TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE 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 the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation or Regulation) to allow for additional transition assistance for covered entities, cover carbon dioxide imports, add three updated offset protocols, and modify provisions regarding implementation and oversight of the Regulation.

DATE: September 18, 2014

TIME: 9:00 a.m.

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

WEBCAST: http://www.calepa.ca.gov/broadcast/?BDO=1

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. September 18, 2014, and will continue at 8:30 a.m. on September 19, 2014. This item may not be considered until September 19, 2014. Please consult the agenda for the hearing, which will be available at least 10 days before September 18, 2014, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)

Sections Affected: Proposed amendments to sections 95802, 95830, 95833, 95852, 95852.2, 95890, 95892, 95895, 95920, 95921, 95973, 95975, 95976, 95983, 95985, and 95990, title 17, California Code of Regulations (CCR).

Documents Incorporated by Reference:

The following documents are ARB-drafted documents that will be incorporated by reference into the cap-and-trade regulation when it is amended. Any changes to these documents will be made available in accordance with the Administrative Procedure Act (Government Code section 11340 et seq.). The final date of these documents, if approved, will be the date of final adoption by ARB.

1. Compliance Offset Protocol Livestock Projects;
2. Compliance Offset Protocol Ozone Depleting Substances Projects; and
3. Compliance Offset Protocol U.S. Forest Projects.

Background and Effect of the Proposed Rulemaking

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, and maintain and continue reductions beyond 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 identified a cap-and-trade regulation as a key strategy for achieving emissions reductions at least cost. As envisioned in the Scoping Plan, the cap-and-trade program would eventually be linked with cap-and-trade programs operating in other states and provinces. ARB worked with other agencies to update the Scoping Plan this year. This update provides a status report on progress toward meeting the 2020 goals and builds on the framework for meeting California's long-term climate goals.

The Regulation provides a fixed limit on GHG emissions from the sources responsible for approximately 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 is designed to link with partners in other jurisdictions. The California Cap-and-Trade Regulation went into effect January 1, 2012.

In 2012, ARB staff proposed two sets of amendments to the Regulation. The first set was focused on implementation requirements and the second on linking the California and Québec cap-and-trade programs. At the June 2012 Board hearing, the Board approved the implementation amendments, which became effective September 1, 2012.

At the April 2013 Board hearing, the Board approved the linkage amendments. The linkage amendments became effective October 1, 2013 with a linked California and Québec cap-and-trade program effective on January 1, 2014.

In response to continued Board direction and further discussions with stakeholders, staff began a public process to propose additional amendments for Board consideration in the fall of 2013. That set of amendments was further refined before being presented to and approved by the Board in April 2014.

During these hearings, the Board provided ongoing direction to staff to continue considering updates to existing offset protocols, to evaluate further modifications to disclosure requirements, and provide additional allocation to Metropolitan Water District. To that effect, and in developing the proposed amendments described in this notice, staff held two workshops and released draft proposed offset protocols for public comment. ARB received more than 65 written comments on the discussion draft protocols and met regularly with stakeholders to discuss concerns and recommendations. The proposed regulation amendments address stakeholder concerns about information disclosure related to registration, compliance, and trading requirements; modify the allowance allocations for the Metropolitan Water District and the City of Shasta Lake; include a compliance obligation for carbon dioxide that is imported into the State; and modify existing offset protocols.

Objectives and Benefits of the Proposed Regulation

The proposed amendments address stakeholder concerns related to corporate association disclosure requirements, allocation, and offset supply. Staff has proposed changes in allowance allocation for the Metropolitan Water District and the City of Shasta Lake. Closely related to allocation, minor changes to tomato product data definitions are proposed; these product data are used to determine allocation to tomato producers. The proposed amendments also include removal of the exemption for imported carbon dioxide. Staff has also proposed amendments to support the addition of three updated offset protocols to the offset program. Details regarding the proposed amendments are included in Chapter II: Summary of Proposed Action of the Staff Report for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms. Staff is also proposing updates to the Livestock and Ozone Depleting Substances offset protocols. Quantification method updates to the U.S. Forest Projects offset protocol are also included in this notice.

Anticipated benefits of the proposed amendments include improved clarity for covered entities regarding the allocation of emission allowances, product data reporting, disclosure of corporate associations, and updates to three existing compliance offset protocols. Given the GHG emissions reductions that will occur because of the program, these amendments may also directly improve the health and welfare of California residents, and the State's environment. Specific discussion of the proposed amendments follows.

Allowance Allocation

Staff is proposing modifications to the allocation to the Metropolitan Water District (MWD) and the City of Shasta Lake based on new information. Staff evaluated new data from MWD and the City of Shasta Lake and is proposing to increase their

allowance allocations. Staff has also proposed changes to clarify that allowance allocation to entities with legacy contract generators with an industrial counterparty would continue for the duration of the legacy contract. Finally, staff is proposing modifications to the definitions of several tomato products to align with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and with how tomato producers already quantify tomato production. These product data are used to calculate allowance allocation to tomato producers.

Tomato Product Data Reporting

Staff has evaluated and is proposing modifications to the definitions of aseptic tomato paste, non-aseptic tomato paste and tomato puree, tomato soluble solids (TSS), and added a definition for raw TSS to align with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and with how tomato producers already quantify tomato production. These product data are used to calculate allowance allocation to tomato producers.

