

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation or Regulation).

DATE: March 22, 2018

TIME: 9:00 A.M.

LOCATION: Riverside County Administrative Center
4080 Lemon Street, 1st Floor
Riverside, California 92501

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., March 22, 2018, and may continue at 8:30 a.m., on March 23, 2018. This item is scheduled to be heard on the Board's Consent Calendar, unless removed upon the request of a Board member or if someone in the audience submits a request-to-speak card on this item. Please consult the agenda for the meeting, which will be available at least ten days before March 22, 2018, to determine when this item will be considered.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on February 2, 2018. Written comments not physically submitted at the hearing must be submitted on or after February 2, 2018, and received **no later than 5:00 p.m. on March 19, 2018**. CARB requests that when possible, written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also 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. Comments submitted in advance of the hearing must be addressed to one of 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.

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 that authority granted in California Health and Safety Code, sections 38510, 38560, 38562, 38570, 38580, 39600, and 39601. This action is proposed to implement, interpret and make specific sections 38562, 38564, 38565, 38570, and 39600 of the Health and Safety Code.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected: Proposed amendment to California Code of Regulations, title 17, sections 95835 and 95911.

Background and Effect of the Proposed Regulatory Action:

The California Global Warming Solutions Act of 2006 (Assembly Bill 32 or AB 32; Chapter 488, Statutes of 2006) requires California to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020, to maintain and continue GHG emissions reductions beyond 2020, and to develop a comprehensive strategy to reduce dependence on fossil fuels, to stimulate investment in clean and efficient technologies, and to improve air quality and public health. It identifies CARB as the State agency charged with monitoring and regulating sources of the GHG emissions that cause climate change. AB 32 also requires CARB to work with other jurisdictions to identify and facilitate the development of integrated and cost-effective regional, national, and international GHG reduction programs. Finally, AB 32 authorizes CARB to utilize a market-based mechanism to reduce GHG emissions. CARB promulgated the Cap-and-Trade Regulation pursuant to this authority.

The Regulation establishes a declining limit on major sources of GHG emissions, and it creates a powerful economic incentive for major investment in cleaner, more efficient technologies. The Cap-and-Trade Program (Program) applies to emissions that cover approximately 80 percent of the State's GHG emissions. CARB creates allowances equal to the total amount of permissible emissions (i.e., the "cap") over a given compliance period. One allowance equals one metric ton of carbon dioxide equivalent emissions. Fewer allowances are created each year, thus the annual cap declines and statewide emissions are reduced over time. Allowances are issued by CARB and distributed by free allocation and by sale at auctions.

The Program is designed to achieve the most cost-effective statewide GHG emissions reductions; there are no individual or facility-specific emissions reduction requirements. Each entity covered by the Regulation has a compliance obligation that is equivalent to its GHG emissions over a compliance period, and entities are required to meet that compliance obligation by acquiring and surrendering allowances in an amount equal to their compliance obligation. Covered entities can also meet a limited portion of their compliance obligation by acquiring and surrendering offset credits, which are compliance instruments that are based on rigorously verified emission reductions that occur from projects outside the scope of the Program. Like allowances, each offset credit is equal to one metric ton of carbon dioxide equivalent emissions. Offset credits are issued by CARB to qualifying offset projects.

Covered entities must submit allowances and offsets to account for their GHG emissions. Entities have flexibility to choose the lowest-cost approach to achieving Program compliance; they may purchase allowances at auction, trade allowances and offset credits with others, or take steps to reduce emissions at their own facilities. Monies from the sale of State-owned allowances at auction are placed into the Greenhouse Gas Reduction Fund and are appropriated, through the budgeting process, consistent with state law to further the purposes of AB 32.

