

Proposed Rule 317.1

Clean Air Act Nonattainment Fees
for the 8-Hour Ozone Standards

Cleaning The Air That We Breathe...



Working Group Meeting #2

February 7, 2024
2:30 p.m.

Zoom Meeting Link:
<https://scaqmd.zoom.us/j/97559313527>

Dial In: +1 (669) 900-6833

Meeting ID: 975 5931 3527

Agenda



Summary of Working Group #1



Responses to Comments



CAA Nonattainment Fee Preliminary Impact Assessment



Proposed Rule Language



Looking Ahead



Summary of Working Group #1

Clean Air Act Nonattainment Fees



Summary of Working Group Meeting #1

- Federal 8-Hour Ozone Standards:
 - 1997 Standard (revoked): 0.08 ppm; 2008 Standard: 0.075 ppm
 - South Coast Air Basin and Coachella Valley were designated as “extreme” nonattainment areas for the 1997 and 2008 standards
- Clean Air Act (CAA) Section 185 Nonattainment Fee:
 - Establishes fee requirements for “severe” or “extreme” ozone nonattainment areas when the area fails to attain an ozone standard by the applicable attainment date
 - Collected until the area is redesignated as an attainment area for that ozone standard
 - South Coast AQMD may only collect fee to satisfy this requirement
 - Fee equivalency approach would be available for 1997 standard as it has been revoked, but South Coast AQMD does not have emissions reductions surplus to the state implementation plan (SIP) for the 1997 standard
 - U.S. EPA is required to collect the fees if the SIP does not meet the requirements or if a state is not administering and enforcing CAA section 185



Responses to Comments

Clean Air Act Nonattainment Fees



Preparation of Responses

South Coast AQMD met with
U.S. EPA following Working
Group Meeting #1





Comment 1 – Alternatives for 1997 Standard

Comment 1: Can South Coast AQMD implement language similar to San Joaquin Valley Air Pollution Control District (APCD) which:

- A) Uses DMV fees for fee equivalency, or
- B) Has an exemption for clean emissions units for NO_x or VOCs?

SJVAPCD defines a “Clean Emissions Unit” as an emissions unit with a minimum control efficiency of at least 95% or that meets BACT during the five-year period immediately prior to and including the Attainment Year

Response 1:

- U.S. EPA allows a district to utilize the CAA §172(e) fee equivalency approach for a revoked standard; However, South Coast AQMD does not have emissions reductions surplus to the SIP to implement the CAA fee equivalency approach for the 1997 standard
- South Coast AQMD will use the fee collection approach for the 1997 standard
- The alternatives/exemptions outlined above do not apply for the fee collection approach



Comment 2 – Alternatives for 2008 Ozone NAAQS

Comment 2: What alternatives to fee collection would U.S. EPA approve for the 2008 8-hour ozone standard? Could the fee equivalency approach for San Joaquin Valley apply here?

Response 2: U.S. EPA requires fee collection for the 2008 standard and would not allow an alternative approach





Comment 3 – Simultaneous Fee Obligations

Comment 3: When the fee obligations for the 1997 and the 2008 8-hour ozone standards are in effect, will the fee obligations be independent?

Response 3: Yes, fees would be calculated separately with separate facility baselines for each standard

	8-Hour Ozone Standards	
	1997 (revoked)	2008
Baseline Calendar Year	2024	2032
Calendar Year CAA Nonattainment Fees Begin	2025	2033



Comment 4 – Alternative Baseline

Comment 4: A facility indicated that, due to equipment upgrades at the facility, emissions in the attainment year of 2024 will not be representative of their normal operating conditions

Response 4:

- South Coast AQMD agrees with a need for an alternative baseline option
- CAA only allows an alternative baseline if the U.S. EPA has issued guidance for establishing an alternative baseline
 - U.S. EPA has not issued such guidance for the 8-hour ozone standards
 - A request was submitted to the U.S. EPA for allowing an alternative baseline for the 8-hour ozone standards



Comment 5 – Spending of Funds

Comment 5: How will CAA nonattainment fees be spent?

Response 5:

- CAA nonattainment fees would support South Coast AQMD efforts to improve air quality
- PR 317.1 is being developed to set the regulatory framework for collection of CAA nonattainment fees
- Resources anticipated to implement Proposed Rule (PR) 317.1
 - Considering setting aside a 6.25% of the collected fees for administration/implementation
- Guidance on the spending of these funds would be determined through a future public process, due to:
 - Uncertainty in the amount of the future fees received
 - Fees would not be assessed until calendar year (CY) 2026 for the 1997 ozone standard and CY 2034 for the 2008 ozone standard



CAA Nonattainment Fee Preliminary Impact Assessment

Clean Air Act Nonattainment Fees



Introduction to Impact Assessment

- CAA nonattainment fees only apply to major stationary sources of NO_x and/or VOCs
 - If a major stationary source is not a major stationary source of VOCs or NO_x, no CAA nonattainment fees will be required
 - A fee will only apply to a major stationary source of that particular pollutant

Potential to Emit Emissions Thresholds
(tons/year)

Pollutant	South Coast Air Basin	Coachella Valley
VOCs	10	10
NO _x	10	10



CAA Section 185 Fee Amount Example Calculation

$$\left[\text{Actual Annual Tons of VOC Emitted} - \left(0.8 \times \text{Baseline Annual Tons of VOC Emitted} \right) \right] \times \text{Annual U.S. EPA CAA §185 Fee Rate} = \text{Annual CAA Nonattainment Fee for VOC}$$

