State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information

PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS REGULATION, INCLUDING COMPLIANCE OFFSET PROTOCOLS

Public Hearing Date: December 16, 2010
First Public Availability Dates: July 25, 2011- August 11, 2011
Second Public Availability Release Date: September 12, 2011
Deadline for Second Public Comment Period: September 27, 2011

At its December 16, 2010 public hearing, the Air Resources Board (ARB or Board) endorsed the proposed finalization of sections 95800 to 96023, title 17, California Code of Regulations (CCR). These sections comprise the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (cap-and-trade program).

At the hearing, the Board considered the California cap-and-trade program Initial Statement of Reasons Staff Report released on October 28, 2010, and adopted Resolution 10-42 directing several modifications proposed by staff. The Board did not endorse the regulation as written and advised staff that the additional changes were necessary. As a result, on July 25, 2011, the first Notice of Public Availability of Modified Text and Availability of Additional Documents (1st 15-Day Change Notice) was issued. The public comment period for the 1st 15-Day Change Notice ended August 11, 2011.

Additional modifications to the regulatory text are being proposed in this Second Notice of Public Availability of Modified Text and Additional Documents and Information (2nd 15-Day Change Notice). These additional modifications address comments ARB staff received in the first 15-day Change Notice and are the result of additional staff analysis and stakeholder engagement. The text of the modified regulatory language is shown in Attachment 1. The originally proposed regulatory language is shown in plain text. The proposed modifications released on July 25, 2011 are shown in ~~strikethrough~~ to indicate deletions and <u>underline</u> to indicate additions. New deletions and additions to the proposed language that are made public with this 2nd 15-Day Change Notice are shown in ~~double strikethrough~~ and <u>double underline</u> format, respectively.

In the Final Statement of Reasons, staff will respond to comments received on the record during the initial 45-day comment period, comments presented at the December 16, 2010 Board hearing both orally and in writing, comments received

during the first 15-day Change Notice released July 25, 2011 and this second 15-day Change Notice. The Administrative Procedure Act only requires that staff respond to changes that are noticed. Therefore, staff will not address comments that are not responsive to this notice, the changes detailed in Attachment 1, or the description of refinery allowance allocation detailed in Appendix A.

Resolution 10-42 and other regulatory documents for this rulemaking action are available online at the cap-and-trade website referenced here:

http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm

The Board is scheduled to consider the proposed regulations for final approval on October 20, 2011. As part of finalizing the regulation, the Board will consider the related environmental analysis and written responses to environmental comments. The finalized regulation must be filed with the California Office of Administrative Law (OAL) by October 28, 2011.

Summary of Proposed Modifications

All references to sections 95800, 95801, 95802, 95810, 95811, 95812, 95813, 95814, 95820, 95821, 95830, 95831, 95832, 95833, 95834, 95840, 95841, 95841.1, 95850, 95851, 95852, 95852.1, 95852.1.1, 95852.2, 95853, 95854, 95855, 95856, 95857, 95858, 95870, 95890, 95891, 95892, 95893, 95910, 95911, 95912, 95913, 95914, 95920, 95921, 95922, 95940, 95941, 95942, 95943, 95970, 95971, 95972, 95973, 95974, 95975, 95976, 95977, 95977.1, 95977.2, 95978, 95979, 95980, 95980.1, 95981, 95981.1, 95982, 95983, 95984, 95985, 95986, 95987, 95988, 95990, 95991, 95992, 95993, 95994, 95995, 95996, 95997, 96010, 96011, 96012, 96013, 96014, 96020, 96021, 96022, and 96023 are to title 17, CCR. The following summary does not include modifications to correct typographical or grammatical errors or changes in numbering or formatting; nor does it include all of the non-substantive revisions made to improve clarity. For a complete account of all modifications in the proposed regulations, please refer to the double underline and double strikeout sections in the Attachment 1.

A. Modifications section 95801. Purpose.

No substantive changes were made to this section.

B. Modifications to section 95802. Definitions.

Definitions were added to support allowance allocation including “carbon dioxide weighted tonne,” “Solomon energy intensity index,” “Solomon Energy Review,” and “enhanced oil recovery”.

Section 95802(a)(273) was added to define tissue products in general including tissue products manufactured using through air drying technology. The definition for “through air dried tissue,” previously in section 95802(a)(265), has been removed.

Section 95802 was modified to more closely align with the federal greenhouse gas (GHG) reporting regulation’s definition of carbon dioxide supplier. In addition, this section was modified to clarify that the source category is focused on upstream supply and it does not include the listed activities and uses. Carbon dioxide used in carbon capture and geologic sequestration (CCGS) and carbon dioxide-enhanced oil recovery (CO_2-EOR) is excluded from the Cap-and-Trade Regulation in a different way from how the federal GHG reporting regulation excludes it. Whereas the federal reporting regulation contains separate reporting categories for carbon dioxide suppliers, CCGS, and CO_2-EOR, ARB does not yet include these reporting categories within our Mandatory Reporting Regulation (MRR), though we signal in section 95852(g) that these activities and uses will be excluded from a compliance obligation through a to-be-developed quantification methodology.

Many of the modified definitions are necessary to clarify the “first deliverer” approach for the electricity sector, accommodate the inclusion of the calculation of a compliance obligation for this sector, and respond to stakeholder comments. Modifications were made to the definitions of “electricity importer,” “direct delivery,” “imported electricity,” “purchasing-selling-entity,” “qualified export “marketer,” “resource shuffling,” and “specified source of electricity.” These changes were made to either clarify staff intent in response to stakeholder comment or to conform to changes in section 95852. A new definition of “California balancing authority” was added to accommodate clarifications made. The term “eligible renewable resource” was added, and the terms “variable renewable resource” and “replacement electricity” were deleted to reflect changes made to account for RPS-eligible electricity imports. Several other definitions were modified to improve clarity.

Modification to the term “voluntary renewable electricity” was needed to correct a typographical error. Changes were also made to respond to stakeholder comments to clarify that the definition also applies to the electricity underlying the renewable energy credit (REC), and to strengthen the definition to prevent double counting of the electricity.

The term “voluntary renewable electricity aggregator” was modified to accommodate changes made in section 95841.1.

Section 95802 was modified to include clarified definitions for terms used in revised section 95834 which contains the procedure governing beneficial holdings relationships. Definitions were modified for “Agent,” “Beneficial

Holding," and "Principal" to clarify the roles of the participants in beneficial holding relationships.

Several definitions relating to how compliance instruments are handled in accounts were modified for clarity. These include "Issue," "Hold," and "Retire." Finally, the definition of the term "Proceeds" was modified to reflect that proceeds will also result from sales from the Allowance Price Containment Reserve.

C. Modifications to section 95810. Covered Gases.

No substantive changes were made to this section.

D. Modifications to section 95811. Covered Entities.

Section 95811(a)(8) was modified to clarify that oil and natural gas systems be referred to as petroleum and natural gas systems in order to harmonize with MRR.

Section 95811(e)(3) was clarified to identify that the term "consignee" is defined in the MRR. To avoid confusion and the potential for inadvertent non-compliance, the MRR regulation includes a clear definition of this term.

E. Modifications to section 95812. Inclusion Thresholds for Covered Entities.

Modifications were made to section 95812(c)(2)(B) in response to stakeholder comments. Modifications were made to clarify the applicability is based on the electricity importer's sources of delivered electricity, including how this applies to specified and unspecified sources of electricity.

Section 95812(c)(2)(C) was deleted because this section was no longer necessary due to the modification made in 95812(c)(2)(B).

Section 95812(c)(3) was modified to more clearly describe the threshold for CO_2 suppliers. The changes clearly state which sources of CO_2 must be included when assessing the total CO_2 for comparison against the threshold for applicability for the cap-and-trade program.

F. Modifications to section 95813. Opt-In Covered Entities.

No substantive changes were made to this section.

G. Modifications to section 95814. Voluntarily Associated Entities and Other Registered Participants.

No substantive changes were made to this section.

H. Modifications to section 95820. Compliance Instruments Issued by the Air Resources Board.

No substantive changes were made to this section.

I. Modifications to section 95821. Compliance Instruments Issued by Approved Programs.

No substantive changes were made to this section.

J. Modifications to section 95830. Registration with ARB.

Section 95830(b) was modified to consolidate several requirements concerning eligibility and restrictions into one place for clarity. New section 95830(b)(1) clarifies that entities must qualify to participate in the cap and trade system pursuant to 95811, 95813, or 95814 prior to registering. New section 95830(b)(2) replaces and clarifies a requirement previously contained in section 95831(a)(1) that an entity cannot apply for more than one registration. New section 95830(b)(3) replaces the original text of section 95830(b). Staff consolidated the requirements in the same section in order to clarify the sequence of qualifying for participation, registration, and holding compliance instruments. These modifications also address stakeholder comments indicating confusion over the requirement that each entity registers once and has only one set of accounts.

K. Modifications to section 95831. Account Types.

Section 95831(a)(1) was modified to clarify that each registered entity will have no more than one holding account, compliance account, limited use holding account, or exchange clearing holding account. The existing requirement was vague, stating only that each registered entity could gain approval for a “set” of accounts.

New section 95831(a)(4)(C) was added to clarify that the Executive Officer may transfer allowances into an account, or out of an account for surrender compliance, or when closing an account.

New section 95831(b)(2)(D) was added to be consistent with a change in section 95857(d)(1) in the first 15-day Change Notice that redirects three of the allowances submitted to fulfill an untimely surrender obligation be placed in the auction holding account.

Section 95831(b)(4) was modified to reflect a decision to direct allowances to the auction holding account rather than the Allowance Price Containment Reserve (Reserve). Existing section 95831(b)(4)(A) was eliminated due to the change in section 95911(b)(4) that allowances remaining unsold when an auction settlement price equals the auction reserve price will be returned to the auction holding account for two consecutive auctions rather than go to the Reserve.

Existing section 95831(b)(4)(B) was then renumbered as section 95831(b)(4)(A). Existing section 95831(b)(4)(C) was eliminated due to the revisions to section 95857(d)(1) that redirects three of the allowances submitted to fulfill an untimely surrender obligation to the auction holding account, not to the Reserve as specified in the existing text. Section 95831(b)(4)(D) was then renumbered as section 95831(b)(4)(B).

Staff agreed to make the changes after stakeholders commented that having unsold allowances placed in the Reserve would unnecessarily reduce the supply of allowances to the market.

New section 95831(c) was added to explain the procedure for closing accounts in the tracking system. New section 95831(c)(1) explains that the Executive Officer will close an entity's accounts when the entity has informed ARB that it has ceased operations, pursuant to section 95101(h). New section 95831(c)(2) creates a provision to close inactive accounts held by voluntarily associated entities on the tracking system. If these entities do not transfer allowances into or out of their accounts during a three-year period then their accounts may be closed. This requirement is being added to ensure that the tracking system does not have to track too many dormant accounts, and so that only entities seeking to actively participate in the cap-and-trade system will register.

