

## Final Regulation Order

### AB 32 COST OF IMPLEMENTATION FEE

Adopt new article 3, sections 95200 to 95207, title 17, California Code of Regulations to read as follows:

**(NOTE: All of the following is new language to be added to the California Code of Regulations)**

#### Article 3: Fees

##### Subarticle 1: AB 32 Cost of Implementation Fee Regulation

###### § 95200. Purpose.

The purpose of this subarticle is to collect fees to be used to carry out the California Global Warming Solutions Act of 2006 (Stats. 2006; Ch. 488; Health and Safety Code sections 38500 *et seq.*), as provided in Health and Safety Code section 38597.

NOTE: Authority cited: Sections 38510, 38597, 39600 and 39601, Health and Safety Code. Reference: Sections 38530 and 39600, Health and Safety Code.

###### § 95201. Applicability.

- (a) This subarticle applies to the following entities. The terms used below are defined in section 95202.
  - (1) *Natural Gas Utilities, Users, and Pipeline Owners and Operators that distribute or use natural gas in California.*
    - (A) All public utility gas corporations and publicly owned natural gas utilities operating in California. Fees shall be paid for each therm of natural gas delivered to any end user in California, excluding natural gas delivered to electricity generating facilities.
    - (B) All owners and operators that are end users of natural gas received directly from interstate pipelines, except for electricity generating facilities. Fees shall be paid for each therm of natural gas directly distributed by interstate pipelines.
    - (C) All owners or operators of interstate pipelines that are not included in subsection 95201(a)(1)(A), and that distribute natural gas directly to end users in California. These entities

are included for the purposes of reporting only. Each owner or operator shall report those end users in California to which they supply natural gas.

(D) All owners or operators of intrastate pipelines that are not included in subsection 95201(a)(1)(A), that distribute natural gas directly to end users. Fees shall be paid for each therm of natural gas distributed directly to end users, except for natural gas delivered to electricity generating facilities.

(E) All California owners or operators that consume natural gas produced on-site and that are subject to the Mandatory Reporting Regulation. Fees shall be paid for each therm of natural gas consumed of the natural gas produced on-site, unless the natural gas is consumed by an electricity generating facility.

(F) All California owners or operators that consume associated gas that is produced on-site and that are subject to the Mandatory Reporting Regulation. Fees shall be paid on the emissions resulting from the combustion of these fuels, unless these fuels are consumed by an electricity generating facility.

(2) *Producers and Importers of California Gasoline and California Diesel Fuels.*

(A) All producers and importers of California gasoline or California diesel for use in California. Fees shall be paid for each gallon of gasoline or diesel fuel distributed.

(B) All producers and importers of CARBOB. Fees shall be paid for each gallon of CARBOB plus the designated amount of oxygenate.

(3) *Cement Manufacturers.*

All owners or operators of cement manufacturing facilities that emit greenhouse gases through the clinker manufacturing process. Fees shall be paid on the amount of CO<sub>2</sub> emissions.

(4) *First Deliverers of Electricity.*

(A) Any owner or operator of an electricity generating facility in California that delivers electricity to the California transmission and distribution system, or any electricity importer that is the

purchasing or selling entity that delivers electricity at its first point of delivery in California. Fees shall be paid for each megawatt-hour of net power generated by combustion of natural gas, coal or other fossil fuels (except California diesel at an electricity generating facility in California), and reported pursuant to section 95111(a)(1)(A) or 95111(a)(2)(A) of the Mandatory Reporting Regulation. Fees shall also be paid for each megawatt-hour of imported electricity reported pursuant to sections 95111(b)(2)(B and C) and 95111(b)(3)(N) of the Mandatory Reporting Regulation if the electricity is from either unspecified sources or specified sources that combust natural gas, coal, petroleum coke, catalyst coke, refinery gas or other fossil fuels (except California diesel).

(B) No fee shall be paid for any megawatt-hour generated at any electricity generating facility that has a nameplate generating capacity of less than one megawatt, or that emits less than 2,500 metric tons of CO<sub>2</sub> from electricity generating activities during the reporting year.

(C) No fee shall be paid for any megawatt-hour of electricity generated at a cogeneration facility.

(5) *Facilities that Combust or Consume Coal, Petroleum Coke, Catalyst Coke or Refinery Gas.*

Any owner or operator of a facility in California, except for electricity generating facilities, that is subject to the Mandatory Reporting Regulation, and combusts as fuel or consumes as feedstock any of the following substances:

- (A) Coal;
- (B) Petroleum coke;

For coal and petroleum coke, fees shall be paid on the annual quantity of emissions as calculated pursuant to 95203(i).

- (C) Catalyst coke; or
- (D) Refinery gas

For catalyst coke or refinery gas, fees shall be paid on the reported emissions.

(b) This subarticle does not apply to any of the following fuels, or to emissions resulting from combustion of any of the following fuels, unless said fuels are used at electricity generating facilities:

- (1) aviation gasoline;
- (2) jet fuel;
- (3) kerosene;

- (4) liquefied petroleum gas;
  - (5) biodiesel;
  - (6) renewable diesel;
  - (7) residual fuel oil;
  - (8) propane; or
  - (9) any fuel exported for use outside of California.
- (c) The fees associated with this subarticle shall be based upon the reported data from the most recent calendar year for which the mandatory reporting data verification process is completed, except for fiscal year 2010/11. 2008 calendar year data shall be used for fiscal year 2010/11.

NOTE: Authority: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: Sections 38501, 38505 and 39300, Health and Safety Code.

