TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

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 California's existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 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 95101, 95102, 95103, 95104, 95111, 95112, 95113, 95114, 95115, 95119, 95121, 95122, 95124, 95130, 95131, 95132, 95133, 95152, 95153, 95156, 95157, Appendix A, and Appendix B.

Background and Effect of Proposed Rulemaking:

In 2006, the Legislature passed and Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (Assembly Bill 32 (AB 32); Stats. 2006, chapter 488). In AB 32, 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 mandates statewide greenhouse gas (GHG) emissions to be reduced to 1990 levels by the year 2020, with continuing reductions thereafter.

One of the requirements of AB 32 is that ARB must adopt a greenhouse gas reporting regulation. To comply with this requirement, the Board approved the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (reporting regulation or MRR) at its December 2007 Board meeting. The reporting regulation became effective on January 2, 2009.

Over the past six years, ARB staff has implemented the California greenhouse gas reporting program established by the reporting regulation. Under the program, over 700 facilities and entities submit to ARB their greenhouse gas emissions data reports annually which are required to be independently verified by ARB-accredited third-party verifiers. Information about the program can be found at: http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep.htm.

At its December 2010 public hearing, the Board approved amendments to the reporting regulation to support the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (title 17, CCR, section 95800 et seq.) (Cap-and-Trade Regulation) data requirements, harmonize to the extent feasible with the United States Environmental Protection Agency's (U.S. EPA) Final Rule on Mandatory Reporting of Greenhouse Gases (U.S. EPA rule), and align with the Western Climate Initiative (WCI) reporting structure. Those amendments to the reporting regulation became effective on January 1, 2012.

In September 2012, the Board approved additional amendments to the reporting regulation, as well as updates to the definition sections of the AB 32 Cost of Implementation Fee Regulation and the Cap-and-Trade Regulation. These updates were necessary to streamline and avoid duplicate GHG reporting, to further align with U.S. EPA's rule, and to continue to provide the highest quality data needed to support California's Cap-and-Trade Regulation. These amendments to the reporting regulation became effective on January 1, 2013. In September 2013, the Board approved further amendments to the reporting regulation and the Cap-and-Trade Regulation, which became effective on January 1, 2014. Links to the relevant rulemaking documents are located here: http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-regulation.htm.

ARB staff is proposing amendments to the reporting regulation to be heard at the Board's September 18-19, 2014 hearing. The proposed updates are needed to continue to support allocation of allowances and the calculation of compliance obligations under the Cap-and-Trade Regulation, to ensure that reported GHG emissions data are accurate and complete in order to support California's climate programs, including the statewide GHG emission inventory, and to integrate and provide data needed for the Cost of Implementation Fee Regulation (title 17, CCR, section 95200 et seq.) (COI Fee Regulation).

Objectives and Benefits of the Proposed Regulation:

The purpose of the proposed amendments to the reporting regulation is to carry out the goals of AB 32 and maintain a robust and accurate greenhouse gas reporting program. The data submitted by reporters under the reporting regulation allows ARB staff to track the emissions from reporting entities over time, demonstrating the progress in reducing GHG emissions.

The proposed amendments support the Cap-and-Trade Regulation with the highest quality of data by collecting additional information to ensure the accuracy of the data used for allocation of allowances and the calculation of compliance obligations. Additionally, the amendments will help to make certain that reported GHG emissions and product data are accurate and complete in order to support emissions reduction programs throughout the State, and to collect and integrate data reporting needs for the COI Fee Regulation.

Expected benefits of the proposed revisions include improved clarity for reporting entities, a reduction in duplicative reporting with integration of COI Fee Regulation data, more accurate and complete data collection to support ARB's climate and air quality programs, and providing verified and robust data needed to support the Cap-and-Trade Regulation.

These benefits may also result in indirect benefits to the State's environment by ensuring that the State has an accurate inventory of GHG emissions to support programs which will reduce emissions and directly improve the health and welfare of California residents, and the state's environment.

