

UPDATED INFORMATIVE DIGEST

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

Sections Affected

Proposed amendments to California Code of Regulations title 17, 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.

Background

In this rulemaking, the Air Resources Board (ARB or Board) has approved proposed revisions to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) (MRR or reporting regulation). The regulation was originally developed pursuant to the California Global Warming Solutions Act of 2006 (the Act). The reporting regulation was adopted by the Board in December 2007, with additional modifications approved for adoption by the Board in December 2010, September 2012, October 2013, and September 2014.

On July 19, 2016, ARB issued a notice of public hearing to consider the proposed amendments at the Board's September 22, 2016 hearing. A "Staff Report: Initial Statement of Reasons for Rulemaking" (Staff Report) was made available for public review and comment starting July 19, 2016. The Staff Report contained a description of the rationale for the proposed amendments. The text of the proposed amendments was included as Appendix A to the Staff Report. The Staff Report and Appendix A were also posted to ARB's web site at: <http://www.arb.ca.gov/regact/2016/ghg2016/ghg2016.htm>.

At its initial September 22, 2016, public hearing, the Board was informed of proposed amendments to MRR and received written and oral comments. The Board did not take action on the proposal at that Hearing, 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

Further modifications to the reporting regulation were released on December 21, 2016, in a "Notice of Public Availability of Modified Text and Availability of Additional Documents," together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from December 21, 2016, to January 20, 2017, pursuant to Government Code section 11346.8. Additional modifications to the reporting regulation were released on April 13, 2017, in a "Second Notice of Public Availability of Modified Text and Availability of Additional Documents,"

together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from April 13, 2017 to April 28, 2017.

Staff evaluated all comments received, and made further modifications to the proposed regulation based on Board direction and consideration of the comments provided during the initial and 15-day comment periods.

At its second public hearing regarding the reporting regulation on June 29, 2017, Air Resources Board approved for adoption amendments to California's existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.).

At the hearing, the Board received oral comments. The Board approved Resolution 17-20, which endorsed the revisions proposed in the Staff Report: Initial Statement of Reasons released on July 19, 2016, with modifications implemented during the two 15-day comment periods, based on stakeholder input. The approved amendments clarify existing calculation and reporting requirements, ensure full accounting of emissions from electricity imports, update the annual verification deadline from September 1 to August 10, support the Cap-and-Trade program, and include other updates.

Description of the Regulatory Action

The purpose of the proposed amendments to the reporting regulation is to carry out the goals of AB 32 and maintain a robust and accurate greenhouse gas (GHG) reporting program. The data submitted by reporters under the reporting regulation allow ARB staff to track the emissions from reporting entities over time, demonstrating the progress in reducing GHG emissions.

The proposed amendments support the Cap-and-Trade Regulation by collecting information used for allocation of allowances and the calculation of compliance obligations. Additionally, the amendments help ensure that reported GHG emissions and product data are accurate and complete as needed to support California's GHG reduction programs, the statewide GHG emissions inventory, and the Cost of Implementation Fee Regulation.

Expected benefits of the proposed revisions include improved clarity for reporting entities, more accurate and complete data collection to support ARB's climate and air quality programs, providing verified and robust data needed to support the Cap-and-Trade Regulation, and to comply with Federal requirements for the Clean Power Plan (CPP).

These benefits may also result in indirect benefits to the State's environment by ensuring that the State has an accurate inventory of GHG emissions to support programs which will reduce emissions and directly improve the health and welfare of California residents, worker safety, and the State's environment.

Below is a summary of proposed updates to the reporting regulation. A more detailed description of the proposed updates appears in the Summary and Rationale section of the “Staff Report: Initial Statement of Reasons for Rulemaking – Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions,” referred to as the ISOR.

General: The updates clarify the procedures for changing calculation methods, revising the reporting and verification cessation criteria for clarity, clarifying record keeping and retention times, and other general revisions fully described in the Staff Report. The amendments update the global warming potential values to be used beginning with 2021 data reported in 2022, to reflect current science and to be consistent with linked jurisdictions that have GHG reporting programs. Staff included a requirement for facilities to provide a facility schematic diagram indicating fuel flows and metering locations as part of GHG monitoring plans, and updating the calibration requirements for differential pressure devices at refineries. Staff included clarifications to existing definitions to minimize ambiguity, and modified definitions as needed to support MRR and Cap-and-Trade Program needs and to provide consistency. Staff incorporated modifications in a number of sections that do not alter the reporting requirements. Examples include correcting clerical oversights and references and reordering definitions to update incorrect alphabetization.

