

ATTACHMENT A TO RESOLUTION 13-44
Cap-and-Trade Regulation
Topics Subject to Potential 15-day Changes

Introduction

This document presents an overview of the main topics ARB staff is proposing for further public consideration as part of a subsequent 15-day comment period. This list is not exhaustive and does not include minor technical changes that may be proposed. Staff will continue to coordinate with stakeholders in the development of the regulatory text. This list in no way limits ARB's authority to make other changes to the proposed regulatory amendments, consistent with the requirements of California law.

Legacy Contracts

The modified staff proposal is to extend transition assistance for legacy contracts through the second compliance period instead of ending after 2014. This is consistent with the staff proposal to extend industry transition assistance for the first compliance period through the second compliance period. A more detailed discussion is available at: <http://www.arb.ca.gov/cc/capandtrade/legacy-contract-proposal.pdf>

New 15-day Proposed Changes and Modified Product Benchmarks and Allowance Allocation

The current regulation includes 28 product benchmarks in 18 different industries. The proposed changes include modifications to product benchmarks in seven sectors, not including refinery products, and additional benchmarks for 17 industries. Many of these benchmarks are still in development awaiting additional industry data. Sectors that will have modifications during the 15-day rulemaking are tomato, chicken, dehydrated flavors, dairy, pistachio, almond, snack chips, juice and spirits, lead, and aluminum manufacturing.

In the 15-day proposal, staff will also make clarifications in the event of a negative true-up during allowance allocation. This event occurs when a covered entity that is eligible to receive true-up allowances decreases their production substantially in a very short period of time such that the true-up allocation would exceed the amount of allowances for which it was eligible.

Refinery Allocation Methodology

In the 15-day changes, staff will propose the following:

CWT to CWB: ARB staff will propose to change the unit for refinery allowance allocation under the cap-and-trade regulation from carbon dioxide weighted tonnes (CWT) to complexity-weighted barrels (CWB). The benchmark for CWB would be calculated using survey data for 2008 and 2010 CWB and MRR data for 2008 and 2010 refinery emissions.

Electricity and Steam: ARB staff proposes no regulatory changes relating to the use of electricity and steam at refineries. However, when calculating the benchmarks, staff proposes to consider electricity and steam use in a way similar to other sectors. That is, greenhouse gas emissions from electricity sold or purchased by refineries will no longer be included in the benchmark, and emissions from net steam consumption would be included in the benchmark. Staff considered an alternative method proposed by industry stakeholders but found it unnecessarily complex and inconsistent with the approach used in other sectors.

Atypical and Typical Benchmarks: Staff proposes to consider typical and atypical refineries separately for the purposes of CWB benchmarking and CWB-based allowance allocation. That is, a benchmark of greenhouse gas emissions per CWB would be calculated for both typical and atypical refineries. "Atypical" refineries would be defined as those which have fewer than twelve process units under CWB definitions and less than 20 million barrels of crude throughput through their atmospheric distillers per year. All refineries which are not "atypical" are by definition "typical." For the purposes of these definitions, refinery facilities which operate jointly will be considered as a single "refinery" for use in determining the appropriate benchmark to be used for allocation.

Hydrogen: Staff proposes that hydrogen production will be considered separately from CWB. In order to provide consistent and equitable incentives for on and offsite hydrogen plants, one benchmark will be calculated for hydrogen production and used to allocate to all facilities which deliberately produce hydrogen, regardless of whether they are refineries or independent hydrogen producers. Current staff thinking is for this benchmark to be based on MRR data from merchant hydrogen plants, because it is the data source most reliably identifying both emissions and product data relating to hydrogen. Staff will continue to work with stakeholders on this issue.

Calcining: Staff propose to allocate allowances for on and offsite calciners using a benchmark calculated using ARB's standard methods and 2008, 2009 and 2010 data, rather than considering calcining within CWB. This benchmark is expected to be significantly higher than the current benchmark.

Additional Issues: Staff held a workshop on October 7, 2013 to discuss refinery allocation related to CWB and has received feedback on these proposals. Staff will continue to work with stakeholders to define jointly operated refineries, consider alternatives for hydrogen benchmarks that still create a level playing field for both on and off site hydrogen, and finalize benchmark values. More information on the refinery workshop is available at: <http://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm>

Exemption for “But-for” CHP Facilities

The 45-day proposal currently exempts “but for” CHP facilities through 2014. Staff proposes to exempt “but-for” CHP facilities entirely and clarify that the compliance obligation for these entities will be accounted for upstream at the natural gas distribution utilities starting in 2015.

Public Wholesale Water Agencies

Staff proposes to evaluate additional data and adjust allocation related to direct emissions, as needed.

Local Distribution Companies

Staff proposes to make a minor modification to clarify that only emissions that occur along the natural gas transmission and distribution networks are exempt when calculating a local distribution company's compliance obligation.

Reporting Requirements to Support Market Oversight

Staff proposed several amendments in the ISOR to better understand which individuals have access to carbon market related data within a registered entity or as a contractor, which registration data must remain static prior to an auction, and disclosures related to previous or ongoing investigation by a regulatory authority. Together, these amendments are intended to support market oversight and ensure ARB and the market monitor understand all points of potential information sharing that could result in collusion or market manipulation. The auction registration requirements are essential to implement a fair and competitive auction where all auction participants are known and company restructuring does not impact ARB's ability to settle the auction. ARB will continue to work with stakeholders to refine the regulatory language in 15-day changes as described below.

Registered Entity Employees and Contractors: Staff will work with stakeholders to clearly define which company individuals must be disclosed as part of tracking system registration. Stakeholders have raised concerns related to how broadly this requirement could apply to employees within the registered entity. Staff will strive to limit the employee disclosure to only those individuals whose job duties require them to have access to tracking system account information, compliance instrument procurement, or emissions obligations.

Stakeholders have also expressed concern that the amendments related to contractor disclosure are too broad and may require disclosure of attorneys, which may require waiving attorney-client privilege. It is not staff's intent to interfere in attorney-client privilege and staff will coordinate with stakeholders to craft regulatory language to limit this disclosure requirement to contractors that have access to tracking system account information, compliance instrument procurement, and emissions obligations.

Auction Registration Information: Stakeholders have expressed concerns related to the amount of registration information provided to ARB in the Compliance Instrument Tracking System Service (CITSS) that must remain static prior to and after each auction in order to be eligible to participate at auction. Staff will work with stakeholders, the market monitor, and the auction administrator to identify the subset of critical data that must remain constant from the time of auction registration until the auction is settled in order to ensure a fair and competitive auction for all participants. Staff will also make clarifications that any disclosure of previous or ongoing investigation by a regulatory agency does not in itself prohibit an entity from participating in the auction.

Market Rules: Staff proposed 45-day modifications to the information reporting requirements when compliance instruments (i.e., allowances and offsets) are transferred from one entity to another in CITSS. These requirements are necessary to monitor the secondary trading market and provide accurate information for public reports for program transparency. Stakeholders have expressed concerns that these amendments may unintentionally prohibit certain types of contracts that are commonly used in market trades. Staff will continue to work with stakeholders, the Commodities and Futures Trading Commission (CFTC), the State Attorney General's Office, the market monitor, and others as needed to ensure the regulatory requirements do not unnecessarily prohibit contracts such as forwards or other commonly used secondary market trades while ensuring sufficient information is provided to ARB for the purposes of market oversight.