

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED AB 32 COST OF IMPLEMENTATION FEE REGULATION AND PROPOSED AMENDMENT TO THE EXISTING REGULATION FOR THE MANDATORY REPORTING OF GHG EMISSIONS

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to impose fees on sources of GHG emissions to carry out Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006, and to consider the adoption of an amendment to the existing Regulation for the Mandatory Reporting of GHG Emissions.

DATE: June 25-26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 25, 2009, and may continue at 8:30 a.m., June 26, 2009. This item may not be considered until June 26, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before June 25, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by fax 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.

#### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

##### **Sections Affected:**

Proposed adoption of California Code of Regulations, title 17, new article 3, sections 95200, 95201, 95202, 95203, 95204, 95205, 95206, and 95207.  
Proposed amendment to California Code of Regulations, title 17, article 2, section 95104.

## **Background:**

### ***AB 32 Cost of Implementation***

Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (AB 32) on September 27, 2006. When the Legislature adopted AB 32, it declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. AB 32 directed ARB to establish a statewide greenhouse gas (GHG) emissions limit for 2020 based on 1990 emissions.

AB 32 directs the Board to carry out specific tasks related to reducing GHG emissions. These tasks include monitoring GHG emissions, implementing a program of annual reporting of GHG emissions from GHG emission sources, and accounting for all GHG emissions, including emissions from all electricity generated in California or imported from other states, providing reporting tools for such data, and ensuring the sources of GHG emissions maintain records of GHG emissions.

AB 32 also specifically directed ARB to adopt a Scoping Plan by January 1, 2009, that shows how emission reductions will be achieved from significant GHG sources via regulations, market mechanisms, and other actions.

ARB's approved Climate Change Scoping Plan identifies the proposed regulation as necessary to carry out AB 32. ARB and other State agencies are developing and implementing regulations and other programs to carry out the Scoping Plan. The Scoping Plan states:

Administration, implementation, and enforcement of the emissions reduction measures contained in the Proposed Scoping Plan will require a stable and continuing source of funding. AB 32 authorizes ARB to collect fees to fund implementation of the statute. This fall ARB will initiate a rulemaking for a fee program to fund administration of the program. (Scoping Plan, page 112.)

AB 32 authorizes ARB, through Health and Safety Code section 38597, to adopt a schedule of fees to be paid by sources of GHG emissions to support the costs of carrying out AB 32. ARB staff is proposing this regulation pursuant to section 38597.

### ***GHG Mandatory Reporting Tool***

ARB's Regulation for the Mandatory Reporting of GHG Emissions is set forth in California Code of Regulations, title 17, sections 95100-95133, and became effective January 2, 2009. The regulation requires specified sources of GHG emissions to report those emissions to ARB every year beginning in 2009. The reporting of GHG emissions is required by operators of cement plants, petroleum refineries, hydrogen plants, electricity generating facilities, cogeneration facilities, electricity retail providers and marketers, and other industrial facilities emitting 25,000 tonnes or more of carbon dioxide (CO<sub>2</sub>) in a calendar year.

To ensure complete and efficient reporting of required data for mandatory reporting, ARB staff contracted with an environmental consulting firm to develop a web-based

reporting tool for the required data submittal. The tool, referred to as “The California GHG Reporting Tool,” allows the reporting of emissions and other data in a manner that directly addresses the requirements of the Mandatory Reporting regulation. It also enables public access to verified emissions information. Information entered in the tool reflects only that information required by the Mandatory Reporting Regulation.

The tool facilitates complete reporting by ensuring that collected data are consistent with the requirements of the Mandatory Reporting Regulation and provides reporters with automated quality assurance checks on data entered in the tool. All information collected through the tool is housed in a secure, password-protected database. The tool eases the administrative burden on reporters and the State by eliminating the transfer of hard-copy reports. ARB developed a comprehensive user guide and sector-specific reporting guidance documents to assist reporters in using the tool.

## **DESCRIPTION OF PROPOSED REGULATORY ACTION**

### ***AB 32 Cost of Implementation***

The proposed regulation imposes fees to fund ARB’s actions, as well as other State agencies’ actions, associated with carrying out AB 32. The fees are based on a “common carbon cost,” which represents the cost of one metric ton of carbon dioxide (MTCO<sub>2</sub>) emissions. The proposed regulation specifies that ARB’s Executive Officer shall calculate the fees due for each fiscal year, using formulas specified in the regulation, and send the fee determination notice to fee payers no later than 30 days after the end of each calendar year.

