

Yolo-Solano Air Quality Management District
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YOLO-SOLANO
AIR QUALITY MANAGEMENT DISTRICT

**PROPOSED AMENDMENTS TO
RULE 5.1, PROCEDURE BEFORE THE HEARING BOARD**

PRELIMINARY STAFF REPORT

June 25, 2021

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I. EXECUTIVE SUMMARY

On September 8, 2021, the Yolo-Solano Air Quality Management District (District) Board of Directors will consider amendments to Rule 5.1, Procedure Before The Hearing Board. The 5-member Hearing Board members are appointed by the District Board of Directors and meet on an as-needed basis to consider variance applications, abatement orders, and permit disputes. Rule 5.1 sets forth standards for hearings conducted before the District Hearing Board.

The main amendments being proposed to Rule 5.1 are as follows:

- Update formatting and content to align with current District rule making policies
- Consolidate, renumber, or reorganize sections to improve rule structure
- Ensure rule conforms to California Health and Safety Code regulations pertaining to Hearing Board proceedings
- Add procedures for interim variance, product variance, and interim abatement orders
- Clarify procedures for hearings and decisions on certain variance applications
- Remove procedure which required the Hearing Board to deny a variance petition until a permit to operate is granted by the District

The proposed amendments will not have a significant or detrimental effect on the environment. Therefore, staff prepared a Notice of Exemption to satisfy the requirements of the California Environmental Quality Act (CEQA). The notice states that the revisions to Rule 5.1 are exempt from the requirements of CEQA pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

A. BACKGROUND

History

Rule 5.1 was adopted on February 23, 1994. The rule has not been amended since its adoption.

The California Health and Safety Code provides a regulatory framework for how air district hearing boards are to conduct proceedings throughout California. Although the applicable sections of the California Health and Safety Code apply to all air district hearing boards throughout California, it is common for local air districts to promulgate their own hearing board rule(s) to provide specific procedures for hearing board matters. The District has found it necessary to implement Rule 5.1 because California Health and Safety Code may not specify a regulatory requirement for certain hearing board matters, or more clarity is needed for hearing board proceedings than what is specified in the state code. Local air district hearing board rules tend to provide guidance which is readily understood by the general public for how hearings are to take place in their particular air district and elucidate the manner in which certain elements of hearings are expected to proceed.

A significant portion of Rule 5.1 mirrors requirements set forth in California Health and Safety Code. However, Rule 5.1 helps to specify certain procedures so petitioners, Hearing Board members, District Board of Directors and staff members, and the public can easily access and understand the methods in which the Hearing Board operates.

Rule 5.1 provides uniform procedures for the submission of petitions to request a hearing before the Hearing Board, specifies findings that the Hearing Board members must make in order to take specific actions, and establishes procedural requirements for how hearings are to take place.

Overview of source category

Rule 5.1 potentially affects all current and potential sources of air pollution within the jurisdiction of the District since all air pollution sources may be involved in Hearing Board proceedings at any time. This also includes manufacturers of products used within the jurisdiction of the District which may emit air contaminants as product manufacturers have the ability to petition for a product variance before the Hearing Board.

II. DISCUSSION OF PROPOSED RULE 5.1 AMENDMENTS

The proposed amendments to Rule 5.1 are as follows:

Section 100 General

Section 101: Removed mention of Rule 5.2 as this is addressed in Section 110.

Section 102: Added to align with current District rule making standards.

Section 110: Added to specify that the provisions of Rule 5.1 do not apply to emergency variance hearings governed by Rule 5.2, with the exception of the method in which to file a petition for a variance as specified in Rule 5.1.

Section 200 Definitions

Specify that terms used in Rule 5.1 are the same as the terms defined in Rule 1.1.

Removal of the definition for “Small Business” in previously defined Section 203 as this term is not utilized in the rule.

Section 300 Standards

[This section is not applicable for this rule]

Section 400 Administrative Requirements

General Amendments

Renumbered and reorganized sections to improve rule structure.

Added various applicable references to California Health and Safety Code.

Removed mention of records retention as this is covered by District records retention policies and procedures.

Removed “Lack of Permit” standard which required Hearing Board to deny a variance petition for

operation or use of any article, machine, equipment, or other contrivance until a permit to operate has been issued by the APCO.

Section 401.1 and 401.2(g): Specified that petitions may be submitted electronically, and such electronically submitted documents shall have the same effect as an original. Petitions shall be submitted on a District-approved application.

Section 401.3(a)(xv) and (xvi): Added required contents for interim and product variance petitions which are required per California Health and Safety Code.

Section 401.7: Added to specify procedures for when a party fails to appear for a hearing or fails to file a notice of defense.

Section 402.2: Added to include findings the Hearing Board is required to make to grant a product variance.

Section 403.1(a): Added to incorporate the Permit Action where the Hearing Board may grant a permit denied by the APCO.

