California Environmental Protection Agency

Air Resources Board

STAFF REPORT: INITIAL STATEMENT OF REASONS FOR RULEMAKING

PROPOSED AMENDMENTS TO THE AB 32 COST OF IMPLEMENTATION FEE REGULATION

Industrial Strategies Division

July 29, 2014

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State of California

AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING

Public Hearing to Consider

PROPOSED AMENDMENTS TO THE AB 32 COST OF IMPLEMENTATION FEE REGULATION

To be considered by the Air Resources Board at a
Public Hearing on September 18, 2014,
at:

Byron Sher Auditorium
Air Resources Board, Cal/EPA Headquarters
1001 I Street
Sacramento, CA 95814

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EXECUTIVE SUMMARY

AB 32, the California Global Warming Solutions Act of 2006 (Health and Safety Code sections 38500-38599), established a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California. Under AB 32, ARB is required to develop regulations that will ultimately reduce California's GHG emissions to 1990 levels by 2020 and to maintain and continue reductions thereafter. AB 32 also provides ARB the authority to adopt a fee schedule to fund the State's cost to develop, implement and enforce the regulations and other provisions of the law.

This report presents ARB Staff's proposal to amend the Cost of Implementation Fee Regulation (Fee Regulation) to more closely align the Fee Regulation provisions with the Mandatory Reporting of Greenhouse Gas Emissions Regulation (MRR) and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation). This Staff Report also provides Staff's justification and analysis of the proposed amendments.

A. Background

The purpose of the Fee Regulation is to establish the means to fund the State's AB 32 costs directly related to state agencies' development, administration, and implementation of AB 32 programs that reduce GHG emissions. The state agency cost of AB 32 implementation is determined annually via the fiscal year State budget. After budget adoption, ARB staff utilizes GHG emissions data to generate fee invoices to be sent to the major sources of GHG emissions. The fee invoices are proportional to the amount of GHG emissions of each fee payer, which ensures that fees are equitably assessed. In addition to supporting program expenses, the fees have been used to repay the AB 32 program start-up loans that were approved by the Legislature and the Governor for implementation of AB 32 programs in fiscal years (FY) 2007-08 through FY2009-10.

The design principle of the Fee Regulation is to assess the fee upstream whenever possible in order to minimize the number of entities subject to the fee and reduce the complexity and the administrative burden of the Regulation. When it is not feasible to assess fees upstream, fees are assessed on entities that consume or produce fuels in California. The Fee Regulation applies to the major sources of GHG combustion and process emissions in the state, or about 250 entities that emit 80 percent of California's GHG emissions. These entities represent a variety of emission sources, including cement manufacturers, electricity importers and in-state generating facilities, industrial facilities, natural gas suppliers, oil and gas producers, and refineries and transportation fuel suppliers.

B. Previous Amendments to the Fee Regulation

On May 8, 2009, ARB began the rulemaking process for the Fee Regulation (CARB 2009). The regulations were approved by OAL on June 17, 2010, and became

effective on July 17, 2010. Revisions to the Fee Regulation were approved by the Board in October 2011, and the final rulemaking package was filed with the Office of Administrative Law (OAL) in August 2012. The amendments consisted of administrative changes and clarifications to Fee Regulation provisions, which were approved by OAL on October 3, 2012 and became effective on the same day. In 2012, ARB proposed additional amendments to the Board to conform the Fee Regulation with the MRR and the Cap-and-Trade Regulation, which were approved by OAL on December 19, 2012 and became effective January 1, 2013 (CARB 2014b).

C. Proposed Amendments to the Fee Regulation

The Staff proposal is to amend the Fee Regulation to more closely align the Fee Regulation with the MRR and the Cap-and-Trade provisions, to clarify Fee Regulation provisions, and to ensure fee payer equity. Specifically, the proposed amendments to the Fee Regulation include:

- Modification of the emissions applicability threshold from metric tons of carbon dioxide ($MTCO_2$) to metric tons of carbon dioxide equivalents ($MTCO_2e$).
- Implementation of the MRR verification requirement thresholds (i.e., 25,000 $MTCO_2e$) for natural gas suppliers and transportation fuel producers and importers.
- Clarification of coal coke applicability.
- A correction of the petroleum coke emission factor.
- Inclusion of a default clinker emission factor.
- Updated references to emission factors, definitions, and provisions of the MRR.
- Revisions to definitions.
- Modifications to language for clarity and consistency.
- Deletion of outdated language.

Staff's analysis shows that the proposed amendments would result in a small redistribution of the fees among the fee payers, with most entities expected to see either an increase or decrease in their fees of approximately two percent or less. This staff report provides a detailed breakdown of the impact the proposed amendments would have on fee payers.

Staff Recommendation

Staff recommends that the Board adopt the proposed Regulation amendments. The proposed regulatory amendments improve alignment of provisions amongst the climate change regulations, transition fee invoicing to more robust third-party verified data, provide a more equitable distribution of fees to fee payers, improve consistency and clarity to reporting entities, and streamline program administration.

I. INTRODUCTION AND BACKGROUND

In this rulemaking, Air Resources Board (ARB or Board) staff is proposing amendments to the Assembly Bill (AB) 32 Cost of Implementation Fee Regulation (Fee Regulation or Program). ARB staff is proposing the amendments to more closely align the Fee Regulation provisions with the Mandatory Reporting of Greenhouse Gas Emissions Regulation (MRR) and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation), transition reliance from certified data to third-party verified data, streamline program administration, clarify existing regulatory provisions, and provide a more equitable distribution of fees while minimizing changes in fees to regulated entities. This Staff Report provides Staff's justification and analysis of the proposed amendments.

Proposed amendments to the Fee Regulation include:

- Modification of the emissions applicability threshold from metric tons of carbon dioxide ($MTCO_2$) to metric tons of carbon dioxide equivalents ($MTCO_2e$).
- Implementation of MRR verification requirement thresholds (i.e., 25,000 $MTCO_2e$) for natural gas suppliers and transportation fuel producers and importers.
- Clarification of coal coke applicability.
- A correction of the petroleum coke emission factor.
- Use of a default clinker emission factor unless the entity reports a facility-specific emission factor.
- Updated references to emission factors, definitions, and provisions of MRR.
- Revisions to definitions.
- Modifications to language for clarity and consistency.
- Deletion of outdated language.

The regulation is codified in title 17, California Code of Regulations, sections 95200 to 95207.

A. ENABLING LEGISLATION

AB 32, the California Global Warming Solutions Act of 2006 (Health and Safety Code sections 38501-38599), established a comprehensive, multi-year program to reduce GHG emissions in California. Under AB 32, ARB is required to develop regulations that will ultimately reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020, and to maintain and continue reductions thereafter. AB 32 also provides ARB the authority to adopt a fee schedule to fund the State's cost to develop, implement and enforce these regulations and other provisions of the law.

The fee is authorized in HSC section 38597, which states:

> "The State board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division."

In 2012, Senate Bill 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012) established a new Cost of Implementation Account within the Air Pollution Control Fund to receive fees collected under the Fee Regulation.

> "16428.95 Notwithstanding Section 38597 of the Health and Safety Code, the Cost of Implementation Account is hereby established in the Air Pollution Control Fund, and revenues collected pursuant to that section shall be available upon appropriation by the Legislature for purposes of carrying out Division 25.5 (commencing with Section 38500) of the Health and Safety Code, and shall be maintained separately from all other funds in the Air Pollution Control Fund."

B. PROGRAM PURPOSE AND DESCRIPTION

The Fee Regulation provides revenue to fund the costs directly related to state agencies' development, administration, and implementation of AB 32 programs that reduce GHG emissions. The State agency cost of AB 32 implementation is determined annually each fiscal year in the State budget. In addition to supporting program expenses, the fees were used to repay the AB 32 program start-up loans that were approved by the Legislature and the Governor for implementation of AB 32 programs in fiscal years (FY) 2007-08 through FY2009-10.

The Fee Regulation is designed to assess the fee where fuel is delivered or produced, electricity is generated and delivered, and cement is manufactured (collectively referred to as "upstream") in order to minimize the number of entities subject to the fee and reduce the complexity and administrative burden of the Regulation. When it is not feasible to assess fees upstream, fees are assessed on entities that consume or combust applicable fuels in California.

Using this approach, the Fee Regulation applies to about 250 entities that emit 80 percent of California's GHG emissions. These entities represent a variety of emission sources, including cement manufacturers, electricity importers and in-state generating facilities, industrial facilities, natural gas suppliers, oil and gas producers, and refineries and transportation fuel suppliers. Fees are assessed on the most widely used fossil fuels, including gasoline, diesel, coal, petroleum coke, catalyst coke, refinery fuel gas, and natural gas. Fees are also assessed for the non-combustion

GHG process emissions from refineries and cement manufacturers; and the GHG emissions associated with the generation of both in-state electricity and imported electricity.

The Fee Regulation is designed to ensure equity in fees assessed to regulated entities. Fee invoices are based on each fee payer's reported GHG emissions, ensuring that fees are proportional to each entity's contribution to the State's total GHG emissions. Entities with higher annual GHG emissions receive a larger fee invoice compared to regulated entities with lower comparative emissions. ARB determines annual invoices by calculating a Common Carbon Cost (CCC), which represents a uniform cost per metric ton of GHGs emitted for a particular report year. ARB determines the CCC by dividing the total annual program cost determined in the State Budget, referred to as the Total Required Revenue (TRR), by the sum of the carbon dioxide (CO_2) emissions across all fee payers subject to the Regulation. The CCC methodology provides an equitable distribution of fees that is proportional to the fee payer's contribution to California's GHG emissions. Ensuring fees are equitably assessed is a primary principle of the Fee Regulation.

