

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to CARB's Certified Regulatory Program as outlined in the Administrative Procedures for Board Meetings and Hearings, California Code of Regulations, title 17, sections 60000-60007.

DATE: May 23, 2019

TIME: 9:00 A.M.

LOCATION: California Environmental Protection Agency
California Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., May 23, 2019, and may continue at 8:30 a.m., on May 24, 2019. Please consult the agenda for the hearing, which will be available at least ten days before May 23, 2019, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide written comments by postal mail or by electronic submittal as set forth below.

The public comment period for this regulatory action will begin on March 1, 2019. Written comments not submitted in person at the hearing must be submitted on or after March 1, 2019, to the electronic docket (see link below), and must be received **no later than 5:00 p.m. on April 15, 2019**. CARB requests that when possible, written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff as soon as possible any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

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

Electronic submittal (Docket): <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 oral 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.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal (i.e., "Proposed Amendments to CARB's Certified Regulatory Program") in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600 and 39601. This action is proposed to implement, interpret, and make specific section 21080.5, Public Resources Code.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected: Proposed amendment to California Code of Regulations, title 17, sections 60000, 60002, 60003, 60004, 60005, 60006, and 60007; and proposed adoption of sections 60004.1, 60004.2, 60004.3, and 60004.4.

Background and Effect of the Proposed Regulatory Action:

These proposed regulatory amendments further describe and update the procedures set forth in California Code of Regulations, title 17, sections 60000 through 60007 that, in part, constitute CARB's "certified regulatory program" under Public Resources Code section 21080.5 (hereafter section 21080.5). CARB's certified regulatory program is considered to be a California Environmental Quality Act (CEQA) equivalent process, which will be updated through this proposal to further describe CARB procedures for the preparation and adoption of environmental analyses regarding projects that may significantly affect the environment.

CEQA requires public agencies to analyze and disclose the potentially significant environmental impacts that may result from their discretionary approval decisions. CEQA also requires such agencies to avoid or mitigate those impacts, if feasible. (Pub. Resources Code § 21100). State agencies may develop their own CEQA-equivalent regulatory programs, and may seek certification of those programs by the Natural Resources Agency. (Pub. Resources Code § 21080.5). This certification exempts agencies from Chapters 3 and 4 of CEQA (Division 13 of the Public Resources Code), because the environmental analysis involved in the regulatory program is deemed to be the functional equivalent of traditional CEQA documentation. (Public Resources Code § 21080.5(c); 14 California Code of Regulations (CCR) §§ 15250-53).

In 1978, CARB received certification of its regulatory program by the Secretary of Natural Resources. The certification documents from the Secretary of Resources issued in August 1978 certified the portion of CARB's regulatory program involving the adoption or approval of standards, rules, regulations or plans to be used in the regulatory program for the protection and enhancement of the ambient air quality of California as meeting the requirements for certification under Public Resources Code section 21080.5.

After receiving its certification, CARB amended its CEQA regulations twice. The first amendments, in 1980, were in response to legislative changes to the Administrative Procedure Act that imposed some requirements that needed to be incorporated into the regulations. The next amendments were approved in September 1981 in response to Assembly Bill 1111¹, which required all agencies to review all regulations on the basis of five statutory criteria (necessity, clarity, consistency, authority, and reference). In response, CARB shortened the then-existing regulations to "eliminate unnecessary repetition of statutory provisions and other excess verbiage, add references to appropriate statutes, and simplify or clarify language in those regulations proposed for retention."

The 1981 amendments significantly shortened the provisions in section 60000-60007, particularly those portions related to environmental analysis requirements. Since 1981, CARB has not amended the procedures for its certified regulatory program; however, the CEQA statute and guidelines have been amended numerous times, and CEQA case law has evolved considerably. The proposed regulatory amendments are intended to address these developments.