New section 95831(c)(3) was added to explain the procedure for dealing with accounts closed by the Executive Officer. Any compliance instruments remaining in the account that are not needed to fulfill a compliance obligation will be consigned to the auction pursuant to section 95910(d) on behalf of the registered entity.

L. Modifications to section 95832. Designation of Authorized Account Representative.

No substantive changes were made to this section.

M. Modifications to section 95833. Disclosure of Direct and Indirect Corporate Associations.

Several changes were made to the criteria determining a direct corporate association in section 95833(a)(1). These changes are intended to make the criteria for direct corporate association apply only to instances where one entity has clear control over another. Staff is proposing this change so that the imposition of joint holding and purchase limits applies only to cases where control is clear.

Section 95833(a)(1)(A) was modified so that a direct corporate association exists only when an entity holds more than 50 percent (changed from 20 percent) of any of three measures of share ownership. Section 95833(a)(1)(B) was modified so that a direct corporate association exists only when an entity holds or can appoint more than 50 percent of another entity's board of directors. Section

95833(a)(1)(C) was modified so that a direct corporate association exists only when an entity holds more than 50 percent of the voting power of another entity. Existing section 95833(a)(1)(D) was eliminated because staff agreed with stakeholder comments that the provision was too vague. Staff is proposing the changes because the previous threshold of 20 percent would have included entities without effective control over affiliates.

Section 95833(a)(2) was modified to require that two entities registered into the cap and trade system that share a common parent not registered into the system have a direct corporate association. Staff is proposing this change to account for cases in which two registered entities are sister corporations by virtue of having a common unregistered parent. Eliminated from the section is an existing requirement involving beneficial holdings which is no longer needed due to revisions in section 95834(c).

Section 95833(a)(3) was modified to clarify the requirements for determining whether entities have an indirect corporate association. Section 95833(a)(1)(A) is rewritten for clarity. Section 95833(a)(1)(A) is rewritten to apply the same criteria as in section 95833(a)(1), but stating that the threshold for entities having an indirect corporate association is 50 percent after multiplying the percentages at each link in a chain of direct corporate associations. Staff is proposing the changes because the previous threshold of 20 percent would have included entities without effective control over affiliates.

Section 95833(c) was modified to state that when the measures contained in sections 95833(a)(1), (2) or (3) yield a value of 25 percent or more, then the entities involved have a disclosable corporate association. Staff is proposing this change so that ARB can be aware of levels of corporate affiliation that do not indicate an entity has effective control over affiliates but nevertheless warrant regulator knowledge for market monitoring purposes. Reporting this lower level of affiliation does not result in imposition of joint holding or purchase limits.

Section 95833(d) contains the text moved from section 95833(c). In addition, section 95833(d) now includes a requirement that entities with a disclosable corporate association must provide the required information.

Section 95833(e) contains text that was moved from existing section 95833(d). The revision also changes an incorrect reference from section 95834(c) to 95833(c).

N. Modifications to section 95834. Disclosure of Beneficial Holding Relationships.

Section 95834(a)(1) was rewritten to remove the declaration that a beneficial holding relationship exists when an entity holds compliance instruments in its holding account that are owned by a second registered entity. Section 95834(a)(1) now explains the role of “agent” consistent with definition 6 which

was originally contained in section 95834(a)(1)(A). Section 95834(a)(2) now explains the role of "principal" consistent with definition 209 which was originally contained in section 95834(a)(1)(B).

The text originally in section 95834(a)(2) was moved to section 95834(a)(3). The text has been modified to eliminate the notification by a utility serving as agent to ARB that a beneficial holdings arrangement exists. This requirement was replaced by the new procedure in 95834(b) that requires both the agent and principal to inform ARB of beneficial holdings relationships.

Additionally, section 95834(3)(B) was modified so that the disclosure of the beneficial holdings relationship must be confirmed by the principal in the relationship. The text previously in 95834(a)(2)(B) was moved to new 95834(a)(2)(C)

Existing section 95834(a)(3) was renumbered to section 95834(a)(4). It was also modified to clarify the requirements for members of a corporate association which are establishing a beneficial holdings relationship.

Section 95834(b)(1) was modified to require both the agent and the principal in a beneficial holding relationship to report the existence of their relationship to the Executive Officer. Section 95834(b)(2) was modified to require confirmation of transfers of compliance instruments within the beneficial holding relationship. New section 95834(b)(3) states that after confirmation by the principal, compliance instruments held by the agent will count against the holding limit of the principal. Staff is proposing the changes to clarify that a beneficial holdings arrangement is an agreement and cannot exist unilaterally.

These changes to section 95834 were made for clarity purposes.

O. Modifications to section 95840. Compliance Periods.

No substantive changes were made to this section.

P. Modifications to section 95841. Allowance Budgets Calendar Years 2013-2020.

No substantive changes were made to this section.

Q. Modifications to section 95841.1. Voluntary Renewable Electricity.

Section 95841.1(a) was modified to correct the year when allowances can begin to be retired. This change is needed to align with the modified start date of the first compliance period.

Section 95841.1(b)(1) was modified to correct the reference to the sections of the regulation which contain the eligibility requirements for renewable generators.

In section 95841.1(b)(1), an addition was made to accommodate stakeholder comments that it is not always economical for all renewable generators to register with the California Energy Commission's (CEC) tracking system. The addition provides an alternative requirement for generators to meet similar stringency and verification requirements developed by the CEC.

Section 95841.1(b) was modified to respond to stakeholder comments and provide another option for documentation for the purchase and sale of qualified electricity or associated renewable energy credits (RECs).

Section 95841.1(b)(1)(F) was modified to respond to stakeholder comments and clarify the attestation requirements the program participant must follow.

Sections 95841.1(b)(2) and (3) were modified in response to stakeholder comment. The changes made clarify that the reporting requirements are directed toward the Voluntary Renewable Electricity participant and that the identification of the generator is the certification number. Additional modifications were made to allow for the alternative generator program requirements noted in section 95841.1(b)(1).

R. Modifications to section 95850. General Requirements.

Section 95850(b) was modified to clarify that the compliance obligation is based on the emissions that have a compliance obligation and not all emissions that are verification under the MRR.

Section 95850(c)(1) was modified to require record retention for ten years as was originally proposed in the 45-day regulation. This amount of time ensures that entities retain records to cover the period under which ARB could require additional compliance instruments if there was under-reporting in a previous compliance period, but only going back 8 years.

Section 95850(c)(4) was added to specify that verification reports are to meet the requirements specified in MRR.

S. Modifications to section 95851. Phase-In of Compliance Obligation for Covered Entities.

No substantive changes were made to this section.

T. Modifications to section 95852. Emission Categories Used to Calculate Compliance Obligations.

Section 95852(a)(1) was modified to clarify that the biofuel must be of a type listed in section 95852.2 and be procured in compliance with section 95852.1.1 in order to be exempt.

Section 95852(b) was modified to accommodate the calculation of the compliance obligation for first deliverers. Because this new section was added, most of the numbering within this section was changed.

New section 95852(b)(1) was in response to stakeholder comment. This section contains the calculation of a compliance obligation for first deliverers of imported electricity, which was previously contained in MRR. A more simplified version was previously in section 95852(b)(7) of this regulation. The requirements regarding resource shuffling have been moved to 95852(b)(2).

Section 95852(b)(2) now contains the requirements to prevent resource shuffling. Modifications were made to respond to stakeholder comments regarding the use of the term "fraud." The term "fraud" has been removed as well as other language that could impede typical electricity market activity, which was not staff's intent. Additional language clarifies that a company's agent must sign the attestations, and when the attestations must be submitted.

Section 95852(b)(3) previously addressed "replacement electricity," which is now addressed in section 95852(b)(4). Section 95852(b)(3) now contains requirements for first deliverers to claim an emission factor from a specified source of electricity. The section was also modified to clarify what criteria must be met for electricity importers to claim a compliance obligation based on the emission factor of a specified source. A new criterion is that the electricity must be directly delivered to ensure a clear connection between the specified source and the electricity delivered into California. This section no longer requires tracking of electricity through a contract chain of custody because stakeholder comments indicated in many cases they purchase the electricity from a marketer and they do not always have access to all of the upstream contracts.

The previous section 95852(b)(4) was deleted because its requirements no longer apply given changes to the accounting for specified sources of electricity. The new section 95852(b)(4) replaces the previous requirements for "replacement electricity," and now includes a Renewables Portfolio Standard (RPS) adjustment. The RPS adjustment provision accomplishes the purpose of reducing a deliverer's compliance obligation by accounting for renewable imports that staff previously addressed through the "replacement electricity" requirements. Stakeholders expressed concern with the requirement that replacement electricity would only apply to variable renewable electricity, and that the use of the term "replacement electricity" pursuant to the definitions in section 95802 required the replacement electricity to come from the same balancing authority area. Stakeholders claimed that because they are mandated under State statute to meet RPS requirements and had anticipated that most, if not all of those deliveries that meet RPS requirements would avoid a compliance obligation under this regulation. Stakeholders argued that since the allocation to benefit ratepayer's is based on consideration of cost burden, the "replacement electricity" provisions would unnecessarily increase ratepayer costs by requiring

a compliance obligation under this regulation for electricity considered to have GHG reduction benefits under RPS mandates. Section 95852(b)(4)(B) clarifies that the RPS adjustment must be for deliveries of electricity within the reporting year. Section 95852(b)(4)(C) clarifies that the RPS adjustment is calculated by applying the default emissions rate to the eligible MWhs. Section 95852(b)(4)(D) was added to clarify that an RPS adjustment cannot be used to avoid a compliance obligation for any other source of electricity when the renewable electricity is directly delivered to the California grid. Section 95852(b)(4)(E) was added to ensure that when the California program is linked with similar programs there is no inaccurate accounting of renewable electricity that would allow the same renewable electricity to avoid a compliance obligation in multiple jurisdictions. Finally, the definition for "replacement electricity" was deleted from section 95802.

Section 95852(b)(5) was deleted and replaced with a new section 95852(b)(5). The section was no longer needed because the exclusion of emissions from biofuels is accomplished by the new compliance obligation equation for electricity importers.

Modifications were made to the new section 95852(b)(5), previously section 95852(b)(6). The modifications were made to detail the requirements for claims of qualified exports and the calculation of the qualified export adjustment that is a term (QE) in the equation in 95852(b)(1). This section was also modified in response to stakeholder concerns that it could be possible for resources to be shuffled which would allow a claim for a lower emission factor and could potentially negate a valid compliance obligation. This was not staff's intent. In response to these stakeholder concerns, modifications were made to clarify the limitations of this adjustment and clarify data requirements. A modification was also made to allow claims of qualified exports regardless of whether or not the importer is a purchasing-selling-entity PSE, since that term is specific to e-tags Section 95852(b)(7) was deleted. It was no longer needed because the full equation for a compliance obligation for first deliverers of imported electricity was moved from MRR to this regulation.

Section 95852.2(b)(18) was modified to clarify that imports by carbon dioxide suppliers and carbon dioxide supplier exports not intended for geologic sequestration do not hold a compliance obligation.

