



ATTACHMENT A



AB-32 Air pollution: greenhouse gases: California Global Warming Solutions Act of 2006. (2005-2006)

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Assembly Bill No. 32

CHAPTER 488

An act to add Division 25.5 (commencing with Section 38500) to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 32, Nunez. Air pollution: greenhouse gases: California Global Warming Solutions Act of 2006.

Under existing law, the State Air Resources Board (state board), the State Energy Resources Conservation and Development Commission (Energy Commission), and the California Climate Action Registry all have responsibilities with respect to the control of emissions of greenhouse gases, as defined, and the Secretary for Environmental Protection is required to coordinate emission reductions of greenhouse gases and climate change activity in state government.

This bill would require the state board to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program, as specified. The bill would require the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020, as specified. The bill would require the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions, as specified. The bill would authorize the state board to adopt market-based compliance mechanisms, as defined, meeting specified requirements. The bill would require the state board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board, pursuant to specified provisions of existing law. The bill would authorize the state board to adopt a schedule of fees to be paid by regulated sources of greenhouse gas emissions, as specified.

Because the bill would require the state board to establish emissions limits and other requirements, the violation of which would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 25.5 (commencing with Section 38500) is added to the Health and Safety Code, to read:

DIVISION 25.5. CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006

PART 1. GENERAL PROVISIONS

CHAPTER 1. Title of Division

38500. This division shall be known, and may be cited, as the California Global Warming Solutions Act of 2006.
CHAPTER 2. Findings and Declarations

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

CHAPTER 3. Definitions

38505. For the purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) "Direct emission reduction" means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) "Emissions reduction measure" means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) "Greenhouse gas" or "greenhouse gases" includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) "Greenhouse gas emissions limit" means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) "Greenhouse gas emission source" or "source" means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) "Market-based compliance mechanism" means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(l) "State board" means the State Air Resources Board.

(m) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38850).

CHAPTER 4. Role of State Board

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

PART 2. MANDATORY GREENHOUSE GAS EMISSIONS REPORTING

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

PART 3. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

38550. By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions.

38551. (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.

(b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.

(c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

PART 4. GREENHOUSE GAS EMISSIONS REDUCTIONS

38560. The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

38560.5. (a) On or before June 30, 2007, the state board shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted pursuant to Section 38562.

(b) On or before January 1, 2010, the state board shall adopt regulations to implement the measures identified on the list published pursuant to subdivision (a).

(c) The regulations adopted by the state board pursuant to this section shall achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of sources, in furtherance of achieving the statewide greenhouse gas emissions limit.

(d) The regulations adopted pursuant to this section shall be enforceable no later than January 1, 2010.

38561. (a) On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b) The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c) In making the determinations required by subdivision (b), the state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d) The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available

economic models, emission estimation techniques, and other scientific methods.

(e) In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f) In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g) The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h) The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

38563. Nothing in this division restricts the state board from adopting greenhouse gas emission limits or emission reduction measures prior to January 1, 2011, imposing those limits or measures prior to January 1, 2012, or providing early reduction credit where appropriate.

38564. The state board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

38565. The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

PART 5. MARKET-BASED COMPLIANCE MECHANISMS

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations.

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

- (1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.
- (2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.
- (3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

38571. The state board shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board. The adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

38574. Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions.

PART 6. ENFORCEMENT

38580. (a) The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division.

(b) (1) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(2) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for

the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(3) The state board may develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board pursuant to this division into the number of days in violation, where appropriate, for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(c) Section 42407 and subdivision (i) of Section 42410 shall not apply to this part.

PART 7. Miscellaneous Provisions

38590. If the regulations adopted pursuant to Section 43018.5 do not remain in effect, the state board shall implement alternative regulations to control mobile sources of greenhouse gas emissions to achieve equivalent or greater reductions.

38591. (a) The state board, by July 1, 2007, shall convene an environmental justice advisory committee, of at least three members, to advise it in developing the scoping plan pursuant to Section 38561 and any other pertinent matter in implementing this division. The advisory committee shall be comprised of representatives from communities in the state with the most significant exposure to air pollution, including, but not limited to, communities with minority populations or low-income populations, or both.

(b) The state board shall appoint the advisory committee members from nominations received from environmental justice organizations and community groups.

(c) The state board shall provide reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

(d) The state board shall appoint an Economic and Technology Advancement Advisory Committee to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions. The committee may also advise the state board on state, regional, national, and international economic and technological developments related to greenhouse gas emission reductions.

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

(a) Nothing in this division affects the authority of the Public Utilities Commission.

38593. (b) Nothing in this division affects the obligation of an electrical corporation to provide customers with safe and reliable electric service.

38594. Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

38595. Nothing in this division shall preclude, prohibit, or restrict the construction of any new facility or the expansion of an existing facility subject to regulation under this division, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant to this division.

38596. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

38599. (a) In the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the Governor may adjust the applicable deadlines for individual regulations, or for the state in the aggregate, to the earliest feasible date after that deadline.

(b) The adjustment period may not exceed one year unless the Governor makes an additional adjustment pursuant to subdivision (a).

(c) Nothing in this section affects the powers and duties established in the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(d) The Governor shall, within 10 days of invoking subdivision (a), provide written notification to the Legislature of the action undertaken.

SEC. 2 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



AB-398 California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire pi

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Assembly Bill No. 398

CHAPTER 135

An act to amend, repeal, and add Sections 38501, 38562, and 38594 of, and to add and repeal Sections 38505.5, 38590.1, 38591.1, 38591.2, 38591.3, 38592.5, and 38592.6 of, the Health and Safety Code, to add Section 4213.05 to, to add Article 3 (commencing with Section 4229) to Chapter 1.5 of Part 2 of Division 4 of, and to repeal Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4 of, the Public Resources Code, and to amend Section 6377.1 of the Revenue and Taxation Code, relating to public resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 25, 2017. Filed with Secretary of State July 25, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 398, Eduardo Garcia. California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption.

(1) The California Global Warming Solutions Act of 2006 establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. The act requires the state board to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 and to ensure that statewide greenhouse gas emissions are reduced to at least 40% below the 1990 level by 2030. The act authorizes the state board to include the use of market-based compliance mechanisms.

The act requires the state board to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions and to update the scoping plan at least once every 5 years.

The act authorizes the state board to adopt a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases, applicable from January 1, 2012, to December 31, 2020, inclusive, as specified.

This bill would require the state board, no later than January 1, 2018, to update the scoping plan, as specified. The bill would require all greenhouse gas rules and regulations adopted by the state board to be consistent with the scoping plan.

This bill would, until January 1, 2031, extend the applicability of a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases to December 31, 2030.

This bill would, until January 1, 2031, require the state board to include specified price ceilings, price containment points, offset credit compliance limits, and industry assistance factors for allowance allocation as part of a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases from January 1, 2021, to December 31, 2030, inclusive. The bill, until January 1, 2031, additionally would require the state board to develop approaches to increase offset projects in the state and to make specified reports to the Legislature as part of that regulation.

This bill would, until January 1, 2031, establish the Compliance Offsets Protocol Task Force, with a specified membership, to provide guidance to the state board in approving new offset protocols for a market-based compliance mechanism for the purposes of increasing offset projects with direct environmental benefits in the state while prioritizing disadvantaged communities, Native American or tribal lands, and rural and agricultural regions.

This bill would, until January 1, 2031, establish the Independent Emissions Market Advisory Committee with a specified membership and would require the advisory committee to at least annually hold a public meeting and report to both the state board and the Joint Legislative Committee on Climate Change Policies on the environmental and economic performance of a specified market-based compliance mechanism and other relevant climate policies.

This bill would, until January 1, 2031, require the California Workforce Development Board, in consultation with the state board, to submit a specified report to the Legislature, no later than January 1, 2019, on the need for increased education, career technical education, job training, and workforce development resources or capacity to help industry, workers, and communities transition to economic and labor-market changes related to specified statewide greenhouse gas emissions reduction goals.

This bill would, until January 1, 2031, require the Legislative Analyst's Office to annually report to the Legislature on the economic impacts and benefits of specified greenhouse gas emissions targets.

(2) Existing law requires all moneys, except for fines and penalties, collected by the state board as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation. Existing law continuously appropriates 60% of the annual proceeds of the fund for transit, affordable housing, sustainable communities, and high-speed rail purposes.

This bill would declare the intent of the Legislature that moneys collected pursuant to the market-based compliance mechanism be appropriated in accordance with a specified order of priorities.

(3) Existing law provides that the California Global Warming Solutions Act of 2006 does not limit or expand the existing authority of air pollution control and air quality management districts.

This bill instead would, until January 1, 2031, prohibit an air district from adopting or implementing an emission reduction rule for carbon dioxide from stationary sources that are also subject to a specified market-based compliance mechanism.

(4) Existing law provides that the state has the primary financial responsibility for preventing and suppressing fires in areas that the State Board of Forestry and Fire Protection has determined are state responsibility areas, as defined. Existing law requires that a fire prevention fee be charged on each habitable structure on a parcel that is within a state responsibility area, to be used for specified fire prevention activities.

This bill, until January 1, 2031, would suspend the fire prevention fee. The bill would declare that it is the intent of the Legislature that moneys derived from the auction or sale of allowances pursuant to the market-based compliance mechanism described under (1) replace the fire prevention fee to continue the funding of the fire prevention activities. The bill would repeal those provisions requiring the payment of the fire prevention fee on January 1, 2031.

(5) Existing law, commencing July 1, 2017, provides that the California Department of Tax and Fee Administration is responsible for the administration of the Sales and Use Tax Law, which was previously administered by the State Board of Equalization.

Existing sales and use tax laws impose taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provide various exemptions from those taxes.

Existing law exempts from those taxes, on and after July 1, 2014, and before July 1, 2022, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of tangible personal property, as specified; qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development, as provided; qualified tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property, as provided; and qualified tangible personal property purchased by a contractor purchasing that property for use in the performance of a construction contract for the qualified person, that will use that property as an integral part of specified processes.

This bill would, on and after July 1, 2014, and before July 1, 2030, additionally exempt from those taxes qualified tangible personal property purchased for use by a qualified person to be used primarily in the generation or production, as defined, or storage and distribution, as defined, of electric power or purchased for use by a contractor for the qualified person, as specified. The bill, on and after January 1, 2018, and until July 1, 2030, would also exempt from those taxes special purpose buildings and foundations used for the generation or production or storage and distribution of electric power. The bill, on and after January 1, 2018, and until July 1, 2030, would expand the definition of qualified person to include, among others, a person primarily engaged in the business of electric power generation.

Under existing law, no later than each March 1 next following a calendar year for which these provisions provide an exemption, the California Department of Tax and Fee Administration is required to provide to the Joint Legislative Budget Committee a report of the total dollar amount of exemptions taken for the immediately preceding calendar year.

This bill would require the department to also provide that exemption report to the Department of Finance. The bill would require the total dollar amount, as reported by the department, with the concurrence of the Department of Finance, to be transferred from the Greenhouse Gas Reduction Fund to the General Fund, as provided.

This bill would also make various nonsubstantive and conforming changes and would repeal this exemption on January 1, 2031.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 38501 of the Health and Safety Code is amended to read:

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving statewide greenhouse gas emissions targets established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic cobenefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the State Air Resources Board extend the market-based compliance mechanism adopted pursuant to subdivision (c) of Section 38562 from January 1, 2021, to December 31, 2030, inclusive, in a manner that effectively reduces greenhouse gas emissions; minimizes any adverse impacts on state consumers, businesses, and the economy; and continues elements of the current program that protect state utility ratepayers.

(j) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

(k) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 2. Section 38501 is added to the Health and Safety Code, to read:

38501. (a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic cobenefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

(j) This section shall become operative on January 1, 2031.

SEC. 3. Section 38505.5 is added to the Health and Safety Code, to read:

38505.5. (a) "District" has the same meaning as in Section 39025.