Section 404.1(a): Added to specify how the Hearing Board may take action on an interim abatement order.

Section 405.7(a): Amended to allow for the hearing and decision of an interim variance, variance or series of variances in effect for less than 90 days, or modification of increments of progress to be conducted by the chairperson of the Hearing Board, or any other member designated by the Hearing Board.

Section 405.9(c): Allows for a rehearing by the full hearing board if a member of the public contests a decision made by a single Hearing Board member.

Section 500 Monitoring and Records

[This section is not applicable for this rule]

Section 600 Test Methods and Calculations

[This section is not applicable for this rule]

III. COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

Health and Safety Code Section 40727.2 requires districts to prepare a written comparative analysis of any new control standard that identifies all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology (BACT) that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the District. Since there are no new control standards being proposed with this rule, this requirement is not applicable.

IV. IMPACTS OF THE PROPOSED RULE

Emissions Impacts

The proposed amendments to not impose any new emission limits or standards. Therefore, the District does not expect the proposed amendments to impact emissions.

Cost Effectiveness

CH&SC Section 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. The amendments to this rule will not impact emissions and therefore cost effectiveness calculations cannot be performed.

Socioeconomic Impacts

California Health and Safety Code Section 40728.5 (a) requires the District, in the process of the adoption of any rule or regulation, to consider the socioeconomic impact if air quality or emission limits may be significantly affected. However, districts with a population of less than 500,000 persons are exempt from the provisions of Section 40728.5 (a). The District's population is estimated to be approximately 331,600 and well below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

Incremental Cost Effectiveness

CH&SC Section 40920.6 requires an assessment of the incremental cost-effectiveness for proposed regulations relative to ozone, Carbon Monoxide (CO), Sulfur Oxides (SOx), Nitrogen Oxides (NOx), and their precursors. Incremental cost-effectiveness is defined as the difference in control costs divided by the difference in emission reductions between two potential control options that can achieve the same emission reduction goal of a regulation. Again, the District does not expect any emissions changes from these amendments, so no incremental cost-effectiveness analysis can be done.

Impacts to the District

The proposed rule amendments are only intended to improve rule clarity and more closely align the rule with provisions of the California Health and Safety Code. No impacts to the District are expected as a result of these rule amendments.

V. ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE

California Public Resource Code Section 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance. The analysis must include the following information:

1. An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
2. An analysis of the reasonably foreseeable mitigation measures.

3. An analysis of the reasonably foreseeable alternative means of compliance with the rule or regulation.

The District does not expect any change in emissions from this rule amendment. Therefore an evaluation under this section cannot be performed.

The proposed rule amendments will have neither a significant nor detrimental effect on the environment or humans due to unusual circumstances. In addition, the proposed amendment is considered to be an action taken to maintain and protect the environment. Therefore, staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Staff prepared a Notice of Exemption (NOE) to meet the CEQA Guidelines (Attachment B).

VI. REGULATORY FINDINGS

Section 40727(a) of the California Health & Safety Code (H&SC) requires that prior to adopting or amending a rule or regulation, an air district's board 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 H&SC Section 40727.2;
2. Information contained in the rulemaking records pursuant to H&SC Section 40728; and
3. Relevant information presented at the Board's hearing for adoption of the rule.

The required findings are:

Necessity: It is necessary for the District to adopt this amended rule in order to ensure uniform written procedures for all hearings before the District Hearing Board. [CH&SC Section 40727(b)(1)]

Authority: The District is authorized to adopt rules and regulations by California Health and Safety Code, Sections 40001, 40702, 40716, 41010 and 41013. [H&SC Section 40727(b)(2)]

Clarity: The proposed rule is written so that the meaning can be easily understood by the persons directly affected by it. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule. [H&SC Section 40727(b)(3)]

Consistency: The proposed rule does not conflict with and is not contradictory to, existing statutes, court decisions, or state or federal regulations. [H&SC Section 40727(b)(4)]

Non-Duplication: The proposed rule does not duplicate any state laws or regulations, regarding the attainment and maintenance of state and federal air quality limits. [H&SC Section 40727(b)(5)]

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. [H&SC

Section 40727(b)(6)]

VII. PUBLIC COMMENTS AND STAFF RESPONSES

Staff will hold a public workshop on August 3, 2021, to discuss the proposed amendments to Rule 5.1. Notification will be sent to surrounding Air Districts, City Managers within the District, all city and county libraries within the District, all Board members, and all affected sources.

A copy of the public workshop notice, the draft staff report, and draft rule language, will be posted on the District's web page prior to the public workshop.

