

State of California
AIR RESOURCES BOARD

**AMENDMENTS TO THE REGULATION FOR THE
MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS**

Resolution 17-20

June 29, 2017

Agenda Item No.: 17-7-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or 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, the Legislature has enacted the Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32; Stats 2006, ch. 488, Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, section 38551 of the Health and Safety code directs that the statewide greenhouse gas limit shall remain in place indefinitely, and that emissions reductions be continued and maintained beyond 2020;

WHEREAS, section 39566 of the Health and Safety code further directs that ARB shall ensure that State greenhouse gas emissions are reduced to at least 40 percent below the statewide greenhouse gas limit no later than December 31, 2030;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38530 of the Health and Safety Code directed ARB, on or before January 1, 2008, to adopt regulations to require the reporting and verification of statewide GHG emissions;

WHEREAS, section 38530 of the Health and Safety Code also requires that the GHG reporting regulations shall require annual reporting, beginning with the largest sources, account for GHG emissions from all electricity consumed in the State, including imports and line losses, ensure rigorous and consistent emissions accounting, and provide

reporting tools and formats to ensure collection of necessary data, ensure that GHG emission sources maintain comprehensive records of all reported GHG emissions, and make reasonable efforts to promote consistency with existing and proposed international, federal, and State GHG emission reporting programs;

WHEREAS, the Board approved the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) (title 17, California Code of Regulations, section 95100 et seq.) on December 6, 2007, and approved the adoption of amendments to the regulation on December 16, 2010, September 20, 2012, October 25, 2013, and September 18, 2014, to align reporting methods and requirements, to the extent possible, with the United States Environmental Protection Agency (U.S. EPA) and to support the California Cap-and-Trade Program;

WHEREAS, section 39607 of the Health and Safety Code requires the Board to inventory sources of air pollution and gather air pollution information;

WHEREAS, section 39607.4 of the Health and Safety Code requires the Board, as part of its responsibilities under section 39607 of the Health and Safety Code, to prepare, adopt, and update the climate change emission inventory, a statewide inventory of GHG emissions;

WHEREAS, mandatory GHG reporting supports California's efforts to improve our GHG emission inventory, track emission trends, regulatory development, and implementation of the Cap-and-Trade Program;

WHEREAS, California has a Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 et seq.), which relies on GHG emissions data reported under MRR;

WHEREAS, California has a Cap-and-Trade Program (title 17, California Code of Regulations, section 95800 et seq.) that relies on reported GHG emissions data derived from calculation methods that are accurate, rigorous, complete, and consistent;

WHEREAS, California has implemented a Renewable Portfolio Standard of 33 percent by 2020 (SB No. 2, Chapter 1, April 2011), and 50 percent by 2030 (SB 350, Chapter 547, October 2015) and successful integration of renewable power is critical to decarbonizing the electricity grid and the California Independent System Operator's (CAISO) Energy Imbalance Market (EIM) is part of the process to support increased integration of renewable power;

WHEREAS, ARB staff considered less prescriptive standards and procedures for reporting but determined that these would be less effective in providing complete, consistent, verifiable, and accurate GHG emissions data;

WHEREAS, ARB staff has proposed amendments to MRR that include the following elements:

Clarifications to support California's Cap-and-Trade Regulation to ensure consistency with allocation and the calculation of compliance obligations;

Updates to ensure that reported GHG emissions data are accurate and complete in order to support California's GHG reduction programs, including the statewide GHG emissions inventory;

Revisions to ensure full accounting of emissions from electricity imports within the EIM that will remain in place until CAISO implements a revision to the EIM that more accurately quantifies the emissions associated with electricity imports;

Modifications to include reporting requirements for electricity generating facilities to implement the U.S. EPA Clean Power Plan; and

Revisions to the annual verification deadline from September 1, to August 10, which is needed to support successful implementation of the Cap-and-Trade Regulation.

WHEREAS, ARB staff held a series of informal public workshops on various topics on December 14, 2015, February 24, 2016, June 24, 2016, and October 21, 2016. The workshops focused on the U.S. EPA Clean Power Plan, the Cap-and-Trade Regulation's Renewable Portfolio Standard adjustment, potential MRR updates for various sectors, including changes for the electricity and natural gas sectors, including the EIM, and the proposed verification deadline change. Staff also participated in various other stakeholder meetings to discuss the proposed regulatory changes with the public and affected stakeholders;

WHEREAS, ARB staff prepared a staff report titled "Initial Statement of Reasons for Rulemaking Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions" (Initial Statement of Reasons), which presents the rationale for the proposed amendments to the regulation;

WHEREAS, the Initial Statement of Reasons and proposed regulatory language were circulated and made available on July 19, 2016, for public comment for at least 45 days prior to the first Board meeting, held on September 22, 2016, on this topic;

WHEREAS, at its initial September 22, 2016, public hearing, the Board was informed of proposed amendments to MRR, and the Board did not take action on the proposal, but directed staff to make additional 15-day changes as appropriate to MRR as part of a subsequent 15-day notice to the rulemaking package, with the changes to the originally proposed text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44 and Government Code section 11340.85;