(b) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 4. Section 38562 of the Health and Safety Code is amended to read:

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emissions limits and emissions reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) (1) Unless otherwise required by context, terms in this subdivision shall have the definitions that apply pursuant to Section 95802 of Title 17 of the California Code of Regulations, as they read on January 1, 2017.

(2) The state board may adopt a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases, applicable from January 1, 2012, to December 31, 2030, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources. In adopting a regulation applicable from January 1, 2021, to December 31, 2030, inclusive, pursuant to this subdivision, the state board shall do all of the following:

(A) (i) Establish a price ceiling. In establishing the price ceiling, the state board shall consider, using the best available science, all of the following:

(I) The need to avoid adverse impacts on resident households, businesses, and the state's economy.

(II) The 2020 tier prices of the allowance price containment reserve.

(III) The full social cost associated with emitting a metric ton of greenhouse gases.

(IV) The auction reserve price.

(V) The potential for environmental and economic leakage.

(VI) The cost per metric ton of greenhouse gas emissions reductions to achieve the statewide emissions targets established in Sections 38550 and 38566.

(ii) To implement the price ceiling, the state board shall develop a mechanism that consists of both of the following:

(I) Allowances remaining in the allowance price containment reserve as of December 31, 2020, shall be utilized solely for the purpose of sale at the price ceiling established by this section.

(II) If the allowances from the allowance price containment reserve are exhausted, the state board shall offer covered entities additional metric tons at the price ceiling if needed for compliance. All moneys generated pursuant to this clause shall be expended by the state board to achieve emissions reductions, on at least a metric ton for metric ton basis, that are real, permanent, quantifiable, verifiable, enforceable by the state board and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur.

(B) Establish two price containment points at levels below the price ceiling. The state board shall offer to covered entities nontradable allowances for sale at these price containment points. The price containment points shall be established using two-thirds, divided equally, of the allowances in the allowance price containment reserve as of December 31, 2017.

(C) Require that current vintage allowances designated by the state board for auction that remain unsold in the auction holding account for more than 24 months to be transferred to the allowance price containment reserve.

(D) Evaluate and address concerns related to overallocation in the state board's determination of the number of available allowances for years 2021 to 2030, inclusive, as appropriate.

(E) (i) Establish offset credit limits according to the following:

(I) From January 1, 2021, to December 31, 2025, inclusive, a total of 4 percent of a covered entity's compliance obligation may be met by surrendering offset credits of which no more than one-half may be sourced from projects that do not provide direct environmental benefits in state.

(II) From January 1, 2026, to December 31, 2030, inclusive, a total of 6 percent of a covered entity's compliance obligation may be met by surrendering offset credits of which no more than one-half may be sourced from projects that do not provide direct environmental benefits in the state.

(ii) For purposes of this subparagraph, "direct environmental benefits in the state" are the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state.

(F) Develop approaches to increase offset projects in the state considering guidance provided by the Compliance Offsets Protocol Task Force, established pursuant to Section 38591.1.

(G) Set industry assistance factors for allowance allocation commencing in 2021 at the levels applicable in the compliance period of 2015 to 2017, inclusive. The state board shall apply a declining cap adjustment factor to the industry allocation equivalent to the overall statewide emissions declining cap using the methodology from the compliance period of 2015 to 2017, inclusive.

(H) Establish allowance banking rules that discourage speculation, avoid financial windfalls, and consider the impact on complying entities and volatility in the market.

(I) Report to the Legislature, by December 31, 2025, on the progress toward meeting the greenhouse gas emissions reduction targets established pursuant to Sections 38550 and 38566 and the leakage risk posed by the regulation. The state board shall include recommendations to the Legislature on necessary statutory changes to the program to reduce leakage, including the potential for a border carbon adjustment, while maintaining the state's ability to reach its targets.

(J) (i) Report to the Legislature, in consultation with the Independent Emissions Market Advisory Committee, established pursuant to Section 38591.2, if two consecutive auctions exceed the lower of the price containment levels established pursuant to subparagraph (B). The report shall assess the potential for allowance prices to reach the price ceiling for multiple auctions.

(ii) A report submitted to the Legislature pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(K) Report to the relevant fiscal and policy committees of the Legislature, including the Joint Committee on Climate Change Policies, on all of the following:

(i) Updates to the scoping plan prepared pursuant to Section 38561 prior to adopting the update.

(ii) Updates on the implementation of the scoping plan prepared pursuant to Section 38561.

(iii) Updates on the implementation of the market-based compliance mechanism adopted pursuant to this subdivision.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) The state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

(h) This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute which is enacted before that date, deletes or extends that date.

SEC. 5. Section 38562 is added to the Health and Safety Code, to read:

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emissions limits and emissions reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) The state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

(h) This section shall become operative on January 1, 2031.

SEC. 6. Section 38590.1 is added to the Health and Safety Code, to read:

38590.1. (a) It is the intent of the Legislature that moneys collected from the auction or sale of allowances pursuant to a market-based compliance mechanism established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500)) shall be appropriated to include, but need not be limited to, the following priorities at the time an expenditure plan is adopted:

(1) Air toxic and criteria air pollutants from stationary and mobile sources.

(2) Low- and zero-carbon transportation alternatives.

(3) Sustainable agricultural practices that promote the transitions to clean technology, water efficiency, and improved air quality.

(4) Healthy forests and urban greening.

(5) Short-lived climate pollutants.

(6) Climate adaptation and resiliency.

(7) Climate and clean energy research.

(b) This section shall remain in effect only until January 1, 2031, and as of that date is repealed unless a later enacted statute that is enacted on or before that date deletes or extends that date.

SEC. 7. Section 38591.1 is added to the Health and Safety Code, to read:

38591.1. (a) The Compliance Offsets Protocol Task Force is hereby established to provide guidance to the state board in approving new offset protocols for a market-based compliance mechanism for the purposes of increasing offset projects with direct environmental benefits in the state while prioritizing disadvantaged communities, Native American or tribal lands, and rural and agricultural regions. The state board shall appoint members to the Compliance Offsets Protocol Task Force to include a representative from each stakeholder group, including, but not limited to, all of the following:

(1) Scientists.

- (2) Air pollution control and air quality management districts.
- (3) Carbon market experts.
- (4) Tribal representatives.
- (5) Environmental Justice advocates.
- (6) Labor and Workforce representatives.
- (7) Forestry experts.
- (8) Agriculture experts.
- (9) Environmental advocates.
- (10) Conservation advocates.
- (11) Dairy experts.

(b) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 8. Section 38591.2 is added to the Health and Safety Code, to read:

38591.2. (a) The Independent Emissions Market Advisory Committee is hereby established within the California Environmental Protection Agency.

(b) (1) (A) The committee shall be composed of at least five experts on emissions trading market design appointed according to the following:

- (i) Three members appointed by the Governor.
- (ii) One member appointed by the Senate Committee on Rules.
- (iii) One member appointed by the Speaker of the Assembly.

(B) The committee shall include a representative from the Legislative Analyst's Office.

(2) The committee members shall meet all of the following requirements:

- (A) Have academic, nonprofit, and other relevant backgrounds.
- (B) Lack financial conflicts of interest with entities subject to the regulation adopted by the state board pursuant to subdivision (c) of Section 38562.

(c) The committee, at least annually, shall hold a public meeting and report to both the state board and the Joint Legislative Committee on Climate Change Policies on the environmental and economic performance of the regulation adopted by the state board pursuant to subdivision (c) of Section 38562 and other relevant climate policies.

(d) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 9. Section 38591.3 is added to the Health and Safety Code, to read:

38591.3. (a) No later than January 1, 2019, the California Workforce Development Board, in consultation with the state board, shall report to the Legislature on the need for increased education, career technical education, job training, and workforce development resources or capacity to help industry, workers, and communities transition to economic and labor-market changes related to statewide greenhouse gas emissions reduction goals, pursuant to Sections 38550 and 38566, and the scoping plan, adopted pursuant to Section 38561. The California Workforce Development Board shall ensure that the report aligns, as appropriate, with California's Unified Strategic Workforce Development Plan, developed by the California Workforce Development Board. The California Workforce Development Board and the state board shall work in consultation with all of the following:

- (1) State Department of Education.
- (2) California Community Colleges.
- (3) Trustees of the California State University.
- (4) Regents of the University of California.
- (5) Governor's Office of Business and Economic Development.
- (6) Interested stakeholders.

(b) The report to the Legislature shall address all of the following:

- (1) Creating and retaining jobs and stimulating economic activity in the state.

- (2) Imbedding workforce training and employment services in infrastructure investments so that services more directly connect to the jobs created.
- (3) The use of community benefits agreements, community workforce agreements, and project labor agreements that connect workforce services and job training directly to jobs impacted or jobs created.
- (4) Preparing the state's students with relevant career technical education that responds to business and industry demands.
- (5) Developing worker retraining programs to assist the existing workforce with the necessary tools to upgrade their skills.
- (6) Responding to the job creation and workforce needs of the state's new and emerging industries, including emerging technologies that will result in greater greenhouse gas emissions reductions.
- (7) Developing job training programs to assist specific populations, such as at-risk youth, displaced workers, veterans, the formerly incarcerated, and others facing barriers to employment.
- (8) Opportunities for community-based organizations to partner with local workforce agencies to improve the labor-market outcomes of targeted disadvantaged populations.
- (9) Targeting workforce development programs and activities in disadvantaged communities, as identified pursuant to Section 39711, and communities that are located near entities regulated by the state board pursuant to this division.
- (10) Identifying and leveraging state and federal funding resources to implement the recommendations made in the report consistent with the regulatory purposes of this division.

(c) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 10. Section 38592.5 is added to the Health and Safety Code, to read:

38592.5. (a) (1) No later than January 1, 2018, the state board shall update the scoping plan, prepared pursuant to Section 38561, to achieve the greenhouse gas emissions reductions required pursuant to Section 38566. The state board shall designate the market-based compliance mechanism adopted pursuant to subdivision (c) of Section 38562 as the rule for petroleum refineries and oil and gas production facilities to achieve their greenhouse gas emissions reductions.

- (2) All greenhouse gas rules and regulations adopted by the state board shall be consistent with the updated scoping plan.
- (3) Nothing in this section shall limit the state board's authority to adopt, maintain, or revise any other measure, including, but not limited to, any of the following:
 - (A) Measures governing methane and fugitive emissions at refineries and oil and gas facilities.
 - (B) Advanced clean cars program adopted by the state board.
 - (C) Low-Carbon Fuel Standard regulations (Subarticle 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations).
 - (D) Regulations addressing short-lived climate pollutants.
 - (E) Implementation of the sustainable freight action plan released in July 2015 pursuant to Executive Order B-32-15.

(b) This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2031, deletes or extends that date.

SEC. 11. Section 38592.6 is added to the Health and Safety Code, to read:

38592.6. (a) The Legislative Analyst's Office shall, until January 1, 2030, annually report to the Legislature on the economic impacts and benefits of the greenhouse gas emissions targets established pursuant to Sections 38550 and 38566.

(b) This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2031, deletes or extends that date.

SEC. 12. Section 38594 of the Health and Safety Code is amended to read:

38594. (a) Except as provided in subdivision (b), nothing in this division shall limit or expand the existing authority of any district.

(b) A district shall not adopt or implement an emission reduction rule for carbon dioxide from stationary sources that are also subject to a market-based compliance mechanism adopted by the state board pursuant to subdivision (c) of Section 38562.

(c) Nothing in this section affects in any manner the authority of a district to adopt or implement, as applicable, any of the following:

- (1) A rule, regulation, standard, or requirement authorized or required for a district to adopt under Division 26 (commencing with Section 39000) for purposes other than to reduce carbon dioxide from sources subject to a market-based compliance

mechanism adopted by the state board pursuant to subdivision (c) of Section 38562.

(2) A rule, regulation, standard, or requirement authorized pursuant to a law affecting emissions associated with landfills, refrigerants, natural gas or methane, volatile organic compounds, or a rule required to comply with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or regulations implementing that act.

