

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

**PROPOSED AMENDMENTS TO THE CALIFORNIA AIR RESOURCES BOARD'S
CERTIFIED REGULATORY PROGRAM IN THE CALIFORNIA CODE OF
REGULATIONS, TITLE 17, SECTIONS 60000-60007**

Public Hearing Date: May 23, 2019
Public Availability Date: May 3, 2019
Deadline for Public Comment: May 20, 2019

Staff is proposing modified regulatory language developed in response to comments received since the Initial Statement of Reasons was released to the public on February 27, 2019. These modifications include minor alterations to the proposed regulatory language to provide additional clarity to the proposal. Staff will present these proposed regulatory amendments to the Board at its May 23, 2019, public hearing for consideration for adoption.

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory amendments are shown in ~~striketrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in ~~double striketrough~~ and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, any documents added to the record, or the changes detailed in Attachment A.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. In section 60003(a), CARB made a change to clarify that CARB's staff prepares and publishes staff reports. Note the distinction between CARB (the agency and its staff) and the state board (the decisionmaking body of CARB, commonly known as CARB's "Board"), as set forth in the definitions in section 60004(a).

2. In section 60003(b), CARB made a minor change to note that both the state board and CARB share the policy set forth in subsection (b). Previously that subsection only referred to the state board.
3. In section 60004(a)(1), CARB made a minor change to the definition for “CARB” to align with other statutory terminology that refers to CARB as the “State Air Resources Board”. This subsection has also been modified to note that CARB’s staff includes CARB’s Executive Office (including the Executive Officer and his or her staff).
4. In section 60004(b)(1), a reference to subsection (f) of section 15064 has been added in response to a comment that this section could be clarified to note that the California Environmental Quality Act’s (CEQA’s) “fair argument” standard applies to a California Air Resources Board (CARB) determination regarding whether an Environmental Impact Analysis must be prepared. CARB believes the existing regulatory text was already clear as to the applicable legal standards, including the “fair argument” standard, given the existing cross-reference to section 15064, subsection (f) of which sets forth the “fair argument” standard. However, CARB has added a specific reference to subsection (f) to make this even more clear.
5. In subsection 60004(b)(1)(A) (and in many other following sections), the term “Impact Environmental Analysis” has been changed to the term “Environmental Impact Analysis” at the suggestion of a commenter. This is simply a stylistic change that does not affect the substance of the regulation; it merely slightly changes the name of CARB’s Environmental Impact Report (EIR) equivalent CEQA document type.
6. In subsection 60004(b)(2), CARB has further clarified the legal standard for triggering EIR-equivalent review, as set forth in item 1 above. As noted above, CARB has added a reference to subsection (f) of section 15064 in response to a comment that this section could be clarified to note that CEQA’s “fair argument” standard applies to a CARB determination regarding whether an Environmental Impact Analysis must be prepared. As noted above, CARB believes the existing regulatory text was already clear as to the applicable legal standards, including the “fair argument” standard, given the existing cross-reference to section 15064, subsection (f) of which sets forth the “fair argument” standard. However, CARB has added a specific reference to subsection (f) to make this even more clear.
7. In subsections 60004(e), 60004.1(e), 60004.2(e), 60004.3(f), and 60004.4(e), CARB made changes to ensure those subsections are consistent with each other. These changes also help ensure that those subsections clearly reflect the Board’s authority to delegate to the Executive Officer the authority to undertake any further or additional environmental review necessary in connection with carrying out and approving 15-day regulatory changes to a rulemaking item previously considered by the Board, where the Board also delegates authority to approve or disapprove the proposed changes. This construct is consistent with the decision in *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681. In that decision, the court held that CARB improperly delegated authority to

undertake 15 day changes to the Executive Officer because the Board had not finalized its responses to environmental comments at the time it delegated its authority to the Executive Officer, and the Executive Officer lacked the “authority to approve or disapprove the project.” (*Id.* at 727-731.) By contrast, the proposed regulatory language sets forth two distinct phases in rulemaking proceedings. In the first phase, CARB completes its environmental review in connection with a proposed regulation, including any required responses to environmental comments. The Board considers both that regulation and the environmental review at a public hearing, and takes action to approve the proposed regulation. At the same time, it delegates the authority – in a second phase – to undertake any further 15 day regulatory changes to the Executive Officer (including authority to approve or reject those regulatory changes), as well as the authority to undertake any appropriate further environmental review in connection with those 15 day changes. In this way, there is no separation between the authority to approve or disapprove the project and the authority to undertake any associated environmental review. In considering potential 15 day changes, both of those functions would be delegated to the Executive Officer by CARB’s Board.

Finally, note that some CARB rulemakings are undertaken in the first instance by the Executive Officer, rather than the Board. The provisions discussed here are not intended to affect those situations; rather, these provisions apply only to rulemakings considered in the first instance by the State Board.

8. In section 60004.1(c), CARB has added the words “that supports a fair argument” to more expressly recognize that the “fair argument” standard applies to a CARB determination regarding whether an Environmental Impact Analysis must be prepared. As noted above, CARB believes this was already clear in the existing language (which cross-references section 15064 of the CEQA Guidelines), but is adding this language at a request of a commenter.
9. In subsection 60004.2(a)(3), CARB has added the words “adverse or beneficial” to clarify that the discussion of environmental impacts in an Environmental Impact Analysis will cover both adverse and beneficial impacts.
10. In subsection 60004.2(a)(5), CARB has added a cross-reference to section 15126.6 of the CEQA Guidelines, to clarify that the alternatives analysis principles in that section apply to alternatives analyses in CARB’s Environmental Impact Analyses. This change was requested by a commenter, and it clarifies CARB’s original intent to align its CEQA procedures (including those regarding alternatives analysis) with traditional CEQA principles.
11. In section 60004.2(b)(3)(B), CARB has revised the language to reflect that CARB, rather than the state board, is generally the entity that prepares responses to environmental comments. Note the distinction between CARB (the agency and its staff) and the state board (the decisionmaking body of CARB, commonly known as CARB’s “Board”), as set forth in the definitions in section 60004(a).

12. In section 60004.2(b)(5), CARB has corrected a cross-reference for subsection (b)(3)(E) to (b)(3)(D). Consistent with subsection (b)(3)(D), CARB has also added additional language to even more clearly state that CARB's written response to comment, where required, will be included in one of the forms set forth in subsection (b)(3)(D). That is, the response to comment will either be included as part of a Final Impact Environmental Analysis (or as an attachment thereto); in a revision to the draft Impact Environmental Impact Analysis; or in a separate response to comments document.
13. In section 60004.2(c)(2), CARB has made a minor change to note that CARB staff, rather than the decisionmaking body itself, prepares the response to comment document. The decisionmaking body then reviews the response to comment, along with other key documents, before taking action on the proposal.

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Rebecca Fancher, Staff Air Pollution Specialist, Legal Office at (916) 324-1550 or (designated back-up contact) Nicholas Rabinowitch, Senior Counsel, Legal Office at (916) 322-3762.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than 5:00 p.m. on the due date to the following:

Postal mail: Clerk of the Board, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

During this process, CARB may propose additional modifications to the proposed regulatory text, which would be made available to the public, for written comment, at least 15-days before final adoption. Following the public hearing, the Board may take action to approve for adoption the regulatory language as proposed with the attached modifications. The Board may also direct the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before final adoption.

CALLIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: May 3, 2019

Attachment

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see CARB's website at www.CARB.ca.gov.