

State of California  
AIR RESOURCES BOARD

**Public Meeting to Consider California's Compliance Plan  
for the Federal Clean Power Plan**

Resolution 17-22

**July 27, 2017**

Agenda Item No.: 17-8-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the California Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, section 111(d) of the federal Clean Air Act (42 USC §7411(d)) provides for federal-state collaboration in securing emission reductions from existing sources;

WHEREAS, the United States Supreme Court has repeatedly held that greenhouse gases are to be regulated under the federal Clean Air Act, and has identified section 111(d) as an appropriate regulatory mechanism;

WHEREAS, California and many other states and companies have long pressed for regulation of power plant greenhouse gas emissions by the United States Environmental Protection Agency (U.S. EPA), recognizing that electric sector emissions are very large, but that reductions are possible, would greatly benefit public health, reduce the risk of climate change, and support the economy;

WHEREAS, after an extensive stakeholder process, U.S. EPA proposed and finalized emissions limitations for new, modified, and existing power plants;

WHEREAS, new source rules are issued directly by U.S. EPA and existing source Emission Guidelines are implemented under section 111(d) of the Clean Air Act's state planning framework;

WHEREAS, under this framework, states must submit compliance plans to show how they will implement U.S. EPA's requirements; U.S. EPA then considers whether to approve these plans and, if it does so, makes relevant aspects of these plans federally enforceable;

WHEREAS, the Emission Guidelines for power plants, named the “Clean Power Plan” were published in the Federal Register in October 2015, directing states to submit compliance plans by September 2016 unless an extension was warranted;

WHEREAS, these deadlines were subsequently stayed by the United States Supreme Court, leaving the Clean Power Plan’s ultimate compliance deadlines for emissions reductions beginning in 2022 and reaching full reductions in 2030-31 intact;

WHEREAS, reductions from the power sector are urgently needed to combat climate change and protect public health, and are fully attainable on this timeline;

WHEREAS, U.S. EPA’s regulations for general implementation of section 111(d) of the Clean Air Act are located in 40 C.F.R. Part 60, Subpart B;

WHEREAS, U.S. EPA’s Clean Power Plan regulations are codified in Subpart UUUU of 40 C.F.R. Part 60;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the 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, section 40000, et seq. of the Health and Safety Code provides local air districts with primary authority to control air pollution from stationary sources;

WHEREAS, sections 38501, 38510, 38560, 38562, and 38570 of the Health and Safety Code are among the provisions of the Health and Safety Code that provide ARB with primary authority to control sources of greenhouse gas emissions, including the authority to develop market-based compliance mechanisms, and provide ARB with the flexibility to coordinate with other agencies for implementation and enforcement;

WHEREAS, the Clean Air Act and title 40 C.F.R. Part 60, Subpart B, require that one or more public hearings, preceded by at least 30 day notice and an opportunity for public review must be conducted prior to adoption and submittal to U.S. EPA of any State Plan, and whereas Subpart UUUU provides additional plan development requirements;

WHEREAS, ARB staff consulted extensively with the public and all relevant stakeholders during plan development, beginning in 2014 during U.S. EPA’s own regulatory development process, and has worked extensively to support the Clean Power Plan and California compliance and to develop a workable compliance plan;

WHEREAS, in September 2016, consistent with federal requirements, including those requirements in 40 C.F.R. §§ 60.23 and 60.6745 and after all required state and federal public notices, this Board held a public hearing on staff’s Proposed Compliance Plan and took written and oral comments;

WHEREAS, staff also consulted with the Environmental Justice Advisory Committee and considered that Committee's comments and concerns;

WHEREAS, staff briefed the California Environmental Protection Agency's Tribal Advisory Committee;

WHEREAS, staff consulted with representatives of California's air districts;

WHEREAS, staff consulted with representatives of California's balancing authority areas on electrical reliability issues;

WHEREAS, staff worked closely with an interagency team including staff of the California Energy Commission and the California Public Utilities Commission to develop the Compliance Plan;

WHEREAS, staff carefully considered public feedback received in a series of informal meetings and workshops, along with formal public comments;

WHEREAS, this public process was augmented by the extensive, but distinct, public processes undertaken to support the 2017 Scoping Plan and amendments to the Mandatory Reporting Regulation and the Cap-and-Trade Regulation;

WHEREAS, the Compliance Plan demonstrates, on the basis of extensive analysis, that California's climate programs, including the Mandatory Reporting Regulation and the Cap-and-Trade Regulation will deliver compliance with all federal Clean Power Plan requirements as well;

WHEREAS, California's climate programs will result in California power sector emissions far below the levels required by the Clean Power Plan;

WHEREAS, harmonizing California's state programs with federal program compliance requirements will support compliance with both sets of programs and is a model of cooperative federalism;

WHEREAS, continued efforts to reduce greenhouse gas emissions from the power sector will benefit Californians, improve public health, support the economy, and form a basis for further federal efforts to reduce emissions;

WHEREAS, California is also working with states throughout the country to further support policies to reduce greenhouse gas emissions, and is collaborating with other western states to support a clean western grid;

WHEREAS, the Compliance Plan supports these efforts and indicates future possibilities for collaboration amongst states, stakeholders, and the federal government;

WHEREAS, U.S. EPA and ARB have long collaborated to design rigorous and flexible compliance frameworks and this partnership has resulted in significant human health and welfare protections and progress towards meeting our mutual climate change goals;

