

UPDATED INFORMATIVE DIGEST

Sections Affected

Amendments to Title 17, California Code of Regulations, Sections 95835 and 95911.

Background

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. AB 32 also authorizes CARB to utilize a market-based mechanism to reduce GHG emissions. CARB promulgated the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation or Regulation) pursuant to this authority.

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.

The Regulation establishes a declining limit on major sources of GHG emissions, and it creates a powerful economic incentive for major investments 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. 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 emission 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 of the scope of the Program.

The amendments in this rulemaking relate to two issues. First, an entity (La Paloma Generating Company, LLC) covered under the Cap-and-Trade Regulation for emissions from its power plant, filed for bankruptcy and sold the power plant to its creditor-purchaser. The creditor-purchaser argued that it was not responsible for any outstanding compliance obligation from the power plant's

pre-sale emissions and CARB argued the opposite. The bankruptcy court overseeing the bankruptcy sale agreed with the creditor-purchaser, and CARB has appealed the bankruptcy court order.

Second, the California, Québec, and Ontario regulations include a procedure to reconcile differences between jurisdiction-specific Auction Reserve Price values. The procedure in the California, Québec, and Ontario regulations uses a specified exchange rate to determine the Auction Reserve Price (in U.S. Dollars (USD) and Canadian Dollars (CAD)) effective during a joint auction. The Auction Reserve Price in effect for a joint auction is determined as the higher of the Annual Auction Reserve Prices established in USD and CAD after applying the established Auction Exchange Rate. The California Cap-and-Trade Regulation does not currently recognize that the Canadian Auction Reserve Price could be set by Ontario.

Description of Adopted Regulatory Action

The 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 the ongoing bankruptcy litigation described above.

In addition, the amendments 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.

There have been no revisions to the amendments since they were initially released on January 30, 2018. No relevant public comments were received on the proposed amendments. The Board adopted the amendments at the March 22, 2018, Board hearing.