

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text
and Availability of Additional Documents and/or Information**

**PROPOSED REGULATION FOR THE REPORTING OF CRITERIA AIR
POLLUTANTS AND TOXIC AIR CONTAMINANTS**

Public Hearing Date: December 14, 2018
Public Availability Date: May 13, 2019
Deadline for Public Comment: June 7, 2019

At its December 14, 2018, public hearing, the California Air Resources Board (CARB or Board) approved for adoption the proposed Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (or CTR Regulation), section 93400 et seq., title 17, California Code of Regulations. The CTR Regulation would require annual reporting of criteria pollutant and toxic air contaminant emissions for sources subject to the regulation, provide consistency in the types of criteria pollutants and toxic air contaminants that need to be reported, establish report contents and how emissions must be reported, and establish reporting deadlines and the process for submitting emissions data reports.

At the hearing, staff presented, and the Board approved for adoption, updates to the regulatory language developed in response to comments received following release of the Staff Report: Initial Statement of Reasons (ISOR) on October 23, 2018. These modifications include revisions to the applicability criteria under section 93401(a)(4), updates to the definitions, and changes to clarify the emissions reporting requirements in the regulation.

The Board directed the Executive Officer to make the modified regulatory language, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications. Under this notice, we are making the proposed modifications available for public comment for 25 days.

The ISOR, Board Resolution, and all other regulatory documents for the rulemaking are available on-line at the following CARB webpage:

<https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>

Overview

Emissions inventory data are foundational for the work performed at CARB and the local air districts. Inventory data helps identify what is being emitted into the air, by whom, and where. Inventory data helps to guide and provide the scientific basis for CARB's regulatory development process, to identify and address areas of concern, and to track progress in emission reduction efforts from stationary, mobile, and area sources.

Community groups, the public, regulators, scientists, and others have growing need to access complete, user-friendly, and high-quality emissions data. CARB is committed to meeting these needs. An example of this is the CARB Pollution Mapping tool that visually displays emissions data and provides graphs and detailed emissions data reports, thereby improving data accessibility and transparency.

With the mandates of Assembly Bill (AB) 617¹ and AB 197², significant new requirements have been established by the legislature, which CARB is responsible for implementing in partnership with the local air districts. The existing criteria and toxics emission inventory data are insufficient for meeting the community protection, public right to know, and cutting-edge analysis needs of these mandates. Therefore, it is necessary to adopt a new paradigm, making significant improvements in the completeness of emission inventory data collected, and how it is collected, to meet the community protection and other public health priorities for CARB and the local air districts. The adoption of the CTR Regulation in December addressed the above issues; the proposed updates in this Notice respond to the Board direction and public comments received.

The Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information (Notice) for the CTR Regulation is subdivided into multiple sections to describe the proposed updates and the rationale for making the changes. Following release of the Notice, interested parties are encouraged to provide feedback regarding the updates. All comments must be received by the deadline for public comment, which is June 7, 2019, to be considered and included in the formal rulemaking process.

¹ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2. Also, see Appendix B for the complete bill language. (Garcia, 2017)

² Assembly Bill 197, Garcia, E., Chapter 250, Statutes of 2017, modified the California Health and Safety Code, amending § 39510, and § 39607, and adding § 38506, § 38531, § 38562.5, § 38562.7, and Article 7.6 (commencing with Section 9147.10) to Chapter 1.5 of Part 1 of Division 2 of Title 2.

The body of this Notice summarizes the proposed modifications and provides high-level information regarding the updates. It also includes references to additional rulemaking documents, information on whom to contact for questions, and the mechanism for submitting comments.

After the main body text, we have included four attachments to the Notice to provide further detail regarding the specific revisions that were made, why they were made, the outreach performed while developing the updates, and a revised preliminary cost assessment based on the updated requirements.

- Attachment A: Revised Regulation Text. Provides the updated regulation text, showing revisions to the original proposal as underline and strikeout text.
- Attachment B: Description and Rationale for Regulation Updates. This attachment provides a section-by-section description and rationale of the changes made to the regulation.
- Attachment C: Outreach and Notifications. Discusses the activities and outreach performed to refine the regulation, and to notify affected parties of the updates to the applicability provisions and other requirements.
- Attachment D: Preliminary Revised Economic Impacts Summary. Provides an overview of the revised economic impacts on facilities and air districts.

Summary of Primary Proposed Modifications

Staff's proposed modifications to California Code of Regulations (CCR), Title 17, sections 93401, 93402, 93403, 93404, 93405, 93406, 93407, and 93410, and proposed adoption of the Regulation's Appendix A, are attached to this Notice as Attachment A. The revisions to the originally proposed "45-day" regulatory language³ are shown in ~~strikeout~~ text to indicate deletions and underline text to indicate additions.

In the Final Statement of Reasons, to be released at a later date, staff will respond to all previously submitted comments received on the record during formal noticed comment periods, such as the 45-day comment period prior to the December 2018 Board hearing, and comments received following distribution of this Notice. For the proposed changes included within this Notice package, staff will only address comments received that are responsive to the regulatory changes specifically shown within Attachment A or any documents newly added to the record.