WHEREAS, although the current federal administration has indicated that it may reconsider the Clean Power Plan, the Clean Power Plan remains federal law;

WHEREAS, despite the temporary stay of Clean Power Plan deadlines, and ongoing litigation, it is responsible and important for California to ready itself to comply with this binding federal law, and to demonstrate the achievability of rigorous greenhouse gas control programs at the federal level;

WHEREAS, ARB will continue to press U.S. EPA to fulfill its obligations to address the pressing threat of climate change;

WHEREAS, ARB supports working together with national and state governments to achieve better, more cost efficient and environmentally beneficial outcomes by tackling issues together in a cooperative fashion, and looks forward to similar collaborations in the future;

WHEREAS, Attachment A is the Proposed Compliance Plan;

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 of Natural Resources Agency 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 prepared an environmental analysis for the Proposed Compliance Plan for purposes of the California Environmental Quality Act under its certified regulatory program (Public Resources Code section 21 080.5) in a document entitled Draft Environmental Analysis for California's Proposed Compliance Plan for the Federal Clean Power Plan (Draft EA), included as Appendix J to the Proposed Compliance Plan circulated for public review from August 5, 2016 through September 19, 2016 (the Draft EA was also circulated as Appendix B to the staff report for the Proposed Cap-and-Trade Regulatory Amendments);

WHEREAS, the Draft EA evaluated potential significant adverse and beneficial impacts from implementation of both the proposed amendments to the Cap-and-Trade regulation and the Proposed Compliance Plan, and stated that these actions could result in beneficial impacts to GHGs and energy demand; could result in less than significant or no impacts to aesthetics, agriculture and forest resources, geology, soils, and mineral resources (relating to the offset protocols), hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population, employment, and housing, public services, recreation, transportation and traffic, and

utilities and service systems; could result in significant and unavoidable adverse impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology, soils, and mineral resources, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, recreation, and transportation and traffic, primarily due to construction activities; and could also result in significant cumulative impacts in certain resource areas;

WHEREAS, staff reviewed written comments received on the Draft EA and prepared the *Final Draft Environmental Analysis Prepared for California's Proposed Compliance Plan for the Federal Clean Power Plan* (Final EA) and prepared written responses to those comments in a document entitled *Responses to Comments on the Draft Environmental Analysis Prepared for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and California's Compliance Plan for the Federal Clean Power Plan* (Responses to EA Comments);

WHEREAS, on July 17, 2017, staff posted on ARB's webpage the Final EA, which includes minor revisions to the Draft EA, and the Response to EA Comments;

WHEREAS, prior to the duly noticed public hearing held on July 27, 2017, staff provided the Final EA, the Response to EA Comments, and the final version of the Proposed Compliance Plan to the Board for consideration; and

WHEREAS, the Board finds that:

The Compliance Plan meets the applicable Clean Air Act requirements;

The Compliance Plan meets the requirements of 40 C.F.R. Part 60, Subpart B;

The Compliance Plan meets or is otherwise more stringent than the requirements of 40 C.F.R. Part 60, Subpart UUUU;

The Compliance Plan meets the statutory requirements in the Health and Safety Code;

The Compliance Plan was developed in an open public process, in consultation with affected parties, through public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

The Compliance Plan is consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

Approval of the Compliance Plan does not present any of the grounds for requiring a subsequent or supplemental Environmental Analysis, which are set forth in section 21166 of the Public Resources Code and section 15162 of Title 14 of the California Code of Regulations.

NOW, THEREFORE, BE IT RESOLVED that the Board re-certifies that the Final EA, as set forth in Attachment B to this resolution, was completed in compliance with ARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board, whose members reviewed and considered the information before taking action to approve the final Proposed Compliance Plan.

BE IT FURTHER RESOLVED that the Board re-approves the Responses to EA Comments as set forth in Attachment C to this resolution.

BE IT FURTHER RESOLVED that in consideration of the Final EA and the Responses to EA Comments, the Board re-adopts the Findings and Statement of Overriding Considerations as set forth in Attachment D to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board adopts the Compliance Plan and directs the Executive Officer to forward the Compliance Plan for compliance with the Emission Guidelines to U.S. EPA and to work with U.S. EPA and other states to ensure federal and state rules work well together.

BE IT FURTHER RESOLVED that ARB certifies, pursuant to 40 C.F.R. Part 60, Subpart B, section 60.23, that ARB provided notice and made the State Plan available for public review at least 30 days before the first Board meeting, notifying both U.S. EPA and the local air districts.

I hereby certify that the above is a true and correct copy of Resolution 17-22 as adopted by the Air Resources Board.

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Rana McReynolds, Clerk of the Board

Resolution 17-22

**July 27, 2017**

**Identification of Attachments to the Board Resolution**

- Attachment A:** Proposed Compliance Plan for the Federal Clean Power Plan
- Attachment B:** *Final Environmental Analysis Prepared for the California's Proposed Compliance Plan for the Federal Clean Power Plan*, released to the public on July 17, 2017.
- Attachment C:** *Responses to Comments on the Draft Environmental Analysis for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and California's Compliance Plan for the Federal Clean Power Plan*, released to the public on July 17, 2017.
- Attachment D:** Findings and Statement of Overriding Considerations.  
(Distributed at the July 27, 2017 Board Meeting).