State of California
AIR RESOURCES BOARD

AMENDMENTS TO CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

Resolution 14-31

September 18, 2014

Agenda Item No.: 14-7-5

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 (Assembly Bill 32; Chapter 488 Statutes of 2006; Health and Safety Code section 38500 et seq.) (AB 32) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California and provided initial direction on creating a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020, maintain and continue reductions beyond 2020, and initiate the transformations required to achieve the State's long range climate goals;

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 GHGs 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 38501(d) of the Health and Safety Code confirms that national and international actions are necessary to fully address the issue of global warming, but action taken by California to reduce GHG emissions will have far reaching effects by encouraging other states, the federal government, and other countries to act;

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

WHEREAS, sections 38562(c) and 38570 of the Health and Safety Code authorize ARB to adopt regulations that utilize market-based compliance mechanisms;
WHEREAS, section 38570(c) of the Health and Safety Code further directs ARB to adopt regulations governing how market-based compliance mechanisms may be used

by regulated entities subject to GHG emissions limits and mandatory emissions reporting requirements to achieve compliance with their GHG emissions limits;

WHEREAS, section 38571 of the Health and Safety Code directs ARB to adopt methodologies for the quantification of voluntary GHG emissions reductions and regulations to verify and enforce any voluntary GHG emissions reductions that are authorized by ARB for use to comply with GHG emissions limits established by ARB; the adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act;

WHEREAS, the Board adopted the Final Regulation Order establishing a GHG Cap-and-Trade program (Program) for California; the regulation (Regulation) became effective January 1, 2012 and includes the following elements:

Addresses emissions of carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O);

Identifies the program scope: starting in 2013, electricity, including imports, and large (emissions >25,000 metric tons carbon dioxide equivalent per year) industrial facilities are included; starting in 2015, distributors of transportation fuels, natural gas, and other fuels are included;

Establishes a declining aggregated emissions cap on included sectors. The cap starts at 162.8 million allowances in 2013. The cap declines approximately 2 percent per year in the initial period (2013–2014). In 2015, the cap increases to 394.5 million allowances to account for the expansion in program scope to include fuel suppliers. The cap declines at approximately 3 percent per year between 2015 and 2020. The 2020 cap is set at 334.2 million allowances;

Provides for distribution of allowances through a mix of direct allocation and auction in a system designed to reward early action and investment in energy efficiency and GHG emissions reductions;

Establishes a market platform for allowance auction and sale;

Establishes cost-containment mechanisms and market flexibility mechanisms, including trading of allowances and offsets, allowance banking, a 2-year compliance period and two 3-year compliance periods, the ability to use offsets for up to 8 percent of an entity's compliance obligation, and an allowance reserve that provides allowances at fixed prices to those with compliance obligations;

Establishes a mechanism to link with other GHG trading programs and approve the use of compliance instruments issued by a linked external GHG trading program;
Establishes requirements and procedures for ARB to issue offset credits according to offset protocols adopted by the Board;

Includes four offset protocols adopted by the Board as part of the regulation;

Establishes a robust enforcement mechanism that will discourage gaming of the system and deter and vigorously punish fraudulent activities; and

Provides an opt-in provision for entities whose annual GHG emissions are below the threshold to voluntarily participate in this program.

WHEREAS, the Board adopted amendments to the Regulation in 2012 to make targeted implementation changes that became effective September 1, 2012;

WHEREAS, the Board adopted amendments to the Regulation in 2013 to formally link the California Cap-and-Trade Program with the Province of Québec's cap-and-trade program that became effective October 1, 2013, making California and Québec allowances and offsets available for compliance purposes in both jurisdictions;

WHEREAS, the Board adopted amendments to the Regulation in 2014 to adopt an additional compliance offset protocol for Mine Methane Capture and make additional implementation changes that became effective July 1, 2014;

WHEREAS, in Resolution 11-32, the Board directed the Executive Officer to monitor protocol development and to propose technical updates to adopted protocols, as needed;

WHEREAS, the Board believes the success of a cap-and-trade program is predicated on GHG regulations that are clear, consistent, enforceable, and transparent;

WHEREAS, staff prepared a document entitled "Staff Report: Initial Statement of Reasons for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms" (ISOR), which presents the rationale and basis for the proposed regulation amendments and identified the data, reports, and information relied on;

WHEREAS, staff has proposed amendments to the Regulation set forth in Attachment A hereto that includes the following elements:

Changes to the allocation of allowances to two entities;

Removal of the exemption of imported carbon dioxide from the Cap-and-Trade Program;

Changes to product data definitions;

Updates to three compliance offset protocols that do not include substantive changes from the protocols originally adopted in 2011;

Clarification of reporting offset credit prices during transfers; and

Clarification and changes to the requirements for corporate disclosure.

