

# Updated Informative Digest

## Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR)

**Sections Affected:** Proposed amendments to Subchapter 7.7, Article 1, and sections 93400, 93401, 93402, 93403, 93404, 93405, 93406, 93407, 93408, 93409, 93410, title 17, California Code of Regulations, and adopt new Subchapter 7.7, Article 2, sections 93420, 93421, and new Subchapter 7.7, Article 2, Appendices A and B to title 17, California Code of Regulations.

### **Documents Incorporated by Reference (Cal. Code Regs., tit. 1, § 20, subd. (c)(3)):**

The amended regulation adopted by the Executive Officer incorporates by reference the following document:

- California Air Resources Board, *Staff Report: Initial Statement of Reasons for the Public Hearing to Consider Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants, Appendix B – U.S. EPA Unit Type Codes*. October 2, 2020. Incorporated by reference in section 93402, definition for “Unit Type Code.” Staff Report available at: <https://ww2.arb.ca.gov/rulemaking/2020/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>.

### **Background and Effect of the Proposed Regulatory Action**

The amendments to CTR support CARB’s commitment to further integrate racial equity and social justice throughout our programs, including the comprehensive collection of toxics and other emissions data. Data collected under the amended CTR is necessary to develop policies and programs to better protect all Californians from the harmful effects of air pollution, particularly from facilities in communities of concern.

In addition, a comprehensive understanding of emissions sources is necessary for CARB to meet its obligations under state and federal law. These include

California Assembly Bill (AB) 617<sup>1</sup>, AB 197<sup>2</sup>, AB 2588<sup>3</sup>, the California Clean Air Act, the federal Clean Air Act, and CARB's broader obligation to protect public health via an understanding of the causes of, and solutions to, air pollution in the state. The amendments address longstanding deficiencies in California facility emission inventory data, inconsistencies in the data collection processes, and difficulties for the public in transparently accessing the facility data.

Improvements in the accuracy and availability of facility emissions data at the local level will assist in the effective implementation of AB 617 community air protection requirements and AB 2588 regulatory requirements. Data collected under CTR will also inform the development of air toxic control measures; and may be used to enhance the data of CalEnviroScreen, a tool used to identify geographic areas within California that are disproportionately impacted by pollution. Further, AB 197 requires CARB to provide public access on its internet website to graphical summaries of facility emissions at the local and sub-county level, which will be significantly enhanced using data collected under CTR.

The proposed CTR amendments are part of a coordinated effort by CARB to improve inventories of airborne emissions from all sources within California, including stationary sources, on-road and off-road mobile source emissions, and area-wide sources (like consumer product emissions). The emissions data collected under CTR will also support CARB's broader obligations under the California Clean Air Act and the federal Clean Air Act to protect public health via an understanding of the causes of, and solutions to, air pollution in the state.

Under the amended CTR, facilities will also provide updated toxics data to air districts, allowing them to better serve their communities, providing more complete information to better evaluate risks from emissions of toxic contaminants under AB 2588. Also, to minimize redundancy, increase efficiency, and reduce uncertainty regarding emissions reporting, staff closely coordinated the CTR amendments with concurrent amendments to the Emissions Inventory Criteria and Guidelines (EICG) under the AB 2588 Air Toxics "Hot Spots" Program.

## **Objectives and Benefits of the Proposed Regulatory Action:**

Government Code section 11346.2(b)(1) requires enumeration of the anticipated benefits of the regulatory action, including the benefits and goals of the authorizing statutes and other needs. Many areas of California continue to

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<sup>1</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

<sup>2</sup> Assembly Bill 197, Garcia, E., Chapter 250, Statutes of 2016, amending and adding to California Health and Safety Code, Chapter 1.5 of Part 1 of Division 2 of Title 2.

<sup>3</sup> Assembly Bill 2588, Connely, 1987, California Health and Safety Code §§ 44300-44394.

be disproportionately burdened by air pollution. CARB has an obligation to collect and communicate emissions data at the regional and local levels, evaluate the risks from airborne emissions, and reduce exposure to air pollution in these communities. The proposed amendments to CTR are critical to supporting these objectives. Multiple federal and state statutes authorize and require CARB to collect, evaluate, and make publicly available facility emissions that are needed to implement the statutes. These include the National Emissions Inventory, AB 2588, AB 617, AB 197, California Health & Safety Code section 41500, and others. Using data collected under the proposed CTR requirements, the emissions sources and trends for the majority of California's permitted facility emission sources will be more fully understood.

