

FINAL REGULATION ORDER

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Subchapter 10 Climate Change, Article 5, title 17, California Code of Regulations, sections 95802, 95812, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95892, 95910, 95911, 95912, 95913, 95914, 95920, and 95921, are amended to read as follows:

NOTE: Changes to the regulation are shown in underline, deletions from the regulation are shown in ~~strikeout~~. "****" indicates sections of regulations not printed are not changed.

Article 5: California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Subarticle 2. Purpose and Definitions

§ 95802. Definitions.

(a) Definitions. For the purposes of this article, the following definitions shall apply:

- (1) “Account Viewing Agent” means an individual authorized by a registered entity to view all the information on the entity’s accounts contained in the tracking system.

[No changes were made to subsections (1) through (5) except to renumber (2) through (6).]

- ~~(6) “Agent” in a beneficial holdings relationship pursuant to 95834 means the registered entity acquiring and holding compliance instruments to be transferred to another entity under an agreement disclosed to ARB.~~

[No changes were made to subsections (7) and (8).]

(9) “~~Alternate Authorized Account Representative~~” means an individual designated pursuant to section 95832 to take actions on an entity’s accounts. the single entity identified during the account application process who may act on behalf of the authorized account representative.

[No changes were made to subsections (10) through (20).]

(21) “~~Authorized Account Representative~~” means ~~an entity approved through the application process outlined in 95832 and legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article.~~

[No changes were made to subsections (22) through (27) except to renumber to (21) through (26).]

(28) “~~Beneficial Holding~~” means ~~the acquisition and holding of compliance instruments by a registered entity to be transferred to another registered entity under an agreement disclosed to ARB.~~

[No changes were made to subsections (29) through (43) except to renumber to (27) to (41).]

(42)(44)“Carbon Dioxide” or “CO₂” means the most common of the six primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.

[No changes were made to subsections (45) through (120) except to renumber to (43) to (118).]

~~(119)~~(124) “Greenhouse Gas” or “GHG” means carbon dioxide (CO₂), methane (CH₄), nitrogen trifluoride (NF₃), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases as defined in this section.

[No changes were made to subsections (122) through (130) except to renumber to (120) to (128).]

~~(129)~~(134) “Hold,” in the context of a compliance instrument, is to have the serial number assigned to that instrument registered into an account assigned to an entity that is registered into the California eCap-and-Trade Program or an account under the control of the Executive Officer.

[No changes were made to subsections (132) through (207) except to renumber to (130) to (205).]

(206) “Primary Account Representative” means an individual authorized by a registered entity through the registration process outlined in section 95832 to make submissions to the Executive Officer and the tracking system in all matters pertaining to this article that legally bind the authorizing entity.

[No changes were made to subsection (208) except to renumber to (207).]

(208) “Primary Residence” means the property an individual uses as a residence the majority of the time during the year or as the principal place of abode of the individual's family members. The primary residence may be documented by the address listed on the individual's federal and state tax returns, driver's license, automobile registration, or voter registration card.

~~(209) “Principal” means the registered entity in a beneficial holding relationship to which compliance instruments will be transferred by an agent under an agreement with the principal that is disclosed to ARB.~~

[No changes were made to subsections (210) through (288) except to renumber to (209) to (287).]

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Subarticle 3: Applicability

This ~~Article 5~~ applies to all of the entities identified in this subarticle.

[No changes were made to sections 95810 or 95811.]

§ 95812. Inclusion Thresholds for Covered Entities.

- (b) If an entity's reported or reported and verified annual emissions in any data year from 2008~~9~~ to through 2011 from the categories specified in section 95852(a) equal or exceed the thresholds identified below, that entity is classified as a covered entity as of January 1, 2013, and for all future years until any requirement set forth in section 95812(e) is met.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

[No changes were made to section 95813.]

§ 95814. Voluntarily Associated Entities and Other Registered Participants.

- (a) Voluntarily Associated Entities (VAE). An entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments may apply to the Executive Officer pursuant to section 95830(c) for approval as a voluntarily associated entity. ~~The following entities may qualify as voluntarily associated entities:~~
- (1) ~~An entity that does not meet the requirements of sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments;~~

- ~~(2) An entity operating an offset project or early action offset project that is registered with ARB pursuant to subarticles 13 or 14; or~~
- ~~(3) An entity providing clearing services in which it takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered with the Cap-and-Trade Program. A qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C. § 1a(9)) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. § 7a-1(a)).~~
- (1) The following entities may qualify as voluntarily associated entities:
 - (A) An individual, or an entity that does not meet the requirements of sections 95811 and 95813, that intends to purchase, hold, sell, or voluntarily retire compliance instruments;
 - (B) An entity operating an offset project or early action offset project that is registered with ARB pursuant to subarticles 13 or 14; or
 - (C) An entity providing clearing services in which it takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered with the Cap-and-Trade Program. A qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C. § 1a(9)) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. § 7a-1(a)).
- (2) An individual registering as a voluntarily associated entity must have a primary residence in the United States.
- (3) An entity registering as a voluntarily associated entity must be located in the United States, according to the registration information reported pursuant to section 95830(c).

- (c) A registered entity that has had its holding account revoked pursuant to section 95921(gf)(3) may not hold compliance instruments or register with the accounts administrator in the Cap-and-Trade Program in any capacity.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Subarticle 4. Compliance Instruments

[No changes were made to sections 95820 or 95821.]

Subarticle 5. Registration and Accounts

§ 95830. Registration with ARB.

- (c) Requirements for Registration.
- (1) An entity must complete an application that contains the following information:
- (A) Name, physical and mailing addresses, and contact information, and type of organization, date and place of incorporation;
 - (B) Names and addresses of the entity's directors and officers;
 - (C) Names and contact information for persons controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the entity;
 - (D) A business number, if one has been assigned to the entity by a California state agency;
 - (E) A U.S. Federal Tax Employer Identification Number, if assigned;
 - (F) Data Universal Numbering System number, if assigned;

~~(B)~~(G) Statement of basis for qualifying for registration pursuant to sections 95811, 95813, or 95814; and

~~(C)~~(H) Identification of all other entities registered pursuant to this article with whom the entity has a corporate association, direct corporate association, direct or indirect corporate association pursuant to section 95833, and a brief description of the association;.