New section 95852(c)(1) was added to harmonize with the requirements for suppliers of natural gas specified in MRR.

Section 95852(c)(2) has been modified to subtract emissions based on the utility bill delivered gas and not on the gas reported for emission calculations. This will prevent a natural gas supplier from having a compliance obligation based on meter inaccuracies.

Section 95852(c)(3) has been modified to require that natural gas be reported in mmBtu not in volume.

Section 95852(c)(4) has been clarified to describe exactly how the compliance obligation for suppliers of natural gas will be calculated. The compliance obligation will be based on the supplier's reported emissions less ARB's calculated emissions from deliveries to covered entities which are customers of the supplier.

Section 95852(e)(2) was clarified to identify that the term "consignee" is defined in the MRR. To avoid confusion and the potential for inadvertent non-compliance, the MRR regulation includes a clear definition of this term.

Section 95852(g) was modified to align with the changes in the definition for carbon dioxide suppliers (section 95802).

U. Modifications to section 95852.1. Compliance Obligations for Biomass-Derived Fuels.

Section 95852.1 was clarified to reduce redundant wording. The reference to "source categories" in this section is not relevant as the first paragraph indicates that "this section only addresses biomass-derived fuels."

Section 95852.1(b) was modified to use the term "non-exempt biomass-derived CO_2" which is a CO_2 emission resulting from the combustion of fuel not listed under section 95852.2(a) or that is not verifiable under section 95131(i) of the MRR and is required to hold a compliance obligation.

V. Modifications to section 95852.1.1. Eligibility Requirements for Biomass-Derived Fuels.

Provision 95852.1.1(a) was modified to clarify that, although there is no absolute requirement for biofuel contracts to meet the criteria, there is a benefit (in terms of a reduced compliance obligation) if the contract does meet the criteria. The heading of this section refers to the general term "biomass-derived fuels", and so does section (a)(1); thus this section was modified to refer to biomass-derived fuels not only biogas and biomethane.

New section 95852.1.1(a)(1)(C) was added to accommodate the time required for the CEC to certify new RPS projects. Staff has heard from stakeholders concerned that many operators will not want to risk taking delivery of any substantial volumes of biofuel until CEC certification is received. Purchasers have an incentive to submit certification applications to the CEC promptly because certification, if granted, is backdated to the date the certification application was submitted. These modifications should also better reflect the way in which the CEC certifies facilities as RPS eligible with respect to particular fuels.

Section 95852.1.1(a)(2) was split up to make it easier to read the requirements of the provision as well as to specify that the recovery of the fuel be destroyed without producing useful energy transfer if a facility invests in converting a flare to a generator or undertakes other equipment modification.

Previous section 95852.1.1(a)(4) was removed. Staff received several comments urging ARB to simplify the "once in, always in" concept. ARB requires annual verification of the biomass derived fuels prior to the implementation of a certification program. ARB's intent is for any adequately-verified biomass-derived fuel to continue to remain eligible for the compliance exemption. Since ARB has rigorous verification requirements, and will further be developing a certification program for biomass derived fuels, this provision is unnecessary.

Section 95852.1.1(b) was modified to clarify that a certain number of offsets can be created and sold separately from the biofuel, in addition to RECs, and the biofuel will still avoid a compliance obligation under the cap and trade program. Staff received several comments stating that it was not clear whether biogas projects are prohibited from claiming ARB-issued offsets or offsets from other programs. Thus, this modification was made to clarify eligibility of offsets from biomass and biogas projects.

W. Modifications to section 95852.2. Emissions without a Compliance Obligation.

Section 95852.2(a)(1) was modified to remove confusion by referring to the methods described in MRR regarding the biogenic fraction of solid waste materials.

Section 95852.2(a)(4)(C) was removed in response to comments received from stakeholders who claimed that tracking and enforcement of sources of wood and wood wastes is extremely difficult for energy generators. However, provisions 95852.2(a)(4)(A) and (B) remain because they are needed in order to report under MRR section 95103(j).

Section 95852.2(a)(8)(A) was modified to include plant, since it is identified in the definition of "biogas."

Provision 95852.2(a)(9) was moved to 95852.2(b) in order to clarify that the process, vented, and fugitive emissions from geothermal generating units and geothermal facilities including geothermal geyser steam or fluids do not hold a compliance obligation.

Provision 95852.2(a)(11) was deleted because mobile equipment emissions are not reported under MRR.

Section 95852.2(b) was modified to delete redundant source categories and source type emissions not reported under the MRR (which should not count toward applicable reporting thresholds per section 95852.2). The modifications

correct for double counting the compliance obligation for natural gas and local distribution companies. These modifications were also made to clarify, in response to comments received, that vented and fugitive emissions from natural gas systems will be reported to ARB under MRR and the cap-and-trade compliance obligation for these emissions will be based on section 95122.

Section 95852.2(b)(5) was modified to specify that produced water emissions, in addition to storage tanks, are reporting only sources.

Section 95852.2(c) was added to the regulation to exempt emissions from military facilities from holding a compliance obligation through December 31, 2013. The Department of Defense (DoD) has raised several legal and practical issues related to its participation in the cap-and-trade program. While ARB does not agree with all of DoD's assertions, ARB will continue to evaluate options related to DoD's ability to reduce GHG emissions. ARB also recognizes that the military does not have a product to be able to pass the carbon cost on to a consumer or end user. These reasons combine to support a temporary exemption. This exemption allows ARB and DoD to work together to craft a direct regulation for military facilities without potential ramifications to national security interests and that would achieve the equivalent GHG benefits of participation in the cap-and-trade program.

Various minor and non-substantive clarifications were made to section 95852.2 to ensure consistent terminology within the regulation.

X. Modifications to section 95853. Calculation of Covered Entity's Triennial Compliance Obligation.

No substantive changes were made to this section.

Y. Modifications to section 95854. Quantitative Usage Limit On Designated Compliance Instruments—Including Offset Credits.

Section 95854(c) was modified to add back in text inadvertently left out during the first 15-day changes to the regulation to apply the same quantitative usage limit to sector-based credits in both the first and second compliance periods.

Z. Modifications to section 95855. Annual Compliance Obligation.

Minor clarifications were made to this section.

AA. Modifications to section 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

Section 95856(b)(2) was modified to clarify which vintage of compliance instruments is valid to meet a compliance obligation. The change explains that a compliance instrument from a vintage within or before the year for which a

compliance obligation is calculated may be used to satisfy an annual obligation for that year. A compliance instrument issued for the last year of a compliance period, or from a previous vintage, may be used for a triennial obligation for that compliance period. The change is needed because stakeholders commented that the original text would have required entities to match vintages of allowances to emissions in a compliance period year by year rather than for the total over the compliance period.

BB. Modifications to section 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

Section 95857(b) was modified to allow entities to use offset credits to meet up to one fourth of the untimely surrender obligation as long as the offset usage does not violate the quantitative offset usage limits for the applicable compliance period. This modification was made in response to stakeholder comments and to clarify staff's original intent that the quantitative offset usage limit applies to the portion of offsets to meet the compliance obligation.. No offsets are allowed to satisfy three-quarters of the untimely surrender obligation since these allowances return to the auction account.

CC. Modifications to Section 95858. Compliance Obligation for Under-Reporting in a Previous Compliance Period.

Section 95858(c) was clarified to state that the penalty provisions in section 96014 do not apply during the six months within which the entity can obtain and surrender the compliance instruments to cover the under-reporting from a previous compliance period. This change was overlooked in the first 15-day version of the regulation.

Section 95858(d) was added to limit the requirement to surrender compliance instruments for under-reporting to the previous eight years. This change was in response to stakeholder comments.

Also, various minor and non-substantive clarifications were made to section 95858.

DD. Modifications to section 95870. Disposition of Allowances.

The timing of allowance allocation activities was updated in section 95870(a-d) in response to stakeholder comment. Allocation to accounts controlled by the Executive Officer will now occur immediately after the creation of these accounts. Allocation to electrical distribution utilities and industrial covered entities will now occur in November of the year prior to the allowance budget year being distributed. A special allocation of 2013 vintages to electrical distribution utilities is now planned in July 2012 to allow for consignment auctions by utilities of one-third (one-sixth at each of two auctions) of 2013 allowances in 2012.

A new approach for allocation to the petroleum refining sector was inserted in section 95870(d)(2)(A-B) in response to stakeholder comment. In the first compliance period, a total amount of allowances will now be assigned to the refining sector. This sector allocation will then be divided among individual refiners using the new method specified in section 95891(d).

In the second and third compliance period, there will no longer be a sector allocation determined for the refining sector. The amount allocated to each individual refinery will be based on the product output-based allocation approach and the "CO_2 weighted tonne" benchmark. These changes and the associated impacts are detailed in Appendix A to this notice.

Based on additional information provided by stakeholders, Table 8-1 was updated with changes to the oil and gas extraction and tissue manufacturing activity categories and to reclassify coke calcining as a high leakage risk activity.

Section 95870 Table 8-1 was modified to define tissue manufacturing as a leakage exposed activity, which includes tissue manufacturing using through air dried technology.

EE. Modifications to section 95890. General Provisions for Direct Allocations.

No substantive changes were made to this section.

FF. Modifications to section 95891. Allocation for Industry Assistance.

Section 95891(a) was updated to indicate that the choice of allocation methodology is based on classification of "activities" rather than "industries" in Tables 8-1 and 9-1. This change clarifies that a facility within a given industry may conduct multiple activities and the operator of a facility may receive allocation under both the product-based and energy-based allocation methodologies (based on the assigned allocation approach for each separate activity). The assignment of allocation method was also updated to allow for the new petroleum refining approach created in 95891(d).

The nomenclature in the equation for the product output-based allocation calculation methodology was changed slightly to improve clarity.

The energy-based allocation calculation methodology specified in section 95891(c) was modified based on stakeholder comment. The text was updated to clarify that the CHP exclusion in the "steam consumed" term applies only to steam produced from CHP units on site. Allocations for on-site CHP unit activities are captured in the $F_{Consumed}$ term. Steam imported from an off-site CHP unit is included in the $S_{Consumed}$ term. The "electricity sold" term was altered slightly to clarify that this term captures all power exported or sold from a facility.

The subscripts for the assistance factor and cap decline factor were updated to show that these factors vary by activity rather than by sector.

In section 95891(d), a new methodology for allocating to individual operators in the petroleum refining sector in the first compliance period was added in response to stakeholder comments about the impact of the prior proposal on equity in the refining sector in the first compliance period.

Under the new text, complex refiners' allowances are allocated based on a methodology initially proposed by the Western States Petroleum Association. This approach allocates allowances based on the following factors: (1) historical emissions from for each refinery, (2) the Solomon Energy Intensity Index (EII) for each refinery, (3) an adjustment factor to reduce competitiveness impacts of allowance allocation between in-state refineries, and (4) future emissions for each refinery.

