TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE AB 32 COST OF IMPLEMENTATION FEE REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to California's existing AB 32 Cost of Implementation Fee Regulation (sections 95200-95207, title 17, California Code of Regulations (CCR)), which was developed pursuant to requirements of the California Global Warming Solutions Act of 2006.

DATE: October 20, 2011

TIME: 9:00 a.m.

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

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 20, 2011, and may continue at 8:30 a.m., Friday, October 21, 2011. This item may not be considered until October 21, 2011. Please consult the agenda for the hearing, which will be available at least 10 days before October 20, 2011, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 95201, 95202, 95203, 95204, and 95205, title 17, CCR: the AB 32 Cost of Implementation Fee Regulation (Fee Regulation).

Background:

With the passage of Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 (Health and Safety Code sections 38501-38599), the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California.

AB 32 created a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California, with the overall goal of reducing emissions to 1990 levels by 2020. The administration, implementation, and enforcement of measures to achieve the emissions reductions goals will require a stable and continuing source of funding.

AB 32 authorizes ARB to adopt a schedule of fees to be paid by the sources of GHG emissions.

On May 8, 2009, ARB released the Staff Report: Initial Statement of Reasons for Rulemaking, Proposed AB 32 Cost of Implementation Fee Regulation and Proposed Amendment to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR). At the Board's September 25, 2009, hearing the Board directed the Executive Officer to finalize the AB 32 Cost of Implementation Fee Regulation (Fee Regulation) and the amendments to the MRR. The Executive Officer subsequently adopted these regulations and submitted them to the California Office of Administrative Law (OAL). The regulations were approved by OAL and became legally effective on July 17, 2010.

Information about the Fee Regulation can be found at: http://www.arb.ca.gov/regact/2009/feereg09/feereg09.htm.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

ARB staff is proposing amendments to the Fee Regulation to clarify regulatory language and conform with recent proposed amendments to the MRR that are expected to become legally effective in late 2011. The proposed amendments consist of administrative changes that add, revise, or delete definitions; change or exclude emissions reporting for some entities; clarify provisions that caused confusion in the first year of implementation; and revise applicability to exclude certain very small GHG emitters.

ARB currently expects to propose additional revisions to the MRR, after the publication of this notice. If such revisions are made to the MRR, ARB may propose additional modifications to the Fee Regulation to be consistent with the revisions to the MRR. Any additional modifications to the Fee Regulation would be made available for a 15-day comment period after the October 2011 Board hearing.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that are comparable to this Fee Regulation or proposed amendments to the Fee Regulation.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulation, may be

accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Wednesday, August 31, 2011.

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

Inquiries concerning the substance of the proposed Fee Regulation may be directed to the designated agency contact persons, Mr. Bill Blackburn, Air Pollution Specialist, at (916) 322-7154, or Mr. David Mallory, Manager of the Climate Change Policy Section, at (916) 445-8316.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at: http://www.arb.ca.gov/regact/2011/feereg11/feereg11.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulatory action are presented below. An assessment of the economic impacts of the proposed amendments to the Fee Regulation is included in the ISOR for this regulatory item.

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

The proposed amendments would impose minimal additional costs on some State and local agencies, but not on school districts. One State agency, the California Department of Water Resources, is presently subject to the existing Fee Regulation, and as a result

of the proposed amendments would incur an additional cost that is estimated to be less than $100.

The Executive Officer has determined that the proposed regulatory action will create savings to some local agencies. Five local agencies, presently subject to the Fee Regulation, are very small GHG emitters and would no longer be required to pay fees after adoption of the proposed amendments. The remaining local agencies that serve as retail providers and marketers of imported electricity and are currently subject to the existing Fee Regulation, 44 in total, would collectively pay additional fees that are estimated to be less than $1500 as a result of the proposed amendments.

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

The proposed amendments to the Fee Regulation are technical amendments to conform with amendments made to the MRR and do not significantly modify the scope of the current Fee Regulation. In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The proposed amendments will not result in a net change to the revenue collected under the fee regulation. Approximately 20 to 25 current fee payers would no longer be required to report emissions through the MRR, and therefore would no longer be required to pay under the fee regulation. An estimated $26,000 (based on 2008 reported emissions) would be distributed among the approximately 131 remaining public and private fee payers. Affected businesses should be able to absorb the increased cost without incurring a significant adverse economic impact. The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined that, pursuant to title 1, CCR, section 4, the proposed regulatory action would not affect small businesses. The businesses affected by the proposed amended regulation include petroleum producers, natural gas producers, and other similar businesses which are excluded from the Administrative Procedure Act "small business" definition found in Government Code section

11342.610. In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the Fee Regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

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

SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the meeting, and comments may be submitted by postal mail or electronic submittal before the meeting. The public comment period for this regulatory item will begin on September 3, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after September 3, 2011, and received **no later than 12:00 noon on October 19, 2011**, and must be addressed to the following:

Postal Mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

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

New Feature

You can now sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: http://www.arb.ca.gov/board/online-signup.htm.

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

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board Members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification to the proposed regulatory action.

Additionally, the Board requests, but does not require, that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

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

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

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

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma;

- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene
Executive Officer

Date: August 23, 2011

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov