

REQUEST FOR EARLY EFFECTIVE DATE

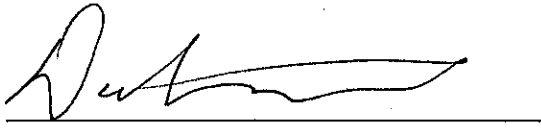
Pursuant to Government Code section 11343.4(b)(3), the Air Resources Board (ARB or Board) requests that the Office of Administrative Law (OAL) prescribe an “earlier effective date” for the amendments to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Cap-and-Trade Regulation or Regulation) that were approved for adoption by the Board at the July 27, 2017 public hearing and are submitted to OAL for review and approval on August 4, 2017. The following demonstrates “good cause” for OAL to allow the amendments to be effective on October 1, 2017.

DEMONSTRATION OF GOOD CAUSE

In this rulemaking, the Board adopted amendments to the Cap-and-Trade Regulation to accomplish a number of objectives (e.g., update certain allocation provisions for the 2018-2020 timeframe, streamline registration requirements, enable linkage with Ontario, Canada, and to establish a framework for the post-2020 program). Significantly, for the allocation to industrial covered entities in the third compliance period (i.e., 2018-2020), the amendments include changes to update some product-based benchmarks using data that more accurately represent the current sector makeup, eliminate some product data benchmarks, define products such that they align with data reported to ARB in prior product benchmark processes, streamline product benchmarks in the fluid dairy sector, more accurately align emissions with nut production processes under five new benchmarks, and align benchmarks to ensure that entities producing the same products are allocated to under the same benchmarks. The amendments also include leakage risk assessments and assistance factors for newly covered sectors. Finally, the amendments address an equity concern to ensure in-state clean fuel producers and out-of-state clean fuel producers are treated the same under the Program.

Under the Regulation, ARB allocates allowances to each eligible covered entity on or before October 24, or the first business day thereafter, of each calendar year 2014-2019 for allocations from 2015-2020 annual allowance budgets. 17 CCR § 95870(e)(1). In light of the amendments to the industrial allocation provisions described above, ARB must be able to allocate allowances pursuant to the amendments on or before October 24, 2017 from the 2018 annual allowance budget. If ARB were unable to allocate to industrial covered entities pursuant to the amendments, it would create market uncertainty and confusion for participants in the Cap-and-Trade Program, and risk placing certain entities out of compliance with the Program requirements. Therefore, such a delay in the effective date would adversely affect the functioning of this critically important regulatory program.

For the foregoing reasons, ARB hereby requests that OAL approve these amendments to be effective on October 1, 2017.



David Hults, Assistant Chief Counsel, Air Resources Board

DATE: 8/2/2017