The Solomon EII is a complexity-adjusted measurement of refinery energy efficiency developed by Solomon Associates. Solomon Associates has been developing energy-efficiency benchmarking relied upon by the industry for the past 30 years. They maintain an extensive database of more than 500 refineries' energy consumption and process data, covering over 85 percent of global refining capacity, which is used to develop the EII values. The Solomon EII is the industry standard for comparing energy efficiency across refineries globally. California refineries that have a Solomon EII value represent over 90% of refining capacity in the State.

Staff feels the EII is the most appropriate performance metric for complex facilities in the first compliance period. This metric is well understood by all complex facilities and has been recognized under the US EPA's Energy-Star Program.

Simple refineries that do not have an EII value or those without a representative EII value as determined by the Executive Officer are allocated to using the "simple barrel" product benchmark proposed in the first 15-day package. The value for this simple benchmark has been updated from 0.0465 allowances/barrel of primary refinery products to 0.0462 allowances/barrel. This change was made to reflect additional data provided by covered refineries and the inclusion of 2010 data in the development of the benchmark. A limit on the amount of allowances a facility can receive was imposed based on historical emission levels consistent with stakeholder comments. This will prevent any excessive rewards due to free allocation under the simple barrel metric.

For the second and subsequent compliance periods, the new text allocates to all refiners using the "Carbon Dioxide Weighted Tonne" approach. This metric is based on the refinery benchmarking conducted for the European Union's Emissions Trading Scheme. See Appendix A for more information on refinery allocation.

Product-based emissions efficiency benchmark values in Table 9-1 were updated based on stakeholder comment. Section 95891 Table 9-1 was modified as follows:

- New product metrics were created for the oil extraction and petroleum refining sectors.

- The hydrogen production benchmarks were updated to ensure equity between merchant hydrogen plants and refinery-owned hydrogen production allocated to using the "Carbon Dioxide Weighted Tonne" metric.

- The tissue benchmark was modified to: 1) re-define benchmarked product unit and 2 to correct a unit conversion error. With the information collected from stakeholders, staff initially believed that there were two tissue manufacturing facilities that used through air drying (TAD) technology. However, during the 15-day comment period, it was brought to staff's attention that there is one facility that used TAD technique and another facility that used the conventional technique. Working with stakeholders, staff gathered information on different tissue manufacturing technologies to re-define the product unit. Staff concludes that the tissue produced from TAD dryer and conventional drier have reasonably comparable functionality even though TAD tissues are high-end products with superior softness, fluffiness, and absorbency. Staff also modified the benchmark value by correcting errors caused by a product unit conversion (metric tons to short tons).

- The linerboard benchmark was modified because staff obtained more precise datasets from a facility that manufactures linerboard.

- The medium benchmark was modified to correct the typographical error in the third decimal place.

- The cement benchmark was modified to correct the amount of clinker consumed for the best in class facility (benchmark facility). In the benchmarked year this facility blended and consumed some amount of clinker produced in the previous year. The previous year amount was not properly accounted for in the initial calculation. Staff corrected the error.

- The tin steel plate production benchmark was modified because of an erroneous calculation. Two years' worth of emissions had been mistakenly removed from the numerator in the initial benchmark calculation. This error made the benchmark number significantly lower than intended. Staff corrected the error.

In section 95891, Table 9-2 was modified to define “sectors and activities associated with process emissions greater than 50%”, rather than “cement manufacturing”. In the previous proposal, staff identified only cement manufacturing as an activity associated with significant level of process emissions for which no cost-effective abatement opportunities are currently available. However, stakeholders in other sectors whose activities also release process emissions raised a concern in comments. After careful consideration, staff determined that sectors with activities that are associated with process emissions greater than 50% are eligible for a lower cap adjustment factor taking into consideration the potential impact from the emissions that do not currently have cost-effective abatement opportunities.

GG. Modifications to section 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.

Section 95892(a) was updated to show how the amount allocated to an individual electrical distribution utility will be calculated based on the total sector allocation and Table 9-3.

In section 95892(b), the language was modified to fully include electrical cooperatives and to clarify that publicly owned utilities (POUs) and cooperatives may only ask for allocations to be placed into compliance accounts of facilities they (or a Joint Powers Agency) operate.

Section 95892(c) was clarified so that all allowances placed into limited use holding accounts must be offered at the consignment auction, not just those controlled by investor owned utilities (IOUs).

Section 95892(d) was changed so that equal limitations apply to both the use of auction proceeds from the sale of allowances and the value of allowances freely allocated and used for compliance.

Section 95892(d)(3)(A) was moved to 95892(d)(4).

Text addressing rebates of allowance value in Section 95892(d)(3)(B and C) was removed because staff determined this language suggested a particular requirement for use of auction proceeds and ARB does not have authority to appropriate funds. The use of revenue obtained from consignment of allowances is the responsibility of the PUC for investor owned utilities and the governing Boards of publically owned utilities.

Section 95892(e) was modified to clarify how utilities will report the use of allowance value to ARB.

Table 9-3 was updated to correctly identify several EDUs as Independently Owned Utilities or Rural Electricity Cooperatives. The apportionment of allowance value was also changed based on stakeholder comment and improved availability of end use customer load data for Western Area Power Administration

(WAPA) and Lassen utility districts. After reviewing the discussion included in Appendix A to the last round of 15-day changes, WAPA identified a misspecification in their accounting of end-use customer load and provided an updated profile of their historical resource mix. After careful review, staff determined that it was appropriate to update the load forecasts for WAPA and Lassen. These changes resulted in very minor redistributions of allowance value. Additionally, edits were made to correct formula and data entry errors included in the previous version of the workbook used to populate table 9-3. These changes resulted in a minor redistribution of allowance value for all utilities.

HH. Modifications to section 95893. Reserved for Allocation to Natural Gas Distribution Utilities for Protection of Natural Gas Ratepayers.

No substantive changes were made to this section.

II. Modifications to section 95910. Auction of California GHG Allowances.

Section 95910(c) was modified to clarify the process used for the two auctions which will be conducted each quarter. Section 95910(c)(1) was modified to clarify the auction of allowances from the current budget year may also include allowances from earlier budget years. This provision is needed to accommodate the two other changes. First, allowances remaining unsold at auction will be returned to auction for two consecutive auctions instead of being sent to the Reserve. Second, allowances used to fulfill an untimely surrender obligation will go to the auction holding account, not the Reserve. Both of these changes may result in older vintage allowances being auctioned.

The requirement that, beginning in 2013, one quarter of the allowances allocated for auction each budget year will be offered at each auction is moved from section 95910(c)(1) to new section 95910(c)(1)(A). New section 95910(c)(1)(B) clarifies that allowances consigned to auction pursuant to 95870(f) will also be sold at the current vintage auction. New section 95910(c)(1)(C) clarifies that allowances remaining unsold at previous auctions may also be returned to the current vintage auction pursuant to section 95911(b)(4).

Section 95910(c)(2)(B) was modified to clarify that one quarter of the future vintage allowances designated for auction in each budget year will be offered at each auction. New section 95910(c)(2)(C) clarifies that allowances remaining unsold at previous future vintage auctions may also be returned to the future vintage auction pursuant to section 95911(b)(4).

Section 95910(d)(2) was modified to correct a reference to the source of allowances when accounts are closed.

JJ. Modifications to section 95911. Format for Auction of California GHG Allowances.

Section 95911(b)(3)(A)3 is modified to reflect changes to section 95911(b)(4) which makes allowances unsold at auction eligible for re-auction at a later time, instead of being redirected to the Allowance Price Containment Reserve (Reserve).

The existing text in section 95911(b)(4)(A), redirected unsold allowances to the Reserve. This text was replaced with a provision to return unsold allowances to the auction holding account. The modified section now allows for them to be re-auctioned after two consecutive auctions reach an auction settlement price above the auction reserve price. Existing section 95911(b)(4)(B), which returned allowances unsold at future vintage auctions to the auction holding account was also removed. This section was replaced by new section 95911(b)(4)(B), which returns unsold future vintage allowances to the auction holding account, and includes the provision that they can be re-auctioned after two consecutive future vintage auctions reach an auction settlement price above the auction reserve price.

Staff included the modifications to section 95911(b)(4) after many stakeholders observed that redirecting unsold allowances to the Reserve when a market is initially over-allocated may result in the market being artificially short in later years. Staff agreed that the original provisions could make the market tighter, at least until market prices rose to the level of the Reserve tier prices. Staff believes the delayed release mechanism will ensure that any initial over allocation could be remedied without a significant effect on prices.

New section 95911(b)(4)(C) added a provision concerning allowances that return to the auction holding account if they remain unsold when an auction settlement price equals the auction reserve price. Staff is proposing that the allowances will be re-auctioned at a later date. However, returning too many allowances to a single auction could result in the auction being oversupplied yet again. Staff is proposing a limit on the number of allowances sent back to each auction, equal to no more than 25% of the number of allowances already designated for a particular auction. This provision would spread the supply of re-auctioned allowances over multiple auctions.

Section 95911(c)(4)(A) was modified to raise the purchase limit for the first compliance period from 10 percent to 15 percent for industrial entities. Staff determined the change was needed after reviewing new data on emissions and in response to comments, the entry of new facilities, and the effect of the allocation of allowances by ARB on net compliance needs.

KK. Modifications to section 95912. Auction Administration and Registration.

No substantive changes were made to this section.

LL. Modifications to section 95913. Sale of Allowances from the Allowance Price Containment Reserve.

Section 95913(f)(3)(B) was modified to clarify that the price charged for an allowance is the price of the tier from which it was purchased, not the bid actually submitted. The change is necessary because the process allows bids to a higher tier to be fulfilled with allowances from a lower-priced tier if they are available. Staff agrees with stakeholders who commented that the procedure did not specify whether the bid or the tier price is to be used.

MM. Modifications to section 95914. Disclosure of Direct and Indirect Corporate Associations.

Sections 95914(e)(1) and (2) are modified to reflect the changes in section 95833 governing the process for determining when a corporate association exists. Instead of there being a single category of "disclosable" corporate association, there are three separate categories of association. The lower level of association, disclosable, does not result in a joint purchase limit for its members. The same change was made to section 95914(e)(3).

Section 95914(e)(2)(C) was modified to correct the calculation of the purchase limit for each member of a corporate association. The member's purchase limit should equal the entity's allocated share of the association's limit times the purchase limit, not the number of allowances auctioned.

Section 95914(e)(3)(A) was modified to clarify the process used when an association does not allocate shares of the purchase limit among its members.

NN. Modifications to section 95920. Trading.

Section 95920(a) was modified to clarify that the holding limit will be applied to a group of entities with a direct or indirect corporate association. The change was needed to reflect a change to the classification of corporate associations in section 95833(a).

Section 95920(b) was modified to replace the term "transaction" with the term "transfer request." The change is needed to clear up confusion between the act of transferring control of a compliance instrument on the tracking system and the underlying agreement in the secondary market between entities which would result in a transfer. This change was made to sections 95920(b)(3) and (4).

The term "transaction" means an understanding among registered entities to transfer the control of an allowance from one entity to another, either immediately

or at a later date. The “transfer” of a compliance instrument means the removal of the serial number of a compliance instrument from one account and placement into another account. In the California cap and trade system, a transfer will be effected through a “Transfer Request” submitted by an authorized account representative or an alternate authorized account representative to the accounts administrator in order to register a transfer of allowances between accounts into the tracking system.

