

UPDATED INFORMATIVE DIGEST

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

Sections Affected: Adoption to California Code of Regulations, title 17, Subchapter 7.7, Article 1, sections 93400, 93401, 93402, 93403, 93404, 93405, 93406, 93407, 93408, 93409, and 93410.

Background

California's existing air quality programs are responsible for significant public health improvements through statewide and regional air quality planning requirements, advancement of technology-based solutions, and risk reduction efforts near industrial facilities. However, certain communities continue to experience adverse and inequitable environmental and health impacts from air pollution.

As compared to other areas, communities near ports, rail yards, warehouses, or freeways, for example, experience a higher concentration of air pollution due to emissions from mobile sources such as cars, diesel trucks, locomotives, and ships. Many of the same communities also experience air quality impacts from large industrial facilities such as oil refineries. Additionally, in many communities across the State, smaller sources of toxic air contaminants like chrome plating facilities, metal recycling facilities, oil and gas production operations, and pesticide use, also contribute to localized air quality impacts. Within certain communities, multiple sources of toxic air contaminants that are located in close proximity may also result in an elevated cumulative exposure burden for nearby human receptors.

Assembly Bill (AB) 617¹, signed into law in July 2017, continues California's environmental leadership by establishing innovative new practices to improve air quality in California's most disadvantaged communities. AB 617 requires community-focused and community-driven action, using multiple strategies and tools, to reduce air pollution and improve public health in communities experiencing a disproportionate cumulative exposure burden from air pollutants. A critical component of AB 617 is its reporting requirements that will be implemented by this regulation.

Emissions inventory data is the foundation of many programs at California Air Resources Board (CARB). Greenhouse gas (GHG) emissions inventory data supports CARB's programs focused on climate change issues, while inventory data for criteria pollutant and toxic air contaminants emissions is critical to

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.

support California's air quality programs. Consistently updated and accurate emissions data is also fundamental to the community right-to-know tenets established in AB 197² and the community-driven action mandated by AB 617. Emissions data is crucial to evaluating and mitigating the effects of air pollutants at the local, regional, and statewide levels.

Historically, emissions inventories were developed to assess emissions to support air quality programs such as State Implementation Plans and local measures implemented by the air districts. AB 197 and AB 617 require a more integrated, trend-based assessment of criteria pollutant and air toxics emissions data. However, the frequency and scope of reporting criteria pollutants and air toxics emissions varies between air districts. Many large air districts collect criteria and air toxic emissions data annually, while smaller districts may only report emissions once every three or four years, depending on the size of a facility. Additionally, the types of criteria pollutants and air toxics reported vary across districts, depending on the attainment status of air districts and the proximity of sources to large sources, which creates incompleteness, inconsistencies, and incompatibilities between currently available data.

Description of the Regulatory Action

The emission reporting requirements in AB 617 direct CARB to establish a uniform statewide system of annual reporting of criteria pollutant and toxic air contaminants for stationary sources, while working closely with the local air districts.

The "Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants" (CTR) includes the following:

- Annual criteria pollutant and air toxics emissions reporting for sources subject to the CTR;
- Consistency in the types of criteria pollutants and air toxics that need to be reported;
- Establishing applicability for sources subject to the reporting requirements;
- Establishing the contents and how the emissions must be reported in the emissions data report;
- Creating reporting deadlines and the process for submitting emissions data reports.

CARB will implement the program requirements in tandem with local air districts to avoid potential duplication of reporting efforts. Air districts have worked closely with their local facilities for many decades and have detailed, specific knowledge of these facilities with regard to their permitting, data collection, and enforcement

² Assembly Bill 197, Garcia, E., Chapter 250, Statutes of 2016, modified the California Health and Safety Code, amending § 39510 and § 39607, and adding § 38506, § 38531, § 38562.5, and § 38562.7.

histories. The districts' knowledge is necessary to ensure the success of the statewide reporting program.

This digest discusses the objectives and benefits of the regulation and provides a summary of the regulation development actions in developing the regulation to establish a uniform statewide system for mandatory annual emissions reporting, pursuant to AB 617 section 39607.1. Additional detailed information is available in the Staff Report: Initial Statement of Reasons, Notices of Public Availability of Modified Text, the Final Statement of Reasons, and other documents for the rulemaking, available here: <https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>.