The following summary provides an overview of the primary proposed revisions to the regulation. In addition to these summary items, other updates were incorporated to address comments received and to improve the regulation. Please refer to

³ See: Appendix A: Proposed Regulation Order For The Regulation For The Reporting Of Criteria Air Pollutants And Toxic Air Contaminants at this website: <https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>

Attachment B of this Notice for a complete description of the specific revisions and rationale for the updates.

Applicability. Based on Board direction and public comments received, it was necessary to modify the applicability criteria for facilities subject to reporting under the CTR Regulation. As mentioned previously, these applicability updates are required in order to meet the overall legislative mandates of AB 617, AB 197, and other CARB and air district obligations established by statute. The updated applicability provisions are consistent with the original “selected community” approach proposed; however, the accelerated inclusion of facilities was included to promote uniformity and equity statewide.

Details regarding the applicability modifications are provided in Attachment B. In summary, the applicability provisions in the original proposal focused on: 1) specified large emission sources, 2) sources with an “elevated prioritization score” for toxics, and 3) any permitted facilities within communities selected under the AB 617 requirements as being significantly impacted by air pollution (i.e., “selected community” facilities).

Items 1 and 2 above are virtually unchanged in the updated text. However, for item 3, the initially proposed “selected community” approach had several inherent limitations that would limit CARB’s ability to implement its statutory mandates. Therefore, a modified approach was developed and is provided within the updated regulation text in Attachment A of this Notice. There were two primary issues with the initial approach that were identified in comments received and discussed at the December 14, 2018, Board hearing. First, determination of community boundaries and appropriate buffer zones is a dynamic and variable process, making it difficult to identify which facilities would be subject to the reporting requirements. Therefore, regulatory certainty in determining facility applicability would not be reasonably achievable. Second, by focusing only on the “selected communities,” the initially proposed requirements would create an inequity with other regions of the state. The selected community regions would have obtained data regarding their sources of toxics and other emissions, but other regions of the state would not have received these same benefits.

Under the modified regulation, sources within California that emit more than 4 tons per year of criteria pollutants would be subject to reporting (except a 100 ton threshold is applied for carbon monoxide); and specific source or activity categories, as identified within Table 4 of the proposed revisions, would also be subject to reporting. This change eliminates the inequity that the “selected community” approach would have created among regions of the state and among facilities across the state. Due to an accelerated phase-in period compared to the selected community approach, in the near term there are increases in costs and the number of affected facilities. This is because the revised applicability updates include most of the industry sources over five years, whereas the original proposal would have taken about ten years to include a comparable number of facilities. The cost impacts are discussed later in this Notice and more fully in Attachment D.

The following paragraphs summarize some of the individual components of the regulation that were modified to improve implementation of the accelerated schedule for facilities subject to reporting.

Timing – Reporting Schedule. With the addition of more sources subject to reporting in an earlier time frame, and in order to balance workload, the reporting schedule for the regulation roll-out was modified as part of the proposed changes. In summary, the initial reporting year was delayed by a year, and the reporting of emissions release point data for “elevated prioritization score” toxics facilities was delayed by an additional year. Also, for facilities subject to the additional 4 tpy or 100 tpy criteria pollutant, or sector-based applicability, the reporting schedule is phased-in based on which air district the facility is located in and the specific permitted processes that occur at the facility. There are two distinct air district groups and three industry sector groupings under the reporting schedule, with additional timing adjustments for agricultural operations and for reporting emissions release location data.

These specific changes are detailed in section 93403 and Appendix A of the updated regulation text (see Attachment A of this Notice), which identifies the industry sectors subject to the reporting requirements. The result of the timing updates is that the reporting requirements are spread out over more years, with the first year being 2019 data reported in 2020 for the first group of core sources and the complete phase-in of all applicable sources occurring with 2024 data reported in 2025. Under the original proposal, additional facilities would have been subject to reporting each year as more AB 617 “selected communities” were identified within the state, so timing and geographic scope of the regulation would have been open-ended. Further, a facility would not know when it would be subject to the reporting requirements until the community where the facility is located was selected, thereby creating uncertainty. The updated approach provides a clear time horizon for statewide reporting by facilities.

Sectors – Identification of Specific Industry Sectors Subject to Reporting. As part of the proposed updates, some identified sectors do not have a safe emissions threshold, regardless of use or throughput. Examples of “zero threshold” sources include metal plating using cadmium or chromium, hazardous waste treatment, processes emitting styrene, and others. Other sector categories have a material use or throughput-based threshold that trigger reporting (e.g., gallons of paint used, amount of diesel fuel burned). The specific sources that would be subject to reporting are identified in Table A-3 of Appendix A of the regulation. Attachment B of this Notice provides additional information regarding the sectors selected and reporting thresholds.