Section 95920(b)(4) was also modified to update a reference to section 95921. This change was needed to reflect modifications to section 95921.

Section 95920(c) was modified to clarify how the holding limit will apply to allowances which can be used for compliance in the current compliance year separately from those that cannot be used for compliance. Section 95920(c)(1) was modified to clarify a reference to section 95856(b), which defines the vintages that can be used for current compliance.

Section 95920(c)(1)(A) was modified to clarify that, in any year, allowances from previous years may be used for compliance. Section 95920(c)(1)(C) was modified to clarify that allowances purchased at the advance auction may be usable during the current compliance year, not the current compliance period.

Section 95920(c)(2) was modified to be consistent with section 95856(b) to state that the ability to use allowances changes with each year not each compliance period. That is, vintage 2015 allowances can be used for compliance surrender in 2016, but not vintage 2016 and 2017 allowances that had been purchased at advance auction.

Section 95920(f) was eliminated because changes to section 95920(a) render the section redundant.

Existing section 95920(g) was renumbered to section 95920(f). Section 95920(f)(1) was modified to clarify that the holding limit is applied only to allowances not all compliance instruments. In addition, the holding limit applies jointly to members of direct and indirect corporate associations, not to members of a disclosable corporate association. This change was also made to sections 95920(f)(2), (3) and (4).

Section 95920(f)(4) was modified to use the newly defined term “transfer request” in place of the term “transaction.” This was to clarify that the accounts administrator will not accept deficient transfer requests. Some stakeholders expressed concern that the provision would require the automatic unwinding of the transaction which resulted in the transfer request.

Section 95920(h) was renumbered to section 95920(g) and clarified so that the holding limit will evaluate a beneficial holding by an agent against the holding limit of the principal for whom it is held.

OO. Modifications to section 95921. Conduct of Trade.

Sections 95921(a)(1) and (2) were modified to clarify that all requests for transfer of compliance instruments between accounts on the tracking system must meet the requirements of this article before the accounts administrator will register them into the tracking system. The changes are needed to emphasize the distinction between the transfer request and the underlying transaction that results in the request. Existing section 95921(b) was replaced completely. Stakeholders expressed concern that the text would have required them to automatically unwind the underlying transaction if the accounts administrator determined the transaction violated a requirement. New section 95921(b) outlines the procedure to be followed when the accounts administrator finds a deficiency in the transfer request submitted pursuant to 95921(a).

New section 95921(b)(1) describes the procedure when a deficiency is detected in a transfer request before it is recorded into the tracking system. New section 95921(b)(1)(A) requires the accounts administrator to inform both the Executive Officer and the entity submitting the request of the deficiency. New section 95921(b)(1)(B) states that the entities submitting the request may resubmit the request with the deficiency corrected within the three-day time limit set pursuant to section 95921(a)(1)(A). New section 95921(b)(1)(C) states that if entities fail to submit the corrected transfer request within the time limit, they must either withdraw the transfer request or submit a new request for transfer.

Staff created this procedure to ensure that some quality control checks are made when a transfer request is submitted. Staff anticipates that most deficiencies will be minor, such as failure to include correct account numbers, compliance instrument serial numbers, or other required information fields. Staff believes that these problems should be remedied within the existing requirement to submit a transfer request within three days of the settlement of a transaction that results in a request for transfer.

Staff also intends to develop the capacity to make checks for compliance with other rules, such as holding limits, prior to registering the transfer into the tracking system.

Whether the entity submitting the deficient transfer request corrects the deficiency before or after the transfer is recorded into the tracking system, staff has proposed the above changes to ensure that either the correction is made or the transfer will be reversed on the tracking system. Ultimately, ARB must be able to use its control over the recognition of transfers between accounts as the final method of ensuring compliance with the regulation.

New section 95921(b)(2) was added to describe the procedure to be used when the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system. New section 95921(b)(2)(A) requires the accounts administrator to inform both the entities submitting the request and the

Executive Officer of the deficiency. New section 95921(b)(2)(B) provides the entities that submitted the deficient transfer request 5 business days to correct the deficiency before the Executive Officer may instruct the accounts administrator to reverse the transaction on the tracking system.

Existing section 95921(b)(3) was removed, as it is not necessary to restate ARB's existing penalty provisions.

Minor modifications were made to section 95921(c) to clarify the information submitted with each transfer request and that the request must be submitted before any transfer is recorded into the tracking system. A requirement for the transfer request to include the time of the transaction and transaction settlement was removed from sections 95921(c)(1) and (2). Staff agrees with stakeholders who commented that these times are not meaningful for many transactions and should not be required.

Section 95921(e) was modified to deal with cases in which a registered entity may acquire and hold allowances on behalf of another entity. Section 95921(e)(1) was modified to remove a prohibition on transactions in which parties fail to disclose ownership interests in the compliance instruments involved. The replacement text states that an entity cannot purchase and hold allowances for another entity except when part of a beneficial holdings relationship disclosed to the Executive Officer pursuant to section 95834. This modification is needed to clarify to entities when they must create and disclose a formal beneficial holding relationship.

New section 95921(e)(2) states that if an entity acquires a compliance instrument on behalf of another entity that is not part of a disclosed beneficial holdings relationship, then the entity cannot hold that instrument but must immediately transfer it to the other entity by specifying the other entity's account number in the transfer request. This provision is added to allow agents to purchase on behalf of clients, as long as they do not hold the instruments in their own accounts.

The text for existing section 95921(2) was renumbered to 95921(e)(3).

New section 95921(g) modifies the information required for transfer requests when submitted by holders of exchange clearing holding accounts. New section 95921(g)(1) exempts these entities from having to include dates, prices, and beneficial holdings information in transfer requests. This information would be in the transfer requests submitted by the entities using the exchange clearing accounts to transfer control of compliance instruments. Staff agrees with stakeholders who commented that requiring this information would be an unnecessary requirement.

New section 95921(g)(2) requires that holders of exchange clearing holding accounts must retain transactions records including the information listed in

95921(c) for 10 years. New section 95921(g)(3) requires the holders of these accounts to make records available within 10 days of a request from ARB. These provisions allow ARB access to transaction data when needed for investigation while reducing the duplication of information in the tracking system.

PP. Modifications to section 95922. Banking, Expiration, and Voluntary Retirement.

No substantive changes were made to this section.

QQ. Modifications to section 95940. General Requirements.

No substantive changes were made to this section.

RR. Modifications to section 95941. Procedures for Approval of External GHG ETS.

No substantive changes were made to this section.

SS. Modifications to section 95942. Approval of Compliance Instruments from External GHG ETS.

No substantive changes were made to this section.

TT. Modifications to section 95943. Reserved for Linkage.

No substantive changes were made to this section.

UU. Modifications to section 95970. General Requirements for ARB Offset Credits.

Minor and non-substantive clarifications were made to section 95970.

VV. Modifications to section 95971. Procedures for Approval of Compliance Offset Protocols.

A numbering structure was added to this section to support the inclusion of new provisions in this section. New section 95971(b) was added in response to stakeholder comments to include a periodic review of approved Compliance Offset Protocols.

WW. Modifications to section 95972. Requirements for Compliance Offset Protocols.

Section 95972(a)(4) was modified in response to stakeholder comments and to clarify that Compliance Offset Protocols can be approved if they can eliminate the conditions that pose a risk of leakage.

Section 95972(a)(9) was modified in response to stakeholder comments and to clarify that eligibility will be based on a standardized approach and not a project-specific approach.

Also, various minor and non-substantive clarifications were made to section 95972.

XX. Modifications to section 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

Section 95973(a)(2) was modified in response to stakeholder comments that the language was unclear in how it applies to early action offset projects transitioning to Compliance Offset Protocols. Section 95973(c) specifies that these early offset projects may have an earlier offset project commencement date.

Also, various minor and non-substantive clarifications were made to section 95973.

YY. Modifications to section 95974. Authorized Project Designee.

Section 95974(a)(2) was modified to clarify additional responsibilities an Offset Project Operator may delegate to an Authorized Project Designee. This change allows an Authorized Project Designee to perform additional administrative functions on behalf of the Offset Project Operator.

ZZ. Modifications to section 95975. Listing of Offset Projects Using ARB Compliance Offset Protocols.

Section 95975(l)(1) was modified to clarify that the limited waiver of sovereign immunity must include a consent to suit by the State of California, Air Resources Board, rather than a consent to suit independently by ARB and/or the State of California. This change was made in response to stakeholder comments and is necessary to ensure the requirements of the waiver pertain clearly to ARB as part of the State of California.

An additional modification in section 95975(l)(3) was added to acknowledge the fact that federal approval may not always be necessary for projects located on Indian lands, as defined by 25 U.S.C. §81(a)(1), and that the Tribe will need to provide ARB with documentation to either demonstrate approval or show that approval is not required. This change was made in response to stakeholder comments and is necessary to clarify the requirement.

Various minor and non-substantive clarifications were made to section 95975.

AAA. Modifications to section 95976. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

Section 95976(a) was modified in response to stakeholder comments that the regulation should recognize that some protocol-specific monitoring equipment requirements exist in ARB's Compliance Offset Protocols.

Also, various minor and non-substantive clarifications were made to section 95976.

BBB. Modifications to section 95977. Verification of GHG Emission Reductions or GHG Removal Enhancements from Offset Projects.

Section 95977(b) was modified in response to stakeholder comments that annual verifications for offset projects which produce very few offset credits each year are a significant cost burden. Staff agrees with these comments and included a threshold that projects must meet to qualify for a two-year verification cycle.

Also, various minor and non-substantive clarifications were made to section 95977.

CCC. Modifications to section 95977.1. Requirements for Offset Verification Services.

Section 95977.1(b)(2) was modified to clarify the timing for submitting an update to conflict of interest evaluation to ensure the most accurate information related to the verification team for an offset project is available and meets the conflict of interest requirements for the regulation.

Section 95977.1(b)(3)(A) was modified to require the Offset Project Developer or Authorized Project Designee to make all relevant offset project information available to the verification team.

Section 95977.1(b)(3)(B) was clarified to indicate key dates included as part of an offset project verification.

Section 95977.1(b)(3)(C) was clarified with a title to specify key discussions a verification team must have with the Offset Project Operator or Authorized Project Designee.

Section 95977.1(b)(3)(D) was modified to accommodate the changes to the offset verification cycle for small projects in section 95977(b).

Section 95977.1(b)(3)(D)(2.)(i.) was modified in response to stakeholder comments to allow flexibility to the verification team to conduct some verification services offsite and not during the time spent at the offset project site.

Section 95977.1(b)(3)(L) was modified to require a verification team to clearly show how the riskiest sources of offset project information were reviewed for accuracy. This is needed to provide written documentation that the verification team fulfilled its regulatory verification requirements.

