

State of California
AIR RESOURCES BOARD

**PUBLIC HEARING TO CONSIDER PROPOSED ADDITIONAL REQUIREMENT
FOR ADVANCE PAYMENT OF CERTAIN FUNDS REGULATION**

STAFF REPORT: INITIAL STATEMENT OF REASONS

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**California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
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Sacramento, California 95814**

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I. EXECUTIVE SUMMARY

INTRODUCTION AND BACKGROUND

Existing law generally designates the California Air Resources Board (CARB) as the state agency with the primary responsibility for the control of vehicular and area sources air pollution, and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular and area sources.

Various CARB projects and programs provide funding to grantees to reduce greenhouse gas emissions, criteria pollutants, and toxic air contaminants to provide health benefits to the public.

The Legislature authorized CARB in Senate Bill No. 854, Chapter 51, 2018, (CARB, 2019AP1) which established California Health and Safety Code section 39603.1 (CARB, 2019AP2), to provide advance payments to grantees of a grant program or project if CARB determines specified conditions are met. Health & Saf. Code section 39603.1 (b) further required CARB, in consultation with Department of Finance (DOF), to adopt a regulation implementing this section to ensure the moneys are used properly.

CARB proposes to adopt Subchapter 4.1, Advance Payments, sections 91040 through 91044, Title 17 California Code of Regulation.

II. THE PROBLEM THAT THE PROPOSAL IS INTENDED TO ADDRESS

Staff is proposing this regulation to further define terms, set forth a review process, as well as add additional criteria to be met in order to qualify for an advance payment. This proposed regulation order would enable grantees to more easily understand how to request advance payments, streamline the review and approval process, and provide procedural safeguards to ensure the advance payments are adequately regulated. Upon successfully meeting all criteria in statute and the proposed regulation, advance payments may be made available to grantees.

III. THE SPECIFIC PURPOSE AND RATIONALE OF EACH ADOPTION, AMENDMENT, OR REPEAL

Purpose of section 91040. Purpose

Section 91040 describes the purpose of the advance payment regulation to ensure that advance payments to grantees by the State Board are consistent with appropriate and prudent controls.

Rationale of section 91040

Section 91040 is necessary as it provides an overview of what the proposed regulation will address.

Purpose of section 91041. Definitions

Section 91041 identifies definitions of terms used throughout Health & Saf. Code section 39603.1 and the regulatory text.

Rationale of section 91041. Definitions

Section 91041 is necessary to specify what certain terms used throughout the statute and regulatory text mean. These definitions are necessary to improve the transparency, comprehensibility, and consistency of the statute and regulation.

Purpose of subsection 91041(a)

Subsection 91041(a) defines ‘Advance Payment’ to clarify what constitutes an advance payment as the term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(a)

Subsection 91041(a) is necessary to ensure that grantees understand the meaning of advance payment as it is not defined in Health & Saf. Code section 39603.1. It further clarifies that an advance payment is a payment that is received in advance of work performed.

Purpose of subsection 91041(b)

Subsection 91041(b) defines ‘Audit Findings’ to clarify what constitutes an audit finding as this term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(b)

Subsection 91041(b) is necessary so that grantees understand that an audit finding is one that indicates improvement is needed in a financial audit and does not include other types of audit findings.

Purpose of subsection 91041(c)

Subsection 91041(c) defines ‘Available Fund Balance’ because CARB must consider the available fund balance when determining the amount of the advance payment and this term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(c)

Subsection 91041 (c) is necessary to further define the type of funds that CARB must consider when determining the amount of the advance payment.

Purpose of subsection 91041(d)

Subsection 91041(d) defines ‘Days’ to differentiate between calendar days and business days.

Rationale of subsection 91041(d)

Subsection 91041(d) is necessary as without a definition days could mean calendar or business days, which would impede CARB's ability to implement and enforce certain sections of Health & Saf. Code section 39603.1 and the advance payment regulation.

Purpose of subsection 91041(e)

Subsection 91041(e) defines 'District' as there are two types of air districts in California.