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).

General: Staff proposed modifications in a number of sections that do not alter the reporting requirements. Examples include correcting clerical oversights and references and reordering definitions to update incorrect alphabetization. Staff also updated the section related to changes in methodology (section 95103(m)) to clarify the procedures for changing methods, and to explicitly identify that the provisions also apply to product data.

Applicability: Staff proposed revisions in this section to clarify reporting applicability for biofuel production facilities that produce and deliver transportation fuels outside the bulk terminal/transfer system. The changes do not impose any new requirements.

Definition Clarifications and Additions: Staff proposed clarifications to existing definitions to minimize ambiguity. Staff added a small number of new definitions to support updated provisions described in the ISOR and to harmonize with Cap-and-Trade Regulation definitions.

Integrate COI Fee Regulation Reporting: In order to streamline and simplify reporting, staff integrated the data reporting requirements of the COI Fee Regulation into the reporting regulation. These proposed updates do not create new reporting requirements, but simply shift the reporting requirements from the COI Fee Regulation to the reporting regulation.

Product Data Reporting: In addition to clarifying and adding selected product data definitions to align with the Cap-and-Trade Regulation and industry standards for reporting, staff modified the product data reporting requirements for tissue producers to more specifically identify the reportable products and required data. Staff also added product data requirements for wineries.

Refinery Product Data: Staff proposed updates to reporting primary refinery products to clarify that refineries do not report products produced by another facility as product data, and that sales data must be adjusted to reflect actual production. Also, staff updated the Complexity Weighted Barrel (CWB) data reporting requirements for clarity, but do not impose additional reporting requirements.

Hydrogen Production: Staff modified the product data definitions for "on-purpose hydrogen" and "by-product hydrogen" to clarify that they refer to pure molecular hydrogen gas, and explicitly exclude impurities that are not hydrogen gas.

Petroleum and Natural Gas Systems: For this sector, staff proposed several edits for clarity, and to correct errors and typos. Staff also added an exemption so equipment blowdowns that are less than 50 standard cubic feet are no longer subject to reporting. Staff also proposed amendments to the flare emissions equations to provide greater clarity.

Staff added a requirement to report the natural gas emissions associated with starting up centrifugal compressors, which will affect only a few reporters. Staff also clarified the existing product data reporting requirements for petroleum and natural gas systems. Finally, staff included a mechanism for voluntarily reporting the quantity of enhanced oil recovery steam produced via renewable methods, which can be used to begin evaluation of the use of renewable methods, such as solar, for oil and gas production.

Fuel Suppliers: Staff proposed amendments to clarify that enterers and in-state biofuel production facilities must report biofuel delivered outside the bulk transfer/terminal system. Staff also added renewable diesel as a reportable biomass-derived transportation fuel and provided clarifications to LPG reporting requirements for NGL fractionators. Staff also clarified how, and under what circumstances, natural gas suppliers should report biomethane deliveries.

Electric Power Entities: For electric power entities (EPE), staff proposed revisions to require that EPEs use a transmission loss factor of 1.02 for specified source claims and to clarify data sources used in the calculation of specified source emission factors. Staff also narrowed the applicability of meter data reporting and specified that EPEs must use a lesser of analysis in some instances. Staff also included reporting elements to monitor the prohibition on certain uses of allowance value for electrical distribution utilities in the Cap-and-Trade Regulation.

Legacy Contract Generators: To better evaluate emissions and help ARB identify the correct amount of transition associated with legacy contracts, staff proposed that legacy contract generators provide additional detail in the energy flow diagrams that are currently submitted.

Natural Gas Transmission and Distribution Leaks: For natural gas providers and pipelines, in order to collect additional data on methane emissions, staff proposed a reporting requirement to submit meter count information and emissions associated with dig-ins to pipelines. These data will be provided from existing operator records and does not require additional monitoring and testing.

