

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider the proposed amendments to California's existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.), which was developed pursuant to requirements of the California Global Warming Solutions Act of 2006.

DATE: October 25, 2018

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., October 25, 2018, and may continue at 8:30 a.m., on October 26, 2018. Please consult the agenda for the hearing, which will be available at least ten days before October 25, 2018, 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 comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on September 7, 2018. Written comments not physically submitted at the hearing must be submitted on or after September 7, 2018, and received **no later than 5:00 p.m. on October 22, 2018**. 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 in advance of the hearing 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: <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 in their comments to facilitate review.

### **AUTHORITY AND REFERENCE**

This regulatory action is proposed under that authority granted in California Health and Safety Code, sections 38510, 38530, 38560, 38562, 38564, 38570, 38571, 38580, 38597, 39600, 39601, 39602, 39607, 39607.4, and 41511. This action is proposed to implement, interpret and make specific sections 38501, 38505, 38510, 38530, 38560.5, 38564, 38565, 38570, 38580, 38597, 39600, 39601, 39602, 39607, 39607.4, and 41511 of the Health and Safety Code.

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

#### **Sections Affected:**

Proposed amendments to California Code of Regulations title 17, Subarticles 1, 2, and 5, Sections 95101(h)(1)(A)(4), and (h)(1)(B), 95101(i)(4) and (i)(5), 95102, 95103(h) and (o), 95111(h), 95115(n)(16), 95118(e), 95152(f)(5), (g)(3), and (h)(3), and 95153(b) and (p) and (p)(6)(B).

#### **Background and Effect of the Proposed Regulatory Action:**

In 2006, the Legislature passed and Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (Assembly Bill 32 (AB 32); Stats. 2006, chapter 488). In AB 32, the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California. AB 32 mandates statewide greenhouse gas (GHG) emissions to be reduced to 1990 levels by the year 2020, with reductions to be maintained and continued thereafter. In 2016, the Legislature passed and Governor Brown signed SB 32, which mandates at a 40 percent reduction below 1990 levels by 2030.

One of the requirements of AB 32 is that CARB must adopt a GHG reporting regulation. To comply with this requirement, the Board approved the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (reporting regulation or MRR) at its December 2007 Board meeting. The initial reporting regulation became effective on January 2, 2009.

Over the past nine years, CARB staff has implemented the California GHG reporting program established by the reporting regulation. Under the program, approximately 800 facilities and entities annually submit to CARB their GHG emissions data reports, the majority of which are verified as accurate and complete by CARB-accredited third-party verifiers. Information about the program can be found at: <http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep.htm>.

At its December 2010 public hearing, the Board approved amendments to the reporting regulation to support the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (title 17, CCR, section 95800 et seq.) (Cap-and-Trade Regulation) data requirements, harmonize to the extent feasible with the United States Environmental Protection Agency's (U.S. EPA) Final Rule on Mandatory Reporting of Greenhouse Gases (U.S. EPA rule), and align with the Western Climate Initiative (WCI) reporting structure. Those amendments to the reporting regulation became effective on January 1, 2012.

In September 2012, the Board approved additional amendments to the reporting regulation, as well as updates to the definition sections of the AB 32 Cost of Implementation Fee Regulation and the Cap-and-Trade Regulation. These updates were necessary to streamline and avoid duplicate GHG reporting, to further align with U.S. EPA's rule, and to continue to provide the highest quality data needed to support California's Cap-and-Trade Regulation. These amendments to the reporting regulation became effective on January 1, 2013. In September 2013, the Board approved further amendments to the reporting regulation and the Cap-and-Trade Regulation, which became effective on January 1, 2014. In September 2014, the Board adopted amendments to clarify the reporting requirements, integrate the Cost of Implementation Fee Regulation (COI) reporting requirements, and collect additional information to support CARB's various climate change programs, such as the statewide GHG emissions inventory. These amendments to the reporting regulation became effective on January 1, 2015. In July 2017, the Board approved further amendments to the reporting regulation, which became effective on January 1, 2018. Links to the relevant rulemaking documents are located here: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-regulation.htm>.

CARB staff is proposing amendments to the reporting regulation to be heard at the Board's October 25, 2018 hearing. The proposed updates are needed to continue to support California's Cap-and-Trade Regulation to ensure consistency with the calculation of compliance obligations, to ensure that reported GHG emissions data are accurate and complete in order to support California's GHG reduction programs, including imported electricity emissions from the California Independent System Operator's (CAISO) Energy Imbalance Market (EIM), and to support the GHG inventory program.

**Objectives and Benefits of the Proposed 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 GHG reporting program. The data submitted by reporters under the reporting regulation allow CARB 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 with the highest quality of data by improving clarity for reporting entities as to their reporting requirements, collecting additional information for more complete and accurate GHG emissions estimates. This supports continued, robust methods for reporting emissions and product data to support the statewide greenhouse inventory program, and emissions reduction programs that directly improve the health and welfare of California residents, worker safety, the state's environment, and CARB's Cap-and-Trade Program.

