

Senate Bill No. 812

CHAPTER 423

An act to amend Sections 42801.1, 42823, 42840, and 42841 of, and to add Section 42823.1 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 7, 2002. Filed with Secretary of State September 9, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 812, Sher. Air pollution: California Climate Action Registry.

(1) Existing law requires the Secretary of the Resources Agency to establish the California Climate Action Registry as a nonprofit public benefit corporation, governed by a prescribed board of directors, that is required to record and register voluntary greenhouse gas emissions reductions made by California entities after 1990. Existing law requires the registry to provide referrals to approved providers for advice on designing programs to establish emissions baselines and to monitor and track greenhouse gas emissions, establishing emissions reduction goals, and designing and implementing organization-specific plans that improve energy efficiency or utilize renewable energy, or both, and that are capable of achieving emission reduction targets.

This bill would require the registry to also provide referrals to approved providers for advice on incorporating conservation and best management practices of native forest reservoirs as a mechanism to assist participants in the attainment of emissions reduction goals and the reporting of emissions results.

(2) Existing law requires the registry to perform various functions, including, among other things, adopting standards for verifying emissions reductions, adopting a list of approved auditors that would verify emission reductions, establishing emissions reduction targets, designing and implementing efficiency improvement plans, maintaining a record of all emission baselines and reductions, and recognizing, publicizing, and promoting entities that participate in the registry.

This bill would require the registry to adopt procedures and protocols for the reporting and certification of greenhouse gas emission reductions resulting from a project or an action of a participant. The bill would require the registry, in coordination with the Resources Agency, to adopt procedures and protocols, including specified criteria, for the monitoring, estimating, calculating, reporting, and certifying of carbon

stores and carbon dioxide emissions resulting from the conservation and conservation-based management of native forest reservoirs in California in order for registry participants to include the results of those conservation activities as a participant's registered emissions results, or as a part thereof. The bill would additionally require the registry, in consultation with the State Air Resources Board, to adopt procedures and protocols for the reporting and certification of specified reductions in emissions of greenhouse gases.

The people of the State of California do enact as follows:

SECTION 1. Section 42801.1 of the Health and Safety Code is amended to read:

42801.1. For purposes of this chapter, the following terms have the following meanings:

(a) "Annual emissions results" means the participant's applicable data on the direct and indirect release of greenhouse gases in one particular year. In addition to annual emissions results a participant may report data annually on emission reductions from a project or other action, including the sequestration of stocks of carbon in forests.

(b) "Baseline" means a datum against which to measure greenhouse gas emissions performance over time, usually annual emissions in a selected base year. For the purposes of this subdivision, the baseline shall start on or after January 1, 1990.

(c) "Certification" means the determination of whether a given participant's greenhouse gas emissions inventory (either baseline or annual result) has met a minimum quality standard and complied with an appropriate set of registry-approved procedures and protocols for submitting emissions inventory information. The process for certification of emissions results will be specified within the procedures and protocols approved for industry-specific emissions inventory reporting, and may involve a range of options depending upon the nature of the emissions, complexity of a company's facilities and operations, or both, and the procedures deemed necessary by the registry board to validate a participant's emissions information.

(d) "De minimis emissions" means emissions that are below a certain threshold, when summed across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry for adoption a threshold emissions level for each type of greenhouse gas emission that shall be considered de minimus.

(e) "Emissions" means the release of greenhouse gases into the atmosphere.



(f) (1) “Emissions inventory” means an accounting of the amount of greenhouse gases discharged into the atmosphere. It is generally characterized by all of the following factors:

- (A) The chemical or physical identity of the pollutants included.
- (B) The geographic area covered.
- (C) The institutional entities covered.
- (D) The time period over which emissions are estimated.
- (E) The types of activities that cause emissions.

(2) An emissions inventory shall include sufficient documentation and supporting data to make transparent the underlying assumptions and calculations for all of the reported results.

(g) “Forest” means lands that support, or can support,” at least 10 percent tree canopy cover and that allow for management of one or more forest resources including timber, fish and wildlife, biodiversity, water quality, recreation, aesthetics and other public benefits.

(h) “Greenhouse gases” include all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(i) “Material” means any emission of greenhouse gas that is not de minimis.

(j) “Native” means forests classified in the 1988 edition, or its approved successor equivalent, of “A Guide to Wildlife Habitats of California,” published by the Department of Fish and Game, and forests that are composed of the forest types within those classifications.

(k) “Natural forest management” means forest management practices that promote and maintain native forests comprised of multiple ages and mixed native species in the overstory and understory.

SEC. 2. Section 42823 of the Health and Safety Code is amended to read:

42823. The registry shall perform all of the following functions:

(a) Provide participants with referrals to approved providers for technical assistance and advice, upon the request of a participant, on any or all of the following:

(1) Designing programs to establish greenhouse gas emissions baselines and to monitor, estimate, calculate, report, and certify greenhouse gas emissions.