Hypothetical Facility Calculation for VOCs

- **Baseline Annual Tons of VOCs = 15**
- **2023 Annual Tons of VOCs = 13**
- **2023 Annual U.S. EPA CAA §185 Fee Rate = \$11,922.00**

$$\text{Annual CAA Nonattainment Fee for VOC} = [13 - (0.8 \times 15)] \times \$11,922.00 = \$11,922.00$$

- Follow same procedure, using NOx, to calculate annual CAA nonattainment fee for NOx
- Add together the annual CAA nonattainment fee for VOC and for NOx to calculate the total annual CAA nonattainment fee



Impact Assessment Methodology

- APPROACH:
 - Staff uses a conservative approach to project fee impact
 - Likely overestimating the total amount of fee to be collected
- UNIVERSE:
 - All Title V facilities (≈320) are assumed to be major stationary sources of NOx and VOC, paying nonattainment fees for both pollutants
- BASELINE EMISSIONS:
 - Based on data from most recent Annual Emissions Reports (AER) (year 2021)¹
- FUTURE YEAR EMISSIONS:
 - Assume same emissions as baseline while accounting for the NOx reductions from implementation of Rule 1109.1
 - Rule 1109.1 includes implementation schedules on a facility level
 - Implementation of other rules will result in emissions reductions, but there are uncertainties with the timing of reductions
 - Some industries might experience throughput growth relative to baselines
- FEES:
 - Assessed at the amount that exceeds 80% of the baseline
 - Assume Annual U.S. EPA CAA §185 Fee Rate = 2023 rate of \$11,922.00

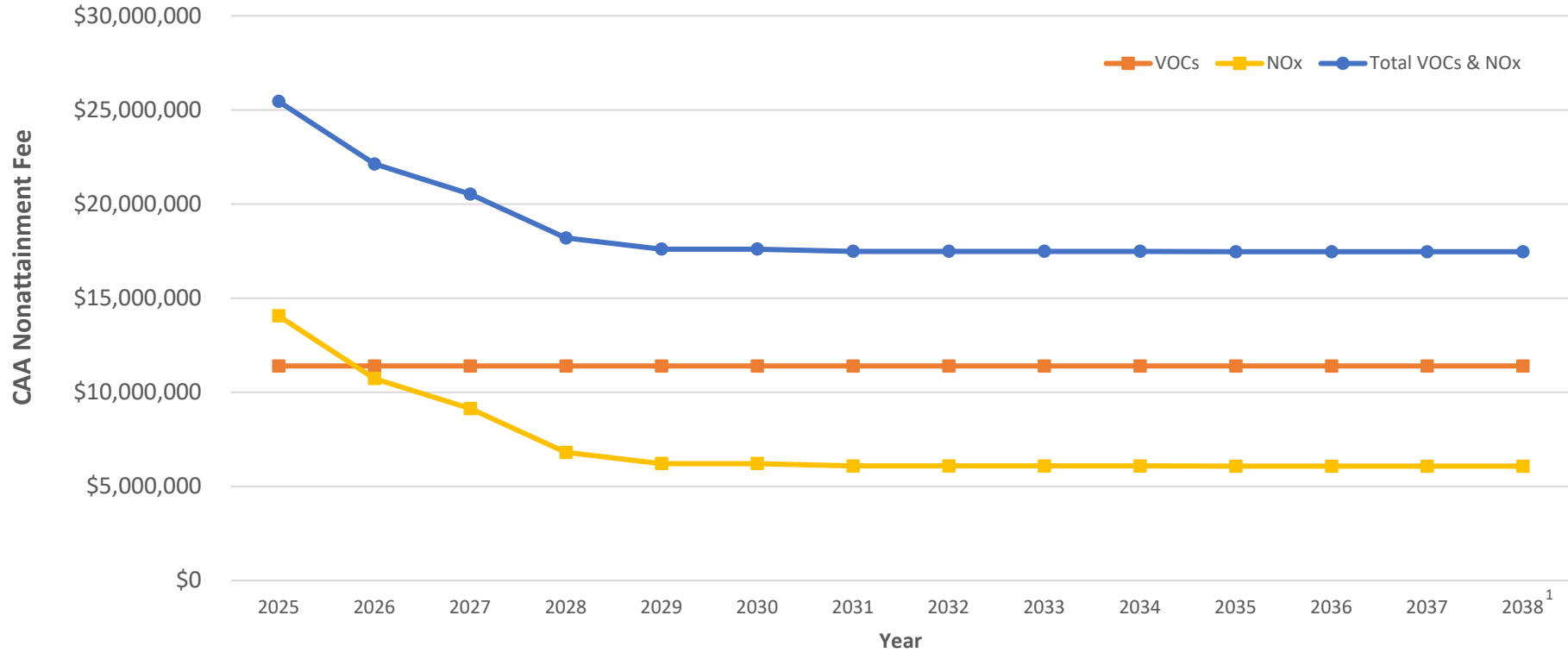
	Example A	Example B
Facility Type	Oil and Gas Production	Refinery subject to Rule 1109.1
Baseline Emissions (2021 AER Emissions)	15 tons	60 tons
2025 Emissions	15 tons	60 tons
2026 Emissions	15 tons	60 tons
2027 Emissions	15 tons	35 tons (Rule 1109.1 scheduled reductions)
2028 & Beyond Emissions	15 tons	35 tons

¹ – For 4 facilities subject to Rule 1109.1, used CY 2017 as baselines



CAA Nonattainment Fee Preliminary Estimates for 1997 8-Hour Ozone Standard

1997 8-Hour Ozone Standard
CAA Nonattainment Fee Projections
Accounting for Rule 1109.1 NOx Reductions



