SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT

STAFF REPORT

ADOPTION OF:
RULE 213, FEDERAL MAJOR MODIFICATIONS

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INTRODUCTION

The District's New Source Review (NSR) program is designed to ensure that construction and operation of new and modified sources does not interfere with progress towards attainment of the National and State Ambient Air Quality Standards.

In December 2002, the United States Environmental Protection Agency (EPA) adopted amendments to the Clean Air Act modifying NSR requirements for modifications of major sources (NSR reform). These federal NSR reforms were designed by EPA to allow major sources of air contaminants greater flexibility to modify existing facilities without triggering NSR requirements, such as Best Available Control Technology (BACT) and offsets. EPA's premise was that some facilities delayed modernizing equipment to avoid triggering NSR requirements, that lifting the requirements would encourage facilities to upgrade, and that the upgrades would yield a net air quality benefit.

The California Air Resources Board (CARB) and many of the air districts, including Sacramento, disagreed with EPA's conclusions. These agencies took the position that: (i) NSR requirements are necessary to improve air quality in California; and (ii) there is no evidence that California facilities have delayed upgrades to avoid NSR requirements.

California responded to EPA NSR reform on two fronts. First, the state legislature passed California Senate Bill 288 – Protect California Air Act of 2003 (SB 288), which was sponsored by State Senator Byron Sher. The bill prohibits local districts from amending or revising their NSR rules or regulations to be less stringent than certain requirements in those rules and regulations that existed on December 30, 2002. Second, the state took part in a lawsuit filed against EPA to try to prevent the implementation of the reforms. The Sacramento Metropolitan Air Quality Management District voted to participate in this lawsuit in February 2003. On June 24, 2005 the Court issued a decision vacating some provisions of the NSR reform, remanding some provisions back to EPA for further consideration, and upholding other provisions.

Proposed Rule 213, FEDERAL MAJOR MODIFICATIONS, will address the two differing state and federal requirements applicable to modifications of federal major sources. Major modifications that are not "Federal Major Modifications" can escape certain federal-only requirements, such as the alternative siting analysis. EPA has imposed a deadline of January 2, 2006 for NSR rules to be amended to comply with their requirements.

BACKGROUND

With the promulgation of both the Federal NSR Reform and California's SB288, the District (and all other California air districts) is faced with the task of amending our rules to comply with the NSR Reforms, as required by EPA, yet not make the rules any less stringent than they were on December 30, 2002. Staff throughout the State has been working closely with the California Air Pollution Control Officers' Association (CAPCOA), CARB, and EPA to meet these two conflicting requirements. The methods developed rely on the Clean Air Act authorization for state and local agencies to adopt rules that are more stringent than required by the Clean Air Act.

Rule 202, NEW SOURCE REVIEW sets the requirements for reviewing permit applications for new and modified sources, including major modifications, and the requirements for Best

Available Control Technology (BACT) and offsets. The rule also sets the calculation procedures for emission increases and reductions associated with new and modified stationary sources and/or emission units. The rule was first adopted on September 20, 1976 and was last amended on February 24, 2005. Consistent with the method developed with CAPCOA, CARB and EPA assistance, new Rule 213, FEDERAL MAJOR MODIFICATIONS, will be used in conjunction with Rule 202 to address the NSR reform requirements for federal major modifications.

Federal Mandate: The District is designated as a serious nonattainment area for the 8-hour ozone standard by EPA. Section 173 of Title I of the Federal Clean Air Act Amendments of 1990 requires permitting authorities to establish a permitting program for reviewing applications for construction of new sources or modification of existing sources of air pollutants. A New Source Review, or Preconstruction Review, is required as part of the State Implementation Plan (SIP) under 40 Code of Federal Regulations (CFR) Part 51 Subpart 1 to ensure that the construction or modification of a source will not cause violations of the State's control strategy or interfere with attainment or maintenance of ambient air quality standards. 40 CFR Part 51 also requires the District to adopt a permitting program that requires the application of BACT for any net increase in emissions at a major stationary source, and Lowest Achievable Emission Rate for a new major stationary source or modification to an existing stationary source that results in significant emission increases.

Federal regulations (67 FR 80186 - 80289) require that the District adopt revisions to the District's NSR rules that incorporate federal NSR reforms that were published in the Federal Register on December 31, 2002. The District is required to adopt the federal NSR reforms that were not vacated or remanded by the court on June 24, 2005. The District must include an exemption for certain federal-only requirements if a modification is not a Federal Major Modification under the federal NSR reforms. Proposed Rule 213 will bring the District's NSR program in compliance with these requirements.

State Mandates: The California Clean Air Act, Health and Safety Code Section 40919, requires that the District's permitting program be designed to achieve no net increase in emissions from stationary sources with emissions greater than 15 tons per year of reactive organic compounds (ROC) or nitrogen oxides (NOx) as precursors to ozone. The California Clean Air Act also requires the permitting program to require the use of BACT for any new or modified stationary source which has the potential to emit 10 pounds per day or more of ROC or NOx. Currently adopted Rule 202, NEW SOURCE REVIEW complies with these requirements and proposed Rule 213 does not change any of these requirements.

Chapter 4.5, Protect California Air Act of 2003 Requirements: In an effort to minimize the potential impact of federal NSR reform, the state legislature passed the Protect California Air Act of 2003 (SB288). The Act (Health and Safety Code Sections 42500 through 42507) is intended to minimize the impact of the relaxation of the federal new source review program on air quality in California. The Act prohibits districts from making revisions to their SIP approved NSR rules in existence on December 30, 2002 that would result in weakening their rules. These revisions include but are not limited to, revisions to rule applicability, changing the definition of modification so that NSR is not triggered or triggered at a higher level of emission increases, or relaxing BACT, air quality analysis, and public participation requirements. The Act does permit districts to deviate from these requirements under specified conditions.