~~(D)~~(2) Identification of all entities registered pursuant to this article for whose benefit the entity holds compliance instruments pursuant to section 95834; and Applicants may be denied registration: 1. based on information provided; or 2. if the Executive Officer determines the applicant has provided false or misleading information; or 3. if the Executive Officer determines the applicant has withheld information material to its application.

~~(E)~~ Applicants may be denied registration based on (i) information provided; or (ii) if the Executive Officer determines the applicant has provided false or misleading information, or has withheld information pertinent to its application.

(23) If an entity qualifies as a voluntarily associated entity pursuant to section 95814(a)(3), then it does not need to include in its registration application pursuant to section 95830(c)(1)(D) information on entities for which it only takes temporary possession of allowances for the purpose of providing a market clearing service for transactions between two entities registered into the Cap and Trade Program. It must provide information pursuant to section 95830(c)(1)(D) if it has a corporate association with another registered entity pursuant to section 95833. Any individual listed by the registering entity in its registration application in a capacity requiring access to the tracking system must comply with the Know-Your-Customer requirements pursuant to section 95834 before access to the tracking system will be granted.

- (34) ~~An entity must designate an authorized account representative pursuant to section 95832.~~An entity must designate a primary account representative, at least one and up to four alternate account representatives pursuant to section 95832. An individual registering as a voluntarily associated entity may elect to serve as both primary and alternate account representatives or designate additional persons.
- (5) An individual registering as a voluntarily associated entity and having a primary residence in the United States , but not located in California, must designate an agent for service of process in California. The agent may be an individual who resides in California, or a corporation, that has previously filed a certificate pursuant to California Corporations Code section 1505.
- (6) An entity applying for registration that is not an individual or an entity supplying exchange clearing services pursuant to section 95814(a)(1)(C) must designate, pursuant to section 95832, either:
- (A) A primary account representative or at least one alternate account representative with a primary residence in California; or
- (B) An agent for service of process in California. For entities registering into California, the agent may be an individual who resides in California, or a corporation, that has previously filed a certificate pursuant to California Corporations Code section 1505.

- (f) Updating Registration Information.
- (1) Registrants must update their registration information within 10 working days of changes to the information listed in section 95830(c).
 - (2) Information may be directly entered into the tracking system operated by the accounts administrator or, if that is not available, submitted to the accounts administrator by the entity.
 - (3) Registration may be revoked, suspended, or restricted if an entity does not update its registration within 10 days of a change pursuant to section 95921(fg)(3).
- (g) Information Confidentiality. The following information collected about individuals during the registration process will be treated as confidential by the Executive Officer and the accounts administrator to the extent possible, and except as needed in the course of oversight, investigation, enforcement and prosecution:
- ~~(1) Except when necessary in the course of enforcement investigation and prosecution, the following registration information will be treated by ARB and the accounts administrator as confidential:~~
 - ~~(A) Beneficial holding as described in section 95830(c)(1)(D); and~~
 - ~~(B) Information relating to the identity of real persons.~~
 - ~~(2) All other registration information collected pursuant to section 95830(c) may be made publicly available by the accounts administrator.~~
 - (1) Information collected pursuant to section 95830(c)(1)(B) and (C);
 - (2) Information collected about individuals pursuant to section 95834; and
 - (3) Information collected about individuals pursuant to section 95832.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95831. Account Types.

- (a) Accounts Created for Registered Entities.
 - (1) The Executive Officer shall not create more than one holding account, one limited use holding account, one compliance account, or one exchange clearing holding account for each entity registered pursuant to 95830.
 - (2) Holding Accounts. When the Executive Officer approves a registration for a covered entity, an opt-in covered entity, or a voluntarily associated entity, the accounts administrator will create a holding account for the registrant.
 - (3) Limited Use Holding Accounts. When an entity qualifies for a direct allocation under section 95890(b) the accounts administrator will create a limited use holding account for the entity that shall be subject to the following restrictions:
 - (A) The entity may not transfer compliance instruments from other accounts into the limited use holding account; and
 - (B) The entity may not transfer compliance instruments from the limited use holding account to any account other than the Auction Holding Account.
 - (4) Compliance Accounts. When the Executive Officer approves a registration for a covered entity or opt-in covered entity, the accounts administrator will create a compliance account for the entity.
 - (A) A covered entity or opt-in covered entity may transfer compliance instruments to its compliance account at any time.
 - (B) A compliance instrument transferred into a compliance account may not be removed by the entity.
 - (C) The Executive Officer may transfer compliance instruments into a compliance account. The Executive Officer may remove compliance instruments to satisfy a compliance obligation, or when closing an account.

- (5) Exchange Clearing Holding Accounts. When the Executive Officer approves registration for an entity identified as a voluntarily associated entity pursuant to section 95814(a)(31), then the accounts administrator will create an exchange clearing holding account for the entity.
 - (A) Entities may transfer compliance instruments to exchange clearing accounts only for the purpose of transferring control of the instruments to the entity performing the clearing function.
 - (B) The clearing entity may only transfer the compliance instruments in its exchange clearing holding account to the account designated by the entity receiving the allowances under the transaction being cleared.
- (b) Accounts under the Control of the Executive Officer. The accounts administrator will create and maintain the following accounts under the control of the Executive Officer:
 - (1) A holding account to be known as the Allocation Holding Account into which the serial numbers of compliance instruments will be registered when the compliance instruments are created.
 - (2) A holding account to be known as the Auction Holding Account into which allowances are transferred to be sold at auction from:
 - (A) The Allocation Holding Account;
 - (B) The holding accounts of those entities for which allowances are being auctioned on consignment pursuant to section 95921(gf)(3);
 - (C) The limited use holding accounts of those entities consigning allowances to auction pursuant to section 95910; and
 - (D) The compliance accounts of entities fulfilling an untimely surrender obligation pursuant to section 95857(d)(1)(A).