**§ 95202. Definitions.**

- (a) For the purposes of this subarticle, the following definitions shall apply:
- (1) “AB 32” means the California Global Warming Solutions Act of 2006, Assembly Bill 32, Chapter 488, Statutes of 2006, as codified in Health and Safety Code section 38500 *et seq.*
  - (2) “Acid gas reagent” means a substance used to chemically remove acid gases from industrial exhaust streams.
  - (3) “Acid gas scrubbers” mean a diverse group of air pollution control devices that can be used to remove some particulates and/or gases from industrial exhaust streams.
  - (4) “Annual” means with a frequency of once a year; unless otherwise noted, annual events such as the fee payment and liability will be based on the calendar year.
  - (5) “ARB” or “Board” means the California Air Resources Board.
  - (6) “Asset-controlling supplier” means any entity that operates electricity generating facilities or serves as an exclusive marketer for certain generating facilities even though it does not own them, and assigned a supplier-specific identification number for its fleet of generating facilities under the provisions of subarticle 2, title 17 of the California Code of Regulations.
  - (7) “Asset-owning supplier” means any entity that owns electricity generating facilities that deliver electricity to a transmission or

distribution line, and is assigned a supplier-specific identification number for its fleet of generating facilities under the provisions of article 2, title 17 of the California Code of Regulations.

- (8) “Associated gas” means hydrocarbon-based gaseous fuel produced in association with crude oil from any oil well and subsequently burned in the field as a fuel.
- (9) “Billing address” means the address where the party responsible for payment would receive an invoice.
- (10) “Biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel meeting all of the following:
  - (A) Registered as a motor vehicle fuel or fuel additive under title 40, Code of Federal Regulations, part 79;
  - (B) A mono-alkyl ester;
  - (C) Meets American Society for Testing and Material designation ASTM D 6751-08 (*Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels*);
  - (D) Intended for use in engines that are designated to run on conventional diesel fuel; and
  - (E) Derived from nonpetroleum renewable resources.
- (11) “Biogas” (also called biomethane) means gas that is produced from the breakdown of organic material in the absence of oxygen. Biogas is produced in processes including, but not limited to, anaerobic digestion, anaerobic decomposition, and thermochemical decomposition. These processes are applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, green waste, and waste from energy crops, to produce landfill gas, digester gas, and other forms of biogas.
- (12) “Busbar” means the power conduit of an electricity generating facility that serves as the starting point for the electricity transmission and distribution system.
- (13) “Calendar year” means the time period from January 1 through December 31.

- (14) “California gasoline” has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).

For California gasoline,

- (A) “Produce” for California gasoline has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
  - (B) “Producer” for California gasoline has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
  - (C) “Supply” for California gasoline has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
  - (D) “Importer” for California gasoline means the majority owner of the California gasoline when it first enters the state of California. For rail cars, cargo tanks, and pipelines, it is the point where the product first crosses the California State border. For imports by marine vessel it is the point where the fuel leaves the vessel.
  - (E) “Import” for California gasoline means movement of California gasoline into the state of California. For rail cars, cargo tanks, and pipelines it is when the product first crosses the California State border. For imports by marine vessel it is the point where the fuel leaves the vessel.
- (15) “California reformulated gasoline blendstock for oxygenate blending,” or “CARBOB,” has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).

For CARBOB,

- (A) “Produce” for CARBOB has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
- (B) “Producer” for CARBOB has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
- (C) “Supply” for CARBOB has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).

- (D) "Importer" for CARBOB means the majority owner of the CARBOB when it first enters the state of California. For rail cars, cargo tanks, and pipelines it is the point where the product first crosses the California State border. For imports by marine vessel it is the point where the fuel leaves the vessel.
  - (E) "Import" for CARBOB means movement of CARBOB into the state of California. For rail cars, cargo tanks, and pipelines it is when the product first crosses the California state border. For imports by marine vessel it is the point where the fuel leaves the vessel.
- (16) "California diesel fuel" has the same meaning as "Vehicular Diesel Fuel," as defined in title 13 California Code of Regulations, section 2282(b).

For California diesel fuel,

- (A) "Produce" for California diesel fuel has the same meaning as "Vehicular Diesel Fuel," as defined in title 13 of the California Code of Regulations, section 2282(b).
- (B) "Producer" for California diesel fuel has the same meaning as "Vehicular Diesel Fuel," as defined in title 13 of the California Code of Regulations, section 2282(b).
- (C) "Supply" for California diesel fuel has the same meaning as defined in title 13 of the California Code of Regulations, section 2282(b).
- (D) "Importer" for California diesel fuel means the majority owner of the California diesel fuel when it first enters the state of California. For rail cars, cargo tanks, and pipelines it is the point where the product first crosses the California state border. For imports by marine vessel it is the point where the fuel leaves the vessel.
- (E) "Import" for California diesel fuel means movement of product into the state of California. For rail cars, cargo tanks, and pipelines it is when the product first crosses the California state border. For imports by marine vessel it is the point where the fuel leaves the vessel.

- (17) "Carbon dioxide" or "CO<sub>2</sub>" means the most common of the six primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.
- (18) "Carbon dioxide equivalent" or "CO<sub>2</sub>E" or "CO<sub>2</sub> equivalent" means a measure for comparing carbon dioxide with other greenhouse gases, based on the quantity of those gases multiplied by the appropriate global warming potential factor and commonly expressed as metric tons of carbon dioxide equivalents (MTCO<sub>2</sub>E).
- (19) "Catalyst" means a substance added to a chemical reaction, which facilitates or causes the reaction, and is not consumed by the reaction.
- (20) "Catalyst coke" means carbon that is deposited on a catalyst, thus deactivating the catalyst.
- (21) "Cement" means a building material that is produced by heating mixtures of limestone and other minerals or additives at high temperatures in a rotary kiln to form clinker, followed by cooling and grinding with blended additives. Finished cement is a powder used with water, sand and gravel to make concrete and mortar.
- (22) "Cement manufacturer" means an owner or operator of a cement plant.
- (23) "Cement plant" means an industrial structure, installation, plant or building primarily engaged in manufacturing Portland, natural, masonry, pozzolanic, or other hydraulic cements, and typically identified by North American Industry Classification System Code 327310.
- (24) "Clinker" means the mass of fused material produced in a cement kiln from which finished cement is manufactured by milling and grinding.
- (25) "Coal" means all solid fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Material Designation ASTM D388-05 "Standard Classification of Coals by Rank."
- (26) "Cogeneration facility" means an industrial structure, installation, plant, or building or self-generation facility, which may include one or more cogeneration systems configured as either a topping cycling or bottoming cycling plant, and in which electricity is generated solely from cogeneration systems.