A key benefit of the proposed regulation and amendments is its harmonization of statewide data submission requirements, such as reporting deadlines, frequency of reporting, and the specific chemical substances and other data to be reported on an annual basis, so that similar industrial sectors will have data comparability, regardless of where they are located within California. The effort also makes the data collection activities more consistent across programs, providing additional efficiency.

For example, the proposed CTR amendments are being aligned with proposed amendments to the AB 2588 "Toxic Hot Spots" program, so that the phase-in schedule for implementation, the list of applicable chemical substances to be evaluated, the reporting deadlines, and other aspects of the two programs are synchronized and consistent. This improved data in turn provides benefits to community groups, the public, regulators, scientists, CARB, and others, who have growing needs to access complete, user-friendly, and high-quality emissions data. The proposed amendments would significantly increase access to useful data in user-friendly forms, such as mapping (as provided in the current CARB Pollution Mapping Tool), graphs, and detailed emissions data reports when needed.

In addition to addressing the goals of AB 197 and AB 617, State Implementation Plans, exposure modeling, and more, inventory data helps to determine what is being emitted into the air, by whom, and where. Inventory data helps guide and provide the scientific basis for CARB's regulatory development process. These amendments also support CARB's fundamental obligation to research the causes of, and solutions to, air pollution (see Health & Safety Code §39002). Inventory data helps identify and address areas of concern, and to track progress in emission reduction efforts from facilities, area sources, and mobile sources. Inventory data is an essential element in the development of cost-effective solutions to reduce air pollution and protect human health. And, although the reporting regulation amendments provide no direct benefits to worker safety, over time, indirect health benefits to workers and residents within California are expected to be realized as actions are taken to reduce emissions based on improved inventory data.

## Description of Regulatory Action

To address the emission inventory needs and concerns previously mentioned, following five public workshops<sup>4</sup> held during February 2020<sup>5</sup>, and substantial stakeholder outreach and input, the formal public process to amend CTR was initiated with the publication of a notice in the California Notice Register on September 29, 2020, and notice of a CARB public hearing scheduled for November 19, 2020, to consider the amendments.

On September 29, 2020, staff also released the staff report for the CTR rulemaking which includes a comprehensive description of the proposed amendments, rationale for the updates, the amended regulatory text, and additional information. The document, the Staff Report: Initial Statement of Reasons for Rulemaking (staff report or ISOR), entitled Public Hearing to Consider Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants, is incorporated by reference herein. On the same date, all references relied upon and identified in the ISOR report were also made available to the public. The ISOR and other materials are available on the CARB CTR regulatory documents page<sup>6</sup>. On September 30, 2020, following release of the regulatory materials, staff also hosted an additional public workshop to provide an overview of the proposed amendments and receive public input for consideration prior to the Board meeting.

Following release of the ISOR and a 45-day public comment period regarding the proposed amendments, on November 19, 2021, the Board held a public hearing to consider the proposed CTR amendments. Written comments were received from 42 individuals or organizations during the 45-day comment period, and oral comments were provided by 43 individuals or organizations during the Board meeting. At the conclusion of the hearing, the Board adopted Resolution 20-31, approving the adoption of the proposed amendments with specified modifications.

However, prior to finalizing the regulation, the Executive Officer was directed by the Board to make modifications to the proposed regulation and any appropriate additional conforming modifications. The Executive Officer was to make any changes available for public comment, with additional supporting documents and information, for a period of at least 15-days. Specifically, the Executive Officer was directed to (1) include revisions to the applicability criteria, (2) incorporate updates to the district phase-in schedule, (3) include

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<sup>4</sup> Presentation slides and other materials for all CTR workshops are available here: <https://ww2.arb.ca.gov/our-work/programs/criteria-pollutant-and-toxics-emissions-reporting/meetings-workshops>

<sup>5</sup> Refer to Chapter X of the ISOR, described in the following paragraph, for complete information regarding outreach activities.

