

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and Availability of
Additional Documents**

**PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE
CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED
COMPLIANCE MECHANISMS**

Public Hearing Date: September 18, 2014
Public Availability Date: October 2, 2014
Deadline for Public Comment: October 17, 2014

At its October 2011 public hearing, the Air Resources Board (ARB or Board) adopted sections 95801 to 96023, title 17, California Code of Regulations. These sections comprise the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulations, including Compliance Offset Protocols (Cap-and-Trade Regulation).

The Cap-and-Trade Regulation provides a fixed limit on greenhouse gas (GHG) emissions from the sources responsible for about 85 percent of the State's total GHG emissions. The Cap-and-Trade Regulation reduces GHG emissions by applying a declining aggregate cap on GHG emissions, and creates a flexible compliance system through the use of tradable compliance instruments (allowances and offset credits). The Cap-and-Trade Regulation became effective January 1, 2012. The first auction of emission allowances occurred in November 2012, and the first compliance period began on January 1, 2013.

In 2012, ARB proposed two sets of amendments to the Cap-and-Trade Regulation. The first set of amendments, related to program implementation, was approved by the Board in June 2012. These amendments took effect in September 2012. The second set of amendments, related to jurisdictional linkage with Québec, was approved by the Board in April 2013. These amendments took effect on October 1, 2013 and specified a January 1, 2014 start date for the linked California and Québec Cap-and-Trade Programs.

In 2013, ARB proposed an additional set of comprehensive regulatory amendments to the Cap-and-Trade Regulation related to program implementation and monitoring. The amendments were heard by the Board in October 2013 and approved in April 2014 with additional 15-day modifications. These amendments took effect on July 1, 2014. On July 29, 2014, staff released a Notice of Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms in response to continued Board direction and further discussions with stakeholders. Following the 45-day comment period, the Board considered the proposed amendments at its meeting on September 18, 2014.

At its September 18, 2014 public hearing, the Board approved for adoption amendments to sections 95802, 95830, 95833, 95852, 95852.2, 95890, 95892, 95895, 95920, 95921, 95972, 95975, 95976, 95983, 95985, and 95990, title 17, California Code of Regulations, as well as updates to three Compliance Offset Protocols. These amendments changed the allocation of allowances to two entities, removed the exemption of imported carbon dioxide from the Cap-and-Trade Regulation, changed product data definitions, clarified reporting offset credit prices during transfers, increased flexibility and provided clarifications to the requirements for corporate disclosures, including for indirect and direct corporate associations, and updated quantification methodologies within the U.S. Forest Projects, Ozone Depleting Substances, and Livestock Projects Compliance Offset Protocols.

The Board approved the amendments for adoption in Resolution 14-31, but directed staff to delay the updates to the common practice values in the U.S. Forest Projects Compliance Offset Protocol until the next proposed update to the protocol. The next update to the U.S. Forest Projects Compliance Offset Protocol will be considered by the Board in December 2014. In Resolution 14-31, the Board also directed staff to consider additional modifications to the proposed amendments to the Cap-and-Trade Regulation as part of a subsequent 15-day rulemaking package. At the hearing, staff presented, and the Board approved for adoption, topics for modified regulatory language developed in response to comments received since ARB released the Initial Statement of Reasons to the public on July 29, 2014. These modifications provide further clarity on product data definitions to harmonize with terms in the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR); further clarify monitoring and reporting requirements in the updates to the U.S. Forest Projects, Livestock Projects, and Ozone Depleting Substances Compliance Offset Protocols; and provide further flexibility to requirements for disclosing non-registered direct corporate associations, while still ensuring ARB obtains information necessary for market monitoring.

The modifications to the corporate disclosure requirements, in response to stakeholder comments during the 45-day comment period and Board direction in Resolution 14-31, include an option for reporting those non-registered direct corporate associations that operate in markets related to the Cap-and-Trade Program, as well as the ability to utilize existing applicable documentation submitted to other government agencies to satisfy information disclosure requirements of the Cap-and-Trade Regulation.

The Board directed the Executive Officer to make the modified regulatory language, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to 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, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications.

The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2014/capandtrade14/capandtrade14.htm>

The text of the modified regulatory language is shown in Attachment 1. The originally proposed regulatory language is shown in ~~striketrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed regulatory language that are made public with this notice are shown in ~~double striketrough~~ and double underline format, respectively. Modifications to the originally proposed protocol language are shown in ~~striketrough~~ to indicate deletions and underline to indicate additions in Attachment 2 (Ozone Depleting Substances Projects) and Attachment 3 (Livestock Projects). Attachment 4 (U.S. Forest Projects) modifications to the originally proposed protocol language are shown ~~double striketrough~~ to indicate deletions and double underline to indicate additions.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all changes that are noticed. Therefore, staff will only address comments that are responsive to this notice, documents added to the record, or the changes detailed in Attachments 1-4.

