

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE COST OF IMPLEMENTATION FEE REGULATION.

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 et seq.), which was developed pursuant to requirements of the California Global Warming Solutions Act of 2006.

DATE: September 18, 2014  
TIME: 9:00 a.m.  
PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item may be considered at a two-day hearing of the Board, which will commence at 9:00 a.m., September 18, 2014, and may continue at 8:30 a.m., September 19, 2014. This item may not be considered until September 19, 2014. Please consult the agenda for the hearing, which will be available at least 10 days before September 18, 2014, to determine the day on which this item will be considered.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)**

**Sections Affected:** Proposed amendments to California Code of Regulations, title 17, sections 95201, 95202, 95203, and 95204.

#### **Background and Effect of Proposed Rulemaking:**

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.

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 Mandatory Reporting Regulation (MRR) and the Cap-and-Trade Regulation, which were approved by OAL on December 19, 2012, and became effective January 1, 2013.

ARB staff is proposing amendments to the reporting regulation to be heard at the Board's September 18-19, 2014 hearing. 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<sub>2</sub>) to metric tons of carbon dioxide equivalents (MTCO<sub>2</sub>e).
- Implementation of the MRR verification requirement thresholds (i.e., 25,000 MTCO<sub>2</sub>e) 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 emissions from combustion of non-biogenic municipal solid waste.
- 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 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. The staff

report provides a detailed breakdown of the impact the proposed amendments would have on fee payers.

**Objectives and Benefits of the Proposed Regulation:**

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 amount of funding collected each year is determined by the fiscal year State budget appropriations for AB 32 implementation. To ensure equity in fees, ARB determines annual invoices by calculating a Common Carbon Cost, which represents a uniform per metric ton cost for a particular report year. ARB determines the Common Carbon Cost by dividing the total annual program cost, referred to as the Total Required Revenue, by the sum of the GHG emissions across all fee payers subject to the regulation.

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.

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; and
- Provide a more equitable distribution of fees.

Below is a summary of proposed updates to the reporting regulation. A more detailed description of the proposed updates appears in the Summary and Rationale section of the Initial Statement of Reasons (ISOR).

1. Modify the emissions applicability from CO<sub>2</sub> to CO<sub>2e</sub> 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<sub>2</sub> only, which is inconsistent with other ARB climate change programs and Mandatory Reporting Regulation data collection that focus primarily on CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions. As currently designed, the Fee Regulation does not reflect the additional contribution of CH<sub>4</sub> and N<sub>2</sub>O 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<sub>2</sub> 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<sub>4</sub> and N<sub>2</sub>O 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<sub>2</sub>e. This amendment further aligns with the MRR and the Cap-and-Trade Regulation provisions, which also have 25,000 MTCO<sub>2</sub>e 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 fees 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<sub>2</sub> per short ton to 3,072 kg CO<sub>2</sub> per short ton. In addition, the current Fee Regulation emission factors account for only CO<sub>2</sub> 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.

**DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

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

**MANDATED BY FEDERAL LAW OR REGULATIONS**

This regulation is not mandated by federal law or regulations.

**COMPARABLE FEDERAL REGULATIONS**

This Regulation does not have a comparable Federal Regulation which assesses fees for the implementation of climate change programs.

**AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled: "Staff Report: Initial Statement of Reasons for Rulemaking: Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, or by calling (916) 322-2990, on July 29, 2014

**Final Statement of Reasons Availability**

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

**Agency Contact Persons**

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. David Mallory, Manager of ARB Climate Change Policy Section, Stationary Source Divisions, at (916) 445-8316, or Mrs. Trish Johnson, Staff, Air Pollution Specialist, at (916) 445-3365.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to is Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

### **Internet Access**

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

<http://www.arb.ca.gov/regact/2014/feereg2014/feereg2014.htm>

### **DISCLOSURES REGARDING THE PROPOSED REGULATION**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below. Chapter VI of the ISOR for the proposed regulation includes additional data on the estimated costs to affected entities.

### **Fiscal Impact / Local Mandate**

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not result in additional costs to State agencies and local government entities. ARB 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, when compared to prior year invoices.

Because the regulatory requirements apply equally to all fee paying entities, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution. In addition, there are no other nondiscretionary costs or savings imposed upon local agencies.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings in federal funding to the state, or costs or mandate to any school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

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

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete**

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

**Cost Impacts on Representative Private Persons or Businesses**

Staff utilized the prior year required revenue to analyze the cost impacts of the proposed amendments and determined that the amendments will not result in a net change in the total amount of fees required and 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.

While staff utilized the same required revenue to estimate overall year-over-year cost changes as a result of the proposed amendments, individual fee payer invoice amounts are typically determined by changes in the annual required revenue and annual emissions. 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.

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

**Results of The Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.3(b)**

**Effect on Jobs/Businesses:**

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

**Benefits of the Proposed Regulation:**

Anticipated benefits of the proposed revisions include the alignment of climate change regulatory provisions, capture of a broader range of statewide GHG emissions, improved clarity for fee paying entities, provide a more equitable distribution of fees, transition reliance from certified data to third-party verified data, and streamline program administration. A further discussion on the economic impacts and benefits of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

### **Effect on Small Business**

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

### **Housing Costs**

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

### **Business Report**

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

### **Alternatives**

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. ARB staff considered three alternatives to the proposed amendments. These alternatives are described in Chapters III and VI of the ISOR.

### **ENVIRONMENTAL ANALYSIS**

ARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory action and concluded that this is exempt pursuant to CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may have a significant adverse impact on the environment. The environmental analysis of the proposed regulatory action and a brief explanation of the basis for reaching this conclusion are included in Chapter IV of the ISOR.

### **WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Interested members of the public may present comments relating to this matter orally or in writing at the hearing, and may provide comments by postal mail or electronic submittal before the hearing. The public comment period for this regulatory item will begin on August 1, 2014. To be considered by the Board, written submissions not physically submitted at the hearing must be submitted on or after August 1, 2014, and received **no later than 5:00PM, September 15, 2014**, and must be addressed to the following:

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

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

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

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

#### **AUTHORITY AND REFERENCE**

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

#### **HEARING PROCEDURES**

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## SPECIAL ACCOMMODATION REQUEST

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

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

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

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

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

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

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

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey  
Executive Officer

Date: July 18, 2014

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.arb.ca.gov](http://www.arb.ca.gov)*