HEALTH AND SAFETY CODE - HSC

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 AIR RESOURCES [39000 - 44475.3] *(Division 26 repealed and added by Stats. 1975, Ch. 957.)*

PART 4. NONVEHICULAR AIR POLLUTION CONTROL [41500 - 42710] *(Part 4 added by Stats. 1975, Ch. 957.)*

CHAPTER 2. Basinwide Mitigation for Cogeneration and Resource Recovery Projects [41600 - 41606] *(Heading of Chapter 2 amended by Stats. 1988, Ch. 1568, Sec. 20.)*

41600. (a) The districts shall provide for, and shall periodically revise as appropriate, the growth allowances necessary to accommodate the net air quality impact, if any, of cogeneration technology projects and resource recovery projects permitted pursuant to Section 42314, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board, for inclusion in the next state implementation plan revisions, the necessary control measures for the growth allowances for federally approved nonattainment pollutants and precursors required by subdivision (a).

(c) Any district that lacks a federally approved demonstration of attainment with the national ambient air quality standard for ozone or nitrogen dioxide is not required to provide a growth allowance for any pollutant under this section until two years after the district makes both demonstrations. Federal approval shall be determined, based on regulations adopted by the Environmental Protection Agency, after public notice and opportunity for comment. After a district demonstrates attainment, the district may establish a growth allowance by allocating an air quality increment within the ambient air quality standard or through adoption of further control measures.

(Amended by Stats. 2000, Ch. 890, Sec. 34. Effective January 1, 2001.)

41605. (a) The districts, in cooperation with the state board, shall develop, adopt, and update, as necessary, a procedure to determine the magnitude of the emissions from the existing electric generating system in the air basin which would be displaced if cogeneration technology projects and qualifying facilities were constructed. The procedure shall be used once each year to determine the utility displacement credits which shall be used in reviewing the permit applications for new cogeneration technology projects and qualifying facilities during the following year, and shall ensure that the credits are real, permanent, quantifiable, enforceable, and surplus.

(b) A district may reduce the emission offset requirement for a cogeneration technology project or qualifying facility by the utility displacement credits determined pursuant to subdivision (a). In all cases in which a cogeneration technology project or qualifying facility satisfies subdivision (c), a district shall reduce the offset requirement for the project or facility by the utility displacement credits determined pursuant to subdivision (a). A district shall allocate at least 90 percent of the pounds of emissions available in the form of utility displacement credits to projects and facilities which satisfy the requirements of subdivision (c).

(c) Utility displacement credits shall be granted to cogeneration technology projects and qualifying facilities for those pollutants for which net project or facility emissions, after offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 42314, are lower, on a pounds of pollutant per unit of energy produced basis, than the emissions which would be generated by the fossil-fuel fired existing electric generating system in the air basin in the absence of the project or facility.

(d) Utility displacement credits shall be credited to a project or facility only to the extent necessary to satisfy district offset requirements, and only after credit has been granted for offsets provided pursuant to paragraphs (3) and (4) of subdivision (a) of Section 42314.

(e) The cogeneration technology project or qualifying facility proponent, and the owner or operator of the purchasing utility, shall provide to the state board or the district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, all of the following:

(1) Emission source test data.

(2) Chronological fuel use data.

(3) Chronological electric load data.

(f) In providing the utility displacement credits required by this section, and for purposes of this section only, the utility, if not an applicant, shall not be required to furnish emission offsets on a case-by-case basis for the project. This section does not permit a district on a case-by-case basis to limit the ability of the utility to operate its existing hydrocarbon combustion facilities in accordance with the requirements of the Public Utilities Commission or the governing body of a public utility owned by a municipality or other political subdivision of the state.

(Amended by Stats. 1985, Ch. 978, Sec. 3.)

41605.5. (a) In considering the offset requirement for a project facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler), to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall include the incremental emissions benefit that occurs because those wastes are not disposed of by open field burning or by forest land burning if the biomass fuel would ordinarily or otherwise be burned in that manner in the same air basin. The emissions credit shall be offset at a ratio of 1.2 to 1 for nonattainment pollutants if within 15 miles, and at a ratio of 2 to 1 if further than 15 miles within the same air basin.

(b) The districts and the state board, in cooperation, shall develop and, on or before July 1, 1988, and at least once every two years thereafter, reevaluate a procedure to determine the availability and magnitude of the offsets resulting from the incremental emissions benefits, including an accounting of the quantity of biomass material credits calculated for purposes of Section 42314.5 as necessary to ensure that state and federal ambient air quality standards may be achieved and maintained, or that reasonable further progress be made toward attainment.

(c) The applicant shall provide the state board or a district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, the following:

(1) The quality of fuel or waste to be burned or used in the facility.

(2) The type of fuel or waste to be burned or used in the facility.

(3) The source of the fuel or waste to be burned or used in the facility.

(Amended by Stats. 1987, Ch. 565, Sec. 1.)

41606. (a) (1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.

(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003–04 fiscal year.

(b) For purposes of this section:

(1) “Qualified agricultural biomass” means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) “Facility” means any facility located in California that meets all of the following criteria:

(A) As of July 1, 2003, converted and continues to convert qualified agricultural biomass to energy.

(B) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit, as determined by the air pollution control district or air quality management district in which the facility operates.

(C) Demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A “significant net increase” means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the implementation of the Agricultural Biomass-to-Energy Incentive Grant Program pursuant to former Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as repealed by the act adding this section.

(c) (1) The State Energy Resources Conservation and Development Commission shall, upon determining that a facility is eligible for funding, provide incentives to the facility, consistent with this section.

(2) The State Energy Resources Conservation and Development Commission shall complete the issuance of incentive payments for qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, within 90 days of the effective date of this section.

(3) In providing incentives pursuant to this section, the State Energy Resources Conservation and Development Commission shall provide incentive payments in the amount of ten dollars ($10) for each ton of qualified agricultural biomass received by a facility and converted into energy. The State Energy Resources Conservation and Development Commission may increase the incentive payment for types or sources of qualified agricultural biomass that require greater incentives to achieve meaningful increases in usage by facilities, as determined by the State Energy Resources Conservation and Development Commission.

(4) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive funded through electricity surcharges, except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.

(5) The State Energy Resources Conservation and Development Commission, in consultation with the California Environmental Protection Agency, may adopt guidelines governing the incentives authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days’ written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. Adoption of guidelines shall not delay the timing of the payment of incentives that are required by paragraph (2).

(6) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those contained in this section, and any guidelines adopted pursuant to this section, were a substantial factor in making the award. Any actions taken by an applicant to apply for, become, or remain eligible for an award, shall not be the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(d) Facilities receiving incentive payments pursuant to this section are not eligible to receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. Generators or suppliers of qualified agricultural biomass may not receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. For purposes of this section, “emission reduction credits” means a credit for a reduction in the emission of an air contaminant that is banked and is available to offset increases in emissions pursuant to Section 40709, and the regulations adopted pursuant to that section.

(Added by Stats. 2003, Ch. 480, Sec. 2. Effective January 1, 2004.)