

State of California
AIR RESOURCES BOARD

**Amendments to the California Cap on GHG Emissions and
Market Based Compliance Mechanisms**

Resolution 14-44

December 18, 2014

Agenda Item No.: 14-10-4

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 & 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 provides 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, section 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 emission 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; and the adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedures 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 (CO₂), methane (CH₄), and nitrous oxide (N₂O);

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 emission 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 April 2014 to adopt a compliance offset protocol for Mine Methane Capture and make additional implementation changes that became effective July 1, 2014;

WHEREAS, the Board approved for adoption amendments to the Regulation in September 2014 to make adjustments to allocation and add three updated Compliance Offset Protocols that are anticipated to become effective January 1, 2015;

WHEREAS, pursuant to Resolution 10-42, the Board directed the Executive Officer to initiate a public process for the review of additional compliance offset protocols for the purpose of bringing additional protocols to the Board for consideration; and ARB staff has proposed a new Rice Cultivation Projects Compliance Offset Protocol as part of this rulemaking;

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; and ARB staff has proposed an update to the U.S. Forest Compliance Offset Protocol as part of this rulemaking;

WHEREAS, in Resolution 14-31, the Board directed 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 and directed the Executive Officer to propose updates to the common practice values in the version of the U.S. Forest Projects Compliance

Offset Protocol to be presented in December 2014; and ARB staff has proposed those updates as part of this rulemaking;

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

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 Cap-and-Trade Regulation as set forth in Appendix A to the ISOR released to the public on October 28, 2014;

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, ARB staff prepared a draft environmental analysis (EA) under its certified regulatory program for each of the two proposed protocols; the EAs are included as Chapter III in the respective Staff Reports prepared for the proposed protocols (Appendices B and C to the ISOR), which were circulated for public review and comment for 45 days from 10/28/2014 through 12/15/2014;

WHEREAS, the draft EA for the proposed Rice Cultivation Protocol identified implementation of the protocol would result in beneficial impacts to greenhouse gas emissions and less than significant impacts or no impacts to all other resource areas; and

WHEREAS, the draft EA for the proposed updated U.S. Forest Protocol identified implementation of the proposed protocol would result in beneficial impacts to greenhouse gas emissions, and the same types of impacts to all other resource areas as were identified in the EA prepared for the original Forestry Protocol in 2010 and included as Appendix O to the Staff Report prepared for the Cap-and-Trade Regulation (2010 Functional Equivalent Document) with the qualification that those same impacts would be extended in geographic scope by expanding project eligibility to areas of Alaska. This draft EA identified less than significant impacts or no impacts to aesthetics, agriculture and forestry resources, air quality, cultural resources, energy demand, geology soils and minerals, hazards and hazardous materials, noise, population and housing, public services, recreation, transportation and traffic, and utilities and service systems, and potentially significant impacts to biological resources, hydrology and water quality, and land use and planning.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby directs the Executive Officer to take the following actions:

1. Consider any additional conforming modifications that are appropriate, and make them available for public comment, with any additional supporting documents and information, for a period of at least 15 days. 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;
2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by ARB's certified regulations at California Code of Regulations, title 17, sections 60000- 60007 and Government Code section 11346.9(a);
3. If appropriate, prepare and circulate any further environmental analysis to the extent required by ARB's regulations at California Code of Regulations, title 17, sections 60001-60007, and as necessary, consider all feasible mitigation or alternatives that could eliminate or substantially lessen any significant adverse environmental impacts identified;
4. Present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments raising significant environmental issues, along with the finalized environmental analysis, for consideration for approval; and
5. Present to the Board, at a subsequently scheduled public hearing, the finalized amendments for consideration for adoption.

I hereby certify that the above is a true and correct copy of Resolution 14-44 as adopted by the Air Resources Board.

/s/

Tracy Jensen, Clerk of the Board