

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATION ESTABLISHING A DEFINITION FOR "LARGE CONFINED ANIMAL FACILITY"

The Air Resources Board (the Board or ARB) will conduct a public meeting at the time and place noted below to consider the adoption of a definition for large confined animal facility. This definition was developed to meet the requirements of Senate Bill 700 (SB 700, Florez, Statutes of 2003, Chapter 479).

DATE: June 23, 2005

TIME: 9:00 a.m.

PLACE: San Joaquin Valley Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, California 93726

or Via Videoconference (2 Locations)
District Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, California 95356

District Southern Region Office
2700 M Street, Suite 275
Bakersfield, California 93301

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 23, 2005, and may continue at 8:30 a.m., June 24, 2005. This item may not be considered until June 24, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before June 23, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of title 17, California Code of Regulations (CCR), sections 86500 and 86501.

Background:

State law (SB 700, Florez, Statutes of 2003, Chapter 479) requires ARB to develop a definition of “large” confined animal facilities (large CAFs) by July 1, 2005. In developing this definition, ARB is to review relevant scientific information, including air quality impacts, how confined animal facilities may affect the attainment and maintenance of ambient air quality standards, and livestock emission factors (Health & Safety Code (H&SC) section 40724.6(a)).

The large CAF definition will be used by the local air pollution control and air quality management districts (local air districts) in the development of rules to mitigate emissions from large CAFs. Local air districts designated as nonattainment for the federal one-hour ozone national ambient air quality standard (NAAQS) as of January 1, 2004, must adopt rules that include, among other things, a requirement that large CAFs develop and implement a mitigation plan (H&SC 40724.6(b) and (d)). Areas designated as attainment for the federal ozone standard are also required to develop a large CAF rule unless the local air district makes a determination that any large CAFs in the region will not contribute to a violation of any State or federal air quality standard (H&SC 40724.7(a)). Emission mitigation plans required for large CAFs must demonstrate reasonably available control technology in moderate and serious areas, and best available retrofit control technology in severe and extreme non-attainment areas.

The Proposed Regulation:

ARB staff has developed a proposed large CAF definition after an evaluation of the scientific information on emissions and air quality impacts of livestock facilities. Staff has also evaluated the needed air quality improvements in non-attainment areas and potential impacts to the livestock industry. The evaluation of the air quality impacts included looking at the relative severity of the air quality problem in different areas of California. The definition is based on the combined, aggregate air quality impacts of the livestock industry in California, with an emphasis on the San Joaquin Valley. There is a special focus on the San Joaquin Valley, due to the severity of its ozone problem and the concentration of animals, especially dairy cows, in this region. The San Joaquin Valley accounts for about 78 percent of the milk cows in California. About 15 percent of the cows are in the South Coast Air Basin and 7 percent are distributed in other parts of the State.

It is important that the large CAF definition include most of the livestock in the San Joaquin Valley because substantial new emission reductions are needed in this region to meet federal air quality standards by the required deadlines. Each category of emission sources in the San Joaquin Valley must be considered in the process of identifying new feasible and cost-effective measures needed for attainment. ARB’s definition will trigger that process for CAFs through development of local air district rules that will require emission mitigation plans for facilities defined as large CAFs.

In terms of program effectiveness, one goal in developing the large CAF definition was to include most of the livestock animals in the definition, while affecting the fewest possible number of facilities. Data on the size of California facilities (number of animals) was evaluated to look for natural breakpoints in facility size distribution. ARB staff also considered the feasibility of establishing a definition based on individual facility emissions. The individual facility emissions approach was rejected as impractical and uncertain in part because of the developing state of livestock emissions estimation research. The proposed large CAF aggregate emissions approach instead uses the number of animals per facility as a surrogate for facility emissions, which on a district-wide basis will include most of the livestock emissions even if the emission factors change in the future. The aggregate approach was used for each livestock category based on information specific to that category.

The staff's large CAF definition proposal excludes most of the facilities that are clearly small and are typically less capable of absorbing the costs of regulations. The proposed definition provides clarity and certainty for the livestock industry and local air districts, and creates a productive environment for identifying the most cost effective and technically feasible emission reduction strategies.

In order to allow verification of the number of animals at a facility, beginning January 1, 2006, the owner or operator of a large confined animal facility would be required to keep records that specify the numbers of animals maintained daily and such other information as may be required by local air district rules. Such records would have to be maintained at a central place of business for a period of not less than three years and made available upon request to the Executive Officer or Air Pollution Control Officer or their representative.

The details of the proposed definition and the associated rationale are provided in the Initial Statement of Reasons prepared by staff. The full document is available as described in the Availability of Documents section below.

COMPARABLE FEDERAL REGULATIONS

Currently, there are no federal statutes regulating airborne emissions from livestock facilities. However, there are federal regulations related to liquid discharges from livestock facilities. These regulations were considered in the development of the large confined animal facility definition for California. The citation for the federal discharge rules is the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, Part II, United States Environmental Protection Agency, 40 CFR Parts 9, 122, 123, and 412.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons for Rulemaking: "Large Confined Animal Facility Definition (Implementation of Senate Bill

700, Florez 2003)” (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of adopting a regulation establishing a definition for large confined animal facility.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the ARB’s web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing June 23, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB’s web site listed below.

Inquiries regarding the substance of the proposed regulatory action may be directed to the designated agency contact persons, Mr. Michael FitzGibbon, Manager of the Emission Inventory Analysis Section, Planning and Technical Support Division at (916) 445-6243 or by e-mail at mfitzgib@arb.ca.gov, or Mr. Patrick Gaffney, Staff Air Pollution Specialist, Planning and Technical Support Division at (916) 322-7303 or by e-mail at pgaffney@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at: <http://www.arb.ca.gov/regact/lcaf05/lcaf05.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board’s Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulations are presented below.

In defining a large confined animal facility, there are no immediate costs to local air districts and to owners and operators of large CAFs because the act of establishing the definition does not create any direct costs. However, once the definition has been established, each local air district that is designated as a federal nonattainment area for ozone and has large CAFs under its jurisdiction, will be required to adopt a regulation affecting the owners and operators of these facilities. Local air districts may incur costs related to the development and implementation of such regulations. Typically, local air

districts can recover any additional costs through fees. As part of the regulation development process, each local air district is required by SB 700 to conduct an impact assessment of rules developed under the legislation. This assessment is to include the impact on the region's employment and economy, among other factors. The range of probable costs to affected sources and businesses is also to be included in the local air district assessment. It is likely that facilities that meet the large confined animal facilities criteria will incur costs to develop and comply with mandated permits and emissions reduction plans. These costs will be incurred later in the process, and not as a result of this definition of large confined animal facilities.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or 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 other nondiscretionary costs or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses. The proposed amendments would provide clarification and compliance flexibility and would improve the way the regulations are administered. No negative economic impacts on small businesses are expected.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the large CAF definitions which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the Board, 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 at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than 12:00 noon, June 22, 2005, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: lcaf05@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, June 22, 2005.**

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, June 22, 2005.**

Please note that the hearing will not be held at the ARB headquarters building. To ensure that your comment will be available for consideration it is important that your comment is received by the deadline.

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 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601 and 40724.6. This action is proposed to implement, interpret and make specific sections 39011.5 and 40724.6 of the Health and 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 Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board 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 such event 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/
Catherine Witherspoon
Executive Officer

Date: April 26, 2005

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at www.arb.ca.gov.