# TITLE 17. CALIFORNIA AIR RESOURCES BOARD

## NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider proposed amendments to California greenhouse gas emissions cap-and-trade program and market-based compliance mechanisms to add security to the market system and help staff implement the cap-and-trade program.

DATE: June 28, 2012

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 28, 2012, and may continue at 8:30 a.m., on June 29, 2012. This item may not be considered until June 29, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before June 28, 2012, to determine the day on which this item will be considered.

## INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected**: Proposed amendments to California Code of Regulations, title 17, to sections 95802, 95812, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95892, 95910, 95911, 95912, 95913, 95914, 95920, and 95921.

**Background:**

The California Global Warming Solutions Act of 2006 (Assembly Bill 32; Stats. 2006, Chapter 488) (AB 32) authorizes ARB to implement a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California. AB 32 required ARB to develop a scoping plan to reduce GHG emissions in California to 1990 levels by 2020. ARB's adopted Scoping Plan includes a comprehensive set of actions designed to reduce GHG emissions in California, improve the environment, reduce dependence on foreign oil, diversify energy sources, save energy, create new jobs, and enhance public health. Meeting the goals of AB 32 requires a coordinated set of strategies to reduce GHG emissions throughout the economy that work within a comprehensive tracking, reporting, verification and enforcement framework. The Scoping Plan includes a variety of measures to achieve AB 32 goals, including direct regulations, performance-

based standards, and market-based mechanisms. Many of the measures in the Scoping Plan complement and reinforce each other.

The Scoping Plan directed ARB staff to develop a cap-and-trade regulation, which is a type of market-based compliance mechanism. The cap-and-trade regulation provides a fixed limit on GHG emissions from the sources responsible for about 85 percent of the state's total GHG emissions. The cap-and-trade 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 cap-and-trade regulation went into effect January 1, 2012.

From 2009 through 2011, ARB staff developed the overall options for program design and development. ARB staff conducted extensive public consultation, including more than 40 public meetings, to discuss and share ideas with the general public and key stakeholders on the appropriate structure of the cap- and-trade program. Staff also met regularly with individual stakeholders to hear their concerns and recommendations. ARB staff collected public comments during each public workshop, which focused on key topics and program design components.

In developing these proposed cap-and-trade regulation amendments, staff held two workshops and released discussion draft regulation amendments for public comment. ARB received more than 15 written comments on the discussion draft amendments and met regularly with stakeholders to discuss concerns and recommendations.

**Description of the Proposed Regulatory Action, Objectives and Benefits**

After considering the comments received, ARB staff is proposing amendments to the cap-and-trade regulation to add to the security of the market system and to aid staff in implementing the regulation. The proposed amendments include detailed Know Your Customer (KYC) requirements for information gathering during registration, and rules for a first auction on November 14, 2012 and associated amendments to dates in the current cap-and-trade regulation to implement the November 14, 2012 auction. Staff also included additional amendments to the regulation to implement the allowance and offset registry, market monitoring provisions of the regulation and collection of information necessary for the financial services operator. Details regarding the proposed amendments are included in Chapter II: Summary of Proposed Action and in Appendix A of the staff report.

***Registration and Accounts***

Under the proposed amendments, ARB will be responsible for tracking information regarding compliance instrument ownership, including transfers of ownership. The proposed regulation will require entities to register with ARB and provide information to ARB regarding ownership and submittal of compliance instruments. ARB will also require reporting information regarding certain transactions between market participants. Some participants submitting information could be entities that do not have compliance obligations or that are not located within California. All covered entities will

be required to register and create an account with ARB or a designated account administrator to comply with the regulation. Voluntarily associated entities will need to register with the tracking system to hold ARB allowances or offsets.

The California registry, Compliance Instrument Tracking System Service (CITSS) will track compliance instrument ownership, submittals and transactions. The primary goal of CITSS is to support ARB in effective implementation of the proposed regulation and to reduce the costs and administrative burden associated with long-term regulation responsibilities. CITSS will also provide information necessary for a secure, liquid, and transparent allowance market.

***Know Your Customer (KYC) Requirements***

The proposed amendments include detailed Know Your Customer (KYC) requirements for information gathering during registration. The regulation will limit registrants to individuals with a primary residence in the United States to enhance the ability of ARB to enforce the regulation. If an entity's account representative does not have an address in California, the regulation will require an agent for service of process in California. KYC amendments will require registrants to provide notarized copies of valid government issued identification, date of birth, verification of an open bank account, employer contact information and disclosure of felony convictions occurring within the past 5 years. Those with a criminal conviction constituting a felony in the United States within the last 5 years will be excluded from registration.

***Consolidated Accounts***

A new provision was added to require entities that have a direct corporate association to have a single set of accounts in the CITSS rather than to one set of accounts for each facility. If entities with a direct corporate association want to manage their own compliance obligation at the facility level, there is a provision to opt-out from consolidated accounts.

***Number of Individuals Associated with a Set of Accounts***

Amendments were made to existing provisions to identify a single individual as a primary account representative who will always receive any information related to the associated entity and its accounts in CITSS. In response to stakeholder concerns, the number of account representatives was increased to five, with the ability to assign several staff with account-viewing rights.

