

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Staff Report

Proposed Rule 223 – Emission Reduction Permits for Large Confined Animal Facilities

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ACRONYMS AND TERMS USED IN THIS REPORT

AGRICULTURAL OPERATIONS: Any operation occurring on a ranch or farm directly related to the growing of crops, or raising of fowl or animals for the primary purpose of making a profit or for a livelihood.

AGRICULTURAL SOURCE OF AIR POLLUTION: A source or a group of sources of air pollution created by or used in the production of crops, or raising of fowl or animals located on contiguous property under common ownership or control. Under SB 700, there are four categories of sources: confined animal facilities; internal combustion engines (including portable and off-road engines); sources subject to Federal Title V requirements; and sources subject to local district regulations as allowed by the Health & Safety Code.

AQMD – South Coast Air Quality Management District: The air pollution control agency for all of Orange County and the urban portions of Los Angeles, Riverside and San Bernardino counties. AQMD is responsible for controlling emissions primarily from non-vehicular sources of air pollution. These can include anything from large power plants and refineries to gasoline stations and internal combustion engine generators.

AQMP – Air Quality Management Plan: AQMD's comprehensive, multiyear strategy of reducing air pollution from all sources under its jurisdiction, designed to bring the region into attainment with state and federal standards. It uses up-to-date science and analytical tools and incorporates a comprehensive strategy aimed at controlling pollution from all sources, including stationary sources, on-road and off-road mobile sources and area sources. The California Clean Air Act requires a non-attainment area to update its AQMP every three years to incorporate the most recent available technical information. The 2003 AQMP updates the demonstration of attainment with the federal standards for ozone and PM₁₀; replaces the 1997 attainment demonstration for the federal carbon monoxide (CO) standard and provides a basis for a maintenance plan for CO for the future. It also updates the maintenance plan for the federal nitrogen dioxide (NO₂) standard that the South Coast Air Basin (Basin) has met since 1992.

AREA SOURCES: A combination of similar emission sources within a geographic area. Area sources include emissions from operations involving solvent usage on surfaces (surface coating), material storage or distribution, construction activities or such agricultural activities as discing, tilling, and travel on unpaved roads. Area sources are generally considered fugitive emissions.

BACM – Best Available Control Measures: A term used to refer to the most effective measures (according to EPA guidance) for controlling small or dispersed particulates and other emissions from sources such as roadway dust, soot and ash from woodstoves and open burning of brush, timber, grasslands, or trash. Examples

of activities to which BACM apply include generation of fugitive dust, agricultural burning, dairy ammonia, and manure handling.

BACT – Best Available Control Technology: The most stringent emission limitation or control technique which:

- (1) has been achieved in practice for such category or class of source; or
- (2) is contained in any SIP approved by the U.S. EPA for such category or class of source. A specific limitation or control technique shall not apply if the owner or operator of the proposed source demonstrates to the satisfaction of the Executive Officer or designee that such limitation or control technique is not presently achievable; or
- (3) is any other emission limitation or control technique, found by the Executive Officer or designee to be technologically feasible for such class or category of sources or for a specific source, and cost-effective as compared to measures as listed in the AQMP or rules adopted by the District Governing Board.

BARCT – Best Available Retrofit Control Technology: An emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.

CAF – Confined Animal Facilities: Any structure, building, installation, barn, corral, or coop for animals or fowl that restricts them to a certain area. See California Health & Safety Code Section 39011.5.

CAPCOA – California Air Pollution Control Officers Association: It is an association of thirty-five local air quality agencies throughout California. CAPCOA has been in existence since 1975, and is dedicated to protecting the public health and providing clean air.

CARB – California Air Resources Board: The state agency charged with coordinating efforts to attain and maintain ambient air quality standards and to conduct research into the causes of and solution to air pollution in California, among other duties.

CEQA – California Environmental Quality Act: The California Environmental Quality Act (CEQA) was put into effect in 1970 to regulate activities subject to state environmental regulations so that major consideration is given to preventing environmental damage.

FUGITIVE DUST: Any solid particulate matter that becomes airborne, other than that emitted from an exhaust stack, directly or indirectly as a result of the activities of man.

FUGITIVE EMISSIONS: Those emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. These include leaks from equipment such as piping. Examples include discing and harvesting; dust from traveling on unpaved roads; or ammonia from dairy manure piles.

LCAF – Large Confined Animal Facility: Any facility as defined in California Health & Safety Code Section 86500, Title 17, Division 1, Chapter 1, Subchapter 2.7.

NAAQS – National Ambient Air Quality Standards: Standards established by U.S. EPA that specify concentrations and durations of air pollutants which reflect the relationship between the intensity and composition of air pollution to undesirable effects established by the federal government. The standard signifies the threshold above which the pollutant is known to cause adverse health effects and allows for an adequate margin of safety. See California Health & Safety Code Section 39014.

NO_x – Nitrogen Oxides: Means the sum of nitric oxide and nitrogen dioxide in the flue gas, collectively expressed as nitrogen dioxide. It is an air pollutant that is a by-product of combustion from transportation and stationary sources, such as gasoline engines, diesel engines, water heaters and boilers. Nitrogen oxides are also a major contributor to the formation of ozone and fine particulate matter.

PARTICULATE MATTER: Any material, except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions. Particulate matter may be directly emitted from a source or form through chemical reaction of air contaminants in the atmosphere.

PHOTOCHEMICAL REACTIONS: Chemical reactions of various pollutants emitted from different sources. For example, the photochemical reaction to form ambient ozone involves the combination of nitrogen oxides and hydrocarbons in the presence of sunlight.

PM₁₀: Particulate matter with an aerodynamic diameter smaller than or equal to 10 microns as measured by the applicable state and federal reference test methods.

SANCTIONS: Punitive actions taken by the federal government for failure to submit or implement a SIP. Such action may include withholding of federal highway funds or grants, and restrictions on the construction of new or modification of existing major stationary sources.

SB 700 – Senate Bill 700: On September 22, 2003, Governor Davis signed into law Senate Bill 700, authored by Senator Florez. The bill amended air pollution

control requirements in the California Health and Safety Code to include requirements for agricultural sources of air pollution.

SCAB – South Coast Air Basin: It is the non-desert portions of Los Angeles, Riverside, and San Bernardino counties and all of Orange County as defined in California Code of Regulations, Title 17, Section 60104. The area is bounded on the west by the Pacific Ocean, on the north and east by the San Gabriel, San Bernardino, and San Jacinto Mountains, and on the south by the San Diego county line.

SIP – State Implementation Plan: Documents prepared by states, and subject to EPA approval, that identify the actions and programs to be implemented to control emissions within their boundaries, in order to achieve and maintain NAAQS.

U.S. EPA – United States Environmental Protection Agency: The federal agency responsible for the development and monitoring of programs to improve the environment. It establishes NAAQS and has oversight authority over state and local programs, develops and enforces regulations, and implements the Federal Clean Air Act, among other environmental laws.

VOC – Volatile Organic Compounds: Any volatile compound of carbon excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and exempt compounds.

