State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text and Availability of Additional Documents

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

Public Hearing Date: September 22, 2016
First Public Availability of Modified Text: December 21, 2016

Second Public Availability of Modified Text: April 13, 2017
Deadline for Second Public Comment Period: April 28, 2017

At its September 22, 2016, public hearing, staff presented the Air Resources Board (ARB or Board) with amendments to California's existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Regulation or MRR) (title 17, California Code of Regulations, (CCR), section 95100 *et seq.*), to ensure that reported greenhouse gas (GHG) data are accurate and fully support the California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms (title 17, California Code of Regulations, section 95800 et seq.) (Cap-and-Trade Regulation). Staff also presented revisions to ensure the data that is collected for ARB's other climate change programs are complete, accurate, and comply with the United States Environmental Protection Agency Clean Power Plan. The amendments were developed pursuant to the requirements of the California Global Warming Solutions Act of 2006, also known as Assembly Bill 32 (AB 32).

At its September 22, 2016, public hearing, the Board was informed of proposed amendments including modifications to sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95117, 95118, 95119, 95121, 95122, 95124, 95129, 95130, 95131, 95132, 95133, 95150, 95153, 95156, 95157, Appendix A, and Appendix B, and proposed adoption of new sections 95160, 95161, 95162, and 95163, title 17, California Code of Regulations. The regulatory documents for this rulemaking are available online at the following ARB website:

http://www.arb.ca.gov/regact/2016/ghg2016/ghg2016.htm

The Board did not take action on the proposal at the September 2016 Board hearing. Staff released a first Notice of Public Availability of Modified Text and Additional Documents on December 21, 2016. Based on comments received during the comment period, as well as further staff analysis, additional revisions to the regulation are reflected in this second Notice of Public Availability of Modified Text and Availability of Additional Documents. The changes are described below and are incorporated in the modified regulatory text.

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. The deletions and additions to the proposed language that were made public with the first notice are shown in ~~double strikethrough~~ and double underline format, respectively. New deletions and additions to the proposed language that are made public with this second notice are shown in **~~bold-strikethough~~** and **bold-underline** format, respectively.

In the Final Statement of Reasons, staff will respond to comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments related to changes that are noticed. Therefore, staff will only address comments filed in this comment period that are responsive to the modifications to the originally proposed amendments that are described in this notice or identified by the **~~bold-strikethrough~~** and **bold-underline** formatting in Attachment A. Staff will also respond to comments relating to the documents added to the rulemaking file, as identified later in this notice.

Summary of Proposed Modifications

Staff's proposed modifications to the originally proposed amendments to sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95117, 95118, 95119, 95121, 95122, 95124, 95129, 95130, 95131, 95132, 95133, 95150, 95153, 95156, 95157, Appendix A, and Appendix B, and proposed adoption of new sections 95160, 95161, 95162, and 95163, title 17, CCR are summarized below and attached to this notice as Attachment A. All subsequent section references are to title 17, CCR, unless otherwise noted.

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting; nor does it include all of the non-substantive revisions made to improve clarity. For a complete account of all modifications in the originally proposed regulatory amendments, refer to the double underline and ~~double strikeout~~ sections of the regulation in Attachment A.

A. Modifications to Section 95101. Applicability.

Staff is not proposing changes to this section.

B. Modifications to Section 95102. Definitions.

Staff is further proposing several MRR definitions to make clarifications and address stakeholder comments.

The definitions of "Butter," "Buttermilk powder," "Freshwater diatomite filter aids," "Intermediate dairy ingredients," and "Seamless rolled ring" are modified only to eliminate text stating that staff may propose a revision to this definition after reviewing

the benchmark. The definitions that existed prior to the originally proposed amendments are retained. In addition, staff added a definition for "Boric oxide equivalent" to support the collection of product data for the Cap-and-Trade Program. Staff also modified the definition of "Soda ash equivalent" to align with changes to the Cap-and-Trade Regulation, and added definitions for "Adjusted hulled and dried pistachios," "Flavored pistachios," "Blanched almonds," "Flavored almonds," and "Pasteurized almonds," also to align with the Cap-and-Trade Regulation. Previously deleted definitions for "Almond" and "Pistachio" were re-instituted because they are used in the new nut definitions. A definition was added for "Fuel cell" for consistency with the Cap-and-Trade Regulation and for clarity.