CARB is proposing to update its certified regulatory program to more fully set forth its CEQA review procedures. Proposed changes include to further specify notice and comment requirements, exemptions, definitions, and the different procedures that will apply to different types of CARB environmental review. Such changes will bring greater efficiency, transparency, and certainty to CARB's planning and rulemaking processes by creating a more uniform and clear environmental review process. It will also improve alignment with current CEQA principles.

Objectives and Benefits of the Proposed Regulatory Action:

The objectives of the proposed amendments are to more fully set forth the procedures CARB follows, to harmonize CARB's procedures with established CEQA principles where appropriate, harmonize the regulation to the statutory requirements, to eliminate regulatory ambiguity, to add greater specificity to CARB's environmental review process, and to update reference citations. Such changes will bring greater efficiency to rulemakings by creating a more consistent, uniform, and clear environmental review process. The amendments align with Public Resource Code section 21080.5, which sets forth the certified regulatory program requirements. Additionally, certain reference citations would also be updated to delete inapplicable and outdated citations. There

¹ 1981 rulemaking record for Board Resolution No. 81-61.

are no expected benefits to worker safety, and public health and safety as a result of this rulemaking.

Comparable Federal Regulations:

CARB is not aware of any federal regulations that are directly comparable to CEQA and CARB's certified regulatory program.

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

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

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

The determinations of the Board's Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Fiscal Impact/ Local Mandate

Pursuant to Government Code sections 11346.5(a)(5) and (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandates to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, Title 2, Division 4, Part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant effect on housing costs, because it has no economic impact.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

Effect on Jobs/Businesses in the State:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. The Staff Report: Initial Statement of Reasons for Public Hearing to Consider Proposed Amendments to the California Air Resources Board's Certified Regulatory Program in the California Code of Regulations, Title 17, Sections 60000-60007 (ISOR) provides the finding of no economic impact in Section VII.

Benefits of the Proposed Amendments to the Regulation

The objectives of the proposed amendments to the regulation are to more fully set forth the procedures CARB follows, to harmonize CARB's procedures with established CEQA principles where appropriate, to eliminate regulatory ambiguity, and to update reference citations. A summary of these benefits is provided under "Objectives and Benefits," in the Informative Digest of Proposed Action and Policy Statement Overview pursuant to Government Code, section 11346.5(a)(3) discussion in this Notice.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the regulation involves administrative changes to further describe existing practices and to update outdated references; therefore it has no potential for economic impact on small businesses.

Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been

identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. CARB has preliminarily made this determination.

ENVIRONMENTAL ANALYSIS

CARB, as the lead agency under CEQA, has reviewed the proposed regulatory action and concluded that it is exempt pursuant to CEQA Guidelines, 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 result in significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Section V of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing.

TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Rebecca Fancher, Staff Air Pollution Specialist, Legal Office

at (916) 324-1550, or (designated back-up contact) Nicholas Rabinowitsh, Senior Counsel, Legal Office at (916) 322-3762.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared an ISOR for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Staff Report: Initial Statement of Reasons for Public Hearing to Consider Proposed Amendments to the California Air Resources Board's Certified Regulatory Program in the California Code of Regulations, Title 17, Sections 60000-60007. Copies of the ISOR and the full text of the proposed regulatory language may be accessed on CARB's website listed below, or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on February 27, 2019.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Brad Bechtold, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

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 originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. 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.

FINAL STATEMENT OF REASONS AVAILABILITY

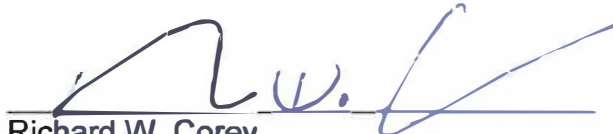
Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this Notice, or may be accessed on CARB's website listed below.

INTERNET ACCESS

This Notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at:

<https://ww2.arb.ca.gov/rulemaking/rulemaking/2019/amendmentstocrp>

CALIFORNIA AIR RESOURCES BOARD

A handwritten signature in blue ink, appearing to read 'R. W. Corey', is written over a horizontal line.

Richard W. Corey
Executive Officer

Date: February 12, 2019

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 our website at www.arb.ca.gov.