

State of California
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text
and Availability of Additional Documents and Information**

PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS TO ALLOW FOR THE USE OF COMPLIANCE INSTRUMENTS ISSUED BY LINKED JURISDICTIONS

Public Hearing Date: June 28, 2012

First Public Availability of Additional Documents Dates: June 11, 2012 – June 27, 2012

Second Notice of Public Availability Date: January 8, 2013

Deadline for Second Public Comment Period: January 23, 2013

At its October 2011 public hearing, the Air Resources Board (ARB or Board) adopted sections 95800 to 96023, title 17, California Code of Regulations (CCR). These sections comprise the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (Regulation).

The Regulation provides a fixed limit on greenhouse gas (GHG) emissions from the sources responsible for about 85 percent of the state's total GHG emissions. The Regulation reduces GHG emissions by applying a declining aggregate cap on GHG emissions, and creates a flexible compliance system through the use of tradable instruments (allowances and offset credits). The Regulation became effective January 1, 2012.

On May 9, 2012, ARB staff released a Notice of a Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms at the June 28, 2012 Board Hearing, accompanied by the May 9, 2012, Initial Statement of Reasons (ISOR) for a regulatory amendment to link California's Cap- and-Trade program with a similar program in Québec. On June 11, 2012, staff released the first Notice of Public Availability of Additional Documents and Information. After the ARB staff published its May 9, 2012, ISOR, the Legislature enacted SB 1018 (chaptered on June 27, 2012)(Stat.2012, ch. 39). That law added procedures governing any decision to link market-based compliance programs under AB 32 with a program in another jurisdiction. The SB 1018 provisions were codified in section 12894 of the Government Code. Under the new law, prior to formally linking the Regulation, ARB must notify the Governor, who then has 45 days in which to consider advice from the Attorney General, and make (or decline to make) four specified findings which are to be submitted to the Legislature. Linkage cannot proceed unless and until the findings have been made.

In light of the new law, at its June 28, 2012, hearing the Board directed the Executive Officer to formally request that the Governor make the required findings regarding Québec's Cap-and-Trade regulations and provide those findings to the Legislature. This notice provides background and support for ARB's future request that the Governor make certain findings as a predicate to linking the Cap-and-Trade programs developed in parallel by California and Québec. Following this second 15-day public comment period, the Executive Officer will provide the administrative record, including public comments, to the Governor along with a request that the Governor make the necessary findings. If the Governor does make the findings, the Board is scheduled to consider final adoption of the proposed amendments at the February 2013 Board Hearing. As part of the process for considering finalizing the amendments to the Regulation allowing for linkage with Québec, the Board will consider the related environmental analysis and written responses to environmental comments.

Additional modifications to the regulatory text are being proposed in this January 2013 Notice, as well as additional documents and information supporting the rulemaking. The additional modifications address minor corrections, typographical errors, and clarifications. The text of the modified regulatory language is shown in Attachment 1. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this January 2013 Notice are shown in ~~double-strikethrough~~ and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to changes that are noticed. Therefore, staff will only address comments that are responsive to this notice, documents added to the record or the changes detailed in Attachment 1.

Documents for this rulemaking action are available online at the cap-and-trade website referenced here:

<http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm>

Additional Document(s) Added to the Record

This January 2013 Notice of Public Availability of Additional Documents and Information places additional documents into the regulatory record. This Notice provides the public with documents pertaining to Québec's regulations. These documents include (1) Québec's "Cap-and-trade system for greenhouse gas emission allowances — Amendment" dated December 12, 2012, (2) Québec's "Mandatory reporting of certain emissions of contaminants into the atmosphere — Amendment" dated September 5, 2012, (3) Québec's "Determination of annual caps on greenhouse gas emission units relating to the cap-and-trade system for greenhouse gas emission allowances for the 2013-2020 period," (4) "Regulation Respecting a Cap-and-Trade System for

Greenhouse Gas Emission Allowances – Overview” prepared by Québec’s Ministry of Sustainable Development, Environment, Wildlife and Parks, dated December 21, 2012, and (5) “Discussion of Findings Required by Government Code section 12894.”

The documents added to the record represent the new regulations as proposed by the Québec government on June 8, 2012, and adopted on December 12, 2012. Official government documents are available through the Québec Gazette at:

Québec Cap-and-Trade program regulations, final amendments:

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=2012A%2F2392.PDF>. [Note that the amendments should be read together with the regulation as initially promulgated in 2011, available at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/Q_2/Q2R46_1_A.HTM]

Québec Cap-and-Trade program allowance caps, final values:

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=2012A%2F2389.PDF>.