- (3) A holding account to be known as the Retirement Account to which the Executive Officer will transfer compliance instruments from compliance accounts or from holding accounts under the control of the Executive Officer for the purpose of permanently retiring them. Alternatively, entities may voluntarily retire compliance instruments by transferring the serial numbers of compliance instruments they are retiring to the Retirement Account.
 - (A) When compliance instruments are registered into the Retirement Account, these compliance instruments cannot be returned to any other holding or compliance account.
 - (B) When compliance instruments are registered into the Retirement Account, any eExternal GHG ETS to which California links pursuant to subarticle 12 will be informed of the retirements.
 - (C) The Executive Officer will record the serial numbers of the retired instruments to a publicly available Permanent Retirement Registry.
- (4) A holding account to be known as the Allowance Price Containment Reserve Account:
 - (A) Into which the serial numbers of allowances directly allocated to the Allowance Price Containment Reserve pursuant to section 95870(a) will be transferred; and
 - (B) From which the Executive Officer will authorize the withdrawal of allowances for sale to covered entities pursuant to section 95913.
- (5) A holding account to be known as the Forest Buffer Account:
 - (A) Into which ARB will place ARB offset credits pursuant to section 95983(a); and
 - (B) From which ARB may retire ARB offset credits pursuant to sections 95983(b)(2), (c)(3), and (c)(4) and place them into to the Retirement Holding Account.

- (6) A holding account to be known as the Voluntary Renewable Electricity Reserve Account, which will be closed when it is depleted of the following originally allocated allowances:
- (A) Into which the Executive Officer will transfer allowances allocated pursuant to section 95870(c); and
 - (B) From which the Executive Officer may retire allowances pursuant to section 95841.1.

- (d) Additional accounts may be created by the Executive Officer to implement the Cap-and-Trade Program.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95832. Designation of Representatives and Agents.~~Authorized Account Representative.~~

- (a) An application for registration into the California Cap-and-Trade Program for an account must designate a single primary~~authorized~~ account representative and at least one but no more than four ~~a single~~ alternate ~~authorized~~ account representatives ~~who may act on behalf of the authorized account representative.~~ Any communication between the accounts administrator and an alternate account representative must also be addressed to the primary account representative. ~~The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.~~ A complete application for an account shall be submitted to the accounts administrator and shall include the following elements:

- (1) Name, business and primary residence addresses, e-mail addresses, and phone numbers, address, E-mail address, telephone number, and ~~facsimile transmission number~~ of the primaryauthorized account representative and any alternate ~~authorized~~ account representatives and account viewing agents;
- (2) ~~Organization name~~;
- (3) ~~A list of all entities subject to a binding agreement for the authorized account representative or any alternate authorized account representative to represent their ownership interest with respect to the compliance instruments held in the account, including a statement of each beneficial owner's percentage ownership interest and a statement of affiliations between beneficial owners~~;
- (2) Name of the organization designating the primary account representative or any alternate account representative to represent its ownership interest with respect to the compliance instruments held in the account;
- (3)(4) The primaryauthorized account representative and any alternate ~~authorized~~ account representative must attest, in writing, to ARB as follows: "I certify under penalty of perjury under the laws of the State of California that I was selected as the primaryauthorized account representative or the alternate ~~authorized~~ account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in title 17, article 5, sections 95800 et seq. on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the accounts administrator or a court regarding the account";

- (4) An attestation verifying the selection of the primary account representative, alternate account representatives, and account viewing agents, signed by the officer of the entity who is responsible for the conduct of the primary account representative, alternate account representatives, and account viewing agents, and is one of the officers disclosed pursuant to section 95830(c)(1)(B);
- (5) The signature of the primary~~authorized~~ account representative and any alternate ~~authorized~~-account representative and the dates signed; and
- (6) An attestation as follows: "I certify that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. I also certify under penalty of perjury of the laws of the State of California that all information required to be submitted to ARB is true, accurate, and complete."

- (c) Authorization of primary~~authorized~~ account representative. Upon receipt by the accounts administrator of a complete application for an account under section 95830(c):
 - (1) The accounts administrator will establish an account or accounts for the person or persons for whom the application is submitted pursuant to section 95831.
 - (2) The primary~~authorized~~ account representative and any alternate ~~authorized~~-account representative for the account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article, notwithstanding any agreement between the primary~~authorized~~ account representative or any alternate ~~authorized~~-account representative and such entity.

- (3) Any such entity shall be bound by any decision or order issued to the primary~~authorized~~ account representative or any alternate ~~authorized~~ account representative by the Executive Officer or a court regarding the account. Any representation, action, inaction, or submission by any alternate ~~authorized~~-account representative shall be deemed to be a representation, action, inaction, or submission by the primary~~authorized~~ account representative or any alternate ~~authorized~~ account representative.
- (d) Each submission concerning the account shall be submitted, signed, and attested to by the primary~~authorized~~ account representative or any alternate ~~authorized~~-account representative for the entity~~entities~~ that owns the compliance instruments held in the account. Each such submission shall include the following attestation statement by the primary~~authorized~~ account representative or any alternate ~~authorized~~-account representative:
“I certify under penalty of perjury under the laws of the State of California that I am authorized to make this submission on behalf of the entity~~entities~~ that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the State of California that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of California that the statements and information submitted to ARB are true, accurate, and complete.” I consent to the jurisdiction of California and its courts for purposes of enforcement of the laws, rules and regulations pertaining to title 17, article 5, sections 95800 et seq., and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

- (f) Changing primaryauthorized account representative and alternate ~~authorized account representative; changes in entities that own compliance instruments.~~
- (1) The primaryauthorized account representative for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous primaryauthorized account representative, or the previous alternate ~~authorized account representative~~ prior to the time and date when the accounts administrator receives the superseding application for an account shall be binding on the new primaryauthorized account representative and the entity~~entities~~ that owns the compliance instruments in the account.
- (2) The alternate ~~authorized account representative~~ for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous primaryauthorized account representative, or the previous alternate ~~authorized account representative~~, prior to the time and date when the accounts administrator receives the superseding application for an account shall be binding on the new alternate ~~authorized account representative~~ and the entity~~entities~~ that owns the compliance instruments in the account.
- (3) ~~In the event that a new entity owning compliance instruments in the account is not included in the list of entities in the application for an account, the new entity shall be subject to and bound by the application for an account; the representations, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative; and the decisions, orders,~~

~~actions, and inactions of the accounts administrator, as if the new entity were included in such list.~~

- ~~(4) Within one day following any change in the entities that own compliance instruments in the account, including the addition or deletion of entities, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for an account amending the list of entities that own the compliance instruments in the account to include the change.~~

(g) Objections Concerning Authorized Account Representatives.