- (27) “Cogeneration system” means individual cogeneration components including the prime mover (heat engine), generator, heat recovery, and electrical interconnection, configured into an integrated system that provides sequential generation of multiple forms of useful energy (usually electrical and thermal), at least one form of which the facility consumes on-site or makes available to other users for an end-use other than electricity generation.
- (28) “Combust” means the process of burning or setting fire to a fuel.
- (29) “Combustion emissions” means greenhouse gas emissions occurring during the exothermic reaction of a fuel with oxygen.
- (30) “Cracking” means the process of breaking down larger molecules into smaller molecules, utilizing catalysts and/or elevated temperatures and pressures.
- (31) “Debt” means those loans obtained by the Board, and required by the Legislature to be repaid, to carry out AB 32 for fiscal years 2007/08, 2008/09, and 2009/10.
- (32) “Delivered electricity” means electricity that is delivered to a point of interconnection with the California electricity transmission and distribution system. For electricity that is generated in California, the electricity is delivered from a specified source at the busbar. For electricity generated outside California from specified or unspecified sources, the electricity is delivered to a point of delivery in California for consumption in California.
- (33) “Electricity Fee Rate” means the rate charged per megawatt-hour (MWh) of electricity generated at a specified source or an unspecified source based on source-specific emissions factors, or a default emissions factor for unspecified sources.
- (34) “Electricity generating facility” or “Generating facility” means a facility that generates electricity and includes one or more generating units at the same location inside or outside California. “Electric generating facility” or “Generating facility” does not include a cogeneration facility or a self-generation facility.
- (35) “Electricity importer” means an owner of electricity generated outside of California as it is delivered to the first point of delivery in California, for electricity having a final point of delivery in California.

- (36) "Emissions" means the release of greenhouse gases into the atmosphere from sources and processes in a facility.
- (37) "Emissions data report" or "greenhouse gas emissions data report" or "report" means the report prepared by an operator each year and submitted by electronic means to ARB to comply with this subarticle.
- (38) "Emission factor" means a unique value for determining an amount of a greenhouse gas emitted for a given quantity of activity (e.g., metric tons of carbon dioxide emitted per gallon of gasoline burned).
- (39) "End user" means the entity to which natural gas is delivered for combustion or consumption.
- (40) "Entity" means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, government agency, or public district.
- (41) "Exclusive marketer" means a marketer that has exclusive rights to market electricity for a generating facility or group of generating facilities.
- (42) "Executive Officer" means the Executive Officer of ARB or his or her delegate.
- (43) "Facility" means any property, plant, building, structure, stationary source, stationary equipment or grouping of stationary equipment or stationary sources located on one or more contiguous or adjacent properties, in actual physical contact or separated solely by a public roadway or other public right-of-way, and under common operational control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.
- (44) "Fee determination notice" means the notice provided by ARB to entities regulated by this subarticle stating the dollar amount due.
- (45) "Feedstock" means the raw material supplied to a process.
- (46) "First deliverer" means either the owner or operator of an electricity generating facility in California, or an electricity importer.

- (47) "Fiscal year" means the time period from July 1 to June 30.
- (48) "Fossil Fuel" means a fuel, including but not limited to coal, oil, natural gas and petroleum by-products, produced by the decomposition of ancient (fossilized) plants and animals.
- (49) "Fuel" means solid, liquid or gaseous combustible material.
- (50) "Fuel fee rate" means the rate charged per MTCO<sub>2</sub> produced by greenhouse gas sources specific to the fuel combusted and calculated by ARB.
- (51) "Gallon" means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement is made on the temperature corrected gallonage.
- (52) "Generating unit" means any combination of physically connected generator(s), reactor(s), boiler(s), combustion turbine(s), or other prime mover(s) operated together to produce electric power.
- (53) "Global warming potential" or "GWP factor" means the radiative forcing impact of one mass-based unit of a given greenhouse gas relative to an equivalent unit of carbon dioxide over a given period of time.
- (54) "Government agency" means any agency as defined in Government Code section 11000.
- (55) "Greenhouse gas source" means any physical unit, process, or other use or activity that releases a greenhouse gas into the atmosphere.
- (56) "Imported electricity" means electricity that is generated outside of California and delivered to a first point of delivery into California with a final point of delivery in California. Imported electricity does not include:
- (A) Power wheeled through California, which is power that is imported into California that terminates in a location outside of California; or
  - (B) Power transactions in which imported power is simultaneously exchanged for exported power.

- (57) "Interstate Pipeline" means any entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act.
- (58) "Intrastate Pipeline" means a natural gas pipeline that operates wholly in California.
- (59) "Kerosene" means a light distillate fuel that includes No. 1-K and No. 2-K as well as other grades of range or stove oil that have properties similar to those of No. 1 fuel oil.
- (60) "Liquefied petroleum gas (LPG)" means normal butane, isobutane, propane, or butylene (including isomers) or mixtures composed predominantly thereof in liquid or gaseous state having a vapor pressure in excess of 40 pounds per square inch absolute at a temperature of 100 degrees Fahrenheit.
- (61) "Mandatory Reporting Regulation" means ARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, as set forth in title 17, California Code of Regulations, Chapter 1, Subchapter 10, article 2 (commencing with section 95100).
- (62) "Marketer" means a purchasing/selling entity that is not a retail provider, and that is the purchaser/seller at the first point of delivery in California for electric power imported into California, or the last point of receipt in California for power exported from California.
- (63) "Megawatt-hour" or "MWh" means the electrical energy unit of measure equal to one million watts of power supplied to, or taken from, an electric circuit steadily for one hour.
- (64) "Meter" means a device designed to measure, record or regulate the amount or volume of the flow of a gas.
- (65) "Metric ton" or "MT" or "tonne" means a common international measurement for the quantity of greenhouse gas emissions, equivalent to about 2204.6 pounds, or 1.1 short tons.
- (66) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.
- (67) "Nameplate generating capacity" means the maximum rated output of a generator under specific conditions designed by the manufacturer. Generator nameplate capacity is usually indicated in units of kilovolt-amperes (kVA) and in Kilowatts (kW) on a nameplate physically attached to the generator.