Based on stakeholder comment, the "Importer of fuel" definition is further amended to clarify the terminology used in relation to the sellers and buyers of imported fuel. The amendments to this definition address the concerns that fuel importers could avoid a reporting obligation through contractual changes by specifying that the seller of the fuel into California is considered to be the importer of the fuel regardless of the location at which the California buyer takes title to the fuel.

Within the definition of "Electricity exporter" text is deleted that was added during the first 15-day proposed revisions related to electricity exported through the Energy Imbalance Market (EIM). The deletion is necessary because the data needed to report this information is not available at the resource level and under the proposed amendments CAISO is no longer required to be a reporting entity.

C. Modifications to Section 95103. Greenhouse Gas Reporting Requirements.

Based on stakeholder feedback, sections 95103(f) and (h) were revised to push back the verification deadline from August 1 to August 10 of each year. This will allow reporting entities and verifiers to have additional time for completing the verification process, while supporting smooth implementation of the Cap-and-Trade Program by ARB staff.

Staff also modified section 95103(h) to identify which product data may be reported using best available data for 2017 data reported in 2018, and to clarify that all changes in sections 95131 through 95133 take effect for 2017 data reported in 2018, which will allow ARB staff to streamline the verification process. In addition, based on stakeholder comment, staff modified the six-year timing requirement for inspections of differential pressure devices in section 95103(k)(6)(A) to include devices at hydrogen plants. Some refineries have integrated hydrogen production at the refinery, and this change would provide equal treatment for those meters at stand-alone hydrogen plants. Also, based on stakeholder feedback, staff restored text in section 95103(l) which allows for the voluntary exclusion of accurate covered product data for the purposes of conformance and material misstatement. The initially proposed update is not necessary because the quantity of any excluded product must still be reported under the current provisions of the regulation.

D. Modifications to Section 95104. Emissions Data Report Contents and Mechanism.

Staff is not proposing changes to this section.

E. Modifications to Section 95105. Record Keeping Requirements.

Based on stakeholder comment, section 95105(c)(3) is modified to make a minor wording clarification related to items to be included in a diagram, changing "combustion emissions" to "combustion units," correcting a typographical error.

F. Modifications to Section 95111. Data Requirements and Calculation Methods for Electric Power Entities.

Staff is making minor clarifications to the reporting requirements for imported electricity from the California Independent System Operator's (CAISO) Energy Imbalance Market (EIM) based on stakeholder comments that additional clarity is needed. Furthermore, CAISO was removed as a reporting entity from MRR. ARB will be pursuing the collection of annual EIM import data through a formal subpoena process.

In addition, based on stakeholder comments, staff reinstated the exemptions to the lesser of analysis for grandfathered contracts and dynamically tagged power deliveries. To correct an previous oversight, staff also added a description of the parameter EF_{unsp} used in the equation for Total Calculated EIM Emissions in section 95111(h)(1)(B).

G. Modifications to 95112. Electricity Generation and Cogeneration Units.

Staff is not proposing changes to this section.

H. Modifications to Section 95113. Petroleum Refineries.

Staff is not proposing changes to this section.

I. Modifications to Section 95114. Hydrogen Production.

Staff modified section 95114(j) to make clear that both gaseous and liquid hydrogen must be individually reported when it is sold or otherwise transferred. This update is purely a clarification and not a change in the intended requirements.

J. Modifications to Section 95115. Stationary Combustion.

Section 95115(n) is modified to remove text stating that staff may propose a revision to product data reporting requirements for operators of dairy product facilities, facilities mining or processing freshwater diatomite filter aids, forging facilities, and soda ash

manufacturing facilities. For the latter two facility types, the requirements that existed prior to the originally proposed amendments are retained. No further changes to dairy product facility reporting are proposed in this 15-day package. In section 95115(n)(15), the word "performing" is removed to correct a typographical error. In addition, staff added requirements for borate manufacturing facilities to report the quantity of boric oxide equivalent produced to support the Cap-and-Trade Program. With the direct collection of borate from borate manufacturing facilities, the requirement to report certain types of soda ash equivalent by soda ash manufacturing facilities was removed. Also, product data reporting requirements were modified for almond and pistachio processing facilities, as the newly named product data are needed in support of the Cap-and-Trade Program.