The proposed regulation imposes fees on entities in six sectors of the economy: natural gas entities, producers and importers of gasoline and diesel fuel, refineries, cement manufacturers, retail providers and marketers of imported electricity, and facilities that combust coal.

Natural gas entities include public utility gas corporations, owners and operators of interstate and intrastate natural gas pipelines, and entities that consume natural gas or associated gas produced on-site that are also subject to the Mandatory Reporting Regulation.

The proposed regulation does not apply to any of the following fuels, or to emissions related to the combustion of the following fuels: aviation gasoline, jet fuel, kerosene, liquefied petroleum gas, biodiesel, renewable diesel, residual fuel oil, propane, or any fuel exported for use outside of California.

The proposed regulation also specifies reporting and recordkeeping requirements, and requires fee-paying entities to report this information using ARB’s “GHG Reporting Tool.” The tool has recently been completed and will be modified to accommodate the reporting requirements of the proposed fee regulation as well as the requirements of the Mandatory Reporting Regulation.

### ***Proposed Amendment to the Mandatory Reporting Regulation***

Staff is proposing to amend California Code of Regulations, title 17, section 95104, to require entities subject to the Regulation for the Mandatory Reporting of GHG Emissions to use ARB's "GHG Reporting Tool" to electronically report the required data. The proposed amendment would apply to all entities that are currently required to report GHG emissions pursuant to the Regulation for the Mandatory Reporting of GHG Emissions.

### **COMPARABLE FEDERAL REGULATIONS**

There are no comparable federal regulations that impose fees to implement a GHG emissions reduction law, or that require the use of a reporting tool for sources of GHG emissions.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB 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 ISOR is entitled, "Initial Statement of Reasons (ISOR) for the Proposed AB 32 Cost of Implementation Fee Regulation and Proposed Amendment to the Mandatory Reporting Regulation."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California, 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on June 25, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Jon Costantino, Manager of the Climate Change Planning Section, at (916) 324-0931, or Ms. Jeannie Blakeslee, Air Pollution Specialist, at (916) 445-8286.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board 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.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2009/feereg09/feereg09.htm>.

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

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

The ARB Executive Officer has determined that, except as discussed below, the proposed regulatory action would not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to State or local agencies.

The proposed regulation would impose costs on some State and local agencies, but not on school districts. One State agency would be affected: the State Department of Water Resources, which directly imports electricity. However, there would be no net fiscal impact on the Department of Water Resources if it is able to use existing administrative mechanisms to pass the fee costs on to its customers.

The Executive Officer has determined that the proposed regulatory action will create costs and impose a mandate on some local agencies. The local agencies impacted would be those that serve as retail providers and marketers of imported electricity. However, the mandate would apply uniformly to all retail providers and marketers of imported electricity, not just local agencies.

Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies or school districts that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

In addition, there will be indirect costs to State and local agencies and school districts, because the regulation imposes costs on businesses that sell products to State agencies, local agencies, and school districts. ARB estimates that businesses selling gasoline and diesel, natural gas, electricity, and cement will recover their compliance costs by raising their product prices by an average of less than one tenth of one percent. Staff estimates an increase of approximately \$0.0015 per gallon of diesel and gasoline, \$0.07 per megawatt-hour of imported electricity from an unspecified source, \$0.0007 per therm of natural gas, and \$0.10 per ton of cement. ARB does not have data on total State and local agency purchases of gasoline and diesel, natural gas,

electricity, and cement, so it cannot estimate the total indirect cost to State and local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB has determined that representative private persons would be affected by the cost impacts from the proposed regulatory action. 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.

In accordance with Government Code section 11346.3, 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. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and brought to the attention of ARB, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **SUBMITTAL OF COMMENTS**

Interested members of the public may present comments relating to this matter orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments or submissions not physically submitted at the meeting must be received **no later than noon, Pacific Standard Time, June 24, 2009**, and addressed to the following:

Postal mail: Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engine.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board 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.

## **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38530, 38597, 39600, 39601, and 41511. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38501, 38505, 38510, 38530, 38597, 39300, 39600, 39601, 41511, and 41513.

## **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 adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt 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 that the regulatory language, as modified, could result from the

proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene  
Executive Officer

Date: April 28, 2009

*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](http://www.arb.ca.gov).*