- (68) “Natural gas” means a naturally occurring mixture of hydrocarbons beneath the Earth’s surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. “Natural gas” does not include “biogas”.
- (69) “Natural gas importer” means any entity that receives natural gas from a party that is not a public gas corporation, as defined in this subarticle, that consumes and/or distributes natural gas to consumers of natural gas.
- (70) “Net power generated” means the gross generation minus station service or unit service power requirements, expressed in megawatt hours (MWh) per year. In the case of cogeneration, this value is intended to include internal consumption of electricity for the purposes of a production process as well as power put on the grid.
- (71) “Operational control” for a facility subject to this subarticle means the entity that has authority to introduce and implement operating, environmental, health and safety policies. In any circumstance where this authority is shared among multiple entities, the entity holding the permit to operate from the local air pollution control district or air quality management district is considered to have operational control for purposes of this subarticle.
- (72) “Operator” means the entity having operational control of a facility.
- (73) “Owner” means the entity having title of the property or assets which are subject to the fee.
- (74) “Payment period” means 60 days from the receipt of the billing, as stated in section 95205 each calendar year.
- (75) “Petroleum coke” means a solid residue high in carbon content and low in hydrogen that is the final product of thermal decomposition in the condensation process in cracking.
- (76) “Petroleum refinery” or “refinery” means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.
- (77) “Point of delivery” means a point on an electric system where a power supplier delivers electricity to the receiver of that energy. This point can be an interconnection with another system or a

- substation where the transmission provider's transmission and distribution systems are connected to another system.
- (78) "Power" means electricity, except where the context makes clear that another meaning is intended.
- (79) "Process" means the intentional or unintentional reactions between substances or their transformation, including, but not limited to, the chemical or electrolytic reduction of metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock.
- (80) "Process emissions" means:
- (A) For cement manufacturing: The greenhouse gas emissions produced through the chemical reactions of feedstock during pyroprocessing to produce cement clinker (which does not include greenhouse gas emissions which are the result of fuel combustion emissions).
  - (B) For refineries and hydrogen plants: The greenhouse gas emissions resulting from the steam methane reforming process excluding those that occur as a result of the use of natural gas as a feedstock.
- (81) "Producer" means any person who owns, leases, operates, controls or supervises a California production facility.
- (82) "Production facility" means a facility in California at which gasoline or CARBOB is produced. Upon request of a producer, the Executive Officer may designate, as part of the producer's production facility, a physically separate bulk storage facility which (A) is owned or leased by the producer, and (B) is operated by or at the direction of the producer, and (C) is not used to store or distribute gasoline or CARBOB that is not supplied from the production facility.
- (83) "Propane" means a normally straight chain hydrocarbon that boils at -3.67 degrees Fahrenheit and is represented by the chemical formula  $C_3H_8$ .
- (84) "Publicly-owned natural gas utility" means a municipality or municipal corporation, a municipal utility district, a public utility district, or a joint powers authority that includes one or more of these agencies that furnishes natural gas services to end users.

- (85) “Public utility gas corporation” means a gas corporation as defined in California Public Utilities Code section 222 that is also a public utility as defined in California Public Utilities Code section 216.
- (86) “Purchasing or selling entity” means for purposes of this regulation an entity that is eligible to purchase or sell energy or capacity and reserve transmission services.
- (87) “Refinery gas” means gas generated at a petroleum refinery or any gas generated by a refinery process unit, and that is combusted separately or in any combination with any type of gas.
- (88) “Renewable diesel” means a motor vehicle fuel or fuel additive which is all of the following:
- (A) Registered as a motor vehicle fuel or fuel additive under 40 CFR part 79;
  - (B) Not a mono-alkyl ester;
  - (C) Intended for use in engines that are designed to run on conventional diesel fuel; and
  - (D) Derived from nonpetroleum renewable resources.
- (89) “Report Year” means the calendar year for which emissions are being reported in the emissions data report.
- (90) “Residual fuel oil” means a general classification for the heavier oils, known as No. 5 and No. 6 fuel oils, that remain after the distillate fuel oils and lighter hydrocarbons are distilled away in refinery operations.
- (91) “Retail provider” means an entity that provides electricity to retail end users in California and is an electric corporation as defined in Public Utilities Code section 218, electric service provider as defined in Public Utilities Code section 218.3, local publicly owned electric utility as defined in Public Utilities Code section 224.3, a community choice aggregator as defined in Public Utilities Code section 331.1, or the Western Area Power Administration.
- (92) “Self-generation facility” means a facility dedicated to serving a particular electricity end user, usually located on the user’s premises. The facility may either be owned directly by the electricity user or owned by an entity with a contractual arrangement to provide electricity to meet some or all of the user’s load.

- (93) "Source" means greenhouse gas source.
- (94) "Specified source" or "specified source of power" means a particular generating unit or electricity generating facility in California or out of state to which electrical generation can be confidently tracked due to full or partial ownership by a first deliverer, or due to its identification in a power contract with a first deliverer, and also means an asset-owning or asset-controlling supplier.
- (95) "Stationary" means neither portable nor self propelled, and operated at a single facility.
- (96) "Steam methane reforming process" means a method in which high temperature steam is used to produce hydrogen from a methane source.
- (97) "Therm" means a unit of heat equal to 100,000 British thermal units ( $1.054 \times 10^8$  joules).
- (98) "Ton" means a short ton equal to 2000 pounds.
- (99) "Unspecified source of power" or "unspecified source" means a source of electricity generation that cannot be matched to a particular electricity generating unit or facility, or to an asset-owning or asset-controlling supplier.

