

PROPOSED AMENDMENTS TO THE REGULATION FOR THE REPORTING OF CRITERIA AIR POLLUTANTS AND TOXIC AIR CONTAMINANTS

Resolution 20-31

November 19, 2020

Agenda Item No.: 20-12-3

WHEREAS, section 39003 of the Health and Safety Code charges the California Air Resources Board (CARB or Board) with coordinating efforts to attain and maintain ambient air quality standards, and conducting research into the causes of and solution to air pollution;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Board to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 41500 obligates CARB to coordinate air pollution control activities throughout the state to ensure that the state is, or will be, in compliance with the state standards adopted pursuant to section 39606 of the Health and Safety Code;

WHEREAS, section 41511 of the Health and Safety Code gives CARB the authority to adopt rules and regulations in carrying out its duties that require the owner or the operator of any air pollution emission source to take such action as it may determine to be reasonable for the determination of the amount of such emission from such source;

WHEREAS, section 39607 of the Health and Safety Code directs CARB to establish a program to gather, monitor and evaluate air pollution data by geographical location, and make available on CARB's internet site an inventory of emissions data on greenhouse gases, criteria pollutants, and toxic air contaminants throughout the state, including district data on criteria pollutants and toxic air contaminants emitted by stationary sources;

WHEREAS, Assembly Bill (AB) 197 (E. Garcia, Stats. 2016, ch. 250) requires an integrated approach for assessing greenhouse gas, criteria pollutant, and toxic air contaminant emissions for stationary sources and includes the following key inventory elements (Health and Safety Code section 39607(a)-(b)(2):

The State Board shall make available, and update at least annually on its Internet Web site the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants for specified facilities;

The State Board's Internet Web site shall include displays of the emissions throughout the state, broken down to a local and sub-county level for stationary sources, and to at least a county level for mobile sources. The information shall be displayed graphically, show emissions trends, and be updated at least once a year;

WHEREAS, section 39701 of the Health and Safety Code directs CARB to coordinate and collect research data on air pollution to support several air quality goals in the state, including the control of nonvehicular emissions and the control of specific contaminants to meet ambient air quality standards;

WHEREAS, section 44300 et seq. of the Health and Safety Code (Air Toxics Hot Spots Act) directs CARB to identify facilities that must report air toxics emissions, specify which emissions must be reported, and how they are reported to the local air district, for the purpose of providing data to inform the public, estimate risks, and reduce toxic emissions exposures;

WHEREAS, the California Clean Air Act of 1988, Stats. 1988, ch. 1568, (Assembly Bill (AB) 2595, Sher) requires that the State ambient air quality standards be attained by the earliest practicable date to protect public health, particularly the health of children, older people, and those with respiratory diseases;

WHEREAS, section 39602 of the Health and Safety Code designates CARB as the air pollution control agency for all purposes set forth in federal law, such as the preparation of the State Implementation Plan required by the federal Clean Air Act (42 U.S.C., § 7401 et seq.), and to that end, CARB is required to coordinate the activities of all California air districts necessary to comply with that Act;

WHEREAS, AB 197 further improves public right-to-know and fosters emissions data transparency, particularly in our most disadvantaged communities;

WHEREAS, California's air quality programs have led to significant public health improvements; however, certain communities continue to experience environmental and health inequities from air pollution;

WHEREAS, many of these communities are affected by multiple stationary, area, and mobile sources of air pollution and suffer disproportionate health impacts;

WHEREAS, the high cumulative exposure burdens in these communities are a public health concern, contributing to health conditions, such as cardiorespiratory disease, increased cancer risk, and an increased risk of premature death;

WHEREAS, expedited emissions reductions of toxic air contaminants and criteria air pollutants are critical in communities with high cumulative exposure burdens to reduce these disproportionate health impacts;

WHEREAS, to address these concerns, AB 617 (C. Garcia, Stats. 2017, ch. 136) added sections 39607.1, 40920.8, 42411, 42705.5, 44391.2 and amended sections 40920.6, 42400, 42402 of the Health and Safety Code, as a significant step in transforming California's air quality programs to address air pollution disparities at the neighborhood level;

WHEREAS, AB 617 includes key elements such as: establishing a uniform statewide reporting system of annual emissions of criteria air pollutants and toxic air contaminants from stationary sources, developing a statewide strategy for reducing criteria pollutant and toxic emissions, and selecting the most highly impacted communities and working with all stakeholders to reduce emission impacts in those communities;

WHEREAS, AB 617 provides initial reporting applicability criteria for facilities based on their greenhouse gas, criteria pollutant, and toxic air contaminant emissions;