Québec Mandatory Reporting Regulations, final amendments:

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=2012A%2F2249.PDF>.

Additional Review of Québec’s Final Cap-and-Trade Program

Review Summary

In the May 9, 2012, ISOR, staff reviewed the draft regulation and design documents for Quebec's Cap-and-Trade program as part of the linkage rulemaking proposal in May 2012. The May 9, 2012, ISOR included a review of the background of Quebec's climate change program, mandatory greenhouse gas reporting requirements, cap-and-trade regulation, three draft offset protocols, and draft caps. The review summary in this notice builds on the information provided in the ISOR and notes any changes from Québec’s draft documents to the final documents adopted by Québec in December 2012.

In December 2012, Québec finalized its regulations that support its cap-and-trade program. The requirements in the draft regulations were discussed in the *Initial Staff Report for Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions* (ISOR) publicly noticed May 9, 2012, and available at: <http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm>. Staff has evaluated the final regulations and does not find any changes that would impact the program equivalency when compared to the requirements that were presented in the earlier draft regulations.

The majority of changes made to Québec's Cap-and-Trade Regulation were to further align administrative and process requirements with the California Cap-and-Trade Regulation amendments approved by the Office of Administrative Law in September 2012. Both the California and Québec programs have final regulations with equivalent detail related to know-your-customer requirements, disclosure of corporate associations, and auction participation requirements. There were no substantive changes that would result in changes to equivalency in scope, compliance periods, compliance obligation surrender, or information disclosure as part of transfer actions taken in the market tracking system. Some non-substantive changes were made to clarify existing text.

Québec's final offset provisions reflect minor changes for clarity and additional harmonization with California's compliance offset program. Québec had a separate validation step whereas California has validation included in the first year of verification services to streamline the process. Québec's final offset provisions allow for a single validation step to remain valid for five years of a project crediting period if there are no significant changes to the project as identified in the regulation. The project would still be subject to the same verification requirements after each reporting period and prior to issuance of compliance offset credits. This modification allows Québec to streamline its validation process similar to the way the California program is designed. The Québec compliance offset program is equivalent to the California program.

Québec did make some minor clarifications in their final offset protocols. For the destruction of ozone depleting substances protocol, Québec clarified that only materials extracted from equipment in Canada would be eligible for offset credit under their program. Some of the calculation factors were also updated to reflect recent testing data. Québec has also created a very narrow early action program similar to California's early action program. This early action program would allow a handful of existing landfill projects to transition to Québec's compliance offset protocol and continue to operate and generate offset credits. Minor technical and non-substantive modifications were made to all three final offset protocols.

The May 9, 2012 ISOR provided a detailed description of the differences between Québec and California's missing data provisions for the greenhouse gas reporting provisions. The final Québec reporting regulation includes missing data provisions that are equivalent to those in the California program.

Québec's Cap-and-Trade program continues to allow for the achievement of its 2020 mitigation goal defined by Decree 1187-2009, a reduction of 20% below the 1990 level of Québec's GHG emissions by 2020. The manner in which Québec determined its allowance budget remains unchanged. The final caps were established with the most recent emissions data which showed that emissions from capped sources are a slightly larger portion of total emissions than had been calculated previously. As a result, the final Québec program allowance budget is approximately 4% higher than its draft budget. This change does not change the stringency of the Québec program.

Economic Analysis Review

Based on ARB staff's review of Québec's final program design and regulatory documents, the economic analysis in the May 9, 2012, ISOR for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions provides an accurate economic analysis of the proposed rulemaking. As detailed in the description of Québec's final program in this notice and provided in the final regulatory documents, there were no changes to Quebec's program since the release of the ISOR that would change the expected economic impact of linking.

Staff has taken note that the final Québec program allowance budget is approximately 4 percent higher than its draft budget, and has examined the potential economic impacts of this change. The manner in which Québec determined its allowance budget remains unchanged. The final caps were established with the most recent emissions data in order to achieve a reduction of 20% below the 1990 level of Québec's GHG emissions by 2020, as set by Decree 1187-2009. Thus, the final allowance caps reflect more recent data on the expected emissions among covered sources and noncovered sources.