Rationale of subsection 91041(e)

Subsection 91041(e) is necessary to clarify for grantees that district, for purposes of this regulation, means both types of air districts: a county or regional air pollution control district or a county or regional air quality management district.

Purpose of subsection 91041(f)

Subsection 91041(f) defines 'Executive Officer' to clarify it is the Executive Officer or designee who makes the final determination on an advance payment request.

Rationale of subsection 91041(f)

Subsection 91041(f) is necessary so that grantees understand who at CARB will review and make a final determination on their advance payment request.

Purpose of subsection 91041(g)

Subsection 91041(g) defines 'Good Standing' as Health & Saf. Code section 39603.1 requires that a grantee requesting an advance payment is in good standing with the Internal Revenue Service (IRS) and California Franchise Tax Board (FTB) in order to be eligible for an advance payment and this term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(g)

Subsection 91041(g) is necessary to specify what CARB considers good standing with the IRS and FTB. The definition notifies grantees which types of actions imposed by IRS and FTB will impact their eligibility for an advance payment. This term is defined broadly so CARB can ensure grantees are financially stable by being in full compliance with FTB and IRS requirements.

Purpose of subsection 91041(h)

Subsection 91041 (h) defines 'Liquidate' as Health & Saf. Code section 39603.1 does not define this term.

Rationale of subsection 91041(h)

Subsection 91041(h) is necessary to establish that liquidate means funds that have been spent by the grantee for eligible project expenses. The term 'liquidate' is a fiscal

term used by the State and grantees might not know what this term means without a definition.

Purpose of subsection 91041(i)

Subsection 91041(i) defines ‘Material Changes’ as it is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(i)

Subsection 91041(i) is necessary to provide grantees notice of the type of change to the spending plan that will require a grantee to notify CARB of that change. A 25 percent or more change to the spending plan was used as a notification cutoff as it represents a significant portion of a spending plan that CARB needs to be aware of in order to maintain fiscal oversight over the advanced funds and ensure appropriate and prudent fiscal controls are in place.

Purpose of subsection 91041(j)

Subsection 91041(j) defines ‘Small Air District’ as this term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(j)

Subsection 91041(j) is necessary because Health & Saf. Code section 39603.1 sets forth different requirements for small air districts than other grantees and a definition will avoid confusion among grantees. CARB, for purposes of this regulation, concluded air districts with a population of 4,000,000 or less as a reasonable cutoff because air districts with populations above this amount are more likely to have sufficient cash flow than air districts serving smaller populations.

CARB’s website lists all 35 Air Pollution Control Districts (CARB, 2019AP3) and the corresponding counties they include. The sources used by CARB to calculate population figures for the air pollution control districts are a combination of the most recent county population data from the California Department of Finance (DOF, 2018) and census block population data from the US Census (US Census, 2010). The California Department of Finance (DOF) publishes updated county population numbers annually. Air Pollution Control District population figures are calculated by identifying the counties included in each Air District. For counties that cross multiple Air Districts, population is allocated according to the fraction of that county’s population that belongs to each District according to the US Census data. For the purposes of calculating these fractions, each census block is assigned to the county and District that encompasses that census block’s center point.

Purpose of subsection 91041(k)

Subsection 91041(k) defines ‘Spending Plan’ as this term is not defined in Health & Saf. Code section 39603.1.

Rationale of subsection 91041(k)

Subsection 91041(k) is necessary because all grantees except for small air districts must submit a spending plan to CARB in order to apply for an advance payment as required by Health & Saf. Code section 39603.1 (a) (4)(C) (i). This definition provides grantees an explanation of what a spending plan is in order to assist grantees in developing an appropriate spending plan.

Purpose of subsection 91041(l)

Subsection 91041(l) defines ‘State Board’ as this term is not defined in Health & Saf. Code section 39603.1, which is authority for this section of the proposed regulation.

Rationale of subsection 91041(l)

Subsection 91041(l) is necessary to clarify that “State Board” for purposes of Health & Saf. Code section 39603.1 and this regulation only applies to the California Air Resources Board.

Section 91042. Advance Payment Request Review Process.