WHEREAS, CARB staff has determined that expanded facility reporting applicability criteria are necessary for permitted facility sources of interest, to implement the statewide and community focused action required by a spectrum of mandates including AB 617, AB 197, AB 2588, the California Clean Act, the federal Clean Air Act, Health and Safety Code section 39003, and others;

WHEREAS, CARB staff collaborated with local air districts, community groups, industry, and others, to establish the proposed amended applicability criteria requiring comprehensive statewide emissions inventory data reporting by permitted facilities, consistent with authorities including CARB's authority pursuant to Health and Safety Code sections 39600, 39601, and 41511, in order to fulfill overall CARB mandates, targeted to reduce the health and societal impacts from air pollution emissions;

WHEREAS, in developing a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for stationary sources, it is necessary for CARB to establish consistent statewide applicability criteria, reporting deadlines, uniform reporting processes, and a clear enumeration of the criteria and toxic air

pollutant emissions and other required data elements that must be submitted as part of each emissions data report;

WHEREAS, in order to reduce resource needs and assist with compliance, and in consideration of the synergies between the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR) amendments and the emissions reporting requirements required under the Air Toxics Hot Spots Act (Health and Safety Code sections 44300-44394), staff has incorporated substantial harmonization between the two programs such as the coordination of substances to be reported, sectors subject to reporting, and the reporting phase-in schedules;

WHEREAS, in developing the proposed amendments, CARB staff prepared a report entitled "Staff Report: Initial Statement of Reasons, Public Hearing to Consider Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants" (Initial Statement of Reasons, ISOR, or Staff Report), which presents the rationale for the proposed amendments;

WHEREAS, the Initial Statement of Reasons and the proposed regulatory language were circulated and made available on September 29, 2020, for public comment for at least 45 days prior to the Board meeting held on November 19, 2020, on this topic;

WHEREAS, staff has proposed amendments to the Regulation for the Reporting of Criteria Pollutants and Toxic Air Contaminants, as set forth in Appendix A to the Initial Statement of Reasons released to the public on September 29, 2020;

WHEREAS, the Board has considered the impact of the proposed CTR Regulation on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, consistent with Government Code sections 11346, subdivision (b), and 11346.45, subdivision (a), and with the Board's long-standing practice, CARB staff held public workshops and had other meetings with interested persons during the development of the proposed regulation;

WHEREAS, as part of outreach efforts, CARB staff worked closely with local air districts throughout the state, individually, through workgroups, and through the California Air Pollution Control Officers Association, to refine the amendments, to more fully understand current air district inventory programs and needs, and to identify and implement mechanisms to minimize air district and industry resource impacts;

WHEREAS, CARB staff hosted five in-person public workshops throughout California discussing the proposed CTR amendments, plus a webinar with nearly 500 participants; staff mailed notifications regarding the workshops and the proposed regulatory amendments to nearly 1,500 facilities and associations potentially subject the amendments, and emailed nearly 22,000 individuals, companies, associations, and others via CARB email lists or individually;

WHEREAS, in developing the proposed CTR Regulation, CARB staff considered input provided at workshops, and comments provided in over 20 written comment letters received following the public workshops, as well as other comments received via email and verbally;

WHEREAS, CARB staff made phone calls to over 75 industry-specific associations or associations representing businesses, such as chambers of commerce, to engage them in the regulatory development process, informing them of the proposed amendments and to answer any questions;

WHEREAS, CARB staff's outreach efforts also included engaging with numerous interested parties including individual regulated facilities, environmental groups, community organizations, industry groups and associations, local air districts, consultants, local government agencies, chambers of commerce, and members of the public;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed amendments are exempt from CEQA under the general rule or "common sense" exemption, California Code of Regulations, title 14, section 15061(b)(3), because it can be seen with certainty that there is no possibility that the proposed action may have a significant effect on the environment, as described in Chapter V of the Staff Report;

WHEREAS, the proposal is also categorically exempt from CEQA under the "Class 6" exemption (14 CCR 15306) because it is an action for the collection of information (i.e. basic data collection, research, experimental management, and resource activities) which does not result in serious or major disturbances to an environmental resource;

WHEREAS, the Board finds that:

To support community right-to-know mandates, and to provide critical data necessary for community-driven actions to address air pollution exposure burdens in the most impacted California communities, significant improvements

and expansions are needed to the existing criteria and toxics emissions inventory data, and to the processes used for collecting and accessing the data;

The proposed amendments support public right-to-know requirements under AB 197, the Air Toxics "Hot Spots" Program, community air protection components under AB 617, criteria pollutant and air toxics emission reporting required under National Emission Inventory requirements (40 CFR, Part 51), development of Air Toxic Control Measures, air monitoring studies and CalEnviroScreen inputs, and other Board activities;

