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HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.)*

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.)*

CHAPTER 6.5. Regulations of Air Pollution Control and Air Quality Management Boards [40725 - 40731] (*Chapter 6.5 added by Stats. 1986, Ch. 758, Sec. 2.)*

40725. (a) A district board shall not adopt, amend, or repeal any rule or regulation without first holding a public hearing thereon.

(b) Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or regulation shall be given not less than 30 days prior thereto to the state board, which notice shall include a copy of the rule or regulation proposed to be adopted, amended, or repealed, as the case may be, and a summary description of the effect of the proposal, and by publication in the district pursuant to Section 6061 of the Government Code. In addition, in the case of a district which includes portions of more than one county, the notice shall be published in each county not less than 30 days prior to the date of the hearings.

(c) Notice published pursuant to subdivision (b) shall invite written public comment and indicate the name, address, and telephone number of the district officer to whom these comments are to be addressed, and the date by which comments are to be received.

(*Added by Stats. 1986, Ch. 758, Sec. 2.*)

40726. The public hearing held pursuant to Section 40725 shall provide for the submission of statements, arguments, or contentions, either oral, written, or both. A district board may continue or postpone the hearing from time to time, to a time and place as it shall determine. Following consideration of all relevant matter presented, a district board may adopt, amend, or repeal a rule or regulation, unless the board makes changes in the text originally made available to the public that are so substantial as to significantly affect the meaning of the proposed rule or regulation. The board shall not take action on a changed text before its next regular meeting, and shall allow further statements, arguments, and contentions, either written, oral, or both, to be made and considered prior to taking final action.

(*Added by Stats. 1986, Ch. 758, Sec. 2.*)

40727. (a) Before adopting, amending, or repealing a rule or regulation, the district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, as defined in this section, based upon information developed pursuant to Section 40727.2, information in the rulemaking record maintained pursuant to Section 40728, and relevant information presented at the hearing.

(b) As used in this section, the following terms have the following meaning:

(1) "Necessity" means that a need exists for the regulation, or for its amendment or repeal, as demonstrated by the record of the rulemaking authority.

(2) "Authority" means that a provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.

(3) "Clarity" means that the regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

(4) "Consistency" means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

(5) "Nonduplication" means that a regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.

(6) "Reference" means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(Amended by Stats. 1997, Ch. 519, Sec. 1. Effective January 1, 1998.)

40727.2. (a) In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b). The analysis shall be in a format that minimizes paperwork and, at the option of the district, may be in matrix form.

(b) Within 60 days from the date of a district's publication, pursuant to Section 40923, of the list of regulatory measures proposed for adoption in the following year, any person may inform the district of any existing federal or state air pollution control requirement or guideline or proposed or existing district air pollution control requirement or guideline that applies to the same type of source or equipment in that district as any proposed new or amended district rule or regulation on that district's list of regulatory measures. If any person informs the district of any requirement or guideline that does not apply to the same type of source or equipment, the district shall notify the person to that effect and shall not be required to review that requirement or guideline.

(c) The analysis prepared pursuant to subdivision (a) shall compare the elements of each of the identified air pollution control requirements to the corresponding element or elements of the district's proposed new or amended rule or regulation.

(d) Air pollution control requirement elements to be reviewed pursuant to subdivision (c) are all of the following:

- (1) Averaging provisions, units, and any other pertinent provisions associated with emission limits.
- (2) Operating parameters and work practice requirements.
- (3) Monitoring, reporting, and recordkeeping requirements, including test methods, format, content, and frequency.
- (4) Any other element that the district determines warrants review.

(e) If one or more elements of a district's proposed new or amended rule or regulation differs from corresponding elements of any existing air pollution control requirement or guideline applicable to the same equipment or source type, the analysis prepared pursuant to subdivision (a) shall note the difference or differences.

(f) The public hearing notice given to the state board pursuant to subdivision (b) of Section 40725, and any notice mailed to interested persons, shall include a statement indicating that the analysis required by this section has been prepared, and shall provide the name, address, and telephone number of a district officer from whom copies may be requested. The analysis required by this section shall be provided to the public upon request.

(g) If a district's proposed new or amended rule or regulation does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, or if the proposed new or amended rule or regulation is a verbatim adoption or incorporation by reference of a federal New Source Performance Standard adopted pursuant to Section 111 of the federal Clean Air Act (42 U.S.C. Sec. 7411) or an airborne toxic control measure established by the state board pursuant to Section 39658, a district may elect to comply with subdivision (a) by finding that the proposed new or amended rule or regulation falls within one or more of the categories specified in this subdivision.