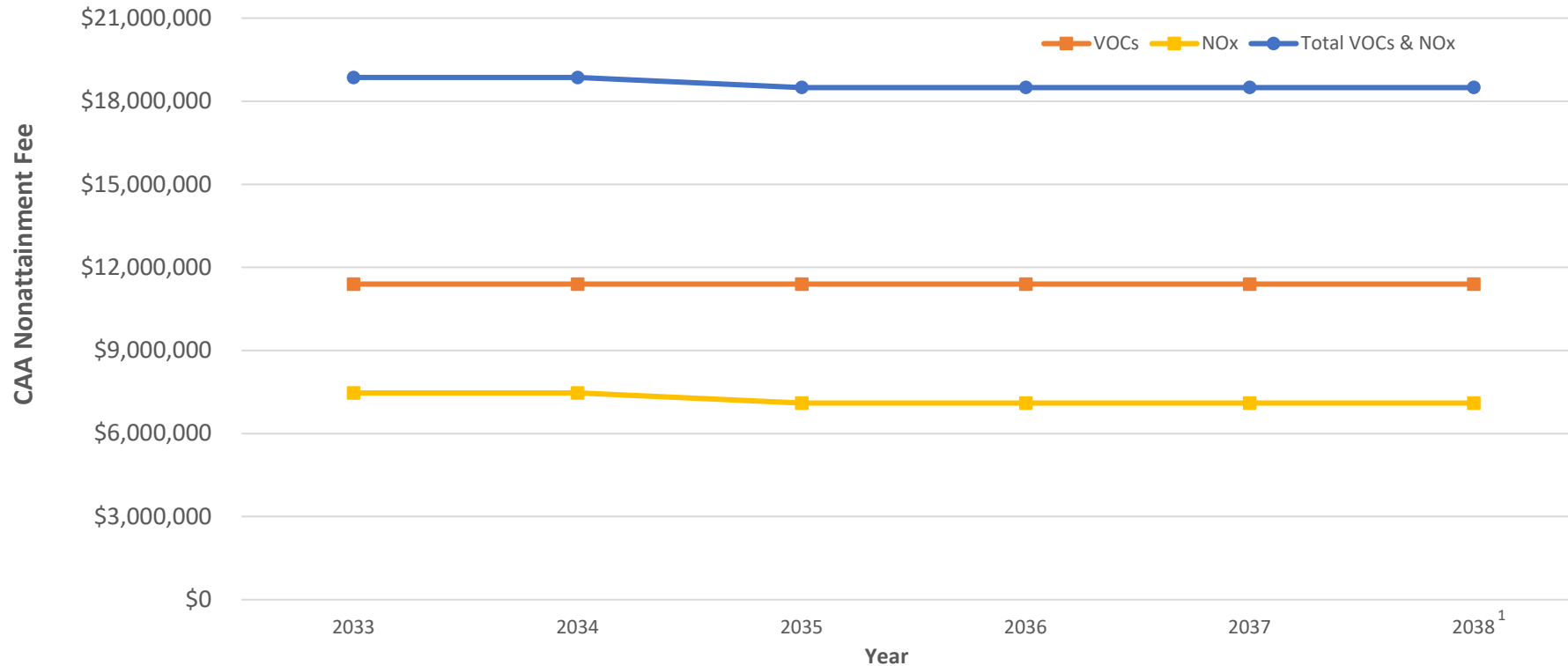
- A conservative approach assuming no emissions reductions from baselines other than NOx reductions from Rule 1109.1
- Estimated conservatively to be \$25 M in CY 2025 with gradual decline until CY 2035 due to Rule 1109.1 implementation

1 – CAA nonattainment fees will continue until attainment with the applicable ozone standard.



CAA Nonattainment Fee Preliminary Estimates for 2008 8-Hour Ozone Standard

2008 8-Hour Ozone Standard
CAA Nonattainment Fee Projections
Accounting for Rule 1109.1 NOx Reductions



- A conservative approach assuming no emissions reductions from baselines other than NOx reductions from Rule 1109.1
- Estimated conservatively to be \$19 M in CY 2033 with gradual decline until CY 2035 due to Rule 1109.1 implementation