(3) A rule, regulation, standard, or requirement authorized pursuant to a law to reduce vehicle trips, vehicle miles traveled, parking, or vehicular air emissions, including, but not limited to, a rule adopted pursuant to Chapter 728 of the Statutes of 2008.

(4) A rule, regulation, standard, or requirement established pursuant to the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code).

(5) A rule, regulation, standard, or requirement adopted by any state agency.

(d) This section shall become inoperative if the state board repeals the market-based compliance mechanism adopted by the state board pursuant to subdivision (c) of Section 38562. The state board shall notify the Secretary of State if this section becomes inoperative.

(e) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 13. Section 38594 is added to the Health and Safety Code, to read:

38594. (a) Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

(b) This section shall become operative on January 1, 2031.

SEC. 14. Section 4213.05 is added to the Public Resources Code, to read:

4213.05. (a) Commencing with the 2017–18 fiscal year, the fire prevention fee imposed pursuant to Section 4212 shall be suspended, effective July 1, 2017. Any moneys held in reserve in the State Responsibility Area Fire Responsibility Fund shall be appropriated by the Legislature in a manner consistent with subdivision (d) of Section 4214.

(b) It is the intent of the Legislature that moneys derived from the auction or sale of allowances pursuant to a market-based compliance mechanism established pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code shall be used to replace the moneys that would have otherwise been collected under Section 4212 to continue fire prevention activities.

(c) This section shall become inoperative on January 1, 2031.

SEC. 15. Article 3 (commencing with Section 4229) is added to Chapter 1.5 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 3. Repeal

4229. This chapter shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute that is enacted on or before January 1, 2031, deletes or extends that date.

SEC. 16. Section 6377.1 of the Revenue and Taxation Code is amended to read:

6377.1. (a) Except as provided in subdivision (e), on or after July 1, 2014, and before July 1, 2030, there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Qualified tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of tangible personal property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(2) Qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Qualified tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property described in paragraph (1) or (2).

(4) Qualified tangible personal property purchased for use by a contractor purchasing that property for use in the performance of a construction contract for the qualified person, that will use that property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, the generation or production, or storage and distribution, of electric power, or as a research or storage facility for use in connection with those processes.

(5) Qualified tangible personal property purchased for use by a qualified person to be used primarily in the generation or production, or storage and distribution, of electric power.

(b) For purposes of this section:

(1) "Department" means the California Department of Tax and Fee Administration.

(2) "Fabricating" means to make, build, create, produce, or assemble components or tangible personal property to work in a new or different manner.

(3) "Generation or production" means the activity of making, producing, creating, or converting electric power from sources other than a conventional power source, as defined in Section 2805 of the Public Utilities Code.

(4) "Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(5) "Primarily" means 50 percent or more of the time.

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of tangible personal property.

(8) (A) "Qualified person" means:

(i) Prior to January 1, 2018, a person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, 541711, or 541712 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

(ii) On and after January 1, 2018, and before July 1, 2030, a person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, 22111 to 221118, inclusive, 221122, 541711, or 541712 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

(B) Notwithstanding subparagraph (A), "qualified person" shall not include either of the following:

(i) Prior to January 1, 2018, an apportioning trade or business that is required to apportion its business income pursuant to subdivision (b) of Section 25128 or a trade or business conducted wholly within this state that would be required to apportion its business income pursuant to subdivision (b) of Section 25128 if it were subject to apportionment pursuant to Section 25101.

(ii) On and after January 1, 2018, and before July 1, 2030, an apportioning trade or business, other than a trade or business described in paragraph (1) of subdivision (c) of Section 25128, that is required to apportion its business income pursuant to subdivision (b) of Section 25128, or a trade or business, other than a trade or business described in paragraph (1) of subdivision (c) of Section 25128, conducted wholly within this state that would be required to apportion its business income pursuant to subdivision (b) of Section 25128 if it were subject to apportionment pursuant to Section 25101.

(9) (A) "Qualified tangible personal property" includes, but is not limited to, all of the following:

(i) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(ii) Equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, but not limited to, computers, data-processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another party.

(iii) Tangible personal property used in pollution control that meets standards established by this state or any local or regional governmental agency within this state.

(iv) (I) Prior to January 1, 2018, special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or that constitute a research or storage facility

used during those processes. Buildings used solely for warehousing purposes after completion of those processes are not included.

(II) On and after January 1, 2018, and before July 1, 2030, special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or that constitute a research or storage facility used during those processes, or the generation or production or storage and distribution of electric power. Buildings used solely for warehousing purposes after completion of those processes are not included.

(B) "Qualified tangible personal property" shall not include any of the following:

(i) Consumables with a useful life of less than one year.

(ii) Furniture, inventory, and equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing, processing, refining, fabricating, or recycling process.

(iii) Tangible personal property used primarily in administration, general management, or marketing.

(10) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(11) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(12) "Storage and distribution" means storing or distributing through the electric grid, but not transmission of, electric power to consumers regardless of source.

(13) (A) "Useful life" for tangible personal property that is treated as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this section. "Useful life" for tangible personal property that is treated as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this section. For the purposes of this paragraph, tangible personal property that is deducted under Sections 17201 and 17255 or Section 24356 shall be deemed to have a useful life of one or more years.

(B) The board shall cancel any outstanding and unpaid deficiency determination and any related penalties and interest and shall not issue any deficiency determination or notice of determination, with respect to unpaid sales and use tax on qualified property with a useful life, as defined in subparagraph (A), that was purchased or leased on or after July 1, 2014, and before January 1, 2018. Any amounts paid by a qualified person pursuant to such determination shall be refunded by the department to the qualified person. Any cancellation or refund described in this subparagraph is contingent upon a qualified person making a request to the department, in a manner prescribed by the department, by June 30, 2018.

(c) An exemption shall not be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the department may prescribe, and the retailer retains the exemption certificate in its records and furnishes it to the department upon request.

(d) (1) Notwithstanding the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) Notwithstanding subdivision (a), the exemption established by this section shall not apply with respect to any tax levied pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant to Section 35 of Article XIII of the California Constitution, or any tax levied pursuant to Section 6051 or 6201 that is deposited in the State Treasury to the credit of the Local Revenue Fund 2011 pursuant to Section 6051.15 or 6201.15.

(e) (1) The exemption provided by this section shall not apply to either of the following:

(A) Any tangible personal property purchased during any calendar year that exceeds two hundred million dollars (\$200,000,000) of purchases of qualified tangible personal property for which an exemption is claimed by a qualified person under this section. For purposes of this subparagraph, in the case of a qualified person that is required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the aggregate of all purchases of qualified personal property for which an exemption is claimed pursuant to this section by all persons that are required or authorized to be included in a combined report shall not exceed two hundred million dollars (\$200,000,000) in any calendar year.

(B) The sale or storage, use, or other consumption of property that, within one year from the date of purchase, is removed from California, converted from an exempt use under subdivision (a) to some other use not qualifying for exemption, or used in a manner not qualifying for exemption.

(2) If a purchaser certifies in writing to the seller that the tangible personal property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and the purchase exceeds the two-hundred-million-dollar (\$200,000,000) limitation described in subparagraph (A) of paragraph (1), or within one year from the date of purchase, the purchaser removes that property from California, converts that property for use in a manner not qualifying for the exemption, or uses that property in a manner not qualifying for the exemption, the

purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the tangible personal property at the time the tangible personal property is so purchased, removed, converted, or used, and the cost of the tangible personal property to the purchaser shall be deemed the gross receipts from that retail sale.

(f) This section shall apply to leases of qualified tangible personal property classified as "continuing sales" and "continuing purchases" in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to the lease, provided the lessee is a qualified person and the tangible personal property is used in an activity described in subdivision (a).

(g) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of exemptions that will be taken for each calendar year, or any portion thereof, for which this section provides an exemption.

(2) (A) No later than each March 1 next following a calendar year for which this section provides an exemption, the department shall provide to the Joint Legislative Budget Committee and to the Department of Finance a report of the total dollar amount of exemptions taken under this section for the immediately preceding calendar year. The report shall compare the total dollar amount of exemptions taken under this section for that calendar year with the department's estimate for that same calendar year. If that total dollar amount taken is less than the estimate for that calendar year, the report shall identify options for increasing exemptions taken so as to meet estimated amounts.

(B) No later than June 30 of that same calendar year, that total dollar amount, notwithstanding subparagraph (A) of paragraph (13) of subdivision (b), as reported by the department, with the concurrence of the Department of Finance, shall be transferred from the Greenhouse Gas Reduction Fund to the General Fund.

(h) This section is repealed on January 1, 2031.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To secure a greater reduction in greenhouse gas emissions to prevent catastrophic climate change, it is necessary for this act to take effect immediately.



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[California's Petroleum Market](#)

California Oil Refinery Cost Disclosure Act Monthly Report

California Oil Refinery Cost Disclosure Act Monthly Report



Senate Bill (SB) 1322 requires all refiners of gasoline products in the state to provide monthly data about various price and volume information. The California Energy Commission (CEC) must publish aggregated, volume weighted reports of this data, within 45 days of the end of each calendar month.

Specifically, SB 1322 requires the CEC to publish the following information from the refinery operators' monthly reports:

- A volume weighted gross gasoline refining margin for the state.
- The gross gasoline refining margin for each refinery with two or more refining facilities in the state.
- Volume and price of domestic and imported crude oil.
- The breakdown of five types of sales required to be reported by refiners and associated volumes, prices per gallon, and actual or estimated costs associated with the Low Carbon Fuel Standard (LCFS) and Cap and Trade programs.

[SB X1-2](#), which took effect June 2023, expands the monthly reports to require refinery operators to provide net gasoline refining information. SB X1-2 also requires the CEC to publish a volume weighted net gasoline refining margin for the state and the net gasoline

refining margin for each refinery with two or more refining facilities in the state. [For more information, please visit Senate Bill X1-2 Implementation.](#)

The data below were self-reported by refiners and have not been independently verified by the CEC or other State agencies. The CEC does not consider these values definitive nor authoritative. The CEC has not assessed, for example, whether refiners properly deducted various costs from their self-reported gross gasoline refining margin when calculating and self-reporting their net gasoline refining margins. The CEC continues to investigate the reported numbers and enhance its reporting requirements through rulemaking activities and stakeholder outreach. Numbers and reports are subject to revision as reporting requirements are updated. Additional findings, recalculations, further analysis, revised data, or other conclusions will be published here as the CEC continues to analyze the reported data. [To follow the rulemaking process, please visit Docket No. 23-OIR-03](#)

Refiner Margin Data

Data last updated: June 24, 2024.

Volume sold and estimated aggregate gasoline refining margin, California volume-weighted average gross refining margin, net refining margin, and numbers in the “Aggregated Data Reported” section are calculated using information obtained from all six refinery companies. Gross and net gasoline refining margins reported by refinery company only reflect information from [California refiners](#) with two or more facilities. As of March 2024, this includes Chevron, PBF, and Valero.

CEC staff will continue to collect and report refiner information on a monthly basis in order to analyze long-term trends as part of its assessment of setting a maximum gross refining margin and penalty for exceeding that maximum, as allowed by SB X1-2.

[Download data](#)

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Volume Sold and Estimated Aggregate Gross Gasoline Refining Margin

Estimated Aggregate Gross Margin (\$) = Total Gasoline Volume Sold (gallons) x Volume-Weighted Average Gross Gasoline Margin (\$/gallon)

Year	Month	Total Gasoline Volume Sold (gallons)	Estimated Aggregate Gross Margin
2023	Jan	904,596,000	\$597,033,360
2023	Feb	781,578,000	\$805,025,340
2023	Mar	919,842,000	\$942,944,477
2023	Apr	916,213,000	\$925,375,130
2023	May	944,664,000	\$1,029,683,760
2023	Jun	926,821,000	\$1,102,916,990
2023	Jul	931,439,000	\$1,061,840,460
2023	Aug	950,529,000	\$1,226,182,410
2023	Sep	901,181,000	\$1,342,759,690
2023	Oct	936,567,000	\$739,887,930
2023	Nov	888,100,000	\$674,956,000
2023	Dec	903,910,000	\$578,502,400
2024	Jan	907,759,000	\$508,345,040
2024	Feb	871,480,000	\$627,465,600
2024	Mar	972,228,000	\$1,020,839,400
2024	Apr	1,061,744,000	\$1,295,327,680

*** Based on data reported by California refiners.** The total gasoline volume sold does not include spot pipeline transaction sales and may be considered a conservative estimate as a result. CEC has not assessed whether refiners have properly deducted various costs from their self-reported margins. Data may differ from previous reports.