Updated Compliance Offset Protocols

Staff has evaluated and is proposing amendments to incorporate by reference the proposed updated Livestock Projects and Ozone Depleting Substances Projects Compliance Offset Protocols into the Regulation. Staff has updated quantification methodologies and other minor changes for the two proposed Compliance Offset Protocols for Livestock projects and Ozone Depleting Substances projects. A detailed analysis of these protocols is included in Appendix C of the Staff Report.

Staff is also proposing to incorporate by reference an updated U.S. Forest Projects (2014a) offset protocol that has been amended to correct volume and biomass equations and update Common Practice values. Staff has evaluated and proposed amendments to the quantification methodologies of the U.S. Forest Protocol. These changes are exempt from the Administrative Procedure Act (APA), pursuant to Government Code section 38571, because they represent changes to quantification methodologies included in the U.S. Forest protocol; however, those elements of the protocol are still regulatory. The changes to the quantification methodologies are identified in the Documents Incorporated by Reference on page 2 of this Notice. No other changes are made to the U.S. Forest Projects protocol pursuant to this Notice of Proposed Regulatory Action that would require Board consideration.

Offset Transfer Price Reporting

Staff has evaluated and is proposing amendments to clarify the requirements to report the price of offset transfers. Staff is proposing to exempt offset transfers for conversion to compliance instruments, which do not specify a price in the transfer agreement, from the price reporting requirement. Rather, these transfers would report a price of zero.

Disclosure of Corporate Associations

Staff has evaluated and is proposing amendments to clarify requirements related to the disclosure of corporate associations, including amendments clarifying that the disclosure of indirect corporate associations is limited to those entities that are registered in the Cap-and-Trade Program. The proposed amendments would also extend the amount of time between disclosures of direct corporate associations when the direct corporate associate is not subject to the Cap-and-Trade Program.

Clarification Regarding Exchange Clearing House Accounts

Staff proposes modifications to clarify that the holding limit calculation will not include allowances contained in exchange clearing holding accounts.

Removal of the Exemption for Carbon Dioxide Imports

Staff has evaluated and is proposing an amendment to remove the compliance obligation exemption for carbon dioxide imports.

DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulatory action, ARB conducted a search for any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATION

This regulation is not mandated by federal law or regulations.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

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: *Staff Report: Initial Statement of Reasons for the 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, or by calling (916) 322-2990, on July 29, 2014.

Final Statement of Reasons Availability

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 Ms. Rajinder Sahota, Chief of the Climate Change Program Evaluation Branch at (916) 323-8503 or Mr. Jason Gray, Manager of the Climate Change Market Monitoring Section at (916) 324-3507.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is 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 person.

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/2014/capandtrade14/capandtrade14.htm

DISCLOSURES REGARDING THE PROPOSED REGULATION

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.

Fiscal Impact / Local Mandate

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs and may create some savings to covered State agencies. The proposed regulatory action would not create costs or savings in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost of savings to State or local agencies.

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. In fact, an express purpose of the proposed amendments is to ensure that California businesses' ability to compete is not directly affected.

Cost Impacts on Representative Private Persons or Businesses
In developing this regulatory proposal, ARB staff evaluated the potential economic impacts to representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of The Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.3(b)

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis chapter of the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed amendments to the regulation is to provide additional allowance allocation, additional cost containment mechanisms, and simplify product data and price reporting and corporate association disclosure requirements.

A summary of these benefits is provided on page 3 of this notice under "Objectives and Benefits of the Proposed Regulation" of the Information Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3).

A detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter IV of the ISOR, Economic Impacts Analysis.

Effect on Small Business
The Executive Officer has also determined, pursuant to California Code of Regulation, title 1, section 4, that the proposed regulatory action would not affect small businesses because small businesses in regulated sectors would generally not be subject to the proposed regulation. In general, the total GHG emissions for small businesses are below the GHG reporting threshold, thereby exempting them from compliance obligations under the proposed regulation.

Housing Costs
The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing.

Business Reports
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 regulation which

apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

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, 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 provision of law.

Environmental Analysis

ARB, as the lead agency for the proposed amendments to the Regulation, prepared an environmental analysis (EA) under its certified regulatory program as part of the ISOR (§§ 60000 through 60008, title 17, CCR) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). When the Regulation was first proposed in 2010, ARB prepared a programmatic EA for the Regulation in a document entitled *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms* (2010 FED), included as Appendix O to the ISOR released for public review and comment in October 2010. ARB has determined that no additional environmental analysis is required for the current proposed amendments addressed in this notice because these changes do not involve any new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts. The basis for reaching this conclusion is provided in Chapter III of the ISOR. Separate EAs were prepared for the other two sets of changes addressed in the second and third notices for the proposed new compliance offset protocol for Rice Cultivation and proposed updated protocol for U.S. Forest Projects to include projects located in Alaska.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting and may provide comments by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on August 1, 2014. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after August 1, 2014 and received no later than 5:00 p.m. on September 15, 2014, 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

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.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 38510, 38560, 38562, 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

Consistent with California Government Code Section 7296.2, 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.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los 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 envié 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

Richard W. Corey
Executive Officer

Date: July 18, 2014

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.