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 Initial Statement of Reasons (ISOR).

**General:**

Staff has proposed modifications in a number of sections to correct typographical errors, clerical oversights, and internal referencing. None of these minor modifications are intended to alter the requirements.

**Cessation:**

Staff has proposed modifications to clarify the provisions for the cessation of reporting and verification for specific entity types, including: entities that must report regardless of emissions level (all-in facilities), electricity importers, and transportation fuel suppliers.

**Definition Clarifications and Additions:**

Staff is proposing clarifications to the definition of "facility" to incorporate a separate facility definition added in the 2016 MRR Rulemaking for onshore natural gas processing. This change is a non-substantive clarification. Staff is also proposing new definitions to support the EIM Purchaser requirements added for capturing GHG emissions associated with electricity imported through the EIM to serve California load.

**Product Data Reporting:**

Staff is proposing to clarify the requirements for reporting of dairy product data butter to ensure the requirements align with industry processes.

**Electricity Imports in the Energy Imbalance Market:**

Under AB 32, CARB must account for statewide GHG emissions, including all emissions resulting from the generation of electricity delivered to and consumed in California, whether that electricity is generated in-state or imported to California to serve California load. In 2015, CARB found that the design of the Energy Imbalance Market (EIM) does not account for the full GHG emissions experienced by the atmosphere from

imported electricity under EIM and results in emissions leakage. CARB refers to these emissions as EIM Outstanding Emissions. Beginning in 2016, CAISO and CARB began coordinating to address GHG accounting inaccuracies in the EIM.

In 2017, CARB adopted amendments to implement a “bridge solution” to account for the full GHG emissions experienced by the atmosphere from imported electricity under the EIM. The “bridge solution,” provides a method to calculate EIM outstanding emissions by determining the amount of electricity transferred into California by EIM, and multiplying that amount by the default emission factor CARB uses for unspecified market transactions, and then subtracting known emissions associated with specific EIM imports. The current MRR for EIM-imported electricity requires EIM participating resource scheduling coordinators to reported deemed delivered electricity in EIM. Additional information provided by CAISO under an annual subpoena would allow CARB to calculate the amount of emissions (“EIM Outstanding Emissions”) to support full accounting of GHG emissions emitted to the atmosphere when there is dispatch to serve California load during periods of imbalances. Under the “bridge solution,” CARB retires unsold allowances equal to EIM Outstanding Emissions. This approach accounts for the EIM Outstanding Emissions under the emissions cap, but it does not assess a compliance obligation to any covered entity. The “bridge solution” is currently in effect, but was put in place as a temporary solution.

In the proposed amendments, staff would implement an “EIM Purchaser” approach to assess a reporting and compliance obligation for EIM Outstanding Emissions. First proposed by CARB in 2016, this approach requires reporting and assigns a compliance obligation for EIM Outstanding Emissions directly to California EIM Purchasers as defined in the proposed amendments. This proposal is designed to ensure EIM Outstanding Emissions are based on data reported by purchasers of EIM electricity and are included as a compliance obligation for those entities serving California load through participation in the EIM. There is no proposed minimum emissions threshold for this EIM Purchaser reporting obligation. The reporting obligation for EIM Purchasers would begin on April 1, 2019. This means that not later than June 1, 2020, EIM Purchasers would be required to report their EIM purchases for April 1, 2019, through December 31, 2019, and annually thereafter.

#### **Nitric Acid Producers:**

Staff is proposing revisions to the source testing frequency for nitric acid plants that are not subject to a compliance obligation under the Cap-and-Trade Regulation. Nitric acid facilities not subject to the Cap-and-Trade Regulation would only conduct one source test per year, instead of two as currently required.

#### **Petroleum and Natural Gas Systems:**

For compressor emissions, staff is proposing to remove the term “rod packing”, when discussing venting from centrifugal compressors. Staff is also proposing to clarify the hours used in a year for calculating fugitive emissions to account for leap years.

**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 amendments are 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 CARB 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.

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

Staff believes the proposed regulation is consistent and compatible with existing State regulations.

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, subs. (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.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

**Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:**

None. Because the regulatory requirements apply equally to all reporting categories and unique requirements are not imposed on local agencies, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution. The proposed regulatory action would not create costs to any school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

Cost or Savings for State Agencies:

One state government agency is affected by the proposed amendments. The state facility imports power to California and is therefore already subject to reporting and verification requirements. Proposed amendments will mean that this agency would also report as an EIM purchaser, which will require an additional 10 hours of reporting in the initial year and five hours of reporting in future years. The costs to this agency are \$770 in the first year of implementation (Fiscal Year 2019/20) and \$385 every year after as the estimated cost for the facility operator to make minor changes to how the required GHG data is reported. These fiscal impacts are the result of generally applicable requirements and are not uniquely focused on state government entities.

