

State of California  
AIR RESOURCES BOARD

**PROPOSED FUEL CELL NET ENERGY METERING GREENHOUSE GAS EMISSION  
STANDARDS REGULATION**

Resolution 19-36

**December 12, 2019**

Agenda Item No.: 19-12-9

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature has enacted the Global Warming Solutions Act of 2006 (Assembly Bill 32 or AB 32; Chapter 488, Statutes of 2006; Health & Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, section 38566 of the Health and Safety Code, added pursuant to Senate Bill 32 (SB 32; Chapter 250, Statutes of 2016), further directs that CARB shall ensure that state GHG emissions are reduced to at least 40 percent below the statewide GHG limit no later than December 31, 2030;

WHEREAS, section 38510 of the Health and Safety Code designates CARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38562(a) of the Health and Safety Code requires CARB to adopt GHG emissions limits and emissions reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions in furtherance of achieving the statewide greenhouse gas emissions limit;

WHEREAS, section 38562(b) of the Health and Safety Code requires CARB, in adopting the regulations described in section 38562(a), to the extent feasible and in furtherance of achieving the statewide GHG emissions limit, to do the following:

Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities;

Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and State ambient air quality standards and to reduce toxic air contaminant emissions;

Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health;

Minimize the administrative burden of implementing and complying with these regulations;

WHEREAS, California's air quality programs have led to significant public health improvements; however, certain communities continue to experience environmental and health inequities from air pollution;

WHEREAS, many of these communities are affected by multiple stationary, area, and mobile sources of air pollution and suffer disproportionate health impacts;

WHEREAS, the high cumulative exposure burdens in these communities are a public health concern, contributing to health conditions, such as cardiorespiratory disease, increased cancer risk, and an increased risk of premature death;

WHEREAS, expedited emission reductions of toxic air contaminants and criteria air pollutants in communities with high cumulative exposure burdens are critical to reduce these disproportionate health impacts;

WHEREAS, the Legislature enacted the California Clean Air Act of 1988 (Statutes of 1988, Chapter 1568) declaring that it is necessary that the State ambient air quality standards be attained by the earliest practicable date to protect public health, particularly the health of children, older people, and those with respiratory diseases;

WHEREAS, the Legislature enacted Assembly Bill 1637 (Chapter 658, Statutes of 2016) amending section 2827.10 of the California Public Utilities Code;

WHEREAS, section 2827.10(b)(1) of the California Public Utilities Code requires that CARB, in consultation with the California Energy Commission, "establish a schedule of annual greenhouse gas emissions reduction standards for a fuel cell electrical generation resource..." and "...update the schedule every three years with applicable standards for each intervening year;"

WHEREAS, section 2827.10(b)(2) of the California Public Utilities Code requires CARB to ensure that each fuel cell generation resource participating in the Fuel Cell Net Energy Metering Program "reduces greenhouse gas emissions compared to the electrical grid resources, including renewable resources, that the fuel cell electrical generation resource displaces, accounting for both procurement and operation of the electrical grid";

WHEREAS, staff has proposed the regulation, as set forth in Appendix A to the Initial State of Reasons released to the public on October 22, 2019;

WHEREAS, the proposed regulatory language was made available to the public at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, staff has prepared a document entitled "Staff Report: Initial Statement of Reasons-Public Hearing to Consider the Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation" (ISOR), released to the public on October 22, 2019;

WHEREAS, the proposed regulation is needed to establish fuel cell net energy metering (NEM) GHG emission standards and a process for determining future fuel cell NEM GHG emission standards.

WHEREAS, staff conducted a working group meeting and three workshops, provided informal regulatory text, and also participated in numerous other meetings with stakeholders to provide additional opportunities to participate in the regulatory development process;

WHEREAS, CARB staff sought feedback and input from California Energy Commission and California Public Utilities Commission staff during the development of the proposed regulation;

WHEREAS, fuel cells, which utilize but do not combust natural gas, have the potential to reduce criteria pollutants and diesel particulate matter, which are critical priorities in the State and a benefit to ratepayers.

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60008);

WHEREAS, staff has determined the proposed regulation is exempt from CEQA under California Code of Regulations, title 14, section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the regulation will enhance the environment by better protecting the public from health impacts associated with exposure to GHG, the regulatory process involves procedures for protection of the environment, and the regulation will not result in any significant adverse environmental impacts as described in Chapter VI of the Staff Report;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, the Board finds that:

The Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation meets the statutory requirements identified in sections 2827.10.(b)(1) and 2827.10.(b)(2) of the California Public Utilities Code;

The Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts;

No reasonable alternatives to the Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation is consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed regulation is exempt from CEQA under California Code of Regulations, title 14, section 15308 because substantial evidence in the record shows that it will enhance the environment by better protecting the public from health impacts associated with exposure to GHGs, the regulatory process involves procedures for protection of the environment, and the proposal will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption sections 95408, 95409, 95410, 95411, and 95412, Title 17 California Code of Regulations, as set forth in Attachment A to this Resolution.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment A. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall 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. The Executive Officer may present

the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15-day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by CARB's regulations at title 17, CCR, section 60004.

I hereby certify that the above is a true and correct copy of Resolution 19-36 as adopted by the California Air Resources Board.



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Patricia Carlos, Board Clerk

Resolution 19-36

December 12, 2019

**Identification of Attachments to the Board Resolution**

**Attachment A\*:** Proposed Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation sections 95408, 95409, 95410, 95411, and 95412, Title 17 California Code of Regulations, subarticle 5.2, as set forth in Appendix A to the Initial Statement of Reasons, released October 22, 2019.

\*Attachment A NOT attached to the proposed resolution; it is simply described on this page.