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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 AIR RESOURCES [39000 - 44475.3]** ( *Division 26 repealed and added by Stats. 1975, Ch. 957.*  )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 4. NONVEHICULAR AIR POLLUTION CONTROL [41500 - 42710]** ( *Part 4 added by Stats. 1975, Ch. 957.*  )

**CHAPTER 3. Emission Limitations [41700 - 41999]** ( *Chapter 3 added by Stats. 1975, Ch. 957.*  )

**ARTICLE 3. Agricultural Burning [41850 - 41866]** ( *Article 3 added by Stats. 1975, Ch. 957.*  )

**41850.** It is the intent of the Legislature, by the enactment of this article, that agricultural burning be reasonably regulated and not be prohibited. The state board and the districts shall take into consideration, in adopting rules and regulations for purposes of this article, various factors, including, but not limited to, the population in an area, the geographical characteristics, the meteorological conditions, the economic and technical impact of such rules and regulations, and the importance of a viable agricultural economy in the state.

(*Added by Stats. 1975, Ch. 957.*)

**41851.** Section 41800 shall not apply to burning regulated pursuant to this article.

(*Added by Stats. 1975, Ch. 957.*)

**41852.** No person knowingly shall set or permit agricultural burning unless he has a valid permit from the agency designated by the state board to issue such permits in the area where the agricultural burning is to take place.

(*Amended by Stats. 1976, Ch. 1063.*)

**41852.5.** The state board may, after holding a public hearing, authorize an exemption from the permit requirement of Section 41852 for a district, or a portion of a district, where agricultural burning does not significantly affect air quality.

(*Added by Stats. 1981, Ch. 700.*)

**41853.** The state board shall designate public fire protection agencies or other equivalent agencies to issue permits under subdivision (a) of Section 41852, and shall adopt rules and regulations to provide a procedure for the issuance of the permits. Each agency so designated by the state board shall issue permits subject to the rules and regulations of the state board.

(*Added by Stats. 1975, Ch. 957.*)

**41853.5.** (a) No permit shall be issued pursuant to Section 41853 to a person for the burning of solid waste which is produced from the ginning of cotton, unless the person pays to the issuing agency a fee of fifteen cents (\$0.15) for each bale of cotton ginned that will produce the solid waste that is to be burned.

(b) Except as provided in subdivision (c), the issuing agency shall deposit monthly the collected fees in the Air Pollution Control Fund.

(c) To pay for administrative costs of issuing the permits, the issuing agency may retain from the fees collected pursuant to this section an amount equal to either the estimated cost of issuing the permits, or 4 percent of the total fees collected, whichever is less. The state board may make an annual audit of the issuing agency to determine the amount of fees retained by an issuing agency.

(*Added by Stats. 1976, Ch. 1216.*)

**41854.** (a) No permit issued pursuant to Section 41853 shall be valid for any day during which agricultural burning is prohibited by the state board pursuant to Section 41855 or by a district board pursuant to Section 41508.

(b) Each permit shall bear a statement of warning containing the following words or words of like or similar import:

"This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board pursuant to Section 41855 of the Health and Safety Code."

*(Added by Stats. 1975, Ch. 957.)*

**41855.** The state board shall determine and designate from meteorological data the days when agricultural burning shall be prohibited within each air basin.

*(Added by Stats. 1975, Ch. 957.)*

**41855.5.** (a) Notwithstanding any other provision of law, no permit may be issued to a person to burn any of the following categories of agricultural waste within the jurisdiction of the San Joaquin Valley Unified Air Pollution Control District, commencing on the following dates:

- (1) Commencing June 1, 2005, for field crops, prunings, and weed abatement.
- (2) Commencing June 1, 2007, for orchard removals.
- (3) Commencing June 1, 2010, for other materials, vineyard removals, and surface harvested prunings.

(b) The San Joaquin Valley Unified Air Pollution Control District, in consultation with the University of California Cooperative Extension, shall develop and adopt, not later than June 1, 2005, rules establishing best management practices for the control of other weeds and maintenance. The rules adopted pursuant to this subdivision shall be operative not later than June 1, 2006.

(c) For the purposes of this section, the following terms have the following meanings:

- (1) "Field crops" means any of the following crops:

- (A) Alfalfa.
- (B) Asparagus.
- (C) Barley stubble.
- (D) Beans.
- (E) Corn.
- (F) Cotton.
- (G) Flower straw.
- (H) Hay.
- (I) Lemon grass.
- (J) Oat stubble.
- (K) Other field crops, as determined by the state board.
- (L) Pea vines.
- (M) Peanuts.
- (N) Rice stubble.
- (O) Safflower.
- (P) Sugar cane.
- (Q) Vegetable crops.

