

Final Regulation Order

Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning

Adopt new section 93113, title 17, California Code of Regulations, to read as follows:

**93113 Airborne Toxic Control Measure to Reduce Emissions of Toxic Air
Contaminants from Outdoor Residential Waste Burning.**

(a) Applicability.

- (1) Notwithstanding section 41806(a) of the Health and Safety Code, this regulation shall apply to persons conducting outdoor burning of combustible or flammable waste generated from inside residences and from outdoor activities associated with a residence, for the purpose of disposing of the waste.
- (2) This regulation shall apply to persons lighting fires that burn combustible or flammable waste, as defined, outdoors in enclosed or partially enclosed vessels, such as incinerators or burn barrels, or in an open outdoor fire, such as in pits or in piles on the ground. This regulation shall not apply to persons lighting fires at the direction of a public officer in an emergency situation for public health or fire safety reasons, in accordance with section 41801 of the Health and Safety Code or other provisions of law.
- (3) Except as provided in (a)(1) and (a)(2) above, nothing in this regulation shall affect the applicability of the provisions of article 2 and article 3, respectively, of chapter 3 of part 4 of division 26 of the Health and Safety Code.

(b) Definitions.

Terms used shall have the same definitions as in Health and Safety Code section 39010 et. seq., unless otherwise indicated. For purposes of this regulation, the following additional definitions shall apply:

- (1) “Air Pollution Control District” (APCD), “Air Quality Management District” (AQMD), “air district,” or “district” means an air pollution control district or an air quality management district created or continued in existence pursuant to Health and Safety Code section 40000 et seq.

- (2) "APCO" means the Air Pollution Control Officer or the chief executive officer of the respective local air pollution control district or local air quality management district where the property is located, or a designated representative.
- (3) "ARB" means the State of California Air Resources Board.
- (4) "Air Toxic" means toxic air contaminants as defined in section 39655 (a) of the Health and Safety Code.
- (5) "Allowable Combustibles" means dry natural vegetation waste originating on the premises and reasonably free of dirt, soil and visible surface moisture.
- (6) "Approved ignition device" means an instrument or material that will ignite open fires without the production of black smoke by the ignition device, as approved by the APCO.
- (7) "Burn Barrel" means a metal container used to hold combustible or flammable waste materials so that they can be ignited outdoors for the purpose of disposal.
- (8) "Census zip code" means a Zip Code[®] tabulation area, a statistical geographic entity that approximates the delivery area for a U.S. Postal Service five-digit Zip Code. Census zip codes are aggregations of census blocks that have the same predominate Zip Code associated with the mailing addresses in the U.S. Census Bureau's Master Address File. Census zip codes do not precisely depict Zip Code delivery areas, and do not include all Zip Codes used for mail delivery. For the purposes of this regulation, census zip codes are referenced to the most recent national decennial census completed by the U.S. Census Bureau.
- (9) "Chief fire official" means the ranking officer in the authority having jurisdiction with responsibility for fire protection within a defined geographic region of an air district, or his or her designee. The chief fire official may be a federal, state, county or municipal employee, depending on the extent of the fire jurisdiction within the exemption area. In State or Federal Responsibility Areas for wildland protection, the state or federal official's determination overrides county authority with regard to burn permits and the use of burn barrels or incinerators in exemption areas.
- (10) "Combustible" means any substance capable of burning or any substance that will readily burn.
- (11) "Disallowed Combustibles" means any waste or manufactured material, including but not limited to petroleum products and petroleum wastes;

construction and demolition debris; coated wire; putrescible wastes; tires; tar; tarpaper; non-natural wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; and fecal- and food-contaminated material. For purposes of this regulation, dry, natural vegetation waste from yard maintenance is not a disallowed combustible, if reasonably free of dirt, soil and surface moisture.