***Auction Process***

Several amendments were made to the existing provisions to clarify the auction process for auction participants and actions taken by the Executive Officer, or his designee. These provisions include timing for critical steps during the auction process, information requirements for the auction platform, and financial requirements to participate in the actual auction.

### *Removal of Beneficial Holdings*

All provisions related to the concept of beneficial holdings were removed. These provisions allowed one entity to hold compliance instruments on behalf of another and not count those holdings against the holding limit. Staff determined that this feature would be difficult to monitor in the CITSS and could potentially lead to gaming. Due to concerns related to integrity of the program, staff recommends removing the feature in the proposed amendments.

### *Purchase Limits for All Covered Entities*

The existing provision to exempt utilities from a purchase limit was amended to apply a 40 percent auction purchase limit. This ensures that all participants, either covered or voluntary, are subject to a purchase limit. The limit for utilities is set at a level staff believes would allow them to acquire compliance instruments to comply with the regulation with some flexibility to acquire instruments to cover power generation emissions.

### *Process to Adjust Holding Limit Exemption*

New provisions were added to allow a covered entity to apply for an adjustment to its holding limit exemption if the entity could demonstrate that its emissions, and therefore its compliance obligation, would increase by more than 250,000 metric tons carbon dioxide equivalent (MTCO2e). This allows for an adjustment if a new facility comes on line or if a large utility experiences an increase in emissions related to imports from fossil power generation.

### *Adjustments to Compliance Instrument Transfer*

Adjustments were made to the requirements for compliance instrument transfers between two accounts within the CITSS. Staff is proposing that two account representatives approve a transfer request to move compliance instruments from their entity account to another recipient's account, and that one account representative for the recipient's account confirm the transfer. This process ensures a multiple review and approval process for the movement of compliance instruments in the CITSS. This feature is important to the security of the CITSS.

## CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

Staff does not believe the proposed regulation is inconsistent or incompatible with existing state regulations

## MANDATED BY FEDERAL LAW OR REGULATIONS

This regulation is not mandated by federal law or regulations.

## COMPARABLE FEDERAL REGULATIONS

This regulation is not mandated by federal law or regulations, and there are no comparable federal regulations.

## AVAILABILITY OF DOCUMENTS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to The California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on May 9, 2012.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

## AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Steve Cliff, Chief of the Climate Change Program Evaluation Branch, at (916) 322-7194 or Ms. Rajinder Sahota, Manager of the Climate Change Program Monitoring Section at (916) 323-8503.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, at (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, at (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

## INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm

## FISCAL IMPACT

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

## ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The amendments proposed in this regulation would clarify the existing cap-and-trade regulation to help ARB implement, oversee, and enforce the cap-and-trade regulation. These amendments provide more specificity in the information required to be reported to ARB during registration and for the tracking of transactions, but this information was envisioned by the existing cap-and-trade regulation. The specificity does not add any cost burden to what was already required, and so has no additional economic impact.

## COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulation are presented below.

### *Costs to State Government and Local Agencies*

The Executive Officer has determined that the proposed regulatory action would not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to State agencies or in federal funding to the State. The proposed regulatory action would not create costs and would impose a mandate on State and local agencies, but would not create costs or impose a mandate on school districts. Because the regulatory requirements apply equally to all covered entities and unique requirements are not imposed on local agencies, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

### *Costs to Businesses and Private Individuals*

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The Executive Officer has determined that representative private persons and businesses would not be affected by the cost impacts from the proposed regulatory action. Pursuant to Government Code section 11346.5(a)(7)(C), the Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, and little or no impact on the ability of California businesses to compete with businesses in other states.

The proposed regulation would not impose sufficient direct or indirect costs to eliminate businesses in California.

## STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SEC. 11346.3(b)

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not eliminate existing businesses within the State of California, and would not affect the creation of new businesses or the expansion of existing businesses currently doing business in California. The proposed regulatory action would not eliminate jobs within the State of California, and would not affect the creation of jobs within California.

In general, most small businesses in regulated sectors would not be subject to the proposed regulation because their total GHG emissions are below the GHG reporting threshold, thereby exempting them from compliance obligations under the proposed regulation. In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

## ALTERNATIVES

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Since the proposed amendments do not have a fiscal, economic or environmental impact, no alternatives, other than no regulatory amendments, were considered.

## ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in the Initial Statement of Reasons.

## SUBMITTAL OF COMMENTS AND WRITTEN COMMENT PERIOD

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on May 14, 2012. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after May 14, 2012 and received **no later than 12:00 noon on June 27, 2012**, and must be addressed to the following:

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

**You can sign up online in advance to speak at the Board meeting** when you submit an electronic board item comment. For more information go to: http://www.arb.ca.gov/board/online-signup.htm.

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.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

## STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 38510, 38560, 38562, 38564, 38570, 38571, 38580, 39600 and 39601.

This action is proposed to implement, interpret, and make specific sections 38530, 38560.5, 38564, 38565, 38570 and 39600 of the Health and Safety Code.

## HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; or
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at 916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la

audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene
Executive Officer

Date: May 1, 2012

*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 our website at www.arb.ca.gov.*