The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment of §111.203 and new §111.217.

If adopted, the commission will submit amended §111.203 and new §111.217 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In response to a petition for rulemaking (Project No. 2016-024-PET-NR), the commission proposes this rulemaking to amend outdoor burning rules as they relate to prescribed burning.

On February 24, 2016, Jackson Walker LLP submitted a petition for rulemaking on behalf of the Texas Forestry Association (TFA). In their petition, TFA requested that the commission amend Chapter 111 to provide specific rules for prescribed burning conducted by Certified and Insured Prescribed Burn Managers (CPBMs) who are certified by the Prescribed Burning Board (PBB) of the Texas Department of Agriculture. At the commission's agenda on April 6, 2016, the commission approved the initiation of a rulemaking based on TFA's petition.

CPBMs are regulated by the PBB under the Texas Department of Agriculture rules in 4 TAC Part 13. The standards established by the PBB represent the minimum requirements for prescribed burning in Texas for CPBMs.

The commission proposes to amend §111.203 and add new §111.217 to the outdoor burning rules.

Section by Section Discussion

§111.203, Definitions

The commission proposes to add §111.203(1) to include a definition for "Certified and Insured Prescribed Burn Manager." This definition aligns with the Texas Department of Agriculture rule definition of CPBMs.

The commission proposes to renumber the definitions in §111.203 to accommodate the added definition.

The commission proposes to amend the definition of "Landclearing operation" in renumbered §111.203(3) to specify that prescribed burning is not considered a landclearing operation. The commission has additional regulatory requirements for landclearing operations which do not apply to prescribed burning.

The commission proposes to amend the definition of "Prescribed burn" in renumbered §111.203(6) to include the use of naturalized vegetative fuels in order to align the definition with that of the Texas Natural Resources Code, which allows for the use of naturalized vegetative fuels for prescribed burning.

§111.217, Requirements for Certified and Insured Prescribed Burn Managers

The commission proposes new §111.217 to add requirements for prescribed burning when conducted under the direction of a CPBM. The commission proposes new §111.217(1) to align the requirements of commission rules with the Texas Department of Agriculture rules in 4 TAC Chapter 227 (Requirements for Certified and Insured Prescribed Burn Managers) and Chapter 228 (Procedures for Certified and Insured Prescribed Burn Managers) set forth by the PBB. The commission proposes new §111.217(2)-(7) requiring CPBMs to follow the same general requirements of §111.219 (General Requirements for Allowable Outdoor Burning), which are not required by the PBB.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in response to a petition submitted on behalf of TFA. The proposed rulemaking would add clarification and more specific language to the current agency rules related to prescribed burning conducted by CPBMs who are certified by the PBB of the Texas Department of Agriculture. The proposed rules would not add any new requirements for CPBMs or prescribed burns, but would clarify the current

requirements and definitions and ensure commission rules align with Texas Department of Agriculture rules. Because the proposed changes to the outdoor burning rules simply clarify the current requirements and because CPBMs are already following the proposed rules and requirements, no fiscal implications are anticipated for the agency, the Texas Department of Agriculture, or other units of state or local government.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be efficient state administration and oversight of CPBMs and prescribed outdoor burning.

The proposed rules are not expected to result in fiscal implications for businesses or individuals. The proposed rules do not add or delete any regulatory requirements for CPBMs, nor are there any changes to fees for the CPBMs or their activities. The proposed rules simply clarify the current requirements for CPBMs and ensure that commission rules align with Texas Department of Agriculture rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules simply clarify the current

requirements for CPBMs and prescribed outdoor burning and ensures that TCEQ rules align with Texas Department of Agriculture rules.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or

the public health and safety of the state or a sector of the state. Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is part of the SIP, and as such is designed to meet, not exceed, the relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The proposed rules implement requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP

containing adequate provisions to implement, attain, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the proposed rulemaking is to implement changes within Chapter 111, Subchapter B, Outdoor Burning rules for prescribed burning conducted by CPBMs who are certified by the PBB of the Texas Department of Agriculture. The proposed revisions seek to amend §111.203 and add new §111.217 to the outdoor burning rules in order to increase clarity and consistency within the outdoor burning rules in this subchapter as well as

consistency with applicable laws found outside this subchapter.

While the proposed rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633 or bill), 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or those that are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This

conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis, unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation. *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) *superseded by statute on another point of law*, Tax Code §112.108, Other Actions Prohibited, *as recognized in*, *First State Bank of Dumas v. Sharp*, 863 S.W.2d 81, 83 (Tex. App. Austin 1993, no writ); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has

complied with the requirements of Texas Government Code, §2001.0225.