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and ARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff determined that for the proposed amendments, ARB can rely on the environmental analysis prepared under its certified regulatory program included in the *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms* (2010 FED) included as Appendix O to the Staff Report: Initial Statement of Reasons (ISOR) released for public review and comment in October 2010. No additional environmental review is required because substantial evidence in the records shows there are no changes that will result in any new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts, as described in Chapter 3 of the Staff Report;

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 according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the proposed regulatory language was made available to the public more than 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, staff participated in multiple meetings with various stakeholders to provide additional opportunities for participation in the regulatory development process;

WHEREAS, in consideration of the ISOR, written comments, and public testimony it has received to date, the Board finds that:

The proposed amendments to the Cap-and-Trade Regulation effectuating changes in allocation to two entities are necessary for appropriate allocation of allowances;

The proposed amendments to remove the exemption for imported carbon dioxide are necessary to effectuate the inclusion of as many covered entities as possible in the Program;

The proposed amendments to change product data definitions are necessary to more accurately calculate allowance allocations;

The proposed amendments to update three compliance offset protocols without making substantive changes to the protocols originally adopted in 2011 are necessary to address formatting changes and updates to quantification methodologies;

The proposed amendments to reporting offset credit prices during transfers are necessary to clarify when covered entities report the price paid for offsets;

The proposed amendments to clarify and amend the requirements for corporate disclosures are necessary to provide certainty to regulated entities regarding corporate disclosure as well as reduce the regulatory burden on covered entities;

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 ISOR;

The proposed amendments to the Cap-and-Trade Regulation were developed in an open public process, in consultation with affected parties, through a public workshop, individual meetings, and other outreach efforts, and these efforts are expected to continue;

The proposed amendments are clear, consistent, enforceable, and transparent;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed amendments are consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed amendments are covered by the prior environmental analysis prepared to comply with CEQA, and no additional environmental review, or revisions to the prior environmental analysis, are required because substantial evidence in the records shows there are no changes that will result in new significant adverse environmental or a substantial increase in severity of previously identified significant adverse impacts.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves for adoption 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 as set forth in Attachment A, including the three updated Compliance Offset Protocols, and the proposed modifications set forth in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to evaluate the implementation of the Cap-and-Trade Program, including the disclosure of corporate associations, to ensure the regulation is operating efficiently for regulated entities and in a manner to ensure market integrity, and to take appropriate action, including proposing future regulatory amendments as needed.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make modified regulatory language, based on the concepts presented in Attachment B, and any additional conforming modifications that are appropriate, available for public comment with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate modifications.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to remove the updates to the common practice values in the Assessment Area Data File that use the latest data from the U.S. Department of Agriculture Forest Service (Forest Service) Forest Inventory and Analysis National Program and Forest Service adjustments for the classification of high and low site class productivity to align with the site class stratification used in the adjusted common practice values for the U.S. Forests Projects Compliance Offset Protocol;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to propose updates to the common practice values described above in the version of the U.S. Forests Projects Compliance Offset Protocol to be presented for Board consideration later this year;

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by ARB's regulations at California Code of Regulations, Title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

I hereby certify that the above is a true and correct copy of Resolution 14-31 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 14-31

September 18, 2014

Identification of Attachments to the Board Resolution

Attachment A: Proposed Modifications to the Regulation for the CALIFORNIA CAP ON GREEN HOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS, sections 95802, 95830, 95833, 95852, 95852.2, 95890, 95892, 95895, 95920, 95921, 95972, 95975, 95976, 95983, 95985, and 95990, title 17, California Code of Regulations as set forth in Appendix A to the Initial Statement of Reasons, released July 29, 2014, including the three updated Compliance Offset Protocols.

Attachment B: Staff's Proposed Topics for 15-day Changes to the Original Proposal (Distributed at the September 18, 2014, ARB hearing)