Applicability: Staff included revisions in this section to modify reporting applicability to change the point of regulation for liquefied petroleum gas (LPG) and liquefied natural gas (LNG) imports from “consignee” to “importer.” Clarifications were also added to address reporters that have activities both in a fuel supplier category and a direct-emissions related category, and to specify that flaring emissions for the oil and gas production sector are included in the applicability and reporting requirements for abbreviated reporters in the sector. Staff also clarified the applicability provisions for emissions that must be reported for natural gas processing plants.

Electric Generators: Staff included revisions to implement reporting and other requirements of the United States Environmental Protection Agency (U.S. EPA) CPP, 40 CFR Part 60, Subpart UUUU, for California power plants.

Product Data Reporting: In addition to clarifying and adding selected product data definitions to align with the Cap-and-Trade Regulation and industry standards for reporting, staff updated MRR to modify, add, or remove product data reporting requirements for certain industry sectors. These amendments are intended to specifically identify the reportable products and required data and are fully described in the Staff Report. In addition, staff incorporated updates to clarify complexity weighted barrel measurement and reporting requirements, hydrogen production and sales reporting, and to remove duplicative product data reporting requirements, particularly for refinery finished product and primary product data reporting.

Petroleum and Natural Gas Systems: For petroleum and natural gas systems, staff included an amendment to clarify the use of a default value for combustion efficiency when calculating emissions. Staff added several minor modifications to clarify the correct conversion of volumetric data to standard conditions. Staff also replaced the existing flash emissions test method in Appendix B of MRR with a revised method to

improve data quality, and provide consistency with other ARB programs. Finally, staff incorporated changes related to reporting sorbent emissions, and gas processing plant emissions.

Fuel Suppliers: The regulation was updated to clarify the reporting requirements to allow biomethane to be reported by a utility that transports the fuel. Staff clarified reporting requirements in cases where fuel is delivered over multiple racks, and requiring reporting of fuel volumes that are exported out of California or are excluded from emissions reporting due to use for aviation or marine purposes. Staff also removed the requirement for enterers and in-State producers of ethanol and biodiesel to report those fuels, clarifying reporting requirements for intrastate pipeline suppliers, and clarifying reporting requirements for facilities that deliver or “pass through” natural gas received from utilities and interstate pipelines to other facilities. Finally, staff incorporated changes to clarify reporting requirements for in-State producers of LNG, and to require that imported LNG and LPG be reported by the importer rather than consignee.

Electric Power Entities: For electric power entities, the proposed revisions include clarifications related to California Independent System Operator (CAISO) sales, the “lesser of” analysis for electricity procured through the Energy Imbalance Market (EIM) market, specified source electricity reporting for generation providing entities, and other minor revisions

Staff included provisions to ensure the full accounting of emissions from imported electricity under the EIM operated by CAISO. Since the EIM may not be providing ARB or its participating members (some of which are reporting entities under MRR) all of the data to support full accounting of GHG emissions emitted to the atmosphere when there is dispatch to serve California load during periods of imbalances, staff developed a solution through this regulatory amendments process for MRR and the Cap-and-Trade Regulation intended to act as a bridge to support accurate accounting while a longer-term solution is developed and implemented by CAISO to incorporate the correct accounting directly into the EIM model. ARB will work with CAISO and stakeholders to ensure changes to the EIM model developed through CAISO’s public process still result in a transparent and rigorous accounting structure to support ARB’s implementation of California’s climate and energy policies.

Verification Requirements: Staff updated the verification deadline from September 1 of each year to August 10, to support successful implementation of the Cap-and-Trade Program. Staff also modified the accreditation requirements to streamline the process, and adjust timing requirements for verifier submittal of documentation and ARB review of documentation to streamline verification process.

