State of California
AIR RESOURCES BOARD

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE COST OF IMPLEMENTATION FEE REGULATION

Resolution 14-33

September 18, 2014

Agenda Item No.: 14-7-7

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature enacted the California Global Warming Solutions Act of 2006 (AB 32, Statutes of 2006, Chapter 488; Health and Safety Code section 38500 et seq.) that declares global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California;

WHEREAS, AB 32 charges the Air Resources Board (ARB or Board) with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases (Health and Safety Code section 38510);

WHEREAS, section 38597 of the Health and Safety Code authorized ARB to adopt by regulation a schedule of fees to be paid by the sources of greenhouse gas emissions, that the fee be adopted consistent with certain requirements of section 57001 of the Health and Safety Code, and that the fees would be deposited into the Air Pollution Control Fund and would be available, upon appropriation by the Legislature, for purposes of carrying out AB 32;

WHEREAS, the Board, determining that the fee would serve these purposes and was necessary and appropriate considering its statutory authorities, approved for adoption the AB 32 Cost of Implementation Fee Regulation (title 17, California Code of Regulations, section 95200 et seq.) (Fee Regulation) on September 25, 2009;

WHEREAS, the revenues from the Fee Regulation support AB 32 program implementation activities undertaken by ARB, Cal/EPA and other State agencies that have positions approved by the Legislature, and other specific costs that are directly linked to AB 32;

WHEREAS, staff has proposed amendments to the adopted Cost of Implementation Fee Regulation, as set forth in Appendix A to the Initial State of Reasons released to the public on July 29, 2014;

WHEREAS, the proposed amendments are intended to conform the Fee Regulation with the proposed amendments to ARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR);

WHEREAS, the amendments proposed here would modify the emissions applicability threshold from metric tons of carbon dioxide ($MTCO_2$) to metric tons of carbon dioxide equivalents ($MTCO_2e$);

WHEREAS, the proposed amendments would implement thresholds for natural gas suppliers and transportation fuel producers and importers with emissions that equal or exceed 25,000 $MTCO_2e$, consistent with MRR verification requirements;

WHEREAS, the proposed amendments would also modify the municipal solid waste (MSW) provisions to assess fees on the emissions from the combustion of non-biogenic MSW;

WHEREAS, the proposed amendments also include various modifications and clarifications to the existing regulatory language, including modifications to several definitions and changes to improve clarity and conform the regulation with the proposed amendments to the MRR and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation);

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and ARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter IV of the Staff Report;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

The proposed amendments are authorized by California law and satisfy the requirements of Health and Safety Code section 38597;

The economic impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The proposed amendments are consistent with ARB's environmental justice policies and equally benefit residents of any race, culture, or income;

The reporting requirements of the proposed amendments which apply to businesses are necessary for the health, safety, and welfare of the people of the State; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the amendments are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed amendments.

WHEREAS, the Board further finds that:

The proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment; and

The proposed amendments are consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption sections 95201, 95202, 95203, and 95204, Title 17 California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make the modified regulatory language in Attachment B, and any additional conforming modifications that are appropriate, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate modifications.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by ARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

I hereby certify that the above is a true and correct copy of Resolution 14-33 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 14-33

September 18, 2014

Identification of Attachments to the Board Resolution

Attachment A: Proposed Modifications to the Cost of Implementation Fee Regulation, California Code of Regulations, title 17, sections 95201, 95202, 95203, and 95204, as set forth in Appendix A to the Initial Statement of Reasons, released July 29, 2014.

Attachment B: Staff's Suggested Modifications to the Original Proposal (Distributed at the September 18, 2014 ARB hearing)

Attachment B to Resolution 14-33

Staff's Suggested Modifications to the Cost of Implementation Fee Regulation (Distributed at the September 18, 2014 Board Hearing)

This attachment shows the modifications to the originally proposed regulatory language. The originally proposed regulatory language is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The suggested modifications to the proposed regulation are shown in double underline to indicate additions and ~~double strikeout~~ to indicate deletions. "[No Change]" indicates that the regulatory language not being amended is not shown.

Shown below are only those portions of the originally proposed regulation that have been modified. Additional changes are also described and modified regulatory language will be developed by staff as described, and the modified language will be made available to the public for a fifteen-day comment period prior to final adoption.