To determine GHG emissions levels for invoicing, the Regulation utilizes GHG data submitted annually to ARB via the emissions reporting tool established through MRR. Once the State budget is adopted, ARB begins the process of invoicing each fee payer based on the CCC and each fee payer's reported carbon dioxide emissions. Staff mail invoices 30 days after budget adoption, with payment due 60 days from the invoice date. A summary of the Fee Program process is included below:

Table 1. Annual Fee Program Process

Step	Description	Date
Reporting Year		
1	GHG emissions reporting deadline.	April 10 (June 1 for Electric Power Entities)
2	GHG emissions verification deadline.	September 15
Subsequent Year after Emissions are Reported and Verified		
3	ARB staff determine Total Required Revenue and Common Carbon Cost for upcoming budget year based on enacted State budget and previously reported emissions data.	Following Budget Enactment
4	ARB's staff issue invoices.	30 days after Budget Enactment?
5	Payment due to ARB.	60 days after Invoice Date

ARB mailed the first fee invoices to regulated entities in FY2010-11. The TRR for FY2010-11 through FY2012-13 was approximately $62 million each year, which consisted of annual AB 32 implementation expenses of about $35 million and program start-up loan repayments of about $27 million each year. In July 2013, the fourth year of the program, ARB sent out invoices for FY2013-14 to approximately 250 fee payers based on the TRR of approximately $50 million. This included both AB 32 implementation expenses for FY2013-14 of $40 million and repayment of the remaining $10 million balance of program start-up loans.

As of the end of FY2013-14, ARB has completed repayment of the AB 32 program start-up loans and the required revenue now consists solely of annual AB 32 implementation expenses. Completion of loan repayment has resulted in a decline of $27M in required revenue over the past two fiscal years, subsequently contributing to a decline in individual fee payer invoices.

Summary of Prior Regulatory Actions

The Fee Regulation was first approved by the Board at the September 25, 2009 hearing and on May 6, 2010, ARB submitted a Final Statement of Reasons and other necessary documents to finalize the rule making package with the California Office of Administrative Law (OAL). The regulations were approved by OAL on June 17, 2010, and became effective on July 17, 2010. Amendments to the Fee Regulation were approved by the Board in October 2011 and the final rulemaking package was filed with the Office of Administrative Law (OAL) in August 2012. The amendments consisted of administrative changes and clarifications to Fee Regulation provisions, which were approved by OAL on October 3, 2012. In 2012, ARB proposed additional amendments to the Board to conform the Fee Regulation with the MRR and the Cap-and-Trade Regulation, which were approved by OAL on December 19, 2012 and became effective January 1, 2013 (CARB 2014b).

C. SPECIFIC PURPOSE FOR THE ADOPTION, AMENDMENT, OR REPEAL

ARB staff developed the proposed amendments to the Fee Regulation in order to:

- Align the provisions of the Fee Regulation, the MRR, and the Cap-and-Trade Regulation.
- Transition Fee Regulation reliance on certified data to third-party verified data.
- Streamline program administration.
- Clarify existing regulatory provisions.
- Provide a more equitable distribution of fees.

Staff developed the proposed amendments by reviewing emissions inventory data, reviewing current applicability and threshold provisions for both the Mandatory Reporting Regulation and Cap-and-Trade Regulation, and reviewing policy and administrative issues identified by staff and regulated entities in past billing cycles.

D. PUBLIC OUTREACH

In developing the proposed amendments, staff presented the amendments in an informal discussion draft released and discussed at a public workshop held on June 5, 2014 to receive comments and feedback from stakeholders. Staff also held one-on-one meetings with affected stakeholders.

Staff considered comments received at the June 5 workshop, written comments received following the workshop on the informal discussion draft, and comments and input received from the one-on-one meetings to develop the proposed amendments.

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II. STATEMENT OF REASONS

This chapter describes the reasons for the proposed amendments to the Fee Regulation and provides ARB staff's technical justification and analysis of the proposed amendments. ARB staff is proposing the amendments to streamline reporting and administration by more closely aligning the Fee Regulation provisions with the Mandatory Reporting of Greenhouse Gas Emissions Regulation (MRR) and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation). This Staff Report provides ARB staff's technical justification and analysis of the proposed amendments.

A. DESCRIPTION OF PROBLEM PROPOSAL IS INTENDED TO ADDRESS

As part of previous fee invoice cycles and programmatic reviews, staff identified a number of improvements to Fee Regulation implementation that, if made, would result in a more straightforward implementation of the program. The improvements to the current Fee Regulation include:

1. Fully reflecting the major types of GHG emissions emitted in California.

2. Taking full advantage of verified data reported under MRR. Doing so would minimize reporting burdens on covered entities and provide an added level of confidence in submitted data.

3. Updating emissions factors for coal coke combustion.

4. Updating applicability provisions for emissions from electricity generation.

5. Updating to the latest emissions factors currently used by other ARB climate change programs, and in some instances, clarifying default emissions factors.

6. Clarifying language in some instances.

B. PROPOSED SOLUTIONS TO THE PROBLEM AND RATIONALE SUPPORTING THE PROPOSED SOLUTION

The following proposed amendments would improve implementation of the Fee Regulation:

1. Modify the emissions applicability from CO_2 to CO_2e to align the Fee Regulation with the emissions reporting requirements of MRR and the Cap-and-Trade Regulations. The current Fee Regulation assesses fees on CO_2 only, which is inconsistent with other ARB climate change programs that focus primarily on

CO_2, CH_4, and N_2O emissions. As currently designed, the Fee Regulation does not reflect the additional contribution of CH_4 and N_2O emissions to climate change and does not capture fees to support the additional administrative workload associated with implementing programs that address these emissions. Additionally, the need to generate Fee Regulation specific CO_2 emissions data from currently available data often results in additional ARB and fee payer work and analysis.

The amendment to modify emissions applicability, to include the contribution of CH_4 and N_2O to statewide GHG emissions, will ensure fees are more equitably distributed than are currently assessed under the Fee Regulation.

2. Implement thresholds for natural gas suppliers and transportation fuel producers and importers that are consistent with MRR's verification requirements for entities with emissions that equal or exceed 25,000 $MTCO_2e$. This amendment further aligns with the MRR and the Cap-and-Trade Regulation provisions, which also have 25,000 $MTCO_2e$ thresholds for verification, and compliance obligations, respectively. It also transitions reliance from certified data to third-party verified data, and eliminates confusion or misinterpretation on behalf of the reporter. The proposed threshold improves the quality of data used for the assessment of fees and improves clarity for reporters currently subject to the Fee Regulation and not subject to the MRR.

3. Include coal coke as an applicable fuel source to provide equitable treatment for the assessment of fees to regulated entities that combust petroleum coke and coal coke.

4. Modify the municipal solid waste (MSW) provisions to include non-biogenic MSW emissions in determining annual invoices. The modification of the MSW provisions to assess fess on the emissions resulting from the combustion from non-biogenic MSW is consistent with current Fee Regulation provisions and the treatment of electricity generation from fossil fuel combustion, and would improve equity amongst fee paying electricity generating facilities.

5. Update emission factors to accurately reflect emissions from each source of fuel. Staff determined that the currently published petroleum coke emission factor is incorrect and is actually the emission factor for coal coke. The amendment corrects the petroleum coke emission factor from 2,530.65 kg CO_2 per short ton to 3,072 kg CO_2 per short ton, as well as an amendment that accounts for CH_4 and N_2O emissions. Staff proposed amendments that would replace the published emission factors in the Fee Regulation with references to the emission factors published pursuant to the MRR, thereby correcting or updating the applicable emission factors and minimizing the need for future regulatory amendments. The proposed amendments would also establish a default clinker emission factor unless the entity reports a facility-specific emission factor

6. Make conforming changes to definitions and other provisions that are needed to minimize differences and administrative complexity between the MRR, the Cap-and-Trade Regulation, and the Fee Regulation. This will also improve and streamline the reporting process for regulated entities. ARB staff is also proposing to delete outdated provisions to minimize regulated entity confusion and improve implementation of the Fee Regulation.

III. SUMMARY OF PROPOSED ACTION

In this chapter, we provide plain language descriptions of the proposed amendments to the Fee Regulation and explain the need and rationale for the proposals. The Fee Regulation is codified in title 17, California Code of Regulations, sections 95200 to 95207. The sections listed below include only those sections that are proposed to be amended, added, or deleted. Sections revised only due to renumbering are not listed here. Appendix A contains the proposed amendments to the Fee Regulation. The proposed changes to the Fee Regulation are shown in underline and ~~strikeout~~ format.

The proposed amendments are not intended to, and do not, revisit or reopen decisions previously approved by the Board. The proposed amendments clarify existing provisions and do not significantly change the calculation of fees established by the Fee Regulation.

A. APPLICABILITY (SECTION 95201) – EMISSION SOURCES SUBJECT TO THE FEE

The types of entities subject to the Fee Regulation are not affected by the proposed amendments to section 95201. The Fee Regulation applies to the following entities:

- Natural gas suppliers and end users receiving natural gas from an interstate pipeline;
- Producers and importers of California gasoline, California Reformulated Gasoline Blendstock (CARBOB), and California diesel;
- Refineries;
- Cement manufacturers;
- Electricity producers and importers;
- Onshore oil and gas producers; and
- Facilities that combust coal, petroleum coke, catalyst coke, or refinery gas.

Staff is proposing limited changes to the Applicability section 95201 to modify existing regulatory language to align applicability provisions with the MRR and the Cap-and-Trade Regulations. MRR generally requires verification for entities responsible for emissions of 25,000 $MTCO_2e$ or greater, consistent with the compliance threshold for the Cap-and-Trade Regulation. Aligning the Fee Regulation applicability provisions with the MRR and the Cap-and-Trade Regulation will eliminate the need for entities that are not required to report to MRR but are required to report to the Fee Regulation. Alignment minimizes reporting ambiguity and will ensure that, to the maximum extent feasible, fee invoices are based on verified reported emissions data. Staff proposes the following regulatory changes:

- Modify fee emissions applicability from CO_2 to CO_2e. This amendment aligns the Fee Regulation with the MRR and the Cap-and-Trade Regulation emission reporting requirements, allows for the capture of a broader range of statewide

GHG emissions, and provides a more equitable distribution of fees based on a sectors usage of a particular fuel type. This proposed amendment would result in approximately a two percent increase in billable emissions, which is expected to have an overall negligible net effect to each fee payer. Due to the design of the Fee Regulation, the increase in billable emissions would be offset by a subsequent decrease in the CCC, which is the uniform cost per GHG emitted or the TRR divided by emissions subject to the Fee Regulation. A two percent increase in billable emissions would have an insignificant effect on the CCC formula. As a result of the increase in the emissions covered, the CCC would experience a proportional decrease of approximately two percent based on FY2013-14 data.

