State of California
AIR RESOURCES BOARD

AMENDMENTS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS AND CONFORMING AMENDMENTS TO THE DEFINITION SECTIONS OF THE AB 32 COST OF IMPLEMENTATION FEE REGULATION AND THE CAP-AND-TRADE REGULATION

Resolution 12-25

September 20, 2012

Agenda Item No.: 12-6-2

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

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 38530 of the Health and Safety Code directed ARB, on or before January 1, 2008, to adopt regulations to require the reporting and verification of statewide GHG emissions;

WHEREAS, section 38530 of the Health and Safety Code also requires that the GHG reporting regulations shall require annual reporting, beginning with the largest sources; account for GHG emissions from all electricity consumed in the State, including imports and line losses; ensure rigorous and consistent emissions accounting; and provide reporting tools and formats to ensure collection of necessary data; ensure that GHG emission sources maintain comprehensive records of all reported GHG emissions; and make reasonable efforts to promote consistency with existing and proposed international, federal, and State GHG emission reporting programs;

WHEREAS, section 38597 of the Health and Safety Code authorized ARB to adopt by regulation a schedule of fees to be paid by the sources of greenhouse gas emissions,

and that the fees would be deposited into the Air Pollution Control Fund and would be available, upon appropriation by the Legislature, for the purposes of carrying out AB 32;

WHEREAS, sections 38562(c) and 38570 of the Health and Safety Code authorized ARB to adopt regulations that utilize market-based compliance mechanisms;

WHEREAS, the Board approved the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) (mandatory reporting regulation) on December 6, 2007 and approved the adoption of amendments to the regulation on December 16, 2010 to align reporting methods and requirements, to the extent possible, with the United States Environmental Protection Agency (U.S. EPA) and to support a proposed California cap-and-trade program;

WHEREAS, the Board approved for adoption the AB 32 Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 et seq.) (AB 32 fee regulation) on September 25, 2009;

WHEREAS, the Board considered the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, including Compliance Offset Protocols (title 17, California Code of Regulations, section 95800 et seq.) (cap-and-trade regulation) on December 16, 2010, and adopted this cap-and-trade regulation on October 20, 2011, which relies on reported GHG emissions data derived from calculation methods that are accurate, rigorous, and consistent;

WHEREAS, section 39607 of the Health and Safety Code requires the Board to inventory sources of air pollution and gather air pollution information;

WHEREAS, section 39607.4 of the Health and Safety Code requires the Board, as part of its responsibilities under section 39607 of the Health and Safety Code, to prepare, adopt, and update the climate change emission inventory, a statewide inventory of greenhouse gas emissions;

WHEREAS, the U.S. EPA has adopted federal GHG emissions reporting rules;

WHEREAS, mandatory GHG reporting supports California's efforts to improve our GHG emission inventory, track emission trends, support regulatory development, and assist in the development of carbon trading markets;

WHEREAS, California has a cap-and-trade program (title 17, California Code of Regulations, section 95800 et seq.), which relies on reported GHG emissions data derived from calculation methods that are accurate, rigorous, and consistent;

WHEREAS, amending the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions is necessary to fully support California's cap-and-trade regulation and other ARB programs, including the statewide GHG emission inventory;

WHEREAS, amendments to the definition sections of the cap-and-trade regulation and AB 32 fee regulation are necessary to conform with the amendments to the mandatory reporting regulation, and to ensure consistent use of defined terms among the regulations;

WHEREAS, ARB staff conducted a public workshop on May 30, 2012 and participated in various other stakeholder webinars and meetings in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, ARB staff prepared a staff report entitled *"Initial Statement of Reasons for Rulemaking Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and Conforming Amendments to the Definition Sections of the AB 32 Cost of Implementation Fee Regulation and the Cap-and-Trade Regulation"* (Initial Statement of Reasons), which presents the rationale for the proposed amendments to the regulations;

WHEREAS, the Initial Statement of Reasons and proposed regulatory language were made available to the public for at least 45 days prior to the September 20, 2012 Board hearing;

