POLLUTANTS:** Interpollutant offsets between PM2.5 and PM2.5 precursors are not allowed unless modeling has been used to demonstrate appropriate PM2.5 interpollutant offset ratios in an EPA-approved PM2.5 Attainment Plan. In such cases, the APCO shall impose, based on an air quality analysis, emission offset ratios in addition to the 1:1 offset ratio of Section 302. Interpollutant emission offsets must receive written approval by the U.S. Environmental Protection Agency.

408 **AIR QUALITY MODELS:** All estimates of ambient concentrations required pursuant to this Rule shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality Models”). Where an air quality model specified is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval from the EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment.

409 **SECONDARY EMISSIONS:** Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to this Rule on the basis of the direct emissions from the stationary source, the requirements of Section 404, but no other provisions of this Rule, must also be met for secondary emissions.

410 **APPLICATION:** In addition to any information required to be submitted with the Authority to Construct application required by Rule 3.1, the following information shall be submitted if the Project is a new major source or a major modification for PM2.5, in accordance with the calculations of this Rule:

410.1 A determination as to whether the Project will result in any secondary emissions.

- 410.2 The calculations used to determine applicability of this Rule, including the emission calculations (increases or decreases) for each Project that occurred during the contemporaneous period.
- 410.3 The calculations, pursuant to Section 302 (Emission Offsets), used to determine the quantity of offsets required for the proposed Project.
- 410.4 Identification of existing emission reduction credits or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter.
- 410.5 Compliance Certification stating that all other federally major facilities within the State of California owned, operated, or under the responsibility of the applicant are in compliance with all air quality rules and regulations.
- 411 **PRELIMINARY DECISION:** Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine compliance with all applicable District, state and federal rules, regulations, or statutes and shall make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement not yet incorporated into this Rule applies to the new or modified source.
- 412 **NOTIFICATION AND REVIEW OF PROPOSED DECISION:** After the APCO has made a preliminary written decision to issue an Authority to Construct for a new Major Stationary Source or Major Modification, the APCO shall:
- 412.1 Publish in at least one newspaper of general circulation in the District, or on the District's webpage, a notice stating the preliminary decision of the APCO, noting how pertinent information can be obtained, and inviting written public comment for a 30-day period following the date of publication. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).
- 412.2 No later than the date the notice of the preliminary written determination is published, make the following available: a copy of all materials the applicant submitted, a copy of the preliminary decision, a

copy of the proposed permit, and a copy or summary of other materials, if any, considered in making the preliminary written decision.

412.3 Send a copy of the notice of public comment to the applicant, EPA Region 9, the California Air Resources Board (ARB), any persons requesting such notice, and any other interested parties such as: any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

412.4 Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO's judgment such a hearing is warranted. The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

413 **AUTHORITY TO CONSTRUCT – FINAL DECISION:** Prior to making a final decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall consider all written comments that were submitted within 30 days after the notice of public comment is published and all comments received at any public hearing(s) in making a final determination on the approvability of the application and make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made available preconstruction information relating to the proposed source or modification. In addition, a copy of the final determination together with the District's responses to comments will be submitted to any commenters and the reviewing authorities noted in Section 412.3.

414 **PLANTWIDE APPLICABILITY LIMIT (PAL):** The APCO may approve the use of an actuals PAL for any existing PM<sub>2.5</sub> or PM<sub>2.5</sub> precursor major stationary source if the PAL meets the requirements contained in 40 CFR 51.165(f)(1) through (15). The provisions of 40 CFR 51.165(f)(1) through (15), as they exist on July 1, 2017 are hereby incorporated by reference.