

D R A F T

WORKING GROUP DISCUSSION ONLY

(PR2301-2/25/09)

PROPOSED RULE 2301 – CONTROL OF EMISSIONS FROM NEW OR REDEVELOPMENT PROJECTS

(a) Purpose

The purpose of this rule is to reduce emissions from development projects.

(b) Applicability

This Rule applies to any applicant that seeks to gain a final discretionary approval for a development project, or any portion thereof, whose operational emissions upon final buildout equal or exceed two (2.0) tons per year of NO_x and is required to prepare an Environmental Impact Report, Negative Declaration or Mitigated Negative Declaration pursuant to §21000 et. seq. of the California Public Resources Code.

(c) Definitions

For the purpose of this Rule, the following definitions shall apply:

- (1) **APPLICANT** is any person or entity that undertakes a development project.
- (2) **ARCHITECTURAL COATINGS** for the purposes of this rule includes primers, sealers, undercoaters, flat and nonflat coatings that are applied to stationary structures and their appurtenances.
- (3) **AREA SOURCES** are any multiple non-mobile sources of air pollution including, but not limited to, water heaters, gas furnaces, fireplaces, wood stoves, landscape equipment, architectural coatings, and consumer products [that are individually small but can be significant emission sources when combined].
- (4) **BASELINE EMISSIONS** are all NO_x, VOC, and PM_{2.5} emissions related to any development project site as it exists at the time that a Notice of Preparation is published pursuant to Section 15082 of the California Code of Regulations (Title 14). Where a Notice of Preparation is not published then the baseline shall be established at the time that an environmental analysis is commenced.

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

- (5) COMPLIANCE PLAN is a plan demonstrating how a project will comply with this rule, and is subject to the requirements set forth in Section (d) of this rule and Rule 306.
- (6) CONSTRUCTION is any activity that entails excavation, grading, demolition, paving, or landscaping; and/or results in emissions from combustion sources that occur for the sole purpose of building a development project.
- (7) CONTIGUOUS OR ADJACENT PROPERTY is two or more parcels of land with a common boundary, or separated by a public roadway or public right-of-way.
- (8) DEVELOPMENT PROJECT is any project, or portion thereof, that is subject to a discretionary approval by a public agency, and will ultimately result in a new or modified building.
- (9) EMISSION REDUCTION MEASURES includes all on-site measures beyond District requirements (excluding this rule), and beyond state or federal requirements for criteria pollutants including NOx, PM2.5 and VOC. City, County, and other public agency requirements including but not limited to those set-forth by climate change programs may be counted as emissions reduction measures.
- (10) ENERGY EFFICIENCY means the efficient use of energy such that both residential and non-residential buildings are designed and constructed to the July 1, 2009 Building Energy Efficiency Standards under Part 6 for Title 24 of the California Code of Regulations. Examples of energy efficiency include but are not limited to, insulating a home to reduce heating and cooling energy uses, installing fluorescent lights instead of incandescent lights and/or skylights for illumination.
- (11) IMPLEMENTATION PLAN is a plan that prescribes a means for properly and successfully implementing and enforcing the mitigation measures as identified within an Ordinance or Local Plan.
- (12) LAND USE is any facility, building, structure, installation, activity, or combination thereof, and the purpose for which it is arranged, designed, intended, constructed, erected, moved, altered or enlarged on, or for which it is or may be occupied or maintained. Land uses include, but are not limited to, any combination of the following:

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

COMMERCIAL – a land use classification for the buying and selling of commodities and services (e.g., office park, medical office building, civic center, and general office building).

EDUCATIONAL – use of land or building for an institution not for profit but for the establishment and maintenance of a public or private school (e.g., secondary school, university and library).

INDUSTRIAL – land use characterized by production, manufacturing or fabrication activities or storage and distribution (e.g., warehouse, manufacturing, light industry and heavy industry).