- (1) Once a complete application for an account under section 95830(c) has been submitted and received, the accounts administrator will rely on the application unless and until a superseding complete application for an account under section 95830(c) is received by the accounts administrator.
- (2) Except as provided in sections 95832(f)(1), no objection or other communication submitted to the accounts administrator concerning the authorization, or any representation, action, inaction, or submission of the primary~~authorized~~ account representative or any alternate ~~authorized~~ account representative for an account shall affect any representation, action, inaction, or submission of the primary ~~authorized~~ account representative or any alternate ~~authorized~~ account representative or the finality of any decision or order by the accounts administrator under this article.
- (3) The accounts administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the primary~~authorized~~ account representative or any alternate ~~authorized~~ account representative for an account, including private legal disputes concerning the proceeds of compliance instrument transfers.

(h) Delegation by primary~~authorized~~ account representative and alternate ~~authorized~~ account representatives.

- (1) ~~An authorized~~A primary account representative or an alternate account representative for a registered entity may delegate, to one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c)(2) authorize up to five natural persons per account that may view all information contained in the tracking system involving the entity's accounts, information, and transfer records (account viewing authority). The persons delegated shall not have authority to take any other action with respect to an account on the tracking system.
- (2) ~~An alternate authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c)(2).~~
- (2)(3) ~~In order to delegate authority to make an electronic submission to the accounts administrator~~ account viewing authority in accordance with section 95832(h)(1) ~~and (2)~~ the primary~~authorized~~ account representative or alternate ~~authorized~~ account representative, as appropriate must submit to the accounts administrator a notice of delegation, that includes the following elements:
- (A) The name, address, email address, and telephone number, ~~and facsimile transmission number~~ of such primary~~authorized~~ account representative or alternate ~~authorized~~ account representative;
- (B) The name, address, email address, and telephone number, ~~and facsimile transmission number~~ of each such natural person, herein referred to as “~~electronic submission agent~~account viewing agent;” and
- (C) An attestation verifying the selection of the account viewing agent, signed by the officer of the entity who is responsible for the conduct of the account viewing agent, and is one of the officers disclosed pursuant to section 95830(c)(1)(B).

~~(C) For each such natural person, a list of the type of electronic submissions for which authority is delegated to him or her; and~~

~~(D) The following attestations by such authorized account representative or alternate authorized account representative:~~

- ~~1. "I agree that any electronic submission to the accounts administrator that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under section 95832(h)(3) shall be deemed to be an electronic submission by me;" or~~
- ~~2. "Until this notice of delegation is superseded by another notice of delegation under section 95832(h)(3), I agree to maintain an email account and to notify the accounts administrator immediately of any change in my email address unless all delegation authority by me is terminated."~~

~~(3)(4)~~ A notice of delegation submitted under section 95832(h)(~~2~~3) shall be effective, with regard to the accounts ~~authorized account representative or alternate authorized account representative~~ identified in such notice, upon receipt of such notice by the accounts administrator and until receipt by the accounts administrator of a superseding notice of delegation by such primary~~authorized~~ account representative or alternate ~~authorized account representative~~ as appropriate. The superseding notice of delegation may replace any previously identified ~~electronic submission agent, add a new electronic submission agent~~ account viewing agent, add a new account viewing agent, or eliminate entirely any delegation of authority.

- ~~(5) Any electronic submission covered by the attestation in section 95832(h)(3)(D) and made in accordance with a notice of delegation effective under section 95832(h)(3) shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.~~

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95833. Disclosure of ~~Direct and Indirect Corporate Associations.~~

- (a) Criteria for Determining Corporate Associations. ~~Entities registered pursuant to section 95830 must disclose direct and indirect corporate associations with other registered entities.~~
- (1) An entity has a corporate association with another entity if either one of these entities:
- (A) Holds more than 20 percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;
 - (B) Holds or can appoint more than 20 percent of common directors of the other entity;
 - (C) Holds more than 20 percent of the voting power of the other entity;
 - (D) In the case of a partnership other than a limited partnership, holds more than 20 percent of the interests of the partnership;
or
 - (E) In the case of a limited partnership, controls the general partner.
- ~~(2)(4)~~ An entity has a “direct corporate association” with another entity if either ~~any~~ one of these entities:
- (A) Holds more than 50 percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;

- (B) Holds or can appoint more than 50 percent of common directors of the other entity; or
 - (C) Holds more than 50 percent of the voting power of the other entity;
 - (D) In the case of a partnership other than a limited partnership, holds more than 50 percent of the interests of the partnership;
or
 - (E) In the case of a limited partnership, controls the general partner.
- ~~(2)~~ An entity (A) has a “direct corporate association” with another entity (B) if the two entities share a common parent that is not registered into the California cap-and-trade program and that parent has a direct corporate association with each entity (A and B) pursuant to section 95833(a)(1).
- (3) An entity has a “direct corporate association” with a second entity if the two entities are connected through a line of more than one direct corporate association.
- (A) An entity (A) has a “direct corporate association” with another entity (B) if the two entities share a common parent that is not registered into the California Cap-and-Trade Program and that parent has a direct corporate association with each entity (A and B) when applying the indicia of control contained in section 95833(a)(2).
 - (B) An entity with a “direct corporate association” with a second registered entity has a direct corporate association with any registered entity with whom the second registered entity has a direct corporate association.
- ~~(4)(3)~~ An entity has an “indirect corporate association” with another entity when if:
- (A) The two entities do not have a direct corporate association;
 - (B)(A) The two entities are connected through a line of more than one direct corporate association; and

~~(C)(B)~~ The controlling entity's percentage of ownership or other indicia of control under section 95833(a)(1)(A), (B), ~~(C)~~, or (DG) of the indirectly controlled entity is more than ~~2050~~ percent but less than or equal to 50 percent after multiplying the percentages at each link in the chain of ~~direct~~ corporate associations.

