

**Sacramento Valley Air Quality
Engineering and Enforcement Professionals
Protocol for Rule Development for
Northern Sacramento Valley Air Basin Districts**

PREFACE

This protocol was developed to provide regulatory consistency among Northern Sacramento Valley Air Basin Districts with similar air quality problems and attainment status. Rules developed in accordance with this protocol are generally not adequate to address regulatory requirements for areas that are designated as “severe or extreme” non-attainment areas. All Sacramento Valley Air Basin Districts are encouraged to contribute to the development of prohibitory rules. However, TAC approval and BCC endorsement shall be limited to those Districts that are participating in the process to meet the goals of the Northern Sacramento Valley Air Quality Attainment Plan. Rules developed via this protocol for implementation by all basin air districts shall require TAC and BCC endorsement by majority vote of all affected Districts. It is important to note that this protocol outlines the requirements in the California Health and Safety Code for rule development by Air Districts. It should also be noted that the majority of rules developed among the Northern Sacramento Valley Air Basin Districts are modified versions of existing rules initially developed by larger Air Districts. When an existing rule is being utilized, a District-specific staff report must be developed to insure that all required items are included..

PURPOSE

To ensure a consistent means of developing and adopting rules required to comply with the Attainment Plan for the Northern Sacramento Valley Air Basin (NSVAB), and other rules that are required to meet State or federal requirements that affect the Basin Air Districts, Basin Coordinating Council for the Northern Sacramento Valley Air Basin directs that the following regulatory protocol shall be followed.

RESPONSIBILITIES

BCC Secretary: The Basin Coordinating Council (BCC) Secretary is responsible for distributing meeting agendas and backup documentation to TAC members and the BCC. As directed by the TAC Chair, the BCC Secretary is also responsible for distributing draft rules and staff reports as part of the implementation of this protocol.

Northern Sacramento Valley Air Quality Engineering, and Enforcement Professionals Group (QEEP’s): As assigned by the TAC, acts collectively to formulate and develop rules including recommendations for control requirements, recordkeeping requirements and other provisions necessary to implement the rule and achieve the targeted emission reductions.

Technical Advisory Committee (TAC): Each TAC member shall review and vote to approve/disapprove proposed rules. Each TAC member is encouraged to present a rule that is consistent with requirements specified in the BCC approved rule for consideration.

Rule Development Manager (RDM): A QEEP's member designated by the QEEP's chair who serves as the primary contact and managing author of draft rules, staff reports, and adoption resolutions. The RDM will modify the rule based upon input from QEEP's, TAC members and the RDS Chair. The RDM also provides the BCC Secretary with copies of the draft rule, staff report, and adoption resolution.

Rule Development Subcommittee Chair (RDS Chair): Provides technical assistance in developing the draft rule. Makes recommendations to TAC regarding the technical content of the rule. Provides the California Air Resources Board (ARB) with a copy of the TAC approved rule for comment, and provides TAC members with ARB comments. Develops the final draft rule, staff report, and adoption resolution, and provides copies to all TAC and BCC members. The RDS Chair also ensures that this Rule Development Protocol is followed.