Please refer to the disclaimer above in the box.

Volume-Weighted Gasoline Refining Margin

Gross gasoline refining margin (\$/gal) = Wholesale price of gasoline (\$/gal) – Crude oil cost (\$/gal)

Net gasoline refining margin (\$/gal) = Gross gasoline refining margin (\$/gal) – Operational costs (\$/gal)

Year	Month	Gross Margin (\$/gallon)	Net Margin (\$/gallon)
2023	Jan	\$0.66	N/A
2023	Feb	\$1.03	N/A
2023	Mar	\$1.03	N/A
2023	Apr	\$1.01	N/A
2023	May	\$1.09	N/A
2023	Jun	\$1.18	\$0.18
2023	Jul	\$1.14	\$0.14
2023	Aug	\$1.29	\$0.24
2023	Sept	\$1.49	\$0.38
2023	Oct	\$0.79	-\$0.10
2023	Nov	\$0.76	-\$0.16
2023	Dec	\$0.64	-\$0.31
2024	Jan	\$0.56	-\$0.38
2024	Feb	\$0.72	-\$0.14

Year	Month	Gross Margin (\$/gallon)	Net Margin (\$/gallon)
2024	Mar	\$1.05	\$0.03
2024	Apr	\$1.22	\$0.21

* California volume-weighted average gasoline refining margins are weighted by the amount of crude oil received by each refinery, **using data reported by all six California refining companies**. CEC has not assessed whether refiners have properly deducted various costs from their self-reported margins. Data may differ from previous reports.

The data reported by multiple refiners, and which is reflected in the Net Margin column above, demonstrate extreme variability that is likely not accurate nor reliable. The CEC is currently developing guidance for refiners to report this statutorily mandated data in an accurate and consistent manner. When accurate information is available, this table will be updated.

Please refer to the disclaimer above in the box.

Gross Gasoline Refining Margin (By Refiner)

Year	Month	Refiner 1 (\$/gallon)	Refiner 2 (\$/gallon)	Refiner 3 (\$/gallon)
2023	Jan	\$0.85	\$0.68	\$0.56
2023	Feb	\$1.16	\$1.05	\$0.80
2023	Mar	\$1.38	\$1.13	\$0.84
2023	Apr	\$1.11	\$1.06	\$0.76
2023	May	\$1.16	\$1.18	\$0.83
2023	Jun	\$1.30	\$1.20	\$0.90
2023	Jul	\$1.24	\$1.20	\$0.95

Year	Month	Refiner 1 (\$/gallon)	Refiner 2 (\$/gallon)	Refiner 3 (\$/gallon)
2023	Aug	\$1.40	\$1.35	\$1.19
2023	Sept	\$1.64	\$1.50	\$1.30
2023	Oct	\$0.86	\$0.77	\$0.34
2023	Nov	\$0.93	\$0.73	\$0.41
2023	Dec	\$0.83	\$0.60	\$0.25
2024	Jan	\$0.71	\$0.60	\$0.22
2024	Feb	\$0.91	\$0.66	\$0.40
2024	Mar	\$1.20	\$1.08	\$0.78
2024	Apr	\$1.26	\$1.33	\$1.02

*** As reported by California refiners with two or more refineries.** CEC has not assessed whether refiners have properly deducted various costs from their self-reported margins. Data may differ from previously reported. Margins are volume-weighted by the amount of crude oil received by each refinery. Refiner names are removed to protect anonymity.

Please refer to the disclaimer above in the box.

Net Gasoline Refining Margin (By Refiner)

Year	Month	Refiner 1 (\$/gallon)	Refiner 2 (\$/gallon)	Refiner 3 (\$/gallon)
2023	Jun	\$0.40	\$0.27	\$0.26
2023	Jul	\$0.40	\$0.16	\$0.23

Year	Month	Refiner 1 (\$/gallon)	Refiner 2 (\$/gallon)	Refiner 3 (\$/gallon)
2023	Aug	\$0.56	\$0.38	\$0.38
2023	Sept	\$0.69	\$0.42	\$0.58
2023	Oct	\$0.40	-\$0.10	-\$0.33
2023	Nov	\$0.35	-\$0.14	-\$0.13
2023	Dec	\$0.20	-\$0.41	-\$0.36
2024	Jan	\$0.23	-\$0.28	-\$0.44
2024	Feb	\$0.25	-\$0.09	-\$0.20
2024	Mar	\$0.25	\$0.10	\$0.23
2024	Apr	\$0.39	\$0.41	\$0.51

*** As reported by California refiners with two or more refineries.** CEC has not assessed whether refiners have properly deducted various costs from their self-reported margins. Data may differ from previously reported. Margins are volume-weighted by the amount of crude oil received by each refinery. Refiner names are removed to protect anonymity.

The data reported by multiple refiners, and which is reflected in the table above, demonstrate extreme variability that is likely not accurate nor reliable. The CEC is currently developing guidance for refiners to report this statutorily mandated data in an accurate and consistent manner. When accurate information is available, this table will be updated.

Please refer to the disclaimer above in the box.

Aggregated Data Reported - April 2024

Product	Volume (thousand gallons)	Price (\$/gallon)	LCFS (\$/gallon)	Cap and Trade (\$/gallon)
Crude Domestic	678,442	\$2.13	N/A	N/A
Crude Foreign	1,022,999	\$2.19	N/A	N/A
Refined Gasoline Purchases	211,674	\$3.22	N/A	N/A
Unbranded Rack	359,012	\$3.40	\$0.10	\$0.31
Branded Rack	53,548	\$3.64	\$0.10	\$0.31
Bulk	332,980	\$3.27	N/A	N/A
Spot Pipeline	105,794	\$3.27	N/A	N/A
Dealer Tankwagon	316,204	\$3.75	\$0.10	\$0.31

*** Based on data reported by all six California refiners.** Prices are volume-weighted by the product volume reported by each refinery.

Definition of Terms

CONTACT

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Sacramento, CA 95814

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Tanya DeRivi

Senior Director, California Climate and Fuels

October 26, 2023

Cap-and-Trade Workshop
California Air Resources Board
1001 I Street,
Sacramento, CA 95814

Submitted via the Workshop Comment Submittal Form
and by email to ctworkshop@arb.ca.gov

Re: Comments on the CARB Public Workshop: Potential Amendments to the Cap-and-Trade Regulation

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) Public Workshop: Potential Amendments to the Cap-and-Trade Regulation, hosted on October 5, 2023.¹ WSPA is a non-profit trade association that represents companies that import and export, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years.

Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006, sets ambitious greenhouse gas (GHG) emission reduction goals that will continue to position the State as a global leader in green technologies. In carrying out these goals, AB 32 directs CARB to adopt regulations to achieve the maximum technologically feasible GHG emission reductions. However, AB 32 places two key *limits* on CARB's broad authority to regulate emissions: (1) CARB must minimize the leakage potential of the actions taken; and (2) CARB must ensure that the emissions reductions are technologically feasible *and* cost-effective.² CARB should carefully consider these factors in revising the Cap-and-Trade program.

WSPA supports CARB's objective to adopt a 2030 reduction target for the Cap-and-Trade program that can maintain a steady and stable carbon market in California. Market-based approaches like the Cap-and-Trade program will help California make significant progress towards its emissions reduction goals while ensuring that these reductions are cost-effective.

WSPA encourages CARB to integrate carbon-negative technologies into the Cap-and-Trade framework to support their successful development and use. Including carbon capture, utilization, and storage (CCUS) and carbon dioxide removal (CDR) technology within the Cap-and-Trade program will be critical to achieving the State's decarbonization objectives. As CARB emphasized in the 2022 Scoping Plan Update, it will not be possible to meet the 2045 carbon neutrality target without the deployment CCUS and CDR technologies at significant scale. The Scoping Plan set targets for 20 million metric tons of carbon dioxide equivalents (MMTCO₂e) removal and capture by 2030 and 100 MMTCO₂e by 2045. However, deploying CDR and CCUS

¹ CARB. California Public Workshop: Potential Amendments to the Cap-and-Trade Regulation. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf and https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_afternoon_0.pdf. Accessed: October 2023.

² AB 32. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32. Accessed: October 2023.

technologies is currently infeasible at scale due to cost, technology readiness, and permitting barriers that delay even pilot projects. It is therefore imperative that CARB incentivize research and investment to support deployment of CCUS and CDR technologies at the scales required to meet the State's climate goals.

CARB must also ensure that the Cap-and-Trade amendments are consistent with other legislative goals. Senate Bill (SB) X1-2 (2023) directs State agencies to evaluate measures to ensure that petroleum and alternative transportation fuels are adequate, affordable, reliable, and equitable. In updating the Cap-and-Trade Regulation, CARB must consider impacts to gasoline costs consistent with SB X1-2. According to the California Energy Commission, the Cap-and-Trade Regulation and the Low Carbon Fuel Standard (LCFS) together add approximately 39 cents per gallon to the cost of gasoline.³ The natural gas sector recently experienced similar supply constraints during periods of strong demand, challenging suppliers to deliver an adequate supply of affordable liquid fuels. The impacts of these cost increases are likely to be significant for California consumers. California continues to face serious supply constraints for transportation fuels, leading energy affordability to be a pressing priority for many Californians. The legislature recognized the importance of these impacts in enacting SB X1-2. Given these already-significant impacts, it is critical for CARB to ensure that its proposed Cap-and-Trade Regulation amendments do not considerably increase California fuel costs. WSPA is concerned that proposed amendments to the Cap-and-Trade Regulation could further compromise the supply reliability of critical transportation fuels, a consequence of which could increase energy costs and further burden California drivers, conflicting with clear legislative priorities in SB X1-2.

Overall, WSPA encourages CARB to adopt a Cap-and-Trade program that can maintain a steady and stable carbon market in California, while facilitating the continued development of critical carbon-negative technologies and integrating these technologies into the Cap-and-Trade framework. WSPA also supports CARB's proposal to expand biogenic emission exemptions within the Cap-and-Trade program to recognize the growth of biofuels within the State since 2010. However, WSPA strongly opposes CARB's inclusion of 'hypothetical' reductions for 2021-2024 budgets when assessing allocation cap adjustments for 2025-2030. Retrospective or cumulative allowance mechanisms accounting for these 'hypothetical' reductions would lead to unrealistic reduction requirements in allowances allocated to industrial entities and natural gas suppliers through potential Cap Adjustment Factors (CAFs) changes.

³ CEC. 2023. California Oil Refinery Cost Disclosure Act Monthly Report: Aggregated Data Reported. July. Available at: <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/california-oil-refinery-cost-disclosure>. Accessed: October 2023.

Our detailed comments are provided below:

1. CARB should not reduce industrial assistance allocations for 2025-2030 on 'hypothetical' reductions for historical inventories or allowance budgets.

