



# NOTICE OF PUBLIC HEARING

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT

Proposed Amendments to  
Regulation IV, Fees

Date: September 19, 2019  
Time: 10:30 AM  
Location: Trinity County Library  
11 Court Street, Weaverville, California

The District hereby provides public notice in accordance with California Health & Safety Code 40725 that the District Governing Board will consider the adoption of proposed amendments to *Regulation IV Fees, Rules 400 Fee Calculation & Administration, 405 Stationary & Portable Source Permit Fees, and 408 Burn Permit Fees*. Oral and written testimony may be directed to the District Governing Board at the public hearing on September 19, 2019. Written comments may be sent to the NCUAQMD, 707 L Street, Eureka, CA 95501, attention: Jason Davis, or emailed to [support@ncuaqmd.org](mailto:support@ncuaqmd.org).

Copies of this notice, the proposed rule, and the staff report will be available for viewing beginning on August 15th at the District office located at 707 L Street, Eureka, by calling (707) 443-3093, or by visiting the District's website ([www.ncuaqmd.org](http://www.ncuaqmd.org)).

**DRAFT**

# **STAFF REPORT**

## **PROPOSED AMENDMENTS TO NCUAQMD REGULATION IV**

### **Rule 408**



**August 15, 2019**

## **Proposed Revisions to Regulation IV, Fees**

### **Rule 408, Burn Permit Fees**

Section proposed to be amended:

(C)(f) Permit Fee Reduction for Public Benefit Applied to Prescribed Burns

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## Proposed Revisions to Regulation IV

### *Executive Summary*

The North Coast Unified Air Quality Management District (District) is the regional government agency responsible for the regulation of the air resource within the counties of Humboldt, Del Norte, and Trinity in northern California. The District implements a burn permit program and smoke management program whereby the open burning of vegetation may be authorized.

The California Health & Safety Code (HSC) establishes the District's authority to adopt rules that limit discharges of pollution, the authority to issue conditional permits for the construction and operation of equipment, and the authority to collect fees for services provided to the community. Fees cannot exceed the reasonable regulatory cost to the District for issuing permits, performing inspections and audits, and the administrative enforcement and adjudication thereof. The District Board has adopted its own set of laws and codes which is referred to as the District Rules and Regulations. District Regulation IV outlines how fees are to be calculated, and when they are to be collected. The fee regulation was last revised in 2017.

In May 2018, the Board approved fee changes to *District Rule 408 – Burn Permit Fees* in order to properly recover costs since the fees had not changed in 14 years. The Non-Standard burn permit fee is now \$80 (1 to 10 burn acres), with two new tiered fees of \$250 (10 to 100 burn acres) and \$500 (100 to 300 burn acres), and continuation of the \$1,250 fee applicable to 300+ burn acres, which, as a practical matter is available only to the large timber land holders in the District: USFS, BLM, CAL FIRE, Redwood National Park and the large timber companies.

Since its implementation, District Staff and the Governing Board have received comments from stakeholders in regards to fees associated with prescribed burning that also has a benefit to the public in wildfire risk reduction. In March 2019, the Governing Board was provided an overview of Open Burning Fees for Prescribed Fire. The Governing Board voiced interest in reviewing options to alleviate open burning fees for prescribed burning which may have a benefit to the public in wildfire risk reduction.

## PROPOSED RULE LANGUAGE

### Rule 408 BURN PERMIT FEES

The principle functions of the District include the issuance of permits, enforcement and investigation of air quality laws, air quality monitoring activities, and conducting research and administration. Rule 408 establishes the fees assessed to recover the cost of providing these services in support of the District's Burn Permit and Smoke Management Programs.

#### Section (C) Permit Fees

##### Discussion

Section C of Rule 400 establishes the schedule of fees to be assessed to offset the cost for implementation of the District's Burn Permit and Smoke Management Programs. To effect the programmatic changes requested by the Governing Board, new language is proposed to be added to subsection 2 – Non-Standard Burn Permit that will establish the mechanism by which fees may be reduced or subsidized. The scope of qualifying activities and the funding streams used to offset District costs will be specified in the District's *Guidelines for Implementing Open Burning Fees for Prescribed Fires*.

##### Proposed Language

###### 1. Non-Standard Burn Permit:

- a. **Less than one acre:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area less than one acre in size that will be burned in a single pile no larger than 10' in diameter, shall pay a fee of \$40.00.
- b. **Non-Standard Burn Permit, 1 to 10 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than one acre, but less than 10 acres in size, shall pay a fee of \$80.00. ~~Burns conducted by Fire Safe Councils may be eligible for a reduced fee at the discretion of the APCO.~~
- c. **Non-Standard Burn Permit, 10 to 100 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than 10 acres, but less than 100 acres is size, shall pay a fee of \$250.00.
- d. **Non-Standard Burn Permit, 100 to 300 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than 100 acres, but less than 300 acres is size, shall pay a fee of \$500.00.