RULE DEVELOPMENT PROTOCOL

1. TAC selects specific programs or emission source(s) for rule development, based upon State or federal programs, the requirements of the Attainment Plan or, as directed by the Basin Coordinating Council. The specified program or emission source for rule development shall be assigned to the Chairperson of the Northern Sacramento Valley Air Quality Engineering and Enforcement Professionals group (QEEP's) via direct contact by the Chair of the TAC. The assignment shall be made in writing, or verbally during a TAC meeting and shall include a rule development priority and a tentative schedule for adoption.
2. The Chair of the QEEP's group assigns the rule to a lead District based on expertise, sharing of workload, and availability and interest of members, or District resources to accept work assignments. The individual assigned to coordinate development of a draft rule shall be titled the Rule Development Manager (RDM).
3. The RDM shall first contact districts within the NSVAB to determine the number of potential sources affected by the rule, and the contribution from such sources to the emissions inventory for all pollutants targeted for reduction. Based upon the significance of the emissions inventory, the RDM shall develop a draft rule suitable for use in the NSVAB. The rule development process shall include reviewing any available sample rules from districts in the broader Sacramento area and other districts as appropriate, contacting key affected sources and/or association representatives for initial input on significant features of the draft rule, and soliciting input from the RDS Chair and Basin Coordinator. The rule should reflect requirements already promulgated in areas with a similar attainment status. The RDM shall serve as the primary contact and decision-maker during the initial rule development process. Assistance from other QEEP's members shall be provided as necessary.
4. The RDM shall provide a draft rule to the QEEP's for a 30- day comment period and revise the rule as deemed appropriate. Where participating members disagree on appropriate standards or other features of the rule, a vote shall be taken and a consensus of the majority shall govern. Each District shall have 1 vote. The RDM shall have the opportunity to conduct more than one comment period within the scheduled time frame of adoption. Comments received after a comment period has ended will not be considered in the rule development process.

5. After resolving all comments at the QEEP's level, the RDM shall provide the BCC Secretary with the QEEP's approved draft rule and staff report. The approved draft rule shall include a preliminary staff report with supporting documentation to address the legal requirements presented below. The staff report shall be based upon the following format:

A. Executive Summary: of the salient issues including the intent of the rule, the emission sources affected, and the expected emission reductions.

B. Introduction: outlining the rule requirements.

C. Background: establishing the reason or need to promulgate the rule.

D. Cost impacts: including estimated cost to businesses and the cost of district implementation; based upon guidance from Section 40703 of the California Health and Safety Code:

“In adopting any regulation, the district shall consider, pursuant to Section 40922, and make public, its findings related to the cost-effectiveness of a control measure. A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals. Section 40922(b) “In developing an adoption and implementation schedule for a specific control measure, the district shall consider the relative cost effectiveness of the measure, as determined, as well as other factors including, but not limited to, technological feasibility, total emission reduction potential, the rate of reduction, public acceptability, and enforceability.”

The cost-effectiveness of a proposed regulation shall be calculated in terms of annual cost per ton of actual emission reductions for the target pollutant. The cost of any required modifications to process and air pollution control equipment specified in a proposed rule shall be based upon the total direct and indirect costs of the new equipment at the end of a 5 year period, after considering maintenance costs, interest payments, and the cost of any required source performance testing. The analysis shall be based upon a five year pay-back period at a nominal annual interest rate of 10%. The cost per ton reduction shall be calculated as 1/5 of the total cost divided by the expected actual annual emission reduction in tons per year. Alternately, cost impacts may be further evaluated based upon the guidelines in the latest revision of U.S. EPA's “OAQPS Control Cost Manual”

E. Affected Source and Emission Impacts: to include:

1. The total current emissions inventory of the targeted pollutant, on a district-by- district, and air basin basis, in tons per year.
2. The total current actual emissions from the targeted source category, on a district- by-district, and air basin basis, in tons per year.
3. The estimated ton per year reduction in actual emissions that may be realized by implementing the proposed rule or regulation, also on a district-by-district and air basin basis.
4. Where alternate levels of control are proposed, the corresponding reductions must be calculated.

F. Socioeconomic impacts

1. In accordance with Section 40728 of the California Health and Safety Code:

- a) 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 data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.
- b) For purposes of this section, “socioeconomic impact” means the following:
 - 1) The type of industries or businesses, including small business, affected by the rule or regulation.
 - 2) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.
 - 3) The range of probable costs, including costs to industry or businesses, including small business, of the rule or regulation.
 - 4) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.
 - 5) The emission reduction potential of the rule or regulation.
 - 6) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910)

Note: Section 40728.5 of CA H&S Code exempts districts with a population of less than 500,000 persons from the requirement to assess the socioeconomic impacts of proposed rules.

G. Environmental Review and Compliance California Public Resources Code, Section 21159, requires an environmental analysis of the reasonable foreseeable methods of compliance.