CARB presented three scenarios that would adjust the 2025-2030 annual allowance budgets based on specific GHG reduction targets. These targets are 40%, 48%, or 55% from 1990 levels by 2030. As part of these adjustments, CARB presented hypothetical linear decline scenarios for 2021 to 2030 that estimated allowance reductions that *could have* been achieved beyond the 2016 Cap-and-Trade Regulation, based on information from the 2022 Scoping Plan Update, the updated 2021 GHG Emission Inventory, and recent State climate policy. The proposed 2025-2030 adjustment includes industrial assistance allocations that would decrease based on what could have been achieved under the hypothetical linear decline scenarios. For example, CARB's first scenario, based on a 40% GHG reduction target, would reduce initial 2021 allowances by **11.5 million**. In calculating this proposed allocation adjustment, CARB first determined the total reductions achieved between 2012 and 2015, as reflected by the 2017 and 2022 GHG inventories—13.7 MMTCO₂e— weighted by the level of Cap-and-Trade program participation, based on the percentage of AB 32 emission sources covered by the program—77%, as discussed in its July 27 workshop.⁴ WSPA would caution that 77% of 13.7 MMTCO₂e should be 10.5 MMTCO₂e. CARB then applied this *same* level of reduction to *all* years from 2021 to 2030, based on a supposed 'linear decline.' According to this method, CARB proposed the 'cumulative reduction target' would be 115 million allowances based on actual GHG reductions achieved *beyond* the targeted levels. To help ensure such a substantial reduction adheres to the original AB 32 cost effectiveness requirements, WSPA urges that any allowances removed from the program only be removed from those available in the price ceiling.

However, as WSPA has previously emphasized, adjusting the 2030 emission target based on actual achieved reductions in previous years will severely impact the stability and predictability of the Cap-and-Trade program and harm long-term decarbonization planning efforts. CARB's proposed methodology would create a disincentive for companies to take early action to maximize their GHG emissions reductions and set a concerning precedent that would undermine confidence in the Cap-and-Trade program by retroactively manipulating the allowance market. This is contrary to the existing Cap-and-Trade framework, which recognizes early actions and is built around encouraging companies to undertake longer-term, higher-capital investments that are necessary to achieve the State's carbon neutrality goals. CARB should reconsider this 'cumulative reduction target' method and assure companies that early actions they take will not be used against them to restrict

⁴ CARB. July 27, 2023. California Public Workshop: Potential Amendments to the Cap-and-Trade Regulation. Slide 22. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-07/nc-CapTradeWorkshop_July272023_0.pdf. Accessed: October 2023.

their future activities. The 2030 emission target should be 40% of the 1990 base year (i.e., 199 MMT CO₂e) regardless of the actual GHG inventory values in interim years.

CARB's preferred scenario, based on a reduction target of 48%, creates additional challenges by artificially inflating required reductions well beyond the targets in AB 32. Under the 48% scenario, CARB would require a cumulative reduction of 265 million allowances by 2030, which assumes a 'linear decline' of 26.5 million every year from 2021 to 2030, equivalent to 8% of 1990 base year emissions from all AB 32 covered entities (e.g., 431 MMT CO₂e * 0.77 * 0.08 = 26.5 MMT CO₂e).⁵ CARB would therefore effectively be requiring all covered entities to achieve additional reductions equivalent to 8% of the 1990 base year GHG emissions starting from 2021 in order to meet the 48% reduction goal. However, this level of reduction is inconsistent with CARB's prior findings in the 2022 Scoping Plan Update, where CARB determined that a 48% reduction would be achieved by setting the 2030 budget at 173 million allowances.⁶ Instead, CARB's revised scenario would lower the 2030 budget to 139 million, an additional reduction of nearly 20%. This would place an unnecessary burden upon the California economy to achieve immediate additional emission reductions far greater than the 2022 Scoping Plan Update targets.

For example, all entities that received allowances within the industrial sector would be subject to substantial increases in compliance burdens based on CARB's proposed CAFs incorporating 'hypothetical' cumulative allowance reductions. Under the 2023 Vintage allocations, the total amount of allowances allocated to the industrial sector is approximately 34.6 million.⁷ Using this metric as a baseline and applying the current CAFs, the total allocation (in the aggregate) would decline to approximately 23 million by 2030 under the current Cap-and-Trade program, which represents overall reductions of just over 30%.⁸ However, under CARB's proposed 48% reduction scenario, the allowances to this sector would be cut down to (approximately) 16 million in 2030, a further 30% reduction beyond the current Regulation, which represents a cumulative reduction of approximately 32 million allowances to all entities in the industrial sector between 2025 and 2030.⁹

WSPA urges CARB to revise its methodology for calculating the annual budget and cumulative allowance reductions to eliminate consideration of 'hypothetical' reductions based on actual emissions levels in order to ensure that the Cap-and-Trade program remains consistent with AB 32, AB 398 (2017), and the 2022 Scoping Plan Update.

⁵ CARB. October 5, 2023. Cap-and-Trade Program Workshop: Potential Amendments to the Cap-and-Trade Regulation. Slide 16. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf. Accessed October 2023.

⁶ Ibid.

⁷ CARB. 2022. Cap-and-Trade Program Vintage 2023 Allocation Summary. Available at: <https://ww2.arb.ca.gov/sites/default/files/2022-12/nc-v2023%20Public%20Allocation%20Summary.pdf>. Accessed: October 2023.

⁸ Ramboll calculation based on application of CARB's published CAFs for 2024-2030, and CARB's reported 2023 vintage allocation in the Natural Gas Suppliers sector. Actual allowances are subject to change based on production data.

⁹ Ibid.

2. CARB has not provided stakeholders with information to support a finding that a 55% GHG reduction target compared to 1990 levels is technologically feasible by 2030.

CARB's 55% GHG reduction target scenario is not technologically feasible. In modeling used to support its 2022 Scope Plan Update, CARB found that even a 48% GHG reduction target may not be achievable by 2030. As CARB acknowledged in the July 27th and October 5th workgroup meetings,^{10,11} the Scoping Plan's carbon neutrality target was *only* achievable by relying on a significant amount of mechanical CDR, CCUS, and renewable hydrogen, among other carbon-negative and low-carbon technologies. However, achieving a 48% reduction by 2030 will require significant *additional* reductions that will further depend on these technologies, but at present, these technologies have not been deployed at rates necessary to meet this target. These concerns would only be amplified under a 55% reduction target scenario.

AB 32 requires CARB to consider technological feasibility and cost-effectiveness in regulating GHG emissions. WSPA has expressed concerns on the feasibility of the 55% scenario in previous comment letters.¹² CARB has not provided stakeholders with information to find that a 55% GHG reduction target might be achievable, however, WSPA understands that the Environmental Justice Advisory Committee (EJAC) has requested the 55% scenario be included. If this scenario continues to be included in discussions about the Cap-and-Trade program, CARB must also include modeling of the leakage risks that will result from the reduction when discussing the viability of this scenario.

WSPA continues to urge CARB to consider near-term reductions using readily available technologies, in accordance with AB 32's statutory mandate. CARB must set reduction targets based on achievable limits using these technologies, while facilitating investment in emerging technologies like CDR and CCUS in order to increase the scale at which these technologies can be deployed. Mandating infeasible reductions now will harm these efforts. For similar reasons, CARB must also consider the cost-effectiveness of these reductions in order to comply with AB 32's legislative directive and to encourage investment in CDR and CCUS technologies.

3. CARB should freeze the current allowance caps to allow adequate time to develop and deploy CDR and CCUS technologies.

As detailed above, CARB's proposed methodology for incorporating 'hypothetical' cumulative allowance reductions based on additional reductions achieved in early

¹⁰ CARB. July 27, 2023. California Public Workshop: Potential Amendments to the Cap-and-Trade Regulation. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-07/nc-CapTradeWorkshop_July272023_0.pdf. Accessed: October 2023.

¹¹ CARB. October 5, 2023. Cap-and-Trade Program Workshop: Potential Amendments to the Cap-and-Trade Regulation. Slide 16. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf. Accessed October 2023.

¹² WSPA. 2023. WSPA Comments on 7-27-2023 Cap-and-Trade Workshop. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/5326/WSPA%20Cap-and-Trade%20July%202023%20Workshop%20Comments%208-17-2023.pdf. Accessed: October 2023.

implementation years will significantly reduce the 2025-2030 allowance budgets and will result in a dramatic and rapid reduction of allowances allocated to all industrial facilities, far beyond what was anticipated under the previous rulemaking.

CARB's preferred scenario is based on a 48% reduction target, consistent with recommendations from the 2022 Scoping Plan Update. That Scoping Plan determined that the 2030 GHG reduction target should be accelerated from 40% to 48% in order to meet the AB 1279 (2022) target of 85% below 1990 levels by 2045.¹³ However, the Update recognized that achieving this level of reductions is dependent on the *immediate deployment* of CCUS and CDR technology, 20 MMTCO₂e by 2030 and 100 MMTCO₂e by 2045. While WSPA agrees that CCUS and CDR are absolutely necessary elements to achieve a 48% reduction target, consistent with the 2022 Scoping Plan Update, the feasibility of implementing these technologies at the required scale is still uncertain. No such projects have yet been implemented at scale in the State. CARB's 48% reduction scenario anticipates that nearly 20% of the 265 million cumulative allocation reductions would come from the transportation sector. However, these reductions will not be feasible without the deployment of CCUS and CDR technologies. As discussed in WSPA's comments on the AB 32 Scoping Plan Recirculated Environmental Analysis dated October 24, 2022,¹⁴ deploying these technologies will require the State to make substantial changes to streamline and speed-up permitting for CCUS projects. WSPA urges CARB to take action to incorporate the CCS Protocol into the Cap-and-Trade Regulation in order to incentivize petroleum refineries to participate in CCS projects. The current Cap-and-Trade Regulation allows suppliers of CO₂ to subtract emissions from their compliance obligation through a Board-approved carbon capture and geologic sequestration quantification methodology that ensures that the emissions reductions are real, permanent, quantifiable, verifiable, and enforceable. However, the Regulation also requires the Board-approved quantification methodology to be incorporated into the Regulation before it can be used to reduce a compliance obligation.¹⁵ WSPA requests that CARB incorporate a "quantification methodology" (i.e., a CCS protocol) into the Cap-and-Trade Regulation or remove the requirement for incorporating the Board-approved quantification methodology in the Regulation.

Following the adoption of SB 905 (2022),¹⁶ WSPA recommended that CARB work with the Office of Planning and Research to develop an improved project environmental review under the California Environmental Quality Act (CEQA) to ensure that regulatory

¹³ CARB. 2022. 2022 Scoping Plan Update. Available at: <https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf>. Accessed: October 2023.

¹⁴ WSPA. Comments on the Recirculated Draft Environmental Analysis for the Draft 2022 Scoping Plan Update. October 24, 2022. Available at: <https://www.arb.ca.gov/lists/com-attach/35-sp22-recirc-ea-ws-UzICZlCJAmlKPIAP.pdf>. Accessed: October 2023.

¹⁵ CARB. Cap and Trade Regulation Section 95852 (g). 2018. Available at: https://ww2.arb.ca.gov/sites/default/files/2021-02/ct_reg_unofficial.pdf. Accessed October 2023.

¹⁶ SB 905, Chapter 359, Statutes of 2022, Section 71465(a). Available at: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB905. Accessed: October 2023.

proceedings do not unjustly stall or halt these crucial technologies. Other concerns include (1) the lack of clarity of authority between CARB and its sister agencies regarding permitting of technologies, installation of pipelines, and land use authorities and (2) the prohibition of use of pipelines to transport CO₂ until a federal rulemaking is completed by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), which could take years to finalize. If not addressed, these issues will cause significant delays and interfere with the State's ability to meet near-term reduction targets.

In light of these potential delays and the centrality of CCUS to the proposed Cap-and-Trade targets, along with the concerns raised in the previous points, WSPA recommends that CARB freeze the reduction of allowance caps under the current Cap-and-Trade program until at least one large-scale CCUS project has been successfully implemented. Once it has been demonstrated that CCUS can be deployed in California and a roadmap has been provided for permitting and infrastructure development, CARB could include an assumed rate of CCUS deployment along with other market signals to determine the appropriate rate of statewide GHG reductions. This approach could result in a non-linear reduction, beginning with gradual reductions in the early years and leading to more rapid decreases in the later years of the program when CCUS technologies are readily available.