Purpose of subsection 91042 (a)

Section 91042 (a) describes the information that will be reviewed by CARB in order to request an advance payment.

Rationale of subsection 91042(a)

Subsection 91042(a) is necessary to inform grantees of the criteria CARB will rely on when determining whether to approve or deny a request for an advance payment in order to establish a transparent and consistent review process.

Purpose of subsection 91042(b)

Subsection 91042(b) describes who at CARB will make the final determination as to whether an advance payment will be made and what criteria will be used to make that determination.

Rationale of subsection 91042(b)

Subsection 91042 (b) is necessary to inform grantees who at CARB will review and approve or deny their advance payment request and the criteria used in making that determination.

Section 91043. Advance Payment Criteria.

Purpose of subsection 91043 (a)

Subsection 91043 (a) sets forth a certification requirement for small air districts in order to demonstrate that they meet all the criteria set forth in subsection 91043 (a)(1-4) when requesting an advance payment.

Rationale of subsection 91043 (a)

Subsection 91043 (a) is necessary because it sets forth a certification requirement, as well as what a small air district must include in the certification in order to request an advance payment. Having all of the required criteria for requesting an advance payment set forth in the regulation will also avoid small districts having to consult both Health & Saf. Code section 39603.1 and the regulation to determine what criteria they must meet in order to request an advance payment. This section also distinguishes the criteria for a small air district from the criteria for all other grantees, which are set forth in subsection 91043(b).

Purpose of subsection 91043(a)(1)

Subsection 91043(a)(1) clarifies that the advance payment a small air district is certifying to is only for the advance payment amount requested. In addition, the purpose of this section is to require a small air district to certify that an advance payment is necessary in order to participate in the grant program or project.

Rationale of subsection 91043(a)(1)

Subsection 91043(a)(1) is necessary because it will clarify and provide an explanation of the type of financial necessity (business or economic situation) that must exist in order to qualify for an advance payment. It is also necessary to clarify for grantees that they must only demonstrate a financial need for the specific amount requested in the advance payment request.

Purpose of subsection 91043(a)(2)

Subsection 91043(a)(2) requires a small air district to certify that the advance payment is limited to an approved program or project.

Rationale of subsection 91043(a)(2)

Subsection 91043(a)(2) is necessary to ensure that the use of the advance payment is adequately regulated by CARB by requiring the small air district to certify that the advance payment will be used only for the approved program or project.

Purpose of subsection 91043(a)(3)

Subsection 91043(a)(3) requires a small air district to certify that unused advance payments must be returned to CARB.

Rationale of subsection 91043(a)(3)

Subsection 91043(a)(3) is necessary because CARB wants to ensure that all unused advance payments are not improperly retained by the small districts, but are instead returned to the State.

Purpose of subsection 91043(a)(4)

Subsection 91043(a)(4) limits the types of entities to which a small air district may provide advance payments from the moneys advanced by CARB.

Rationale of subsection 91043(a)(4)

Subsection 91043(a)(4) is necessary in order for CARB to maintain oversight of the distribution of the advance payments from small districts to other entities. Limiting small districts from advancing any of the advance payments from CARB, except to other air districts, allows CARB to ensure greater fiscal oversight and governmental accountability over the fund, since districts are subject to the advance payments regulations and other financial controls.

Purpose of subsection 91043(b)

Subsection 91043 (b) sets forth a certification requirement for all other entities in order to demonstrate that they meet all of the applicable criteria in subsection 91043 when requesting an advance payment.

Rationale of subsection 91043(b)

Subsection 91043 (b) is necessary because it sets forth what all other entities must include in the certification in order to request an advance payment. There are additional requirements for all other entities than what is required for small air districts. Having all of the required criteria for requesting an advance payment set forth in the regulation will also avoid grantees having to consult both Health & Saf. Code section 39603.1 and the regulation to determine what criteria they must meet in order to request an advance payment.

Purpose of subsection 91043(b)(1)

Subsection 91043(b)(1) sets forth a certification requirement regarding outstanding financial audit findings.