H. Division 26 Findings: Findings required by Division 26 of the California Health and Safety Code, Air Resource:

1. “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 six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings, and their definitions are:
 - a) Before adopting, amending, or repealing a rule or regulation, the district board shall make the following findings of necessity, authority, clarity, consistency, non-duplication, and reference, as defined in this section, based upon relevant information presented at the hearing.
 - b) As used in this section, “necessity” means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.
 - c) As used in this section, “authority” means that a provision of law of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.
 - d) As used in this section “clarity” means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.
 - e) As used in this section “consistence” means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.
 - f) As used in this section, “non-duplication” means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements

are necessary or proper to execute the powers or duties granted to, and imposed upon, a district.
g) As used in this section, “reference” means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

I. Resolution: Proposed resolution of adoption itemizing the purpose, authority and approval.

6. As directed by the TAC Chair, the BCC Secretary shall provide all TAC members with a copy of the draft rule and staff report for a 30 day comment period. All TAC comments shall be forwarded, in writing, to the RDM. Conflicting comments shall be forwarded, in writing, to the RDS Chair for resolution. This may require detailed teleconferencing with Districts offering comments. It shall be understood that comments received after a comment period has ended will not be considered in the rule development process, unless approved by a majority vote of TAC members at a scheduled meeting.

7. The RDM shall submit for TAC approval, via the BCC Secretary, a revised draft rule and staff report. Upon approval by TAC, the RDS Chair shall forward the draft rule to ARB for additional input. All comments received shall be forwarded to the RDM and shall be considered in developing the revised draft rule, based upon direction provided by the RDS Chair. The RDM shall then provide TAC with a written summary of the comments received, a basis for including or excluding suggested changes to the rule, and a revised draft rule reflecting any changes made to the rule. TAC shall provide specific guidance on recommended changes to the rule, and such recommendations shall be clearly documented through TAC meeting minutes. ARB comments shall also be included in the revised staff report with corresponding justification for including or omitting suggested changes to the rule. The RDM shall prepare a final draft rule, based upon the recommendations of TAC. The final draft rule, staff report, and draft adoption resolution shall then be forwarded to the BCC Secretary.

8. The BCC Secretary shall provide all TAC members with a copy of the final draft rule, staff report, and adoption resolution. RDS Chair shall forward the TAC approved draft rule to the California Air Resources Board (ARB) for comments as agreed upon in a separate protocol with ARB. The RDS Chair shall be responsible for distributing comments from ARB on the proposed rule. TAC members shall consider and vote to approve or disapprove changes suggested by ARB. The RDS Chair shall direct the RDM to develop the final draft rule, staff report, and adoption resolution, based upon changes, if any, agreed to by majority vote of the TAC, and shall then forward the rule, staff report, and adoption resolution to the BCC Secretary for submittal to members of the Basin Coordinating Council (BCC). adopting resolution, need statements, summary of issues, positions on issues, referencing supportable/justifiable information, estimated number of affected sources, estimated emissions reductions, and a summary of all comments received with staff responses there to.

9. Following the BCC endorsement, each local district seeking to adopt the proposed rule shall issue a Public Notice, pursuant to and in accordance with all public notice requirements in effect, providing a description of rule under consideration, the date, time, and location of the adoption hearing, and information as needed to allow the public to comment, both verbally or in writing, on the proposed rule prior to the hearing. Notice shall be provided a minimum of thirty (30) days

prior to the scheduled hearing date. Each local District shall also conduct workshops on the proposed rule and proceed with rule adoption consistent with local Board policy. If revisions are made to the BCC endorsed rule at the local level, the APCO should present both the endorsed version and the modified version as alternatives to the local Board for consideration in the rule adoption process. The TAC Chair and RDS Chair shall have the responsibility for assuring the rule development protocol is followed and that the accompanying staff report includes estimated emissions reductions (county-by-county), cost-effectiveness, fiscal impact to affected sources, similar controls in other districts and temporal compliance estimations.