Including CCUS under the Cap-and-Trade program would incentivize the deployment of CCUS technologies in line with the 2022 Scoping Plan Update's schedule and will still achieve the same overall reductions without jeopardizing industry's ability to meet the reduction targets or penalizing them for regulatory delays outside of their control. This approach would also be more consistent with AB 32's clear directives that CARB consider technical feasibility and cost-effectiveness in promulgating its regulations.

4. CARB's proposed adjustments to the Cap-and-Trade framework will increase fuel costs in California, which is inconsistent with the legislature's directive in SB X1-2.

CARB has taken several recent actions to address emissions from the transportation sector by increasing the number of zero-emission vehicles (ZEVs). For instance, CARB recently finalized its Advanced Clean Cars II and Advanced Clean Fleets regulations requiring significant increases in ZEV sales through 2035 and 2040.^{17,18} However, CARB has acknowledged that internal combustion engine vehicles will continue to operate in California well past 2035, even with CARB's 100% ZEV sales mandates. Reducing transportation emissions therefore requires CARB to continue to consider and address internal combustion engine vehicles and petroleum and alternative transportation fuels.

¹⁷ CARB. 2022. Advanced Clean Cars II. Available at: <https://ww2.arb.ca.gov/rulemaking/2022/advanced-clean-cars-ii>. Accessed: October 2023.

¹⁸ CARB. 2023. Advanced Clean Fleets. Available at: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>. Accessed: October 2023.

SB X1-2 requires State agencies to “ensure that the supply of petroleum and alternative transportation fuels is affordable, reliable, equitable, and adequate.”¹⁹ WSPA has been working diligently with the California Energy Commission (CEC) and CARB as they develop the Transportation Fuels Assessment Report and Transportation Fuels Transition Study to facilitate a transition to a carbon neutral transportation sector. Consistent with SB X1-2, this transition must minimize market volatility and impacts to fuel costs.

As proposed, the combined impacts of the Cap-and-Trade and LCFS programs may significantly increase transportation fuel costs. CARB’s proposed adjustments to the Cap-and-Trade allocation cap starting in 2025 will substantially increase the program compliance cost for the industry, as detailed above, which will likely have adverse impacts to transportation fuel costs for consumers. At the same time, CARB is considering a potential step down of the carbon intensity benchmark in 2025 for its LCFS program, which may range from 2%-5%.²⁰ CARB’s Standardized Regulatory Impact Assessment (SRIA) estimates that the proposed LCFS amendments will increase gasoline and diesel cost in 2025 by \$0.47 and \$ 0.59 per gallon, respectively.²¹

These proposed programmatic updates will exacerbate existing state-wide issues that already impact transportation fuel costs. As of July 2023, California’s motor vehicle fuel excise tax rate has increased to \$0.58/gallon.²² This tax is increased every calendar year based on the California Consumer Price Index (CPI) for inflation. The California Legislative Analyst’s Office (LAO) expects the annual inflation to remain at around 4%,²³ which indicates that the tax rate in July 2025 will increase to approximately \$0.62/gallon. Under this tax rate, consumers will already bear heightened fuel transportation costs that will be substantially increased under CARB’s current Cap-and-Trade and LCFS proposals.

The combined impact of these factors will result in increased fuels costs in 2025, counter to the legislature’s express directive in SB X1-2. CARB must account for cumulative cost impacts when designing and updating the suite of regulations that could impact the transportation fuels industry and all Californians.

¹⁹ SB X1-2. Available at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320241SB2. Accessed: October 2023.

²⁰ CARB. May 23, 2023. LCFS Public Workshop: Auto-Acceleration Mechanism and Step Down Benchmark Considerations. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-05/LCFSPresentation_052223_0.pdf. Accessed: October 2023.

²¹ CARB. September 8, 2023. Low Carbon Fuel Standard 2023 Amendments Standardized Regulatory Impact Assessment (SRIA). Available at: https://ww2.arb.ca.gov/sites/default/files/2023-09/lcfs_sria_2023_0.pdf. Accessed: October 2023.

²² California Department of Tax and Fee Administration (CDTFA). Sales Tax Rates for Fuels. Available at: <https://www.cdtfa.ca.gov/taxes-and-fees/sales-tax-rates-for-fuels.htm>. Accessed: October 2023.

²³ California Legislative Analyst’s Office (LAO). November 2022. The 2023-24 Budget: Considering Inflation’s Effects on State Programs Sales Tax Rates for Fuels. Available at: <https://lao.ca.gov/reports/2022/4647/Inflation-Effects-on-State-Programs-111622.pdf>. Accessed: October 2023.

5. CARB should ensure that any post-2030 reductions targets provide adequate flexibility to encourage large-scale reduction projects.

At the outset, as WSPA has previously explained in its comment letter dated August 17 2023,²⁴ CARB requires legislative authorization to extend the Cap-and-Trade program beyond 2030, which includes the proposed 30.3 million allowance target in 2045.²⁵ WSPA encourages CARB to work with the State Legislature to establish legally defensible post-2030 targets that will send clear market signals for the multi-decade capital investments industries will make to deploy decarbonization technologies.

With respect to post-2030 reduction targets, CARB has proposed two options for determining the 2031-2045 allowance budget: (1) capping 2030 allowance at a value that is consistent with emission reduction target below 1990 levels (i.e., 40%, 48%, and 55%) for the scenario (Emission Target Method); or (2) projecting future budgets from an adjusted 2030 allowance cap that incorporates cumulative achieved emissions reductions (Allowance Budget Method). WSPA strongly encourages CARB to base post-2030 budgets on a 2030 value that is consistent with emission reduction target from 1990 levels. This approach aligns with the statewide net-zero goals. In contrast, projecting future budgets based on CARB's target allowance budget exacerbates existing issues with CARB's proposed 2025-2030 budget adjustment, as explained by WSPA in Comment 1, and is not suitable as the starting point or baseline for the future trajectory.

CARB determined in its 2022 Scoping Plan Update that its 2030 reduction target should be accelerated from 40% to 48% in order to achieve AB 1279's 85% reduction target by 2045.²⁶ A 48% reduction target translates to a Cap-and-Trade budget of 173 million allowances in 2030.²⁷ The Emission Target Method reasonably approximates the long-term Cap-and-Trade allowance trajectory under this scenario. By contrast, the Allowance Budget Method uses a starting budget of 139 million allowances in 2030, which represents a 58% reduction from 1990 levels. However, CARB lacks authority to impose these heightened reduction requirements through 2030, which go well beyond the targets set by AB 32. The Allowance Budget Method would *exacerbate* this issue, significantly increasing the stringency of long-term emissions reduction targets without an adequate legal or technical basis. This Method would reduce 235 million additional allowances as compared to the Emission Target

²⁴ WSPA. 2023. WSPA Comments on 7-27-2023 Cap-and-Trade Workshop. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/5326/WSPA%20Cap-and-Trade%20July%202023%20Workshop%20Comments%208-17-2023.pdf. Accessed: October 2023.

²⁵ CARB. October 5, 2023. Cap-and-Trade Program Workshop: Potential Amendments to the Cap-and-Trade Regulation. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf. Accessed: October 2023.

²⁶ CARB. 2022. 2022 Scoping Plan Update. Available at: <https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf>. Accessed: October 2023.

²⁷ CARB. October 5, 2023. Cap-and-Trade Program Workshop: Potential Amendments to the Cap-and-Trade Regulation. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf. Accessed October 2023.

Method,²⁸ with over two-thirds of these allowance reductions occurring in the first 5 years (i.e., 2031-2036, Table 1).

Both of these Methods also fail to incorporate needed flexibility for industrial facilities to facilitate long-term reduction strategies. This problem is most apparent under the Allowance Budget Method—this Method is based on a trajectory that falsely assumes the long-term feasibility of all short-term compliance methods and fails to recognize the long lead time for investment in sustainable and low-carbon initiatives. Basing post-2030 allowance budgets on this Method will therefore constrain the ability of industry to further invest in large-scale capital projects that are necessary to achieve the long-term emission targets but may not yield immediate reductions.

However, the Emission Target Method suffers from a similar problem. This Method bases post-2030 allowance budgets on a linear reduction trajectory, which assumes a consistent rate of emissions reductions between 2030 and 2045, using the 2030 target as the starting point and 30.3 million allowances in 2045 as the endpoint. However, this Method is oversimplified and does not fully account for the implementation timelines for large-scale carbon reduction programs.

Table 1. Estimated Annual Allowances (million) Under the 48% Scenario²⁹			
Calendar Year	Option #1: Emission Target Method	Option #2: Allowance Budget Method	Cumulative Allowance Difference From 2031
2030 (base year)	172	139	--
2031	163	132	31
2032	153	125	60
2033	144	117	87
2034	135	110	112
2035	125	103	134
2036	116	96	154
2037	106	88	172
2038	97	81	187
2039	87	74	201
2040	78	67	212
2041	68	59	221

²⁸ Ibid

²⁹ Data for the 2030 base year and 2045 end year are from CARB's October 5th Cap-and-Trade Program Workshop. Available at: https://ww2.arb.ca.gov/sites/default/files/2023-10/nc-CapTradeWorkshop_Oct052023_0.pdf. Accessed October 2023. For the middle years, linear interpolation was tabulated by Ramboll based on the method described by CARB in the slides.

Table 1. Estimated Annual Allowances (million) Under the 48% Scenario²⁹			
Calendar Year	Option #1: Emission Target Method	Option #2: Allowance Budget Method	Cumulative Allowance Difference From 2031
2042	59	52	227
2043	49	45	232
2044	40	38	234
2045	30.3	30.3	235
2031-2045 Total	1450	1215	235

WSPA strongly encourages CARB to adjust its post-2030 reduction targets to better facilitate long-term reduction strategies by imposing fewer reductions in earlier years and increasing reductions in later years. This strategy would still allow California to meet its reduction targets, while being more consistent with the long-term planning and significant up-front capital investment necessary to install large-scale emissions controls. Using this approach, CARB would encourage innovation and would facilitate more cost-effective reductions, consistent with the requirements of AB 32.

6. WSPA supports CARB’s proposal to update biogenic emission exemptions in the Cap-and-Trade program to support low-carbon fuel production and use in California.

WSPA encourages CARB to expand the exemptions for biogenic emissions which are essential for continued production of renewable fuels in California, including sustainable aviation fuels and propane.

Exempting biogenic emissions encourages the continued development of low-carbon and carbon-negative technologies. Biogenic feedstocks can be utilized in hard-to-decarbonize and hard-to-electrify sectors. Electrical grid infrastructure upgrades, as addressed in the 2022 Scoping Plan Update, require extended implementation timelines—biogenic fuels are readily available and help secure near-term emissions reductions while these upgrades are implemented. In addition, increased reliance on renewable generation, combined with significant increases in electricity demand due to the electrification of additional sectors of the economy, may create intermittency or reliability challenges—biogenic fuels can help mitigate these risks by providing reliable, consistent power.

Exempting biogenic emissions is consistent with existing State programs seeking to expand carbon reduction potential in natural and working lands. SB 1383 (2016)³⁰ and ongoing

³⁰ Senate Bill 1383. Short-Lived Climate Pollutant Reduction Law. September 19, 2016. Available at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1383. Accessed: June 2023.

forestry management programs³¹ will expand the supply of biogenic feedstocks that can be utilized in hard-to-decarbonize and hard-to-electrify sectors.

CARB should ensure that the biogenic fuel provisions in the Cap-and-Trade program align with existing requirements in the LCFS program and the Mandatory Greenhouse Gas Reporting Regulation (MRR). While both the LCFS and Cap-and-Trade programs regulate the transportation fuel production and use in California, there are inconsistencies among these two programs, including program scope and quantification mechanisms. WSPA recommends that CARB form a separate working group to address changes to the MRR that are necessary for consistent reporting and compliance requirements for biogenic fuels across Cap-and-Trade, LCFS, and MRR. The goal of this alignment should be to support the low-carbon transportation fuel production and use in California.

Thank you for considering our comments. We would welcome the opportunity to discuss these concerns in more detail. If you have any immediate questions, please feel free to contact me at tderivi@wspa.org. We look forward to working with you on these important issues.