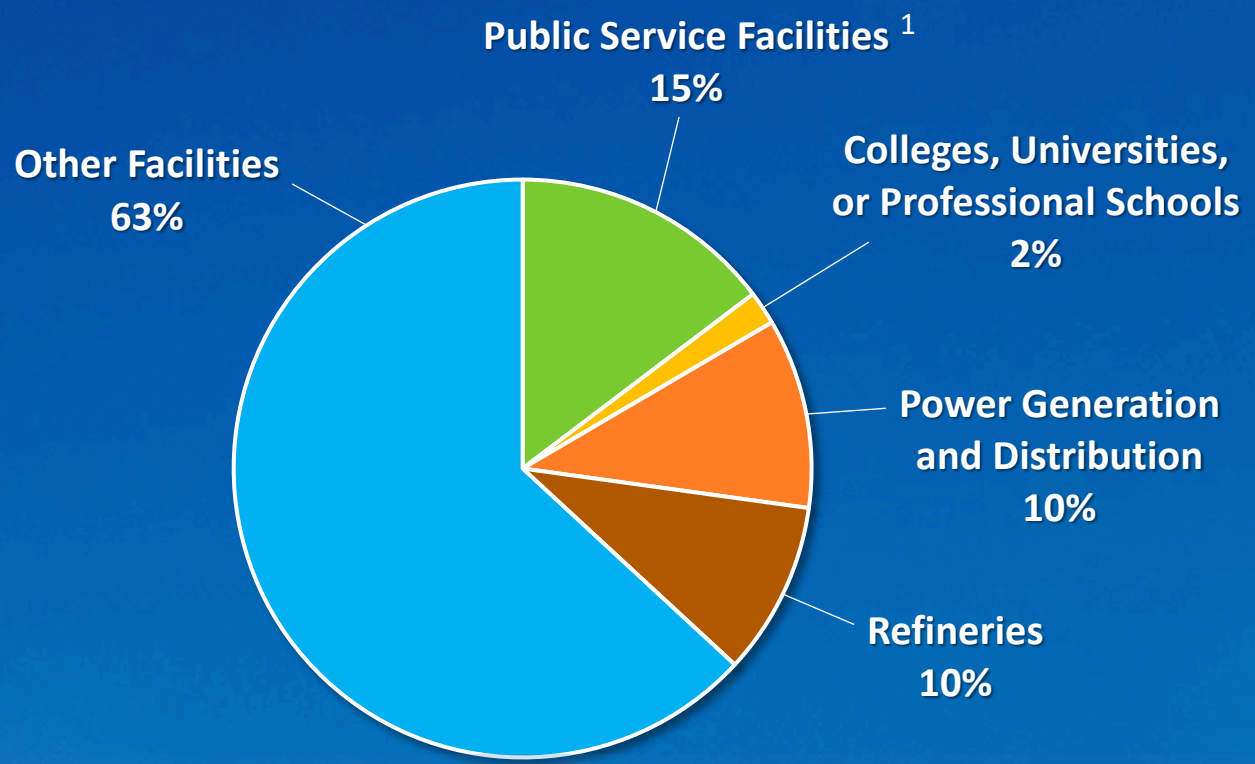
1 – CAA nonattainment fees will continue until attainment with the applicable ozone standard.



Projected Calendar Year 2025 Universe

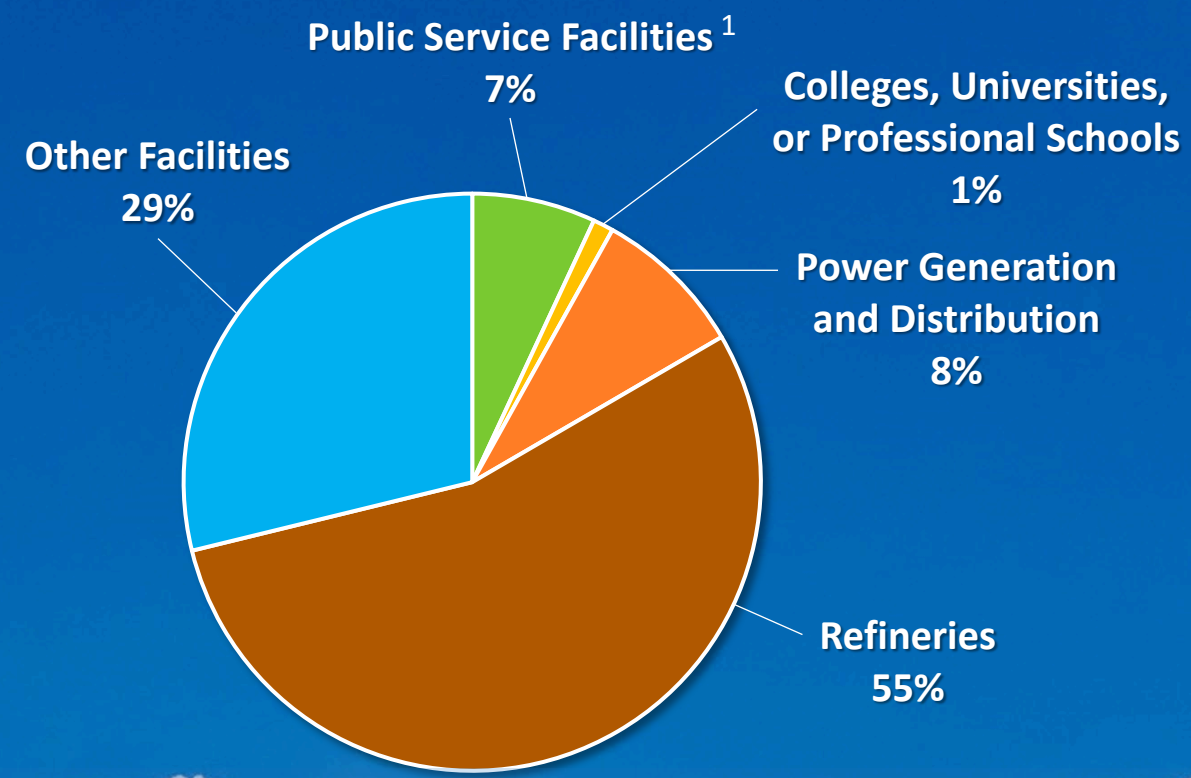
Major Source Facility Universe

≈320 Major Stationary Sources



CAA Nonattainment Fee Universe

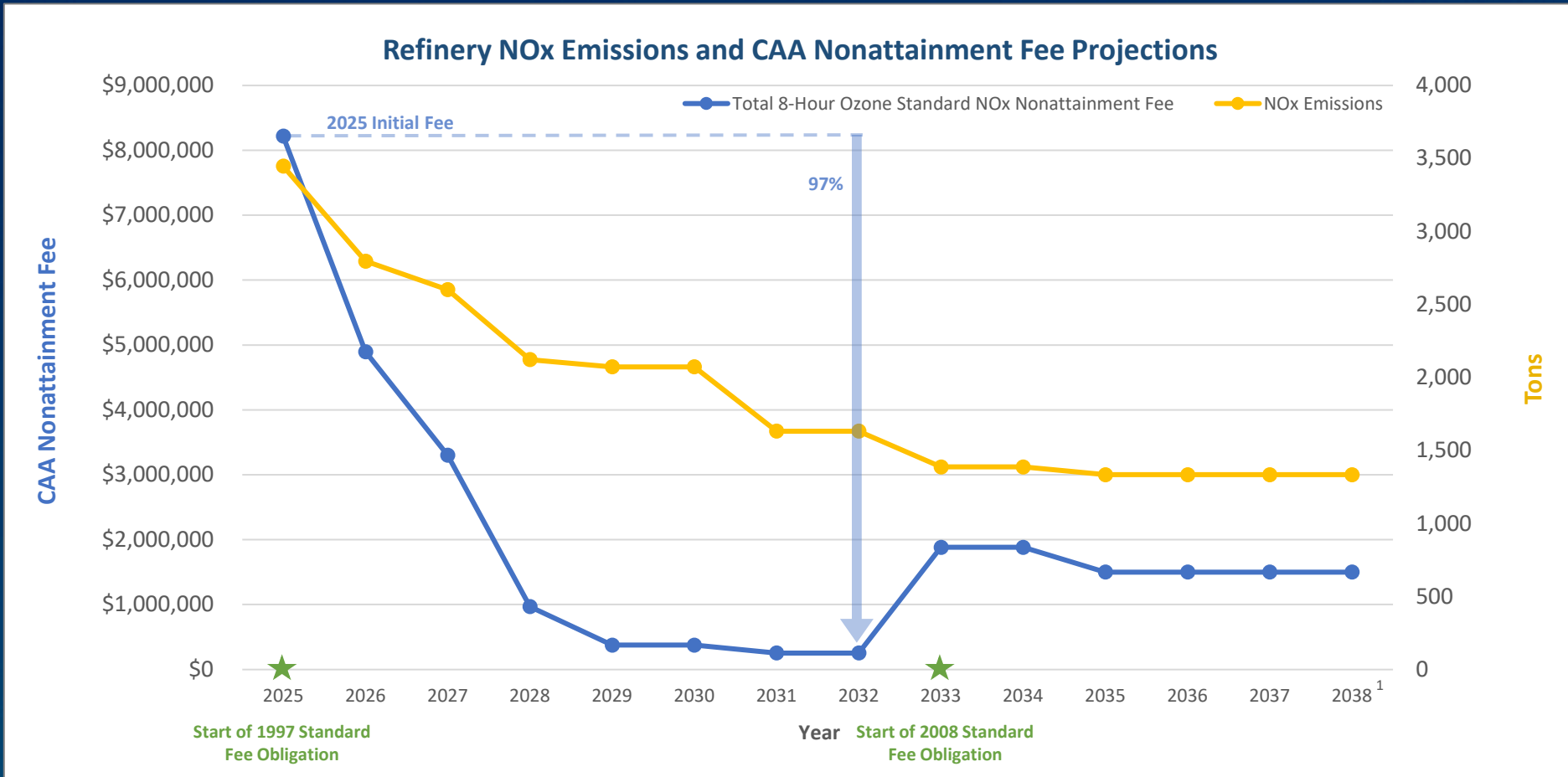
Estimated Conservatively to be \$25 M in 2025



1 – Public service facilities include general medical & surgical hospitals; sewage treatment; solid waste landfill; water supply & irrigation systems; natural gas distribution; regulation & administration of communications, electric, gas, & other utilities; and other general government support.



Refinery NOx Emissions and CAA Nonattainment Fee Projections



- Nonattainment fee is based on emissions that exceed 80% of the facility baseline
- A 20% reduction relative to baseline will result in zero fee obligation
- For example, the graph shows for refineries a 19% reduction in emissions produced a 97% reduction in CAA nonattainment fees

1 – CAA nonattainment fees will continue until attainment with the applicable ozone standard.



Summary of Preliminary Impact Assessment

- Conservative approach is used to evaluate PR 317.1 impact based on the following assumptions:
 - All Title V facilities are assumed to be major sources of VOCs and NO_x whereas a fee will only apply in PR 317.1 to a major source of VOCs and/or NO_x
 - All Title V facilities are assumed to pay nonattainment fees for both VOCs and NO_x whereas a fee will only apply in PR 317.1 for a particular pollutant that a facility is a major source of (i.e. if a facility is a major source of NO_x only, it is not responsible to pay nonattainment fee for its VOC emissions)
 - Future emissions are same as baseline emissions, except for NO_x reductions from Rule 1109.1
 - Future emissions reductions from other NO_x rules for non-refinery facilities are not accounted for
- For 1997 ozone standard, fee obligations start in 2025
 - Fee estimated conservatively to be \$25 M in 2025 with gradual decline due to anticipated emissions reductions from Rule 1109.1
- For 2008 ozone standard, fee obligations start in 2033
 - Fee estimated conservatively to be \$19 M in 2033