<sup>6</sup> CARB Regulatory Documents for CTR: <https://ww2.arb.ca.gov/rulemaking/2020/proposed-amendments-reporting-criteria-air-pollutants-and-toxic-air-contaminants>

refinements to sector phase-in timing, (4) incorporate updates to the toxic substances subject to reporting, and (5) include minor updates to the reporting requirements in the regulation as needed.

As directed by the Board, staff proposed additional modifications to the proposed regulation following further consultation with air districts, community members, industry, and other stakeholders, as well as hosting another public workshop on February 11, 2021. On March 30, 2021, the modified regulatory text reflecting comments received and direction by the Board was published to the California Notice Register and CARB's website for a supplemental public comment period with issuance of a "Notice of Public Availability of Modified Text." In addressing items (1)-(5) in the prior paragraph, the notice describes the modifications and why they were made. The supplemental 15-day comment period started on March 30, 2021, and ended on April 14, 2021. Written comments were received from 24 individuals or organizations during the 15-day comment period. Staff evaluated the comments received and the Executive Officer determined that no further modifications to CTR were necessary.

In addition to the above notifications, per section 44(a), title 1, California Code of Regulations, and Government Code section 11340.85, to ensure extensive outreach, the Notices and revised regulatory text were provided via the CARB list-serve topic "ctr-report," or "Criteria and Toxics Reporting Regulation," which includes, among others, those who testified at the public hearing, submitted comments at the hearing or during comment periods, or requested notification of any proposed changes. For completeness, list-serve notification was also provided to over 20 additional lists for industrial sectors and stakeholders that may potentially be affected by the regulation (approximately 20,000 recipients). Physical letters were also mailed to over 1000 recipients including facilities potentially subject to reporting, industry groups, and other interested parties<sup>7</sup>.

### **Summary of Amendments**

The following summarizes the primary proposed amendments and 15-day modifications. The CTR updates are discussed more fully in the previously mentioned ISOR, in which we provide the formal comments received during the rulemaking process and staff responses to the comments. The most significant initially proposed amendments and 15-day modifications to CTR include updates to:

- Collect comprehensive and reliable annual emissions data from the majority of permitted facilities in California, and establish uniform applicability criteria, reporting schedules, and data submission requirements for these facilities;

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<sup>7</sup> Refer to Chapter X of the ISOR for additional information regarding outreach activities.

- Provide a foundation to track emissions data and trends over time, and geographically throughout the state, to assist in reducing community exposure to airborne pollutants and associated health risks;
- Require use of scientifically defensible methodologies and provide applicability thresholds that are easy to understand by industry and the public;
- Include updates to minimize resource impacts on facilities and districts by providing abbreviated reporting options.
- Under the 15-day modifications, extend the implementation timeline for sources located in medium and rural air districts, which are subject to reporting under the “sector-based” applicability of 93401(a)(4), provide an additional year before the requirements take effect, changing the start year from 2023 to 2024 in Appendix A, Table A-1, and also reflected in Appendix B, Table B-1;
- Include criteria pollutant applicability thresholds that reflect differences in regional air quality impacts, applying lower thresholds (e.g., 4 tons per year versus 10 tons per year (tpy)) for regions with communities selected for monitoring or emissions reduction plans under AB 617;
  - Specifically, as part of the 15-day modifications, change the originally proposed statewide 4 tpy criteria pollutant applicability threshold for section 93401(a)(4) “additional applicability” sources from 4 tpy to 10 tpy for facilities in District Group B shown in CTR Table A-2 (i.e., districts that do not currently have an AB 617 identified community and are in general smaller or rural air districts).
- Add two appendices to establish a phase-in schedule for specified permitted processes, to identify additional sources subject to reporting, and to specify additional toxics subject to reporting with a phase-in schedule;
  - This includes Tables A-1 and B-1, which specify reporting schedules for the phase-in of facility reporting and toxics reporting, Table A-2 which identifies air district reporting phases, Table A-3, which identifies additional sources subject to reporting, and Tables B-2, B-3, and B-4 which identify specific toxics subject to reporting;
  - The Table B-1 toxics phase-in schedule was added under the 15-day modifications; the updated Table B-2 (initially Table B-1 under the initial proposal) identifies EICG ChemGroup1 substances subject to reporting under CTR; also added under the 15-day modifications are Table B-3 identifying additional toxics with health risk values that are subject to reporting under CTR, and the new Table B-4 showing additional toxics subject to reporting for wastewater treatment facilities;
- Require reporting of emissions for diesel-powered portable equipment, which applies to a small subset of facilities subject to CTR; part of 15-day

modifications, include updates and clarifications such as requiring reporting of all emissions, including toxics, and include reporting of equipment registered under CARB's Portable Equipment Registration Program (PERP);