- (R) Wheat stubble.
- (2) "Orchard removals" includes, but is not limited to, any of the following:
- (A) Orchard removal matter.
  - (B) Stumps.
  - (C) Untreated sticks.
- (3) "Other materials" includes, but is not limited to, any of the following:
- (A) Brooder paper.
  - (B) Deceased goats.
  - (C) Diseased bee hives.
- (4) "Other weeds and maintenance" includes, but is not limited to, any of the following:
- (A) Ditch bank work.
  - (B) Canal bank work.
  - (C) Dodder weed.
  - (D) Star thistle.
  - (E) Tumbleweed.
  - (F) Noxious weeds.
  - (G) Pesticide sacks.
  - (H) Fertilizer sacks.
- (5) "Prunings" means prunings from any of the following:
- (A) Apple crops.
  - (B) Apricot crops.
  - (C) Avocado crops.
  - (D) Bushberry crops.
  - (E) Cherry crops.
  - (F) Christmas trees.
  - (G) Citrus crops.
  - (H) Date crops.
  - (I) Eucalyptus crops.
  - (J) Fig crops.
  - (K) Kiwi crops.
  - (L) Nectarine crops.
  - (M) Nursery prunings.
  - (N) Olive crops.
  - (O) Other prunings, as determined by the state board.
  - (P) Pasture or corral trees.
  - (Q) Peach crops.

(R) Pear crops.

(S) Persimmon crops.

(T) Pistachio crops.

(U) Plum crops.

(V) Pluot crops.

(W) Pomegranate crops.

(X) Prune crops.

(Y) Quince crops.

(Z) Rose prunings.

(6) "Surface harvested prunings" includes, but is not limited to, any of the following:

(A) Almond prunings.

(B) Walnut prunings.

(C) Pecan prunings.

(D) Grape vines.

(E) Vineyard removal materials.

(7) "Vineyard materials" includes, but is not limited to, any of the following:

(A) Grape canes.

(B) Raisin trays.

(8) "Weed abatement" includes, but is not limited to, any of the following:

(A) Berms.

(B) Bermuda grass.

(C) Fence rows.

(D) Grass.

(E) Pasture.

(F) Ponding or levee banks.

(d) (1) The San Joaquin Valley Unified Air Pollution Control District shall develop and adopt, by January 1, 2005, rules to regulate the burning of diseased crops. The rules shall become operative no later than June 1, 2005. The rules shall provide for the issuance of a conditional crop burning permit if all of the following criteria are met:

(A) The fields to be burned are specifically described.

(B) The applicant has not been cited for a violation of burning rules or regulations in the past 3 years, unless the violation was of a de minimis nature, as determined by the district and the county agricultural commissioner.

(C) The county agricultural commissioner has determined all of the following:

(i) During the growing season for that crop, there is the presence of a disease that will cause a substantial, quantifiable reduction in yield or poses a threat to the health of adjacent vines, trees, or plants in the field proposed to be burned, during the current or next growing season.

(ii) There is no economically feasible alternative means of eliminating the disease other than burning.

(2) A conditional crop burning permit shall authorize the burning of only the identified diseased crop.

(3) The holder of a permit may not transfer, sell, or trade the permit to any other individual.

(4) A citation for a violation of burning rules or regulations may be appealed to the San Joaquin Air Pollution Control District Hearing Board.

*(Added by Stats. 2003, Ch. 481, Sec. 1. Effective January 1, 2004.)*

**41855.6.** The district may postpone the commencement dates set forth in subdivision (a) of Section 41855.5 for any category of agricultural waste or crop described if all of the following applies:

- (a) The district determines that there is no economically feasible alternative means of eliminating the waste.
- (b) The district determines that there is no long-term federal or state funding commitment for the continued operation of biomass facilities in the San Joaquin Valley or development of alternatives to burning.
- (c) The district determines that the continued issuance of permits for that specific category or crop will not cause, or substantially contribute to, a violation of an applicable federal ambient air quality standard.
- (d) The state board concurs with the district's determinations pursuant to this section.

*(Amended by Stats. 2004, Ch. 183, Sec. 221. Effective January 1, 2005.)*

**41855.8.** (a) Upon appropriation of moneys pursuant to Provision 1 of Item 3900-101-0001 of Section 2.00 of the Budget Act of 2021, the state board may administer a program to support incentives for alternatives to agricultural burning in the San Joaquin Valley.

(b) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) does not apply to funding criteria or other guidelines expressly related to the granting of moneys under the program described in subdivision (a) adopted or used by the state board.

*(Added by Stats. 2021, Ch. 115, Sec. 60. (AB 148) Effective July 22, 2021.)*

**41856.** The state board shall promulgate guidelines for the regulation and control of agricultural burning for each of the air basins established by the state board.