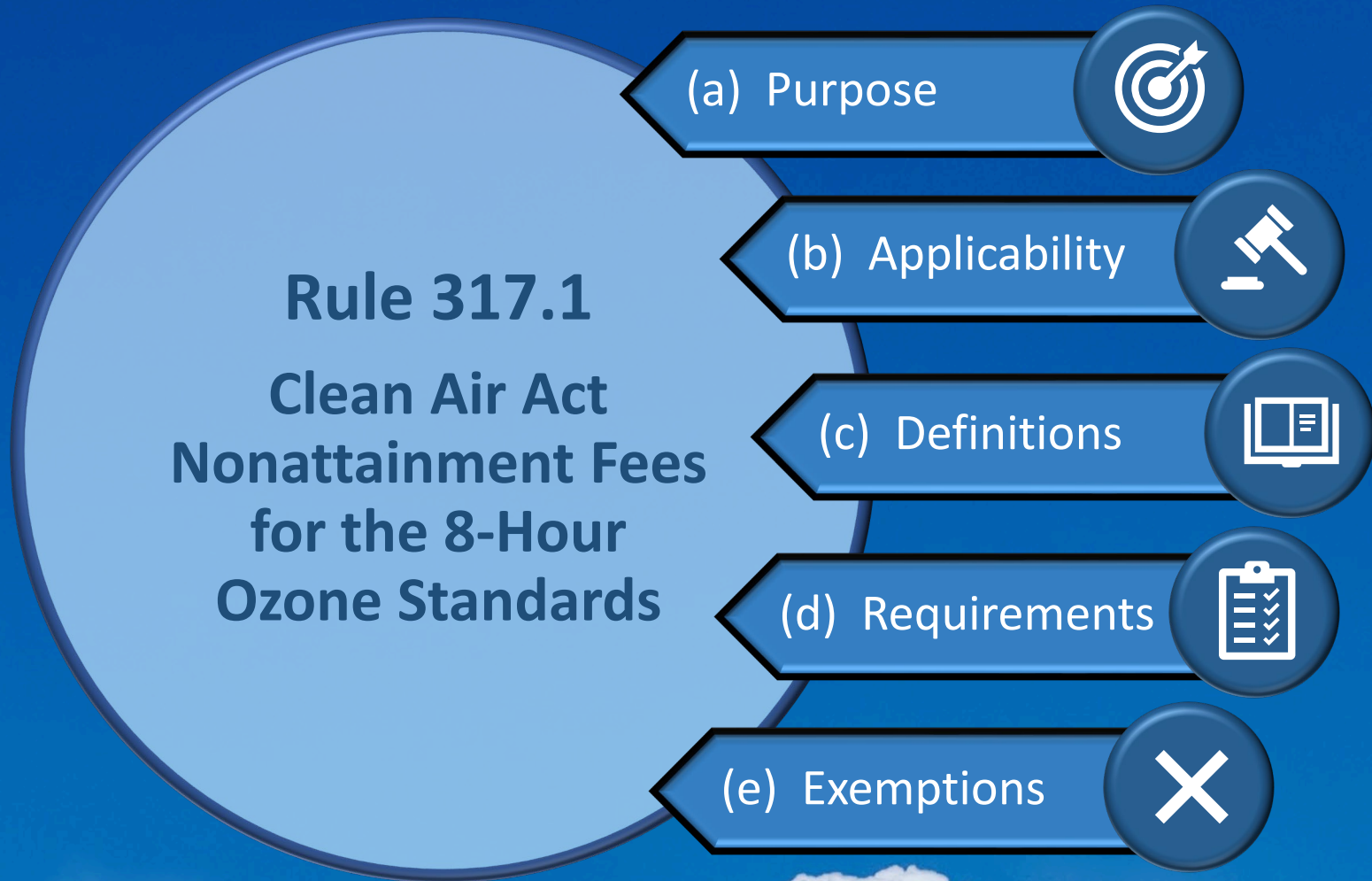


Proposed Rule Language

Clean Air Act Nonattainment Fees



Proposed Rule 317.1 Structure





Purpose

(a) Purpose

The purpose of this rule is to satisfy requirements as specified in Sections 182(d), 182(e), 182(f) and 185 of the 1990 amendments to the federal Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS.

Rule development to comply with the CAA should the area fail to attain the 1997 &/or 2008 8-hour ozone standards



Applicability

(b) Applicability

- (1) This rule shall become applicable if and when the U.S. Environmental Protection Agency (EPA) makes a final finding that a Basin has failed to attain the 1997 8-hour ozone NAAQS or the 2008 8-hour ozone NAAQS by the applicable Attainment Date.
- (2) Except as otherwise provided as exempt in subdivision (e), this rule is applicable to any Major Stationary Source of volatile organic compounds (VOCs) and/or oxides of nitrogen (NOx) pursuant to Section 185 of the federal CAA.

A major stationary source within the South Coast AQMD jurisdiction is defined as having PTE emissions of 10 tons per year or more of VOC and NOx



Key Definitions – Actual Emissions

- (1) ACTUAL EMISSIONS means the mass of emissions of NO_x or VOCs, which are emitted by a Major Stationary Source to the atmosphere during a calendar year, reported to or amended by the Executive Officer, through the South Coast AQMD's Annual Emissions Report (AER) program and shall include, but not be limited to the following:
 - (i) Permitted emissions;
 - (ii) Regulated emissions;
 - (iii) Fugitive emissions; and
 - (iv) Unregulated emissions



Key Definitions – Baseline Emissions

- (7) **BASELINE EMISSIONS** means a Major Stationary Source’s VOCs and/or NO_x emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions are calculated separately for each Applicable Ozone Standard, and as follows:
- (A) For a Major Stationary Source which was a Major Stationary Source during the entirety of the Attainment Year, the Baseline Emissions is the lower of:
- (i) The Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), during the Attainment Year or
 - (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s) during the Attainment Year.

Rule Section	(c)(7)(A)	(c)(7)(B)	(c)(7)(C)
Became Major Source	As of beginning of Attainment Year	During Attainment Year	After Attainment Year



Requirements – Fee Assessment

(d) Requirements

(1) Fee Assessment

The Executive Officer shall annually assess, for each Applicable Ozone Standard, the CAA Nonattainment Fees beginning the second year after the Attainment Year, for emissions in the previous calendar year (the Fee Assessment Year) pursuant to paragraph (d)(2).