- Implement an applicability threshold for natural gas suppliers and transportation fuel producers and importers that is consistent with MRR's verification requirements for entities with emissions that equal or exceed 25,000 $MTCO_2e$. The purpose of this proposed amendment is to further align the Fee Regulation with the MRR and Cap-and-Trade Regulation provisions and to decrease reliance on data that has not undergone third-party verification. Staff's analysis indicates that implementing a 25,000 $MTCO_2e$ threshold for natural gas suppliers, and transportation fuel producers and importers, would remove ten small natural gas suppliers. These ten natural gas suppliers would comprise approximately $12,000 in total fees (based on FY2013-14 CCC of $0.145 per $MTCO_2$). The $12,000 in (lost) fees would be redistributed amongst the remaining fee payers resulting in a 0.025 percent net increase in billable emissions for each covered entity.

  The proposed threshold amendment improves clarity for entities currently subject to the Fee Regulation and not subject to MRR and subsequently provides an economic benefit to these small businesses by removing fee responsibilities and alleviating administrative costs associated with Fee Regulation reporting requirements. The proposed threshold also reduces the administrative workload to identify these small entities, communicate the reporting requirements of the MRR and Fee Regulation, setting up and assigning a separate fees ID in the electronic reporting tool, and internally confirming the reported data.

- Include coal coke as a fee-applicable fuel source. The recommendation to include coal coke is being made to clarify that the Fee Regulation applies to emissions from the use of fossil fuels and fossil fuel derived by-products, such as coal and coke derived from coal. The intent through the initial development of the Fee Regulation was to include coal derivatives as part of the definition of coal; however the regulatory language did not explicitly state that coal coke is a fee-applicable fuel source. Staff has determined the proposed amendment will not subject any new facilities to fees because these facilities interchangeably use petroleum coke and coal coke as a fuel source. There is no effect on fee payers as a result of this amendment.

- Modify the municipal solid waste (MSW) exemption to include non-biogenic MSW emissions from electricity generation rather than exempting both biogenic and non-biogenic emissions. Non-biogenic MSW GHG emissions are the result of combusting fossil fuel derived materials such as plastics, textiles, synthetic rubber, and other materials (Johnke 2002, US EPA 2014). The modification of the MSW exemption to include non-biogenic MSW emissions is consistent with current Fee Regulation provisions and treatment of electricity generation from fossil fuel combustion, and would improve equity amongst fee paying electricity generating facilities (EGFs). Three MSW facilities are affected by the amendment. The current average annual MSW facility fee is approximately $1,000 and the average annual fee increase as a result of the proposed amendment would be approximately $11,000. The impact to the remaining fee payers is a small decrease in fees.

- Require the reporting of CO_2e emissions from combusting natural gas, rather than the reporting of total therms of natural gas, for gas produced from gas wells. This amendment would align the Fee Regulation provisions for reporting natural gas produced from gas wells with MRR requirements. In addition, the current Fee Regulation structure assesses fees on the reported therms using a natural gas emission factor typically used for refined, pipeline quality natural gas. Produced field gas does not meet the standards of pipeline quality gas; therefore, reported emissions provide the most equitable assessment of fees. If an oil and gas producer processes their produced field gas to pipeline quality standards, then the quality of gas is reflected in the emissions output.

- The remaining proposed amendments to the applicability section include the removal of outdated regulatory language and the addition of clarifying language to minimize ambiguity. The removal of outdated language for the applicability section primarily consists of removing language which references electricity generated prior to January 1, 2011. Fees have already been assessed to 2010 data and the language, though still, of course, good law with regard to actions in the years to which it refers is no longer relevant going forward. Additionally, removal of the term “Fee Regulation only” from the Regulation is proposed as a result of amendments to MRR that will fully capture the data requirements necessary for the assessment of fees.

  Clarifying language is added to minimize ambiguity of the applicability of several subsections. Specifically, language was added to clarify that the exclusion of applicable fuels used at EGFs only applies to EGFs that are subject to the Fee Regulation. Clarifying language is also proposed for oil and gas producers to provide a distinction between natural gas produced from gas wells and oil wells. Further, language is proposed to clarify that the exemption of biodiesel and renewable diesel only applies to pure forms of the renewable fuels (i.e., B100 and R100) and not the portions of the biofuels blended with petroleum diesel that constitute the definition of California diesel.

B. DEFINITIONS (SECTION 95202)

ARB staff is proposing several changes to the definitions in the Fee Regulation. Changes include deleting definitions that are no longer applicable, adding new definitions to support changes described in this staff report, and amending existing definitions to align with MRR definitions.

C. CALCULATION OF FEES (SECTION 95203)

ARB staff is proposing minor amendments to section 95203 “Calculation of Fees” to ensure consistency with the proposed amendments identified in this staff report. Amendments to this section include the modification of CO_2 to CO_2e, the transition from the use of Fee Regulation emission factors to the use of MRR emission factors, updates to the emission factor methodology for transportation fuels and cement manufacturers, the addition of emissions for coal coke and produced natural gas from gas wells in the CCC formula, the removal of outdated language, and the addition of clarifying language.

The predominant amendment of this section is the correction to the petroleum coke emission factor published in the current version of the Fee Regulation. Staff determined that the currently published petroleum emission factor is incorrect and is actually the emission factor for coal coke. The amendment corrects the petroleum coke emission factor from 2,530.65 kg CO_2 per short ton to 3,072 kg CO_2 per short ton.

D. REPORTING AND RECORDKEEPING REQUIREMENTS (SECTION 95204)

ARB staff is proposing minor amendments to section 95204 “Reporting and Recordkeeping Requirements” which are intended to shift the Fee Regulation reporting requirements to the applicable reporting requirements of MRR. The remaining proposed amendments to this section consist of the addition of clarifying language to minimize ambiguity.

E. REGULATORY ALTERNATIVES

California Government Code section 11346.2 requires ARB to consider and evaluate reasonable alternatives to the proposed amendments to the Fee Regulation and provide reasons for rejecting those alternatives. This section discusses the alternatives evaluated and provides the reasons why it was not included in the proposed rulemaking. Staff evaluated the following alternatives:

- Do not amend the Fee Regulation.
- Proposal of alternative amendments to the Fee Regulation.
- Proposing “performance standards” in lieu of the Fee Regulation amendments.

No Changes to the AB 32 Cost of Implementation Fee Regulation
A "no action" alternative means that ARB staff would not amend the Fee Regulation and the Program would take a "business-as-usual" approach. If the Fee Regulation is not amended, some provisions of the Fee Regulation would not be in alignment with the MRR and the Cap-and-Trade Regulation provisions. Under this alternative, the Fee Regulation would continue to rely on certified data, as opposed to third-party verified MRR data.

This alternative would maintain inconsistencies and perpetuate reporting confusion for regulated entities in complying with MRR and the Fee Regulation. Examples of inconsistencies include:

1) Under the "no action" alternative, ARB staff would continue to assess fees to small natural gas suppliers and transportation fuel producers and importers with emissions under 25,000 $MTCO_2$. This approach would continue to levy fees on entities that are not currently covered by the reporting (for entities under 10,000 $MTCO_2$) and verification requirements of the MRR and would require that ARB continue to collect this Fee Regulation data through a separate administrative process, which increases the administrative workload for both ARB and the regulated entities.

2) Under the "no action" alternative, ARB staff would continue to assess fees on CO_2 instead of CO_2e. Continuing to assess fees on CO_2 would perpetuate inconsistent GHG emissions treatment in the Fee Regulation, when compared to other ARB climate change programs. Continuing to assess fees on CO_2 only does not equitably assess fees to sources with CH_4 and N_2O emissions, both of which are contributors to climate change and which ARB and other state agencies work to reduce as part of implementing AB 32.

Alternative amendment approach to the AB 32 Cost of Implementation Fee Regulation
Under this alternative, staff would propose amendments detailed in this Staff Report minus the inclusion of non-biogenic emissions from MSW facilities. Staff considered the economic impact of this proposed alternative in Chapter VI. Continuing to exempt non-biogenic MSW emissions (a fossil-derived fuel) from the Fee Regulation would provide unequal treatment of electricity generating facilities that combust fossil fuels under the Fee Regulation.

Performance Standards in lieu of Fee Regulation amendments. California Government Code 11346.2(b)(4)(A) provides that "[i]n the case of a regulation that would mandate the use of specific… actions or procedures, the imposition of performance standards shall be considered as an alternative." A non-prescriptive performance standard would not meet the purposes required by the Fee Regulation, or its underlying statute. The Fee Regulation must set forth a well-defined set of procedures for reporting, fee calculation, and assessment in order to meet specific budgetary needs through an equitable and transparent fee imposed on particular sources. A general performance standard, which does not define specific means of compliance, would not be reasonable because it would not allow ARB to maintain the

fee system, and its underlying fee assessment calculations, on a fair, transparent, and rigorous basis, and so was not considered further.

IV. ENVIRONMENTAL IMPACT ANALYSIS

A. INTRODUCTION

The portion of ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of the State's ambient air quality has been certified by the Secretary for Natural Resources pursuant to Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA Guidelines section 15251(d)). Public Resources Code section 21080.5 exempts public agencies with certified regulatory programs from certain CEQA requirements, including but not limited to, preparing environmental impact reports, negative declarations, and initial studies. Under its certified program, ARB as a lead agency prepares a substitute environmental document (referred to as an Environmental Analysis or EA) as part of the Staff Report to comply with CEQA's goals and policies and to provide public review of the analysis. (California Code of Regulations, title 17, sections 60000 – 60008).

B. PROPOSED AMENDMENTS

ARB staff has determined the proposed regulatory amendments to the Fee Regulation are exempt from the requirements of CEQA under CEQA Guidelines section 15061(b)(3) ("common sense" exemption) because it can be seen with certainty that there is no possibility that implementation of the Fee Regulation, as modified by the proposed amendments, would result in any significant adverse impacts on the environment. The regulation, as modified by the proposed amendments, continues to subject regulated entities to specific reporting and recordkeeping requirements and assessment of a fee for greenhouse gas emissions. Actions taken for reporting, recordkeeping, and payment of the required fees do not result in any changes to the physical environment. The current proposed amendments make administrative and procedural changes to align the Fee Regulation with the MRR and the Cap-and-Trade Regulation provisions and make other procedural modifications that do not alter compliance with the Fee Regulation in any way that could affect air emissions or the physical environment or result in adverse impacts to the environment. After the amendments are finalized, a Notice of Exemption will be filed with the Office of Planning and Research and the Secretary for Natural Resources for public inspection.

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V. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. ARB is committed to making environmental justice an integral part of its activities. The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into ARB's programs consistent with the directives of State law (CARB 2001). These policies apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low-income and minority communities.