EXECUTIVE SUMMARY

Proposed Rule 223 is designed to ensure that all LCAFs, as defined by CARB, reduce emissions of air contaminants from their facilities to the extent feasible. The proposed rule will implement requirements of SB 700 codified in California Health & Safety Code Section 40724.6. Specifically, the proposed rule requires an owner or operator of a LCAF to:

- Obtain an AQMD permit to build, erect, install, alter, replace, or operate a LCAF;
- Provide the AQMD with an inventory of all emission sources at the facility, and an emissions mitigation plan that demonstrates that the facility will use BARCT to reduce emissions of pollutants that contribute to non-attainment of any ambient air quality standard; as well as annual updates of this information;
- Keep records that specify the number of animals at the facility; and

The AQMD shall make the draft permit available for public review for 30 days prior to issuing ~~any~~the permit. Those LCAF permits already issued will be reissued with a 30 day comment period prior to reissuance.

Proposed Rule 223 requires that all LCAFs apply for and obtain a permit that includes a mitigation plan that the LCAF will implement to reduce its emissions. Further, the mitigation plan is to be updated annually. Staff believes that the above requirements in Proposed Rule 223, including the emissions mitigation plan, will significantly reduce emissions from LCAFs.

BACKGROUND

AQMD is the air pollution control agency for all of Orange County and the urban portions of Los Angeles, Riverside and San Bernardino counties. This area of 10,000 square miles is home to nearly 16 million people - about half the population of the state of California. It is the second most populated urban area in the United States and one of the smoggiest.

AQMD is responsible for controlling emissions primarily from stationary sources of air pollution. These can include anything from large power plants and refineries to the corner gas station. There are about 28,000 such businesses operating under AQMD permits. Many consumer products are also considered stationary sources and include house paint, furniture varnish, and thousands of products containing solvents that evaporate into the air. About 23% of this area's ozone-forming air pollution comes from stationary sources, both businesses and residences. The other 77% comes from mobile sources--mainly cars, trucks and

buses, but also construction equipment, ships, trains and airplanes. Emission standards for mobile sources are generally established by state or federal agencies, such as CARB and the U.S. EPA, rather than by local agencies such as the AQMD, although AQMD may establish operational limitations for these sources, and may establish emission standards for non-road engines and fleets, with approval from U.S. EPA.

Agricultural operations represent a significant source of air pollution throughout the state. SB 700, which was enacted into law as of January 1, 2004, eliminated the exemption from the permit system of local air pollution control districts for agricultural operations in the farming of crops or raising of fowl or animals. The bill amended air pollution control requirements in the California Health & Safety Code to include requirements for agricultural sources of air pollution.

It is important to note that sources may still need to comply with applicable District Rules, even if permits are not required.

As shown in Table 1, the federal eight-hour ozone standard has been exceeded in the SCAB at an average of 97 days over the past three years. This makes the impact of emissions from CAFs a critical consideration in the development of Proposed Rule 223.

Table – 1

Year	Number of Days over the Federal Eight-Hour Ozone Standard
2004	90
2003	120
2002	99

Source: AQMD Webpage - Historic Ozone Air Quality Trends

VOCs are the most important class of pollutants emitted from CAFs. There is significant ongoing research associated with emissions factors of VOC from livestock operations, particularly with dairies and certain poultry ranching operations. CARB's current VOC emission factor of 12.8 lbs/year/head for dairies is within the range indicated by the research to date. When the evaluation of recent research results is completed, the State will determine whether adjustment to the emission factors is warranted.

According to data compiled by CARB, in 2004 the overall livestock VOC emissions are most significant in the San Joaquin Valley. This data is shown in Table - 2 and indicates that the San Joaquin Valley accounts for about 63% of the State's livestock VOC emissions, while the South Coast accounts for 12%.

Collectively, these two regions account for about 75% of the total livestock VOC emissions in the State.

Table – 2

Region	Livestock VOC Emissions (tons/day)			% of Total Statewide VOC Emissions from Livestock
	Dairies	Other Livestock	Total Livestock	
South Coast	4.6	0.7	5.3	12
San Joaquin Valley	23.5	5.5	29.0	63
Statewide	35.7	10.1	45.8	100

Source: CARB Staff Report: “Initial Statement of Reasons for Rulemaking Public Hearing to Consider the Large Confined Animal Facility Definition” May 6, 2005

However, it should be pointed out that due to implementation of Rule 1127 – Emission Reductions from Livestock Waste, and the recently accelerated migration of the dairies out of the Basin, their relative contribution to the emissions inventory in the near future is expected to be significantly lower than what the current figures in Table 2 indicate.

SB 700 required CARB to develop a definition for the source category of a LCAF by July 1, 2005. In developing the proposed definition, CARB was required to review all available scientific information, including emission factors for CAFs and the effect of these facilities on air quality in the State’s various air basins. CARB was also directed to consider the impact of emissions from these facilities on attainment and maintenance of ambient air quality standards.

In developing the proposed definition for large CAFs, CARB staff considered the following key factors:

- ▶ severity and nature of the air quality problem in various local air districts;
- ▶ number of animals and their associated emissions per district;
- ▶ status of research on emission factors;
- ▶ efficiency in definition structure (number of animals relative to facility number); and,
- ▶ ability of local air districts to expand the definition if warranted.

The bill further provides that local air pollution control and air management districts shall, not later than July 1, 2006, adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a LCAF, as defined by CARB, to obtain a permit from the district to reduce, to the extent feasible, emissions of air contaminants from the facility. Staff has developed Proposed Rule 223 to satisfy SB 700 and California Health & Safety Code Section 40724.6 requirements.

After considering the above factors, CARB staff has proposed the thresholds shown in Table 3.

Table – 3

Livestock Category	Facilities at or Exceeding Thresholds are Considered Large	
	Non-Attainment Areas	Attainment Areas
Dairy	1,000 milk producing cows	2,000 milk producing cows
Beef Feedlots	3,500 beef cattle	7,000 beef cattle
Other Cattle Operations	7,500 calves, heifers or other cattle	7,500 calves, heifers or other cattle
Chickens – Broilers	650,000	1,300,000
Chickens – Egg Layers	650,000	1,300,000
Turkeys	100,000	200,000
Swine's	3,000	6,000
Sheep and Goats	15,000	30,000
Horses	2,500	5,000
Ducks	650,000	1,300,000
Rabbits, Pheasants, Llamas, Others	30,000	60,000

Source: CARB Staff Report: “Initial Statement of Reasons for Rulemaking Public Hearing to Consider the Large Confined Animal Facility Definition”, May 6, 2005, modified September 7, 2005.

The definition is designed to address the combined, aggregate air quality impacts of the livestock industry in California. According to the CARB Staff Report, “Initial Statement of Reasons for Rulemaking Public Hearing to Consider the Large Confined Animal Facility Definition” the CARB staff did not take an individual facility emissions approach in defining a large CAF because it is impractical and uncertain, in part due to the developing state of livestock emissions estimation research. At this time, facility emissions are calculated on a per animal basis pending completion and peer review of research on specific emission rates for various processes at a facility.

The AQMD is designated a non-attainment area, therefore, for dairies, the definition of LCAF is 1,000 milking cows in the ten federal non-attainment areas as defined in SB 700. There are an estimated 55 dairies in the area under AQMD jurisdiction of 1,000 or more milking cows. Poultry farms or egg ranches with at least 650,000 birds qualify as LCAF. It is estimated that there are 4 egg ranches that meet this criteria in the Basin.

Emission Factors

Emission factors are a critical part of emission calculations. Due to ongoing research, these numbers may change as more detailed research data is made available. The interim emission factors currently used by AQMD staff for

calculating emissions from milking cows and layer hens are shown in Table 4 below.

Table 4

	Ammonia (lb/hd/year)	PM ₁₀ (lb/hd/year)	VOC (lb/hd/year)
Milking Cows	34.6	2.46	12.8
Layer Hens	.096	.0308	.02565

To improve the current emission factors, further studies are currently being conducted at different locations. It is anticipated that improved emission rate data will be available soon. New data will be incorporated as it becomes available.