~~(4)~~ Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates other rules.

~~(5)~~ A publicly-owned electric utility or joint powers agency that is the operator of an electricity generating facility in California has a direct corporate association with the operator of another electricity generating facility in California if the same entity operates both generating facilities. A publicly-owned electric utility or joint powers agency that is the operator of an electricity generating facility in California has a direct corporate association with an electricity importer if the same entity operates the generating facility in California and is the entity importing electricity.

~~(c)~~ Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates those rules.

~~(c)~~ An entity has a ~~disclosable corporate association if any of the criteria in section 95833(a)(1), (2), or (3) yields a value above 25 percent.~~

~~(d)~~ Each registered entity with a disclosable, direct indirect corporate association with another registered entity must disclose the following information. If an entity has a corporate, direct, or indirect association with another registered entity, or an unregistered entity involved in determinations made pursuant to 95833(a)(3), (4) or (5), it must disclose the following information for each associated entity:

- (1) ~~The name of the other entity;~~Information to identify the associated entity, including:
 - (A) Name, contact information, and physical address of the entity;
 - (B) Whether the entity is parent or subsidiary;
 - (C) Holding account number, if applicable;
 - (D) Primary account representative, if applicable;
 - (E) Data Universal Numbering System number, if assigned;
 - (F) A U.S. federal tax Employer Identification Number, if assigned;
and
 - (G) Place and Date of Incorporation, if applicable;
 - (2) The type of corporate association and a brief description of the association, to include ~~the following information:~~ sufficient to explain the entity's evaluation of the measures contained in section 95833(a) used to determine the type of corporate association disclosed.
 - (A) ~~Corporate parent;~~
 - (B) ~~Subsidiary;~~
 - (C) ~~Sister company;~~
 - (D) ~~Partnership; and~~
 - (E) ~~Other information that describes the relationship.~~
- (e) The entity must disclose the information pursuant to section 95833(~~d~~e) to the Executive Officer:
- (1) When registering pursuant to section 95830;
 - (2) At any time after registering when a ~~disclosable~~disclosable corporate, direct, or indirect association is created or exists;
 - (3) Within 30 days of a change to the information disclosed on ~~disclosable corporate~~disclosable corporate, direct and indirect corporate associations; and
 - (4) No later than the auction registration deadline established in section 95912 when reporting a change to the information disclosed, otherwise the entity may not participate in that auction.

- (f) Consolidation of Accounts for Corporate Associations.
- (1) By January 1, 2013, the Executive Officer will consolidate the accounts held by entities registered into the California Cap-and-Trade Program pursuant to section 95830 that are part of a direct corporate association into a consolidated set of accounts.
- (2) By October 1, 2012, the primary account representative or alternate account representative for all entities that are part of a direct corporate association and intend to have their accounts consolidated must provide to the Executive Officer:
- (A) Confirmation of the corporate association if not already provided;
- (B) Confirmation of the entity's intent to have its account consolidated with that of the other entities within the corporate association; and
- (C) A change of primary account representative and alternate account representative to new representatives that will serve as the primary account representative and alternate account representatives for the consolidated accounts.
- (3) To opt out of consolidation of accounts, the primary account representative or alternate account representative for an entity within the corporate association must provide to the Executive Officer by October 1, 2012:
- (A) Confirmation of the corporate association if not already provided;
- (B) An attestation, signed by the officer of the entity who is responsible for the conduct of the account viewing agent and is one of the officers disclosed pursuant to section 95830(c)(1)(B), that the entity seeks exclusion of its account from the consolidated set of accounts to be created; and

- (C) Confirmation of the opt-out decision by the primary account representative or alternate account representative for any entity opting out of consolidation, as well as the primary account representative or alternate account representative designated for any entities remaining in the corporate association consolidated account pursuant to section 95833(f)(2)(C). This confirmation will include a distribution of the purchase and holding limits between the consolidated corporate association and any associated entities opting out of consolidation.
- (4) To consolidate the accounts for a corporate association the Executive Officer shall instruct the accounts administrator to:
 - (A) Create a single consolidated set of accounts for members of a corporate association that accept consolidation;
 - (B) Include a compliance account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a compliance account;
 - (C) Include a limited use holding account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a limited use holding account;
 - (D) Complete all valid transfer requests in the system involving any accounts for the members of the corporate association;
 - (E) Transfer all compliance instruments in the existing accounts held by the member entities to the appropriate corporate association accounts; and
 - (F) Close the accounts held by the individual member entities of the corporate association that have not opted out.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95834. Know-Your-Customer Requirements.~~Disclosure of Beneficial Holding Relationships.~~

(a) General Requirements.

- (1) The accounts administrator cannot provide access to the tracking system to an individual until the Executive Officer has determined the individual applying for participation has complied with the requirements of this section.**
- (2) The requirements of this section are in addition to any requirements contained elsewhere in this article that apply to the functions the individual will undertake in the tracking system.**
- (3) All documents submitted to the Executive Officer pursuant to this section shall be in English.**
- (4) Individuals with a criminal conviction in the five previous years constituting a felony in the United States are ineligible for registration and participation in the Cap-and-Trade Program.**

(b) The individual must provide documentation of the following:

- (1) Name;**
- (2) The address of the primary residence of the applicant, which may be shown by any of the following:**
 - (A) A valid identity card issued by a state with an expiration date;**
 - (B) Any other government-issued identity document containing an individual's primary address; or**
 - (C) Any other document that is customarily accepted by the State of California as evidence of the primary residence of the individual;**
- (3) Date of birth;**
- (4) Employer name, contact information, and address;**
- (5) Either a passport number or driver's license number, if one is issued;**
- (6) An open bank account in the United States;**