- e. **Non-Standard Burn Permit, more than 300 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or more than 300 acres in size, shall pay a fee of \$1,250.00.

Table 1 – Burn Permit Fees

Permit Type or Service	Fee
Standard	\$20
Non-Standard, < 1 acre	\$40
Non-Standard, 1 to 10 acres	\$80
Non-Standard, 10 to 100 acres	\$250
Non-Standard, 100 to 300 acres	\$500
Non-Standard, > 300 acres	\$1,250

- f. **Permit Fee Reduction for Public Benefit Prescribed Burns:** All Non-Standard Burn Permit, Smoke Management Plan, and No Burn Day Permit fees may be subject to a fee subsidy upon the APCO’s determination that the purpose of the burn permit application is made to indirectly benefit the public through wildfire risk reduction. The APCO’s determination of fee subsidy eligibility shall be made pursuant to the District’s Guidelines for Implementing Open Burning Fees for Prescribed Fires. If eligible, an applicant shall receive a subsidy in the amount and manner consistent with the District’s Guidelines for Implementing Open Burning Fees for Prescribed Fires.

## COMMENTS FROM STAKEHOLDERS

During the month preceding the public hearing for Rule adoption, the District will receive comments from interested parties for a minimum of 30 days. The rule amendment will be noticed in the Times-Standard, which is utilized as the “newspaper of general circulation” for publishing District notices. At the conclusion of the public comment period, District staff will prepare a document summarizing all comments received from the public and will provide a response to each suggestion. The results will be presented to the Governing Board for consideration at the rule adoption public hearing.

## REQUIRED REGULATORY FINDINGS

Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Sections 40725 – 40731. Section 40727 of the Code requires the District to make six findings prior to amending, or repealing a rule or regulation. Specifically, the District Board must make findings concerning authority, necessity, consistency, non-duplication and code references based upon information developed pursuant to Section 40727.2 (described below), information in the rulemaking record, and relevant information presented at the hearing.

One of the required basis for making the six findings is information developed in accordance with California Health & Safety Code (HSC) Section 40727.2. This Section requires districts to identify all existing federal, state and district air pollution control requirements that apply to the same equipment or source type as the proposed rule, and the differences between these requirements and the proposed rule.

Pursuant to HSC Section 40727.2(g), the District may comply with this statutory requirement by making a finding that the proposed fee rule amendments do not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements. Thus, Staff recommends that a finding be made that a new standard is not created, an existing standard is not made more stringent, nor are more stringent administrative requirements imposed.

In addition, the proposed revisions to Regulation IV satisfy the requirements for each of six the required findings as discussed below.

### Authority

*Authority - A provision of law or of a state or federal regulation which permits or requires the regional agency to adopt, amend, or repeal the regulation.*

California Health and Safety Code (HSC) Section 40702 requires the District to 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 the HSC and other statutory provisions. HSC 42311(a) authorizes the District Board to adopt, by regulations, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs. HSC 42311(f) authorizes the District to assess fees to cover the cost of administering toxic air contaminant programs. HSC Section 41512 limits the percentage increase in fees to no more than 15 percent per year.

### Necessity

*Necessity - A need exists for the regulation, or for its amendment or repeal as demonstrated by the record of the rulemaking authority.*

The proposed rule amendments are necessary to implement the Governing Board's directive to subsidize open burning (prescribed fire) when conducted for the benefit of the public. fund the District's efforts to attain and maintain federal and state ambient air quality standards.

### Clarity

*Clarity - The regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.*

The proposed regulation is written in plain English utilizing generally recognized grammatical structure, and commonly understood words. The terminology used is consistent throughout the Regulations, and is consistent with State and Federal rule language. The amendments are written so that the meaning can be understood by the affected parties.

### Consistency

*Consistency – The regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.*

The proposed rule language does not conflict with District Regulations, State, or Federal law.

### **Non-Duplication**

*Non-Duplication - A regulation should 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, a district.*

Regulation IV, Rule 408 contains the tables and schedules used to calculate fees for burn permits and smoke management plans. The requirements of these Rules are not duplicated in other volumes of federal or state law.

### **Reference**

*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.*

The changes to the proposed Rules will affect District Regulation IV, Rule 408. The changes are being completed in accordance with HSC 40702, 42311(a), 42311(f), and 42311.5. The proposed Rule amendments are intended to ensure cost recovery for permitting program costs pursuant HSC 42311 while complying with statutory fee recovery requirements.