- Under the 15-day modifications, provide additional time for emissions testing for the waste and wastewater sectors, delaying reporting until 2028 data reported in 2029. The affected sources are relocated to the newly established Phase 3B in Table A-3, and the reporting phase-in schedules for the 3B sources are included in Table A-1 and Table B-1.
- For owners or operators of a GHG, Criteria, or Elevated Toxic Facility subject per 93401(a)(1), (2), or (3) under the 15-day modifications to 93401(a)(2)(A), reporting of substances listed in Appendix B, Table B-3, may be deferred until 2026 data reported in 2027;
- Under a 15-day modification to 93403(b)(3)(A), the requirement to report release location (i.e., stack) data was removed for owners or operators of Additional Applicability facilities subject only per 93401(a)(4) and required to provide a "Full Report; however release data may be requested by the CARB Executive Officer or the local air district; sources subject to Abbreviated Reporting are also not subject to release location data reporting;
- Include minor updates to definitions for completeness, and other modifications to clarify the requirements such as including an exemption for permitted open burning, providing a more complete explanation regarding reporting control efficiency data, and providing examples of data that may be submitted when reporting production or use data for toxics;
- Further refine the existing requirements in the regulation for completeness and clarity.

## Comparable Federal Regulations:

Government Code section 11346.2(b)(6) requires CARB to describe its efforts to avoid unnecessary duplication or conflicts with federal regulations that address the same issues. As with the proposed CTR amendments, various provisions of existing federal regulations require the reporting of criteria emissions and toxics air contaminants to U.S. EPA. For example, in 2008, U.S. EPA promulgated the Air Emissions Reporting Requirement (AERR), requiring states and local air pollution control agencies to submit emissions inventories for criteria pollutants to U.S. EPA's Emission Inventory System (EIS)<sup>8</sup> for State Implementation Plans.

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<sup>8</sup>40 CFR 51 . (2012, July 1). *Code of Federal Regulations, Title 40, Chapter 1, Subchapter J, Part 51, Subpart A, Requirements for Preparation, Adoption, and Submittal of Implementation Plans*. Retrieved August 20, 2020, from [https://www.ecfr.gov/cgi-bin/text-idx?SID=16ec8d342d1e200093512b1767b4ceaa&mc=true&tpl=/ecfrbrowse/Title40/40cfr51\\_m ain\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=16ec8d342d1e200093512b1767b4ceaa&mc=true&tpl=/ecfrbrowse/Title40/40cfr51_m ain_02.tpl). Accessed August 20, 2020.

These regulations require reporting either annually or every three years based on the quantity of emissions from the source and the regional attainment status, focusing only on larger sources of criteria air pollutants.

In addition, certain specified California industry sectors are required to annually report their emissions of specified toxic air contaminants to U.S. EPA under the federal Emergency Planning and Community Right-to-Know Act<sup>9</sup>, and the Toxic Chemical Release Reporting: Community Right-To-Know (TRI)<sup>10</sup> provisions.

Although the proposed CTR amendments also require reporting of criteria and toxic emissions, which does have some overlap with existing federal requirements, the requirements are not duplicative. The proposed amendments to the regulation are specifically designed to address the needs associated with evaluating air pollution impacts in disproportionately impacted communities, and comprehensively throughout California, using consistent data. These needs cannot be met with data collected under existing federal regulations, as detailed below, which makes it necessary to implement the proposed CTR amendments. The federal regulations do not provide the comprehensive agency-reviewed, and updated data for all chemicals of concern that are needed to evaluate and mitigate the impacts of these emissions in California.