Rationale of subsection 91043(b)(1)

Subsection 91043(b)(1) is necessary because it requires grantees to certify that there are no outstanding financial audit findings. This information is necessary so that CARB can confirm that it is not advancing moneys to grantees that have fiscal issues related to the funding source of the advance payments.

Purpose of subsection 91043(b)(2)

Subsection 91043(b)(2) sets forth a certification requirement that entities be in good standing with the Franchise Tax Board and Internal Revenue Service and states failure to maintain good standing status will require the return of unspent advance payments.

Rationale of subsection 91043(b)(2)

Subsection 91043(b)(2) is necessary to ensure that advance payment funds will not be approved for entities not in good standing with FTB and IRS because if state or federal taxes have not been paid or an entity is subject to other sanctions, penalties, suspension or forfeiture, that entity should not be entrusted with state moneys paid in advance of services being rendered to the State.

Purpose of subsection 91043(b)(3)

Subsection 91043(b)(3) sets forth a certification requirement for entities to submit a spending plan to the Executive Officer.

Rationale of subsection 91043(b)(3)

Subsection 91043(b)(3) is necessary as before CARB can approve an advance payment, a spending plan is needed that sets forth an outline of how the advanced funds will be expended. This subsection also provides notification to grantees of who at the State Board the grantees must submit the spending plan to.

Purpose of subsection 91043(b)(4)

Subsection 91043(b)(4) sets forth a certification requirement for grantees to agree that they will not provide an advance payment to any other entity using the advance payment funds approved by CARB.

Rationale of subsection 91043(b)(4)

Subsection 91043(b)(4) is necessary to require grantees to confirm that they are not allowed to advance payments to any other entity in order to comply with Health & Saf. Code section 39603.1 (a) (E).

Purpose of subsection 91043(b)(5)

Subsection 91043(b)(5) sets forth a certification requirement for grantees to report any material changes to the spending plan within 30 days.

Rationale of subsection 91043(b)(5)

Subsection 91043(b)(5) is necessary to inform grantees that the certification must also include a commitment to report to CARB any material changes to the spending plan within 30 days. This subsection further specifies that CARB must be notified within 30 days of the change, because Health & Saf. Code section 39603.1 only states CARB must be notified in 30 days, but doesn't specify what the start date is for the 30 day window.

Purpose of Section 91044

This section defines each section of the proposed regulation as severable and is needed to clearly define that if one provision within the proposed regulation is deemed invalid, the remaining parts are still deemed to be valid.

Rationale of Section 91044

This section preserves regulations to carry out the purpose of the authorizing statute, even if one section of the regulation is deemed invalid

IV. BENEFITS ANTICIPATED FROM THE REGULATORY ACTION, INCLUDING THE BENEFITS OR GOALS PROVIDED IN THE AUTHORIZING STATUTE

The proposed regulation will specify in greater detail certain terms set forth in Health & Saf. Code section 39603.1, provide a review process, and criteria necessary for requesting an advance payment. The regulation will bring greater efficiency and transparency to the advance payment process by creating a more consistent, uniform, and clear review process. For these reasons, the proposed regulation is needed to further specify the terms and requirements considered by CARB in approving an advance payment. There are no expected benefits to worker safety, and public health and safety, or the environment as a result of this rulemaking.

V. AIR QUALITY

The proposed regulation will not affect the air quality data and emissions reductions of a program.

VI. ENVIRONMENTAL ANALYSIS

The proposed regulation do not contain any requirements that will change the environmental impact of a program.

A. INTRODUCTION

This chapter provides the basis for CARB's determination that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA). A brief explanation of this determination is provided in section B below. CARB's regulatory program, which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of the State's ambient air quality, has been certified by the California Secretary for Natural Resources under Public Resources Code section 21080.5 of CEQA (14 CCR 15251(d)). Public agencies with certified regulatory programs are exempt from certain CEQA requirements, including but not limited to, preparing environmental impact reports, negative declarations, and initial studies. CARB, as a lead agency, prepares a substitute environmental document (referred to as an "Environmental Analysis" or "EA")

as part of the Staff Report prepared for a proposed action to comply with CEQA (17 CCR 60000-60008). If the proposal is finalized, a Notice of Exemption will be filed with the Office of the Secretary for the Natural Resources and the State Clearinghouse for public inspection.