- (12) "Flammable" means capable of catching fire easily, or combustible.
- (13) "Incinerator" means any device constructed of nonflammable materials, including containers commonly known as burn barrels, for the purpose of burning therein trash, debris, and other flammable materials for volume reduction or destruction.
- (14) "Incorporated place" means the city, town, municipality or village reported to the U.S. Census Bureau as being legally in existence under California law at the time of the most recent national decennial census completed by the U.S. Census Bureau. For the purposes of calculating population density for this regulation, incorporated places include the FIPS Place Class Codes C1, C7 and C8, as defined by the U.S. Census Bureau in Technical Documentation, Summary File 1, October 2002.
- (15) "Natural vegetation" means all plants, including but not limited to grasses, forbs, trees, shrubs, flowers, or vines that grow in the wild or under cultivation. Natural vegetation excludes vegetative materials that have been processed, treated or preserved with chemicals for subsequent human or animal use, including but not limited to chemically-treated lumber, wood products or paper products.
- (16) "Open outdoor fire" means the combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.
- (17) "Permissive burn day" or "burn day" means any day on which agricultural burning, including prescribed burning, is not prohibited by the ARB and agricultural and prescribed burning is authorized by the air district consistent with the Smoke Management Guidelines for Agricultural and Prescribed Burning, set forth in sections 80100-80330 of title 17 of the California Code of Regulations.

- (18) "Population density" means the number of people per square mile within a census zip code. It is calculated as the number of people within a census zip code divided by the area of the census zip code after subtracting the population and area of all incorporated places within the census zip code.
- (19) "Processed or treated wood and wood products" means wood that has been chemically treated to retard rot or decay or wood that has been modified with glues, laminates, stains, finishes, paints or glosses for use in furniture or for construction purposes, including but not limited to plywood, particle board, fencing or railroad ties. For the purposes of this regulation, dimensional lumber that has been air-dried or kiln-dried, with no preservatives or finishes added, is not considered processed or treated wood.
- (20) "Residence" means a single- or two-family dwelling unit and the land and ancillary structures surrounding it.
- (21) "Residential waste burning" means the disposal of the combustible or flammable waste from a single- or two-family dwelling unit or residence by burning outdoors. Residential waste burning is not agricultural, including prescribed, burning.
- (22) "Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid materials, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; tires; tar; tarpaper; wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; fecal- and food-contaminated material; felled trees; tree stumps; brush; plant cuttings and prunings; branches; garden waste; weeds; grass clippings, pine needles, leaves and other natural vegetation waste.

(c) Prohibitions.

- (1) No person shall burn disallowed combustibles from any property for the purpose of disposing of waste material outdoors at a residence, except as provided under subsection (e), "Exemptions", below.

- (2) No person shall dispose of allowable combustibles from any property by burning them in a burn barrel or incinerator outdoors, except as provided under subsection (e), "Exemptions", below.
- (3) No person shall ignite, or allow to become ignited, allowable combustibles unless using an approved ignition device.
- (4) No person shall ignite, or allow to become ignited, allowable combustibles unless it is a permissive burn day in the air district where the residential waste burning is to take place.

(d) Compliance Schedule.

- (1) For the purposes of Section 39666(d) of the Health and Safety Code, the date of adoption of this regulation shall be _____ [insert the date of filing with the Secretary of State].
- (2) Unless an air district adopts an earlier effective date in accordance with section 39666(d) of the Health and Safety Code, the prohibitions set forth in subsection (c), above, shall become effective on January 1, 2004.
- (3) Beginning no later than January 1, 2003, the ARB shall conduct a public education and outreach program with respect to the regulation, the public health impacts of residential waste burning, and available alternatives to burning.

(e) Exemptions.

- (1) No exemption from the prohibitions set forth in subsections (c)(1) and (c)(2) is available for an incorporated place in any census zip code or census zip code sub-area.
- (2) Where the population density of the unincorporated area is less than or equal to 3.0 within the boundaries of any census zip code within an air district, the following exemptions apply:
 - (A) dry non-glossy paper and cardboard may be burned.
 - (B) burn barrels or incinerators may be used.
- (3) Where the population density of the unincorporated area is greater than 3.0 but less than or equal to 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of (e)(10).