The Legislature has obligated CARB to “conduct research into the causes of and solutions to air pollution” (Health & Safety Code § 39003) and granted CARB the authority to “do such acts as may be necessary” to fulfill its obligations under the law (Health & Safety Code § 39600). CARB also has more specific authority to require the owner or operator of any air pollution emission source to allow CARB to know the amount of emissions from source. (Health & Safety Code §41511). Beyond this authority, additional reporting requirements are mandated by AB 617, section 39601.7(b)(1) of the H&SC, which requires CARB to establish “a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source,” and H&SC section 39607(b)(2) established under AB 197 that requires that the state board shall, “Inventory sources of air pollution within the air basins and determine the kinds and quantity of air pollutants...”. Further, the cost of differing state and federal reporting regulations is justified by the expected benefits to human health, public welfare, and the environment. Community monitoring and emission reduction programs under AB 617, and other CARB programs will be substantially supported using the data collected under the

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<sup>9</sup> 42 U.S.C. 116. (2011, January 7). *Emergency Planning and Community Right-to-Know*. *United States Code, 2011 Edition*. Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap116.htm>. Accessed August 20, 2020.

<sup>10</sup> 40 CFR 372. (1996, July 1). *Code of Federal Regulations, Title 40, Chapter I, Subchapter J, Part 372, Toxic Chemical Release Reporting: Community Right-to-Know*. Retrieved from <https://ecfr.io/Title-40/pt40.30.372>. Accessed August 20, 2020.



proposed amendments to regulation, which serves as a foundation to establish, evaluate, and quantify community and statewide air quality improvements.

The following paragraphs provide some specific examples regarding how data collected under existing federal programs is not sufficient to successfully fulfil the requirements of several CARB programs, and why the proposed CTR amendments are necessary.

For example, under the U.S. EPA requirements for criteria pollutant emissions reporting, for many facilities, data is only required to be reported every three years, which is not effective when evaluating community level impacts. It is important to know what the emissions are as soon as possible, to allow evaluation of immediate impacts and to track potential reductions. In addition, the thresholds for reporting applicability are in many cases much higher under the U.S. EPA requirements, and vary by district. The amendments establish consistent and annual statewide requirements for a majority of the air district-permitted facilities in the state, requiring reporting of synchronous criteria and toxics data, for more and smaller facilities, to effectively address community emissions concerns throughout California.

For the toxics data collected by U.S. EPA, there are similar limitations in the collected federal Toxics Release Inventory (TRI)<sup>11</sup> data which necessitates that CARB establish a separate regulation and requirements to collect emissions data necessary to effectively implement various programmatic mandates. For example, the facility self-reported TRI data is not necessarily reviewed by CARB or the air districts for quality or completeness, as would be done for data collected for the additional facilities required to report under the proposed updated applicability requirements. In addition, TRI focuses on specific larger industry sectors, and does not include smaller sources such as small diesel engines, gas stations, print shops, and paint booths, which are included under the CTR amendments, and can present health risks to nearby residents. The TRI data also does not explicitly collect diesel particulate matter as an individual toxic substance, which is of significant concern in impacted communities. Collecting criteria and toxics emissions data from small sources or facilities, which is then reviewed by air districts and CARB for public dissemination, is a critical element needed to understand and reduce the air pollution impacts in disproportionately burdened communities and statewide where warranted. For these reasons, the proposed amendments to CTR are necessary to successfully and fully meet the AB 197 and AB 617 program objectives, as well as many additional program needs, as previously mentioned.

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<sup>11</sup> US EPA. (2017). *Toxic Chemical Release Inventory Reporting (TRI). Section 313 of the Emergency Planning and Community Right-to-Know Act*. Retrieved from [https://ofmpub.epa.gov/apex/guideme\\_ext/guideme\\_ext/r/files/static/v3336/rfi/ry\\_2017\\_rfi.pdf](https://ofmpub.epa.gov/apex/guideme_ext/guideme_ext/r/files/static/v3336/rfi/ry_2017_rfi.pdf). Accessed August 20, 2020.

The proposed amendments also do not conflict with any Federal regulations. For facilities that may be subject to partial overlap between the federal and CARB requirements due to the amendments, the impacts would be minimal, because the collected data will generally meet the requirements of both federal and state reporting programs, so duplicative data collection is not required. In addition, for the federal criteria and toxics emissions reporting programs, we anticipate that the proposed CTR amendments may enhance compliance and data quality, because of the requirement for more comprehensive and consistent annual reporting, and the enhanced scrutiny of collected facility criteria and toxics data by CARB, local air district staff, and others.

**An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):**

During the process of developing the regulatory action, CARB conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing State regulations.