Section 95977.1(b)(3)(R)(4.)(a.) was modified to clarify the timing of the submittal of the detailed verification report to the Offset Project Developer, Authorized Project Designee, or Offset Project Registry. This change was needed to ensure that the detailed verification report was completed and finalized at the same time as the Offset Verification Statement.

Section 95977.1(b)(3)(V) was modified to include additional information a verification body must provide to ARB or an Offset Project Registry as part of oversight of the verification program. This change is necessary to ensure that offset verification service costs are commensurate with the complexity of the offset project being verified.

Also, various minor and non-substantive clarifications were made to section 95977.1.

DDD. New section 95977.2. Additional Project Specific Requirements for Offset Verification Services

No substantive changes were made to this section.

EEE. Modifications to section 95978. Offset Verifier and Verification Body Accreditation.

No substantive changes were made to this section.

FFF. Modifications to section 95979. Conflict of Interest Requirements for Verification Bodies for Verification of Offset Project Data Reports

Section 95979(b)(2) was modified to apply conflict of interest requirements on the previous five years of activity between an offset verifier and Offset Project Operator or Authorized Project Designee to add integrity to the offset verification program and align with similar requirements in the MRR.

Section 95979(b)(4) was clarified regarding when the same offset verification body can provide offset verification services to the offset project and to align with similar requirements in the MRR.

Section 95979(c) was modified to align the time period with the requirements in 95979(b)(2), but for instances where there is a potential for a low conflict of interest.

Section 95979(f)(3)(A) was modified to state that if an emerging conflict of interest can be mitigated and is disclosed to ARB, then the verification body will not by subject to revocation or suspension proceedings. This change was necessary to clarify that timely notice and mitigation of an emerging conflict of interest would not jeopardize the accreditation of a verification body.

GGG. Modifications to section 95980. Issuance of Registry Offset Credits.

New section 95980(b) was added to include a deadline for an Offset Project Registry to determine the completeness of a submission by a project operator.

Original section 95980(b), now section 95980(c) was modified to clarify when the initial crediting period for an early action offset project that transitions to a Compliance Offset Protocol begins.

HHH. New section 95980.1. Process for Issuance of Registry Offset Credits.

Section 95980.1(a) was modified to support the inclusion of the completeness deadline added to new section 95980(b) and allow the Offset Project Registry 15 days after its determination to issue registry offset credits.

III. Modifications to section 95981. Issuance of ARB Offset Credits.

New section 95981(c) was added in response to stakeholder comments requesting that staff include a deadline for ARB to determine the completeness of a submission by a project operator.

Original section 95981(d), now section 95981(e), was modified to clarify when the initial crediting period for an early action offset project that transitions to a Compliance Offset Protocol begins.

Also, various minor and non-substantive clarifications were made to section 95981.

JJJ. Modifications to section 95981.1. Process for Issuance of ARB Offset Credits.

Section 95981.1(a) was modified to support the inclusion of the completeness deadline added to new section 95981(c) and allow ARB 15 days after its determination to issue ARB offset credits.

Section 95981.1(d) was modified to shorten the time period from 30 to 15 days for ARB to notify project operators that the information they submitted was incomplete and request additional information. This change was made in

response to stakeholder comments that the process for the ultimate issuance of ARB offset credits was too lengthy.

Also, various minor and non-substantive clarifications were made to section 95981.1.

KKK. Modifications to section 95982. Registration of ARB Offset Credits.

No substantive changes were made to this section.

LLL. Modifications to section 95983. Forestry Offset Reversals.

Sections 95983(c)(3) and (c)(4) were modified to make it clear that ARB offset credits must only be replaced if there have been ARB offset credits issued to the offset project. Also, in response to stakeholder comments, staff changed the timing for replacing the reversed tons in section 95983(c)(3), new section (c)(3)(B), and new sections 95983(c)(4)(2) and (c)(4)(3), from 90 days to six months. This will alleviate concerns that entities will not have enough time to find sufficient compliance instruments.

New section 95983(d)(1) was added to clarify that ARB will compensate for reversals out of the Forest Buffer Account in the case of project termination due to unintentional reversal. This will ensure that permanence obligations are fully upheld for all GHG reductions or removal enhancements achieved by the offset project.

Also, various minor and non-substantive clarifications were made to section 95983.

MMM. Modifications to section 95984. Ownership and Transferability of ARB Offset Credits.

No substantive changes were made to this section.

NNN. Modifications to section 95985. Invalidation of ARB Offset Credits.

Section 95985(b) was modified and now focuses only on clarifying the timeframe in which ARB may invalidate ARB offset credits. The eight year statute of limitations in original section 95985(b) was moved to new section 95985(b)(1). The other part of original section 95985(b,) regarding what may trigger invalidation, was moved to new section 95985(c). Original section 95985(b)(1) was deleted in response to stakeholder comments that ARB would invalidate an ARB offset credit based on clerical errors and any errors that would not affect the number ARB offset credits that were issued.

Original section 95985(b)(2) was moved to new section 95985(c)(1). New sections 95985(c)(1)(A), through (c)(1)(C)(3.) were added to include a process by which ARB would determine if there was an overstatement in the number of GHG emission reductions and GHG removal enhancements that were credited with ARB offset credits. This includes a notification process and identifies which information ARB will look at to determine if there was an overstatement. New section 95985(c)(1)(B) was added to provide the equation that ARB will use to determine the amount of the overstated GHG reductions and GHG removal enhancements. All provisions in sections 95985(c)(1) were added in response to stakeholder comments that invalidating all of the ARB offset credits associated with an Offset Project Data Report is overly burdensome and unnecessary to maintain the environmental integrity of the program.

Original section 95985(b)(3) was moved to new section 95985(c)(2). Original section 95985(b)(4) was moved to new section 95985(c)(3).

Original section 95985(b)(5) was deleted and replaced with new section 95985(b)(1)(A). The statute of limitations was changed from five years to three years for ozone depleting substances projects, because ARB feels that three years is sufficient time for any new information regarding an Offset Project Data Report for that project type to be discovered.

Original section 95985(b)(6) was deleted and replaced with new section 95985(b)(1)(B). These new provisions clarify that offset projects developed under the other three Compliance Offset Protocols may also qualify for a three year statute of limitation if a different verification body verifies a subsequent Offset Project Data Report from that offset project within three years. This provision provides some flexibility to Offset Project Operators to switch verification bodies before the six year verification body rotation requirement is reached so that the project can be reviewed by a different verifier which could bring to light any irregularities in the offset project data or confirm the validity of the offset project implementation and subsequent issued ARB offset credits.

Original section 95985(b)(7) was moved to new section 95985(c)(4)(A). New section 95985(c)(4)(B) was added to clarify that reversals for forest offset projects do not trigger an invalidation and reversals will be handled according to section 95983. This provision was added to alleviate stakeholder concerns that any reversal would trigger invalidation and that the forest owner would have to double compensate for those tons.

New section 95985(d) was added to immediately block any transfers of ARB offset credits after ARB makes an initial determination to investigate the applicable Offset Project Data Report. This provision will prevent the holders of potentially invalidated ARB offset credits from transferring them (and any associated replacement liability) to other unwitting parties.

Original sections 95985(c) through (c)(3) were moved to new sections 95985(e) through (e)(3).

Original sections 95985(d) through (d)(4) were moved to new sections 95985(f) through (f)(4). New section 95985(f)(4)(A) was added to provide notice of ARB's final determination to invalidate ARB offset credits to affected parties. New section 95985(f)(4)(B) was added to provide notice of ARB's final determination to invalidate ARB offset credits to programs that are linked with California's cap-and-trade program.

Original sections 95985(e) and (e)(1) were moved to new sections 95985(g) and (g)(1). New sections 95985(g)(1)(A) and (g)(1)(B) were added to support the new provisions added in section 95985(c)(1). If ARB invalidates only a portion of the ARB offset credits from an Offset Project Data Report, ARB must determine how many and which ARB offset credits to remove from each parties Compliance and/or Holding Accounts. The formula in section 95985(g)(1)(A)(1.) will be used to determine how many ARB offset credits will be removed from the accounts of the affected parties, and section 95985(g)(1)(A)(2.) will be used to determine which ARB offset credits will be removed from the accounts of the affected parties.

New section 95985(g)(1)(B) was added to make clear that, if ARB offset credits are invalidated due to either reason in section 95985(c)(2) or (c)(3), all of the ARB offset credits in Holding and/or Compliance Accounts for the applicable Offset Project Data Report will be invalidated. The intent of this requirement did not change; however, stakeholders wanted the language to be more clear.

Original section 95985(e)(3) was deleted because these parties are covered under new section 95985(g)(2).

Original sections 95985(e)(2) and (e)(4) were moved to new sections 95985(g)(2) and (g)(3) respectively.

Original section 95985(f) was moved to new section 95985(h). A numbering structure was added to new section 95985(h) for readability and the addition of new provisions under this section. New section 95985(h)(1) clarifies that only ARB offset credits in the Retirement Account must be replaced by the parties identified in section 95985(e)(2). New section 95985(h)(1)(A) was added to support the new provisions added in section 95985(c)(1). If ARB invalidates only a portion of the ARB offset credits from an Offset Project Data Report, ARB must determine, through the formula in this section, how many ARB offset credits that each party identified in section 95985(e)(2) must replace.

New section 95985(h)(1)(B) was added to require that the parties identified in section 95985(e)(2) must replace the ARB offset credits within six months of

being notified by ARB. They must replace ARB offset credits in the amount calculated pursuant to section 95985(h)(1)(A).

New section 95985(h)(1)(C) was added to require that if the parties identified in section 95985(e)(2) do not replace the ARB offset credits within six months, each unplaced ARB offset credit is a violation.

New sections 95985(h)(1)(C)(1.) through (h)(1)(C)(3.) require that the Offset Project Operator replace the ARB offset credits in the event that the parties identified in section 95985(e)(2) are no longer in business. This will ensure that the environmental integrity of the program is preserved and the cap is made whole.

New section 95985(h)(1)(D) was added to determine which ARB offset credits will be removed from the accounts of the parties identified in section 95985(e)(2).

New section (h)(1)(E) was added to provide notice of which ARB offset credits were invalidated to the parties identified in section 95985(e)(2). New section 95985(h)(1)(F) was added to provide notice of which ARB offset credits were invalidated to programs that are linked with California's cap-and-trade program.

The invalidation requirements in original section 95985(f) were moved to new sections 95985(h)(2)(A) and (h)(2)(B). New section 95985(h)(2) adds a numbering structure to the original requirements in section 95985(f) for readability and only addresses replacement of ARB offset credits that were invalidated for reasons identified in section 95985(c)(2) or (c)(3). The requirements were unchanged in substance except that the parties identified in section 95985(e)(2) must replace the ARB offset credits within six months instead of 90 days. This will alleviate concerns that entities will not have enough time to find sufficient compliance instruments.

New section 95985(h)(2)(C) was added to provide notice of which ARB offset credits were invalidated to the parties identified pursuant to section 95985(e)(2). New section 95985(h)(2)(D) was added to provide notice of which ARB offset credits were invalidated to programs that are linked with California's cap-and-trade program.