B. ANALYSIS

CARB has determined that the proposed action is exempt from CEQA under the “general rule” or “common sense” exemption (14 CCR 15061(b)(3)). The common sense exemption states a project is exempt from CEQA if “the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The proposed regulation order defines certain terms included in Health & Saf. Code section 39603.1, and sets forth the review process and criteria grantees must meet in order to request an advance payment. The purpose of this regulation is to further clarify and define the administrative process required for advancing moneys for CARB’s grant programs and projects. Therefore, this regulation does not directly affect air quality or any other environmental resource area.

Based on CARB’s review, it is certain that there is no possibility that the proposed action may result in a significant adverse impact on the environment; therefore, this activity is exempt from CEQA.

VII. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (Government Code section 65040.12, subdivision (c)). CARB is committed to making environmental justice an integral part of its activities. The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into CARB’s programs consistent with the directives of State law (CARB, 2001). These policies apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low-income and minority communities.

Staff’s recommendations are consistent with the environmental justice policies outlined above. The proposed regulation order clarifies the process for receiving an advance payment which increases awareness to the public, including disadvantaged communities, of CARB’s projects and programs and their ability to apply for an advance payment in order to participate in CARB’s projects and programs. As a result, CARB should experience increased engagement with disadvantaged communities who would likely not initially have the capital to participate in CARB’s projects and programs. The

advance payments and the proposed regulation will enable these disadvantaged communities to more easily participate in CARB's projects and programs.

VIII. ECONOMIC IMPACT ASSESSMENT

Potential impact on business:

The proposed regulation allows a grantee to receive advance payment limited to Health & Saf. Code section 39603.1. CARB has initially determined that this regulation will not have a significant statewide economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code Section 11346.3, the proposed regulatory action will 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. This proposed regulation will specify in greater detail certain terms set forth in Health & Saf. Code section 39603.1, provide a review process, and criteria necessary for requesting an advance payment and does not impact the actual program objectives. Additional grantee staff time may be needed to complete an advance payment request form; the cost of additional staff time is minor and determined to be absorbable. CARB has identified 26 affected entities as current grantees qualified for advance payment. The cost is estimated here based on the assumption that all affected entities will participate in the program; therefore, representing the high cost estimate. Based on a survey¹ of affected entities such as organizations like the Community Housing Development Corporation (CHDC), Eastern Kern Air Pollution Control District, South Coast Air Quality Management District, and Santa Barbara County Air Pollution Control District, CARB determined the average time spent by a typical affected entity to complete an advance payment request is 12 hours. Based on the classification reported to CARB by the grantees, the representative filling out the forms is comparable to an administrative service manager in California with an average wage and benefit of \$82 per hour (OES, 2018) (US Bureau, 2019). Therefore, the total cost for additional staff time needed to complete an advance payment request form is estimated to be approximately \$26,000 annually [i.e., 26 (applications) x 12 hours x \$82 (wage and benefit rate)] or \$130,000 over the 5-year life of the regulation assuming that all affected entities participate in the program every year.

Cost to a Small Business

¹ See Section XII References 7-11.

All affected entities are considered small businesses with 100 or fewer employees. If a small affected entity choose to participate in the advance payment program in any year, the entity is expected to spend about 12 hours on average to complete an advance payment request. At an average wage rate of \$82 per hour, the application cost for additional staff time is estimated to be approximately \$1,000 [i.e., 12 hours x \$82 (wage rate)].

Fiscal Effect on Local Agencies

The proposed regulation requires all air districts to satisfy certain financial criteria to qualify for advance payment. To show that they satisfy these criteria, all air districts may require some additional staff time. According to air district staff, it would take a maximum of about two days (16 hours) to complete an advance payment request at a cost of \$84 per hour (CARB, 2019AP4). Staff identified 35 air districts that are likely to be affected by the proposed regulation. Assuming that all affected air districts participate in the advance payment program, the total costs are estimated to be approximately \$47,000 per year [i.e., 35(applicants) x 16 hours x \$84 (wage and benefit rate)]. Therefore, the proposed regulation is expected to impose annual cost of \$47,000 on all air districts in the current fiscal year (2019/2020) and each of two subsequent fiscal years (2020/2021 and 2021/2022) and a total cost of \$235,000 over the 5-year life of the regulation assuming all affected air districts participate in the program every year.