NOTE: Authority cited: Section 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: Sections 38530, 39600 and 39601, Health and Safety Code.

**§ 95203. Calculation of Fees.**

(a) *Total Required Revenue (TRR).*

- (1) The Required Revenue (RR) shall be the total amount of funds necessary to recover the costs of implementation of AB 32 program expenditures for each fiscal year, based on the number of personnel positions, including salaries and benefits and all other costs, as approved in the California Budget Act for that fiscal year.
- (2) For fiscal years 2010/2011, 2011/2012, 2012/2013, and 2013/2014, the RR shall also include the payments required to be made by ARB on the Debt incurred. The Debt shall be repaid at a rate of \$27 million dollars for each of fiscal years 2010/2011, 2011/2012,



and 2012/2013. The remaining Debt shall be repaid in fiscal year 2013/2014.

- (3) The RR shall also include any amounts required to be expended by ARB in defense of this subarticle in court.
- (4) If there is any excess or shortfall in the actual revenue collected for any fiscal year, such excess or shortfall shall be carried over to the next year's calculation of the Total Revenue Requirement. If ARB does not expend or encumber the full amount authorized by the California Legislature for any fiscal year, the amount not expended or encumbered in that fiscal year shall be carried over and deducted from the next year's calculation of the Total Revenue Required.
- (5) The annual Total Revenue Requirement is equal to the annual RR adjusted for the previous fiscal year's excess or shortfall amount, as provided in subsection (a)(4).

(b) *Common Carbon Cost.*

The Executive Officer shall calculate a Common Carbon Cost (CCC), which represents the annual cost per MTCO<sub>2</sub> emitted. The CCC shall be calculated in accordance with the following formula:

$$CCC = \frac{TRR}{(Q_c \times EF_c) + Q_{cc} + Q_{rga} + (Q_{ng} \times EF_{ng}) + (Q_{ag}) + (Q_g \times EF_g) + (Q_d \times EF_d) + (Q_e \times EF_e) + Q_{pe}}$$

Where

TRR = Total Required Revenue, as specified in subsection 95203(a).

$(Q_c \times EF_c)$  = Statewide quantity of emissions from coal, or petroleum coke, except that used in an electricity generating facility, calculated as the sum of:

$(Q_b \times EF_b)$  = Quantity of bituminous coal ( $Q_b$ ) x emission factor for bituminous coal ( $EF_b$ );

$(Q_l \times EF_l)$  = Quantity of lignite coal ( $Q_l$ ) x the emission factor ( $EF_l$ ) for lignite coal;

$(Q_a \times EF_a)$  = Quantity of anthracite coal ( $Q_a$ ) x the emission factor ( $EF_a$ ) for anthracite coal;

$(Q_{sb} \times EF_{sb})$  = Quantity of subbituminous coal ( $Q_{sb}$ )x the emission factor ( $EF_{sb}$ ) for subbituminous coal;

$(Q_{pc} \times EF_{pc})$  = Quantity of petroleum coke ( $Q_{pc}$ ) x the emission factor ( $EF_{pc}$ ) for petroleum coke

- $Q_{cc}$  = Statewide quantity of emissions from catalyst coke, except that used in an electricity generating facility
- $Q_{rga}$  = Statewide adjusted quantity of emissions from refinery gas, except that used in an electricity generating facility
- $Q_{ng}$  = Statewide quantity, in therms, of natural gas supplied for all uses except electricity generating facilities during the reporting period
- $EF_{ng}$  = Emission factor of  $MTCO_2$  natural gas
- $Q_{ag}$  = Statewide quantity of emissions from associated gas
- $Q_g$  = Statewide quantity of gasoline supplied during the reporting period. This is the volumetric sum of California gasoline produced or imported into California and the amount of finished CARBOB product produced or imported into California. The finished CARBOB product is calculated as the volume sum of the CARBOB plus the maximum amount of oxygenate designated for each volume of CARBOB.
- $EF_g$  = Emission factor of  $MTCO_2$  for each supplied gallon of California gasoline.
- $Q_d$  = Quantity of California diesel fuel supplied during the reporting period
- $EF_d$  = Emission factor of  $MTCO_2$  for each supplied gallon of California diesel fuel
- $(Q_e \times EF_e)$  = Quantity of emissions from delivered electricity as the sum of:

$(Q_{sp} \times EF_{sp})$  = Quantity of MWh of electricity delivered from each specified source multiplied by the emission factor for that specified source;

$(Q_{usp} \times EF_{usp})$  = Statewide quantity of MWh of electricity delivered from unspecified sources multiplied by the default emission factor for unspecified sources.

$Q_{pe}$  = Quantity of process emissions from cement manufacturing.

(c) *Fuel Fee Rate.*

For entities reporting pursuant to section 95204(d)(1), (d)(2), (d)(3), (d)(5), (e), and (f)(1), and (f)(2) the Executive Officer shall calculate a fuel fee rate for each fuel included in subsection 95203(b) using the following formula:

$$FR_i = CCC \times EF_i$$

Where:

$FR_i$  = Fuel fee rate for the fuel

CCC = Common Carbon Cost

$EF_i$  = Emission factor of  $MTCO_2$  for each unit of fuel supplied.