Objectives and Benefits of the Regulation:

The CTR supports the community right-to-know components of AB 197 and the community-driven actions to address cumulative exposure burden in the most impacted communities in AB 617. The data collected under the regulation will be a significant and beneficial tool in ensuring that communities that are disproportionately affected by air pollution will get the help they need to reduce their air pollution burdens. Additionally, the CTR meets the needs of AB 197 by requiring the annual collection of criteria pollutant and air toxics emissions data, which improves the ability to establish emissions trends for the largest of California's emissions sources.

A key benefit of the CTR is its harmonization of statewide data submission requirements, such as reporting deadlines, frequency of reporting, and the specific chemical substances and other data to be reported on an annual basis, so that similar industrial sectors will begin to have data comparability, regardless of where they are located within California. This improved data in turn provides benefits to community groups, the public, regulators, scientists, CARB, and others, who have growing needs to access complete, user-friendly, and high quality emissions data. The regulation will significantly increase access to useful data in user-friendly forms, such as mapping (as provided in the current CARB Pollution Mapping Tool³), graphs, and detailed emissions data reports when needed.

In addition to addressing the requirements and goals of AB 197 and AB 617, inventory data helps to determine what is being emitted into the air, by whom, and where. Inventory data helps guide and provides the scientific basis for CARB's regulatory development process; identify and address areas of concern; and to track progress in emission reduction efforts, from stationary sources, area sources, and mobile sources. Consistently reported and accurate inventory data are an essential element in the development of cost effective solutions to reduce air pollution and protect human health. Moreover, inventory data supports CARB's overall obligation to work to improve California's air quality. Additionally,

³ CARB Pollution Mapping Tool: https://www.arb.ca.gov/ei/tools/pollution_map/.

while the reporting regulation provides no direct benefits to worker safety, over time, indirect benefits to workers and residents within these communities may be realized as a function of actions taken to reduce emissions, based on the improved inventory.

The Board's Action

On December 14, 2018, following a 45-day public comment period regarding the original proposed CTR (the "Original Proposal"), the Board held a public hearing to consider the proposed regulation. At the conclusion of the hearing, the Board adopted Resolution 18-57⁴, which approved for adoption of the Original Proposal.

However, prior to finalizing the regulation, the Executive Officer was directed by the Board to make modifications to the Original Proposal, as described in the modified regulatory language and concepts presented in Attachment B of Resolution 18-57, and any additional conforming modifications that are appropriate. The Executive Officer was to make any regulation changes available for public comment, with relevant supporting documents and information, for a period of at least 15-days, according to the provisions of California Code of Regulations, title 1, section 44(a) and Government Code section 11340.85.

Specifically, the Executive Officer was directed to: (1) further modify the proposed CTR applicability criteria, as presented in Attachment B, (2) pursue expansion of the applicability requirements to include all permitted stationary sources statewide in the future, (3) explore options for a funding source to support the resources needed for data collection, and (4) continue to collaborate with local air districts in the implementation and enforcement of the CTR.

Supplemental Comment Periods and Modifications to the Original Proposal

As directed by the Board, following a series of workshops and substantial stakeholder outreach, staff proposed modifications to the Original Proposal. On May 13, 2019, the modified regulatory text (the "First Proposed Modifications"), reflecting the changes identified at the hearing and as directed by the Board, was published to the California Notice Register and to CARB's website for a first supplemental public comment period, with issuance of a "Notice of Public Availability of Modified Text and Availability of Additional Documents."⁵ The Notice described each modification, the rationale for modifications, and the modified regulatory text, with all modifications clearly indicated. The first supplemental comment period started on May 13, 2019, and ended on June 7, 2019.

⁴ California Air Resources Board, Resolution 18-57. Available online at: <https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>

⁵ Documents available at the link provided in the previous footnote.

In response to comments received regarding the First Proposed Modifications to the regulation, staff determined further revisions to the regulation were necessary, and initiated a second public review and comment period to finalize the regulation updates. Therefore on July 17, 2019, additional regulation modifications (the “Second Proposed Modifications”) were published with the issuance of a second Notice. The second supplemental comment period started on July 17, 2019, and ended on August 1, 2019.