VIII. REFERENCES

ATTACHMENT A

**PROPOSED RULE 5.1, PROCEDURE BEFORE THE HEARING BOARD
STRIKE-OUT UNDERLINE VERSION**

ATTACHMENT B

PROPOSED AMENDMENTS TO RULE 5.1, PROCEDURE BEFORE THE HEARING BOARD; CLEAN VERSION

ATTACHMENT C

NOTICE OF EXEMPTION FROM CEQA GUIDELINES

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

County Clerk
County of Yolo
625 Court Street Room 105
Woodland, CA 95695

County Clerk
Solano County
600 Texas Street
Fairfield, CA 94533

From: Yolo-Solano Air Quality Management District
1947 Galileo Court, Suite 103
Davis, CA 95618

Project Title: Revision of Rule 5.1 – PROCEDURES BEFORE THE HEARING BOARD

Project Location: Yolo-Solano Air Quality Management District

Project Description: The District is proposing to amend Rule 5.1, PROCEDURES BEFORE THE HEARING BOARD. The District is proposing to amend the rule to modernize the rule to align with current practice, consolidate or clarify rule sections to make the procedures more understandable and readable to the public, and incorporate rule changes based on California Health and Safety Code changes or specifications. Proposed changes also include the addition of procedures for product variance and interim abatement order proceedings.

Name of Public Agency Approving Project: Yolo-Solano Air Quality Management District

Name of Person or Agency Carrying Out Project: Yolo-Solano Air Quality Management District

Exempt Status:

- Ministerial
- Emergency Project
- Categorical Exemption (CEQA Guidelines Section 15308, Action by Regulatory Agency for Protection of the Environment)
- Statutory Exemption

Reason why project is exempt: The revision of Rule 5.1 is an action taken to maintain and protect the environment and is therefore exempt from CEQA because it constitutes a Class 8 categorical exemption pursuant to CEQA Guidelines 15308.

Lead Agency Contact Person: Mat Ehrhardt, Air Pollution Control Officer

Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

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To: Office of Planning and Research
1400 Tenth Street, Room 121
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Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

ATTACHMENT D

RESOLUTION NO. 21-XX

RESOLUTION NO. 21-XX

RESOLUTION AMENDING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULE 5.1

WHEREAS, California Health and Safety Code section 40702 provides that an air quality management district shall adopt rules and regulations as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by Division 26 of the Health and Safety Code; and

WHEREAS, Health and Safety Code section 40727 provides that before adopting, amending, or repealing a rule or regulation, a district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, based upon information developed pursuant to section 40727.2, information in the rulemaking record maintained pursuant to section 40728, and relevant information presented at the public hearing required by section 40725; and

WHEREAS, section 15308 of the CEQA Guidelines provides that actions taken by regulatory agencies as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, are categorically exempt from CEQA review (Class 8 Categorical Exemption); and

WHEREAS, District staff identified requirements within Rule 5.1, PROCEDURES BEFORE THE HEARING BOARD which required updating to modernize the rule to align with current practice, consolidate or clarify rule sections to make the procedures more understandable and readable to the public, and incorporate rule changes based on California Health and Safety Code changes or specifications. Proposed changes also include the addition of procedures for product variance and interim abatement order proceedings.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Yolo-Solano Air Quality Management District hereby finds, authorizes, directs and declares as follows:

1. The Board of Directors has considered and hereby adopts by reference the staff report prepared in this matter.
2. The Board of Directors makes the following findings pursuant to Health and Safety Code section 40727:
 - a. Necessity: Information in the District's rulemaking record maintained pursuant to Health and Safety Code section 40728 demonstrates a need for amending District

Rule 5.1;

- b. Authority: Health and Safety Code section 40702 permits the District to amend District Rule 5.1;
 - c. Clarity: District Rule 5.1 as amended is written so that its meaning can be easily understood by the persons directly affected by it;
 - d. Consistency: District Rule 5.1 as amended is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;
 - e. Nonduplication: District Rule 5.1 as amended does not impose the same requirements as an existing state or federal regulation;
 - f. Reference: By adopting District Rule 5.1, the District meets the requirements of Health & Safety Code Sections 40702.
3. The Board of Directors finds that the District has complied with the procedural requirements set forth in Chapters 6 and 6.5 of Part 3 of Division 26 of the Health and Safety Code.
4. The Board of Directors finds that amending District Rule 5.1 is an action taken by a regulatory agency as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, and is therefore categorically exempt from CEQA review as a Class 8 Categorical Exemption.
5. The Board of Directors hereby amends District Rule 5.1 as set forth in Exhibit 1 (Attachment A of the Staff Report), which is attached and incorporated by reference. The amendment is effective September 8, 2021.

PASSED AND ADOPTED by the Board of Directors of the Yolo-Solano Air Quality Management District this 8th day of Month, 2021, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Jim Provenza, Chair Board of Directors
Yolo-Solano Air Quality Management District

Attest:

Approved as to Form:

Denise Almaguer, Clerk
Board of Directors

Hope Welton, District Counsel

ATTACHMENT E

WRITTEN COMMENTS RECEIVED