The Program is also designed to accommodate regional trading programs. Since 2007, California has been a partner in the Western Climate Initiative (WCI), an effort of United States states and Canadian provinces working together to implement policies to combat climate change, including through the development of a regional cap-and-trade system. Staff works with other WCI jurisdictions to ensure that rigorous and compatible systems are being developed. This cooperation facilitates future Program linkages with other developing GHG reduction programs in the region. On January 1, 2014, California and Québec linked their respective cap-and-trade programs. On January 1, 2018, the Program linked with the cap-and-trade program in Ontario.

The Regulation was adopted by the Board in October 2011, and it took effect January 1, 2012. The Regulation has been amended multiple times since then. Most recently, the Board approved amendments on July 27, 2017, that clarify compliance obligations for certain sectors; continue Program linkage with Québec, Canada beyond 2020; link the Program with the new cap-and-trade program in Ontario, Canada beginning January 2018; and extend the Program beyond 2020 by establishing new emissions caps, enabling future auction and allocation of allowances, and continuing all other provisions needed to implement the Program after 2020. In adopting these amendments, that took effect on October 1, 2017, the Board recognized that additional regulatory modifications to the Cap-and-Trade Program are required through a new rulemaking process to implement the AB 398 (Chapter 135, Statutes of 2017) requirements for the post-2020 Cap-and-Trade Program. Board Resolution 17-21 directed the Executive Officer to initiate this rulemaking process. On October 12, 2017,¹ CARB initiated that rulemaking process, which will be conducted in parallel with, and conclude after, the much more narrow amendments described in this Notice.

¹ https://www.arb.ca.gov/cc/capandtrade/meetings/20171012/ct_presentation_11oct2017.pdf

The proposed regulatory action includes CARB staff's proposal to amend the Cap-and-Trade Regulation to clarify existing requirements related to changes of facility ownership. Specifically, the proposed amendments clarify that the Cap-and-Trade Regulation requires a successor entity after a change in ownership to be responsible for the outstanding, pre-transfer compliance obligation of the predecessor covered entity. This clarification is made in light of ongoing bankruptcy litigation involving a covered entity in the Program. In addition, the proposed amendments would clarify the regulatory procedure for establishing the Auction Reserve Price by ensuring consistency with the procedure for establishing the Auction Reserve Price in the Ontario and Québec regulations, and ensure that California can certify joint auctions regardless of which jurisdiction's Auction Reserve Price is used for a joint auction.

Objectives and Benefits of the Proposed Regulatory Action:

CARB staff is proposing these amendments to achieve two goals. The first goal is to clarify that the Cap-and-Trade Regulation requires a successor entity after a change in ownership to be responsible for the outstanding, pre-transfer compliance obligation of the predecessor covered entity. This has long been CARB's interpretation of the Cap-and-Trade Regulation, and all ownership changes that have occurred to date—besides in one bankruptcy matter involving the La Paloma Generating Station—have resulted in the purchasing or succeeding entity being responsible for the outstanding compliance obligation of the selling or preceding entity. The proposed amendment ensures that all market participants operate under the same requirements and that every purchaser after a change in ownership must account for the outstanding (i.e., unsurrendered) compliance obligation of the predecessor covered entity.

The second goal is to allow the Auction Reserve Price to be set based upon the highest of three jurisdiction-specific Auction Reserve Price values in the linked program (California, Ontario, and Québec). Without the modification, in specific, and unlikely, circumstances, it may not be possible for the CARB Executive Officer to certify that a joint auction using the Auction Reserve Price set by Ontario is conducted in accordance with the California Regulation. This outcome would reduce market participants' confidence in the market, which could reduce market participation and liquidity, and potentially impact a covered entity's ability to comply. The proposed modification ensures that California can certify joint auctions with other jurisdictions operating a GHG emissions trading system (ETS) to which California has linked, including Ontario.

The proposed action, by clarifying liability under the Cap-and-Trade Regulation and ensuring compliance with the Cap-and-Trade Program, may yield nonmonetary public health and environmental benefits.