Amend article 3, sections 95201, 95202, 95203 and 95204, title 17, California Code of Regulations to read as follows:

Article 3: Fees

Subarticle 1: AB 32 Cost of Implementation Fee Regulation

§ 95201. Applicability.

(a) – (b) [No Change]

(c) This subarticle does not apply to any of the following fuels, or to emissions resulting from combustion of any of the following fuels.

(1) biodiesel (~~B100~~≥99%);
(2) renewable diesel (~~R100~~≥99%);
(3) biomass;
(4) biogas; or
(5) biogenic emissions from municipal solid waste.

(d) [No Change]

NOTE: Authority: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.
Reference: Sections 38501, 38505 and 39600, Health and Safety Code.

§ 95202. Definitions.

(a) For the purposes of this subarticle, the following definitions shall apply:

(1) – (110) [No Change]

(~~108~~ 111) "Petroleum coke ~~(Fee Regulation only)~~" means a black solid residue, ~~high in carbon content and low in hydrogen that is the final product of thermal decomposition in the condensation process in cracking~~ obtained mainly by cracking and carbonizing of petroleum derived feedstocks, vacuum bottoms, tar and pitches in processes such as delayed coking or fluid coking. It consists mainly of carbon (90 to 95 percent), has low ash content, and may be used as a feedstock in coke ovens. This product is also known as marketable coke ~~or catalyst coke~~.

(112) – (144) [No Change]

NOTE: Authority cited: Section 38510, 38597, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 39600 and 39601, Health and Safety Code.

§ 95203. Calculation of Fees.

(a) – (c) [No Change]

(d) *Fuel Emission Factors.*

For entities reporting pursuant to section 95204(d)(1), (d)(2), (d)(3), ~~(d)(4), (d)(5), (e),~~ (f)(1), ~~and~~ (f)(2), and (f)(3), the Executive Officer shall calculate the Common Carbon Cost and the Fuel fee rates using the ~~following~~ emissions factors~~:~~ pursuant to the Mandatory Reporting Regulation. For entities reporting pursuant to 95204(e) the Executive Officer shall calculate the emission factors using an arithmetic average of fuel grades taken from column C of 40 CFR 98 Table MM-1. For entities reporting pursuant to 95204(h), the Executive Officer shall calculate the Common Carbon Cost and fuel fee rates using the default clinker emission factor provided in the latest ARB GHG inventory, unless the entity reports a facility-specific clinker emission factor.

[No change]

(e) – (m) [No Change]

NOTE: Authority cited: Sections 38510, 38597, 39600 and 39601, Health and Safety Code.
Reference: 38501, 38510, 38597, 39600 and 39601, Health and Safety Code.

§ 95204. Reporting and Recordkeeping Requirements.

(a) [No Change]

(b) ~~*All reporting entities subject to this subarticle must report the following*~~

~~(1) Report Information:~~
~~(A) Report year~~
~~(B) Facility information~~
~~1. Official responsible for payment~~
~~2. Facility name~~
~~3. Physical address~~
~~4. Mailing address~~
~~5. Billing address~~
~~6. Description of facility geographic location~~

~~(C) Electricity Importer and fuel supplier Information:~~
~~1. Entity name~~
~~2. Email address~~
~~3. Telephone number~~
~~4. Official responsible for payment~~
~~5. Mailing address~~
~~6. Billing address~~

(~~2~~) Entity Statement of Truth, Accuracy and Completeness.

~~Entity signature and date stating: *This report has been prepared in accordance with the AB 32 Cost of Implementation Fee Regulation (subchapter 10, article 3, subarticle 1, sections 95200 to 95207, title 17, California Code of Regulations). The statements and information contained in this emissions data report are true, accurate and complete.*~~ All entities subject to this subarticle are required to certify reports pursuant to the requirements of Section 95104 of the Mandatory Reporting Regulation.

(c) – (h) [No Change]

(i) *Records Retention.*

Entities subject to this subarticle must maintain copies of the information reported pursuant to ~~this subarticle~~ the applicable sections of the Mandatory Reporting Regulation ~~and provide them to an authorized representative of ARB within five business days upon request~~. Records must be kept at a location within the State of California for five years.

NOTE: Authority cited: Sections 38510, 38597, 39600 and 39601, Health and Safety Code. Reference: 38501, 38510, 38597, 39600 and 39601, Health and Safety Code.

In addition to the changes above, in Section 95203(e), staff may modify the Transmission loss correction factor (TL) to conform with potential amendments to the TL in the Mandatory Reporting Regulation.