Example Implementation Timeline for 1997 8-Hour Ozone Standard CAA Nonattainment Fee

Calendar Year	2024	2025	2026	2027
Criteria	Attainment year	Initial fee assessment year	Facilities to report actual emissions for 2025	Facilities to report actual emissions for 2026
			South Coast AQMD to assess facilities' fee obligations for 2025	South Coast AQMD to assess facilities' fee obligations for 2026



Requirements – Fee Determination

(2) Fee Determination

Beginning the calendar year after the applicable Attainment Year, the CAA Nonattainment Fee shall be the Annual CAA Nonattainment Fee Rate per ton of VOCs and/or NOx Emissions during the Fee Assessment Year that exceed 80% of the Baseline Emissions or Alternative Baseline Emissions. For each Major Stationary Source, the CAA Nonattainment Fee shall be calculated as follows:

$$\text{VOCs CAA Nonattainment Fees} = \text{Annual CAA Nonattainment Fee Rate} \times [A_V - (0.8 \times B_V)]$$

$$\text{NOx CAA Nonattainment Fees} = \text{Annual CAA Nonattainment Fee Rate} \times [A_N - (0.8 \times B_N)]$$

$$\text{CAA Nonattainment Fees} = \text{NOx CAA Nonattainment Fees} + \text{VOCs CAA Nonattainment Fees}$$

Where:

- For a Major Stationary Source of VOCs:
 - A_V = Actual Emissions of VOCs for the applicable Fee Assessment Year (in tons per year). If A_V is less than or equal to 80% of B_V , there shall be no VOCs CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_V = Baseline Emissions or Alternative Baseline Emissions for VOCs (in tons per year).
- For a Major Stationary Source of NOx:
 - A_N = Actual Emissions of NOx for the applicable Fee Assessment Year (in tons per year). If A_N is less than or equal to 80% of B_N , there shall be no NOx CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_N = Baseline Emissions or Alternative Baseline Emissions for NOx (in tons per year).

- An example calculation was provided on slide 14 of this presentation
- This calculation is consistent with the CAA requirements
- The fee rate is adjusted annually for inflation based on the consumer price index



Requirements – Annual Reporting and Payment

(3) Annual Reporting and Payment

A Major Stationary Source of NO_x and/or VOC shall annually report for all Actual Emissions and pay the appropriate CAA Nonattainment Fees for all Actual Emissions pursuant to (d)(2).

(4) Payment Due Date

No later than the seventy-fifth (75th) day following October 1, unless a later date is specified by the Executive Officer, a Major Stationary Source shall submit payment of the amount invoiced.

(5) Responsibility of Fee Payment

Emission reports and CAA Nonattainment Fee payment submittals are the responsibility of the owner/operator regardless of whether the owner/operator was notified.

(6) Failure to Pay Fees

If one hundred twenty (120) days have elapsed since the invoice date and all CAA Nonattainment Fees have not been paid in full, the Executive Officer may take action to revoke all Permits to Operate for equipment on the premises, as authorized in California Health and Safety Code Section 42307.

- Rule 301 (e)(10) requires both the AER be completed and AER fee payment be received by the seventy-fifth (75th) day following January 1
- AER reports will be used to determine fee obligations
- Invoice must be paid within 75 days of October 1
- Facility has 120 days from invoice to make payment before potential actions to revoke all permits to operate



Requirements – Alternative Baseline Emissions

(7) Alternative Baseline Emissions

If a Major Stationary Source elects to use an Alternative Baseline Emissions to determine the CAA Nonattainment Fee, the following requirements shall be met:

- (A) The U.S. EPA issued guidance authorizing an alternative methodology for calculation of a Major Stationary Source's Baseline Emissions pursuant to CAA Section 185(b)(3) that is consistent with the methodology specified in clauses (d)(7)(B)(i)-(iii) and requirements specified in subparagraphs (d)(7)(C) and (d)(7)(D);
- (C) The Executive Officer has authorized a Major Stationary Source to use this Alternative Baseline Emissions methodology; and
- (D) The Major Stationary Source was a Major Stationary Source during the entirety of the Attainment Year.

This is a tentative pathway and is subject to U.S. EPA review and approval



Requirements – Alternative Baseline Emissions Continued

- (B) No later than 120 days after the end of the Attainment Year or no later than 120 days after the U.S. EPA makes a final finding that a Basin has failed to attain the Applicable Ozone Standard by the applicable Attainment Date, whichever is later, the Major Stationary Source submits to the Executive Officer the following:
 - (i) Total permitted, regulated, fugitive, and unregulated emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), for each of the ten (10) calendar years preceding and including the Attainment Year;
 - (ii) For a Major Stationary Source without an electrical steam generating unit(s), identification of the two consecutive years within the last ten (10) calendar years prior to and including the Attainment Year selected and an analysis demonstrating that the Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), from the average of these two years represent typical operations;
 - (iii) For a Major Stationary Source with an electrical steam generating unit(s), identification of the two consecutive years within the last five calendar years prior to and including the Attainment Year selected and an analysis demonstrating that the Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), from the average of these two years represent typical operations;
 - (iv) Analysis of adopted local, state, and federal rules or regulations that would have restricted the source's ability to either operate or emit a particular pollutant, had they been in effect during the consecutive two years selected;
 - (v) The average annual emissions of the two years, as identified in clause (d)(7)(B)(ii) or (iii), not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), considering the impacts identified in clause (d)(7)(B)(iv);
 - (vi) Certification, in writing, by the highest-ranking executive on site that the source's emissions are irregular, cyclical, or otherwise vary significantly from year to year; and
 - (vii) Any other information as required by the U.S. EPA guidance;

This is a tentative pathway and is subject to U.S. EPA review and approval



Exemptions

(e) Exemptions

(1) Extension Year

No Major Stationary Source shall be required to remit CAA Nonattainment Fees under this rule during any calendar year that is considered an extension year for the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS.