The proposed amendments to the CTR are part of a comprehensive effort by CARB to improve inventories of airborne emissions from all sources within California, including stationary sources (i.e., typically facilities), on-road and off-road emissions from mobile sources and area-wide sources (e.g., consumer products);

The proposed amendments are necessary to support collection of statewide emissions data necessary to provide CARB and air districts a comprehensive understanding of facility emissions throughout California;

The proposed amendments will further CARB's ability to meet its obligations under applicable state and federal laws including the California Clean Air Act, and the federal Clean Air Act;

The proposed amendments will further CARB's ability to meet its statutory obligation to coordinate efforts to attain and maintain ambient air quality standards, and conduct research into the causes of and solution to air pollution;

The proposed amendments are necessary to enhance the quantity and quality of emissions inventory data collected from facilities to address ongoing toxic and criteria pollutant air quality issues;

The expanded and enhanced emissions data collected under the proposed amendments will be a significant and beneficial tool providing greater accessibility, transparency, and usability of the data, helping to ensure that communities which are disproportionately affected by air pollution will get the help they need to reduce community-level air pollution burdens, while also helping to improve air quality throughout the State;

The proposed expanded reporting applicability would increase the number of facilities subject to the CTR reporting regulation from about 1,300 facilities currently subject to reporting, to approximately 60,000 facilities statewide at full implementation, adding sources based on specified permitted processes and activity-level based reporting thresholds;

To expand reporting applicability, the proposed amendments establish a 4 ton per year reporting threshold for most criteria pollutants, and identify 52 permitted processes associated with toxic emissions (with associated reporting thresholds) which would be subject to reporting under the amendments;

The proposed amendments include a multi-year phase in process to include sources subject to reporting, to reduce near-term and longer-term resource impacts, and allow time to prepare for the requirements, by distributing the inclusion of additional sources subject to reporting over six years;

The proposed requirements provide simplified "abbreviated" reporting for many permitted processes for approximately 40 percent of facilities subject to reporting (or 24,000 facilities) to reduce costs and streamline workload for facility operators and local air districts;

To better support community members and others in directly addressing their immediate local concerns about facilities, the proposed amendments include a mechanism for citizens to make a, "Request for Determination of Applicability," in which a citizen may request that CARB coordinate with a local air district to clarify a facility's air district permit status, and the facility's applicability under CTR;

To provide a more comprehensive understanding of toxic diesel exhaust emissions and their health impacts, the proposed amendments require annual data reporting for portable diesel equipment used at California's largest facilities;

To provide more expansive reporting of emissions of high-priority toxics, the CTR amendments include a list of specified toxics which must be reported in addition to toxics identified on the current CARB "Hot Spots" list of reportable toxics;

To enhance reporting consistency and minimize duplication of effort, the proposed amendments align the requirements with other reporting regulations and requirements currently in place, including the Air Toxics "Hot Spots" program;

The proposed amendments requires submission of relevant facility-level emissions data as needed to support CARB and air district community-level and statewide emissions reduction programs and strategies;

CARB will provide a statewide overlay of additional data quality checks, such as evaluating information for overall statewide consistency within sectors, trends, and other analysis;

The proposed amendments were developed in an open and public process, in consultation with affected parties and local air districts, through multiple public workshops, numerous individual meetings, mailings, email notifications, telephone calls, and other outreach efforts which are expected to continue throughout implementation of the program;

The proposed amendments were designed to be implemented in a cooperative manner with California's local air districts, recognizing the existing district emissions inventory programs, knowledge of local emissions sources, and expertise present in the districts;

The proposed amendments are clear, consistent, enforceable, and transparent;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

This regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants;

The proposed amendments were developed using the best available economic and scientific information;

The economic and cost impacts of the proposed amendments have been analyzed as required by California law and the conclusions and supporting documentation for these analyses are set forth in the Initial Statement of Reasons;

Related to costs required to implement the regulation, the proposed amendments are not considered a major regulation under California law, which produces a net overall cost increase to both affected facilities and local air districts to prepare, submit, and process the required emissions inventory data;

The reporting requirements of the proposed amendments that apply to businesses are necessary for the health, safety, and welfare of the people of the State, because they support community and statewide emissions reduction programs designed to reduce public health risks, as well as supporting other CARB and district programs;

The proposed amendments comply with the rulemaking requirements of section 93562 of the Health and Safety Code which, among other requirements,

directs the Board to develop such regulations while ensuring, to the extent feasible, that they complement, and do not interfere with, efforts to achieve and maintain federal and State ambient air quality standards and to reduce toxic air contaminants;