*(Added by Stats. 1975, Ch. 957.)*

**41857.** The guidelines promulgated by the state board shall be based on meteorological data, the nature and volume of materials to be burned, and the probable effect of such burning on the ambient air quality within the air basins affected.

*(Added by Stats. 1975, Ch. 957.)*

**41858.** In adopting such guidelines, the state board shall consider their economic and technical feasibility, including their probable effect on agricultural production in the air basin affected.

*(Added by Stats. 1975, Ch. 957.)*

**41859.** The state board shall continuously review the guidelines promulgated under this article, and may modify, repeal, or alter such guidelines if scientific and technological data indicates that such changes are warranted. Before adopting any such changes, the state board shall hold a public hearing and shall consider the criteria set forth in Section 41857.

*(Added by Stats. 1975, Ch. 957.)*

**41860.** The state board shall adopt and publish a list of orchard and citrus grove heaters which it finds produce no more than one gram per minute of unconsumed solid carbonaceous material. No new orchard or citrus grove heater produced or manufactured shall be sold for use against frost damage unless it has been approved by the state board.

No person shall use any orchard or citrus grove heater after January 1, 1975, unless it has been approved by the state board or does not produce more than one gram per minute of unconsumed solid carbonaceous material.

In addition to the penalties specified in Section 42400, the cost of putting out the fire caused by a violation of this section may be imposed on any person who violates this section.

*(Added by Stats. 1975, Ch. 957.)*

**41861.** No burning shall be conducted for the improvement of land for wildlife or game habitat until the person desiring to conduct such burning obtains from the Department of Fish and Game a written statement certifying that the burning is desirable and proper for the improvement of land for wildlife or game habitat and such statement is filed with the air pollution control officer having jurisdiction in the area in which the burning is to take place. As to burning conducted by the Department of Fish and Game, the department shall, on its own behalf, issue and file such statements.

(Added by Stats. 1975, Ch. 957.)

**41862.** A district may issue a permit to authorize agricultural burning on days designated by the state board pursuant to Section 41855 as nonburning days when denial of such a permit would threaten imminent and substantial economic loss.

The state board shall require the districts to transmit regular reports of permits issued authorizing agricultural burning on nonburning days. The report shall include the number of such permits issued, the date of issuance of each permit, the person to whom each permit was issued, and any other information requested by the state board.

(Added by Stats. 1975, Ch. 957.)

**41863.** Each basinwide coordinating council and district shall, as part of the implementation plans and programs prepared pursuant to Chapter 2 (commencing with Section 41600), include a component for the regulation and control of agricultural burning pursuant to guidelines adopted by the state board therefor.

(Added by Stats. 1975, Ch. 957.)

**41864.** The provisions of this article shall not supersede any rule or regulation of any district, which rule or regulation was in effect for five or more years prior to September 19, 1970.

(Added by Stats. 1976, Ch. 1063.)

**41865.** (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) "Conditional rice straw burning permit" means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) "Allowable acres to be burned" means the number of acres that may be burned pursuant to subdivision (c).

(5) "Department" means the Department of Food and Agriculture.

(6) "Maximum fall burn acres" means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) "Maximum spring burn acres" means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

| Year | Maximum Fall Burn Acres | Maximum Spring Burn Acres |
|------|-------------------------|---------------------------|
| 1998 | 90,000                  | 110,000                   |
| 1999 | 90,000                  | 110,000                   |
| 2000 | 90,000                  | 110,000                   |

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) "Administrative burning" means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(l) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, and the advisory committee, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(o) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(p) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(q) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars (\$10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(r) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(s) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

*(Amended by Stats. 2004, Ch. 644, Sec. 18. Effective January 1, 2005.)*

**41865.5.** Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2001, the State Air Resources Board, in consultation with the Department of Food and Agriculture, and in cooperation with the State Energy Resources Conservation and

Development Commission and the California Integrated Waste Management Board, shall prepare and submit to the Legislature recommendations for ensuring consistency and predictability in the supply of rice straw for cost-effective uses, including, but not limited to, recommendations for methods of harvesting, storing, and distributing rice straw for off-field uses. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

*(Added by Stats. 1999, Ch. 640, Sec. 1. Effective January 1, 2000.)*

**41866.** The Sacramento Valley Basinwide Air Pollution Control Council may impose, and may require that districts within the Sacramento Valley Air Basin collect, a fee not to exceed five dollars (\$5) per permit, per year on each permit issued by a district within the Sacramento Valley Air Basin, for the purpose of administering all basinwide air pollution control efforts, and may adopt a budget to expend those funds at any noticed regularly scheduled meeting, allowing for public comment.

*(Amended by Stats. 1995, Ch. 529, Sec. 17. Effective October 4, 1995.)*