This rulemaking is consistent with ARB's Environmental Justice Policy to reduce health risks in all communities, including low-income and minority communities. Staff has determined that the proposed amendments to the Fee Regulation would not result in an adverse impact to air quality, and would not result in an increase in exposure to pollutants. Adoption and implementation of amendments to the Fee Regulation will have no adverse impacts on environmental justice communities.

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VI. ECONOMIC IMPACT ANALYSIS

In this chapter, ARB staff provides an overview of the economic impacts of the proposed amendments to the Fee Regulation on affected entities.

A. SUMMARY

The net effect of the amendments would not change the total fees collected. According to the design of the Fee Regulation, staff's proposal would result in some entities experiencing an increase in annual fees, while other entities would experience a decrease in annual fees. For the economic analysis, ARB staff estimated the anticipated annual cost increases or decreases to activities covered by the Fee Regulation. Facilities that combust petroleum coke or non-biogenic MSW would experience the largest annual fee increases, while the remaining sectors would see increase or decreases in their invoices of about two percent or less. Impact breakdowns are provided in Figure VI.I and Figure VI.II.

B. ECONOMIC IMPACTS ASSOCIATED WITH PROPOSED AMENDMENTS TO THE FEE REGULATION

The proposed amendments to the Fee Regulation consist of modifying emissions applicability from CO_2 to CO_2e, implementing emission thresholds for natural gas suppliers and producers and importers of California gasoline and California diesel, revisions to the municipal solid waste (MSW) exemption, correction to the petroleum coke emission factor, correction of current emission factors to account for CH_4 and N_2O emissions, removal of outdated language, and the addition of clarifying language.

Annual fees are determined by the calculation of the CCC, which is the uniform cost per metric ton of GHG emissions emitted for a particular reporting year. The CCC methodology consists of the Total Required Revenue (TRR) divided by the emissions subject to the Regulation. Because the Total Required Revenue and the emissions subject to the Fee Regulation vary each year as emissions and implementation costs change, ARB staff is unable to predict the exact economic impact on future invoices. Rather than attempt to predict future emissions and expected implementation costs, ARB staff utilized the TRR and emissions data from the latest billing cycle (FY2013-14) to estimate the economic impacts of the proposed amendments. Staff used this data to estimate the economic impacts for the fuels and activities covered by the fee regulation. Staff's analysis provides the net impacts of the amendments to the following activities:

- Production and supply of gasoline, CARBOB, and diesel.
- Electricity generation and electricity imports.
    - Impacts to MSW facilities combusting non-biogenic MSW are included in the electricity generation sector

- Combustion natural gas and associated gas.
- Combustion of subbituminous, bituminous, and anthracite coal.
- Combustion of refinery gas.
- Combustion of petroleum coke.
- Combustion of catalyst coke.
- Clinker production.

In FY 2013-14, ARB sent out approximately 250 individual invoices totaling approximately $50M and representing approximately 342 $MMTCO_2$. The fee payer population is not normally distributed because the Fee Regulation is designed to invoice emissions sources according to their contribution to the State's GHG emissions. Of the 250 FY2014-15 invoices mailed, 15 of the highest emitting entities accounted for approximately 75 percent of the billable emissions and fees collected. The bottom half of the fee payer population (125 invoices) accounted for less than $1M of total fees or approximately two percent of the TRR.

Staff analysis demonstrates that the proposed amendments are anticipated to have a negligible impact to the fee payers as a whole. The net effect on the emissions subject to the Fee Regulation as a result of adopting all the amendments is anticipated to be an increase in covered emissions of approximately two percent. As a result of the increase in covered emissions, the CCC would proportionally decrease by approximately two percent.

To demonstrate the annual effect of the increase in covered emissions on the CCC and the resulting difference to fee payers, the TRR and emissions data from FY 2013-14 is used as an example. FY 2013-14 CCC formula parameters consisted of a TRR of $49,660,846 and total billable emissions of 342,446,847 $MTCO_2$. The CCC for FY 2013-14 is calculated as follows:

$$\text{CCC} = \frac{\$49{,}660{,}846 \text{ (total required revenue)}}{342{,}446{,}847 \text{ MTCO}_2 \text{ (billable emissions)}} = \frac{\$0.14501767}{\text{per MTCO}_2}$$

In the CCC example below, the estimated two percent increase to billable emissions results in an emissions total of 349,295,784. The effect on the CCC is illustrated below:

$$\text{CCC} = \frac{\$49{,}660{,}846 \text{ (total required revenue)}}{349{,}295{,}784 \text{ MTCO}_2\text{e (billable emissions)}} = \frac{\$\ 0.14217419}{\text{per MTCO}_2\text{e}}$$

The effect on the CCC for FY 2013-14 due to the increase in emissions results in a lower cost per GHG emitted to each fee payer. To demonstrate the difference to a particular fee payer's invoice, the following two scenarios provide calculations involving a higher GHG emitting fuel source such as coal and a lower GHG emitting fuel source such as natural gas:

Scenario 1 – An industrial facility combusts 200,000 short tons of bituminous coal which emits 465,670 $MTCO_2$, according to the Fee Regulation emission factor of 2.32835 $MTCO_2$ per short ton of bituminous coal combusted. Applying the FY 2013-14 CCC of $0.14501767 per $MTCO_2$, the calculated fee is:

465,670 $MTCO_2$ x $0.14501767 per $MTCO_2$ = **$67,530**

If $MTCO_2e$ is utilized, the combusted 200,000 short tons of bituminous coal emits 469,230 $MTCO_2e$, using an EPA emission factor (US EPA 2014) of 2.34615 $MTCO_2e$ per short ton of bituminous coal combusted. Applying the revised CCC, which accounts for the increased emissions, of $0.14217419 per $MTCO_2e$, the calculated revised fee is:

469,230 $MTCO_2e$ x $0.14217419 per $MTCO_2e$ = **$66,712**

In this scenario, the difference in fees results in a savings of $818 or 1.21 percent when applying CO_2e in place of CO_2.

Scenario 2 – A large natural gas supplier delivers 5 billion therms to various end users (that combust the fuel), which results in 26,510,000 MT of CO_2 emissions when applying the Fee Regulation emission factor of 0.005302 $MTCO_2$ per therm of natural gas combusted. Multiplying the FY 2013-14 CCC of $0.14501767 per $MTCO_2$, the calculated fee is:

26,510,000 $MTCO_2$ x $0.145017676276 per $MTCO_2$ = **$3,844,418**

If $MTCO_2e$ is utilized, the combusted 5 billion therms of natural gas emits 26,536,000 $MTCO_2e$ using an EPA emission factor (US EPA 2014) of 0.0053072 $MTCO_2e$ per therm. Applying the revised CCC, which accounts for the increased emissions, of $0.14217419 per $MTCO_2e$, the calculated revised fee is:

26,536,000 $MTCO_2e$ x $0.14217419 per $MTCO_2e$ = **$3,772,734**

In this scenario, the difference in fees results in a decrease of $71,684 or 1.86% when applying CO_2e in place of CO_2.

Scenario 3 – A refinery supplies 10,000,000 gallons of California diesel fuel which equates to emissions of 99,600 $MTCO_2$, according to the Fee Regulation emission

factor of 9.96 kg CO_2 per gallon diesel fuel. Applying the FY 2013-14 CCC of \$0.14501767 per $MTCO_2$, the calculated fee is:

99,600 $MTCO_2$ x \$0.14501767 per $MTCO_2$ = **\$14,444**

If $MTCO_2e$ is utilized, the 10,000,000 gallons of California diesel fuel emits 102,400 $MTCO_2e$, using a MRR emission factor of 10.24 kg CO_2e per gallon of diesel fuel. Applying the revised CCC, which accounts for the increased emissions, of \$0.14217419 per $MTCO_2e$, the calculated revised fee is:

102,400 $MTCO_2e$ x \$0.14217419 per $MTCO_2e$ = **\$14,559**

In this scenario, the difference in fees results in an increase of \$115 or 0.8 percent when applying CO_2e in place of CO_2.

The amendments will have a negligible economic impact to a majority of the entities subject to the Fee Regulation; however, some entities will experience larger economic impacts than others. Businesses that will experience the largest economic impact as a result of the amendments include facilities that combust petroleum coke as a result of a correction to the petroleum coke emission factor, municipal solid waste (MSW) facilities as a result of modifying the exemption to account for non-biogenic emissions, and natural gas suppliers that will no longer be subject to fees as a result of implementing thresholds.

Combustion of Petroleum Coke
12 out of 250 facilities would be affected by the correction to the petroleum coke emission factor from 2,530 kg CO_2/short ton to 3,072 kg CO_2/short ton. The average petroleum coke fee for the facilities that combust the fuel, is approximately \$12,000 and the average increase would be approximately \$2,500. The increase in fees for these facilities would result in fee decreases for the remaining fee payers.

Municipal Solid Waste Facilities
Three MSW facilities would be affected by the revision of the proposed MSW exemption to account for non-biogenic emissions. The average MSW facility fee is approximately \$1,000 and the average fee increase would be approximately \$11,000. The increase in fees for these facilities would also result in fee decreases for the remaining fee payers.

Natural Gas Suppliers
Approximately 10 natural gas suppliers would be exempt from fees as a result of implementing a 25,000 $MTCO_2e$ threshold totaling approximately \$12,000. The \$12,000 would be redistributed amongst the remaining 240 fee payers.

C. ANNUAL COST OF THE PROPOSED AMENDMENTS TO THE FEE REGULATION

1. Estimated Cost to Businesses

In accordance with Government Code section 11346.3, the staff has determined that the proposed regulatory action would not eliminate existing businesses within the State of California, and would not affect the creation of new businesses or the expansion of existing businesses currently doing business in California. The proposed regulatory action would not eliminate jobs within the State of California, and would not affect the creation of jobs within California.

In general, small businesses in regulated sectors would not be subject to the proposed regulation because their total GHG emissions are below the GHG reporting threshold, thereby exempting them from the Fee Regulation.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), staff found that 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 of California.

The Executive Officer has determined that representative private persons and businesses would not be affected by the proposed regulatory action. Pursuant to Government Code section 11346.5(a)(7)(C), 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, and little or no impact on the ability of California businesses to compete with businesses in other states.