To the extent that AB 197 interfaces with the proposed amendments, the proposal has been developed in conformance with, and in support of, that statute; specifically Health and Safety Code sections 38531, 38562.5, and 39607, which require annual update and display of greenhouse gas, criteria pollutant, and toxic air contaminant emissions to illustrate changes in emissions over time, consideration of social costs, and focus on direct emissions reductions, including in and around disadvantaged communities;

The proposed amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, income, or national origin;

On the basis of the whole record, including the environmental analysis included in the Staff Report, no substantial evidence exists to support a fair argument that the proposed CTR Regulation will result in any significant adverse impacts on the environment;

The proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment; and

The proposed amendments are also categorically exempt from CEQA under the "Class 6" exemption (14 CCR 15306) because it is an action for the collection of information (i.e. basic data collection, research, experimental management, and resource activities) which does not result in serious or major disturbances to an environmental resource.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption amendments to California Code of Regulations, title 17, Subchapter 7.7, Article 1, sections 93400, 93401, 93402, 93403, 93404, 93405, 93406, 93407, 93408, 93409, 93410, and adopt new Subchapter 7.7, Article 2, sections 93420, 93421, and new Appendices A and B, to title 17, California Code of Regulations.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make any additional conforming modifications that are appropriate, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the

regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate modifications.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to provide annual implementation status updates, including recommendations for improvements to the emissions inventory.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to explore options for a funding source to support the resources needed for collecting annual criteria pollutant and toxic air contaminant emissions data from permitted sources across the State.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue collaboration with the local air districts and the California Air Pollution Control Officers Association (CAPCOA) in the implementation and enforcement of the CTR Regulation, to ensure efficient and complete execution of the requirements established by the CTR Regulation.

BE IT FURTHER RESOLVED that in consideration of the shared responsibilities between CARB and local air districts in consistently implementing and enforcing the CTR requirements, the Board directs CARB staff to coordinate closely with air districts, CAPCOA and stakeholders to develop methods and protocols to prevent duplicative enforcement actions and penalties upon the same infraction.

BE IT FURTHER RESOLVED that in consideration of the benefits of determining the locations of additional stationary sources that are not subject to the CTR reporting requirements, the Board directs the Executive Officer to collaborate with CAPCOA and air districts to identify the presence and locations of additional stationary sources that do not meet the applicability criteria requiring emissions reporting under CTR, but that may have an impact on public health, and to further consider those impacts and provide information on the locations of these sources to interested parties as appropriate.

BE IT FURTHER RESOLVED that the Board directs CARB staff to work with CAPCOA, air districts, and stakeholders to establish statewide uniform emission estimation methods and data reporting to the extent feasible, and that estimation method development will include a transparent public process to incorporate stakeholder expertise and feedback.

BE IT FURTHER RESOLVED that the Board directs CARB staff to work with the California Department of Pesticide Regulation, CAPCOA, air districts, and other stakeholders to create a single, unified list that includes all relevant toxic air contaminants, including agricultural chemicals and pesticides, with the goal of cross-

linking pesticide and other toxics emissions databases to provide a unified site to access air toxics emissions data.

BE IT FURTHER RESOLVED that the Board directs CARB staff to work with CAPCOA, air districts, and stakeholders to establish a universal and standardized system of airborne emissions reporting for toxics and criteria pollutants, with consistent quality across that state.

BE IT FURTHER RESOLVED that the Board directs CARB staff to develop a process to regularly update (no less than every five years) the list of toxics to be reported under the CTR and Air Toxics "Hot Spots" programs; staff shall present this process to the Board within one year as an informational item.

BE IT FURTHER RESOLVED that the Board directs CARB staff to work with CAPCOA, air districts, and other stakeholders to develop a work group that evaluates the way data is presented and compiled within CARB's Pollution Mapping Tool.

BE IT FURTHER RESOLVED that the Board directs CARB staff to work with CAPCOA, the Office of Environmental Health Hazard Assessment, air districts, communities, and other stakeholders to initiate public processes to prepare methodologies for assessing the impacts of emissions at the community-scale, including an evaluation of the population exposure and cumulative impacts from multiple sources. Staff will brief the Board on method development activities as part of the annual emission inventory implementation update.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the CTR Regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by CARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses as necessary to any comments received raising significant environmental issues, to present to the Board for approval along with the final regulation.

I hereby certify that the above is a true and correct copy of Resolution 20-31 as adopted by the California Air Resources Board.

Katie Estabrook

Katie Estabrook, Board Clerk