(h) Nothing in this section limits the existing authority of districts to determine the form, content, and stringency of their rules and regulations. In implementing this section, it is the intent of the Legislature that the districts retain their existing authority and flexibility to tailor their air pollution emission control requirements to local circumstances.

(i) For purposes of this section, a district rule or regulation shall be considered "proposed" if the rule or regulation has been made available to the general public in connection with a request for comments.

(j) To the extent that the district board determines that there are additional costs imposed by this section, the district board shall recover those additional costs through the imposition of fees on regulated entities.

(Amended by Stats. 2000, Ch. 729, Sec. 7. Effective January 1, 2001.)

40728. Every district shall maintain a file of each regulation which shall be deemed to be the record for that rulemaking proceeding. The file shall include all of the following:

(a) Copies of any petitions received by the district from interested persons proposing the adoption, amendment, or repeal of the regulation.

(b) Copies of published notices of proposed adoption, amendment, or repeal of the regulation.

(c) All data and other factual information, any studies or reports, and written comments submitted to the district in connection with the adoption, amendment, or repeal of the regulation.

(d) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(e) The text of regulations as originally proposed, and the modified text of regulations, if any, that were made available to the public prior to the adoption.

(Added by Stats. 1986, Ch. 758, Sec. 2.)

40728.5. (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation. The district board shall actively consider the socioeconomic impact of regulations and make a good faith effort to minimize adverse socioeconomic impacts, as defined below. This section does not apply to the adoption, amendment, or repeal of any rule or regulation that results in any less restrictive emissions limit if the action does not interfere with the district's adopted plan to attain ambient air quality standards, or does not result in any significant increase in emissions.

(b) For purposes of this section, "socioeconomic impact" means the following:

(1) The type of industries or business, including small business, affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry or business, including small business, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

(c) To the extent that information on the socioeconomic impact of a regulation is required to be developed by a district pursuant to other provisions of this division, that information may be used or referenced in the assessment in order to comply with the requirements of this section.

(d) This section does not apply to any district with a population of less than 500,000 persons.

(e) Upon the approval by a majority vote of the district board, a county district is not required to include the analysis specified in paragraphs (2) and (4) of subdivision (b) in any assessment of socioeconomic impacts for any rule or regulation that only adopts a requirement that is substantially similar to, or is required by, a state or federal statute, regulation, or applicable formal guidance document. Examples of state or federal formal guidance documents include, but are not limited to, federal Control Techniques Guidelines, state and federal reasonably available control technology determinations, state best available retrofit control technology determinations, and state air toxic control measures.

(Amended by Stats. 2000, Ch. 729, Sec. 8. Effective January 1, 2001.)

40730. (a) A district may establish programs to assist the public, government agencies, and businesses in complying with district regulations.

(b) For the purposes of a program established pursuant to subdivision (a), a district may provide to any person any factual nonconfidential information regarding any product or service that is in compliance with district regulations, and regarding the air emissions associated with a particular use of that product or service. The provision of that information, upon request or otherwise, shall not include any recommendation to any person with respect to any product or service.

(Added by Stats. 1994, Ch. 247, Sec. 1. Effective January 1, 1995.)

40731. In order to assist in the development of the BACM, RACM, and BARCT measures specified in Sections 40724, 40724.5, and 40724.6, and to reduce or eliminate emissions of regulated air pollutants and their precursors, the California Air Pollution Control Officers Association, in consultation with the state board and other interested parties, shall, not later than January 1, 2005, develop a clearinghouse of available control measures and strategies for agricultural sources of air pollution and emissions from agricultural operations, including, but not limited to, the following sources:

(a) Operations that create fugitive dust emissions, including, but not limited to, discing, tilling, material handling and storage, and travel on unpaved roads.

(b) Confined animal facilities, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, or milking parlor, including, but not limited to, a system for the collection, storage, treatment, and distribution of liquid or solid manure from domestic animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks, if those animals are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes, and feeding is by means other than grazing.

(c) Internal combustion engines used in the production of crops or the raising of animals or fowl, except an engine that is used to propel an implement of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003.

(d) Other equipment, operations, or activities associated with the growing of crops or the raising of fowl or animals, that emit, or cause to be emitted, any regulated air pollutant, or any precursor to any regulated air pollutant.

(Added by Stats. 2003, Ch. 479, Sec. 8. Effective January 1, 2004.)