(2) Establishing emissions reduction goals based on international or federal best practices for specific industries and economic sectors.

(3) Designing and implementing organization-specific plans that improve energy efficiency or utilize renewable energy, or both, and that are capable of achieving emission reduction targets.



(4) Designing plans for the conservation and management of native forest reservoirs as a means to assist participants in attaining emission reduction goals and reporting annual emissions results.

(b) In coordination with the State Energy Resources Conservation and Development Commission, the registry shall adopt and periodically update a list of organizations recognized by the state as qualified to provide the detailed technical assistance and advice in subdivision (a) and assist participants in identifying and selecting providers that have expertise applicable to each participant's circumstances. The registry shall coordinate with the Department of Forestry and Fire Protection and the State Board of Forestry and Fire Protection to provide referrals to providers for purposes of paragraph (4) of subdivision (a).

(c) The registry shall adopt procedures and protocols for the reporting and certification of greenhouse gas emission reductions resulting from a project or an action of a participant. A participant shall report emission reductions as a separate item in its annual emissions results.

(d) In coordination with the Resources Agency and consistent with the data and information acquired and developed pursuant to subdivision (b) of Section 25730 of the Public Resources Code, the registry shall adopt procedures and protocols for the monitoring, estimating, calculating, reporting, and certifying of carbon stocks and carbon dioxide emissions resulting from the conservation and conservation-based management, including reforestation, of native forest reservoirs in California in order to permit participants to include the results of those activities as a participant's registered emissions results, or as a part thereof. Procedures and protocols shall require, at a minimum, that those forestry activities meet the following criteria in order to be reported as a participant's emissions results, or as a part thereof:

(1) Forestry activities that are reported as a participant's emissions results, or as a part thereof, shall be based on forest management practices within a defined project area that exceed applicable federal, state, and local land use laws and regulations, including, but not limited to, the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code). Applicable federal, state, and local land use laws and regulations shall be those in effect each time a participant registers a defined project area in the registry.

(2) Forestry activities that are reported as a participant's emissions results, or a part thereof, shall occur on forestland that is permanently dedicated to forest use through a restriction, granted in perpetuity, on the use that may be made of real property that is consistent with the



conservation purposes listed in Section 170(h)(4)(A)(ii) and (iii) of Title 26 of the United States Code.

(3) Forestry activities reported as emissions results, or as a part thereof, shall reflect the amount of time that net carbon gains are stored.

(4) Forestry activities maintain and promote native forest types.

(5) If emissions results are derived from forest lands undergoing harvest and regeneration, those results are derived from natural forest management practices.

(e) Adopt procedures and protocols for certification of reported baseline emissions and emissions results. When adopting procedures and protocols for the certification, the registry shall consider the availability and suitability of simplified techniques and tools.

(f) Qualify third-party organizations that have the capability to certify reported baseline emissions and emissions results, and that are capable of certifying the participant-reported results as provided in this chapter.

(g) Adopt procedures and protocols, including a uniform format for reporting emissions baselines and emissions results to facilitate their recognition in any future regulatory regime.

(h) Maintain a record of all certified greenhouse gas emissions baselines and emissions results. Separate records shall be kept for direct and indirect emissions results. The public shall have access to this record, except for any portion of the data or information that is exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) Encourage organizations from various sectors of the state's economy, and those from various geographic regions of the state, to report emissions, establish baselines and reduction targets, and implement efficiency improvement and renewable energy programs to achieve those targets.

(j) Recognize, publicize, and promote participants.

(k) In coordination with the State Energy Resources Conservation and Development Commission and the state board, adopt industry-specific reporting metrics at one or more public meetings.

(l) In consultation with the state board, adopt procedures and protocols for the reporting and certification of reductions in emissions of greenhouse gases, to the extent permitted by state and federal law, for those reductions achieved prior to the operative date of the regulations adopted pursuant to subdivision (a) of Section 43018.5.

SEC. 3. Section 42823.1 is added to the Health and Safety Code, to read:

42823.1. Procedures and protocols adopted pursuant to subdivision (d) of Section 42823 shall not be interpreted or construed as a condition



for any lease, permit, license, certificate, or other entitlement for an ongoing use of forest land.

SEC. 4. Section 42840 of the Health and Safety Code is amended to read:

42840. (a) Participants shall utilize the following reporting procedures to establish a greenhouse gas emissions baseline, participants shall report their certified emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990. After establishing baseline emissions, participants shall report their certified emissions results in each subsequent year in order to show changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline. Participants shall also report using industry-specific metrics once the registry adopts an industry-specific metric for the industry in question.