Timing for Implementation of Reporting Requirements: The proposed amendments to the regulation are anticipated to become effective on January 1, 2018. The majority of the provisions under the proposed revisions would take effect for 2018 data reported in 2019. There are a few exceptions to the start date for certain reporting requirements including: (1) updated product data reported under MRR that is needed to determine allowance allocations will be effective for 2017 data reported in 2018; (2) additional requirements implemented to comply with the U.S. EPA CPP requirements, which, if approved for compliance by U.S. EPA, would take effect for 2021 data reported in 2022;

and (3) requirements for metering or measuring continuous bleed pneumatic devices, which would take effect in calendar year 2019 for data reported in 2020.

Complete details of the updates are provided in the initially proposed revised regulation with the accompanying Staff Report: Initial Statement of Reasons, and in the two 15-day change packages which include the Notices of Modified Text and the Proposed 15-Day Modifications, all of which are available here:

<http://www.arb.ca.gov/regact/2016/ghg2016/ghg2016.htm>.

The Board's Action

At the initial September 22, 2016 public hearing, the Board was informed of proposed amendments to MRR and received written and oral comments. The Board did not take action on the proposal at the September 2016, Board Hearing, 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.

In accordance with Government Code section 11346.8, at its second public hearing regarding the reporting regulation, held on June 29, 2017, the Air Resources Board adopted Resolution 17-20, which approved amendments to Division 3, Chapter 1, Subchapter 10, Article 2, 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. The resolution reflects the initial proposed updates, and further updates incorporated resulting from two 15-day comment periods and additional stakeholder input.

Fifteen-Day Changes

Following the initial September 22, 2016, Board meeting, the board directed staff to make additional 15-day changes as appropriate to MRR as part of a subsequent 15-day notice to the rulemaking package.

Further modifications to MRR were released on December 21, 2016, in a "Notice of Public Availability of Modified Text and Availability of Additional Documents," together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from December 21, 2016 to January 20, 2017, pursuant to Government Code section 11346.8. Additional modifications to the reporting regulation were released on April 13, 2017, in a "Second Notice of Public Availability of Modified Text and Availability of Additional Documents," together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from April 13, 2017 to April 28, 2017.

Staff 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 testimony. Modifications are reflected in the adopted Board Resolution and the final proposed regulation text. In summary, they include additional minor clarifications to applicability, definition updates (primarily for product data), and minor changes for record keeping, when elements of the regulation take effect, and other clarifications. For electric power entities the definition of “first point of receipt” was restored to prior language, as was language for the renewable portfolio standard adjustment, and the proposal to require reporting by the California Independent System Operator was withdrawn. Based on stakeholder comment staff revised the provisions for accounting for imported electricity emissions from the EIM market. For other sectors, such as electricity generation, petroleum refineries, hydrogen production, and others, based on stakeholder input, minor additional updates were incorporated relating to emissions and product data reporting. The verification deadline was revised from August 1, in the original proposal, to August 10, based on stakeholder input and Board direction, and timing changes were made for responding to ARB’s requests for information, as well as clarifying changes related to verifier assessment of material misstatement for product data.

The following web link includes the notices that describe the 15-day revisions in detail, as well as the full text of the 15 day changes with each change clearly notated.
<http://www.arb.ca.gov/regact/2016/ghg2016/ghg2016.htm>.

Additional Modifications

After the close of the 15-day comment period, the Executive Officer determined that no additional modifications should be made to the regulation, with the exception of non-substantial changes, including punctuation and formatting corrections and corrections of typographical errors which are fully described in the Final Statement of Reasons for the Rulemaking, available here: <http://www.arb.ca.gov/regact/2016/ghg2016/ghg2016.htm>.

Comparable Federal Regulations

The U.S. EPA requires mandatory GHG reporting (*Mandatory Reporting of Greenhouse Gases; Final Rule*. 40 CFR Parts 86, 87, 89, 90, 94, and 98. United States Environmental Protection Agency. October 30, 2009). Staff believes the proposed regulation is consistent with existing federal law. The proposed amendments to the reporting regulation were developed to minimize, to the greatest extent possible, any redundant State and federal reporting, while also ensuring that ARB is collecting the necessary additional information required by California’s various GHG programs, including the Cap-and-Trade Regulation, COI Fee Regulation, and the statewide GHG inventory.

Changes to Underlying Laws or Effect of the Regulations

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.