Abbreviated Reporting – Data Requirements for Selected Sectors. With the addition of specific sectors to the CTR Regulation, we sought a mechanism to reduce workload on facilities and air districts in complying with the regulation. One of the primary approaches for this is providing “abbreviated reporting” requirements for certain industry sectors where criteria and toxics emissions can be simply quantified based on readily available facility data. The abbreviated reporting process closely involves the local air districts who would collect the facility-specific data or other data and then compute emissions using district methods approved by CARB.

Sectors identified for abbreviated reporting include:

- Combustion of natural gas or propane in boilers or heaters;
- Combustion of diesel oil or other fuels, in emergency standby engines or direct-drive emergency standby fire pump engines;
- Retail sale of gasoline;
- Cremation of humans or animals;
- Construction aggregate processing, where no asphalt products are used or produced;
- Agricultural operations.

Data currently reported by these sectors to air districts include information such as annual fuel usage, gallons of fuel consumed, total annual sales of gasoline, and quantity of remains cremated, as specified in the regulation text. Since these parameters are normally already tracked and quantified by facility operators, minimal new effort is needed to provide the data to the air district for the purpose of quantifying emissions. The regulation was also updated to allow districts to initiate an abbreviated reporting process for other sector categories, upon approval by CARB of the air district methods used to determine source emissions. Additional information regarding abbreviated reporting is provided in Attachment B of this Notice under the discussion for section 93403(b)(2).

Public Outreach and Stakeholder Engagement in Preparing the Proposed Revisions

Staff engaged in an extensive and collaborative process to develop the proposed revisions to ensure that those that could be affected by the revisions were aware of the updates, and included in the process. Our goal was to be inclusive, to ensure that those affected by the regulation and updates would: 1) have opportunities for input into development of the proposed revisions, 2) be fully aware of the proposed revisions and requirements, and, 3) have a clear understanding about how the regulation and updates would affect them. Attachment C of this document provides a description of the individuals and agencies CARB staff worked with, and the overall outreach process that was used in developing the revisions.

Updated Analysis of Costs of Regulation for Facilities and Air Districts

Under the proposed statewide applicability provisions, the accelerated phase-in would affect a greater number of facilities, earlier than originally proposed. Approximately 50,000 individual facilities would be affected by the proposed statewide applicability provisions to the CTR Regulation over the full eight year roll-out period. Because of the condensed timeframe for facilities subject to reporting, the cumulative facility and air district costs are higher than what was originally estimated in the ISOR.

In summary, for affected facilities owned or operated by private businesses, local governments, and the State government, total costs are now estimated at \$41.5 million over the eight years of phasing-in all facilities subject to the regulation, or approximately \$5.2 million per year on average. A typical reporting facility affected by the regulation may experience, on average, a net cost increase between \$40 and \$1,140 on an annual basis (the actual cost range for individual reporters per year can vary substantially depending on the sector and the level of existing district reporting requirements for the facility, including whether the facility qualifies for abbreviated reporting). The estimated costs for air districts depends on the implementation year, but can range from approximately \$350,000 to \$6.5 million annually to implement the proposed regulation, or \$38.7 million over the eight years. In total, the combined facility and district implementation costs to comply with the updated proposed regulation are estimated to be approximately \$80.2 million over the eight year initial implementation period.

Under the original proposal, the forecasted total cost for affected facilities owned or operated by private businesses, local governments, and the State government over eight years was estimated to be approximately \$20.1 million, affecting approximately 32,500 facilities. A more complete analysis of updated economic impacts, including a detailed comparison of the costs estimated for the proposed modifications and the original proposal, as well as the core methodologies and assumptions applied, are provided in Attachment D.

Additional Document(s) or Incorporated Document(s) Added to the Record

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

- CARB, *California Emission Inventory Development and Reporting System (CEIDARS) utility table CNTLDEV*. Accessed January 17, 2019. Incorporated by reference in regulation section 93402, definition of "Pollution control device code."
- United States Department of Labor, Occupational Safety and Health Administration, *SIC Division Structure*. Accessed January 15, 2019. Available at: https://www.osha.gov/pls/imis/sic_manual.html. Incorporated by reference in regulation section 93402, definition of "Standard Industrial Classification Codes" or "SIC."

- United States Environmental Protection Agency, Code of Federal Regulations, title 40, section 98.238, last amended October 22, 2015. Incorporated by reference in regulation section 93402, definition of “Onshore petroleum and natural gas production facility.”

These documents are available for inspection by contacting Bradley Bechtold, Regulations Coordinator, at (916) 322-6533.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to John Swanson, Manager, Criteria Pollutant and Air Toxics Reporting Section, at (916) 323-3076 or Patrick Gaffney, Staff Air Pollution Specialist, Criteria Pollutant and Air Toxics Reporting Section, at (916) 322-7303.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

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

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

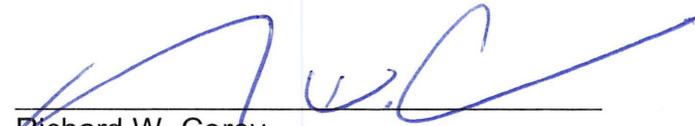
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB 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, attachments to this Notice, and documents added to the record 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: May 13, 2019

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 CARB's website at www.CARB.ca.gov