

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

**PROPOSED RULE 10.9 RICE STRAW EMISSION REDUCTION
CREDITS**

STAFF REPORT

Projected Rule Adoption Date: 4/6/09

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Summary

On April 6, 2009, the Feather River Air Quality Management District (District) Board of Directors will consider the adoption of Rule 10.9 Rice Straw Emission Reduction Credits. This rule establishes procedures which ensure federal recognition of the banking of Emission Reduction Credits (ERCs) resulting from the permanent reduction of open field burning of rice straw located within the Sacramento Valley Ozone Nonattainment Area (SNFA). The District's area included in the SNFA is located south of Subaco Road and south of the Bear River in Sutter County

The requirements for Rule 10.9 will be:

1. An application will be required to bank all ERC's under this program. There will be two types of applications: new applications and re-certification applications. Those parties who previously banked rice straw ERC's in South Sutter may surrender their existing ERC's and apply to "re-certify" their credits. Any other parties who can substantiate that they grew rice during the 1988-1992 baseline may submit a "new" banking application to obtain credits.
2. All applications must be received within six (6) months of rule adoption.
3. Each applicant must show that the property for which the application is submitted grew and burned rice in the baseline period between 1988 and 1992.
4. Each applicant must show that the property for which the application is submitted is limited by deed restriction to burning in any calendar year no more than 25% of the rice growing acreage.

It is expected that most of the parties with rice straw ERCs will re-bank their existing certificates in accordance with this rule. In addition, the program will be available to other landowners who either did not know about the program previously or who previously chose not to participate in the program.

The adoption of Rule 10.9 is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This rule, if adopted, is not an activity that may cause a direct or reasonably foreseeable indirect physical effect in the environment and therefore is not considered a "project", as defined by Section 21065 of the California Public Resource Code and Section 15378(b)(4) & (5) of the California Environmental Quality Act (CEQA) guidelines. A CEQA analysis is therefore not necessary.

Background

Rice straw burning in the Sacramento Valley was “phased down” pursuant to state law adopted in 1991 (California Health and Safety Code 41865). On July 2, 2001, the District amended its Emission Credit and Banking rule which allowed landowners in all areas of Sutter and Yuba Counties to use their Emission Reduction Credits (ERC’s) from permanent reductions in open biomass burning to provide offsets for increases in emissions to new or modified sources. The existing District ERC rule is not recognized by the United States Environmental Protection Agency (EPA) as being valid for “federal purposes” (ie. major modification projects or new major stationary sources) within the SNFA.

The SNFA Districts have worked in conjunction with the Sacramento Valley Basinwide Control Council (BCC) and the California Rice Commission to address all concerns and comments raised by the California Air Resources Board (ARB) and the US EPA. The other Air Districts in the SFNA have developed a model Rice Straw Emission Reduction Credit Rule and White Paper to establish procedures which ensure federal recognition of the banking of ERC’s. The adoption of this District rule is based on this model rule and White Paper. Rice ERC’s from all other areas of Sutter and Yuba Counties are designated attainment and are not eligible to be transferred into the SFNA.

Rule Requirements

PURPOSE: The purpose of adopting Rule 10.9 is to re-define ERC eligibility standards and ensure that Phase Down emission reductions qualify as air quality offsets and ERC’s used in the SNFA.

APPLICABILITY: The provisions of this Rule would apply to any eligible applicant who has (or will) apply for ERC’s in the SNFA.

Cost Impacts

Costs to Businesses: Section 40703 of the California Health and Safety Code requires that air districts consider and make public findings relating to the cost effectiveness of implementing an emission control measure. The requirements of this rule do not constitute emission control measures, nor do they require any additional emission control equipment or emission reductions. However, some cost will be incurred by persons or sources that are eligible to bank and/or use ERC’s.

The cost to bank will vary depending on the time expenditure of District staff to process and track the usage of said credits, and the cost reduce emissions. The adoption of this rule does not propose or recommend amendments to current District fee schedules. The value of banked credits is determined by the market (ie. negotiated between the buyer and seller) and will vary considerably based on supply and demand considerations.

Cost to District: The cost to the District has the potential to be significant, depending on the number of recertified and new applications filed and processed. The District has fee provisions in the Rule to assess fees to cover costs of processing the ERC applications. Staff expects the requirements of this amended rule will provide increased ERC credits of new ERC applications.

Socioeconomic Impacts

Section 40728.5 (c) of the CHSC exempts districts with a population of less than 500,000 from performing a socioeconomic impact analysis. Proposed Rule 10.9 will not significantly affect air quality or emission limitations in FRAQMD.

Public Comment

A public workshop will be held on February 19, 2009, to provide a forum for public comment. Written comments must be received no later than 3:00 p.m. on April 6, 2009. A public hearing will be held on April 6, 2009 to consider adoption of the Rule.

Findings

Section 40727 of the CHSC requires: Before adopting, amending, or repealing a rule or regulations, the District board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference. These findings, their definitions and references, are listed in Table 1.

Table 1 Findings

FINDING	DEFINITION	REFERENCE
Authority	A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions	California Health and Safety Code, Sections 40000, 40001, 40702, 40709 through 40713 and 41865 are provisions of law that provide air districts with the authority to adopt this proposed rule.
Necessity	The District has demonstrated that a need for the rule, or for rule adoption or repeal.	It is necessary for districts to adopt this rule to comply with state law and to ensure consistency with neighboring air districts.
Clarity	The rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it	There is no indication, at this time, that the proposed rules are written in such a manner that it can not be easily understood by persons affected by the rule.
Consistency	This rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	These rules are consistent with applicable statutory requirements.
Non-Duplication	The rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the district	The proposed rule does not impose requirements that duplicate existing laws or regulations.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	The proposed rule has been developed to meet the requirements of Section 40709 and 41865 of the California Health and Safety Code.