RECREATIONAL - land used for leisure activities that requires physical alteration to the area in which leisure activities are performed (e.g., park, health club, hotel, and restaurant).

RESIDENTIAL – an area of land lawfully used, designated in a plan, development order, or other final development approval for residential purposes (e.g., single family housing, apartments, townhouses and mobile home park).

RETAIL – the use of land for the selling of goods or merchandise to the ultimate consumer (e.g., discount store, supermarket, service station and hardware store).

- (13) LEAD AGENCY pursuant to Section 21067 of the California Public Resources Code is the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.
- (14) OPERATIONAL EMISSIONS are the combination of area and motor vehicle emissions associated with a development project.
- (15) TRANSIT is any local, metropolitan or regional passenger transportation service by bus, rail, or other conveyance, either publicly or privately owned, which is provided to the public on a regular or continuing basis, and may include station platforms, park-and-ride facilities and other infrastructure necessary to support the above transit modes.
- (16) TRANSPORTATION EMISSION REDUCTION MEASURES are those that can directly or indirectly result in mobile source emissions reductions from, including but not limited to, trips and vehicle miles traveled (VMT). ~~All transportation measures defined in the PR 2301 Guidance Document. Every one (1) point attributed to the transportation measures in the PR~~

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

~~2301 Guidance Document is equivalent to a one (1) percent emissions reduction from the projects operational (vehicle) emissions.~~

- (17) TRANSPORTATION PROJECT is any project for the purpose to create a new paved surface that is used for the transportation of motor vehicles, or any structural support thereof. Examples of transportation projects include streets, freeways and highways and any related ramps, and bridges. This does not include development projects where traffic surfaces are a portion of the project but not the main land use.
- (18) Urban Emissions Model or URBEMIS (www.urbemis.com) is a computer model that calculates the expected emissions associated with land use development in California, found at the above website.

(d) Compliance Plan

- (1) Any applicant subject to this rule shall submit a Compliance Plan no later than applying for a final discretionary approval with the Lead Agency. Nothing in this rule shall preclude an applicant from submitting a Compliance Plan prior to filing an application for a final discretionary approval with the Lead Agency. ~~twenty (20) calendar days prior to any publication, posting or mailing of a Notice of Availability per Section 15087 of the California Environmental Quality Act (CEQA) Guidelines or Notice of Intent per Section 15072 of the CEQA Guidelines subject to §21000 et. seq. of the California Public Resources Code.~~ The Compliance Plan shall be submitted on a form provided by the AQMD and include information such as:
- (A) Applicant information,
 - (B) Project description (including, but not limited to, location, land-use, size, and phase-in dates),
 - (C) Project construction and operational emissions information, and
 - (D) Emission reduction measures selected pursuant to Paragraph (e)(2) of this rule.

(e) Requirements

Applicants shall use URBEMIS and any of the Alternative Calculation Methods approved by the California Energy Commission in accordance with the California Code of Regulations - Title 24 or other methods approved by the Executive Officer, the California Air Resources Board (CARB) and the United States

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

Environmental Protection Agency (EPA) to determine overall emissions from the proposed project and the percentage of energy reduced in excess of the July 1, 2009 Title 24 standards. URBEMIS defaults must be used unless project specific data is available.

(1) Construction Emissions Reductions Measures (Re-evaluation underway due to recent CARB rule delay.)

(A) Construction equipment owned and/or operated for a project shall comply with state regulations. Applicants shall:

- (i) Display an ARB-issued Equipment Identification Number (EIN) in clear view on the construction equipment.
- (ii) Demonstrate compliance with the ARB In-Use Off-road Diesel Vehicle Regulation by displaying a copy of the ARB-issued Certificate of Reported Compliance in clear view on the construction site. Where an ARB-issued Certificate of Reported Compliance is unavailable the applicant shall provide to the Executive Officer proof of a submitted application for ARB Certification with the Compliance Plan.