Summary of Proposed Modifications

The staff's proposed modifications in this document are summarized below and are set forth in detail in Attachments 1-4 to this notice. All references are to sections 95802, 95830, and 95833, title 17, California Code of Regulations, and the updates to the Compliance Offset Protocols.

1. In section 95802, the definition of "Primary Refinery Products" was modified to align with the MRR and to provide a more accurate listing of Energy Information Administration product codes for each material included in the definition. These changes provide clarity and align the product codes with the materials historically included in this definition;
2. In section 95830(c)(1)(H), staff has further clarified how entities must identify and disclose their non-registered direct corporate associations. This includes providing additional flexibility that entities may opt to use regarding the number of related entities that must be identified and disclosed, based on their relationship to the Cap-and-Trade Program. Additional changes are proposed governing which types of documentation may be submitted to satisfy the disclosure requirements in sections 95830 and 95833. These modifications build upon the clarifications provided in the regulatory language released during the 45-day comment period, and were made in response to stakeholder comments received during the 45-day comment period. The changes are necessary to provide consistency and clarity in how corporate associations are identified;

3. In section 95830(f)(1), staff has further clarified 45-day language regarding the timing for updating corporate disclosure information. Specifically, staff has modified the word “annually” to mean “within one year” of a change. Staff has also proposed a change consistent with those made in section 95830(c)(1)(H) regarding how to identify and update information related to non-registered direct corporate associations. Finally, staff has removed a sentence that was originally included to apply to a previous rulemaking. This sentence was inadvertently left in during the originally noticed 45-day comment period. This sentence would require updating of information on a timeline that is now inconsistent with the other changes made during the 45-day comment period and in this 15-day notice. These changes are necessary to ensure clarity in timing for making required updates to submitted information;
4. In section 95833(d), staff has proposed a clarification to the term “entity” to ensure regulated parties understand this section refers to “registered” entities. Staff has also proposed language to cross-reference the changes made in response to stakeholder comments in section 95830(c)(1)(H). This change is needed to ensure consistency between the sections;
5. In section 95833(e), staff has proposed a modification to clarify that “annually” means “within at least one year” of a change. This modification ensures consistency with section 95830(f)(1) and improved clarity for regulated entities;
6. In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive;
7. Ozone Depleting Substances Projects Compliance Offset Protocol:
 - Two typographical errors were fixed in the first sentence in subchapter 5.3.
 - The regulatory compliance language covering the destruction of ODS was further clarified in subchapter 3.8.
 - Additional language was provided in subchapter 5.3(a) to clarify that documentation of the disqualified ozone depleting substance (ODS) container’s capacity is required or the entire destruction event is disqualified.
 - The word “of” was inserted in subchapter 6.2(c)(3) for consistency with phrasing elsewhere in the protocol.
 - The date in the title of figure B.1 was changed to accurately reflect the correct version of data provided in table B.6.
 - In subchapters D(a)(2) and D(a)(3), the 48-hour requirement was altered so that the requirement is based on Continuous Emissions Monitoring System (CEMS) data, if available.

- Subchapter D(a)(4) was altered and a new subchapter D(a)(5) was added. This clarifies that for facilities where both aggregation and destruction occur there is no need to weigh and sample each container separately until the ODS has been aggregated, identified and destined for destruction. This will prevent facilities that receive multiple containers for aggregation prior to destruction from needing to weigh and sample each container individually prior to aggregation. Subchapter D(a)(5) clarifies that once a container is identified and destined for destruction, the only ODS that may be removed is to meet the sampling requirements of the protocol or any regulatory requirements.
- Subchapters D(b)(1)(C), D(b)(2)(B), and D(b)(3)(C) were clarified to state that three minutes is the minimum time that a container must be stationary before weighing and more time may be required for the weight to stabilize prior to obtaining the final weight of the container.