(2) Cessation of Fees

No Major Stationary Source shall be required to remit CAA Nonattainment Fees for a given ozone standard once the Basin has been redesignated by U.S. EPA to attainment for that Applicable Ozone Standard or, for a revoked standard, if U.S. EPA has terminated the anti-backsliding requirement associated with the CAA Nonattainment Fees for the applicable standard. The CAA Nonattainment Fees will cease in the same calendar year as the redesignation or termination.

- If the U.S. EPA grants an extension year before the failure to attain, fee obligations will not apply to that year
- Fees will cease if area is redesignated as in attainment or if anti-backsliding requirements are terminated



Looking Ahead

Clean Air Act Nonattainment Fees

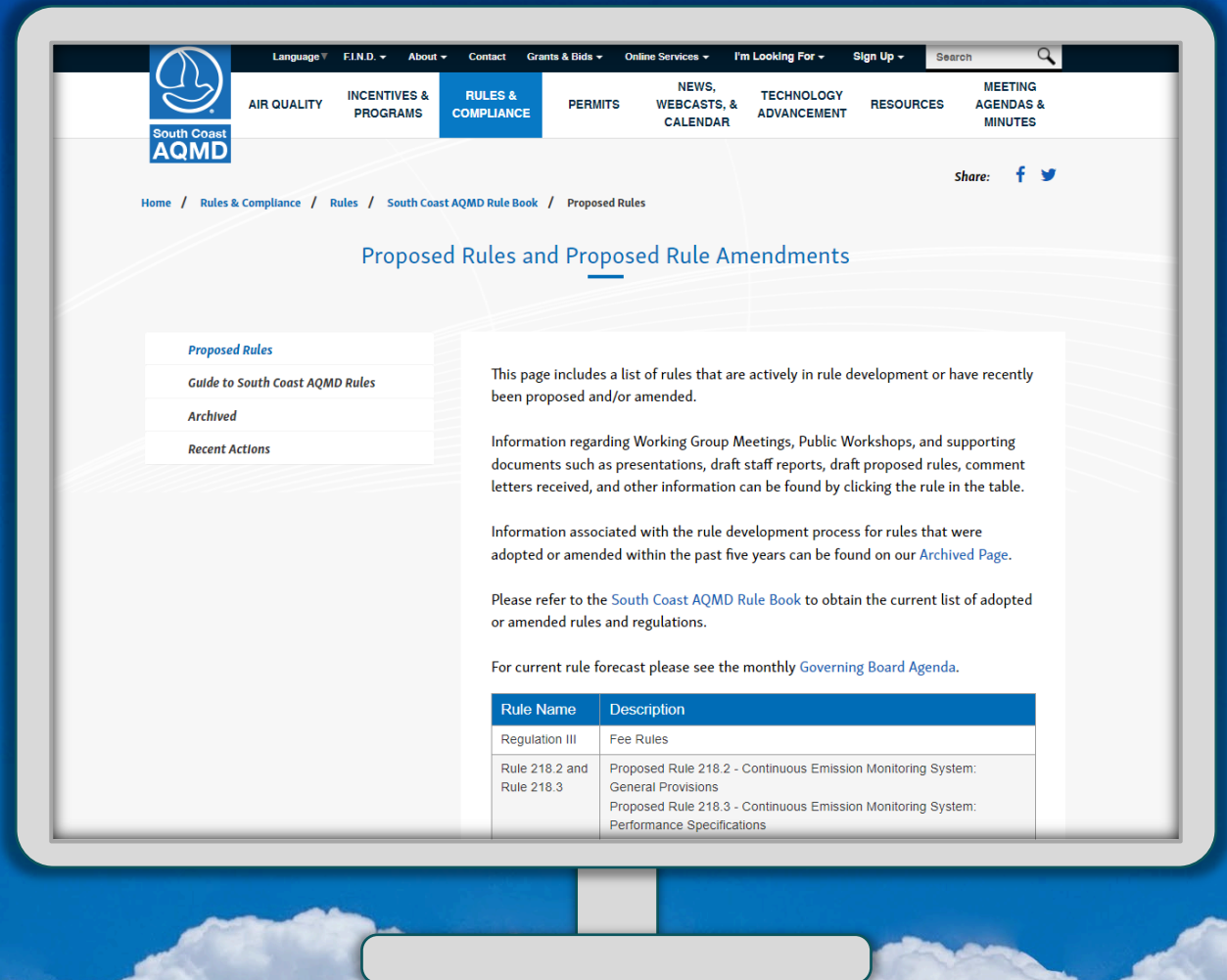


Working Group Materials

Working group materials for each working group meeting will be made available on the Proposed Rules and Proposed Rule Amendments Website:

<https://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules>

Point your smartphone camera here to be directed to the website





Early Feedback Request

- Initial preliminary draft rule language:
 - We appreciate your early review
 - Early input allows us more time to work with stakeholders to address any issues
 - We are available for discussions
 - Available online: <https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pr-317-1---initial-preliminary-draft-rule-language-020224.pdf?sfvrsn=16>

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- Preliminary draft rule language (75-day package) will be circulated prior to the PR 317.1 Public Workshop

Please provide any feedback by:
Wednesday, February 21st, 2024

To schedule a discussion or provide feedback, please contact:

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Rules 317 & 317.1





Next Steps





Proposed Rule 317.1 Staff Contacts

Please contact staff with any questions or comments

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Open Discussion

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