(B) At the project site applicants shall:

- (i) Use architectural coatings that do not exceed fifty (50) percent of the VOC limit specified in Paragraph (c)(2) of SCAQMD Rule 1113; or
- (ii) Use of “Certified Clean Air Choices” cleaning products or products that meet the requirements of the Clean Air Choices Cleaner Certification Protocol; or
- (iii) Use of leaf blowers that are certified by the ARB to achieve the following emissions standards:

HC +NO _x (g/kW-hr)	CO (g/kW-hr)
19	536

(2) Operational Emissions Reductions Measures

Area Source and Transportation Emissions Reductions Measures

~~For area and operational NO_x emissions of 2.0 tons per year or greater:~~

The applicant shall implement sufficient Emission Reduction Measures that achieve emissions reductions equal to or greater than ~~those achieved~~ by percent (%) from the project's operational NOx emissions excluding Emissions Reduction Measures. ~~% beyond the July 1, 2009 Building Energy Efficiency Standards under Part 6 for Title 24 of the California Code of Regulations.~~

~~(B) — Transportation Emissions Reductions Measures~~

~~For operational NOx emissions of 2.0 tons per year or greater, the applicant shall implement transportation emission reduction measures equivalent to:~~

~~(i) — A minimum points based on the PR 2301 Guidance Document; or~~

~~(ii) — The applicant may substitute project specific reductions for one or more of the transportation emissions reductions measures in the PR 2301 Guidance Document. Applicants must provide documentation to substantiate that the project specific reduction meets the minimum requirement described in ~~(e)(2)(B)(A)(i)~~.~~

(3) Substitution Emissions Reductions

An applicant can propose other methods that include on-site and off-site emissions reductions measures approved by the Executive Officer to achieve ~~operational NOx~~ emission reductions in part or in whole, greater than or equivalent to the ~~emissions reductions measures subject to~~ requirements specified in Paragraph (e)(1)(B) and ~~(e)(2)(B)~~ (e)(2). Notwithstanding compliance with Paragraph (d) the applicant must provide the following:

- (i) A detailed description of the substitution measure(s),
- (ii) Methodology for determining the reduction potential of each substitution measure; and
- (iii) An implementation plan specific to each substitution measure.

(4) The emissions calculation to determine the emissions reductions achieved pursuant to Paragraph (e)(1)(B) and (e)(2) shall be in accordance with the PR 2301 Guidance Document.

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

- (f) Delegation to Local Government
 - (1) The District may delegate authority to any local government that complies with the following:
 - (A) Adopts by Ordinance Rule 2301 or sets forth in a Local Plan the requirements of subdivision (e); or
 - (B) Adopts by Ordinance or sets forth in a Local Plan a program that will attain overall emissions reductions greater than or equivalent to those achieved by paragraph (e).
 - (2) Any local government seeking delegation must demonstrate the following:
 - (A) The proposed Ordinance or Local Plan has been analyzed under CEQA and has a certified CEQA document with an emissions estimate approved by the Executive Officer including a emissions inventory, tracking mechanism, and a commitment to remedy any excess emissions if commitments are not met; and
 - (B) The Ordinance or Local Plan sets forth requirements that meet or exceed the applicability, Compliance Plan requirements and compliance schedule in subdivision (b), (d) and (g) of Rule 2301. The local government shall clearly define construction and operational emissions reductions measures in the Ordinance or Local Plan; and
 - (C) The local government demonstrates to the satisfaction of the Executive Officer that it has an implementation plan providing adequate resources to adopt and enforce the Ordinance or Local Plan; and
 - (D) The local government executes a Memorandum of Understanding with the Executive Officer specifying the procedures to monitor and review performance of implementing the program, and procedures for revocation of delegation if the Executive Officer determines that performance of the local government is inadequate.
 - (3) It is a violation of this rule for any person to violate a provision of an Ordinance or Local Plan which has been granted delegation.