8. Livestock Projects Compliance Offset Protocol

- The definition of “enclosed vessel” was clarified. The modifications include appropriate digester types (and corresponding digester covers) that will achieve the Biogas Collection Efficiency (BCE) for enclosed vessels as outlined in table A.3 of the protocol.
- Subchapter 3.5(b) was modified to clarify that the commencement date for a livestock offset project is after any initial startup period when the project becomes operational. This allows the Offset Project Operator or Authorized Project Designee time to solve any operational issues with the system before commencing the project.
- Subchapter 5.1(i) was modified to clarify that Offset Project Operators or Authorized Project Designees should use data from the weather station closest the project location that has data available during a reporting period.
- Subchapter 5.1(k) was modified from “drainage and cleaning of” to “the complete drainage and cleaning of solid buildup from” to ensure that protocol language refers to the complete, not partial, removal of solid buildup.
- Minor, non-substantive changes were made to subchapter 5.2(l) to ensure proper grammar and spelling.
- Equation 5.8 was modified to include a summation for the number of effluent ponds used in a project. This change was made to determine the methane conversion factor (MCF) for projects with multiple effluent treatment systems. Other minor, non-substantive changes were made to the equation to ensure consistency throughout the protocol. These changes are consistent with the intent of the calculation and ensure the accurate quantification of greenhouse gas (GHG) emission reductions.
- Subchapters 6.1(b)(3) and 6.1(b)(4) were modified to allow a single gas flow meter to monitor multiple destruction devices while requiring a conservative biogas destruction efficiency (BDE) determination. These modifications provide flexibility to Offset Project Operators and Authorized Project Designees while maintaining the conservativeness of the GHG emission reduction calculations.

- Subchapter 6.2(a)(2) was modified to clarify that permanently fixed instruments, along with portable and manufacturer specified instruments, may be used to field check gas flow meters and continuous methane analyzers.
- Tables A.1, A.2 and A.4 were updated to reflect the 2012 typical Average Mass (TAM) and volatile solids (VS) values which are derived from the 2014 U.S. Environmental Protection Agency's *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012 (April 2014)*.
- Changes were made to remove the word “baseline” that unintentionally limited data substitution so it could not apply to project parameters. Additional changes were made to remove the contradiction of including a conservative method for substituting missing data from two parameters in table B.1 but not allowing substitution for missing data from two parameters in the text of the appendix.
- Appendix B was reworded to clarify the original intent that data substitution for equipment that monitors operational activity cannot occur and a BDE of 0% must be used for the time period the monitoring device is inoperable.
- Table B.1 was modified to permit the substitution of a single quarter of methane concentration data in a reporting period.

9. U.S. Forest Projects Compliance Offset Protocol

- Minor, non-substantive change was made to subchapter 6.2.1 step 2 to correct grammar.
- Modifications were made to subchapter 6.2.1 step 4 to clarify how the baseline, inclusive of all onsite carbon pools, is developed. Clarifications were made that separate, rather than independent, baselines are developed for each carbon pool to acknowledge that estimates are not necessarily independent from one another. Soil carbon was added to the list of carbon pools to be included, as applicable, in the onsite carbon baseline estimate. Mention of harvested wood delivered to mills was removed from this step because directions for quantifying this component of the baseline are provided later in the chapter.
- Minor, non-substantive changes were made to subchapter 6.2.3 and 6.3.2 to ensure consistency throughout the protocol.
- Criteria for deducting missing biomass was added to table A.2 to require that a standardized approach and a description of how deductions for missing biomass in standing live trees are estimated and accounted for be included in the inventory methodology. Additional modifications were made to table A.2 to clarify how deductions for missing biomass in standing dead trees are estimated and to emphasize the different approaches and resources that are to be used by projects in California, Oregon, and Washington and projects in the other 45-states.
- Language was added to appendix A, section A.3 to explain the purpose and proper use of table A.3(b).
- Previously added language was moved within Appendix C to enhance clarity.
- The phrase “prior to delivery to a mill” was added back into equation C.2 to ensure consistency throughout the protocol.

- Pursuant to Board direction, the proposed change to the classification of high and low site classes was amended to revert back to the previous classification. High site class refers to U.S. Forest Service FIA assigned site class productivity codes I-III and low site class refers to U.S. Forest Service FIA assigned site class productivity codes IV-VII. Language was also added to further explain how common practice values are established.

These modifications do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Staff Report because the modifications consist primarily of definition and provision clarifications that do not alter the compliance responses, so no additional environmental analysis or recirculation of the analysis is required.

Additional Documents Added to the Record

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following documents that are proposed for incorporation by reference:

- Regional Biomass Equations Used by FIA to Estimate Bole, Bark and Branches. September 2014. (For use by projects in California, Oregon, and Washington)
- FIA Volume Equation Documentation. September 2014. (For use by projects in California, Oregon, and Washington)
- Assessment Area Data File (Originally approved by Board in October 2011).

Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Ms. Rajinder Sahota, Chief, Climate Change Program Evaluation Branch, at (916) 323-8503 or Mr. Jason Gray, Manager, Climate Change Market Monitoring Section at (916) 324-3507.

Public Comments

Written comments will only be accepted on the modifications identified in this notice and may be submitted by postal mail or electronic mail submittal as follows:

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 verbal 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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments

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 ARB's website at www.arb.ca.gov.