Original section 95985(g) was moved to new section 95985(i). A numbering structure was added to new section 95985(i) for readability and the addition of new provisions under this section. New section 95985(i)(1) clarifies that only ARB offset credits in the Retirement Account must be replaced by the Forest Owner. New section 95985(i)(1)(A) was added to support the new provisions added in section 95985(c)(1). If ARB invalidates only a portion of the ARB offset credits from an Offset Project Data Report, ARB must determine, through the formula in this section, how many ARB offset credits that the Forest Owner must replace.

New section 95985(i)(1)(B) was added to require that the Forest Owner must replace the ARB offset credits within six months of being notified by ARB. They must replace ARB offset credits in the amount calculated pursuant to section 95985(i)(1)(A).

New section 95985(i)(1)(C) was added to require that if the Forest Owner does not replace the ARB offset credits within six months, each ARB offset credit not replaces is a violation.

New section 95985(i)(1)(D) was added to determine which ARB offset credits will be removed from the accounts of the Forest Owners.

New section 95985(i)(1)(E) was added to provide notice of which ARB offset credits were invalidated to the Forest Owner. New section 95985(i)(1)(F) was added to provide notice of which ARB offset credits were invalidated to programs that are linked with California's cap-and-trade program.

The invalidation requirements in original section 95985(g) were moved to new sections 95985(i)(2)(A) and (i)(2)(B). New section 95985(i)(2) adds a numbering structure to the original requirements in section 95985(g) for readability and only addresses replacement of ARB offset credits that were invalidated for reasons identified in section 95985(c)(2) or (c)(3). The requirements were unchanged in substance except that the Forest Owner must replace the ARB offset credits within six months instead of 90 days. This will alleviate concerns that entities will not have enough time to find sufficient compliance instruments.

New section (i)(2)(C) was added to provide notice of which ARB offset credits were invalidated to the Forest Owner. New section 95985(i)(2)(D) was added to provide notice of which ARB offset credits were invalidated to programs that are linked with California's cap-and-trade program.

Original section 95985(h) was moved to new section 95985(j).

Also, various minor and non-substantive clarifications were made to section 95985.

OOO. Modifications to section 95986. Executive Officer Approval Requirements for Offset Project Registries.

New section 95986(c)(2)(A)(3.) was added to require that conflict of interest and confidentiality requirements be in place for any contractors of Offset Project Registries. This new section provides additional integrity to the offset program.

Section 95986(c)(2)(F) was modified to clarify that the prohibition for serving as an offset project consultant applies at the subdivision level for those applicants that have designated a subdivision to provide registry services.

Section 95986(d)(1) was modified to allow ARB to monitor for any potential conflicts of interest between an offset project registry and offset project developer who lists their offset project on the offset project registry but also contracts for other non-offset project related consulting services.

New section 95986(d)(4) was added to require that Offset Project Registries have a certain amount of knowledge in operating a registry before they may be approved. This requirement will ensure that Offset Project Registries have the demonstrated knowledge and experience necessary to perform registry services.

New section 95986(d)(5) was added to require an Offset Project Registry to have a primary business in the United States to ensure a physical presence in the geographic region where ARB will issue offsets. This will better facilitate any in-person audits ARB may wish to pursue at the Offset Project Registry offices.

New section 95986(j) was added to ensure that the Offset Project Registry had experience in specific activities required to successfully implement an offset program.

New sections 95986(k)(5)(A) through (C) were added to require that Offset Project Registries undergo a performance review before they can be reapproved to provide registry services. These provisions were added in response to stakeholder comments that ARB should include a performance review of Offset Project Registries before reapproving them.

Original section 95986(k)(3), now section (l)(3) was modified to allow offset projects that must transfer to another registry in the event their current registry's approval is revoked to qualify for a one-year crediting period extension. These modifications were made in response to stakeholder comments that switching Offset Project Registries could cause a delay in the reporting of GHG reductions and GHG removal enhancements and subsequently cause those reductions to be ineligible for crediting.

Also, various minor and non-substantive clarifications were made to section 95986.

PPP. Modifications to section 95987. Offset Project Registry Requirements.

Sections 95987(b), (g), and (h) were modified to clarify that Offset Project Registries must only make the listed information publicly available for offset projects developed under Compliance Offset Protocols. This clarification was

made because the Offset Project Registries do not need to meet these requirements for offset projects that are developed for voluntary purposes.

Also, various minor and non-substantive clarifications were made to section 95987.

QQQ. Modifications to section 95988. Record Retention Requirements for Offset Project Registries.

This section was modified to clarify that Offset Project Registries must only meet the record retention requirements for offset projects developed under Compliance Offset Protocols. This clarification was made because the Offset Project Registries do not need to meet these requirements for offset projects that are developed for voluntary purposes.

RRR. Modifications to section 95990. Recognition of Offset Credits for Early Action.

Section 95990(a)(2)(B) was modified to clarify that Early Action Offset Programs must only be able to track ownership and transactions for early action offset projects developed under the methodologies identified in this section. This clarification was made because the Early Action Offset Programs do not need to meet these requirements for offset projects that are developed under other protocols.

Section 95990(a)(2)(C) was modified to clarify that Early Action Offset Programs must only track early action offset credits from offset projects that qualify for early action under this section. This clarification was made because the Early Action Offset Programs do not need to meet these requirements for credits that may not be used under this article.

Section 95990(a)(3) was modified to clarify that the requirements in this provision apply to designated subdivisions, if the applicant designates a subdivision to be an Early Action Offset Program.

Section 95990(a)(3)(A) was modified to prohibit Early Action Offset Programs from acting as offset project consultants for early action offset projects registered on their own registry. This was included to prevent conflict of interest.

New section 95990(a)(3)(D) was added to require an Early Action Offset Program to have a primary business in the United States to ensure a physical presence in the geographic region where ARB will issue early action offset credits. This will better facilitate any in-person audits ARB may wish to pursue at the Early Action Offset Program offices.

Section 95990(c)(3) was modified to change the latest date that early action offset projects can register or list their projects with an Early Action Offset Program from January 1, 2013 to January 1, 2014. This modification will allow ARB time to approve Offset Project Registries and ARB accredited verifiers to process and verify offset projects developed under Compliance Offset Protocols.

Section 95990(c)(5) was modified to require that only the most current version of any protocol may be used at the time the project is initiated. This ensures that an early action offset project is not using an out-of-date protocol.

New sections 95990(d)(1), (e)(1)(A), and (h)(5)(A) were added to clarify that Offset Project Operators or Authorized Project Designees for forest and urban forest offset projects that do not transition their early action offset projects to Compliance Offset Protocols must register with ARB for issuance of ARB offset credits. For these projects, the holders of the early action offset credits may not register, list, meet the attestation requirements, and seek issuance of ARB offset credits. Staff is requiring the project proponents to register in these cases to ensure that the CO_2 sequestered and credited by ARB remains sequestered and ARB has enforcement authority in the case of reversals from these projects.

New sections 95990(d)(2) and (d)(3), (e)(1)(B) and (e)(1)(C), and (h)(5)(B) and (h)(5)(C) were added to clarify that either the Offset Project Operator or Authorized Project Designee or the holders of early action offset credits may register, list, meet the attestation requirements, and seek issuance of ARB offset credits for forest or urban forest offset projects that do transition to Compliance Offset Protocols and any offset projects developed under the methodologies listed in section 95990(c)(5)(A) and (C). Staff is allowing the holders of these credits to take actions for these early action offset projects because there is no risk of reversal for those offset projects developed under the methodologies listed in section 95990(c)(5)(A) and (C). If the forest or urban forest offset project is transitioning into the compliance offset program, ARB can monitor and address reversals in the future because the Offset Project Operator or Authorized Project Designee will be part of the compliance offset program.

New section 95990(e)(2) was modified to require that the parties identified in section 95990(e)(1) submit the required information. The structure of these provisions was changed for clarity.

Original section 95990(e)(2), now new section 95990(e)(3), was modified to require that Offset Project Registries clearly indicate which offset projects are part of the compliance offset program. This requirement was added to provide transparency.

Section 95990(f)(3)(A) was modified to require that the verifier review the Offset Verification Statement in addition to the Early Action Verification Report.

Section 95990(f)(3)(B) was modified to require that, during the desk review, the verifier review the data checks that were conducted in the original verification performed under the Early Action Offset Program. This provision was added in response to stakeholder comments to streamline the requirements for regulatory verification of Early Action Offset Credits.

Section 95990(f)(3)(C) was modified to require that the ARB accredited verifier determine with reasonable assurance whether or not they agree that a positive offset verification statement should have been issued under the Early Action Offset Program after reviewing the documentation from the original verification conducted under the Early Action Offset Program. Reasonable assurance is defined in the regulation. This provision was added in response to stakeholder comments to streamline the requirements for regulatory verification. Instead of issuing another verification statement, the ARB verifier must make an attestation to ARB regarding their findings.

Section 95990(f)(3)(D) was modified to support the changes in provision 95990(f)(3)(C).

Section 95990(f)(4) was modified to require that the ARB verifier recommend to ARB that full verification services be performed if the verifier cannot concur with reasonable assurance that a positive verification statement should have been issued. Staff removed the three percent or 25,000 metric ton threshold. This provision was added in response to stakeholder comments to streamline the requirements for regulatory verification by evaluating the original verification on the threshold of five percent offset material misstatement. If the offset material misstatement was greater than five percent it wouldn't have been issued a positive verification statement under the Early Action Offset Program. The verifier must prepare a report for ARB detailing why full verification services are warranted. ARB will make the final decision to avoid conflicts of interest in the verifier recommending the additional verification services be performed.

New section 95990(f)(5) was added to support the modifications in section 95990(f)(4). The provision requires ARB to review the information in the report prepared by the verification body.

New section 95990(f)(6) was added to support the modifications in section 95990(f)(4). The provision requires that ARB make a final determination as to whether full verification service must be provided. If ARB finds that a positive verification statement should not have been issued then full verification services must be performed.

New section 95990(f)(7) was added in response to stakeholder comments and to clarify the implications of a second desk review on credits which have already been transferred to ARB. This provision was included to make it clear that if a desk review has successfully been completed that no further reviews are

triggered by subsequent early action verification activities for that early action offset project.

Section 95990(h)(3) was modified to support the changes made to section 95990(f)(3)(C).

New section 95990(h)(6) was modified to require that the parties identified in section 95990(h)(5) submit the required attestations. The structure of these provisions was changed for clarity. If the Offset Project Operators or Authorized Project Designees do not transfer over the early action offset projects, ARB must have parties identified as responsible for the offset credits that are brought into the system to ensure ARB's enforcement authority.

New section 95990(i)(1)(D)(1.) was added in response to stakeholder comment and to require that Early Action Offset Programs release all the credits in their buffer accounts for forest projects to ARB. This will ensure that permanence requirements are met for all early action offset projects that come over to ARB.

New section 95990(i)(1)(D)(1.)(a.) was added to clarify that credits with vintages from 2001 through 2004 that are released to ARB by the Early Action Offset Program will be given a special series of unique serial numbers and will be placed in ARB's Forest Buffer Account. This provision is necessary so that ARB can easily identify these credits since they may not be used in the compliance offset program.