For emission fees, operators of LCAFs can use an emission factor that is different from the District suggested factors, provided that the applicant demonstrates to the satisfaction of the Executive Officer that the suggested factors are more representative of their emissions.

Senate Bill 700: Agriculture & Air Quality

SB 700 was adopted to harmonize state and federal permitting requirements and to recognize the contribution to the State's air pollution from agricultural operations.

The main elements of SB 700 are that it:

- ▶ Defines “agricultural source” in state law;
- ▶ Removes the restriction from state law that prevented air districts from requiring permits for agricultural sources;
- ▶ Establishes specific permitting and exemption requirements for agricultural sources;
- ▶ Requires emission control regulations in areas that do not attain NAAQS for PM₁₀;
- ▶ Requires permits and emissions mitigation for CAFs that are defined by CARB as “large”; and
- ▶ Requires CAPCOA to compile a clearinghouse of information about available emissions control and mitigation for agricultural activities.

AQMD has complied with SB 700 requirements by adopting or amending the following rules:

Rule 403 – Fugitive Dust;

Rule 403.1 – Supplemental Fugitive Dust Control Requirements for Coachella Valley Sources;

Rule 461 – Gasoline Transfer and Dispensing;

Rule 1110.2 – Emissions from Gaseous-and Liquid-Fueled Engines;

Rule 1127 – Emission Reductions from Livestock Waste;

Rule 1186 – PM10 Emissions from Paved and Unpaved Roads, and Livestock Operations.

In December 2004, the AQMD Governing Board adopted Rule 312 – Special Permitting Fees for Agricultural Sources, and approved amendments to Rules 102, 201, 201.1, 202, 203, and 219, in order to facilitate the permitting of equipment at agricultural facilities (including confined animal facilities) by streamlining requirements, incorporating reduced fee provisions, and identifying equipment that is exempt from written permits. This was done to comply with SB 700 that states:

The purpose of the act adding this section is to establish a new set of programs at the state and regional levels to reduce air emissions from agricultural sources in order to protect public health and the environment.

It is therefore the intent of the Legislature to require the State Air Resources Board and air quality management districts and air pollution control districts in the state to regulate stationary, mobile, and area sources of agricultural air pollution.

Proposed Rule 223 was developed to satisfy the requirement that all LCAFs are permitted. The pertinent section of SB 700 relating to the permitting of LCAFs, (California Health & Safety Code 40724.6(b)) reads as follows:

Not later than July 1, 2006, each district that is designated as a federal non-attainment area for ozone as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility, as defined by the state board pursuant to subdivision (a), to obtain a permit from the district to reduce, to the extent feasible, emissions of air contaminants from the facility.

PROPOSED RULE 223

Proposed Rule 223 was developed to satisfy the requirement that all LCAFs have permits that seek to minimize their emissions. In accordance with SB 700 and California Health & Safety Code Section 40724.6, Proposed Rule 223 requires

that the owner or operator of LCAFs submit an application for a permit that includes:

- (i) The information that the Executive Officer determines is necessary to prepare an emissions inventory of all regulated air pollutants emitted from the operation, including, but not limited to, precursor and fugitive emissions, using emission factors approved by CARB in a public hearing; and
- (ii) List of all equipment and the regulating District rules; and
- (iii) List of all other sources of air pollution, including but not limited to animals, birds, and lagoons; and
- (iv) Total capacity of the facility in terms of animal and bird population; and
- (v) An emissions mitigation plan that demonstrates that the facility will use BARCT to reduce emissions of pollutants that contribute to the non-attainment of any ambient air quality standard, and that are within the District's regulatory authority.

Proposed Rule 223 requires that all LCAFs apply for and obtain a permit that includes a mitigation plan that the LCAF will implement to reduce its emissions. Staff believes that the above requirements in Proposed Rule 223, including the emissions mitigation plan, will significantly reduce emissions from LCAFs.

No new permit applications will be required for any LCAF that has already filed an application or received a permit to operate a LCAF. Proposed Rule 223 requires that each LCAF submit an emissions mitigation plan as part of the permit process and comply with all applicable rules and regulations. LCAF permits and permit conditions may be updated as required pursuant to District Rule 204.

In order to comply with California Health & Safety Code Section 40724.6(d)(4) noticing requirements, prior to approval of any new or modified permit, the District shall provide for 30 days public notice and comment on any draft permit. LCAF permits already issued will be reissued with a 30 day comment period prior to reissuance. District staff will post a notice and the proposed permit on the District website and District headquarters for public review. Staff will review the proposed permit with the applicant prior to the 30 day public notice period. Based on the comments received, AQMD may modify the proposed permit if it is determined that the necessary modifications are warranted.

BARCT is defined as an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source. Proposed Rule 223 requires compliance with BARCT but does not mandate any specific measure. AQMD staff believes the dust and emission control mitigation requirements in District

Rules 403 – Fugitive Dust; 403.1 – Supplemental Fugitive Dust Control Requirements for Coachella Valley Sources; 1127 – Emission Reductions from Livestock Waste; and 1186 – PM10 Emissions from Paved and Unpaved Roads, and Livestock Operations, satisfy most of the BARCT particulate emission mitigation requirements for dairy and some portions of poultry operations.

~~Attachment~~ Appendix A of Proposed Rule 223 contains a list of the Proposed Emission Mitigation Measures. This list was developed in consultation with and general agreement of stakeholders, including Western United Dairymen, Milk Producers Council, Inland Empire Poultrymen, Inc. and Pacific Egg and Poultry Association. In addition, most of the measures proposed are based on extensive study conducted by the Dairy Permitting Advisory Group (DPAG) that identified and recommended emission mitigation measures for San Joaquin Valley Air Pollution Control District (SJVAPCD) as they developed BACT for dairies. DPAG is composed of SJVAPCD staff, dairy industry representatives, academics, environmentalists, and other parties interested in dairy air emissions, and was set up to provide recommendations to the SJVAPCD's Executive Officer in three areas:

1. VOC emission factors for dairies.
2. "Modifications" at existing dairies.
3. BACT for dairies.

DPAG attempted to identify every potential air pollution reduction technique currently available to dairies. As stated in their final report, in identifying potential controls, DPAG did not limit the scope to "engineered" mechanical equipment, but attempted to look at all possible mechanisms for reducing emissions from dairies. For example, they reviewed the potential of altering the diets of lactating cows and examined the potential impacts of increasing the frequency of common manure management techniques, like feed lane flushing, in addition to looking at mechanical systems like biogas digesters and enclosed housing vented to air pollution control devices.

After identifying the potential controls, DPAG then gathered the available information to determine whether, and to what extent, the technique could be expected to control dairy emissions. Finally, based on the information gathered, DPAG identified the issues and factors that were recommended for SJVAPCD to consider in making BACT determinations relative to the listed potential control technique.

Operators of dairy and poultry LCAFs will be required to choose the mitigation measures from that list, or alternatively any other measures not specifically listed but approved by the Executive Officer. District staff will jointly continue to work with stakeholders to further develop and update BARCT and other control measures for both dairy and poultry operations.

