

## **Updated Informative Digest**

### **AMENDMENTS TO CALIFORNIA'S AGRICULTURAL BURNING GUIDELINES**

#### **Sections Affected**

Amendments were made to Subchapter 2, Chapter 1, Division 3, title 17, California Code of Regulations (CCR), sections 80100, 80101, 80102, 80110, 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**

California's Agricultural Burning Guidelines were established in 1971 in response to statewide legislation that recognized the need to reduce the harmful health effects caused by smoke from unrestrained open burning of vegetative material on public and private lands. The Agricultural Burning Guidelines (Guidelines) are comprised of the regulations contained in Subchapter 2, Chapter 1, Division 3, Title 17, California Code of Regulations (CCR). Section 39011 of the Health and Safety Code defines agricultural burning. Agricultural burning refers to the intentional use of fire for waste removal of vegetation, disease and pest prevention, forest operations, and range improvement. Agricultural burning includes "prescribed burning", which consist of fires intentionally ignited to meet specific land management objectives. Thus prescribed burning is a subset of agricultural burning.

The California Air Resources Board (ARB) and the State's 35 local air quality management districts and air pollution control districts (air districts) are responsible for administering the Guidelines. The ARB has oversight authority and makes daily burn/no-burn decisions for each air basin or portion thereof.

Amendments to the existing Guidelines are proposed to ensure that public health and air quality standards are taken into account in the face of expected increases in prescribed burning.

#### **Description of the Proposed Regulatory Action**

The amendments place primary emphasis on smoke management through improved planning, collaboration, and consultation between burners, including federal and State land management agencies, and air agencies. The amendments contain three new basic provisions: requirements for a "burn authorization system"; requirements for a "smoke management plan"; and provisions for the use of a "marginal" burn day.

At a public hearing on March 23, 2000, the Air Resources Board (Board) approved the amendments to the Guidelines with certain modifications to the originally proposed regulatory language. These modifications were:

- ◆ proposed residential burning provisions were withdrawn;
- ◆ additional time was provided to air districts to address ARB disapproval of an air district smoke management program from 120 days to 180 days;
- ◆ a "degree of confidence" factor was added to the 48-hour burn day forecast;
- ◆ the burner notification process was revised for naturally-ignited wildfires; and,
- ◆ changes were made to clarify language, and correct spelling and rule numbers.

In addition, as a result of public comments and testimony presented at the public hearing, the Board directed staff to make several further modifications to the Guidelines. These modifications include:

- ◆ the provision of more specific criteria for exempting small amounts of crop waste from some requirements of the Guidelines; and,
- ◆ added language specifying that an alternative analysis, when conducted pursuant to the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA), can be used to satisfy the alternatives analysis provision of the Guidelines.

The Board in its resolution of approval also made the following directives.

1. The new Guidelines shall be sent to the air districts, and the Executive Officer shall assist and monitor their implementation, and report back to the Board within one year of the July 1, 2001, program implementation date.
2. The Executive Officer shall convene a working group that shall include representatives of the California Department of Forestry and Fire Protection (CDF), the U.S. Forest Service, the California Air Pollution Control Officers Association (CAPCOA), and the ARB to investigate and, if feasible, develop a uniform smoke management plan format for use by the CDF, U.S. Forest Service, and other land managers, and report back to the Board on its progress within one year.
3. The Executive Officer shall work with the air districts requesting changes to the meteorological criteria contained in Article 3 of the Guidelines to begin evaluating revised criteria pursuant to title 17 of the California Code of Regulations, section 80179, and to propose appropriate regulatory amendments for the Board's consideration by August 1, 2001.
4. The Executive Officer shall work with the U.S. Forest Service and CAPCOA to investigate the feasibility of sharing available resources and technical information, particularly in the area of meteorology, so as to promote efficient and consistent implementation of the smoke management program.

5. The Executive Officer shall work with CAPCOA to determine how to address the issue of residential burning and to report back to the Board within one year with recommendations.
6. The Executive Officer shall seek ways, in addition to increased permit fees, to recover air district costs associated with compliance with the requirements of the Guidelines.
7. The Executive Officer shall work with CAPCOA to assess appropriate fee structures to ensure equity and a level of uniformity to burners and other stakeholders participating in the program and to report to the Board periodically on the fees, costs, and funding status of the air districts' smoke management programs.
8. The Executive Officer shall work with CAPCOA to develop a programmatic environmental impact report template that can be used by the air districts in performing environmental impact assessments of their smoke management programs and to assist the air districts, as requested, in the assessment of environmental impacts associated with burn projects.
9. The Executive Officer is to assist air districts, as requested, in the assessment of environmental impacts associated with burn projects or smoke management program revisions that are undertaken by the air districts to comply with the Guidelines.
10. The Executive Officer shall submit the adopted regulation to the Office of Administrative Law with a request that this regulation become effective upon filing with the Secretary of State in order to facilitate expeditious air district compliance with the Guidelines.

On June 20, 2000, the ARB released a Notice of Public Availability of Modified Text (Modified Text) for a 15-day comment period. The Modified Text provided revised regulatory language per the direction of the Board at its March 23, 2000, hearing. After considering the comments received, the Executive Officer determined that no further regulatory changes were necessary.

### **Comparable Federal Regulations**

Federal lands are covered under the National Environmental Policy Act (NEPA) requirements in which federal agencies evaluate the environmental impacts of the tools used for resource management on publicly owned lands. They generally consider the impacts on, among other things, plant and animal species in the area, aquatic life, cultural resources, soil conditions, riparian areas, wetlands, water quality, air quality, and visibility.

Likewise, State public lands and State responsibility areas are covered by the California Environmental Quality Act (CEQA). These public agencies must undertake comprehensive reviews and analyses of the potential impacts from affected programs and projects that could occur from program implementation. The environmental impact analyses under the new Guidelines are not intended to replace the similar analyses performed by federal and state lead agencies for their projects.

At present there are no comparable federal requirements that regulate emissions for agricultural burning. However, on April 23, 1998, the U.S. Environmental Protection Agency (U.S. EPA) published its *Interim Air Quality Policy on Wildland and Prescribed Fires*. In the interim policy, U.S. EPA urged State and tribal air quality managers to collaborate with wildland owners and managers to mitigate the air quality impacts that could be caused by the increase of fires managed to achieve resource benefits. U.S. EPA encouraged them to develop and implement smoke management programs (SMPs) which establish procedures and requirements for minimizing emissions and managing smoke dispersion. The goals of SMPs are to mitigate the nuisance and public safety hazards (e.g., on roadways and at airports) posed by smoke intrusions into populated areas; to prevent deterioration of air quality and National Ambient Air Quality Standard (NAAQS) violations; and, to address visibility impacts in federal Class I areas.

U.S. EPA's final policy is expected to be published in summer 2001. This document will incorporate recommendations from U.S. EPA's Regional Haze Regulations, which were published in the Federal Register on July 1, 1999. The document will also consider recommendations from the United States Department of Agriculture's Agricultural Air Quality Task Force. These recommendations were published in the Federal Register on September 18, 2000.