(d) *Fuel Emission Factors.*

For entities reporting pursuant to section 95204(d)(1), (d)(2) (d)(3), (d)(4 5), (e), (f)(1) and (f)(2) the Executive Officer shall calculate the Common Carbon Cost and the Fuel fee rates using the following emissions factors:

Fuel Type	CO <sub>2</sub> Emission Factor	Emission Factor Units
Coal		
Anthracite	2,597.94	kg CO <sub>2</sub> / short ton
Bituminous	2,328.35	kg CO <sub>2</sub> / short ton
Sub-bituminous	1,673.64	kg CO <sub>2</sub> / short ton
Lignite	1,369.32	kg CO <sub>2</sub> / short ton
Petroleum coke	2,530.65	kg CO <sub>2</sub> / short ton
Natural Gas	5.302	kg CO <sub>2</sub> / therm
Diesel	9.96	kg CO <sub>2</sub> / gallon

Gasoline	8.55	kg CO <sub>2</sub> / gallon
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(e) *Electricity Fee Rate.*

The Executive Officer shall calculate an Electricity Fee Rate for each source of electricity delivered in California using the following formulas:

$$\begin{aligned} EFR_{sp} &= CCC \times EF_{sp} \\ EFR_{asp} &= CCC \times EF_{asp} \\ EFR_{usp} &= CCC \times EF_{usp} \end{aligned}$$

Where:

“sp” denotes a specified source that is an electricity generating facility or unit

“asp” denotes an asset-owning or asset-controlling supplier

“usp” denotes an unspecified source

$EFR_{sp}$  = The Electricity fee rate for the specified source

$EFR_{asp}$  = The Electricity fee rate for the asset-owning and asset-controlling suppliers

$EFR_{usp}$  = The Electricity fee rate for unspecified sources

$EF_{sp}$  = Emission factor for specified source in MTCO<sub>2</sub> per MWh

$EF_{asp}$  = Emission factor for asset-owning and asset-controlling suppliers in MTCO<sub>2</sub> per MWh

$EF_{usp}$  = .499 MTCO<sub>2</sub> per MWh, the default Emission Factor for unspecified sources.

(f) *Emission Factors for Specified Sources that are Electricity Generating Facilities or Units.*

The Executive Officer shall calculate emissions factors for specified sources of electricity that are generating units or facilities using the following methodology:

$$EF_{sp} = \frac{E_{sp}}{EG}$$

Where:

$E_{sp}$  = CO<sub>2</sub> emissions from electricity generating facility for a specified electric generating facility/unit for the report year (MTCO<sub>2</sub>)

EG = Net generation from a specified electricity generating facility for the report year (MWh)

(1) For specified electricity generating facilities/units whose operators are subject to reporting or who voluntarily report under the Mandatory Reporting Regulation,  $E_{sp}$  shall be equal to the sum of CO<sub>2</sub> emissions from fossil fuel combustion, acid gas scrubbers, or acid gas reagents, as reported to ARB. Similarly, EG shall be the net generation reported to ARB.

(2) For specified electricity generating facilities/units whose operators are not subject to Mandatory Reporting Regulation but who are subject to the Acid Rain Program (40 CFR Part 75),  $E_{sp}$  shall be equal to the amount of CO<sub>2</sub> emissions reported to U.S. EPA pursuant to 40 CFR Part 75 for the facility in metric tons for the report year. EG shall be data reported to EIA and published in the EIA 923 Excel file for the reporting year available at [http://www.eia.doe.gov/cneaf/electricity/page/eia906\\_920.html](http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html) (the EIA data).

(3) For specified electricity generating facilities whose operators do not report to ARB under the Mandatory Reporting Regulation and do not report to U.S. EPA under the Acid Rain Program, EG shall be taken from the EIA data for the reporting year.  $E_{sp}$  shall be calculated using EIA data as shown below.

$$E_{sp} = 1000 \times \sum(Q_{fuel} \times EF_{fuel})$$

Where:

$Q_{fuel}$  = Heat of combustion for each specified fuel type from the specified electric generating facility for the report year (MMBtu)

$EF_{fuel}$  = CO<sub>2</sub> emission factor for the specified fuel type as taken from the title 17, California Code of Regulations, Chapter 1 Subchapter 9, Article 2, Appendix A (kgCO<sub>2</sub>/MMBtu).

(g) *Emission Factors for Asset Owning/Controlling Suppliers.*

The Executive Officer shall calculate emissions factors for asset-owning or asset-controlling suppliers using the following methodology:

Where,

$$EF_{asp} = \frac{\sum E_{asp} + \sum (PE_{sp} * EF_{sp}) + (PE_{usp} * EF_{usp}) - \sum (SE_{sp} * EF_{sp})}{\sum EG_{asp} + \sum PE_{sp} + PE_{usp} - \sum SE_{sp}}$$

$\sum E_{asp}$  = the sum of CO<sub>2</sub> emissions from fossil fuel combustion, acid gas scrubbers, or acid gas reagents from each specified electricity generating facility/unit in the asset owning/controlling supplier's fleet, as reported to ARB under the Mandatory Reporting Regulation (MTCO<sub>2</sub>)

$\sum EG_{asp}$  = the sum of net generation for each specified electricity generating facility/unit in the asset owning/controlling supplier's fleet for the report year as reported to ARB under the Mandatory Reporting Regulation (MWh)

$\sum PE_{sp}$  = Sum of electricity purchased from specified sources by the asset-owning or asset-controlling supplier for the year as reported to ARB under the Mandatory Reporting Regulation (MWh)

$PE_{usp}$  = Amount of electricity purchased from unspecified sources by the asset-owning or asset-controlling supplier for the year as reported to ARB under the Mandatory Reporting Regulation (MWh)

$\sum SE_{sp}$  = Amount of wholesale electricity sold from a specified source by the asset-owning or asset-controlling supplier for the year as reported to ARB under the Mandatory Reporting Regulation (MWh)

$EF_{sp}$  = CO<sub>2</sub> emission factor as defined for electricity generating units and facilities.

