

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

**PROPOSED AMENDMENTS TO  
RULE 5.2, UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE**

**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 5.2, Upset/Breakdown Conditions: Emergency Variance. Facilities in the District may encounter an unforeseeable failure or malfunction which causes a violation of District rules. This is known as an upset/breakdown condition. In an effort to work with our regulated community and acknowledge that violations of District rules may occur due to malfunctions outside of the control of facility operators, the District may elect to take no enforcement action for violations of District rules as long as specific criteria for upset/breakdown conditions are met. Rule 5.2 sets forth standards for determining the presence of an upset/breakdown condition (and potential relief from District rules and regulations), procedures for sources to notify and report upset/breakdown conditions to the District, and the process for requesting an emergency variance hearing before the District Hearing Board.

The main amendments being proposed to Rule 5.2 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
- Clarifies the applicability and definition of an upset/breakdown condition
- More clearly specifies the procedures and findings to grant an emergency variance
- Explicitly states that the chairperson of the Hearing Board (or designee) may issue an emergency variance

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 5.2 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. An emergency variance caused by an upset/breakdown condition is one type of hearing that the District Hearing Board may receive a petition for. 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 emergency variance rule(s) to provide specific procedures for emergency variance hearings.

Since emergency variances are similar to general variances heard by the District Hearing Board, significant portions of Rule 5.2 mirror requirements set forth in Rule 5.1 and California Health and Safety Code. However, Rule 5.2 helps to specify certain emergency variance procedures so

petitioners, Hearing Board members, District Board of Directors and staff members, and the public can easily access and understand what an upset/breakdown condition is, criteria that must be met for the District to elect to not take enforcement action for upset/breakdown conditions, and the emergency variance procedure.

Rule 5.2 defines an upset/breakdown condition, establishes procedures required for the District to have the option to elect to not take enforcement action for upset/breakdown conditions, specifies findings that the Hearing Board members must make in order to grant an emergency variance, and establishes procedural requirements for how emergency variance hearings are to take place.

#### Overview of source category

Rule 5.2 potentially affects any article, machine, equipment, or other contrivance for which a Permit to Operate has been granted by the APCO as any permitted equipment may experience an upset/breakdown condition at any time.

## **II. DISCUSSION OF PROPOSED RULE 5.1 AMENDMENTS**

The proposed amendments to Rule 5.1 are as follows:

### **Section 100      General**

Section 102: Added to specify that upset/breakdown conditions and emergency variances only apply to permitted sources in the District.

Section 103: Added to align with current District rule making standards.

### **Section 200      Definitions**

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

Section 201: Added to define what can be considered to be involved in an upset/breakdown condition.

Section 202: Added to define when the District can consider to elect to take no enforcement action during an upset/breakdown condition and when a facility should consider requesting an emergency variance.

Section 203: Amended to more clearly define that an upset/breakdown condition causes a violation of District rules. Other additions made to clarify what an upset/breakdown condition is. Section 203.4 amended from “or” to “and” to clarify that all four subsections must be met in order to meet the definition of an upset/breakdown condition.

### **Section 300      Standards**

#### General Amendments

Renumbered and reorganized sections to improve rule structure.

Added various applicable references to California Health and Safety Code.

Section 301: Removed section regarding reporting a breakdown the next business day because the District cannot be contacted. Added specifications for upset/breakdown condition notification to the District.

Section 302: Removed duplicative definition of an upset/breakdown condition. Specifies that failure to obtain an emergency variance for an upset/breakdown condition which persists longer than the end of the production run or 24 hours, whichever is sooner, is a violation of District rules.

Section 303.1: Added section to specify procedure for requesting an emergency variance in writing and allow for the submission of electronic documents.

Section 303.2: Removed portion of section and moved to a new section later in the rule which pertains to Hearing Board decisions on emergency variances.

Section 303.3(c): Added requirement to find good cause in order to grant an emergency variance.

Section 303.4: Added to more clearly define procedures for Hearing Board decisions on emergency variances.

Section 303.6: Specifies that an emergency variance is only in effect until source returns to compliance. Extends time period for which an emergency variance may be granted from 15 to 30 days per California Health and Safety Code regulations.

#### **Section 400      Administrative Requirements**

Replaced Air Pollution Control Officer with APCO per District rule making procedures.

#### **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 upset/breakdown conditions and emergency variance 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 5.2. Notification will be sent to surrounding Air Districts, City Managers within the District, building/planning/community development departments within the YSAQMD, 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 5.2, UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE  
STRIKE-OUT UNDERLINE VERSION**

**ATTACHMENT B**

**PROPOSED AMENDMENTS TO RULE 5.2, UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE;  
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 5.2- UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE

**Project Location:** Yolo-Solano Air Quality Management District

**Project Description:** The District is proposing to amend Rule 5.2, UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE. 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.

**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 5.2 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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**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 X.XX

**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 5.2, UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE 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.

**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 5.2;
  - b. Authority: Health and Safety Code section 40702 permits the District to amend

- District Rule 5.2;
- c. Clarity: District Rule 5.2 as amended is written so that its meaning can be easily understood by the persons directly affected by it;
  - d. Consistency: District Rule 5.2 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 5.2 as amended does not impose the same requirements as an existing state or federal regulation;
  - f. Reference: By adopting District Rule 5.2, 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 5.2 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 5.2 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 September, 2021, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

Attest:

Approved as to Form:

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Denise Almaguer, Clerk  
Board of Directors

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Hope Welton, District Counsel



**ATTACHMENT E**

**WRITTEN COMMENTS RECEIVED**