Even if the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the proposed rulemaking is merely an update to Chapter 111, Subchapter B, §111.203, to add clarity to certain definitions and create consistency with applicable definitions found outside this subchapter, and the addition of new §111.217, which merely cross-references the applicable requirements for outdoor burning found in 4 TAC Chapters 227 and 228, relating to prescribed burns conducted by CPBMs, as well as those in §111.219. This proposal, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC,

§382.012 and §382.017. Because this proposed rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The requirements relating to outdoor burning, and specifically prescribed burns, are control measures for particulate matter emissions and are essential for attainment and maintenance of the particulate matter NAAQS. Specifically, the proposed rulemaking provides a definition for "Certified and Insured Prescribed Burn Manager" that aligns with the definition provided by the Texas Department of Agriculture; clarifies that prescribed burning is not considered a landclearing operation, which has additional regulatory requirements that do not apply to prescribed burning; expands the definition of "Prescribed burn" to include naturalized vegetative fuels, which aligns with the definition under the Texas Natural Resources Code; renumbers the definitions for organizational purposes; and adds new §111.217 that provides requirements for prescribed burns conducted under CPBMs, which aligns with the Texas Department of Agriculture's rules for such, as set forth by the PBB, and requires CPBMs to follow the same general requirement of

§111.219, which are not required by the PBB. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The specific intent of the proposed rulemaking is to clarify the rule requirements for prescribed burning and align the requirements in this subchapter with those found outside this subchapter to allow for more streamlined, consistent, and clear rules to be applied to prescribed burning, which leads to the increased protection of health and safety. The proposed rulemaking adds a definition for "Certified and Insured Prescribed Burn Manager" that aligns with the Texas Department of Agriculture definitions and clarifies that prescribed burning is not considered a landclearing operation, which has additional regulatory requirements that do not apply to prescribed burning. The proposed rulemaking expands the definition of "Prescribed burn" to include naturalized vegetative fuels, which aligns with the definition under the Texas Natural Resources Code, and renumbers the definitions for organizational purposes. The proposed rulemaking also adds a section that provides specific requirements for prescribed

burns conducted under CPBMs, which aligns with the Texas Department of Agriculture's rules for such, as set forth by the PBB, and requires CPBMs to follow the same general requirement of §111.219, which are not required by the PBB.

Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to actions and rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with the CMP goals and policies.

Written comments on the consistency of this rulemaking with the CMP may be submitted to the contact person at the address listed under the Submittal of Comments

section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Because Chapter 111 contains applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program), owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 111 requirements for each emission unit affected by the revisions to Chapter 111 at their site.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 28, 2017, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-027-111-CE. The comment period closes on March 6, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amancio Gutierrez, Program Support Section, (512) 239-3770.

SUBCHAPTER B: OUTDOOR BURNING

§111.203, §111.217

Statutory Authority

The amendment and new section are proposed under the authority of the Texas Water Code (TWC) §5.102, General Powers, §5.103, Rules, and §5.105, General Policy which authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC; Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amendment and new section are also proposed under THSC, §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382, and under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment and new section implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.017, and 382.051; and FCAA, 42 USC, §§7401 *et seq.*

§111.203. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Commission on Environmental Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this subchapter [chapter], have the following meanings, unless the context clearly indicates otherwise.

(1) Certified and Insured Prescribed Burn Manager--A person with ultimate authority and responsibility for a prescribed burn, who has been certified by the Prescribed Burning Board of the Texas Department of Agriculture. The certification issued by the Prescribed Burning Board must be considered effective, and to have met the certification requirements found in 4 TAC Chapter 226 (relating to Requirements for Certification by the Board), at the time the prescribed burn is conducted.

(2) [(1)] Extinguished--The absence of any visible flames, glowing coals, or smoke.

(3) [(2)] Landclearing operation--The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include prescribed burning or burning following clearing for ecological restoration.

(4) [(3)] Neighborhood--A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.

(5) [(4)] Practical alternative--An economically, technologically, ecologically, and logistically viable option.

(6) [(5)] Prescribed burn--The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

(7) [(6)] Refuse--Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(8) [(7)] Structure containing sensitive receptor(s)--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation that has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(9) [(8)] Sunrise/Sunset--Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

(10) [(9)] Wildland--Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

§111.217. Requirements for Certified and Insured Prescribed Burn Managers.

Prescribed burning shall be authorized when conducted under the direction of a Certified and Insured Prescribed Burn Manager, as defined in §111.203 of this title (relating to Definitions), for forest, range and wildland/wildlife management and wildfire hazard mitigation purposes, with the exception of coastal salt-marsh management burning. When possible, notification of intent to burn should be made to

the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. Such burning shall be subject to the following requirements.

(1) 4 TAC Chapter 227 (relating to Requirements for Certified and Insured Prescribed Burn Managers) and Chapter 228 (relating to Procedures for Certified and Insured Prescribed Burn Managers).

(2) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(3) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(4) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(5) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive

materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.