The proposed Rule 213 meets this mandate. This rule is adopting by reference the definition of a Federal Major Modification and Plantwide Applicability Limits and does not relax any of the requirements for BACT, offsets, or public participation.

SUMMARY OF PROPOSED RULES

Proposed Rule 213, FEDERAL MAJOR MODIFICATIONS, establishes definitions for Federal Major Modifications and Plantwide Applicability Limits and then exempts non-Federal Major Modifications from the federal-only requirements in Rule 202, NEW SOURCE REVIEW. A detailed summary of the proposed rule may be found in Attachment A (see page 6).

COST IMPACTS

Section 40703 of the California Health and Safety Code requires that the District consider and make public its findings relating to the cost effectiveness of implementing an emission control measure. The proposed rule does not implement an emission control measure and therefore is not subject to the cost effectiveness mandate.

SOCIOECONOMIC IMPACT ANALYSIS

The provisions of Section 40728.5 of the California Health and Safety Code require, 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."

The proposed rule will not significantly affect air quality or strengthen an emission limitation, and is therefore not subject to the socioeconomic analysis mandate.

ENVIRONMENTAL REVIEW AND COMPLIANCE

The approval of the proposed action is exempt from CEQA for the following reason. The proposed action consists of adopting approved federal requirements and because the District has not exercised discretion by modifying federal requirements, it is considered to be ministerial in nature and thus is statutorily exempt from CEQA, pursuant to state CEQA Guidelines Section 15268 – Ministerial Projects, as defined by CEQA Guidelines Section 15369.

TABLE OF FINDINGS

Six required findings: According to Section 40727(a) of the California Health and Safety Code, prior to adopting or amending a rule or regulation, an air district's board must 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 Health and Safety Code Section 40727.2;
2. Information contained in the rulemaking records pursuant to Section 40728 of the California Health and Safety Code; and
3. Relevant information presented at the Board's hearing for the rule.

The table below sets the finding and the basis for making the finding.

FINDING	FINDING DETERMINATION
Authority: The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule.	The District is authorized to adopt rules and regulations by Health & Safety Code Sections 40001, 40702, 41010, 40919, and 42300. (Health & Safety Code Section 40727(b)(2)).
Necessity: The District must find that the rulemaking demonstrates a need exists for the rule, or for its amendment or repeal.	It is necessary for the District to adopt this rule to comply with the NSR reform requirements that were published in 40 CFR Part 51.165 and were not vacated or remanded by the courts on June 24, 2005 (67 FR 80186). (Health & Safety Code Section 40727(b)(1)).
Clarity: The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it.	The District has reviewed the rule and determined that it can be easily understood by the affected industry. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule. (Health & Safety Code Section 40727(b)(3)).
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.	The proposed rule amendments do not conflict with and are not contradictory to existing statutes, court decisions, or state or federal regulations. (Health & Safety Code Section 40727(b)(4)).
Non-Duplication: The District must find that either: 1) The rule does not impose the same requirements as an existing site or federal regulation; or 2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District.	The proposed rule duplicates federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District (Health & Safety Code 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.	The proposed rule implements EPA's NSR reform requirements that were not vacated or remanded by the court on June 24, 2005 (40 CFR Part 51.165). (Health & Safety Code Section 40727(b)(6)).
Additional Informational Requirements (Health & Safety Code Section 40727): In complying with HSC Section 40727, the District must identify all federal requirements and District rules that apply to the same equipment or source type as the proposed rule or amendments.	The draft rule does not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements, therefore, a rule consistency analysis is not required.

ATTACHMENT A
SUMMARY OF PROPOSED AMENDMENTS

Rule 213, Federal Major Modifications

NEW SECTION NUMBER	EXISTING SECTION NUMBER	PROPOSED LANGUAGE
101	N/A	Sets the purpose of the rule to set additional definitions and exemptions to be used when processing authorities to construct under Rule 202, NEW SOURCE REVIEW.
102	N/A	Sets the rule applicability to major stationary source permit applicants that do not meet the Federal Major Modification definition or that have an approved Plantwide Applicability Limit.
103	N/A	Incorporates the District's standard severability language in case the rule is challenged in court.
201	N/A	Sets the definition of a Federal Major Modification to be as defined in 40 CFR Section 51.165. Clarifies what the reviewing authority is, and uses the definitions in Rule 207, TITLEV – FEDERAL OPERATING PERMIT PROGRAM for major stationary source and for significant. In addition, excludes major modifications that do not cause a pre-established PAL to be exceeded from being a Federal Major Modification.
202	N/A	Sets the definition for Major Stationary Source for this rule to be the same as Major Stationary Source – Title V in Rule 207, TITLE V – FEDERAL OPERATING PERMIT PROGRAM.
203	N/A	Sets the definition for Plantwide Applicability Limits (PAL) to be an emission limit established in accordance with 40 CFR 51.165(f)(2)(v).
301	N/A	Exempts permit applications from Rule 202, NEW SOURCE REVIEW, Section 401, Alternative Siting if they are not a Federal Major Modification.
401	N/A	Sets the procedure for applying for a PAL to be under Rule 201, GENERAL PERMIT REQUIREMENTS and according to the provisions of 40 CFR 51.165(f).