(h) *Fee Liability for Fuels.*

The Executive Officer shall calculate the Fee Liability for each entity reporting pursuant to section 95204(d)(1-3), (d)(5) and (e), based on the quantity of each fuel supplied, consumed or produced, as follows:

$$FS_i = (FR_i \times QF_i)$$

Where:

$FS_i$  = The Fee for each entity

$QF_i$  = Quantity of fuel

(Note: The Fee Liability calculation formula for associated gas is addressed under section 95203(k))

(i) *Fee Liability for Facilities that Combust Coal, Petroleum Coke, Catalyst Coke, or Refinery Gas.*

(1) Coal and Petroleum Coke

The Executive Officer shall calculate the Fee Liability for each entity reporting pursuant to sections 95204(f)(1) and 95204(f)(2), based on the quantity of each fuel consumed as follows:

$$FS_i = (FR_i \times QF_i)$$

Where:

$FS_i$  = The Fee for each entity

$QF_i$  = Quantity of fuel

(2) Catalyst Coke and Refinery Gas

For entities reporting pursuant to sections 95204(f)(3), and 95204(f)(4), each entity shall be charged a Fee based on the total number of  $MTCO_2$  emitted and reported annually. The fee shall be calculated as follows:

$$FS_i = CCC \times QE_i$$

Where:

$FS_i$  = The Fee for the Entity

CCC = Common Carbon Cost

$QE_i$  = the total amount of emissions associated with the catalyst coke or refinery gas, as applicable.

(j) *Fee Liability for Delivered Electricity.*

The Executive Officer shall calculate the fee liability for each entity reporting pursuant to section 95204(g) based on the quantity of electricity delivered, as follows:

$$FS_i = \sum(EFR_d \times QM_d)$$

Where:

$FS_i$  = Fee for each entity

$QM_d$  = Quantity of MWh of delivered electricity from each specified source, asset-owning or asset-controlling supplier, or unspecified source, as appropriate

$EFR_d$  = Electricity fee rate for electricity from each specified source, asset-owning or asset-controlling supplier, or unspecified source, as appropriate

(k) *Fee Liability for Entities.*

For entities reporting pursuant to section 95204(d)(46), and 95204(h), each entity shall be charged a fee based on the total number of  $MTCO_2$  emitted and reported annually. The fee shall be calculated as follows:

$FS_i = CCC \times QE_i$

Where:

$FS_i$  = Fee for the Entity

CCC = Common Carbon Cost

$QE_i$  = Total amount of emissions associated with the entity.

NOTE: Authority cited: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: 38501, 38510, 38597, 39600 and 39601, Health and Safety Code.

**§ 95204. Reporting and Recordkeeping Requirements.**

(a) *Reporting Format.*

All reports required by this subarticle must be submitted to ARB by using the California Air Resources Board's Greenhouse Gas Reporting Tool, as specified in title 17, California Code of Regulations, section 95104(e), or any other reporting tool approved by the Executive Officer that will guarantee transmittal and receipt of data required by ARB's Mandatory Reporting Regulation and this subarticle. The Reporting Tool is available on ARB's internet website at [www.arb.ca.gov].

(b) All entities subject to this subarticle must report the following:



- (1) *Report Information:*
  - (A) Report year
  - (B) Facility information
    - 1. Official responsible for payment
    - 2. Facility name
    - 3. Physical address
    - 4. Mailing address
    - 5. Billing address
    - 6. Description of facility geographic location
  
- (2) *Entity Information:*
  - (A) Entity name
  - (B) Email address
  - (C) Telephone number
  
- (3) *Entity Statement of Truth, Accuracy and Completeness.*

Entity signature and date stating: *This report has been prepared in accordance with the AB 32 Cost of Implementation Fee Regulation (subchapter 10, article 3, subarticle 1, sections 95200 to 95207, title 17, California Code of Regulations). The statements and information contained in this emissions data report are true, accurate and complete.*
  
- (c) *Timeline for Reporting.*
  - (1) Reports from each affected entity for the 2008 calendar year data and the 2009 calendar year data must be submitted to ARB by August 16, 2010.
  - (2) Reports for the 2010 calendar year data and subsequent calendar years must be submitted to ARB by June 30 of the following year, each year.
  
- (d) *Natural Gas Utilities, Users and Pipeline Owners and Operators.*
  - (1) All public utility gas corporations and publicly owned natural gas utilities operating in California must annually report the aggregate quantity of therms of natural gas delivered at the meter to end users, excluding natural gas delivered to electricity generating facilities.
  - (2) All owners or operators of intrastate pipelines that distribute natural gas directly to end users must annually report the

aggregate quantity of therms of natural gas directly distributed, at the meter to the end users, excluding natural gas delivered to electricity generating facilities.

- (3) All owners or operators that are end users of natural gas received directly from interstate pipelines, except for electricity generating facilities, must annually report the therms of natural gas directly distributed, at the meter from the interstate pipeline(s).
  - (4) All owners or operators of interstate pipelines that distribute natural gas directly to end users must annually report the following information for each end user directly receiving natural gas: name, contact address, facility address, and contact phone number.
  - (5) All California owners or operators that consume natural gas produced on-site and are subject to the Mandatory Reporting Regulation must report the quantity of therms of natural gas consumed annually of natural gas that is produced on-site, excluding natural gas consumed by an electricity generating facility, in addition to all information required under the Mandatory Reporting Regulation.
  - (6) All California owners or operators that consume associated gas produced on-site and that are subject to the Mandatory Reporting Regulation must report all information required by the Mandatory Reporting Regulation, including the quantities of emissions resulting from the combustion of these fuels, excluding associated gas produced on-site and consumed by on-site electricity generating facilities.
- (e) *Producers and Importers of Gasoline and Diesel Fuels.*

All producers and importers of California gasoline, CARBOB or California diesel fuel must report the total amount of each variety of fuel sold or supplied for use in California. Producers and importers of CARBOB must report each volume of CARBOB and the associated designated volume/volumes of oxygenate.

