

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AGRICULTURAL BURNING GUIDELINES

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider the adoption of regulations to amend Title 17 of the California Code of Regulations regarding Agricultural Burning Guidelines.

DATE: March 23, 2000
TIME: 9:30 a.m.
PLACE: Air Resources Board
Board Hearing Room
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board commencing at 9:30 a.m., March 23, 2000, and may continue at 8:30 a.m., March 24, 2000, if necessary. This item may not be considered until March 24, 2000. Please consult the agenda for this meeting, which will be available at least ten days before March 23, 2000, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board at (916) 322-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls for outside the Sacramento area at least 14 days before the hearing.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Proposed Actions and Sections Affected: Proposed amendments to Subchapter 2, Chapter 1, Division 3, title 17, California Code of Regulations (CCR), sections 80100, 80101, 80102, 80110, 80120, 80120, 80130, 80140, 80145, 80150, 80155, 80160, 80170, 80175, 80179, 80180, 80200, 80210, 80230, 80240, 80250, 80260, 80270, 80280, 80290, 80300, 80310, 80311, 80320, and 80330.

Background: "Agricultural burning" refers to the intentional use of fire for vegetation management in areas such as agricultural fields, orchards, and wildlands like rangeland and forests. The planned use of fire on wildlands is generally referred to as "prescribed burning", a subset of agricultural burning. The ARB currently has agricultural burning regulations, which it is proposing to amend. Upon the adoption of an amended State regulation, the local air pollution control district or air quality management district (air district) responsible under State law for managing the smoke

impacts of agricultural burning would be required to adopt and implement conforming programs and requirements.

The State's Agricultural Burning Guidelines are implemented by either the local air district or, in those air basins consisting of two or more air districts, the Basinwide Air Pollution Control Council ("basinwide council"). The ARB has program oversight authority and makes daily burn/no-burn decisions for each air basin or portion thereof.

The existing program has generally been effective in managing agricultural burning, given the current levels of prescribed burning for wildland management. However, we believe it is both necessary and timely to reevaluate the regulation to improve the statewide smoke management program for the following reasons:

- Land managers – defined here as entities that administer, direct, oversee, or control the use of public or private land, including the application of fire to the land – are planning significant increases in prescribed burning for California. The smoke management system needs to be improved to effectively address these increases and minimize the impact on public health and welfare.
- Short-term, high-impact smoke episodes have resulted from prescribed burning and other agricultural burning. These episodes can produce very high concentrations of inhalable particulate matter in downwind communities and other smoke sensitive areas such as hospitals, schools, public events, or tourist attractions. Certain populations, including children, the elderly, exercising adults, and those suffering from asthma or bronchitis are especially vulnerable. Particulate matter can increase the number and severity of asthma attacks, cause and aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections. Community health studies also link exposure to particulate matter with premature death in people with existing heart or lung disease.
- Population growth and increased urbanization of formerly rural areas have increased the potential for smoke impacts from agricultural burning, including prescribed burning. Increased burning, coupled with increasing population, results in a need for more careful consideration of the amount, timing, and location of burning to reduce the possibility of smoke impacts.
- Prescribed fire and other types of agricultural burning have the potential to affect California's ability to meet the health-based air quality standards for particulate matter and federal regulations to improve visibility in national parks.

Given the significant concern in California about the impact of smoke from expected increases in prescribed fire, as well as some problems with the current system to regulate and monitor burns, there is a need to strengthen California's existing smoke management program. These proposed regulatory revisions, in combination with enhanced forecasting tools and improved communication and coordination with federal, State, and private land managers, should advance this objective.

Summary of Proposed Rule Amendments:

The proposed amendments to the Agricultural Burning Guidelines provide direction to air districts in the regulation and control of agricultural burning, including prescribed burning, in California. The regulatory actions called for are intended to assure that each air district has a program that meets specific State and federal requirements. The proposed amendments contain the following major new features relative to the existing Agricultural Burning Guidelines:

- Smoke Management Programs. In coordination with the ARB, each air district must develop and implement a smoke management program that minimizes or avoids the health impacts of smoke from agricultural burning, including prescribed burning, on smoke sensitive areas. As proposed, this program will contain a daily system for regulating the amount, timing, and location of burn events to minimize smoke impacts. It will emphasize communication and coordination between the ARB, the air districts, and the burners. It will also contain a process for public notification and education.
- Preparation of Smoke Management Plans by Prescribed Burners. Air districts must require private and public land managers who conduct prescribed burning to prepare and submit smoke management plans, and report prescribed burn projects. The extent of information required of prescribed burners will be determined by the magnitude of the planned burn project. Those projects that are anticipated to have negligible or small smoke impacts will require minimal reporting requirements. On the other hand, those burn events with more potential to cause health related impacts on smoke sensitive populated areas (e.g., communities, schools, hospitals, public events, or tourist attractions), would require prescribed burners to prepare advance plans, more detailed reporting and monitoring, and contingency measures.
- Advanced Planning and Consultation Between Prescribed Burners, Air Districts, and the ARB to Ensure Greater Emphasis on Smoke Prevention and Reduction to Smoke Sensitive Populations. The ARB, air districts, and prescribed burners must work together to determine the appropriate amount, location, and scheduling of burn projects, considering daily weather and air quality conditions. Provisions that assist this collaboration include the ARB declaration of burn, no-burn, and marginal burn days, the ARB and air district coordination of this information in determining approval of specific burn projects, and prescribed burner requirements to consult, coordinate, and evaluate burn projects with the air district.
- Improved Meteorological Data and Tracking Techniques to Accommodate Necessary Increases in Prescribed Burning. The ARB will work with air districts to enhance current meteorological tools and data tracking techniques to improve burn day declarations. A new designation of “marginal burn day” would allow the ARB to declare burn days when meteorological and air quality conditions for all or a portion of an air basin are marginally acceptable for limited amounts of burning to occur.

Based on this declaration, an air district could authorize burn events, provided that smoke impacts to smoke sensitive areas are not expected to occur as a result. Districts will have the opportunity to work with the ARB to develop improved meteorological criteria which will assist in the determination of permissive burn, no burn, and marginal burn days in their regions.

- Consideration of Non-Burn Alternatives. Air district smoke management programs must provide for analysis and periodic assessment of actions that are taken to minimize smoke through the use of non-burn alternatives or strategies for otherwise accomplishing their objectives.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSON

The ARB has determined that it is not feasible to draft the regulations in plain English due to the technical nature of the regulations; however a non-controlling plain English summary of the regulations is contained in the Initial Statement of Reasons (ISOR), in the discussion of the proposed regulation, and is available from the contact person named in this notice. The ISOR, the full text of the proposed regulatory language, and a discussion of the potential environmental impacts of the proposal may be obtained from the Air Resources Board, Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. The ARB staff has compiled a record that includes all information upon which the proposal is based. Copies of the documents may be obtained through the Air Resources Board, Public Information Office, 2020 L Street, Sacramento, California 95814.

Further inquiries regarding this matter should be directed to Agency Contact Person Ms. Lucille van Ommering, Staff Air Pollution Specialist, Air Quality and Transportation Planning Branch, Planning and Technical Support Division, P.O. Box 2815, Sacramento, California 95812, (916) 323-0296.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The ARB's Executive Officer has determined that the proposed regulatory action will not create direct costs or savings, as defined in Government Code section 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or non-discretionary savings to local agencies. The ARB's Executive Officer has also determined that the proposed regulatory action will create costs or savings, as defined in Government Code section 11346.5(a)(6), to local agencies (air districts) whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code. However, in this case, such administrative costs are not reimbursable because they are recoverable by fees that are within an air pollution control/air quality management district's authority to assess.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on businesses, or on directly-affected private persons. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action should have a positive impact on the creation or elimination of jobs within the State of California, positive impacts on the creation of new businesses or elimination of existing businesses within California, and positive impacts on the expansion of businesses currently doing business within California. The Executive Officer has also determined that the proposed action will not directly affect the ability of California businesses to compete with businesses in other states. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report/Initial Statement of Reasons.

As explained in the Initial Statement of Reasons, it is likely that some individual businesses may be adversely affected by the proposed regulatory action. Therefore, the Executive Officer finds that the adoption of the proposed amendments may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact to business and invites the public to submit proposals. Submissions may include but are not limited to the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards; and
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than 12:00 noon, March 22, 2000, or received by the Clerk of the Board at the hearing.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least ten days prior to the hearing. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND REFERENCE

Adoption of the amendments to title 17, Agricultural Burning Guidelines, is proposed under the authority granted to the ARB in sections 39515, 39516, 39600, 39601, 39607.5, 41856, and 41859 of the Health and Safety Code. The purpose of the amendments is to implement, interpret, and make specific sections 39011, 39025, 39053, 39515, 39516, 39600, 39601, 41850, 41851, 41865, 41852-41859, and 41861-41863 of the Health & Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed, or with non-substantive or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications, if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text with the modifications clearly indicated will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Air Resources Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: January 25, 2000