The following web link includes the notices that describe the revisions in detail, as well as the full text of the First and Second Proposed Modifications with each change clearly notated: <https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>

In summary, the changes resulting from the First and Second Proposed Modifications included revisions to the reporting requirements and definitions and updates to the applicability requirements identifying which categories of facility operators are subject to reporting under the regulation. Specifically related to applicability, for the final regulation it was necessary to delete section 93401(a)(4) of the Original Proposal and First Modifications. This section expanded applicability beyond the core facility classifications specified in AB 617. The section removal was necessary due to the scope and complexity of the updates needed to establish the expanded applicability provisions, which could not be developed within the timing constraints of the rulemaking process. Therefore, the core AB 617 applicability was implemented, while also establishing the primary reporting elements such as schedules, the reporting process, data to be reported, document retention, enforcement, and other framework components of the reporting program.

Compared to the Original Proposal and the First Proposed Modifications, the final regulation text reduced the scope of the applicability provisions and substantially decreased the number of affected facilities (while removing the regulation elements requiring additional time to properly complete). These modifications also reduced the estimated cost impacts of the regulation. Under the Original Proposal, the regulation was expected to affect about 14,680 facilities, with a 4-year overall cost of \$10.5 million to facilities and air districts to implement the regulation. With the revisions released under the Second Proposed Modifications (and as included in the Final Regulation Order), the regulation is expected to affect about 1,300 facilities at 5-year overall cost of \$6.0 million to facilities and districts for to implement the requirements. In a future rulemaking, staff intends to revisit the expansion of the CTR applicability provisions to implement more comprehensive statewide reporting.

Additional Modifications

After the close of the second supplemental 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, corrections of typographical errors, and minor updates to reduce ambiguity which have no effect on the stated requirements. These modifications are fully described in the Final Statement of Reasons for the Rulemaking, available here: <https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants>. The Executive Officer subsequently issued an Executive Order, approving the regulations with the proposed modifications.

Additional Documents Added to the Record

In the interest of completeness, CARB staff added the following additional documents to the rulemaking record:

- 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.”
- United States Environmental Protection Agency, Code of Federal Regulations (CFR), title 40, part 51(s), *Requirements for Preparation, Adoption, And Submittal of Implementation Plans*, as it existed June 12, 2019. Incorporated by reference in section 93402, in the definition of “Reactive organic gases.” The CFR text is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=cafb770759c3d3ec44d883322cee77b0&mc=true&node=se40.2.51_1100&rqn=div8
- United States Environmental Protection Agency, Code of Federal Regulations, title 40, part 50, *National Primary and Secondary Ambient Air Quality Standards*, as it existed June 14, 2019. The document was included in the original text of the regulation, and the revision is only to formally incorporate the document by reference into the CTR. The document is cited in section 93402 of the CTR, in the definition of “National Ambient Air Quality Standards.” The CFR text is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=cafb770759c3d3ec44d883322cee77b0&mc=true&node=se40.2.51_1100&rqn=div8

Comparable Federal Regulations:

Various provisions of existing federal regulations require the reporting of criteria emissions and toxics air contaminants to United States Environmental Protection Agency (U.S. EPA). The proposed CARB regulation also requires reporting of criteria and toxic emissions, which does have some overlap with existing federal requirements. Overall, however, the requirements are not duplicative. The proposed CARB regulation is specifically designed to address the needs associated with evaluating air pollution impacts in disproportionately impacted communities. These needs cannot be met with data collected under existing federal regulations, which makes it necessary to implement the new CARB requirements.

In addition, the reporting requirements are mandated by AB 617, section 39601.7(b)(1) of the H&SC, which requires CARB to establish “a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source.” Further, the cost of differing reporting regulations is justified by the anticipated benefits to human health, public welfare, and the environment. Community monitoring and emission reduction programs will be implemented using the data collected under the regulation as a foundation to establish, evaluate, and quantify community air quality improvements. Additional information related to the justification for adoption of regulations different from federal regulations is provided in Section IX of the “Staff Report: Initial Statement of Reasons – Proposed Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants,” referred to as the Initial Statement of Reasons.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the regulatory action, CARB conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing State regulations.