- (f) *Coal, Catalyst Coke, Petroleum Coke, or Refinery Gas Combustion or Consumption.*

All entities that are subject to the Mandatory Reporting Regulation, except for electricity generating facilities, must report the following

information for each of the following substances that are combusted as fuel or consumed as feedstock:

(1) Coal;

The number of tons of coal and the grade of coal combusted or consumed in each calendar year must be reported

(2) Petroleum coke;

The number of tons of petroleum coke combusted or consumed in each calendar year must be reported

(3) Catalyst coke;

The quantity of emissions from combustion as reported each calendar year under the applicable section of the Mandatory Reporting Regulation must be reported

(4) Refinery gas;

The quantity of emissions from combustion or consumption as reported each calendar year under the applicable section of the Mandatory Reporting Regulation must be reported. If known by the reporting entity, the quantity of emissions from natural gas can be excluded. To exclude the quantity of emissions from natural gas, the following method shall be used:

$$Q_{rga} = Q_{rg} - (Q_{ng} \times EF_{ng})$$

Where:

$Q_{rga}$  = Adjusted quantity of emissions from refinery gas

$Q_{rg}$  = Quantity of emissions from refinery gas reported through the Mandatory Reporting Regulation

$Q_{ng}$  = Quantity of natural gas

$EF_{ng}$  = Default emission factor for natural gas found in 95203(d)

(g) *First Deliverers of Electricity.*

- (1) *Electrical Generating Facilities.* All electricity generating facilities shall provide the same information that is required to be submitted under the Mandatory Reporting Regulation. This information must be reported on the same schedule specified in the Mandatory Reporting Regulation.

(2) *Electricity Importers* All electricity importers must report all information required to be submitted under the Mandatory Reporting Regulation.

(h) *Cement Manufacturers.*

All cement manufacturers must report all information required under the Mandatory Reporting Regulation, and must also report the total amount of process emissions resulting from their operations, as defined in this subarticle.

(i) *Records Retention.*

Entities subject to this subarticle must maintain copies of the information reported pursuant to this subarticle and provide them to an authorized representative of ARB within five business days upon request. Records must be kept at a location within the State of California for five years.

NOTE: Authority cited: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: 38501, 38510, 38597, 39600 and 39601, Health and Safety Code.

#### **§ 95205. Payment and Collection.**

- (a) Beginning in fiscal year 2010/2011, and thereafter, within 30 days after the State Budget has been signed by the Governor, the Executive Officer shall provide a written fee determination notice to each affected entity of the amount due. The amount of the fee shall be based on the reports submitted pursuant to section 95204 and the fee calculation formulas set forth in section 95203. ARB will not collect the fee from entities whose total amount due, as calculated per section 95203, is less than or equal to fifty dollars (\$50.00).
- (b) *Payment Period.* Each entity that is notified by the Executive Officer that it must remit a specified dollar amount to ARB for the current fiscal year shall transmit that dollar amount to ARB for deposit into the Air Pollution Control Fund within 60 days of receipt of the fee determination notice.
- (c) *Late Fees.* The Executive Officer shall assess an additional fee on entities failing to pay the fee within 60 days of receipt of the fee determination notice. The Executive Officer shall set the late fee in an amount sufficient to pay ARB's additional expenses incurred by

the entity's untimely payment. The late fee is in addition to any penalty that may be assessed as provided in section 95206.

- (d) *Expenditure of Fees.* The fees collected from the entities are to be expended by ARB only for the purposes of recovering the costs of carrying out the provisions of AB 32 and repaying the Debt.

NOTE: Authority: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: Sections 38501, 38505 and 39300, Health and Safety Code.

**§ 95206. Enforcement.**

- (a) *Penalties.* Penalties may be assessed for any violation of this subarticle pursuant to Health and Safety Code section 38580. Each day during any portion of which a violation occurs is a separate offense.
- (b) *Injunctions.* Any violation of this subarticle may be enjoined pursuant to Health and Safety Code section 41513.
- (c) *Violations.* Each day or portion thereof that any report required by this subarticle remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation of this subarticle. For the purposes of this section, "report" means any information required to be submitted by section 95204.
- (d) *Payment Violations.* The failure to pay the full amount of any fee required by this subarticle shall constitute a single, separate violation of this subarticle for each day or portion thereof that the fee has not been paid after the date the fee is due.
- (e) *Auditing.* The Executive Officer may contract with outside entities, including, but not limited to, the Board of Equalization, to obtain data or services needed to audit the returns provided by fee payers. The Executive Officer may use fee revenues collected under this subarticle to fund auditing and collection procedures.
- (f) *Authorization to Enforce.* Enforcement of this subarticle may be carried out by authorized representatives of ARB, including authorized representatives of air pollution control or air quality management districts.

NOTE: Authority: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: Sections 38501, 38505, 39300 and 41513, Health and Safety Code.

**§ 95207. Severability.**

- (a) Each part of this subarticle is deemed severable, and, in the event that any part of this subarticle is held to be invalid, the remainder of this subarticle shall continue in full force and effect.
- (b) If any fee payer or group of fee payers subject to this subarticle is determined to be ineligible, by a court of law or statute, to pay the fees pursuant to this subarticle, the remaining entities shall be assessed the entire fee based on the formula contained in section 95203, without including the emissions associated with the ineligible fee payer or group of fee payers in the calculation. If a refund is ordered by any court or other authority the remaining fee payers shall be responsible to pay the subsequent deficit.

NOTE: Authority: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.  
Reference: Sections 38501, 38505 and 39300, Health and Safety Code.

## **AMENDMENTS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS**

*No modifications are proposed to section 95104(e), title 17, California Code of Regulations. The language below is unchanged in this notice.*

### **§ 95104. Greenhouse Gas Emissions Data Report.**

(e) The operator shall submit emissions data reports, and any revisions to the reports, through the California Air Resources Board's (ARB) Greenhouse Gas Reporting Tool, or any other reporting tool approved by the Executive Officer that will guarantee transmittal and receipt of data required by ARB's Mandatory Reporting Regulation and Cost of Implementation Fee Regulation.

NOTE: Authority cited: Sections 38510, 38530, 39600, 39601, and 41511, Health and Safety Code. Reference: Sections 38530, 39600, and 41511, Health and Safety Code.