(g) Compliance Schedule

- (1) Effective January 1, 2010, any applicant for a development project which will result in operational emissions that exceed ten (10) tons per year of NO_x shall submit a Compliance Plan to the Executive Officer in accordance with subdivision (d) and (e).
- (2) Effective January 1, 2011, any applicant for a development project which will result in operational emissions that exceed four (4) tons per year of NO_x shall submit a Compliance Plan to the Executive Officer in accordance with subdivision (d) and (e).
- (3) Effective January 1, 2012, any applicant for a development project which will result in operational emissions that are greater than or equal to 2.0 tons per year of NO_x shall comply with applicable Rule 2301 requirements in accordance with subdivision (d) and (e).

(h) Compliance Plan Review Process**(1) Completeness of the Compliance Plan**

The Executive Officer shall determine whether the Compliance Plan is deemed complete within twenty (20) calendar days after receipt of the Compliance Plan unless the applicant agrees to a longer time. Should the Compliance Plan be deemed incomplete, the Executive Officer shall notify the applicant in writing and shall specify the additional information required. Resubmission of the Compliance Plan begins a new twenty (20) day calendar period for determination of completeness of the Compliance Plan. The Executive Officer shall notify the applicant in writing when the Compliance Plan is complete.

(2) District Evaluation

The Executive Officer shall evaluate the contents of the Compliance Plan including the modeling inputs and calculations. During the evaluation process, the Executive Officer may request clarification or ask for additional supplementation to document the facts contained within. Time to receive additional information requested by the Executive Officer shall not count toward the time the Executive Officer has to provide approval or disapproval. The clock shall resume once the Executive Officer has received the requested information.

(3) Compliance Plan Approval

The Executive Officer shall notify the applicant in writing of approval or disapproval of the Compliance Plan within thirty (30) calendar days after the Compliance Plan has been deemed complete. The Executive Officer shall provide the following in writing to the applicant:

- (A) The Executive Officer determination regarding the Compliance Plan;
- (B) The rule requirements as they apply to the project; and
- (C) A statement of rule compliance or an explanation of the unresolved issues.

(4) Project changes that result in any increase in emissions shall require submission of a new Compliance Plan and re-notification to the public agency, and all interested parties identified by the applicant. A new Compliance Plan is not required if there is no net increase in emissions or change in the emissions reductions measures pursuant to paragraph (d)(1).

(5) Guidance Document

The PR 2301 Guidance Document shall be annually reviewed by AQMD staff and all new or revised emissions reductions strategies shall be presented to the Governing Board Mobile Source Committee for review.

(i) Fees

For the purposes of this rule the Compliance Plan shall be assessed applicable fees in accordance with Rule 306.

(j) Appeal Process

An applicant has the right to appeal the denial of the compliance plan to the Hearing Board in the same manner as a permit denial as specified in Section 42302 of the California Health and Safety Code.

(k) Exemptions

- (1) Transportation and transit projects.
- (2) Development projects that have operational emissions of less than two (2.0) tons per year of NOx. The lead agency per Section 21067 of the CEQA Guidelines shall retain records that demonstrate the projects operational emissions for not less than two (2) years. ~~These said~~ records shall be made available to the District upon request.

D R A F T

Proposed Rule 2301 (cont.)

(Adopted Month day, 2009)

- (3) Reconstruction of any development project that is damaged or destroyed and is rebuilt to essentially the same use and intensity.
 - (4) Development projects that have published a Notice of Preparation or that have commenced an environmental analysis through the lead agency on or before the date of rule adoption.
 - (5) Projects at airports and marine ports.
- (1) Violations
- Any person subject to this rule who fails to comply with any provision of this rule is in violation of the rule and is subject to civil and criminal penalties pursuant to the Health and Safety Code Section 42400 through 42403, and any other enforcement action authorized under the Health and Safety Code for violations of District rules. Each day in which a violation continues, including failure to submit a required document, shall constitute a separate offense.