- (7) Employment or other relationship to an entity that has registered or has applied to register with the California Cap-and-Trade Program if the individual is listed by an entity registering pursuant to section 95830;
 - (8) A government-issued document providing photographic evidence of identity of the applicant which may include:
 - (A) A valid identity card or driver's license issued by a state with an expiration date and date of birth; or
 - (B) A passport; and
 - (9) Any criminal conviction during the previous five years constituting a felony in the the United States. This disclosure must include the type of violation, jurisdiction, and year.
- (c) Verification of information.
- (1) Any copy of a document submitted pursuant to section 95834 must be notarized by a notary public no more than three months before submittal.
- ~~(a) There are two types of participants in a beneficial holding relationship, an agent and a principal:~~
- ~~(1) The agent in the beneficial holding relationship is the registered entity acquiring and holding compliance instruments to be transferred to another entity under an agreement with that entity that is disclosed to ARB; and~~
 - ~~(2) The principal in the beneficial holding relationship is the registered entity to whom the compliance instruments will be transferred by an agent under an agreement with that entity that is disclosed to ARB.~~
 - ~~(3) An electrical distribution utility may serve as the agent in a beneficial holding relationship for a second registered entity with whom it has a contract for the delivery of electricity for the sole purpose of supplying the second entity with compliance instruments to cover emissions resulting from satisfying the electricity contract.~~

- (A) ~~This disclosure must be made to ARB prior to any such purchases, and must include the terms of the contract governing the eventual transfer.~~
 - (B) ~~This disclosure must include the principal's confirmation that the electrical distribution utility is authorized to serve as an agent on its behalf.~~
 - (C) ~~An entity serving as an agent in this type of a beneficial holding relationship may not also serve as the agent in a beneficial holding relationship with an entity with whom it does not have a contract for the delivery of electricity.~~
- (4) ~~An entity may acquire compliance instruments for the eventual transfer to registered entities that are part of a corporate association to be used for the affiliated entities' compliance obligations. An entity cannot have this type of beneficial holding relationship unless the corporate association is disclosed pursuant to section 95833.~~
- (b) ~~Disclosure of Beneficial Holding.~~
- (1) ~~An entity that establishes an agreement to participate in a beneficial holdings arrangement as either an agent or a principal must report the identity of the second entity in the arrangement, its account information, and the nature of the relationship to the Executive Officer within 10 days of establishing the agreement, notwithstanding the other disclosure requirements in section 95834(a).~~
 - (2) ~~The agent will disclose the identity and account number of the principal when acquiring compliance instruments on behalf of a principal when submitting a transfer request to the accounts administrator pursuant to section 95921. The accounts administrator will notify the principal of the transaction and the principal must confirm the transfer within the time limit specified pursuant to section 95921(a).~~

- (3) ~~After confirmation of the transfer by the principal, the compliance instruments acquired under the transfer and held by the agent will count against the holding limit of the principal and must be transferred to the principal within one year after the agent acquired them.~~
- (e) ~~Multiple Beneficial Holding Relationships. If an entity with a beneficial holding relationship pursuant to section 95834(a)(1) serves as an agent for more than one principal then the entity must either:~~
 - (1) ~~Submit a statement to the Executive Officer, under penalty of perjury under the laws of the State of California, that it:~~
 - (A) ~~Does not share information on one principal's transaction strategies or holdings with any other principal with whom it has a beneficial holding relationship; and~~
 - (B) ~~Conducts separate transactions for each principal with whom it has a beneficial holding relationship; or~~
 - (2) ~~Submits a statement to the Executive Officer, that it has a direct or indirect corporate association with the principals with whom it has a beneficial holding relationship.~~

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Subarticle 6. California Greenhouse Gas Allowance Budgets

[No changes were made to sections 95840 through 95841.1.]

Subarticle 7. Compliance Requirements for Covered Entities

[No changes were made to sections 95850 through 95855.]

§ 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

(b) Compliance Instruments Valid for Surrender.

- (1) A compliance instrument listed in subarticle 4 may be used to satisfy a compliance obligation.
- (2) To fulfill any compliance obligation, a compliance instrument must be issued from an allowance budget year within or before the year for which an annual compliance obligation is calculated or the last year of a compliance period for which a triennial compliance obligation is calculated, unless:
 - (A) The allowance was purchased from the Allowance Price Containment Reserve pursuant to section 95913; or
 - (B) The allowance is used to satisfy an excess emissions obligation.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

[No changes were made to sections 95857 through 95858.]

Subarticle 8. Disposition of Allowances

§ 95870. Disposition of Allowances.

- (d) Electrical Distribution Utility Sector Allocation. Allowances available for allocation to electrical distribution utilities each budget year shall be 97.7 million metric tons multiplied by the cap adjustment factor in Table 9-2 for each budget year 2013-2020. The Executive Officer will allocate to electrical distribution utilities on ~~July 15, 2012, or the first business day thereafter,~~ September 14, 2012 for vintage 2013 allowances and November 1, or the first business day thereafter, of each calendar year from 2013-2019 for allocations from 2014-2020 annual allowance budgets.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Subarticle 9. Direct Allocations of California GHG Allowances

[No changes were made to sections 95890 through 95891.]

§ 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.

(b) Transfer to Utility Accounts.

- (1) Investor Owned Utilities. The Executive Officer will place allowances in the limited use holding account created for each electrical corporation.
- (2) Publicly Owned Electric Utilities or Electrical Cooperatives. ~~When allocating to a publicly owned electric utility or an electrical cooperative, the Executive Officer will place allowances in either a limited use holding account or in a compliance account per the entity's preference. Prior to receiving a direct allocation of allowances, publicly owned electric utilities or electrical cooperatives shall inform the Executive Officer of the share of their allowances that is to be placed:~~ When a publicly owned electric utility or electrical cooperative is eligible for a direct allocation, it shall inform the Executive Officer of the amounts to be placed:
 - (A) In the compliance account of an electrical generating facility operated by a publicly owned electric utility, an electrical cooperative, or a Joint Powers Agency in which the electrical distribution utility or electrical cooperative is a member and with which it has a power purchase agreement; or
 - (B) In the publicly owned electric utility's or electrical cooperative's limited use holding account.
- (3) Publicly owned electric utilities or electrical cooperatives receiving a direct allocation must inform the Executive Officer of the accounts in which the allocations are to be placed by September 1, or the first business day thereafter.

(c) Monetization Requirement.