Sincerely,



Tanya DeRivi
Senior Director, California Climate and Fuels

³¹ CARB. Draft California 2030 Natural and Working Lands Climate Change Implementation Plan, January 2019. Available at: <https://ww2.arb.ca.gov/sites/default/files/2019-06/draft-nwl-ip-040419.pdf>. Accessed: October 2023.

CA Health & Safety

Code Section 38562

(a)

On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b)

In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1)

Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2)

Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3)

Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4)

Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5)

Consider cost-effectiveness of these regulations.

(6)

Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7)

Minimize the administrative burden of implementing and complying with these regulations.

(8)

Minimize leakage.

(9)

Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c)

In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d)

Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1)

The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2)

For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3)

If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e)

The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities

when adopting the regulations required by this section.

(f)

The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g)

After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

Location:

https://california.public.law/codes/ca_health_and_safety_code_section_38562

Original Source: Section 38562, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&ionNum=38562. (last accessed Aug. 19, 2023).

CA Health & Safety Code Section 38560

The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

Location:

https://california.public.law/codes/ca_health_and_safety_code_section_38560

Original Source: Section 38560, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&ionNum=38560. (last accessed Aug. 19, 2023).

CA Health & Safety

Code Section 38561

(a)

On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b)

The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c)

In making the determinations required by subdivision (b), the state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d)

The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(e)

In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f)

In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g)

The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h)

The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

Location:

https://california.public.law/codes/ca_health_and_safety_code_section_38561

Original Source: Section 38561, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&ionNum=38561. (last accessed Aug. 19, 2023).



Tanya DeRivi

Senior Director, California Climate and Fuels

June 21, 2024

Cap-and-Trade Workshop
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted via the Workshop Comment Submittal Form
and by email to ctworkshop@arb.ca.gov

Re: Comments on the CARB Public Workshop: Potential Amendments to the Cap-and-Trade Regulation

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) Public Workshop: Cap-and-Trade Program Workshop, hosted on May 31, 2024.¹ WSPA is a non-profit trade association that represents companies that import and export, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years.

WSPA supports CARB's objective to adopt a 2030 reduction target for the Cap-and-Trade program that can maintain a steady and stable carbon market in California. It is also important to provide entities with regulatory and legal certainty as these proposed amendments impact auction activities in 2025 and beyond. Market-based approaches like the Cap-and-Trade program will help California make significant progress towards its emissions reduction goals while ensuring that these reductions are more cost-effective. However, WSPA reiterates, as noted in comment letters for previous workshops, that CARB's proposed updates to the Cap-and-Trade program must be consistent with requirements under Assembly Bill (AB) 32, AB 398, and Senate Bill (SB) 32; should integrate carbon-negative technologies; and should limit cost impacts consistent with other legislative programs seeking to mitigate consumer burdens related to petroleum and alternative transportation fuels.

CARB's authority to adopt and implement the Cap-and-Trade program is governed by AB 32, SB 32, and AB 398. AB 32, the California Global Warming Solutions Act of 2006, sets ambitious greenhouse gas (GHG) emission reduction goals that will continue to position the State as a global leader in green technologies. In carrying out these goals, AB 32 directs CARB to adopt regulations to achieve the maximum technologically feasible GHG emission reductions, but places key limits on CARB's broad authority to regulate emissions, requiring CARB to minimize the leakage potential of the actions taken, ensure that the emissions reductions are technologically feasible *and* cost-effective, and ensure that any reductions achieved are real, permanent, quantifiable, verifiable, and enforceable.² SB 32, the California Global Warming Solutions Act of 2016, builds on and expands the requirements in AB 32, but reiterates that reduction measures must be technologically feasible and cost-effective.³ AB 398 (2017) outlines specific requirements for the Cap-and-Trade program through 2030 intended to limit the program's cost impacts for consumers and industry, including a price ceiling, price containment points, and industry assistance factors.⁴ In particular, in setting a price ceiling, CARB must

¹ CARB. Cap-and-Trade Program Workshop. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-05/nc_CapTradeWorkshop_May3124.pdf. Accessed June 2024.

² AB 32. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32. Accessed: June 2024. See Attachment A.

³ *Ibid.*

⁴ California Legislative Information. Assembly Bill No. 398. Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB398. Accessed June 2024. See Attachment A.

consider any adverse impacts on businesses, 2020 tier prices of the allowance price containment reserve, leakage potential, the auction reserve price, and the cost per metric ton of greenhouse gas emissions reductions, among other factors. Therefore, in amending the Cap-and-Trade program, CARB is statutorily bound to carefully consider these factors and to account for these legislative priorities. CARB's analysis to date has failed to appropriately quantify and assess potential consumer impacts or leakage risks under various proposed update scenarios, in violation of CARB's statutory mandate.

CARB has also not taken sufficient action to integrate carbon-negative technologies into the Cap-and-Trade program. WSPA has repeatedly emphasized that CARB must incorporate mechanisms within the Cap-and-Trade program to support the successful development and deployment of carbon dioxide removal (CDR) technology, including carbon capture, utilization, and storage (CCUS). As CARB itself has recognized, these technologies are necessary to achieve the State's decarbonization objectives. In the 2022 Scoping Plan for Achieving Carbon Neutrality, CARB found that it will not be possible to meet the 2045 carbon neutrality target without deploying CDR and CCUS at scale.⁵ Indeed, the 2022 Scoping Plan Update set targets for 20 million metric tons of carbon dioxide equivalents (MMTCO₂e) removal and capture by 2030 and 100 MMTCO₂e by 2045. However, these targets are currently infeasible due to cost and regulatory barriers that delay even pilot projects. To address these barriers, CARB must incentivize research and investment to support deployment of CCUS and CDR technologies at the scales and expedited timelines required to meet the State's climate goals. One potential pathway would be to include CCUS and CDR technologies in the Mandatory GHG Reporting Regulation (MRR) program, which would allow entities to reduce their compliance obligations or generate tradable credits under the Cap-and-Trade program. By doing so, CARB would incentivize long-term investments in these critical technologies while facilitating substantial future emission reductions, consistent with statewide goals. Without incentives, companies may be reluctant to incur the high up-front costs required to develop these technologies. Incorporating such mechanisms into the Cap-and-Trade program will ease existing burdens and increase access to these critical technologies.

CARB has also failed to address potential conflicts between the proposed Cap-and-Trade amendments and other legislative programs seeking to minimize consumer burdens associated with transportation fuels. Senate Bill X1-2 (2023) directs State agencies to evaluate measures to ensure that petroleum and alternative transportation fuels are adequate, affordable, reliable, and equitable. However, according to the California Energy Commission, the existing Cap-and-Trade Regulation and the Low Carbon Fuel Standard (LCFS) together add approximately 42-43 cents per gallon to the cost of gasoline.⁶ As currently proposed, CARB's amendments to the Cap-and-Trade program are likely to increase these already-significant burdens, and potentially conflict with SB X1-2. In particular, WSPA is concerned that the proposed amendments to the Regulation could exacerbate existing impacts by further compromising the supply reliability of critical transportation fuels, leading to increased energy costs and possibly further burdening California drivers. CARB must consider impacts to gasoline costs in updating the Cap-and-Trade Regulation and seek to minimize costs, consistent with SB X1-2's legislative mandate. In enacting SB X1-2, the California legislature recognized the importance of ongoing supply constraints for transportation fuels, leading energy affordability to be a pressing priority for many Californians.

⁵ CARB. 2022 Scoping Plan for Achieving Carbon Neutrality. Available at: <https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf>. Accessed June 2024.

⁶ CEC. 2024. California Oil Refinery Cost Disclosure Act Monthly Report: Aggregated Data Reported. April. Available at: <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/california-oil-refinery-cost-disclosure>. Accessed: June 2024.

In response to the May 31, 2024, workshop, WSPA offers the following comments:

- 1. CARB must provide additional information on its proposed approach to allocations for crude oil extraction, and cannot finalize a new single benchmark without providing additional opportunity for public comment.**

CARB is proposing to apply a “one-product, one-benchmark” approach to industrial allocation that would unify the benchmarks for crude oil extraction using thermal production and non-thermal production. CARB explained at its May 31 workshop that this approach is “technology-agnostic” and could include newly calculated single benchmarks.⁷ While CARB suggested that these principles have underlaid output-based industrial allocation “since program inception,” CARB’s “one-product, one-benchmark” approach is *not* part of the current Cap-and-Trade Regulation, and would require significant public input and development before it could be incorporated into the Cap-and-Trade program. CARB has not provided sufficient information for the public to meaningfully engage with any new single benchmarks developed under this approach. Without information on proposed calculation methods and data sources, CARB cannot meaningfully solicit public feedback in accordance with its statutory requirements.⁸ While WSPA supports CARB’s proposal to delay implementation of a “one-product, one-benchmark” for crude until at least vintage 2031, this delayed implementation cannot cure a deficient public review period where stakeholders have not had access to information necessary to understand and evaluate the method’s validity and impacts.

Based on the limited information provided to date, WSPA offers the following initial suggestions to guide CARB’s proposed development of new single benchmarks for crude oil extraction in accordance with a “one-product, one-benchmark” approach:

First, CARB must ensure that industries can account for GHG reduction benefits from carbon dioxide removal technology, including CCUS, in accordance with SB 905 (2022). In developing benchmarks, CARB must recognize that delays in CCUS and CDR programs have effectively limited the industry’s ability to decarbonize and comply with the more stringent targets under the proposed Cap-and-Trade Regulation amendments. CARB’s progress in developing a CCUS and CDR strategy in accordance with SB 905 has already been delayed. These technologies are expected to account for 40 MMTCO₂e of targeted emission reductions by 2030; however, without a framework to achieve the reductions, these reductions will likely be delayed, which will significantly constrain near-term reductions.

Second, CARB’s proposed “technology agnostic” methodology may be flawed. While WSPA in general supports technology-neutral approaches, in this instance, the methodology neglects technology differences needed for certain processes under a large product category. Before proceeding with this methodology, CARB must, at minimum, consider the specific industrial sectors affected by these proposed benchmark changes and ensure that any changes are equitably applied across all industrial sectors.

The crude oil industrial sector is likely to be particularly harmed by this flawed methodology. CARB claims that “[c]rude oil extraction is not clearly bimodal in practice or in emissions intensity.”⁹ However, there are significant distinctions between different types of crude and

⁷ CARB. Cap-and-Trade Program Workshop. Slide 32. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-05/nc_CapTradeWorkshop_May3124.pdf. Accessed June 2024.

⁸ CA Health & Safety Code § 38561(g). See Attachment A.

⁹ CARB. Cap-and-Trade Program Workshop. Slide 31. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-05/nc_CapTradeWorkshop_May3124.pdf. Accessed June 2024.

crude production processes, and a simple aggregation of all types of oil extraction processes into a single benchmark could potentially harm in-state fuel supplies.¹⁰

- California is the only State to maintain data on the carbon intensity of crude production. By contrast, estimates for out-of-state crude production are not reliable. Carbon intensity calculations for crude imported from many other countries are similarly unreliable due to inaccurate data on the range of production techniques used, the lack of confidence in the accuracy of data reported for specific production techniques, and out-of-date emission factors for production and transportation techniques. As a result, out-of-state data may significantly *underestimate* carbon intensity, putting California crude production at a disadvantage under a single benchmark because of these untrustworthy data and modeling assumptions. If CARB has data supporting the carbon intensity calculations for out-of-state crude production, CARB should release said data to stakeholders sooner than the 45-day package, in a clean and easily digestible format, such that stakeholders can properly review and provide meaningful comments prior to the finalization of the regulatory package.
- A single benchmark would neglect the distinctions between different types of crude oil and crude production processes and deemphasize thermal enhanced recovery techniques. CARB's approach would discourage in-state production, raising concerns about the potential for emissions leakage to out-of-state entities where emissions cannot be accurately measured. Under AB 32, CARB has an obligation to minimize leakage resulting from its regulatory activities.¹¹ Therefore, CARB should conduct a leakage analysis under this proposed update to understand its potential leakage risks, and also account for these leakage impacts in conducting its California Environmental Quality Act analysis.¹²

2. CARB must provide additional information on its proposed approach to allocations for transportation fuel production using a “liquid hydrocarbon fuel” framework.

