

UPDATED INFORMATIVE DIGEST

PROPOSED AMENDMENTS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS AND CONFORMING AMENDMENTS TO THE DEFINITION SECTIONS OF THE AB 32 COST OF IMPLEMENTATION FEE REGULATION AND THE CAP- AND-TRADE REGULATION

Sections Affected

This action amends Division 3, Chapter 1, Subchapter 10, Article 2, sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95119, 95120, 95121, 95122, 95123, 95130, 95131, 95132, 95133, 95150, 95151, 95152, 95153, 95154, 95155, 95156, and 95157, title 17, California Code of Regulations; adopts new section 95158, title 17, California Code of Regulations; amends Division 3, Chapter 1, Subchapter 10, Article 3, section 95202, title 17, California Code of Regulations; and amends Division 3, Chapter 1, Subchapter 10, Article 5, section 95802, title 17, California Code of Regulations.

Background

In this rulemaking, the Air Resources Board (ARB or Board) has approved proposed revisions to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) (reporting regulation), as well as conforming amendments to the definition sections of the AB 32 Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 et seq.) (fee regulation) and 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). The regulations were originally developed pursuant to the California Global Warming Solutions Act of 2006 (the Act). The reporting regulation was adopted by the Board in December 2007, with additional modifications approved for adoption by the Board in December 2010. The fee regulation was first considered by the Board in September 2009, and went into effect on July 17, 2010. The cap-and-trade regulation was first considered by the Board in December 2010, and went into effect on January 1, 2012.

On August 1, 2012, ARB issued a notice of public hearing to consider the proposed amendments at the Board's September 20, 2012 hearing. A "Staff Report: Initial Statement of Reasons for Rulemaking" (Staff Report) was made available for public review and comment starting August 1, 2012. The Staff Report contained a description of the rationale for the proposed amendments. The text of the proposed amendments was included as Attachments A, B, and C to the Staff Report. All references relied upon and identified in the Staff Report were also made available to the public on August 1, 2012. The Staff Report and Attachments A, B, and C were also posted to ARB's website at: <http://www.arb.ca.gov/regact/2012/ghg2012/ghg2012.htm>.

On September 20, 2012, the Board conducted a public hearing to consider staff's proposal for adoption. The proposed revisions to the regulations are necessary to support California's cap-and-trade program, as well as further harmonization with the U.S. Environmental Protection Agency (U.S. EPA) federal mandatory greenhouse gas (GHG) reporting requirements contained in Title 40, Code of Federal Regulations (CFR), Part 98. The revisions are also necessary, and authorized, to "prepare, adopt, and update" California's inventory of emissions related to climate change formerly conducted by the State Energy and Natural Resources Conservation and Development Commission pursuant to Chapter 8.5 (commencing with Section 25730) of Division 15 of the Public Resources Code. (California Health & Safety Code sections 39600, 39601, 39607, 39607.4, and 41511).

At the hearing, written and oral comments were received. The Board adopted Resolution 12-25, approving the revisions proposed in the Staff Report for adoption, with a small number of modifications proposed by staff to address stakeholder comments. In Resolution 12-25, the Board directed the Executive Officer to adopt the proposed regulations, 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 12-25 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 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 reporting regulation, as well as to one definition in the fee regulation and cap-and-trade regulation, were released on October 12, 2012 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 12, 2012 to October 29, 2012, pursuant to Government Code section 11346.8. These amendments clarify calculation methods, increase the rigor of reported data, and support cap-and-trade and the other AB 32 programs.

Description of the Regulatory Action

The proposed 2012 amendments represent minor but necessary revisions to the current reporting regulation. Staff is not proposing major changes to GHG reporting requirements nor adding reporting obligations for new industrial sectors. The changes correct or clarify reporting requirements necessary for submittal of complete and accurate emission data reports, and add or modify data elements for product data reporting necessary to support the cap-and-trade program. The changes are also necessary to align California's GHG emissions reporting with the changes and updates discussed above, to streamline and avoid duplicate GHG reporting, and to continue to provide the high quality of data needed to support a

market-based cap-and-trade program. Other updates proposed and discussed in the Staff Report include changes to conform the definition sections of both the cap-and-trade and fee regulations to the amendments in the reporting regulation to ensure consistent application of each rule for California. The primary objectives of the revisions to the reporting regulation include harmonization with U.S. EPA reporting requirements to the extent consistent with program needs, and the inclusion of requirements necessary to support the ARB cap-and-trade program for GHG emissions.

All data specified in the reporting regulation will be reported to ARB annually. The first reports under the proposed new requirements must be submitted in 2014 based on 2013 emissions data, meaning that reporting entities will need to begin collecting data pursuant to the revised requirements starting January 1, 2013.

Complete details are provided in the regulations and Staff Report, which are available here: <http://www.arb.ca.gov/regact/2012/ghg2012/ghg2012.htm>.

The Board's Action

At its September 20, 2012 public hearing, the Board adopted Resolution 12-25, which approved the amendment of Division 3, Chapter 1, Subchapter 10, Article 2, sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95119, 95120, 95121, 95122, 95123, 95130, 95131, 95132, 95133, 95150, 95151, 95152, 95153, 95154, 95155, 95156, and 95157, title 17, California Code of Regulations; and added new section 95158, title 17, California Code of Regulations. All of these sections provide for the mandatory reporting of greenhouse gas emissions and other data. Under the resolution, the Board also adopted conforming amendments to the definition sections of the AB 32 Cost of Implementation Fee Regulation by approving the amendment of Division 3, Chapter 1, Subchapter 10, Article 3, section 95202, title 17, California Code of Regulations; and the amendment of Division 3, Chapter 1, Subchapter 10, Article 5, section 95802, title 17, California Code of Regulations.

At the hearing, the staff presented and the Board approved modifications to the regulation originally proposed in the Staff Report released August 1, 2012, in response to comments received since the Staff Report was published. In addition, based on public comments received, the Board directed staff to provide various clarifications to the regulations. 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 12-25 the Board directed the Executive Officer to adopt the proposed regulations, 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 12-25 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 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 reporting regulation, as well as to one definition in the fee regulation and cap-and-trade regulation, were released on October 12, 2012 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 12, 2012 to October 29, 2012. These amendments clarify calculation methods, increase the rigor of provided data, and support cap-and-trade and the other AB 32 programs.

Additional Modifications

After the close of the 15-day comment period, the Executive Officer determined that no additional modifications should be made to the regulations, with the exception of nonsubstantial 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:

<http://www.arb.ca.gov/regact/2012/ghg2012/ghg2012.htm>.

The Executive Officer subsequently issued Executive Order R-12-014 on November 2, 2012, approving the regulations with the proposed modifications.

Comparable Federal Regulations

U.S. EPA requires mandatory GHG reporting (*Mandatory Reporting of Greenhouse Gases; Final Rule*. 40 CFR Parts 86, 87, 89, 90, 94, and 98. United States Environmental Protection Agency. October 30, 2009). ARB's proposed revised reporting regulation was developed to minimize, to the greatest extent possible, any redundant State and federal reporting, while at the same time supporting California's cap-and-trade program and other AB 32 programs. Without adoption of the proposed revised reporting regulation, reporters would have to submit duplicative GHG emissions reports based on wholly different requirements, estimation methods, and reporting systems, in order to comply with different ARB and U.S. EPA reporting requirements for GHG data.

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.