

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO THE COST OF IMPLEMENTATION FEE REGULATION

Sections Affected: Amendments to sections 95201, 95202, 95203, and 95204 to title 17, California Code of Regulations (CCR).

Background:

In this rulemaking, the Air Resources Board (ARB or the Board) has approved proposed revisions to the AB 32 Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 *et seq.*) (Fee Regulation). The Fee Regulation as originally developed pursuant to the requirements of Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Health and Safety Code sections 38501-38599), in which the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California.

AB 32 created a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California, with the overall goal of reducing emissions to 1990 levels by 2020. The administration, implementation, and enforcement of measures to achieve the emissions reductions goals require a stable source of funding. Accordingly, AB 32 authorizes ARB to adopt a schedule of fees to be paid by the sources of GHG emissions. The Fee Regulation was accordingly adopted by the Board in 2010, with subsequent amendments in 2011 and 2012.

On July 29, 2014, ARB issued a notice of public hearing to consider proposed amendments to the Fee Regulation at the Board's September 18, 2014 hearing. A "Staff Report: Initial Statement of Reasons for Rulemaking" (Staff Report) was made available for public review and comment starting July 29, 2014. The Staff Report contained a description of the rationale for the proposed amendments. The text of the proposed amendments was included as Appendix A to the Staff Report. The Staff Report and Appendix A were also posted to ARB's web site at: <http://www.arb.ca.gov/regact/2014/feereg2014/feereg2014.htm>

At its September 18, 2014, public hearing, the Board approved for adoption amendments to the existing Fee Regulation. At the hearing, the Board received written and oral comments. The Board approved Resolution 14-33, which endorsed the revisions proposed in the Staff Report: Initial Statement of Reasons released on July 29, 2014, along with a small number of modifications proposed by staff. In Resolution 14-33, the board directed the Executive Officer to adopt the proposed regulation with the modifications identified in the Resolution and other conforming modifications as may be appropriate, after making the modified language and any additional supporting documents available to the public for a comment period of no less than 15 days, in accordance with Government Code section 11346.8(c).

Resolution 14-33 also directed the Executive Officer to consider written comments as may be submitted during this period, and to make such modifications as may be appropriate in light of the comments received, and to present the regulation to the Board for further consideration if the executive Officer determined this was warranted in light of the comments received.

Further modifications to the Fee Regulation were released on October 2, 2014 in a "Notice of Public Availability of Modified Text," together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from October 2, 2014 to October 17, 2014, pursuant to Government Code section 11346.8. The approved amendments make clarifying Fee Regulation requirements; integrate many Fee Regulation requirements into the separate Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) (reporting regulation) for ease of compliance, and adjust the applicability of the Fee Regulation to ensure that it appropriately gathers fees from covered sectors.

Description of Adopted Regulatory Action:

The purpose of the Fee Regulation is to supply a stable and continuous source of funding to carry out the purposes of AB 32. The proposed amendments strengthen the Fee Regulation and make it more equitable and effective in several ways. The amendments integrate many formerly separately Fee Regulation reporting requirements directly into the reporting regulation, thereby reducing reporting requirements and procedural costs for covered entities. They also make clear that fees will be calculated based on emissions of all covered greenhouse gases, rather than carbon dioxide alone. Further, the amendments eliminate fee burdens for some small natural gas suppliers and transportation fuel importers and providers. They also include fee coverage for combustion emissions from non-biogenic solid waste. The amendments also clarify several definitions and correct some technical calculation errors.

Anticipated benefits of the proposed revisions include improved clarity of Fee Regulation obligations, more equitable assessment of fees on covered entities, reduced reporting burdens for covered entities, and continued support for California's AB 32 programs. These benefits may also result in indirect benefits to the health and welfare of California residents, worker safety, and the state's environment by supporting programs which will reduce emissions and directly improve the health and welfare of California residents, worker safety, and the state's environment.

The Board's Action

At its September 18, 2014 public hearing, the Board adopted Resolution 14-33, which approved the amendment of Division 3, Chapter 1, Subchapter 10, Article 3, sections 95201, 95202, 95203, and 95204 to title 17, California Code of Regulations.

At the hearing, the staff presented and the Board approved modifications to the regulation that were originally proposed in the Staff Report released on July 29, 2014, in

response to comments received since the Staff Report was published. In addition, based on public comments received, the board directed staff to provide additional modifications to the regulation. The Board also directed staff to make the modified text available for a supplemental public comment period of at least 15 days.

Fifteen-Day Changes

In accordance with Government Code section 11346.8, in Resolution 14-33 the Board directed the Executive Officer to adopt the proposed regulation, with the modifications identified in the Resolution and other conforming modifications as may be appropriate, after making the modified language and any additional supporting documents available to the public for a comment period of no less than 15 days. Resolution 14-33 also directed the Executive Officer to consider written comments as may be submitted during this period, and to make such modifications as may be appropriate in light of comments received, and to present the regulations to the Board for further consideration if the Executive Officer determined this was warranted in light of the comments received.

Further modifications to the Fee Regulation were released on October 2, 2014 in a "Notice of Public Availability of Modified Text," together with a copy of the full text of the regulation modifications, with the modifications clearly indicated. The comment period extended from October 2, 2014 to October 17, 2014, pursuant to Government Code section 11346.8. The approved amendments were based on direction from the Board and stakeholders comments. To summarize, the amendments include clarifications to the applicability of the regulation to certain fuels, technical clarifications to definitions, record retention, and calculation requirements, clarifications to the amendments' effective date, and amendments to provisions covering electricity importers to further align the Fee Regulation with the reporting regulation.

The notice describing the changes and the text of the 15-day changes are available here: <http://www.arb.ca.gov/regact/2014/feereg2014/feereg2014.htm>

Additional Modifications

After the close of the 15-day comment period, the Executive Officer determined that no additional modifications should be made to the regulation, with the exception of non-substantial changes, including punctuation and formatting corrections and corrections of typographical errors which are fully described in the Final Statement of Reasons for the Rulemaking, available here:

The Executive Officer subsequently issued Executive Order No. R-14-016 on November 14, 2014, approving the regulations with the proposed modifications.

Comparable Federal Regulations: There are no federal regulations that are comparable to this Fee Regulation or proposed amendments to the Fee Regulation.

Changes to Underlying Laws or Effect of the Regulations

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.