Under the current Cap-and-Trade program, petroleum refineries receive allocation for the activity of “petroleum refining” using complexity weighted barrel (CWB) as the output metric. CARB is proposing to replace the current CWB metric with a new “liquid hydrocarbon fuel” framework, including developing a liquid hydrocarbon fuel benchmark which facilitates that process 100% petroleum feedstocks, co-process renewable and petroleum feedstocks, and process 100% renewable feedstocks would utilize for direct allocation of Cap-and-Trade allowances to these entities. WSPA supports the need to ensure that industries with leakage risk are provided cost protection through the distribution of allowances as AB 32 identified. Additionally, WSPA recognizes the need to develop additional benchmarks for industrial processes that are new to California – like renewable fuel production – are also afforded cost protection through the distribution of allowances. These needs are critically important to ensure California's decarbonization efforts are done in a cost-effective manner.

The information CARB shared during the May 31 workshop is limited and highly conceptual; without information on proposed calculation methods and data sources, CARB cannot meaningfully solicit public feedback in accordance with its statutory requirements.¹³ Before developing a liquid hydrocarbon fuel framework further, WSPA recommends that CARB

¹⁰ WSPA. 2023. WSPA Comments on 7-27-2023 Cap-and-Trade Workshop. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/5326/WSPA%20Cap-and-Trade%20July%202023%20Workshop%20Comments%208-17-2023.pdf. Accessed: June 2024. See Attachment A.

¹¹ CA Health & Safety Code § 38562(b)(8). See Attachment A.

¹² California Code of Regulations Title 17, § 60004.2. Environmental Impact Analysis. Available at: <https://www.law.cornell.edu/regulations/california/17-CCR-60004.2>. Accessed: June 2024. See Attachment A.

¹³ CA Health & Safety Code § 38561(g). See Attachment A.

provide stakeholders with additional details, such as illustrative examples and calculations to show how this new framework will operate both on a per-entity basis and holistically within the transportation fuels industry. More clarity on the specifics of the new “liquid hydrocarbon fuel” framework, and its underlying calculation methods, will enable industries to better evaluate potential impacts.

Based on the limited information CARB provided, WSPA provides the following initial comments on CARB’s proposed “liquid hydrocarbon fuel” framework:

- WSPA is concerned that CARB’s liquid hydrocarbon fuel framework could create complex and costly impacts for fuel production facilities. There are wide differences in the production of liquid hydrocarbon fuels that include a variety of feedstocks (e.g., light/heavy crudes, vegetable oils, waste oils and fats), different processing configurations (i.e., stand-alone, co-processing), different site configurations, and varying on-site and off-site energy requirements. Petroleum refining, standalone renewable fuel production, and co-processing include different process steps and have distinct energy requirements and GHG intensities.
- CARB must ensure that a single liquid hydrocarbon fuel benchmark provides a similar level of allowances to petroleum refining as if petroleum refineries were still to utilize the CWB. Additionally, CARB must ensure new production processes such as renewable fuels production are provided a similar level of allowances under a single liquid hydrocarbon fuel benchmark than if separate benchmarks for renewable fuel production and co-processing were developed.
- CARB must provide further information on how this new framework will operate both on a per-entity basis and holistically within the transportation fuel industry. The “liquid hydrocarbon fuel” framework needs to include all energy-intensive products produced by a facility. This is because the existing CWB approach does not utilize product production; rather, it uses inputs to specific petroleum refinery process units that may produce different products like natural gas liquids, gasoline, jet fuel, and diesel in a hydrocracker. For this reason, a comprehensive list of products must be included if CARB is to create a combined benchmark. Importantly, even if a products’ combustion emissions are not obligated under the Cap-and-Trade program (e.g., jet fuel, Sustainable Aviation Fuel, exported fuels, etc.) the product must be counted. An example of a list CARB may seek to utilize is the on-site production volumes identified in the Petroleum Refinery Product Data Report, MRR Section 95113(I)(1).
- Given these, WSPA supports CARB’s proposal that the current CWB metric be retained for petroleum refineries through at least vintage 2030 and possibly beyond. WSPA also recommends that the phase-in of any proposed changes be scheduled at the end of the compliance period to support entities’ compliance strategies and true-ups. Additionally, WSPA supports changes to allocation processes established in or prior to the 2018 Cap-and-Trade Regulation amendments be phased in gradually to allow entities sufficient time to adjust and ensure a smoother transition. This approach will help mitigate potential disruptions and provide a more manageable adaptation period for all stakeholders involved.

3. CARB should revise its proposed method for reporting fuel ethanol denaturant to accurately account for emissions from transportation fuels and mitigate undue reporting burdens.

Under the existing Cap-and-Trade program, all ethanol blended in transportation fuels are reported as 100% biogenic ethanol such that all associated CO₂ emissions are exempt under

the Cap-and-Trade program and the MRR. CARB is now proposing a change to this method to report GHG from fuel ethanol as 2.5% fossil denaturant by default.¹⁴ The initial concept for this proposal would include amending the MRR so that the appropriate volume of fossil fuel denaturant from supplied fuel ethanol is counted and removing the exemption for ethanol CO₂ emissions under the Cap-and-Trade program.¹⁵

While WSPA appreciates CARB's proposal to update the reporting method with a default rate that is consistent with Federal limits, WSPA recommends the following updates:

- CARB's proposed default rate of 2.5% is equivalent to the *maximum allowable* level of denaturants under the Federal limits. This approach would likely *overestimate* the GHG emissions from transportation fuels. WSPA encourages CARB to allow for a supplier to choose a standard 2.5%, or an alternative approach that uses verifiable information to demonstrate the amount of denaturant in the supplier's ethanol.
- Otherwise, CARB's proposed default calculation method will make reporting even more challenging and require a shift in protocol to include out-of-state entities.
- CARB's proposed updates will likely double count emissions. Ethanol denaturants have been included in the Low Carbon Fuel Standard's (LCFS) CA-GREET modeling dating back to at least 2015.¹⁶ The proposed changes to the Cap-and-Trade program would unnecessarily double count and double regulate these emissions.
- CARB must ensure that the proposed changes do not affect the current and future exemption status of CO₂e emissions from other biogenic fuels from Cap-and-Trade obligations, including renewable gasoline, renewable propane, to name a few, irrespective of the feedstock used for biogenic fuel production. Exempting biogenic fuels from the Cap-and-Trade program and MRR encourages the continued development of low-carbon and carbon-negative technologies and is also consistent with existing State programs seeking to expand carbon reduction potentials in natural and working lands. Biogenic fuels are sufficiently regulated by the California LCFS program, which addresses emissions from the production and use of biogenic fuels in the transportation sector.¹⁷

4. WSPA reaffirms the need for carbon negative technologies under Cap-and-Trade and MRR to achieve the 2045 target for carbon neutrality under the 2022 Scoping Plan Update.

As WSPA has pointed out in its previous comment letters,^{18,19} CCUS and CDR technologies will be critical to the overall success of the 2022 Scoping Plan Update to achieve carbon neutrality by 2045. Therefore, WSPA recommends that CARB amend the Cap-and-Trade Regulation to include a mechanism for reducing Cap-and Trade compliance obligations based on emissions reductions achieved by CDR technology, including CCUS, and amend the MRR parallelly to include a mechanism for tracking and reporting these emission reductions. Such

¹⁴ CARB. Cap-and-Trade Program Workshop. Slide 40. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-05/nc_CapTradeWorkshop_May3124.pdf. Accessed June 2024.

¹⁵ *Ibid.*

¹⁶ CARB. CA-GREET 2.0 Supplemental Document and Tables of Changes. Page 44. Available at: https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/ca-greet/ca-greet2-suppdoc-060415.pdf?_ga=2.187462315.2097013215.1718233402-591690338.1695900805. Accessed June 2024.

¹⁷ WSPA. WSPA Cap-and-Trade October 2023 Workshop Comments 10-26-2023. 2023. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/6456/WSPA%20Cap-and-Trade%20October%202023%20Workshop%20Comments%2010-26-2023.pdf. Accessed June 2024. See Attachment A.

¹⁸ *Ibid.*

¹⁹ WSPA. WSPA Cap-and-Trade April Workshop Comment Letter 5-8-2024. Available at: https://ww2.arb.ca.gov/system/files/webform/public_comments/10651/WSPA%20Cap-and-Trade%20April%20Workshop%20Comment%20Letter%205-8-2024.pdf. Accessed June 2024. See Attachment A.

a mechanism would provide incentive for companies to take on the long-term, costly investments and implementation uncertainty associated with these technologies, while facilitating substantial emissions reductions in future years. CARB has already established a placeholder for such a concept in California Code Regulations title 17 Section 95852(g), and WSPA encourages CARB to finalize this concept.

WSPA also encourages CARB to utilize existing market-based regulatory programs, such as Cap-and-Trade and MRR, to support a robust CDR program, rather than pursue a parallel—and potentially duplicative—rulemaking process, such as that proposed under SB 308 (2023).²⁰ This new legislation would require CARB to establish a separate CDR market rather than retain flexibility to incorporate CDR rules into the existing Cap-and-Trade framework. The addition of CDR to Cap-and-Trade would provide entities with another tool to achieve the emission reductions necessary to meet the State's climate goals and further develop Cap-and-Trade as an economy-wide emissions reduction program. Creating an additional market when a successful market currently exists would be duplicative and would create an unnecessary compliance obligation secondary to the existing Cap-and-Trade requirements, further burdening emitting entities.

5. WSPA supports the proposed provision for exemption of emergency electricity generation during State of Emergency events and requests that CARB clarify that the provision would apply to all energy generators and provide clear guidance for how the exempted emissions should be measured.

WSPA strongly supports CARB's proposal to exempt emissions from electricity generation during an emergency. This exemption would only apply when the Governor has declared a State of Emergency and the electric grid requires stable electricity supply to prevent outages. WSPA recommends that CARB broaden its exemption to include all regulated entities under the Cap-and-Trade program with capabilities to provide electricity to the California grid. By limiting the exemption to only those facilities that are *not* covered by the Cap-and-Trade program, CARB would restrict California's ability to utilize needed available generation resources in an emergency. Electric grid reliability remains a pressing concern as the State moves toward increased electrification under the 2022 Scoping Plan Update, which will result in significant increases in electricity demand. At the same time, an aging grid, limited infrastructure, and inadequate supply will likely threaten energy security for Californians.

The Governor's Executive Order N-14-22 recognizes the need for grid reliability and energy supply during extreme heat events in California, by temporarily suspending permitting requirements during such emergency conditions. Consistent with this Executive Order, CARB should similarly exempt emergency electric generation from Cap-and-Trade requirements during such periods. CARB should therefore broaden its proposed exemption to align with this executive direction.

As CARB further develops this exemption, it is important that CARB develop a clear accounting methodology for entities to follow during an emergency event that will allow for electricity generators to exempt GHG emissions during the emergency event.

²⁰ California Legislature. 2022. Senate Bill 308, Carbon Dioxide Removal Market Development Act. February 2. Available at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB308. Accessed: June 2024. See Attachment A.

6. WSPA supports the administrative changes outlined for Emission-Intensive, Trade-Exposed electricity allocations.

WSPA agrees with CARB's proposal to transfer responsibility from the California Public Utilities Commission to CARB for providing leakage protection to industrial entities for their electricity-related carbon costs. CARB's administration of that allocation process should also extend to facilities served by publicly owned utilities.

Thank you for considering our comments. We would welcome the opportunity to discuss these concerns in more detail. If you have any immediate questions, please feel free to contact me at tderivi@wspa.org. We look forward to working with you on these important issues.

Sincerely,



Tanya DeRivi
Senior Director, California Climate and Fuels