New section 95990(i)(1)(D)(1.)(b.) was added to clarify that the credits with vintages from 2001 through 2004 that are released to ARB by the Early Action Offset Program may only be retired by ARB in the event of a reversal. It further clarifies that these vintages may not be used to satisfy ARB's Forest Buffer Account requirements under this section. This provision is necessary because these credits will still be considered voluntary credits and not compliance offsets. ARB cannot allow voluntary credits to be used for compliance purposes. Retaining these credits in ARB's Forest Buffer Account will ensure that in the event of a reversal the atmosphere is made whole by retiring all voluntary and compliance offsets issued to the project.

Original section 95990(i)(1)(D)(2.), now new section 95990(i)(1)(D)(3.), was modified to support the changes in section 95990(i)(1)(D)(1.) and to determine how many ARB offset credits would be issued after Forest Buffer Account contributions are met, if the Offset Project Operator or Authorized Project Designee is the party that transferred the early action offset credits into the ARB system. In this case, the total number of ARB offset credits issued will be at the project level.

Original section 95990(i)(1)(D)(2.)(a.), now new section 95990(i)(1)(D)(3.)(a.), was modified to support the changes in section 95990(i)(1)(D)(1.) and describe

how ARB will determine if one ARB offset credit will be issued to the Offset Project Operator or Authorized Project Designee for each early action offset credit issued to the early action forest offset project. In this case, if the total number of credits released to ARB from the buffer of the Early Action Offset Program that meets the requirements of this section is greater than or equal to the number of ARB offset credits that need to be put into ARB's Forest Buffer Account, the project will be issued one ARB offset credit for each early action offset credit and its Forest Buffer Account contribution will be satisfied.

Original section 95990(i)(1)(D)(2.)(b.), now new section 95990(i)(1)(D)(3.)(b.), was modified to support the changes in section 95990(i)(1)(D)(1.) and describes how many ARB offset credits will be issued to the Offset Project Operator or Authorized Project Designee for each early action offset credit issued to the early action forest offset project, if the total number of credits released to ARB from the buffer of the Early Action Offset Program is less than the number of ARB offset credits that need to be put into ARB's Forest Buffer Account. Based on these factors, the Offset Project Operator or Authorized Project Designee can determine how many ARB offset credits they can be issued after satisfying the Forest Buffer Account contribution.

New section 95990(i)(1)(D)(4.) was added to support the changes in section 95990(i)(1)(D)(1.) and to determine how many ARB offset credits would be issued after Forest Buffer Account contributions are met, if the holder of the early action offset credits is the party that transferred the early action offset credits into the ARB system. In this case, the total number of ARB offset credits issued will be at the individual holder level.

New section 95990(i)(1)(D)(4.)(a.) was added to support the changes in section 95990(i)(1)(D)(1.) and describes how ARB will determine if one ARB offset credit will be issued to the holder of the early action offset credits for each early action offset credit issued to the early action forest offset project. In this case, if the total number of credits released to ARB from the buffer of the Early Action Offset Program that meets the requirements of this section is greater than or equal to the number of ARB offset credits that need to be put into ARB's Forest Buffer Account, the holder will be issued one ARB offset credit for each early action offset credit and its Forest Buffer Account contribution will be satisfied.

New section 95990(i)(1)(D)(4.)(b.) was added to support the changes in section 95990(i)(1)(D)(1.) and describes how many ARB offset credits will be issued to the holder of the early action offset credits for each early action offset credit issued to the early action forest offset project, if the total number of credits released to ARB from the buffer of the Early Action Offset Program is less than the number of ARB offset credits that need to be put into ARB's Forest Buffer Account. Based on these factors, the holder can determine how many ARB offset credits they can be issued after it satisfies its Forest Buffer Account contribution.

Section 95990(i)(1)(E) was modified to make the calculation in this section optional. This means that the Offset Project Operator or Authorized Project Designee of the early action offset project may use this calculation to determine if it would be eligible to be issued additional ARB offset credits than it was issued early action offset credits. If they choose not to do the calculation, they would still be issued ARB offset credits on a one to one basis. This provision was made optional in response to stakeholder comments that some projects may not want to go through the complicated process to be issued additional ARB offset credits.

Sections 95990(i)(1)(E)(2.), (i)(1)(E)(2.)(a.), and (i)(1)(E)(2.)(b.) were modified to provide clarity based on stakeholder comments that the text as written was unclear.

Sections 95990(j)(1) and (j)(2) were deleted and replaced with new provisions to support the changes and clarifications made to sections 95990(d), (e)(1), and (h)(5) for Offset Project Operators or Authorized Project Designees, or holders of early action offset credits.

Section 95990(k)(1) was modified to remove the requirement that early action offset projects may transition to Compliance Offset Protocols no earlier than January 1, 2013. This requirement was removed due to stakeholder comments that early action offset projects should be able to use Compliance Offset Protocols as soon as they are finalized through the rulemaking process.

Section 95990(k)(1)(D) was modified to ensure that no previously credited carbon stocks under an Early Action Offset Program would inadvertently be re-issued ARB offset credit the first year the project transitions to the Compliance Offset Protocol. Even though the baselines would be recalculated, credit would be based on the increase in carbon stocks from the last credits issued, based on the re-calculated baseline.

Section 95990(k)(3)(C) was modified to allow GHG reductions and GHG removal enhancements that occur in 2014 under an early action protocol to be verified by September 30, 2015. This change was made in response to stakeholder comments that ARB should streamline the requirements for early action offset projects with those for offset projects using Compliance Offset Protocols by allowing early action offset projects to have nine months to verify their Early Action Data Report.

New sections 95990(l)(1) and (l)(2) were added to replace original section 95990(l). New section 95990(l)(1) provides that early action offset credits from non-sequestration offset projects may be invalidated pursuant to the relevant provisions for non-sequestration offset projects in section 95985. New section 95990(l)(1)(A) provides that if the parties identified in section 95985(e)(2) are no longer in business and the Offset Project Operator or Authorized Project

Designee transitioned the early action offset credits to ARB, then the Offset Project Operator must replace the invalidated ARB offset credits. New section 95990(l)(1)(B) provides that if the parties identified in section 95985(e)(2) are no longer in business and the holder of the early action offset credits transitioned them to ARB, then the holder that transitioned them must replace the invalidated ARB offset credits. New section 95990(l)(2) provides that early action offset credits from forest offset projects may be invalidated pursuant to the relevant provisions for forest offset projects in section 95985.

Also, various minor and non-substantive clarifications were made to section 95990.

SSS. Modifications to section 95991. Sector-Based Offset Credits.

No substantive changes were made to this section.

TTT. Modifications to section 95992. Procedures for Approval of Sector-Based Crediting Programs.

No substantive changes were made to this section.

UUU. Modifications to section 95993. Sources for Sector-Based Offset Credits.

No substantive changes were made to this section.

VVV. Modifications to section 95994. Requirements for Sector-Based Offset Crediting Programs.

No substantive changes were made to this section.

WWW. Modifications to section 95995. Quantitative Usage Limit.

No substantive changes were made to this section.

XXX. Modifications to section 95996. Reserved for Sector-Specific Requirements.

No substantive changes were made to this section.

YYY. Modifications to section 95997. Reserved for Approved Sector-Based Crediting Programs.

No substantive changes were made to this section.

ZZZ. Modifications to section 96010. Jurisdiction.

No substantive changes were made to this section.

AAAA. Modifications to section 96011. Authority to Suspend, Revoke, or Modify.

Section 96011(c) was deleted because it was redundant to section 96011(a).

BBBB. Modifications to section 96012. Injunctions.

No substantive changes were made to this section.

CCCC. Modifications to section 96013. Penalties.

No substantive changes were made to this section.

DDDD. Modifications to section 96014. Violations.

Section 96014(b) was modified to provide a periodic calculation for penalties. This new requirement recalculates penalties every 45 days instead of every day. The change was made in response to stakeholder concerns about large penalties accruing if the period for recalculation was every day.

EEEE. Modifications to section 96020. Severability, Effect of Judicial Order.

No substantive changes were made to this section.

FFFF. Modifications to section 96021. Confidentiality.

No substantive changes were made to this section.

GGGG. Modifications to section 96022. Jurisdiction of California

No substantive changes were made to this section.

HHHH. Modifications to section 96023. Reserved Provisions.

No substantive changes were made to this section.

1. Modifications to Compliance Offset Protocol Urban Forest Projects.

This protocol was modified to require an urban forester to be involved in the review of the project and offset project data report. The verification team must also include a forester or urban forester. These changes were necessary to ensure the right experts were involved in the documentation preparation and review for this project type.

2. Modifications to Compliance Offset Protocol Livestock Projects.

This protocol was modified to allow identical engines to share a biogas flow meter and any mention of thermocouplers for flares have been expanded to include engines. Both of these changes were in response to stakeholder comments.

The requirements for adjustments to metered biogas flow data in Section 6.1 have been replaced with a more conservative method to ensure a rigorous accounting methodology within the protocol.

Additional minor and non-substantive changes were also made to this protocol.

3. Modifications to Compliance Offset Protocol Ozone Depleting Substances Projects.

This protocol was modified to include the updated leakage rates in Table 5.4. The leakage rates were updated to reflect the impacts of ARB's Refrigerant Management Program. This change had already been made to the baseline calculations, but was inadvertently left out of Table 5.4.

CFC-13 was added as an eligible gas and incorporated into the methodology based on information from US EPA and others. The incorporation required changes throughout the protocol including addition of 10-year cumulative emission rates, carbon ratios, and substitute emissions.

Additional minor and non-substantive changes were also made to this protocol.

4. Modification to Compliance Offset Protocol U.S. Forest Projects.

This protocol was modified to make the definition for "Forest Owner" consistent with the cap-and-trade regulation which was modified in response to stakeholder comments.

The eligibility of offset projects was also modified to allow projects that were part of other voluntary programs to register under the Compliance Offset Protocol if the offset project owners had met legal requirements before transitioning from the other voluntary programs. Stakeholders were concerned that only projects previously registered at the Climate Action Reserve would be allowed to transition to the Compliance Offset Protocol.

Clarifications were made to the language related to projects on tribal lands.

Additional minor and non-substantive changes were also made to this protocol.

Additional Document(s) Added to the Record

Staff has also added to the rulemaking record and invites comments on staff documents that describe in greater detail the refinery sector allocation methodology (Appendix A). The regulation also incorporates the CEC *Guidelines For California's Solar Electric Incentive Programs,* Third Edition, June 2010.

These documents can be accessed at:
http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm

Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Steve Cliff, Chief, Climate Change Program Evaluation Branch, at (916) 322-7194 or Ms. Rajinder Sahota, Manager, Climate Change Program Operations Section at (916) 323-8503.

Public Comments

Written comments will only be accepted on the modifications approved by the Board and may be submitted by postal mail or electronic mail submittal as follows:

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

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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments

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 ARB's website at www.arb.ca.gov.