The proposed amendments do not result in a net change in the total amount of fees collected each year. Although there is no net change in the total amount of fees collected, amendments to the Fee Regulation will redistribute fees among affected businesses and government agencies. Due to the structure and methodology of the CCC formula in the Fee Regulation, any fee increases to an entity is accompanied with a proportional decrease in fees provided to the remaining entities.

The two charts below show the percentage change in fee by sector, representing the redistribution of fees as a result of the amendments. The second chart displays the percentage change in fee by sector, without the percentage change in fees for the combustion of petroleum coke.

Figure VI.I.

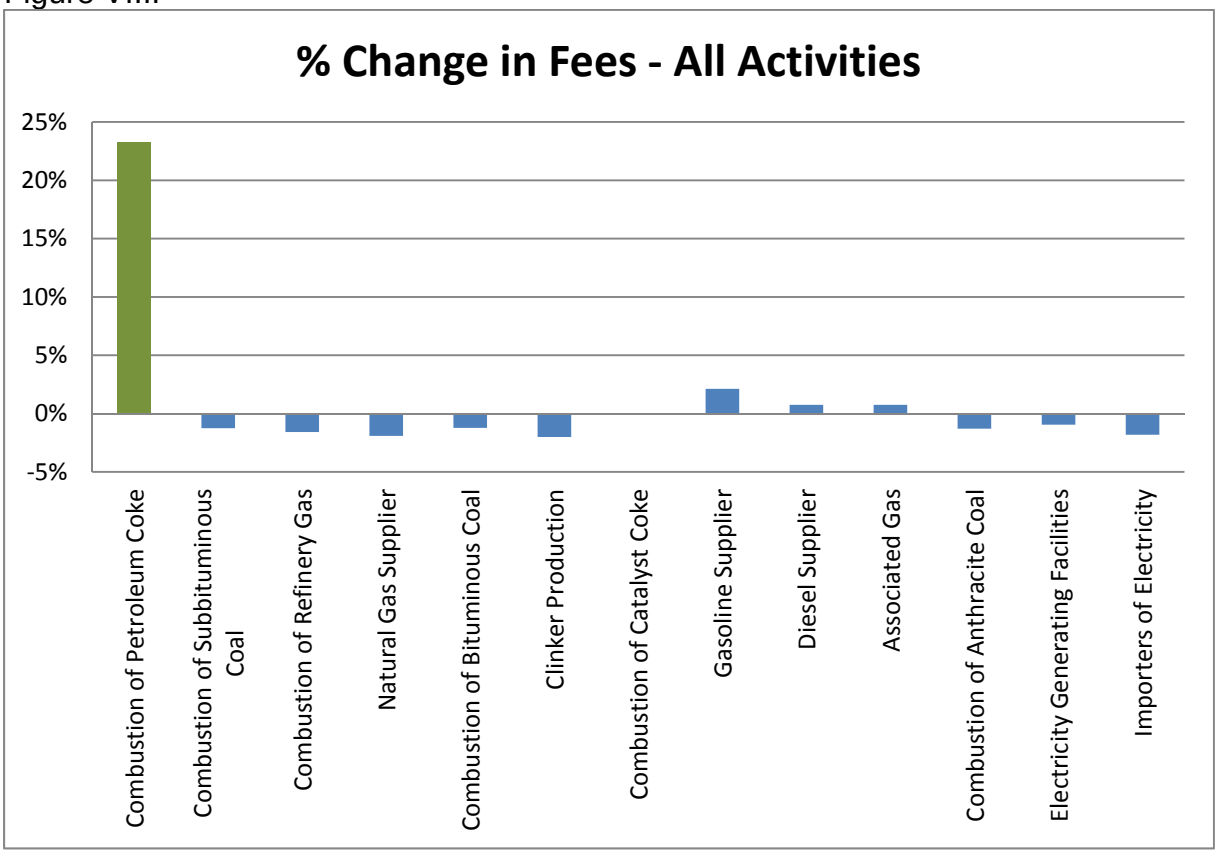
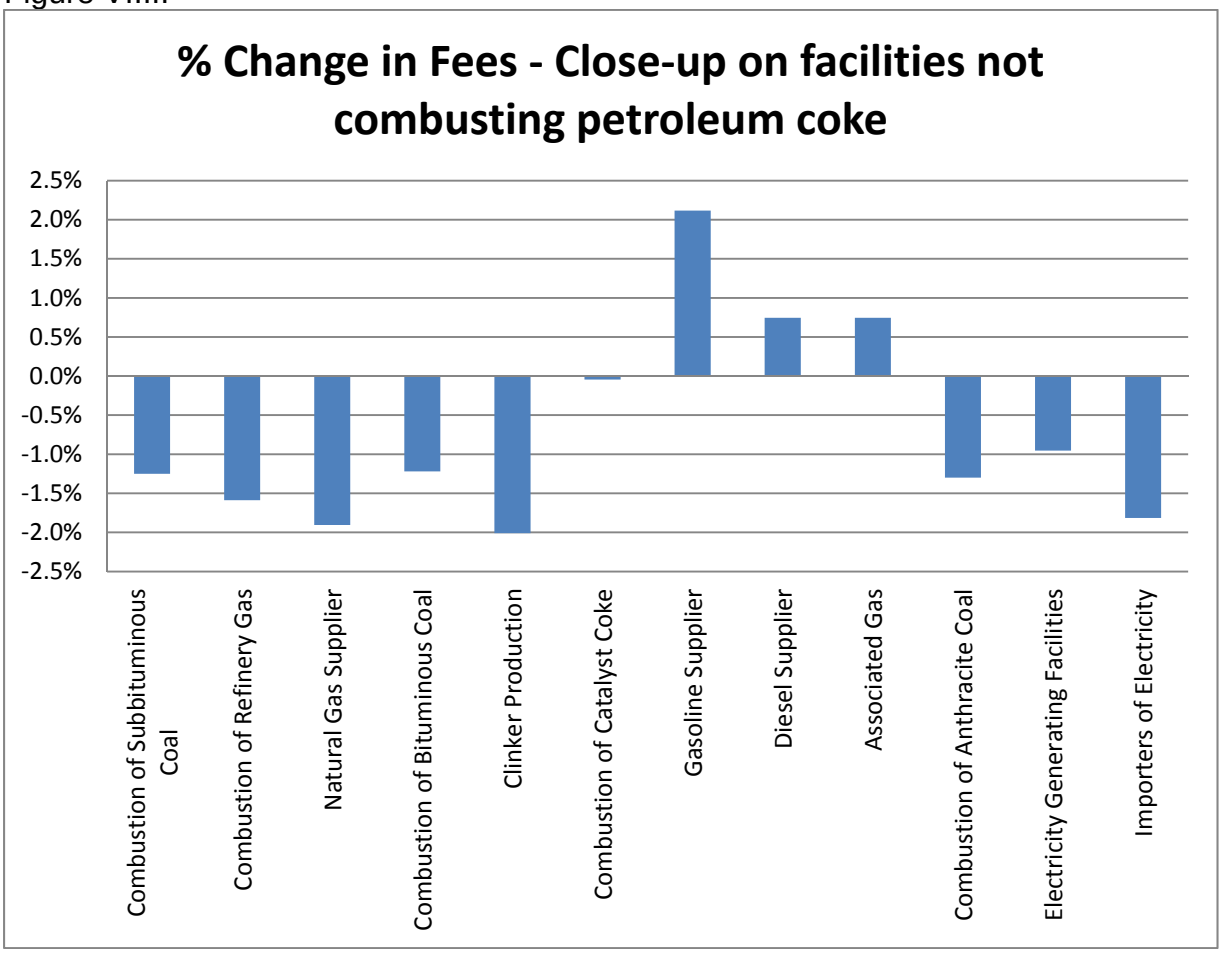

% Change in Fees - All Activities
25%
20%
15%
10%
5%
0%
-5%
Combustion of Petroleum Coke
Combustion of Subbituminous Coal
Combustion of Refinery Gas
Natural Gas Supplier
Combustion of Bituminous Coal
Clinker Production
Combustion of Catalyst Coke
Gasoline Supplier
Diesel Supplier
Associated Gas
Combustion of Anthracite Coal
Electricity Generating Facilities
Importers of Electricity

Figure VI.II.



2. Estimated Cost to Public Agencies

The proposed amendments to the Fee Regulation would not result in significant additional cost to local, State, or federal agencies. Any facility or entity that meets MRR applicability requirements is required to report their GHG emissions to ARB, including local, state, or federal government agencies.

Local Agencies
Staff identified approximately 50 local agencies from MRR data that are required to pay fees. As a result of the amendments to the Regulation, staff expects the 50 local agencies to collectively experience a decrease in fees of approximately $50,000.

State and Federal Agencies
One State agency is affected by the amendments and will save an estimated $2,000. In addition, two federal agencies will see a decrease in fees by $31 and a decrease by $250, respectively. The proposed amendments will not result in any additional costs to the ARB to implement the Fee Regulation.

D. ECONOMIC IMPACTS ASSOCIATED WITH PROPOSED ALTERNATIVE AMENDMENTS TO THE FEE REGULATION

ARB staff considered three alternatives to the proposed amendments.

Alternative 1: No Changes to the AB 32 Cost of Implementation Fee Regulation
A "no action" alternative means that ARB staff would not amend the Fee Regulation and the Program would take a "business-as-usual" approach. The "no action" alternative would have no fee payer impacts.

Alternative 2: Alternative amendment approach
Under this alternative, staff would propose the amendments in this Staff Report, but would exempt non-biogenic emissions from MSW facilities from fees. Each of the three facilities combusting non-biogenic MSW would continue to receive an average annual fee of approximately $1,000 and would not experience the average annual fee increase of $11,000 described in Staff's proposal. Staff considered the economic impact of this proposed alternative and determined that excluding non-biogenic emissions from fee invoicing would only slightly adjust the distribution of fees among the fee paying sectors and would not be consistent with the policy of equity for fee paying electricity generating facilities. The two charts below show the percentage change in fee by sector, representing the redistribution of fees as a result of implementing Alternative 2:

Figure VI.III.