WHEREAS, ARB staff considered less prescriptive standards and procedures for reporting but determined that these would be less effective in providing complete, consistent, verifiable, and accurate GHG emissions data, and less effective in promoting consistency between the mandatory reporting regulation, cap-and-trade regulation, and AB 32 fee regulation;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the impact of the proposed amendments, additions, and deletions to the regulations on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, in consideration of the information in the public record, including the Initial Statement of Reasons, written comments, and testimony provided at the hearing, the Board finds that:

1. The proposed amendments to the regulations meet the requirements specified in sections 38530, 38562, 38570, 38597, 39607, and 39607.4 of the Health and Safety Code;

2. The proposed amendments to the regulations promote consistency, to the extent feasible, with the U.S. EPA GHG reporting rule;

3. The emission estimation methods, schedules, and other provisions of the proposed amended regulations focus on the most significant GHG emission sources, use rigorous and consistent emission accounting methods, provide accounting for all electricity consumed in the state, including imports, require verification of emissions data, and to the extent feasible, maintain consistency with other GHG reporting programs;

4. Annual reporting of GHG emissions and supporting information from cement production facilities, electric power entities including importers and exporters, electricity generation and cogeneration units, petroleum refineries, hydrogen plants, stationary fuel combustion sources, glass production facilities, lime manufacturing facilities, nitric acid production facilities, pulp and paper manufacturing facilities, iron and steel production facilities, suppliers of transportation fuels, suppliers of natural gas, natural gas liquids, and liquefied natural gas, suppliers of carbon dioxide, and petroleum and natural gas systems that emit over 10,000 metric tons of carbon dioxide equivalent per year from stationary source combustion and process emissions is necessary to identify and characterize the most significant California GHG emission sources;

5. Accurate GHG emissions reporting is necessary to support a rigorous cap-and-trade program and California's other GHG emission reduction programs, including the statewide GHG emission inventory;

6. The proposed amendments promote consistency between the mandatory reporting regulation, cap-and-trade regulation, and AB 32 fee regulation;

7. The economic and cost impacts of the proposed amended regulations have been analyzed as required by California law and the conclusions and supporting documentation for these analyses are set forth in the Initial Statement of Reasons;

8. The proposed amendments represent an overall cost savings to California businesses;

9. The reporting requirements of the proposed regulations which apply to businesses are necessary for the health, safety, and welfare of the people of the State; and

10. No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the regulations are proposed, or be as effective as, and less

burdensome to affected private persons and businesses, than the proposed regulations.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that the proposed regulations will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption the amendments to sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95119, 95120, 95121, 95122, 95123, 95130, 95131, 95132, 95133, 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, 95202, and 95802, title 17, California Code of Regulations, as set forth in Attachment A hereto.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board hereby approves for adoption the addition of the new section 95158, title 17, California Code of Regulations, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulations are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulations, as set forth in Attachment A hereto. If the Executive Officer determines that additional conforming modifications are appropriate, the Executive Officer shall adopt the modified regulations after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to monitor the development of the U.S. EPA Mandatory Reporting of Greenhouse Gas Emissions rules.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to return to the Board as needed to amend the GHG reporting regulations to include additional emissions sources, update emission estimation methods, or provide other enhancements to the regulation.

I hereby certify that the above is a true and correct copy of Resolution 12-25, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Manager, Office of Legal Affairs

Resolution 12-25

September 20, 2012

Identification of Attachments to the Board Resolution

Attachment A: Proposed Modifications to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and Conforming Amendments to the Definition Sections of the AB 32 Cost of Implementation Fee Regulation and the Cap-and-Trade Regulation California Code of Regulations, title 17, sections 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95119, 95120, 95121, 95122, 95123, 95130, 95131, 95132, 95133, 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, 95158, 95202, 95802 as set forth in Attachments A-C to the Initial Statement of Reasons, released August 1, 2012.