Under Proposed Rule 223, applications to obtain a permit shall include an emissions mitigation plan to implement BARCT. ~~Attachment~~ [Appendix A](#) of Proposed Rule 223 contains a list of the Proposed Emission Mitigation Measures. Operators of dairy and poultry LCAFs will be required to select and implement the mitigation measures from that list based on the options available in each table and category, or alternatively, implement any other measures not specifically listed but approved by the Executive Officer. Owners of LCAFs shall also be required to submit an annual emissions mitigation plan to the District in order to demonstrate that they are implementing BARCT, as defined at the time of the annual renewal submittal. In addition to the above, operators of LCAFs would be required to complete and attach to each application submittals and annual renewals the Emission Mitigation Plan Template shown as Attachment A of this Staff Report. The template basically summarizes the latest status of the LCAF. In addition to the list of measures in ~~Attachment~~ [Appendix A](#), LCAF operators must also comply with Rule 1127 or any other applicable District rules.

Under SB 700, CAFs under AQMD jurisdiction with annual emissions of half the major source threshold (5 tons/year), or more, are already required to have applied or received an operating permit from the AQMD. Based on the current emission factors, CAFs with 782 or more cows or 52,000 or more birds trigger the permit threshold. Operators of CAFs that have already applied for or have received an operating CAF permit on or before June 02, 2006, from the AQMD satisfy the information requirements of the Proposed Rule. They meet the permitting requirements of Proposed Rule 223 because LCAFs, by definition, have at least 1000 cows or 650,000 egg layers, and so are by default a sub-set of those that already require an operating permit.

Operators of CAFs that have already applied for or have received an operating CAF permit on or before June 02, 2006, from the AQMD satisfy the information requirements of the Proposed Rule. They meet the permitting requirements of Proposed Rule 223 because LCAFs, by definition, have at least 1000 cows, and so are by default a sub-set of those that already require an operating permit.

Facilities that have already been issued a permit to operate would have their permits updated through annual renewal, in accordance with District Rule 204, to add conditions reflecting BARCT. Plans submitted pursuant to paragraph (c)(4) of Proposed Rule 223 shall not be subject to Rule 306 plan annual review/renewal fees unless the plan is modified or a new plan is submitted. For new and modified plans, owners shall remit the annual review/renewal fees pursuant to Rule 306. Operators of LCAFs shall implement new or modified emission mitigation measures on a schedule approved by the Executive Officer. The Emissions Mitigation Template identified as Attachment A in the staff report will be required to be submitted with the initial application and renewals thereafter.

District Rule 312, adopted by the AQMD Governing Board in December 2004, was designed to be a fee rule that transitions agricultural sources into the written permit system. To provide relief to agricultural facilities, a special reduced fee schedule was established under this rule. Agricultural facilities that applied for permits during the period paid reduced fee. At the expiration of this rule on June 30, 2005, the permit processing and associated fees for agricultural sources are now governed by Rule 301.

COMPARATIVE ANALYSIS

As required by H & S Code 40727.2(a), staff has reviewed federal air pollution control requirements and other AQMD rules and regulations and has not found any federal regulation that applies to the same equipment or source type as that regulated under Proposed Rule 223. AQMD staff has found other District rules and regulations that apply to the same type of source or equipment. A comparison of these regulations with Proposed Rule 223 is listed as Attachment B.

SOCIOECONOMIC ANALYSIS

PR 223 requires large confined animal facilities (LCAF) to obtain permits from the AQMD, provide emission inventory and emission mitigation plans along with their annual updates to the AQMD, and keep records of animal counts at facilities. There are 55 dairies (NAICS 112120—dairy cattle and milk production) and four egg ranches (NAICS 112310—chicken egg production) affected by the proposed rule. The 55 dairies are also subject to Rule 1127—Emission Reductions from Livestock Waste—which has requirements for dairies similar to those in PR 223. Therefore, there is no additional cost for the 55 dairies under PR 223.

Three of the four egg ranches are located in Riverside County and the remaining one is in San Bernardino County. The four ranches have already filed permits under Rule 1127. Based on field visits, these ranches have been implementing control measures to mitigate potential emissions. As such, there would be no additional cost associated with control measures that would be identified in their initial emission mitigation plans.

In conclusion, PAR 223 would not result in cost impact at this time.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act (CEQA), the SCAQMD is the Lead Agency and has reviewed the proposed project pursuant to CEQA Guidelines §15002 (k)(1). Because the proposed project will not require major modifications at existing facilities to comply and no daily operational emission increases are anticipated, it can be seen with certainty that there is no possibility that the proposed project in question has the potential to have a significant adverse effect on the environment. Thus, the proposed project is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) - Review for Exemption. A Notice of Exemption has been prepared pursuant to CEQA Guidelines §15062 - Notice of Exemption. The Notice of Exemption will be filed with the county clerks of Los

Angeles, Orange, Riverside and San Bernardino counties immediately following the adoption of the proposed project.

LEGISLATIVE AUTHORITY

The California Legislature created the AQMD in 1977 (The Lewis-Presley Air Quality Management Act, Health and Safety Code Section 40400 et seq.) as the agency responsible for developing and enforcing air pollution control rules and regulations in the AQMD. By statute, the AQMD is required to adopt an AQMP demonstrating compliance with all state and federal ambient air quality standards for the AQMD [California Health and Safety Code Section 40460(a)]. Furthermore, the AQMD must adopt rules and regulations that carry out the AQMP [California Health and Safety Code Section 40440(a)].

Legal Mandates

SB 700 already enacted into law, requires each district that is designated as a federal non-attainment area for ozone as of January 1, 2004, to adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility, to obtain a permit from the district to reduce to the extent feasible, emissions of air contaminants from the facility.

DRAFT FINDINGS

Before adopting, amending or repealing a rule, the AQMD shall make findings of necessity, authority, clarity, consistency, non-duplication and reference, as defined in Health and Safety Code Section 40727. The draft findings are as follows:

Necessity - The AQMD Governing Board finds and determines that Proposed Rule 223 – Permitting Requirements for Large Confined Animal Facilities, is necessary in order to implement the requirements of SB 700 and Health and Safety Code § 40724.6 and improve air quality in an effort to meet federal and state air quality standards for ozone and particulate matters..

Authority - The AQMD Governing Board obtains its authority to adopt, amend or repeal rules and regulations from Health and Safety Code §§40000, 40001, and 40440.

Clarity - The AQMD Governing Board finds and determines that Proposed Rule 223 is written and displayed so that the meaning can be easily understood by persons directly affected by it.

Consistency – The AQMD Governing Board finds and determines that Proposed Rule 223 is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or federal or state regulations.

Non-Duplication – The AQMD Governing Board has determined that Proposed Rule 223 does not impose the same requirements as any existing state or federal regulation.

Reference - In adopting these proposed amendments, the AQMD Governing Board references the following statutes which AQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001, 40440 and 40724.6.

CONCLUSION

The adoption of Proposed Rule 223 will satisfy state requirements for permitting of large confined animal facilities. The rule is crafted in such a way to promote feasible, cost-effective emissions reductions at these facilities. Control of emissions from agricultural operations in the AQMD will further the efforts to meet clean air standards in the region.

COMMENTS AND RESPONSES

1. **Comment:** Do LCAFs that comply with Regulations II, XI, 403, 1127, 1186, etc., meet the BARCT requirements of SB 700?

Response: *Dairies that comply with the requirements of the above rules, meet most of the BARCT requirements. However, in order to better cover all emissions from both dairy and poultry operations, District staff has jointly worked with stakeholders to develop a list of more comprehensive BARCT measures for both dairy and poultry operations.*
2. **Comment:** What constitutes alteration at a dairy/poultry farm?

