

State of California  
AIR RESOURCES BOARD

**California Cap-and-Trade Program**

Resolution 12-51

**October 18, 2012**

Agenda Item No.: 12-7-6

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

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

WHEREAS, AB 32 added section 38501 to the Health and Safety code, which acknowledges that by exercising a global leadership role to reduce emissions of greenhouse gases, California will also position its economy, technology centers, financial institutions and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases;

WHEREAS, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's intent that ARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32; and design emissions reduction measures to meet the statewide emissions limits for greenhouse gases in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

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

WHEREAS, section 38560 of the Health and Safety Code directs ARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emissions reductions from sources or categories of sources;

WHEREAS, the Cap-and-Trade Regulation was adopted by the Board and is codified in title 17, California Code of Regulations, sections 95800-96023;

WHEREAS, in Resolutions 10-42 and 11-32, the Board directed staff to evaluate the effectiveness of the cost containment provisions of the regulation including the Allowance Price Containment Reserve, offsets, banking, and the three-year compliance period;

WHEREAS, while maintaining the emission reduction goals for the program, it is ARB's policy to ensure that allowance prices do not exceed the highest price tier of the Allowance Price Containment Reserve [Cal. Code Regs., tit. 17, §§ 95870, 95913.] during the period 2013 to 2020;

WHEREAS, in Resolution 12-33, the Board directed staff to suspend the enforcement of the required attestation [Cal. Code Regs., tit. 17, § 95832(b)(2)] addressing resource shuffling for the first 18 months of the program, and to continue to work with the Emission Markets Advisory Committee, the California Independent System Operator, state agencies and stakeholders to provide certainty to the electricity market about how the regulation will address resource shuffling. The Board also directed the staff to provide a report and any recommendations for action at the October 2012 Board meeting;

WHEREAS, ARB has been working with stakeholders to address and minimize, to the extent feasible, emissions leakage from imported electricity, and to ensure adequate and reliable electricity supply for California; and

WHEREAS, ARB is committed to ensuring that reductions in the percentage of allowances given to California manufacturing businesses in 2015 does not discourage needed investments in upgrading existing facilities, investment in new technologies, and competitiveness.

NOW, THEREFORE, BE IT RESOLVED that the Board directs staff to develop and bring to the Board for consideration by mid-2013 a proposal for incorporating into the cap-and-trade program one or more mechanisms that will achieve the policy objective of ensuring that allowance prices will not exceed the highest price tier of the Allowance Price Containment Reserve while minimizing the impact on existing allowances and maintaining the environmental objectives of the program. In evaluating possible mechanisms, staff shall work with the Emission Market Advisory Committee, market participants, and other stakeholders to demonstrate that the proposed mechanisms are effective in a reasonable range of plausible combinations of conditions as needed to assure their effectiveness during the period of 2013 to 2020.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with the California Independent System Operator, the California Public Utilities Commission, the California Energy Commission, and stakeholders to refine the definition of resource shuffling and to identify situations that ARB would not consider resource shuffling based on the proposal in Attachment A. Staff shall return to the Board with proposed regulatory amendments by mid-2013, and publicly release regulatory guidance consistent with Attachment A prior to the November 14, 2012 allowance auction.

BE IT FURTHER RESOLVED, the Board directs the Executive Officer to complete current studies of leakage risk and evaluate options for ensuring the competitiveness of California industries and return with a recommendation by mid-2013.

I hereby certify that the above is a true and correct copy of Resolution 12-51, as adopted by the Air Resources Board.



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Lori Andreoni, Manager, Office of Legal Affairs

## Attachment A

### CALIFORNIA CAP-AND-TRADE PROGRAM

#### Clarifying Resource Shuffling Definition

Staff proposes to work with stakeholders to develop regulatory language to be considered by the Board in mid-2013 that further clarifies the definition of resource shuffling in the cap-and-trade regulation. The language will propose actions or “safe harbors” that are not considered resource shuffling. The safe harbors are expected to include:

1. Changes in electricity deliveries due to use of electricity needed to comply with California’s Renewable Portfolio Standard.
2. Compliance with state or federal laws and regulations, including the Emission Performance Standard [Pub. Util. Code § 8340 *et seq.*].
3. Compliance with requirements related to maintaining reliable grid operations.
4. Changes in deliveries as a result of court orders or certain settlements that are legally binding.
5. Retirement of resources.
6. Termination of a contract or divestiture of resources for reasons other than reducing GHG compliance obligation.
7. Early termination of a contract for, or full or partial divestiture of, resources subject to the Emissions Performance Standard.
8. Expiration of a contract.
9. Short-term trading activity under contracts with terms of no more than 12 months, for either specified or unspecified power, based on economic decisions including congestion costs but excluding implicit and explicit GHG costs.
10. Short-term trading activity under contracts with terms of no more than 12 months, or resulting from an economic bid that clears the CAISO day-ahead or real-time market, for either specified or unspecified power, based on economic decisions including implicit and explicit GHG costs and congestion costs, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity from a power plant covered by the Emission Performance Standard, that is not covered under paragraphs 11, 12 or 13.
11. Operational emergencies or transmission or distribution constraints, including constraints caused by the inability to obtain or retain transmission rights, transmission curtailments or outages.

## Attachment A

12. Changes in deliveries because a first deliverer has surplus electricity (more than enough to meet demand) as a result of the first deliverer being required to take electricity from specific generating units (e.g., electricity contracts with “must-take” or “must-run” provisions.)
13. Provision of electricity that is required to make up for transmission losses associated with deliveries from out-of-state power plants.

Regulatory language will also be developed to provide greater specificity regarding activities that constitute resource shuffling. These activities are expected to include:

1. Substituting relatively lower emission electricity to replace electricity generated at a high emission power plant (i.e., a coal resource) that is covered by SB 1368 but does not meet California’s Emissions Performance Standard, in order to reduce a compliance obligation.
2. Assigning a long term contract for high emission electricity specified in (1) to a third party, for the purpose of reducing compliance obligation

ARB staff will work with entities that hold long-term contracts or ownership shares in these facilities to address their movement towards divestment in order to ensure that the steps taken do not constitute resource shuffling.