Fiscal Effect on State Agencies

CARB does not anticipate a need for additional staff. CARB staff are currently required to determine an applicant's eligibility for a disbursement and recover the unspent funds in the event of non-performance of a grantee under the existing regulations. The determination of the available funds for the advance payment may require minor additional staff time. The current staff is expected to absorb this additional workload. Therefore, CARB does not anticipate any fiscal impact on the current fiscal year (2019/2020) and two subsequent fiscal years (2020/2021 and 2021/2022) or over its lifetime.

Benefits of the Proposed Regulatory Action

The proposed regulation would specify in greater detail certain terms set forth in Health & Saf. Code section 39603.1, provide a review process, and criteria necessary for requesting an advance payment. The proposed regulation would bring greater efficiency and transparency to the advance payment process by creating a more consistent, uniform, and clear review process. For these reasons, the proposed regulation is needed to further specify the terms and requirements considered by CARB in approving an advance payment. There are no expected benefits to worker safety, public health and safety, or the environment as a result of this rulemaking.

IX. EVALUATION OF REGULATORY ALTERNATIVES

California Government Code section 11346.2, subdivision (b)(4) requires CARB to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides reasons why these alternatives were not included in the proposal. As explained below, each alternative proposed was found to be no less burdensome than the proposed regulation and are equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing law. CARB has not identified any reasonable alternatives that would lessen any adverse impact on small businesses.

No alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as or less burdensome to affected entities than the proposed regulation.

Staff considered the following regulatory alternatives to the proposal:

Alternative 1: Set Fewer or No Additional Advance Payment Criteria

CARB considered setting fewer or no criteria for advance payment beyond those required in statute. For some entities, this alternative would streamline the process for receiving advance payment, as those entities would not need to comply with the additional criteria.

However, not setting additional criteria for advance payment undermines CARB's ability to maintain fiscal oversight over the advance payment process and clarify the requirements—particularly for small districts than other grantees. For example, CARB determined it was necessary to set forth a certification requirement in order to advise grantees how to demonstrate they meet the advance payment criteria. Another example of a criteria set forth in the regulation in order to ensure fiscal accountability, is that grantees must return any unused moneys to the state. This was included to ensure that moneys not used within the timelines set forth in the grant program or project are not improperly retained by the grantees. Additionally, setting forth all of the criteria applicable to small districts and other entities in the regulation will assist grantees in determining which criteria apply to their request for an advance payment without having to consult both the statute and regulation. Setting fewer or no additional advance payment criteria would also fail to provide a consistent, uniform, and clear review and approval process. For these reason, staff rejects this alternative.

Alternative 2: Not Define Certain Terms Used in Statute

CARB also considered not defining certain terms used in statute (HSC § 39603.1), such as “material changes” or “good standing.” Under this alternative, CARB would address any interpretive questions on a case-by-case basis and arguably simplify the regulation.

However, failure to define certain statutory terms would prevent grantees and CARB from having a common and clear understanding of key substantive terms set forth in HSC § 39603.1. For example, HSC § 39603.1 requires that grantees report any material changes to the spending plan to CARB within 30 days. The proposed regulation defines the term “material change” as one that changes any line item in the spending plan by 25% or more, in order to retain more oversight of budgetary changes to the approved spending plans. Leaving this term undefined would undermine clarity and consistency in the administration process. Another example is that HSC § 39603.1 requires grantees to be in good standing with Internal Revenue Service and Franchise Tax Board in order to qualify for an advance payment. The proposed regulation defines the term “good standing” as not being subject to any form of sanction, penalty, suspension, forfeiture, or disciplinary action by IRS and FTB. CARB could have left this term undefined, but determined that a definition was necessary to provide clarity and consistency in the administration process. If CARB and the grantees have little to no common understanding of the key substantive terms in the statute, CARB’s staff workload could actually increase due to additional time and resources needed to provide outreach to grantees. For these reasons, staff rejects this alternative.