Comparable Federal Regulations:

There are no directly comparable federal regulations mandating economy-wide Cap-and-Trade Programs. The proposed regulatory action continues to place a compliance obligation on large industrial sources, fuel suppliers, and electricity generators and importers for the GHG emissions associated with their current and future activities. The

GHG emissions from these entities are not currently covered by any federal regulations. Covering these GHG emissions does not conflict with federal regulations.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

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

MANDATED BY FEDERAL LAW OR REGULATIONS (Gov. Code, §§ 11346.2, subd. (c), 11346.9):

The proposed regulatory action is not generally mandated by federal law or regulations.

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

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

Under Government Code sections 11346.5, subdivisions (a)(5) and (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, nor costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), nor other nondiscretionary cost or savings to State or local agencies.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

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

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

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.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

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.

These determinations are based on an economic assessment that leads the Executive Officer to expect no adverse economic impacts from the proposed regulatory action. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the Initial Statement of Reasons (ISOR).

Benefits of the Proposed Regulation:

The benefits that accrue from the proposed action on successor liability include improved operation of the existing Cap-and-Trade Regulation through the clarification of predecessor and successor liability with respect to outstanding compliance obligations in bankruptcy. The amendment will also ensure clarity for entities planning to purchase other registered entities as they value the compliance obligations they would be assuming.

The proposed action on determination of the Auction Reserve Price for joint auctions removes one potential outcome that could prevent the Executive Officer from certifying the results of a joint auction, by ensuring that the Auction Reserve Price for a specific joint auction could be set by the Ontario Auction Reserve Price. Under the existing California Regulation, California may not recognize the same joint Auction Reserve Price recognized by Ontario and Québec, if the Auction Reserve Price is set by Ontario. In this case, the Executive Officer could not certify the auction as consistent with the California Regulation. This outcome would reduce market participants' confidence in the market, which could reduce market participation and liquidity, and potentially impact an entity's ability to comply. The failure to certify an auction would reduce market efficiency because the market relies on auction settlement prices as a broad measure of market participants' valuation of allowances.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

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

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subs. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses. Based on the definition of “small business” in Government Code section 11342.610, the inclusion threshold for the Cap-and-Trade Regulation, and the fact that the proposed amendments do not modify the inclusion threshold or any compliance obligation requirements, no small businesses will be affected by the proposed amendments. As described in previous Cap-and-Trade rulemakings, no small businesses face any compliance obligation under the Cap-and-Trade Regulation, and the proposed regulatory action would not impose any new compliance obligations on any covered entities. Therefore, the proposed amendment would not affect small business.

Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):

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 provisions of law.

The Executive Officer analyzed three alternatives to the proposed amendments and determined that all of the alternatives would be less effective in carrying out the purpose for which the action is proposed than the proposed amendments, as described in the staff report.

ENVIRONMENTAL ANALYSIS

CARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory action and concluded that no subsequent or supplemental environmental analysis is required for the proposed amendments. A brief explanation of the basis for reaching this conclusion is included in Chapter VI of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may 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; and
- 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; y
- 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.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Ben Carrier, Attorney, CARB Legal Office, at (916) 327-5986 or (designated back-up) contact Raymond Olsson, Manager, Market Monitoring Section, at (916) 322-7615.

AVAILABILITY OF DOCUMENTS

CARB 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: Public Hearing to Consider the Proposed Amendments to the California Cap On Greenhouse Gas Emissions and Market-based Compliance Mechanisms Regulation.

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 CARB's website listed on the next page, 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, on January 30, 2018.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, (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.

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 take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption 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. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

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

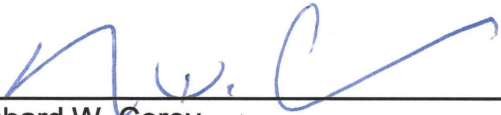
FINAL STATEMENT OF REASONS AVAILABILITY

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 CARB's website listed below.

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2018/capandtradeghg18/capandtradeghg18.htm>

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: January 18, 2018

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.