Response: *An alteration is a change that would require a modification of the permit description or require a change of permit conditions. Increases in the number of animals to a level that is below the design capacity as stated in permit description would not be a modification. Similarly, moving a fence or changing the configuration of a milking barn would not be a modification. Alternatively, adding a new milking barn or increasing the number of animals above the design threshold would be a modification.*
3. **Comment:** Add “or submitted application” to PR 223(i) to read “Operators that have obtained or submitted application to obtain a LCAF permit on or before [date of adoption], satisfy the information requirements

Response: *Under other provisions of SB 700, CAFs under AQMD jurisdiction with annual emissions of half the major source threshold (5 tons/year) are required to have an operating permit from the AQMD. Based on the current emission factors, CAFs with 782 or more cows or 52,000 or more birds trigger the permit threshold. LCAFs, by definition, have at least 1000 cows or 650,000 egg layers, and so are by default a sub-set of those that already require an operating permit. AQMD staff believes that operators of all LCAFs have already submitted complete applications but may not yet have received an operating permit from the AQMD; and, these applications contain most, if not all, the information required for the initial submittal required by Rule 223. Applications that contained all the information necessary to demonstrate compliance with Rule 223 and pending applications where the applicant submits supplemental information sufficient to demonstrate compliance with Rule 223 may be issued the*

initial LCAF Permit to Operate without the need to submit a new permit application. Based on that understanding, the proposed rule language has been changed to reflect that operators that have submitted a CAF application with complete information to obtain a LCAF permit satisfy the requirements for initial permitting under Rule 223.

4. **Comment:** Why does the Proposed Rule require 30 days comment period?

Response: *The 30-day notice period is part of SB 700 and codified in Health and Safety Code Section 40724.6(d)(4). Staff will post a notice on the AQMD website and have the draft permit available for public review. AQMD staff will review proposed permits with the applicant prior to the 30-day public notice period.*

5. **Comment:** Why does the Proposed Rule allow up to 6 months for permits to be processed?

Response: *This is a provision from SB 700. Permits may be and are frequently issued in a much shorter timeframe.*

6. **Comment:** Recordkeeping should be based on monthly average population instead of daily, as currently proposed.

Response: *Monthly average recordkeeping will be acceptable for the recordkeeping requirements of the rule. This change is reflected in the rule language.*

7. **Comment:** Permits should be discussed with applicant first before it is made open to public for comments.

Response: *See response to Comment 4.*

8. **Comment:** Emission factors are still a contentious issue and industry does not agree with those numbers, and would like to work with the District on the factors. The concern is not on the permitting side, but we are concerned about using those numbers to calculate emission fees.

Response: *Health and Safety Code Section 40724.6(d)(1)(A) requires the use of emission factors that are approved by ARB. Staff will continue to work with CARB, industry and other stakeholders to develop accurate emission factors. For emission fees, the applicant can use an emission factor that is different from the AQMD suggested factor provided that the applicant demonstrates to the satisfaction of the Executive Officer their factor is more representative of their specific emissions.*

9. **Comment:** Emission factors should be included in the staff report.
- Response:** *Emission factors currently used by staff are included in the staff report.*
10. **Comment:** In the feed section of Table 1 (A) the stated requirement is to incorporate five mitigation measures, and the assumption is that silage is being fed. However, if a producer does not feed silage the current draft still requires four other measures be chosen. The problem is that many of the silage-related choices are no longer available – since there is no silage.
- Response:** Staff will continue to work with industry and other stakeholders to develop and further refine the control measures and the technology involved. There is a provision for alternative control measures that operators could implement in order to not limit themselves to the options outlined in the Table.
11. **Comment:** Agricultural Waste Management Field Handbook is not the proper document to use to determine a reference point for a mitigation measure. The correct document is the California Field Office Technical Guide.
- Response:** Staff replaced the references to Agricultural Waste Management Field Handbook with specific Natural Resource Conservation Standards.
12. **Comment:** Proposed Rule 223 does not include control measures for emissions of contaminants such as hydrogen sulfide and methane.
- Response:** District staff believes that source specific rules address other pollutants. Proposed Rule 223 primarily addresses specific emissions from LCAFS that lead to non-attainment of criteria pollutants.
13. **Comment:** Proposed Rule 223 does not take into account the emissions from enteric processes and feed storage.
- Response:** The proposed rule has been revised after the Set Hearing to include control measures for emissions from feed and silage operations. Staff believes that the control measures identified in the tables in Appendix A of the proposed rule would reduce the emissions from enteric processes and feed and silage operations.
14. **Comment:** Center on Race, Poverty and Environment requests that the District place the Center on the mailing list for poultry LCAF permits.
- Response:** Proposed Rule 223 provides for 30 days public notice and comment on any draft LCAF permit. District staff will post a

notice and the proposed permit on the District website and District headquarters for public review. In addition, the Center will be added to the public notice mailing list for poultry LCAF proposed permits.

ATTACHMENT A

Rule 223 Emission Mitigation Plan Template

Large Confined Animal Facility (LCAF)

Rule 223 – Emission Mitigation Plan (EMP)

For LCAFs (see Thresholds below) subject to Rule 223.

Farm Information:

Name of Business:			AQMD ID No.:
Mailing Address:	City:	State:	Zip:
Farm Address:	City:		Zip:
Contact Name:	Title:		Phone No.:

LCAF Compliance Information:

LCAF Type: ☐ (1) Dairy ☐ (2) Poultry (Layer) ☐ (3) Poultry (Broiler) ☐ (4) Other LCAF		
Farm Currently Under AQMD Permit or Permit Application? ☐ Yes ☐ No	AQMD Application No.:	Rule 223 EMP Elements (check all applicable) ☐ Regulation IV including ☐ Rule 403 (non-dairy LCAFs) ☐ Regulation XI including ☐ Rule 1127 (dairies) <div style="margin-left: 150px;">☐ Rule 1186 (dairies)</div> <div style="margin-left: 150px;">☐ Additional Mitigation Measures (attach measures here)</div> ☐ Rule 223 Attachment A
Comments:		

Frequently Asked Questions

1. *What is an LCAF?*

A Large Confined Animal Facility (LCAF) is a livestock operation with animal totals exceeding the following thresholds established by the California Air Resources Board (CARB):

Livestock Category	Threshold (number of animals)
Dairy	1,000 milking cows
Chicken – Egg Layers	650,000
Chicken – Broilers	650,000
Turkeys	100,000
Others	Contact AQMD (see below)

2. *Where can I get assistance regarding this form?*

Contact XXX at 909.396.XXXX or XXX@aqmd.gov

Submit the completed application to XXX by January 1, 2007 (or January 15, 2008 and subsequent year for annual compliance plan updates) via one of the following methods:

Mail to: SCAQMD, 21865 Copley Dr., Diamond Bar, CA 91765 FAX: 909.396.xxxx Email:

ATTACHMENT B

Comparison of Proposed Rule 223 to Other District Rules

COMPARISON OF PROPOSED RULE 223 TO OTHER DISTRICT RULES

Current District Rules	PR 223
<p>Rule 403 – Fugitive Dust: The purpose of this Rule is to reduce the amount of particulate matter entrained in the ambient air as a result of anthropogenic (man-made) fugitive dust sources by requiring actions to prevent, reduce or mitigate fugitive dust emissions.</p>	<p><i>PR 223 requires compliance with BACM and BARCT but does not mandate any specific measure, such as those specified in Rule 403. Compliance with Rule 403 meets the BACM and BARCT requirements of PR 223 without duplication of required measures.</i></p>
<p>Rule 403.1 –Supplemental Fugitive Dust Control Requirements for Coachella Valley Sources: The purpose of this rule is to reduce or prevent the amount of fine particulate matter (PM₁₀) entrained in the ambient air from anthropogenic fugitive dust sources.</p>	<p><i>PR 223 requires compliance with BACM and BARCT but does not mandate any specific measure, as does Rule 403.1. Compliance with Rule 403.1 meets the BACM and BARCT requirements of PR 223 without duplication of required measures.</i></p>
<p>Rule 1127 – Emission Reduction from Livestock Waste: The purpose of this rule is to reduce ammonia, VOC, and PM₁₀ emissions from livestock waste.</p> <p>Best Management Practices:</p> <p>Dairy operators are required to apply Best Management Practices.</p> <p>Reporting and Recordkeeping Requirements</p> <p>(1) No later than January 1, 2005, the operator of an existing dairy farm shall submit a Rule 1127 notification to the Executive Officer in writing. The Rule 1127 notification shall include:</p> <p>(A) Dairy farm operator's name;</p> <p>(B) Name of contact person, if different from operator's name;</p> <p>(C) Farm name, if applicable;</p> <p>(D) Farm street address;</p>	<p><i>PR 223 would require owner/operator of LCAFs to submit to the Executive Officer on or before January 15 of each year, an annual compliance report that shall include:</i></p> <ul style="list-style-type: none"> ▶ <i>An emissions inventory of all regulated air pollutants emitted from the facility, including precursor and fugitive emissions, using emission factors approved by CARB; and</i> ▶ <i>List of all equipment and the regulating District rules; and</i> ▶ <i>List of all non-permitted, non-animal sources of air pollution, such as lagoons; and</i> ▶ <i>Total capacity of the facility in terms of animal and bird population; and</i> ▶ <i>An emissions mitigation plan that demonstrates that the facility is using best available retrofit technology (BARCT) to reduce emissions of pollutants.</i>

Attachment B

<p>(E) Farm mailing address, if different from the street address;</p> <p>(F) Telephone number for the contact person.</p> <p>(2) No later than 30 days after operations begin at a new dairy farm or at an existing farm under a new operator, the operator shall submit to the Executive Officer the information required in paragraph (1) above.</p> <p>(3) An operator shall submit an annual report to the Executive Officer in writing by January 15th of each year after January 1, 2007. The report shall include:</p> <p>(A) Information required in paragraph (1) above; and</p> <p>(B) Animal population for the previous calendar year, broken out by number of adult cows, heifers, and calves;</p> <p>(C) Amount of manure removed from the dairy in the preceding calendar year, broken out by the following destinations:</p> <p>(i) agricultural lands within the jurisdiction of the AQMD;</p> <p>(ii) manure processing operation(s) within the jurisdiction of the AQMD, reporting amount to each manure processing operation;</p> <p>(iii) a location out of the jurisdiction of the AQMD.</p>	<p><i>No new permit applications will be required for any large CAF that has already filed an application or received a permit.</i></p> <p><i>Proposed Rule 223 requires that each large CAF submit an emissions mitigation plan as part of the permit process and comply with all applicable rules and regulations. Large CAF permits may be updated as required pursuant to District Rule 204.</i></p> <p><i>Information submitted pursuant to Rule 1127 that satisfies the requirements of PR 223 does not need to be re-submitted and satisfies the requirements of PR 223.</i></p> <p><i>Attachment A to the rule lists the measures for the emission mitigation plan for the operator to select. Each measure category allows the operator to demonstrate use of an equally effective measure to the Executive Officer.</i></p>
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ATTACHMENT C

**Senate Bill 700 – Florez - Air Quality: Emissions: Stationary Sources:
Agricultural Operations.**

Senate Bill No. 700

CHAPTER 479

An act to amend Section 42310 of, and to add Sections 39011.5, 39023.3, 40724, 40724.5, 40724.6, 40724.7, 40731, 42301.16, 42301.17, 42301.18, and 44559.9 to, the Health and Safety Code, relating to air quality.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.] LEGISLATIVE COUNSEL'S DIGEST

SB 700, Florez. Air quality: emissions: stationary sources: agricultural operations.

(1) Existing law authorizes the board of every air quality management district and air pollution control district to establish a permit system that requires any person that uses certain types of equipment that may cause the emission of air contaminants to obtain a permit. Existing law exempts vehicles and certain types of equipment from those permit requirements.

This bill would eliminate that exemption for any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals. To the extent that the bill would increase the number of permits that a district board, electing to establish a permit system prior to January 1, 2004, would be required to issue, the bill would impose a state-mandated local program.

(2) Existing law defines various terms governing the construction of air pollution control laws in the state, and authorizes the state board to revise those definitions to conform to federal law. This bill would define the terms "agricultural source of air pollution" and "fugitive emissions," and would prohibit, notwithstanding the existing authority, the state board from revising those definitions.

(3) The existing federal Clean Air Act requires districts to adopt local programs for issuing operating permits to major stationary sources of air pollutants. The existing act defines a stationary source as any building, structure, facility, or installation that emits or may emit any air pollutant.

This bill would require each district that is designated a serious federal non-attainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, to adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation requiring best available control measures (BACM) and best available retrofit control technology (BARCT) for agricultural practices at agricultural sources of air pollution to reduce air pollutants from those sources for which that technology is applicable for agricultural practices by the earliest feasible date, but not later than January 1, 2006, and would require each district subject to those requirements to comply with a schedule for public hearing, adoption, and implementation of the final rule.

The bill would require each district that is designated a moderate federal non-attainment area or an applicable ambient air quality standard for particulate matter as of January 1, 2004, to adopt and implement control measures necessary to reduce emissions from agricultural practices by the earliest feasible date, but no later than January 1, 2007, unless the district determines that those sources do not significantly cause or contribute to a violation of state or federal standards.

The bill would require, by January 1, 2005, the state board to review all available scientific information and develop a definition of a "large confined animal facility."

The bill would require, by July 1, 2006, each district that is designated as a federal non-attainment area for ozone as of January 1, 2004, to adopt, implement, and submit for inclusion in the state

implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility as that term is defined by the state board to obtain a permit to reduce, to the extent feasible, emissions of air contaminants from the facility. The bill would require the district to perform an assessment of the impacts of the rule or regulation prior to its adoption. The bill would authorize a permit holder to appeal any district determination or decision related to that permit.

The bill would require a district that is designated as being in attainment for the federal ambient air quality standard for ozone as of January 1, 2004, to adopt the same rule or regulation required of non-attainment districts, by July 1, 2006, unless the district board makes a determination that large confined animal facilities will not contribute to a violation of any state or federal ambient air quality standard. The bill would provide the rule or regulation is not required to be submitted for inclusion into the state implementation plan.

The bill would require the California Air Pollution Control Officers Association, in consultation with the state board and other interested parties, by January 1, 2005, to develop a clearinghouse of available control measures and strategies for agricultural sources of air pollution and emissions of air contaminants from agriculture operations. The additional duties for districts under the bill would impose a state-mandated local program.

(4) Existing law establishes the Capital Access Loan Program for Small Businesses, administered by the California Pollution Control Financing Authority, which provides loans through participating financial institutions to entities authorized to conduct business in the state and whose primary business location is in the state.

This bill would require the authority to expand the program to include outreach to financial institutions that service agricultural interests in the state for the purposes of funding air pollution control measures.