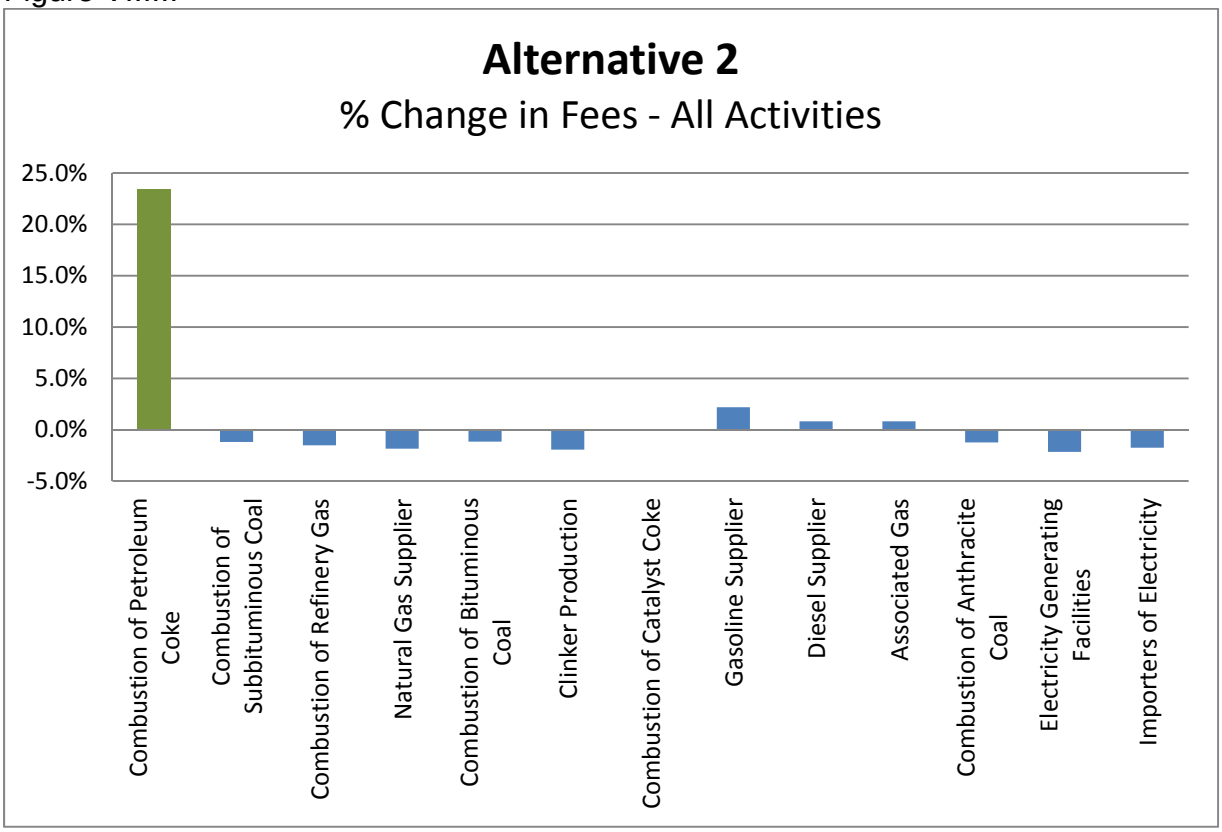
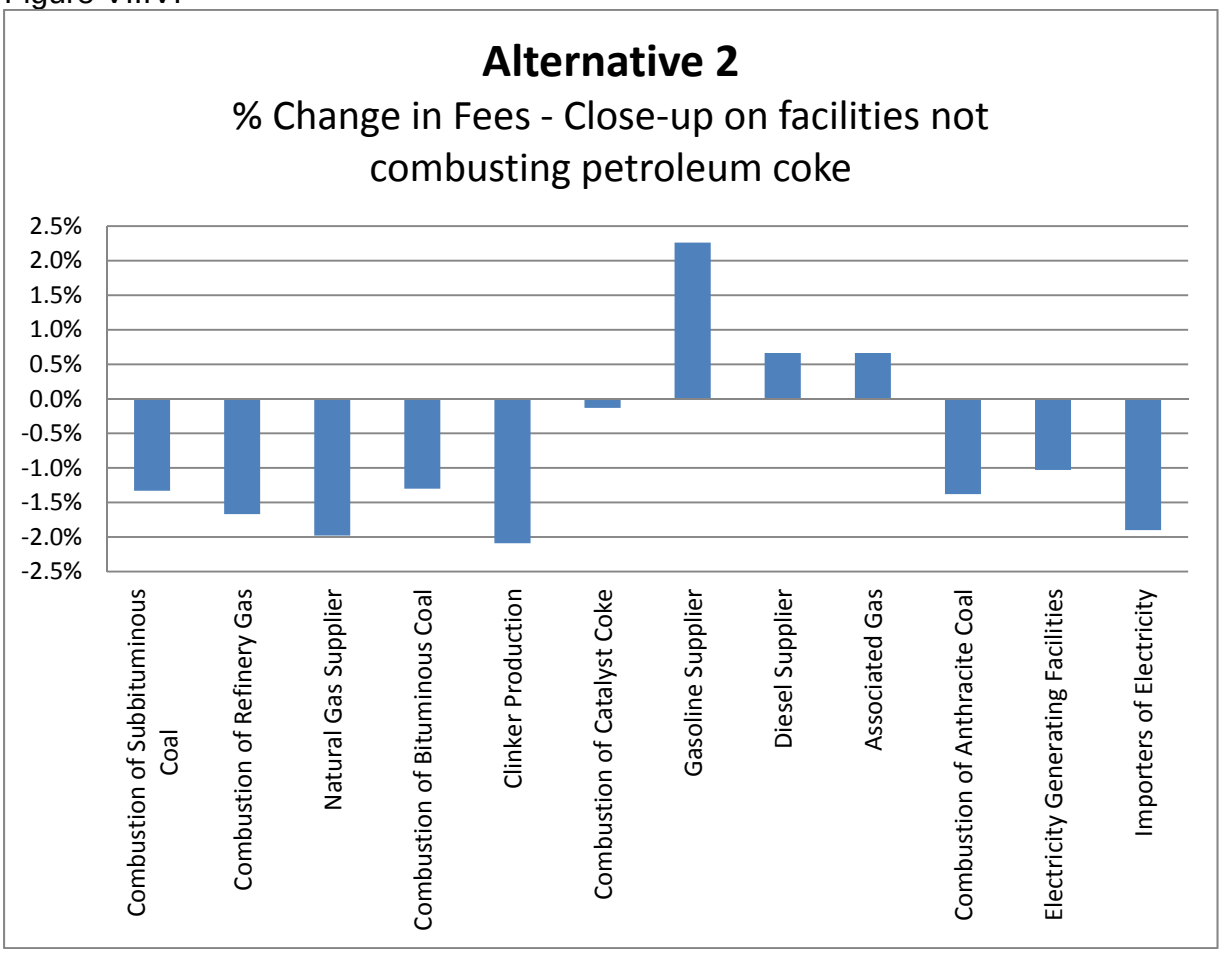


Figure VI.IV.



Alternative 3: Performance Standards in lieu of Fee Regulation amendments

A non-prescriptive performance standard would not meet the purposes required by the Fee Regulation, or its underlying statute, so the economic impacts of a performance standard were not considered.

No alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation.

VII. SUMMARY AND RATIONALE FOR EACH REGULATORY PROVISION

The following section explains in detail the rationale for each provision of the proposed amendments to the Fee Regulation.

A. APPLICABILITY – SECTION 95201

Summary of Section 95201(a)(1)(A)

This section is revised to implement a threshold (in therms of natural gas delivered) for public utility gas corporations and publicly owned natural gas suppliers. Language is modified to add the phrase "that are subject to section 95201(a)(4)".

Rationale for Section 95201(a)(1)(A)

The modification is necessary to align Fee Regulation provisions with MRR's verification requirements. Language was also added to clarify that the exclusion of natural gas delivered to electricity generating facilities (EGFs) only applies to those EGFs that are subject to the Fee Regulation. This language clarifies the Fee Regulation and ensures fees are applied, subject to the applicability threshold, to either the use of natural gas at EGFs or to the delivery of natural gas from suppliers.

Summary of Section 95201(a)(1)(B)

This section is revised to modify the threshold for end-users of natural gas received via interstate pipelines from 100,000 therms to a threshold that aligns with the verification requirements of MRR. Language is modified to add the phrase "that are subject to section 95201(a)(4)".

Rationale for Section 95201(a)(1)(B)

The modification is necessary to align Fee Regulation provisions to be consistent with MRR's verification requirements. Language was added to this section to clarify that the exclusion of natural gas delivered to EGFs only applies to those EGFs that are subject to the Fee Regulation. This language clarifies the Fee Regulation and ensures fees are applied to either the use of natural gas at fee-paying EGFs or to the delivery of natural gas from suppliers.

Summary of Section 95201(a)(1)(C)

This section deletes the reporting requirements of natural gas delivered from interstate pipelines.

Rationale for Section 95201(a)(1)(C)

The deletion of this section is necessary to remove redundant language because the reporting requirements for interstate pipeline deliveries to end-users are mandated pursuant to 95122 of MRR.

Summary of Section 95201(a)(1)(D), reordered to (a)(1)(C)

This section is revised to implement therms of natural gas delivered thresholds for owners of intrastate pipelines and to add the phrase "that are subject to section 95201(a)(4)".

Rationale for Section 95201(a)(1)(D), reordered to (a)(1)(C)

The modification is necessary to align Fee Regulation provisions to be consistent with MRR's verification requirements. Language was added to clarify that the exclusion of natural gas delivered to EGFs only applies to those EGFs that are subject to the Fee Regulation. This language clarifies the Fee Regulation and ensures fees are applied to either the use of natural gas at fee-paying EGFs or to the delivery of natural gas from suppliers.

Summary of Section 95201(a)(1)(E), reordered to (a)(1)(D)

This section is revised to add clarifying language related to the fee applicability of the combustion of gas produced on-site and to modify the reporting units from therms to tons of CO_2e from the combustion of produced natural gas.

Rationale for Section 95201(a)(1)(E), reordered to (a)(1)(D)

Language was added to clarify the applicability of the Fee Regulation to natural gas produced from gas wells. Combustion of natural gas produced from on-site gas wells is a source of GHG emissions. An amendment for this subsection revises the units for which fees are assessed from therms to emissions, which provides a more representative quantification of actual emissions. Language was also added to clarify that the exclusion of natural gas combusted only applies to those EGFs that are subject to the Fee Regulation. This language clarifies the Fee Regulation and ensures fees are applied to either the combustion of gas at fee-paying EGFs or to the delivery of natural gas from suppliers.

Summary of Section 95201(a)(1)(F), reordered to (a)(1)(E)

This section is revised to add clarifying language to the section related to the fee applicability of the combustion of associated gas produced on-site.