K. Modifications to Section 95117. Lime Manufacturing.

Staff is not proposing changes to this section.

L. Modifications to Section 95118. Nitric Acid Production.

Staff is not proposing changes to this section.

M. Modifications to Section 95119. Pulp and Paper Manufacturing.

Staff is not proposing changes to this section.

N. Modifications to Section 95121. Suppliers of Transportation Fuels.

Staff is not proposing changes to this section.

O. Modifications to Section 95122. Suppliers of Natural Gas, Natural Gas Liquids, Liquefied Petroleum Gas, Compressed Natural Gas, and Liquefied Natural Gas.

Staff is not proposing changes to this section.

P. Modifications to Section 95124. Lead Production.

Staff is not proposing changes to this section.

Q. Modifications to Section 95129. Substitution for Missing Data Used to Calculate Emissions from Stationary Combustion and CEMS Sources.

Staff is not proposing changes to this section.

R. Modifications to Section 95130. Requirements for Verification of Emissions Data Reports.

Staff is not proposing changes to this section.

S. Modifications to Section 95131. Requirements for Verification Services.

Staff corrected typographical errors made during the 45-day revisions and removed two previously proposed references to Cap-and-Trade Regulation sections that have been proposed for deletion from the Cap-and-Trade Regulation. No substantial changes were made to this section.

T. Modifications to Section 95132. Accreditation Requirements for Verification Bodies, Lead Verifiers, and Verifiers of Emissions Data Reports and Offset Project Data Reports.

Staff is not proposing changes to this section.

U. Modifications to Section 95133. Conflict of Interest for Verification Bodies.

Staff is not proposing changes to this section.

V. Modifications to Section 95150. Definition of the Source Category.

Staff is not proposing changes to this section.

W. Modifications to Section 95153. Calculating GHG Emissions.

Staff is not proposing changes to this section.

X. Modifications to Section 95156. Additional Data Reporting Requirements.

Staff is not proposing changes to this section.

Y. Modifications to Section 95157. Activity Data Reporting Requirements.

Staff is not proposing changes to this section.

Z. Modifications to Subarticle 6. Reporting Requirements and Calculation Methods for Electricity Generating Units Subject to the Clean Power Plan.

Staff is not proposing changes to this section.

AA. Appendix A. Emission Factors and Calculation Data for Petroleum and Natural Gas Systems Reporting

Staff is not proposing changes to this section.

BB. Appendix B. Test Procedure for Determining Annual Flash Emission Rate of Gaseous Compounds from Crude Oil, Condensate, and Produced water.

To be consistent with other ARB programs, including ARB's proposed Oil and Gas Regulation, for which this test procedure was amended and refined, in concert with a scientific peer review of the procedure, staff is amending the test procedure in MRR. The conforming changes are necessary so ARB programs affecting the oil and gas industry use identical test methods for the flash test procedure.

Additional Documents Added to the Rulemaking Record

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following documents:

Based on proposed updates to the Test Procedure for Determining Annual Flash Emission Rate of Gaseous Compounds from Crude Oil, Condensate, and Produced Water, the following document is incorporated by reference ((Cal. Code of Regs., title 1, §20, subd. (c)(3)):

1. ASTM D-7096-16. Standard Test Method for Determination of the Boiling Point Range Distribution of Gasoline by Wide Bore Capillary Gas Chromatography, 2016.
2. Method to Determine the Boric Oxide Equivalent in Borate Products, California Air Resources Board, 2017.
3. Pistachios In the Shell, Shipping Point and Market Inspection Instructions, U.S. Department of Agriculture, April 2005.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Jim Aguila, Chief, Program Planning and Management Branch, at (916) 322-8283 or (designated back-up contact) Brieanne Aguila, Manager, Climate Change Reporting Section, at (916) 324-0919.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice and Attachment A, and on the documents added to the rulemaking file, identified above.

Comments may be submitted by postal mail or electronic submittal no later than 5:00 pm on April 28, 2017, 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 verbal 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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: April 13, 2017

Attachments

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 ARB's website at www.arb.ca.gov