(5) Under existing law, any person who violates a rule, regulation, permit, or order of a district is guilty of a misdemeanor. Because this bill would increase the number of people who are subject to that provision, it would expand the scope of a crime, thereby imposing a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Agricultural operations necessary for growing crops or raising animals are a significant source of directly emitted particulates, and precursors of ozone and fine particulate matter. These emissions have a significant adverse effect on the ability of areas of the state, including, but not limited to, the San Joaquin Valley, to achieve health-based state and federal ambient air quality standards.

(2) Since 1999, the agriculture industry has reduced emissions of oxides of nitrogen (NO_x) by more than 2000 tons per year, emissions of particulate matter of 10 microns in diameter (PM 10) by more than 500 tons per year, and emissions of volatile organic compounds (VOCs) from agricultural

chemicals by more than 20 percent. According to the state board, however, agricultural sources of air pollution still contribute twenty-six percent of the smog-forming emissions in the San Joaquin Valley.

(3) In the San Joaquin Valley, a large portion of the sources of particulate emissions are area-wide sources whose emissions are directly related to growth in population and the resulting vehicle miles traveled. According to the State Air Resources Board, however, agricultural sources of air pollution account for over fifty percent of the directly emitted particulate air pollution generated in the valley during the fall, amounting to over 170 tons per day of emissions.

(4) All parties living or operating a business in an area that has been classified as being a non-attainment area with respect to the attainment of federal or state ambient air quality standards share the responsibility of reducing emissions from air pollutants.

(5) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) prohibits the state from adopting emission standards or limitations less stringent than those established under the federal act, including limitations on emissions from agricultural sources.

(6) Division 26 (commencing with Section 39000) of the Health and Safety Code establishes numerous policies and programs to reduce air pollutants for the protection of public health.

(7) The purpose of the act adding this section is to establish a new set of programs at the state and regional levels to reduce air emissions from agricultural sources in order to protect public health and the environment.

(b) It is therefore the intent of the Legislature to require the State Air Resources Board and air quality management districts and air pollution control districts in the state to regulate stationary, mobile, and area sources of agricultural air pollution.

SEC. 2. Section 39011.5 is added to the Health and Safety Code, to read:

39011.5. (a) “Agricultural source of air pollution” or “agricultural source” means a source of air pollution or a group of sources used in the production of crops, or the raising of fowl or animals located on contiguous property under common ownership or control that meets any of the following criteria:

(1) Is a confined animal facility, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, milking parlor, or system for the collection, storage, treatment, and distribution of liquid and solid manure, if domesticated animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes and feeding is by means other than grazing.

(2) Is an internal combustion engine used in the production of crops or the raising of fowl or animals, including, but not limited to, an engine subject to Article 1.5 (commencing with Section 41750) of Chapter 3 of Part 4 except an engine that is used to propel implements of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

(3) Is a Title V source, as that term is defined in Section 39053.5, or is a source that is otherwise subject to regulation by a district pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) Any district rule or regulation affecting stationary sources on agricultural operations adopted on or before January 1, 2004, is applicable to an agriculture source.

(c) Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source, over which it otherwise has jurisdiction pursuant to this division, or pursuant to the federal Clean Air Act (42 U.S.C. Sec.

7401 et seq.) or any rules or regulations adopted pursuant to that act that were in effect on or before January 1, 2003, or to exempt an agricultural source from any requirement otherwise applicable under Sections 40724 or 42301.16, based upon a finding by the district in a public hearing that the aggregate emissions from that source do not exceed a de minimus level of more than one ton of particulate matter, nitrogen oxides or volatile organic compounds per year.

SEC. 3. Section 39023.3 is added to the Health and Safety Code, to read:

39023.3. “Fugitive emissions” mean those emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

SEC. 4. Section 40724 is added to the Health and Safety Code, to read:

40724. (a) Each district that is designated as a serious federal non-attainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation requiring best available control measures (BACM) for sources for which those measures are applicable and best available retrofit control technology (BARCT) to reduce air pollutants from sources for which that technology is applicable for agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and for fugitive emissions from those agricultural practices a manner similar to other source categories by the earliest feasible date, but not later than January 1, 2006. The rule or regulation shall also include BACM and BARCT to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard. Each district that is subject to this subdivision shall comply with the following schedule with respect to the rule or regulation imposing BACM and BARCT:

(1) On or before September 1, 2004, notice and hold at least one public workshop for the purpose of accepting public testimony on the proposed rule or regulation.

(2) On or before July 1, 2005, adopt the final rule or regulation at a noticed public hearing.

(3) On or before January 1, 2006, commence implementation of the rule or regulation.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

Attachment C

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

SEC. 5. Section 40724.5 is added to the Health and Safety Code, to read:

40724.5. (a) By the earliest feasible date, but no later than January 1, 2007, each district that is designated a moderate federal non-attainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, and that is not subject to the requirements of Section 40724, shall adopt and implement control measures necessary to reduce emissions from agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and from fugitive emissions in a manner similar to other source categories from those activities by the earliest feasible date. Control measures adopted and implemented pursuant to this section shall also be implemented by the district to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard.

(b) A district is not required to adopt and implement control measures pursuant to this section if it determines in a public hearing that agricultural practices do not significantly cause or contribute to a violation of state or federal standards.

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

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(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

(e) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 6. Section 40724.6 is added to the Health and Safety Code, to read:

40724.6. (a) On or before July 1, 2005, the state board shall review all available scientific information, including, but not limited to, emissions factors for confined animal facilities, and the effect of those facilities on air quality in the basin and other relevant scientific information, and develop a definition for the source category of a “large confined animal facility” for the purposes of this section. In developing that definition, the state board shall consider the emissions of air contaminants from those sources as they may affect the attainment and maintenance of ambient air quality standards.

(b) Not later than July 1, 2006, each district that is designated as a federal non-attainment area for ozone as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility, as defined by the state board pursuant to subdivision (a), to obtain a permit from the district to reduce, to the extent feasible, emissions of air contaminants from the facility.

(c) A district may require a permit for a large confined animal facility with actual emissions that are less than one-half of any applicable emissions threshold for a major source in the district for any air contaminant, including, but not limited to, fugitive emissions in a manner similar to other source categories, if prior to imposing that requirement the district makes both of the following determinations in a public hearing:

(1) A permit is necessary to impose or enforce reductions in emissions of air pollutants that the district show cause or contribute to a violation of a state or federal ambient air quality standard.

(2) The requirement for a source or category of sources to obtain a permit would not impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

(d) The rule or regulation adopted pursuant to subdivision (b) shall do all of the following:

(1) Require the owner or operator of each large confined animal facility to submit an application for a permit within six months from the date the rule or regulation is adopted by the district that includes both of the following:

(A) The information that the district determines is necessary to prepare an emissions inventory of all regulated air pollutants emitted from the operation, including, but not limited to, precursor and fugitive emissions, using emission factors approved by the state board in a public hearing.

(B) An emissions mitigation plan that demonstrates that the facility will use reasonably available control technology in moderate and serious non-attainment areas, and best available retrofit control technology in severe and extreme nonattainment areas, to reduce emissions of pollutants that contribute to the nonattainment of any ambient air quality standard, and that are within the district's regulatory authority.

(2) Require the district to act upon an application for permit submitted pursuant to paragraph (1) within six months of a completed application, as determined by the district.