- (1) In 2012 an electrical distribution utility must offer one ~~third~~^{sixth} of the allowances placed in its limited use holding account in 2012 for sale at ~~each of the two auctions~~^{the auction} scheduled for 2012.
- (2) Within each calendar year after 2012, an electrical distribution utility must offer for sale at auction all allowances in ~~ajts~~^{ajts} limited use holding account that were issued:
 - (A) From budget years that correspond to the current calendar year; and
 - (B) From budget years prior to the current calendar year.

- (e) Reporting on the Use of Auction Proceeds and Allowance Value. No later than June 30, 2013~~4~~, and each calendar year thereafter, each electrical distribution utility shall submit a report to the Executive Officer describing the disposition of any auction proceeds and allowance value received in the prior calendar year. This report shall include:
- (1) The monetary value of auction proceeds received by the electrical distribution utility;
 - (2) How the electrical distribution utility's disposition of such auction proceeds complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.;
 - (3) The monetary value of allowances received by the electrical distribution utility which were deposited directly into electrical generating facility compliance accounts. The electrical distribution utility shall calculate the value of these allowances based on the average market clearing price of the four quarterly auctions held in the same calendar year that the allowances are allocated; and

- (4) How the electrical distribution utility's disposition of the monetary value of allowances, deposited directly into compliance accounts, complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

[No changes were made to section 95893.]

Subarticle 10. Auction and Sale of California Greenhouse Gas Allowances

§ 95910. Auction of California GHG Allowances.

- (a) Timing of the Allowance Auctions.
 - (1) In 2012, an auction will be held on November 14.
 - ~~(1) In 2012, auctions will be held on August 15 and November 14.~~
 - (2) Beginning in 2013, auctions shall be conducted on the twelfth business day of the second month of each calendar quarter.
- (b) General Requirements. ~~An allowance may be designated for auction prior to its vintage year.~~
 - (1) Allowances allocated to the Auction Holding Account pursuant to section 95870(f) will be designated to specific auctions pursuant to section 95910(c).
 - (2) An allowance may be designated for auction prior to or after its vintage year.
- (c) Allowances from future vintages will be auctioned separately from allowances from current and previous vintages each quarter. ~~The Executive Officer will conduct two separate auctions each quarter.~~

- (1) Auction of Allowances from the Current and Previous Budget Years.
- (A) This auction will be known as the Current Auction.
- ~~(A)~~(B) Beginning in 2013, one quarter of the allowances allocated ~~designated~~ for auction from the current calendar year's budget will be ~~offered pursuant to section 95870(f)~~ designated for sale at each Current Auction.
- ~~(B)~~(C) ~~This auction~~The Current Auction will include allowances consigned to auction pursuant to section 95910(d).
- ~~(C)~~(D) ~~Advanced auctions~~The Current Auction may include allowances ~~which were returned to the Auction Holding Account following an auction which resulted in unsold allowances,~~ from the current and previous budget years which remained unsold at previous auctions and which are ~~returned to auction pursuant to 95911(b)(4)~~ designated for auction pursuant to section 95911(f)(3).
- (2) Auction of Allowances from Future Budget Years.
- (A) This auction will be known as the Advance Auction.
- ~~(A)~~(B) ~~At each auction~~the one Advance Auction taking place in 2012, ~~one half~~the Executive Officer will designate for sale all of the allowances designated~~allocated~~ for an Advance Auction pursuant to ~~section 95870(b)~~ will be offered from the 2015 budget.
- ~~(B)~~(C) Beginning in 2013, one quarter of the allowances ~~designated~~ allocated for ~~a~~an Advance ~~a~~An Auction pursuant to ~~95870(b)~~ from the budget year three years subsequent to the current calendar year will be ~~offered~~ designated for sale at each ~~auction~~Advance Auction.
- ~~(C)~~(D) ~~This~~The Advance Auction will include allowances which were returned to the Auction Holding Account following an Advance a Auction which resulted in unsold allowances, and which are

~~returned to~~ designated for auction pursuant to section 95911(f)(3)(b)(4).

- ~~(3) Auctions of allowances from different budget years will be conducted separately.~~
- (d) Auction of Consigned Allowances.
- (1) An entity may consign allowances to the Executive Officer for sale at the quarterly auctions only from a limited use holding account.
 - (2) When the Executive Officer withdraws compliance instruments from accounts closed pursuant to section 95831(c), accounts containing allowances in excess of the holding limit pursuant to section 95920(b)(5), or accounts suspended or revoked pursuant to section 95921(gf)(3):
 - (A) Allowances shall be consigned to the next auction;
 - (B) If, after review, the Executive Officer determines the withdrawn ARB offset credits are valid, the Executive Officer will retire them, withdraw a similar number of allowances from the Auction Holding Account, and consign those allowances to auction in place of the retired ARB offset credits.
 - (3) Each consigning entity agrees to accept the auction settlement price for allowances sold at auction.
 - (4) Deadline for Consignment.
 - (A) For the auctions conducted in 2012, allowances designated for consignment pursuant to section 95892(c) must be transferred to the Auction Holding Account at least 10 days before ~~the~~each auction.

- (B) Beginning in 2013, allowances consigned to auction through a transfer to the Auction Holding Account at least 75 days prior to the regular quarterly auction will be offered for sale at that auction.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95911. Format for Auction of California GHG Allowances.

