

State of California  
AIR RESOURCES BOARD

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

Resolution 18-52

**December 13, 2018**

Agenda Item No.: 18-10-6

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB 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 (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 GHG limit shall remain in place indefinitely, and that emissions reductions be continued and maintained beyond 2020;

WHEREAS, section 38566 of the Health and Safety Code, added pursuant to Senate Bill 32 (SB 32; stats. 2016, ch. 250), further directs that CARB shall ensure that state GHG emissions are reduced to at least 40 percent below the statewide GHG limit no later than December 31, 2030;

WHEREAS, section 38510 of the Health and Safety Code designates CARB 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 CARB, 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 (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; September 18, 2014; and June 29, 2017, 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 greenhouse gas 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 the Regulation for Mandatory Reporting of Greenhouse Gas Emissions;

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, CARB 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, CARB staff has proposed amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions that include the following elements:

Clarifications on cessation, emissions and product data reporting requirements, and definitions to support accurate GHG accounting and the Cap-and-Trade Program;

Add reporting requirements to support the assessment of an obligation to the electricity sector for emissions leakage in the Energy Imbalance Market;

WHEREAS, consistent with Government Code sections 11346, subdivision (b), and 11346.45, subdivision (a), and with the Board's long-standing practice, CARB staff held public workshops to discuss changes affecting regulated entities, in concert with staff and management who oversee CARB's Cap-and-Trade Program. These workshops were held March 2, 2018; April 26, 2018; and June 21, 2018;

WHEREAS, Staff proposed a *Staff Report: Initial Statement of Reasons-Public Hearing to Consider the Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* (ISOR), with proposed regulatory language as set forth in Appendix A to the Initial Statement of Reasons, released to the public on September 4, 2018;

WHEREAS, Staff made available to public the proposed regulatory language at least 45 days prior to the public hearing to consider the proposed regulation, with one subsequent comment period of at least 15 days to propose additional modifications to the regulatory text;

WHEREAS, CARB'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 CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, on November 15, 2018, the Board conducted a public hearing to consider the *Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions*;

WHEREAS, following the public hearing, the Board directed the Executive Officer to make the modified regulatory language and any additional appropriate conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Board further directed the Executive Officer to consider written comments submitted during the public review period; make any additional appropriate conforming modifications available for public comment for at least 15 days; and evaluate all comments received during the public comment periods, as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a). The Board directed the Executive Officer to present at a subsequently scheduled public hearing the finalized amendments for consideration for adoption by the Board;

WHEREAS, following the Board hearing, the Executive Officer circulated the modified regulatory language and supporting documentation for a 15-day public comment period, 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 from November 15, 2018, through November 30, 2018;

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 Staff Report;

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;

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

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

WHEREAS, in consideration of the ISOR, written comments, and public testimony, the Board finds that:

1. The proposed amendments meet the statutory requirements specified identified in section 38530, 39607, and 39607.4 of the Health and Safety Code;
2. The proposed amendments were developed in an open public process, in consultation with affected parties, through public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;
3. The initially proposed amendments to the regulation were further developed and modified as the result of 15-day comment period, providing additional stakeholder input and refinements to the proposed updates;
4. The proposed regulation is clear, consistent, and enforceable;
5. The proposed amendments to the regulations promote consistency, to the extent feasible, with the U.S. EPA GHG reporting rule;
6. 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;
7. 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;
  8. 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;
  9. Accurate GHG emissions reporting, along with reporting of supporting information, is necessary to support operation of the Cost of Implementation Fee Regulation;
  10. The proposed amendments promote consistency between the Mandatory Reporting Regulation and Cap-and-Trade Program and will further enhance the operation of these programs;
  11. 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;
  12. 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;
  13. 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;
  14. No reasonable alternatives to the amendment considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation, and no performance standard alternative could support comprehensive rigorous data collection as is required by law;

15. The proposed amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and
16. 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 adopts amendments to sections 95101, 95102, 95103, 95111, 95115, 95118, 95152, and 95153, 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 any future potential changes may be proposed and implemented for the EIM and propose any amendments as necessary.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons, and 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 18-52 as adopted by the California Air Resources Board.

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Cristina Granados, Clerk of the Board

Resolution 18-52

**December 13, 2018**

**Identification of Attachments to the Board Resolution**

**Attachment A\*:** Final Regulation Order: Proposed Modifications to the Regulation for the Mandatory Reporting of Greenhouse gas Emissions, California Code of Regulations, title 17, sections 95101, 95102, 95103, 95111, 95115, 95118, 95152, and 95153, as set forth in the Initial Statement of Reasons (posted September 4, 2018), and further modified in Proposed 15-Day Modifications (posted November 15, 2018) (Distributed at the December 14, 2018, CARB hearing).

**\*Attachment A is NOT attached to the proposed resolution; it is simply described on this page.**