WHEREAS, during the initial comment period and two subsequent 15-day public comment periods, the public submitted comments on the proposed amendments, with the 45-day comment period commencing on July 22, 2016 and ending on

September 19, 2016, with additional oral and written comments submitted at the September 22, 2016, Board hearing, and with the first 15-day comment period occurring from December 21, 2016 to January 20, 2017, and the second 15-day comment period occurring from April 13, 2017 to April 28, 2017;

WHEREAS, staff has evaluated all comments received and made further conforming modifications to the proposed regulation based on consideration of the comments provided during the initial and 15-day comment periods, and during Board hearing testimony;

WHEREAS, ARB'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 ARB 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 California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter 4 of the Initial Statement of Reasons;

WHEREAS, the Board has considered the impact of the proposed amendments, additions, and deletions to the regulations on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

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

WHEREAS, section 57004 of the Health and Safety Code provides for the scientific peer review of the scientific basis or scientific portion of various ARB rules;

WHEREAS, a revised test procedure incorporated into the proposed regulation was positively reviewed, consistent with section 57004, as part of the Board's earlier review of the proposed Regulation for Greenhouse Gas Emissions Standards for Crude Oil and Natural Gas Facilities, and the Board found in Resolution 17-10 that section 57004 requirements had been satisfied;

WHEREAS, the proposed regulation was developed in compliance with all other applicable provisions of AB 32, including the requirements of section 38562(b);

WHEREAS, in consideration of the information in the public record, including the Initial Statement of Reasons, written comments, public testimony provided at two Board

hearings, comments received during two 15-day comment periods, and the entirety of the record, the Board finds that:

The proposed amendments to the regulations meet the requirements specified in sections 38530, 39607, and 39607.4 of the Health and Safety Code;

The proposed amendments to the regulation were developed in an open and public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue as the regulation is implemented and future revisions to it are considered;

The initially proposed amendments to the regulation were further developed and modified as the result of initial two 15-day comment periods, providing additional stakeholder input and refinements to the proposed updates;

The proposed regulation is clear, consistent, and enforceable;

The proposed amendments to the regulations promote consistency, to the extent feasible, with the U.S. EPA GHG reporting rule and with reporting requirements arising from U.S. EPA's Clean Power Plan;

The emission estimation methods, schedules, and other provisions of the proposed amended regulations focus on the most significant GHG emission sources, use rigorous and consistent emission accounting methods, provide accounting for all electricity consumed in the state, including imports, require verification of emissions data, and to the extent feasible, maintain consistency with other GHG reporting programs;

Annual reporting of GHG emissions and supporting information, including product data where required, is necessary to identify and characterize the most significant California GHG sources, with the proposed amendments affecting sectors such as petroleum refineries, oil and gas producers, electricity generation facilities, hydrogen plants, nitric acid producers, suppliers of fuels, electric power entities, and others;

Accurate GHG emissions reporting, along with reporting of supporting information and product data, is necessary to support a rigorous Cap-and-Trade Program and California's other GHG emissions reduction programs, including the statewide GHG emission inventory;

Accurate GHG emissions reporting, along with reporting of supporting information, is necessary to support operation of the Cost of Implementation Fee Regulation;

The proposed amendments promote consistency between MRR and Cap-and-Trade Program and will further enhance the operation of these programs;

The economic and cost impacts of the proposed amended regulations 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;

The proposed amendments are not a major regulation under California law, with a net overall minor cost increase, resulting from some sectors having modest cost increases to comply with the updates, and some having minor cost savings;

The reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State because they support GHG emissions reduction programs;

No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the changes to the regulation are proposed, or be as effective as, and less burdensome to affected private persons, than the proposed regulation, and no performance standard alternative could support comprehensive rigorous data collection as is required by law;

The requirements of Health and Safety Code section 57004 have been satisfied by prior scientific peer reviews of relevant portions of this proposed rulemaking package;

The proposed Regulation is consistent with ARB's environmental justice policies and does not disproportionately impact people of any race, culture, or income; and

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.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption amendments to sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95117, 95118, 95119, 95121, 95122, 95129, 95130, 95131, 95132, 95133, 95150, 95153, 95156, 95157, Appendix A, and Appendix B, and proposed adoption of new sections 95160, 95161, 95162, and 95163, title 17, California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that the adopted regulatory text may be further revised with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue collaboration with CAISO as a revised accounting algorithm for EIM is developed and implemented and to propose amendments to reflect accounting based on the revised EIM for GHG reporting, as appropriate.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons, and to submit the completed rulemaking package to the Office of Administrative Law.

I hereby certify that the above is a true and correct copy of Resolution 17-20 as adopted by the Air Resources Board.



Rana McReynolds, Clerk of the Board

Resolution 17-20

June 29, 2017

Identification of Attachments to the Board Resolution

Attachment A: Final Regulation Order: Amend Division 3, Chapter 1, Subchapter 10, Article 2, Subarticle 1, sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95117, 95118, 95119, 95121, 95122, 95129, 95130, 95131, 95132, 95133, 95150, 95153, 95156, 95157, Appendix A, and Appendix B, and proposed adoption of new sections 95160, 95161, 95162, 95163, title 17 California Code of Regulations.