Verification Requirements: To ensure the quality and completeness of data collected under MRR, staff clarified that natural gas purchase data by facilities are subject to verification for accuracy and completeness. Also, staff added that if an incorrect North American Industry Classification System (NAICS) code is not corrected prior to final report submission, the report will receive an adverse verification opinion. Staff also added provisions to improve the clarity and strength of conflict of interest requirements and the requirements concerning the duration for which verifiers may serve a reporting entity.

Reporting 2014 data in 2015: Because the proposed amendments to this reporting regulation will become effective after the data have been collected for 2014, the proposed amendment describes how the new reporting requirements are applied to 2014 data reported in 2015. Staff included provisions for indicating which requirements are applicable for 2015 data reported in 2016, and when best available methods (BAM) are acceptable for 2015 data reported in 2016.

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

As mentioned previously, the 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). Staff does not believe the proposed regulation is inconsistent with existing federal law. In fact, the proposed amendments to the reporting regulation were developed to minimize, to the greatest extent possible, any redundant State and federal reporting, while also ensuring that ARB is collecting the necessary additional information required by California's

various GHG programs, including the Cap-and-Trade Regulation, COI Fee Regulation, and the statewide GHG inventory.

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: Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions."

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, Mrs. Brieanne Aguila, Manager of ARB's Climate Change Program Data Section, Stationary Source Division, at (916) 324-0919, or Mr. Patrick Gaffney, Staff, Air Pollution Specialist, at (916) 322-7303.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed to 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/ghg2014/ghg2014.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 result in a cost decrease to one State agency (Department of Water Resources) of $225/year. Two groups of local government entities are affected. Approximately 26 local government entities that are in the business of delivering and importing electricity will realize a cost savings of about $120/year each. Also, five local government entities that deliver natural gas will have a cost increase of about $450/year each. The total fiscal effect on local government entities is a net savings of $900/year.

Because the regulatory requirements apply equally to all reporting categories and unique requirements are not imposed on local agencies, 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 Impacts Directly Affecting Businesses, 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

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative businesses and determined that businesses may see an incremental cost increase as the result of the proposed regulatory action. Approximately 118 businesses are affected by the proposed amendments. Some EPEs and oil and gas producers will have minor cost decreases, while other reporters, such as natural gas suppliers and legacy contract generators will have minor cost increases. Most businesses subject to the reporting regulation will not experience noticeable changes in cost of compliance as a result of the proposed amendments.

ARB staff estimates that the amended requirements will lead to a total net cost decrease of approximately $2,100 for all affected reporters over an eight-year time period. For those sectors that have increases, approximately 89.9 percent of the cost impacts affect natural gas suppliers. A typical reporter subject to the proposed revisions will see an average cost reduction of about $18/year. The actual cost range for individual reporters varies, ranging from a cost of approximately $450/year for affected natural gas suppliers, to a savings of about $120/year for affected EPEs.

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 improved clarity for reporting entity's reporting and verification obligations, more accurate GHG emissions estimates from corrected or updated emissions calculation methods and emission factors, improved methods to support the accuracy of the statewide greenhouse inventory program and continued robust methods for reporting emissions and product data in order to support ARB's Cap-and-Trade Regulation. These benefits may also result in indirect benefits to the health and welfare of California residents, and the state's environment by ensuring that the state has an accurate inventory of GHG emissions to support programs which will reduce emissions and directly improve the health and welfare of California residents, and the state's environment. A further discussion on the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Effect on Small Businesses

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 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. Because the proposed amendments are made to the existing reporting regulation, and given that these proposed amendments do not have a significant adverse fiscal or economic impact, no alternatives were considered other than making no changes to the regulation, or the specific alternatives described in Chapter II of the ISOR. These alternatives were evaluated, but dismissed as not being more effective than the proposed revisions in carrying out the purposes of the updates.

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. A brief explanation of the basis for reaching this conclusion is included in Chapter IV of the ISOR. The environmental analysis of the proposed regulatory action can be found 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 5:00 pm, 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 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.

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 alterno 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 envié 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.