Rationale for Section 95201(a)(1)(F), reordered to (a)(1)(E)

This language is necessary to minimize reporting ambiguity and clarify the applicability of associated gas produced from oil wells. Combustion of associated gas produced from on-site gas wells is a source of GHG emissions. Language was also added to clarify that the exclusion of associated gas combusted only applies to those EGFs that are subject to the Fee Regulation. This language clarifies the Fee Regulation and ensures fees are applied to either the combustion of associated gas at fee-paying EGFs or to on-site combustion of associated gas.

Summary of Section 95201(a)(2)(A)&(B)

These sections are revised to implement fee applicability thresholds for producers and importers of California gasoline and California diesel.

Rationale of Section 95201(a)(2)(A)&(B)

The modification to implement thresholds for producers and importers of California gasoline and California diesel are necessary to align Fee Regulation provisions with MRR's reporting and verification requirements.

Summary of Section 95201(a)(3)

This section is revised to add clarifying language for the production of clinker.

Rationale of Section 95201(a)(3)

This language is necessary to clarify the applicability of process emissions from clinker production.

Summary of Section 95201(a)(4)

This section is revised to delete outdated language for electricity deliveries prior to January 1, 2011 and to state that certain Californian electric generating facilities are exempt from the fee.

Rationale of Section 95201(a)(4)

This modification is necessary to remove language that is no longer relevant and to clarify fee applicability to certain facilities.

Summary of Section 95201(a)(5)

This section is revised to clarify that coal coke is a fee-applicable fuel source and language is modified to add the phrase “subject to section 95201(a)(4).”

Rationale of Section 95201(a)(5)

This modification is necessary to ensure fee payer equity for facilities that combust various forms of coke. Language was also added to clarify that the fee exclusion for the combustion or consumption of coal, coal coke, petroleum coke, catalyst coke, or refinery fuel gas at EGFs only applies to EGFs that are subject to the Fee Regulation. According to the Fee Regulation, EGFs are invoiced directly for the combustion or consumption of these fuels.

Summary of Section 95201(c)

This section is revised to include the B100 and R100 indicators next to the exemptions for biodiesel and renewable diesel respectively. This section also modifies the MSW emissions exemption to exempt only the emissions from the combustion of the biogenic portion of MSW.

Rationale of Section 95201(c)

The amendments are necessary to clarify that exemptions for biodiesel and renewable diesel apply only to B100 and R100, and not the portion of the biofuels blended with petroleum diesel within California diesel, as defined elsewhere in the Fee Regulation. This modification of the MSW exemption to include applicability to non-biogenic MSW emissions provides equity amongst fee paying EGFs that combust fossil fuels. Non-biogenic MSW GHG emissions are the result of combusting fossil fuel derived materials such as plastics, textiles, synthetic rubber, and other materials. The modification of the MSW exemption to include non-biogenic MSW emissions is consistent with current Fee Regulation provisions and treatment of electricity generation from the combustion of fossil derived fuel.

Summary of Section 95201(d)

This section is revised to delete outdated language pertaining to electricity delivered prior to January 1, 2011.

Rationale of Section 95201(d)

This modification is necessary to remove language that is no longer relevant

B. DEFINITIONS – SECTION 95202

Summary of Section 95202(a)(7)

This section is revised to remove the term “Fee Regulation only” from the definition of associated gas.

Rationale of Section 95202(a)(7)

The modification is necessary for accuracy because the term associated gas is not used only in the Fee Regulation and associated gas reporting is required by MRR.

Summary of Section 95202(a)(15)

New section 95202(a)(15) is added to provide a definition for “Biogenic emissions.”

Rationale of Section 95202(a)(15)

This new definition is necessary to define biogenic emissions to support the exemption for biogenic MSW and support fee applicability of non-biogenic MSW emissions.

Summary of Section 95202(a)(22)(A)

This section is revised to remove the term “Vehicular Diesel Fuel” from the definition of “Produce.”

Rationale of Section 95202(a)(22)(A)

This revision is necessary to provide the correct definition for the term “Produce,” because the current Regulation incorrectly refers to “Produce” as having the same meaning as “Vehicular Diesel Fuel.”

Summary of Section 95202(a)(22)(B)

This section is revised to remove the term “Vehicular Diesel Fuel” from the definition of “Producer”.

Rationale of Section 95202(a)(22)(B)

This revision is necessary to provide the correct definition for the term "Producer," because the current Regulation incorrectly refers to "Producer" as having the same meaning as "Vehicular Diesel Fuel."

Summary of Section 95202(a)(25), renumbered (a)(26)

This section is revised to remove the term "Fee Regulation only" from the definition of catalyst coke.

Rationale of Section 95202(a)(25), renumbered (a)(26)

This revision is necessary because the emissions from catalyst coke are not exclusive to the Fee Regulation and required to be reported in MRR as part of fluidized catalytic cracking unit operations.

Summary of Section 95202(a)(32)

New section 95202(a)(33) is added to provide a definition for "Coal coke."

Rationale of Section 95202(a)(32)

This new definition is necessary to define coal coke which supports the fee applicability of this fuel.

Summary of Section 95202(a)(40)

This section is revised to remove the definition of "Covered emissions "

Rationale of Section 95202(a)(40)

This definition deletion is necessary to remove language that is not relevant to the Fee Regulation and is used for purposes of Cap-and-Trade.

Summary of Section 95202(a)(50), renumbered (51)

This section is revised to expand on the definition of "Electricity importers."

Rationale of Section 95202(a)(50), renumbered (51)

This revision is necessary to provide consistency with MRR's definition of the same term.

Summary of Section 95202(a)(57)

New section 95202(a)(57) is added to provide a definition for “Energy Imbalance Market.”

Rationale of Section 95202(a)(57)

This new definition is necessary to provide consistency with MRR’s definition of the same term.

Summary of Section 95202(a)(75)

New section 95202(a)(75) is added to provide a definition for “Gas well”.

Rationale of Section 95202(a)(75)

This new definition is necessary to support proposed amendments to the Fee Regulation and to provide consistency with MRR’s definition of the same term.

Summary of Section 95202(a)(81), renumbered (84)

This section is revised to expand the definition of “Imported electricity.”

Rationale of Section 95202(a)(81), renumbered (84)

This section is revised to provide consistency with the MRR’s definition of the same term.

Summary of Section 95202(a)(86)

This section is revised to remove the definition “Linked Jurisdiction”.

Rationale of Section 95202(a)(86)

The definition deletion is necessary to remove language that is not applicable to the Fee Regulation.

Summary of Section 95202(a)(105)

New section 95202(a)(105) is added to provide a definition for “Oil well.”

Rationale of Section 95202(a)(105)

This new definition is necessary to support proposed amendments to the Fee Regulation and to provide consistency with the MRR's definition of the same term.

Summary of Section 95202(a)(108), renumbered (111)

This section is revised to expand on the definition of "Petroleum coke."

Rationale of Section 95202(a)(108), renumbered (111)

This section is revised to provide consistency with the MRR's definition of the same term.

Summary of Section 95202(a)(121)

This section is revised to remove the definition "Radiative forcing".

Rationale of Section 95202(a)(121)

The definition deletion is necessary to remove language that is not used in the Fee Regulation.

Summary of Section 95202(a)(127)

New section 95202(a)(127) is added to provide a definition for "Renewable Energy Credit."

Rationale of Section 95202(a)(127)

This new definition is necessary to support the Fee Regulation and to provide consistency with the MRR's definition of the same term.

Summary of Section 95202(a)(136)

This section is revised to remove the definition "Steam methane reforming process."

Rationale of Section 95202(a)(136)

This definition deletion is necessary to remove language that is not applicable to the Fee Regulation.

C. CALCULATION OF FEES – SECTION 95203

The amendments to this section include modification of fee calculations to replace CO_2 emissions with CO_2e emissions, transition from the use of Fee Regulation emission factors to the use of MRR emission factors, modification of the emission factor methodology for transportation fuels and cement manufacturers, the addition of emissions from coal coke and produced natural gas from gas wells in the CCC formula, removal of outdated language, and the addition of clarifying language. The proposed amendments are described below.

Summary of Section 95203(a)(2)

This section is revised to remove language related to the repayment of loans used for program start-up costs.

Rationale of Section 95203(a)(2)

This revision is necessary to remove language that is no longer applicable to the Fee Regulation.

Summary of Section 95203(b)

This section is revised to modify the Common Carbon Cost formula, which support the proposed amendments described in this staff report. The changes include the modification of emissions applicability from CO_2 to CO_2e, replacement of produced natural gas reported in therms with produced natural gas emissions, inclusion of coal coke emissions, and clarifying language additions.

Rationale of Section 95203(b)

The modification to the CCC formula is necessary to support proposed amendments described in this staff report, such as, changes to modify emissions applicability from CO_2 to CO_2e, revision of required reporting units from therms to emissions for produced natural gas, inclusion of coal coke emissions, and clarifying language additions. The current Fee Regulation assesses fees on CO_2 only, which is inconsistent with other ARB climate change programs that focus primarily on CO_2, CH_4, and N_2O emissions. As currently designed, the Fee Regulation does not reflect the additional contribution of CH_4 and N_2O emissions to climate change and does not capture fees to support the additional administrative workload associated with implementing programs that address these emissions.

Summary of Section 95203(c)

This section is revised to add the phrase “and (f)(3)” to reference the reporting requirements for petroleum coke in section 95204 that was renumbered to (f)(3).

Rationale of Section 95203(c)

This section is revised to support the inclusion of coal coke in section 95204(f)(2) for the calculation of the fuel fee rate. The revision to include coal coke is being made to clarify that the Fee Regulation applies to emissions from the use of fossil fuels and fossil fuel derived by-products, including emissions from coke derived from coal.

Summary of Section 95203(d)

This section is revised to delete the table of emission factors and provide language to reference the use of emission factors pursuant to MRR or describe the calculation method of applicable emission factors for transportation fuels and cement production.

Rationale of Section 95203(d)

The revision to this section is necessary to better align the Fee Regulation with MRR. Referencing MRR emission factors ensures consistency with the emission factors used in reporting and for other climate programs.

Summary of Section 95203(e)

This section is revised to delete outdated language related to electricity deliveries prior to January 1, 2011.

Rationale of Section 95203(e)

The revision is necessary to remove language that is no longer relevant, as ARB staff conducted invoicing according to the Fee Regulation for electricity deliveries prior to January 1, 2011 in 2013.