## SOCIOECONOMIC IMPACTS

California Health & Safety Code (HSC) Section 40728.5 - *Required Assessment*, specifies that District conduct a socioeconomic impact analysis on proposed regulations. However, pursuant to Section (d), because the combined population of Humboldt, Del Norte, and Trinity Counties is less than 500,000 persons, the District is not required to prepare the assessment.

## ENVIRONMENTAL IMPACTS

The California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency that undertakes or approves a discretionary project to prepare documentation identifying the potential environmental impacts of that project. The Guidelines exempt certain types of actions. Section 15273 of the CEQA Guidelines states: “*CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies....*” Therefore, the portions of this rule making action pertaining to fees are exempt from CEQA.

# **Regulation IV**

## **Rule 408 – Burn Permit Fees**

*This Rule was first adopted December 16, 2004; revised February 1, 2014.  
The current version was adopted by the Governing Board via Resolution 2019-X on August 15, 2019.*

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  - 2. Non-Standard Burn Permit
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  - 4. Fire Training Burn Permit
  - 5. Burn Barrels in Exempt Areas
  - 6. Smoke Management Plans
- D. PERMIT FEE WAIVER

## RULE 408 BURN PERMIT FEES

- A. **PURPOSE:** The purpose of this rule is to allow the District to recover its reasonable costs incurred for direct and incidental costs associated with the burn program, including but not limited to the issuance of burn permits, inspection of burn projects, enforcement and surveillance, planning, research and monitoring, and administration. The authority to establish this rule is provided for in H&SC §41512.5.
- B. **APPLICABILITY:** The following fees shall be assessed by the District for burn permits issued pursuant to Regulation II, Open Burning.
- C. **PERMIT FEES:** Every applicant for a Burn Permit shall, at the time of application, pay to the District the corresponding fee for each type of permit requested. Fee amounts are listed in this Section and in Table 1 below. Burn Permits are issued for a limited term beginning on the date issued by the APCO and ending on December 31<sup>st</sup> of that same year.
1. **Standard Burn Permit:** Every applicant for a Standard Burn Permit for residential burning shall pay a fee of \$20.00.
  2. **Non-Standard Burn Permit:**
    - a. **Less than one acre:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area less than one acre in size that will be burned in a single pile no larger than 10' in diameter, shall pay a fee of \$40.00.
    - b. **Non-Standard Burn Permit, 1 to 10 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than one acre, but less than 10 acres in size, shall pay a fee of \$80.00.
    - c. **Non-Standard Burn Permit, 10 to 100 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than 10 acres, but less than 100 acres in size, shall pay a fee of \$250.00.
    - d. **Non-Standard Burn Permit, 100 to 300 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or greater than 100 acres, but less than 300 acres in size, shall pay a fee of \$500.00.
    - e. **Non-Standard Burn Permit, more than 300 acres:** Every applicant for a Non-Standard Burn Permit requesting to burn vegetation removed from an area equal to or more than 300 acres in size, shall pay a fee of \$1,250.00.

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- 3. **No Burn Day Permit:** Every applicant for a No Burn Day Permit requesting to burn materials pursuant to a Non-Standard Burn Permit, shall pay a fee of \$65.00. A fee for No Burn Day Permits shall not be assessed for a Non-Standard Burn Permit issued for the purpose of burning vegetation removed from an area equal to or larger than 300 acres in size.
- 4. **Fire Training Burn Permit:** No fee shall be assessed.
- 5. **Burn Barrels:** Burn barrels may only be used in exempt areas. Every applicant requesting to use a burn barrel must first possess a valid Standard or Non-Standard Burn Permit for the proposed location. No additional fees shall be assessed.
- 6. **Smoke Management Plan Review:** An applicant for a Non-Standard Burn Permit may be required to prepare and submit a smoke management plan to the District for review and approval. In addition to the burn permit fees, the applicant shall pay \$65 for each plan submitted. The additional fee shall only be assessed on permit applications requesting to burn vegetation removed from areas larger than one (1) acre, but less than 300 acres in size.

Table 2 – Other Fees and Permits

Permit Type or Service	Fee
No Burn Day Permit Application Review	\$65 Does not apply to Non-Standard permits for 300 acres or more.
Fire Training Burn Permit	No fee.
Burn Barrel (May only be used in exempt areas)	No additional charge. Appropriate Standard or Non-Standard Fee applies.
Smoke Management Plan Review	\$65 Only applies to Non-Standard permits issued for more than 1 acre but less than 300 acres.

- D. **PERMIT FEE WAIVER:** Standard Burn Permit fees may be waived by the APCO upon a showing of economic hardship or during circumstances deemed by the APCO as an emergency.

# Regulation IV

## Rule 408 – Burn Permit Fees

*This Rule was first adopted December 16, 2004; revised February 1, 2014.*

*The current version was adopted by the Governing Board via Resolution ~~2018-32019-X~~ on ~~May 10, 2018~~August 15, 2019.*

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