Small Business Alternative

The Board has not identified any reasonable alternatives that would reduce any adverse impact on small businesses.

Performance Standards in Place of Prescriptive Standards

Advance payment requests are voluntary and therefore the proposed advance payment regulation does not mandate the use of specific technologies or equipment, or prescribe specific actions or procedures.

Health and Safety Code section 57005 Major Regulation Alternatives

The proposed regulation will not result in a total economic impact on state businesses of more than \$10 million in one or more years of implementation. Therefore, this proposal is not a major regulation as defined by Health and Safety Code section 57005.

X. JUSTIFICATION FOR ADOPTION OF REGULATIONS DIFFERENT FROM FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS

There are no federal regulations that are directly comparable to CARB's proposed regulation.

XI. PUBLIC PROCESS FOR DEVELOPMENT OF THE PROPOSED ACTION (PRE-REGULATORY INFORMATION)

Consistent with Government Code sections 11346, subdivision (b), and 11346.45, subdivision (a), and with the Board's long-standing practice, CARB staff held a public workshop on May 20, 2019, the development of the proposed regulation. This informal pre-rulemaking discussion provided staff with useful information that was considered during development of the regulation that is now being proposed for formal public comment.

XII. REFERENCES

1. (CARB, 2019AP1) Senate Bill No. 854, Legislative Counsel Bureau, Chapter 51, approved by Governor June 27, 2018.
2. (CARB, 2019AP2) Health and Safety Code, Section 39603.1, current as of June 4, 2019.
3. (CARB, 2019AP3) California Air Resources Board, California Local Air District Directory <https://ww2.arb.ca.gov/air-pollution-control-districts> (accessed July 16, 2019)
4. (U.S. Census, 2010) United States Census Bureau, TIGER/Line Shapefiles, 2010. Last updated March 26, 2012. https://www2.census.gov/geo/maps/dc10map/GUBlock/st06_ca/place/ (accessed July 12, 2019)
5. (DOF, 2018) State of California, Department of Finance, E-6. Population Estimates and Components of Change by County, July 1, 2010-2018. Sacramento, California, December 2018. <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-6/> (accessed July 16, 2019)
6. (CARB, 2001) CARB, Policies and Actions for Environmental Justice, December 13, 2001 <https://ww3.arb.ca.gov/ch/programs/ej/ejpolicies.pdf>
7. Rahwanji, Vivian, Community Housing Development Corporation (personal communication, May 3, 2019 (Non-profit email #1)).
8. Stephens, Glen, Eastern Kern Air Pollution Control District (personal communication, February 15, 2019 (Air District email #1)).

9. Whynot, Jill, South Coast Air Quality Management District (personal communication, February 19, 2019 (Air District email #2)).
10. Whynot, Jill, South Coast Air Quality Management District (personal communication, February 21, 2019 (Air District email #3)).
11. Fredrickson, Jim, Santa Barbara County Air Pollution Control District (personal communication, February 26, 2019 (Air District email #4)).
12. (OES, 2018) U.S. Bureau of Labor Statistics, Division of Occupational Employment Statistics. May 2018 State Occupational Employment and Wage Estimates California.
https://www.bls.gov/oes/2018/may/oes_ca.htm#11-0000 (accessed June 10, 2019)
13. (US Bureau, 2019) U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation Historical Listing National Compensation Survey, March 2004 – December 2018. <https://www.bls.gov/web/ecec/ececqrtn.pdf> (accessed June 10, 2019)
14. (CARB, 2019AP4) California Air Resources Board, State Area Designations Regulation. Final Statement of Reasons.
https://www.arb.ca.gov/regact/2019/stateareadesignations/fsor.pdf?_ga=2.26386941.1189216586.1563905599-1390389697.1559575292 (accessed July 25, 2019)

XIII. APPENDICES

Appendix A: Proposed Regulation Order