Summary of Section 95203(f), reordered to (e)(1)

New section 95203(e)(1) is added to provide a calculation of electricity fee rates for in-state electricity generation.

Rationale of Section 95203(f), reordered to (e)(1)

This new section is necessary to disaggregate the electricity fee rate formulas to clearly state the distinction between in-state electricity generation and imported electricity calculations.

Summary of Section 95203(f), reordered to (e)(2)

This section is revised to update the unspecified source emission factor from 0.427 $MTCO_2$ per MWh to 0.428 $MTCO_2e$ per MWh, the addition of a transmission loss factor for specified sources in the electricity fee rate calculation, and the removal of the emission factor for unspecified imports from linked jurisdictions.

Rationale of Section 95203(f), reordered to (e)(2)

The revisions to this section are necessary to support the modification of emissions applicability from CO_2 to CO_2e, align the section with MRR provisions, and remove language that is no longer relevant.

Summary of Section 95203(g), reordered to (f)

This section is revised to provide a separate section for the calculation of emission factors from in-state electricity generation. Additional modifications to this section consist of the removal of language that is no longer relevant.

Rationale of Section 95203(g), reordered to (f)

The separate section is necessary to provide clear and disaggregated calculations of the emission factors for in-state electricity generation and imported electricity from specified sources. Other revisions to this section remove language that is no longer relevant.

Summary of Section 95203(h), reordered to (g)

This section is revised to provide a separate section for the calculation of emission factors for imported electricity from specified sources.

Rationale of Section 95203(h), reordered to (g)

The separate section is necessary to provide clear and disaggregated calculations of the emission factors for in-state electricity generation and imported electricity from specified sources. The revision to this section supports proposed amendments to section 95203(g), reordered to (f).

Summary of Section 95203(i), reordered to (h)

This section is revised to reference the methodology for the calculation of asset-controlling supplier emission factors pursuant to MRR. Additional revisions to this section remove language related to emission factor calculations for asset controlling suppliers.

Rationale of Section 95203(i), reordered to (h)

The revisions to this section support the alignment of the Fee Regulation with MRR provisions and removal of language that is no longer relevant.

Summary of Section 95203(j), reordered to (i)

The revision removes language that references another section of the Fee Regulation regarding fee calculations for associated gas.

Rationale of Section 95203(j), reordered to (i)

The revisions to this section are necessary to remove language that is no longer relevant.

Summary of Section 95203(k), reordered to (j)

This section is revised to add the fee liability for coal coke.

Rationale of Section 95203(k), reordered to (j)

This section is revised to support the proposed inclusion of coal coke as an applicable fuel source.

Summary of Section 95203(l), reordered to (k)(1)

New section 95203(l), reordered to (k)(1) is added to provide a section clearly describing the fee liability from in-state electricity generation.

Rationale of Section 95203(l), reordered to (k)(1)

This new section is added to clearly distinguish between the fee liability of in-state electricity generation and imported electricity.

Summary of Section 95203(l), reordered to (k)(2)

This section is revised to provide a section for the fee liability for imported electricity.

Rationale of Section 95203(l), reordered to (k)(2)

The revision to this section is necessary to clearly distinguish between the fee liability of in-state electricity generation and imported electricity.

Summary of Section 95203(m), reordered to (l)

This section is revised to include the fee liability for the produced natural gas emissions, the addition of $MTCO_2e$, and to remove the reference to 95204(h) which is the reporting requirements of cement manufacturers. A new section 95203(m) is added for calculating the fee liability of cement manufacturers.

Rationale of Section 95203(m), reordered to (l)

The revisions to this section are necessary to support modifications to the reporting requirements of produced natural gas, modification to emissions applicability, and the alignment of MRR provisions.

Summary of Section 95203(m)

New section 95203(m) is added to include the fee liability calculation for cement manufacturers.

Rationale of Section 95203(m)

The revisions to this section are necessary to align with MRR emission factors. The addition is needed to address the use of continuous emissions monitoring system (CEMS) by cement manufacturers, which aggregates combustion and process emissions from clinker production. The methodology added utilizes the quantity of clinker produced multiplied by a clinker emission factor to quantify the total amount of process emissions resulting from clinker production.

D. REPORTING AND RECORDKEEPING REQUIREMENTS – SECTION 95204

Minor amendments are being proposed to section 95204 “Reporting and Recordkeeping Requirements” which are designed to shift the Fee Regulation reporting requirements to the applicable reporting requirements of the MRR. The remaining amendments to this section consist of the addition of clarifying language to minimize ambiguity of the listed provisions.

Summary of Section 95204(b)(1)

This section is revised clarify that the requirement to report entity information is fulfilled by reporting pursuant to section 95103 of MRR.

Rationale of Section 95204(b)(1)

The revisions to this section are necessary to align the Fee Regulation with MRR provisions.

Summary of Section 95204(b)(2)

This section is revised to clarify that the requirement to certify reports is fulfilled pursuant to the requirements of MRR.

Rationale of Section 95204(b)(2)

The revisions to this section are necessary to align the Fee Regulation with MRR provisions.

Summary of Section 95204(c)(1)

This section is revised to remove language regarding the reporting timeline for report years 2008 and 2009..

Rationale of Section 95204(c)(1)

The revision is necessary to remove language that is no longer relevant, because emissions data reports for years 2008 and 2009 have already been submitted to ARB.

Summary of Section 95204(c)(2)

This section is revised to remove language regarding the reporting timeline for report years 2010 and 2011.

Rationale of Section 95204(c)(2)

The revisions to this section are necessary to remove language that is no longer relevant because emissions data reports for years 2010 and 2011 have already been submitted to ARB.

Summary of Section 95204(c)(3), reordered (c)(1)

This section is revised to align the Fee Regulation deadline for the submittal of reports with the reporting deadlines described in section 95103(e) of MRR for all entities subject to the Fee Regulation.

Rationale of Section 95204(c)(3), reordered (c)(1)

The revisions to this section are necessary to align the Fee Regulation with MRR provisions.

Summary of Section 95204(c)(4)

This section is revised to remove language regarding the reporting timeline for electricity importers for report year 2012.

Rationale of Section 95204(c)(4)

The revisions to this section are necessary to remove language that is no longer relevant because electricity importer reports for 20212 have already been submitted to ARB.

Summary of Section 95204(d)(1)

This section is revised to remove Fee Regulation specific reporting requirements for natural gas deliveries and to clarify that these reporting requirements are to be fulfilled pursuant to section 95122(b)(d) of the MRR.

Rationale of Section 95204(d)(1)

The revisions to this section are necessary to align the reporting requirements for the Fee Regulation with MRR provisions.

Summary of Section 95204(d)(2)

This section is revised to remove Fee Regulation specific reporting requirements for natural gas deliveries and to clarify that these reporting requirements are to be fulfilled pursuant to section 95122(b)(d) of the MRR.

Rationale of Section 95204(d)(2)

The revisions to this section are necessary to align the reporting requirements of the Fee Regulation with MRR provisions.

Summary of Section 95204(d)(3)

This section is revised to clarify that the reporting requirements are to be fulfilled pursuant to section 95122 of MRR.

Rationale of Section 95204(d)(3)

The revisions to this section are necessary to align the reporting requirements of the Fee Regulation with MRR provisions and provide clarification for reporting entities.

Summary of Section 95204(d)(4)

This section is deleted to remove language related to the required reporting information for interstate pipelines. and to clarify that these reporting requirements are to be fulfilled pursuant to 95122 of MRR.

Rationale of Section 95204(d)(4)

The deletion of this section is the result of the reporting requirements for interstate pipeline deliveries to end-users are fulfilled pursuant to 95122 of MRR.

Summary of Section 95204(d)(5), reordered to (d)(4)

This section is revised to modify required reporting for produced natural gas from gas wells from units of energy (therms) to units of emissions. Clarifying language regarding natural gas produced from gas wells is added.

Rationale of Section 95204(d)(5), reordered to (d)(4)

The revisions to this section to modify reporting units from therms to emissions provide a more representative quantification of actual emissions. Clarifying language is added to minimize ambiguity regarding the reporting of produced natural gas.

Summary of Section 95204(d)(6), reordered to (d)(5)

This section is revised to add clarifying language for produced associated gas from oil wells.

Rationale of Section 95204(d)(6), reordered to (d)(5)

The revisions to this section clarify the reporting requirements for produced associated gas.

Summary of Section 95204(d)(8), reordered to (d)(7)

This section is revised to remove language pertaining to report years 2011 and subsequent years.

Rationale of Section 95204(d)(8), reordered to (d)(7)

The revisions to this section are necessary to remove language that is no longer relevant because emissions data reports for 2011 have already been submitted to ARB.

Summary of Section 95204(e)

This section is revised to clarify that the reporting requirements for producers and importers of gasoline and diesel fuels are to be fulfilled pursuant to the reporting requirements of section 95113(m) or 95121(d) of MRR.

Rationale of Section 95204(e)

The revisions to this section are necessary to align the reporting requirements of the Fee Regulation with MRR provisions.

Summary of Section 95204(f)

This section is revised to include reporting requirements for coal coke and to add language to clarify that the reporting requirements are to be fulfilled pursuant to MRR.

Rationale of Section 95204(f)

The revisions to this section are necessary to for the inclusion of coal coke as an applicable fuel source and to align the Fee Regulation reporting requirements with MRR provisions.

Summary of Section 95204(h)

This section is revised to remove Fee Regulation specific reporting of process emissions for cement manufacturers.

Rationale of Section 95204(h)

The revisions to this section are necessary to align the Fee Regulation reporting requirements with MRR provisions.

Summary of Section 95204(i)

This section is revised to clarify that the retention of reporting records are to be fulfilled pursuant to the applicable sections of the MRR.

Rationale of Section 95204(i)

The revisions to this section are necessary to align the Fee Regulation with the MRR provisions and provide clarification for reporting entities.

VIII. REFERENCES

1. California Air Resources Board (2009). Staff Report: Initial Statement of Reasons for Rulemaking, Proposed AB 32 Cost of Implementation Fee Regulation and Proposed Amendment to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions. Released May 8, 2009. http://www.arb.ca.gov/regact/2009/feereg09/feeisor.pdf

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4. California Air Resources Board (2014). Mandatory Greenhouse Gas Reporting Regulation. February 2014. http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-regulation.htm

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