CARB does not have a fiscal impact as a result of the proposed regulation changes because there is no new CARB workload, staffing, or other resources needed to implement the proposed MRR revisions.

Other Non-Discretionary Costs or Savings on Local Agencies:

The combined cost to 13 local agencies is estimated to be approximately \$85,214 over eight years, under the proposed EIM related amendments, and largely due to the verification costs for one local agency that is currently reporting and will become subject to verification. Each entity is estimated to have a cost increase of \$770 to make changes in how their GHG data are reported for the first year that the updates take effect. Each year thereafter, each facility is estimated to incur an additional ongoing cost of approximately \$385 to comply with the proposed amendments.

Cost or Savings in Federal Funding to the State:

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings in federal funding to the state.

Adoption of the proposed amendments has no additional fiscal impact on CARB. No change in staffing level is needed to administer the program under the revised rule. CARB fiscal expenses needed for integrating the proposed amendments into the existing reporting systems are already accounted for in the current operational budget that was proposed in the previous amendment to the rule.

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

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

**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.

**NON-MAJOR REGULATION: STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

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

*Effect on Jobs/Businesses:*

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. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Initial Statement of Reasons (ISOR).

*Benefits of the Proposed Regulation:*

The objective of the proposed regulatory action is to implement improved clarity for reporting obligations, provide more accurate GHG emissions estimates to support the accuracy of the statewide greenhouse inventory program and support CARB's Cap-and-Trade Regulation. These changes will support CARB's Cap-and-Trade Program and other related programs. The estimated benefits of the proposed amendments to the regulation are unquantified, which includes any benefits to the health and welfare of California residents, worker safety, and the state's environment. A summary of these benefits is provided under the "Objectives and Benefits of the Proposed Regulation", heading of the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussed previously.

**Business Report (Gov. Code, §§11346.5, subd. (a)(11); 11346.3, subd. (d)):**

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

**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.

CARB staff performed an analysis of the reporters affected by the proposed amendments and determined that 63 unique businesses will have fiscal impacts resulting from the proposed changes. Some industrial sectors will have overall net cost increases, such as for purchasers of EIM energy. Other sectors will have cost savings, such as for certain electricity generators and nitric acid producers. Most businesses



subject to the reporting regulation will not experience noticeable changes in cost of compliance as a result of the proposed amendments.

CARB staff estimates that over eight years, the estimated net impact is a savings of \$150,818, which is the sum of cost increases of \$446,050 for the added reporting requirements for EIM purchasers, and cost savings of \$(596,869) for the other proposed amendments.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide economic impact directly affecting representative private persons.

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

The Executive Officer has determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because none of the affected companies are known to qualify for the small business status based on the California Government Code section 11342.610 definition.

**Alternatives Statement (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. The proposed amendments are made to the existing reporting regulation, and these proposed amendments do not have a significant adverse fiscal or economic impact. However, staff considered alternatives, including making no changes to the regulation, gathering data from individual sources without adding regulatory requirements, or adopting performance standards. The specific alternatives are described in Section XI of the ISOR. These alternatives were evaluated, but dismissed as not being more effective than the proposed amendments in carrying out the purposes of the updates.

**ENVIRONMENTAL ANALYSIS**

CARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory action and concluded that this is exempt pursuant to CEQA Guidelines §15061(b)(3), because it can be seen with certainty that there is no possibility that the proposed action may have a significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Section VIII 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 Syd Partridge, Manager, Climate Change Reporting Section, at (916) 445-4292, or (designated back-up contact) Ryan Schauland, Manager, Emissions Data Quality Assurance Section, at (916) 324-1847.

### **AVAILABILITY OF DOCUMENTS**

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Initial Statement of Reasons for Rulemaking – Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, 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 September 4, 2018.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, at (916) 445-9564. 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).

Following the public hearing, the Board may vote on a resolution directing the Executive Officer to: make any proposed modified regulatory language that 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, and any additional supporting documents and information, available to the public for a period of at least 15 days; consider written comments submitted during this period; and make any further modifications as may be appropriate in light of the comments received available for further public comment. The Board may also direct the Executive Officer to: evaluate all comments received during the public comment periods and prepare written responses to those comments; and present to the Board, at a subsequently scheduled public hearing, the final proposed regulatory language, and staff's written responses to comments.

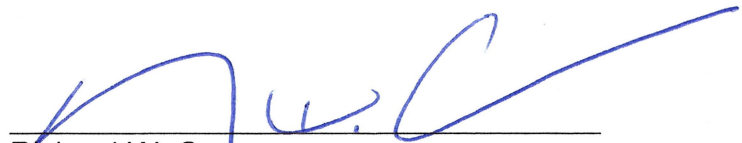
## **FINAL STATEMENT OF REASONS AVAILABILITY**

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 <http://www.arb.ca.gov/regact/2018/ghg2018/ghg2018.htm>

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey  
Executive Officer

Date: August, 21, 2018

*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](http://www.arb.ca.gov).*