(b) (1) Participants shall report direct emissions and indirect emissions separately. Direct emissions are those emissions from applicable sources that are under management control of a participating entity, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions that are required to be reported by participants are those emissions embodied in net electricity and steam imports, including offsite steam generation and district heating and cooling. Participants are encouraged, but are not required, to report other indirect emissions based on guidance that is adopted by the registry.

(2) On or after January 1, 2004, the registry board, in coordination with the State Energy Resources Conservation and Development Commission, may revise the scope of indirect emission source types that are required to be reported by participants specified in paragraph (1) after a public workshop and review process conducted by the registry if all of the following requirements have been met.

(A) The State Energy Resources Conservation and Development Commission has approved that revision at a public hearing following a public workshop.

(B) Prior to approving that proposed revision, the commission determines all of the following:

(i) A reasonable and generally-accepted methodology exists that will enable participants to accurately estimate and report the emissions for the indirect source type in question.



(ii) The proposed revision will not create an unreasonable reporting burden on the participants.

(iii) The proposed revision is necessary to achieve the purposes listed in Section 42810.

(C) The registry, at any time it acts to revise the scope of indirect emission source types that are required to be reported by participants, establishes a timeframe for the phase in of the revised scope so that participants shall have at least four months before the start of the next annual reporting cycle that incorporates the revised scope.

(3) In cases of joint ownership, emissions are reported by the managing entity, unless the owners decide to report emissions on a pro rata basis.

(4) Participants shall not be required to report emissions of any greenhouse gas that is de minimis in quantity, when summed up across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry a definition of de minimis emissions that reasonably accounts for differences in the size, activities, and sources of direct and indirect baseline emissions of participants, and is consistent with the goals and intent of subdivision (f) of Section 42801.

(c) (1) All participants shall report direct and indirect carbon dioxide (CO₂) emissions that are material to their operations.

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane (CH₄).

(C) Nitrous Oxide (N₂O).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride (SF₆).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions required by both paragraphs (1) and (2).

(4) Emissions of all gases under this subdivision shall be reported in mass units.

(d) The basic unit of participation in the registry shall be an entity in its entirety such as a corporation or other legally constituted body, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.



(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation is clearly defined.

(2) Participants shall report emissions results from all of their applicable sources in the state when they initially register.

(3) Participants may, and are encouraged to, at any time, register emissions from all applicable sources based in the United States, so long as this reporting meets all the other requirements established by this chapter. Those participants with emissions in other states that report California emissions only may not be able to receive equal consideration for their emissions records in future national or international regulatory regimes relating to greenhouse gas emissions. In addition, participants with operations outside of the United States are encouraged to register their total worldwide emissions baselines and annual emissions results. Within three years, the registry shall review and report to the Legislature with a recommendation on whether the registry should require, rather than encourage, participants to report all of their greenhouse gas emissions in the United States, not just California emissions.

(4) To ensure that reported emissions reflect actual emissions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(5) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:

(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate certified emissions results achieved prior to the divestiture



among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any adjustments for changes in vertical integration shall be verified in the annual emissions certifications required for recordation of emissions results.

(6) If a participant changes from statewide to national reporting under this program, changes to its baseline will be treated in a similar manner as changes in vertical integration as described in paragraph (5).

(7) To ensure that reported emissions accurately reflect shifts in operations to or from other states, the registry shall adopt, in consultation with the State Energy Resources Conservation and Development Commission, at a public meeting and following at least one public workshop, reporting procedures for participants that choose to report greenhouse emissions on a statewide basis that require participants to show both of the following:

(A) Changes in a participant's operations, such as a facility startup or shutdown, that result in a significant and long-term shift of greenhouse gas emissions from California to other states or from other states to California.

(B) The corresponding change in the participant's baseline.

SEC. 5. Section 42841 of the Health and Safety Code is amended to read:

42841. (a) To support the estimation, calculation, reporting, and certification of emissions results in a consistent format, the registry shall adopt standardized forms that all participants shall use to calculate, report, and certify emissions results, unless an alternative format is (1) reviewed and recommended by the State Energy Resources Conservation and Development Commission and the State Air Resources Board, and (2) adopted by the registry, and deemed to be consistent with the goals and intent of this chapter. In cooperation with the State Energy Resources Conservation and Development Commission, the registry shall review commonly available emissions tracking software to determine whether existing software packages are able to generate reports for the registry.

(b) The procedures established for all of the following shall conform to the requirements of Article 6 (commencing with Section 42870):

(1) Establishing electricity and fuel usage and for calculating associated emissions.

(2) Mass-balance calculations, stack testing, or continuous emissions monitoring of greenhouse gases from onsite fuel combustion are all acceptable ways of reporting greenhouse gases from onsite fuel combustion.



(3) Estimating, calculating, reporting, and certifying noncombustion emissions of the gases listed in paragraphs (1) and (2) of subdivision (c) of Section 42840.

(4) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow contemporaneous and ex post certification of direct and indirect emissions.