(3) Require the owner or operator to implement the plan contained in the permit approved by the district, and shall establish a reasonable period, of not more than three years, after which each permit shall be reviewed by the district and updated to reflect changes in the operation or the feasibility of mitigation measures. The updates required by this paragraph are not required to be submitted for inclusion into the state implementation plan.

(4) Establish a reasonable compliance schedule for facilities to implement control measures within one year of the date on which the permit is approved by the district, and shall provide for 30 days public notice and comment on any draft permit.

(d) Prior to adopting a rule or regulation pursuant to subdivision (b), a district shall, to the extent data are available, perform an assessment of the impacts of the rule or regulation. The district shall consider the impacts of the rule or regulation in a public hearing, and make a good faith effort to minimize any adverse impacts. The assessment shall include all of the following:

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- (1) The category of sources affected, including, but not limited to, the approximate number of affected sources, and the size of those sources.
 - (2) The nature and quantity of emissions from the category, and the significance of those emissions in adversely affecting public health and the environment and in causing or contributing to the violation of a state or federal ambient air quality standard.
 - (3) The emission reduction potential.
 - (4) The impact on employment in, and the economy of, the region affected.
 - (5) The range of probable costs to affected sources and businesses.
 - (6) The availability and cost-effectiveness of alternatives.
 - (7) The technical and practical feasibility.
 - (8) Any additional information on impacts that is submitted to the district board for consideration.
- (e) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
- (f) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Section 40703, 40727, and 40728.5.
- (g) A permit holder may appeal any district determination or decision required by this section pursuant to Section 42302.1, in addition to any other applicable remedy provided by law.
- (h) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Sections 40724 and 40724.5.
- (i) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

SEC. 7. Section 40724.7 is added to the Health and Safety Code, to read:

40724.7. (a) A district that is designated as being in attainment for the federal ambient air standard for ozone shall adopt a rule or regulation as described in Section 40724.6 shall fulfill both of the following conditions:

- (1) The regulation shall be adopted not later than July 1, 2006, unless a district board makes a determination in a public hearing, based on substantial scientific evidence in the record, that large

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confined animal facilities will not contribute to a violation of any state or federal ambient air quality standard.

(2) The regulation may not be submitted for inclusion in the state implementation plan.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Section 40703, 40727, and 40728.5.

(d) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Section 40724.

(e) The rule or regulation adopted by a district pursuant to this section is not required to be submitted for inclusion into the state implementation plan.

SEC. 8. Section 40731 is added to the Health and Safety Code, to read:

40731. In order to assist in the development of the BACM, RACM, and BARCT measures specified in Sections 40724, 40724.5, and 40724.6, and to reduce or eliminate emissions of regulated air pollutants and their precursors, the California Air Pollution Control Officers Association, in consultation with the state board and other interested parties, shall, not later than January 1, 2005, develop a clearinghouse of available control measures and strategies for agricultural sources of air pollution and emissions from agricultural operations, including, but not limited to, the following sources:

(a) Operations that create fugitive dust emissions, including, but not limited to, discing, tilling, material handling and storage, and travel on unpaved roads.

(b) Confined animal facilities, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, or milking parlor, including, but not limited to, a system for the collection, storage, treatment, and distribution of liquid or solid manure from domestic animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks, if those animals are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes, and feeding is by means other than grazing.

(c) Internal combustion engines used in the production of crops or the raising of animals or fowl, except an engine that is used to propel an implement of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003.

(d) Other equipment, operations, or activities associated with the growing of crops or the raising of fowl or animals, that emit, or cause to be emitted, any regulated air pollutant, or any precursor to any regulated air pollutant.

SEC. 9. Section 42301.16 is added to the Health and Safety Code, to read:

42301.16. (a) In addition to complying with the requirements of this chapter, a permit system established by a district pursuant to Section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title V (42 U.S.C. Sec.

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7661 et seq.) of the federal Clean Air Act is required by district regulation to obtain a permit in a manner that is consistent with the federal requirements.

(b) Except as provided in subdivision (c), a district shall require an agricultural source of air pollution to obtain a permit unless it makes all of the following findings in a public hearing:

(1) The source is subject to a permit requirement pursuant to Section 40724.6.

(2) A permit is not necessary to impose or enforce reductions of commissions of air pollutants that the district show cause or contribute to the violation of state or federal ambient air quality standard.

(3) The requirement for the source or category of sources to obtain a permit would impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

(c) Prior to requiring a permit for an agricultural source of air pollution with actual emissions that are less than one-half of any applicable emissions threshold for a major source in the district, for any air contaminant, but excluding fugitive dust, a district shall, in a public hearing, make all of the following findings:

(1) The source is not subject to a permit requirement pursuant to Section 40724.6.

(2) A permit is necessary to impose or enforce reductions of emission of air pollutants that the district show cause or contribute to a violation of a state or federal ambient air quality standard.

(3) The requirement for a source or category of sources to obtain a permit would not impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

SEC. 10. Section 42301.17 is added to the Health and Safety Code, to read:

42301.17. (a) A district may adopt by regulation a program under which the district does not require a permit to be obtained by an agricultural source of air pollution that the district may otherwise require to obtain a permit if the owner or operator of the source has taken the following actions to reduce emissions from the source:

(1) Removed all internal combustion engines used in the production of crops or the raising of fowl or animals, except an engine that is used to propel implements of husbandry, at the source and replaced them with engines that meet or exceed the most stringent standards adopted by the state board and the United States Environmental Protection Agency for new internal combustion engines.

(2) Reduced or mitigated emissions from all agricultural activities, including, but not limited to, tilling, discing, cultivation, the raising of livestock and fowl, and similar activities, to a level that the district determines does not cause, or contribute to, a violation of a state or federal ambient air standard, toxic air contaminant, or other air emission limitation.

(3) Reduced or mitigated all emissions from any farm equipment, underground petroleum fuel tanks, or other similar equipment used in agricultural activities to a level that the district determines does not cause or contribute to a violation of a state or federal ambient air standard, toxic air contaminant, or other air emission limitation.

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(4) Complied with any other conditions required by state or federal law or district rule or regulation for the source.

(b) Subdivision (a) does not apply to those permits required to be issued pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title V (42 U.S.C. Sec. 7661 et seq.).

SEC. 11. Section 42301.18 is added to the Health and Safety Code, to read:

42301.18. (a) Any agricultural source that existed prior to January 1, 2004, that becomes subject to a permit requirement pursuant to a district rule or regulation that was adopted prior to that date shall be permitted as an existing source and not as a new source.

(b) Any agricultural source that is an existing source pursuant to subdivision (a) shall be permitted by the district based upon its maximum potential to emit air contaminants, to the extent that level can be determined, as of January 1, 2004.

(c) A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.

SEC. 12. Section 42310 of the Health and Safety Code is amended to read:

42310. (a) A permit shall not be required for any of the following:

(1) Any vehicle.

(2) Any structure designed for and used exclusively as a dwelling for not more than four families.

(3) An incinerator used exclusively in connection with a structure described in subdivision (b).

(4) Barbecue equipment that is not used for commercial purposes.

(5) (A) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

(B) As used in this subdivision, maintenance does not include operation.

(b) Nothing in this section shall affect any requirements imposed on a district or a source of air pollution, including, but not limited to, an agricultural source, pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 13. Section 44559.9 is added to the Health and Safety Code, to read:

44559.9. The authority shall expand the Capital Access Loan Program established by this article to include outreach to financial institutions that service agricultural interests in the state for the purpose of funding air pollution control measures.

SEC. 14. The provisions of the act adding this section are severable.

If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.