When combined with the California allowance budget of about 2,508 MMTCO_{2e} for the period 2013-2020, the increase in the Québec program allowance budget is about one-half of one percent (0.5%) of the combined allowance budget. By itself, this small increase in the allowance budget would not affect the results of the economic analysis presented in the ISOR. When combined with the updated data on expected Québec emissions covered by the program, there is no measurable change in the economic impact on California. Of particular note, the ISOR economic analysis examined potential impacts of a 5 percent to 15 percent increase in allowance prices in California as a result of linking with Quebec (ISOR, p. 85). The final Québec allowance caps and emissions estimates do not change this range, and consequently do not change the results of the economic analysis.

Environmental Impacts Review

Based on staff's review of Québec's final program design and regulatory documents, the environmental analysis in the ISOR for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions provides an accurate environmental analysis of the proposed rulemaking. As detailed in the description of Québec's final program in this notice and provided in the final regulatory documents, there were no significant changes to the scope and stringency of Quebec's program. There were also no significant changes to the three Quebec offset protocols that were proposed as part of this rulemaking in May, 2012.

Summary of Proposed Modifications

All references to sections: 95802, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022 are to title 17, CCR. For a complete account of all modifications in the proposed regulations, please refer to the double underline and double strikeout sections in Attachment 1.

A. Modifications to Section 95802. Definitions.

The definition for “covered entity” was modified to make consistent with the existing requirements in section 95812.

B. Modifications to Section 95814. Voluntary Associated Entities and Other Registered Participants.

No substantive changes were made to this section.

C. Modifications to Section 95830. Registration with ARB.

Section 95830(h) was clarified to state that the physical location determines which jurisdiction an entity must apply to for registration; Québec entities will register with Québec, United States entities will register with California.

D. Modifications to Section 95831. Account Types.

No substantive changes were made to this section.

E. Modifications to Section 95832. Designation of Representatives and Agents.

No substantive changes were made to this section.

F. Modifications to Section 95833. Disclosure of Corporate Associations.

New Section 95833(f)(3)(D) was added to ensure that there was equitable treatment of entities with a direct corporate association whether or not the related entities were registered in one jurisdiction or across linked jurisdictions. This provision ensures that all entities in a linked program are subject to the same limits and requirements for purchase and holding limits. Entities that have a direct corporate association across jurisdictions must opt out of a consolidated account and designate how they will share their purchase and holding limits. The requirements for opting out are the same as those for entities with a direct corporate association within a jurisdiction and provide clear boundaries of jurisdiction in a linked program.

G. Modifications to Section 95834. Know-Your-Customer Requirements.

No substantive changes were made to this section.

H. Modifications to Section 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

No substantive changes were made to this section.

I. Modifications to Section 95870. Disposition of Allowances.

No substantive changes were made to this section.

J. Modifications to Section 95910. Auction of California GHG Allowances.

Section 95910(a)(2) was modified to recognize that auction dates must be business days in California and any jurisdiction to which California has linked. The original amendments were missing the language requiring auction date to also be a business day in the linked jurisdiction.

K. Modifications to Section 95911. Format for Auction of California GHG Allowances.

Section 95911(c)(5) was modified for clarity.

L. Modifications to Section 95912. Auction Administration and Participant Application.

Section 95912(e)(8) was modified to fix a typographical error.

M. Modifications to Section 95913. Sale of Allowances from the Allowance Price Containment Reserve.

No substantive changes were made to this section

N. Modifications to Section 95920. Trading.

Section 95920(g) was corrected for a typographical error.

O. Modifications to Section 95921. Conduct of Trade.

No substantive changes were made to this section.

P. Modifications to Section 95942. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.

Sections 95942(f) and (g) were modified to remove references to serial numbers as distinct serial numbers will not be made public.

Section 95942(h) was modified for clarity.

Q. Modifications to Section 95943. Linked External GHG ETS.

No substantive changes were made to this section.

R. Modifications to Section 96010. Jurisdiction.

No substantive changes were made to this section.

S. Modifications to Section 96022. Jurisdiction of California.

Section 96022 was modified for clarity.

Contacts

Inquiries concerning the additional documents being added to the record may be directed to Mr. Steve Cliff, Chief, Climate Change Program Evaluation Branch, at (916) 322-7194 or Ms. Rajinder Sahota, Manager, Climate Change Program Monitoring Section at (916) 323-8503.

Submission of Comments

Written comments will only be accepted on the documents identified as being added to the record in this second 15-day notice and the proposed modifications to the regulation noted in double underline and strikeout, and may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code §6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the additional documents added to the record shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.