- (4) As part of any Request for Exemption submitted under subsection (e)(3), an air district may create sub-areas within a census zip code where the prohibitions set forth in subsections (c)(1) and (c)(2) shall still apply, subject to the provisions of (e)(10).
- (5) Where the population density is greater than 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to create sub-areas within a census zip code to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of subsection (e)(10), provided the unincorporated sub-area has a population density of less than or equal to 3.0.
- (6) The prohibition contained in subsection (c)(2) of this regulation shall not apply in any jurisdiction where a local ordinance or other enforceable mechanism is in effect on January 4, 2002 requiring the use of a burn barrel or incinerator to burn allowable combustibles, unless the local ordinance or other enforceable mechanism is subsequently rescinded or revoked.
- (7) No air district shall file a Request for Exemption from subsection (c)(1) to allow the burning of dry non-glossy paper and cardboard if it is prohibited by air district rules in effect on January 4, 2002, or thereafter, or within a geographic area where it is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002, or thereafter.
- (8) No air district shall file a Request for Exemption from subsection (c)(2) to allow the use of a burn barrel or incinerator outdoors at a residence if it is prohibited by air district rules in effect on January 4, 2002, or thereafter, or within a geographic area where the use of a burn barrel or incinerator is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002, or thereafter.
- (9) On or before May 1, 2003, and every ten years thereafter, the ARB shall provide the air districts with a listing of all incorporated places and the population density within the boundaries of each census zip code contained within each air district.
- (10) Any Request for Exemption by an air district shall be submitted in writing to the ARB on or before August 1, 2003, and every ten years thereafter, and shall include all of the following:
 - (A) a resolution, board order, or other enforceable mechanism adopted by the air district's Governing Board at a formal public meeting approving the Request for Exemption; and
 - (B) a written commitment from the air district to provide information on the hazards associated with residential waste burning, and ways to

minimize these hazards, to all persons conducting residential waste burning by using either an air district or appropriate fire protection agency permit program for residential waste burning, or other equivalent mechanism; and

- (C) to allow the burning of dry non-glossy paper and cardboard where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, a finding by the air district that the exemption is necessary; and
 - (D) to allow the use of burn barrels or incinerators where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, written documentation from the chief fire official with primary jurisdiction over fire safety within the area contained within the census zip code, including references to fire codes (where applicable), that an unacceptable fire risk would occur if the prohibition set forth in subsection (c)(2) for that area remained in effect; and
 - (E) for census zip code sub-areas, documentation showing the population, land area, and population density of each census zip code sub-area and providing specific, enforceable, geographic boundaries; and
 - (F) a list of the specific exemptions requested, for each applicable census zip code and census zip code sub-area, that are included in the Request for Exemption; and
 - (G) a finding that all incorporated places within the boundaries of the census zip code or census zip code sub-area within an air district are excluded from the Request for Exemption; and
 - (H) a finding that the air district considered the health risks to all populated communities that are within exempted areas; and
 - (I) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the burning of dry-non-glossy paper and cardboard; and
 - (J) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the use of a burn barrel or incinerator.
- (11) The ARB shall review the air district's Request for Exemption for completeness and approve or reject the Request for Exemption, in writing, within 60 days after submittal.
- (12) If the air district's Request for Exemption is not complete, the ARB shall return the Request for Exemption to the air district for amendment. The

air district shall have an additional 30 days to submit a revised Request for Exemption.

- (13) By January 1, 2004, and every ten years thereafter, the ARB shall make available a listing of all census zip codes and census zip code sub-areas within each air district that are exempt in accordance with the criteria specified in subsections (e)(2), (e)(3) and (e)(5) and as approved by the ARB.
- (14) (A) Except as provided in subsection (e)(14)(B), all exemptions shall terminate on December 31, 2013, and as appropriate every ten years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).
- (B) An exemption provided in accordance with subsection (e)(5) shall terminate on December 31, 2008, and as appropriate every five years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).

NOTE: Authority cited: Sections 39600, 39601, 39659 and 39666, Health and Safety Code. Reference: Sections 39020, 39044, 39650 through 39669, 39701, 41700 and 41806, Health and Safety Code.