- (a) Auction Bidding Format.
- (1) The auction will consist of a single round of bidding.
 - (2) Bids will be sealed.
 - (3) Bid quantities must be submitted as multiples of 1,000 California GHG allowances.
 - (4) Bid prices must be submitted in whole dollars and whole centsEntities registered into the California Cap-and-Trade Program must submit bids in whole U.S. dollars and whole cents.
- (b) Auction Reserve Price Schedule.
- (1) Each auction will be conducted with an auction reserve price.
 - (2) No allowances will be sold at bids lower than the auction reserve price.
 - (3) ~~If an auction settlement price equals the reserve price:~~
 - (A) ~~The auction operator will fulfill winning bids with allowances from consignment sources in the following order:~~
 1. ~~Allowances consigned to auction pursuant to section 95910(d)(2);~~
 2. ~~Allowances consigned from limited use holding accounts pursuant to section 95910(d)(1);~~
 3. ~~Allowances directly allocated by ARB to auction pursuant to subarticle 8 and allowances returned to the auction pursuant to section 95911(b)(4).~~

- ~~(B) When there are insufficient winning bids to exhaust the allowances from a consignment source in section 95911(b)(3)(A), the auction operator will sell an equal proportion of allowances from each consigning entity in that source.~~
- ~~(4) Disposition of Allowances Allocated for Auction when an Auction Settlement Price Equals the Reserve Price.~~
 - ~~(A) Allowances designated by ARB for an auction which remain unsold when the auction settlement price equals the Auction Reserve Price shall be returned to the Auction Holding Account to be re-auctioned.~~
 - ~~(B) Allowances returned to the Auction Holding Account will be re-designated for auction after two consecutive auctions have resulted in an auction settlement price greater than the applicable Auction Reserve Price. This requirement applies separately to the current vintage and future vintage auctions.~~
 - ~~(C) The number of allowances returned to each subsequent current vintage or future vintage auction will not exceed 25 percent of allowances already designated by ARB for that auction.~~
- ~~(5) Disposition of Consigned Allowances Remaining Unsold at Auction.~~
 - ~~(A) Allowances consigned to auction from limited use holding accounts that remain unsold at auction will be returned to the respective source accounts.~~
 - ~~(B) Allowances consigned to auction pursuant to section 95921(f)(3) that remain unsold at auction will be held in the Auction Holding Account until the next auction.~~
- ~~(6) Method for Setting the Auction Reserve Price.~~
 - ~~(A) For auctions conducted in calendar year 2012 and 2013 the Reserve Price shall be \$10 per metric ton of CO₂e for vintage 2013 allowances. For auctions conducted in 2012, the Reserve Price shall be \$10 per metric ton of CO₂e for vintage 2015 allowances.~~

~~(B) For auctions conducted in calendar years after 2013 the Reserve Prices shall be the Auction Reserve Prices for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.~~

(c) Method for Setting the Auction Reserve Price.

(1) The Auction Reserve Price for vintage 2013 allowances auctioned in 2012 will be \$10 per allowance. For Advance Auctions conducted in 2012, the Reserve Price shall be \$10 per allowance for vintage 2015 allowances.

(2) Beginning in 2012, and each year thereafter, the Auction Administrator will announce the Auction Reserve Price for auctions to be conducted the following calendar year on the first day in December that is a business day in California. The Reserve Price shall be stated in U.S. dollars.

(3) The auction administrator will calculate the Auction Reserve Price using the following procedure:

(A) The Auction Reserve Price in U.S. dollars shall be the U.S. dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

(B) Prior to the opening of the auction window on the day of the auction, the Auction Administrator shall announce the Auction Reserve Price.

(4) The Auction Reserve Price will be announced prior to the opening of the auction window at 10 a.m. Pacific Standard Time (or Pacific Daylight Time when in effect) on the day of auction, and will be in effect until the window closes at 1 p.m. Pacific Standard Time (or Pacific Daylight Time when in effect).

~~(d)~~(e) Auction Purchase Limit.

- (1) The auction purchase limit is the maximum number of allowances offered at each quarterly auction which can be purchased by any entity or group of entities with a ~~disclosable~~direct corporate association pursuant to section 95833.
- (2) The auction purchase limit will apply to auctions conducted from January 1, 2012 through December 31, 2014.
- (3) For the ~~a~~Advance aAuction of future vintage allowances conducted pursuant to section 95910(c)~~(2)~~ the purchase limit is 25 percent of the allowances offered for auction.
- (4) For the auction of current vintage allowances conducted pursuant to section 95910(c)(1):
 - (A) The purchase limit for covered entities and opt-in covered entities will be 15 percent of the allowances offered for auction;
 - (B) The purchase limit ~~does not apply to~~ for electrical distribution utilities will be 40 percent of the allowances offered for auction; receiving a direct allocation of allowances pursuant to section 95892(b) and subject to the monetization requirement pursuant to section 95892(c). This provision shall not be interpreted to exempt said electrical distribution utilities from any other requirements of this article; and
 - (C) The purchase limit for all other auction participants is four percent of the allowances offered for auction.

~~(e)~~(d) Determination of Winning Bidders and Settlement Price. The following process shall be used to determine winning bidders, amounts won, and a single auction settlement price:

- (1) Each bid will consist of a price and the quantity of allowances, in multiples of 1,000 CA GHG Allowances, desired at that price.
- (2) Each bidder may submit multiple bids.

- (3) Beginning with the highest bid price, bids from each bidder will be considered in declining order by price, and the auction operator shall reject a bid for a bundle of 1,000 allowances:
- (A) If acceptance of the bid would result in violation of the purchase limit pursuant to sections 95911(~~ed~~) and 95914;
 - (B) If acceptance of the bid would result in violation of the holding limit pursuant to sections 95914 and 95920(b); or
 - (C) If acceptance of the bid would result in a total value of accepted bids for an auction participant greater than the value of the bid guarantee submitted by the auction participant pursuant to section 95912(~~hi~~).
- (4) ~~Beginning with the highest bid price, bids will be considered in declining order by price and entities submitting bids at that price will be sold allowances until either:~~ Bids from all bidders will be ranked from highest to lowest by price. Beginning with the highest bid and proceeding to successively lower bids, entities submitting bids at each price will be sold allowances until:
- (A) The next lower bid price is less than the auction reserve price, in which case the current price becomes the auction settlement price; or
 - (B) The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of allowances yet to be sold, in which instance, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in section 95911(~~de~~)(5) shall apply.
- (5) Resolution of tie bids: . If the quantity of allowances contained in the bids placed at the auction settlement price is greater than the quantity of allowances available to be sold at that price, then:

- (A) The auction administrator will calculate the share of the remaining allowances to be distributed to each entity bidding at the auction settlement price by dividing the quantity bid by that entity and accepted by the auction administrator by the total quantity of bids at the settlement price which were accepted by the auction administrator;
- (B) The auction administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share calculated in section 95911(e)(5)(A) above by the number of allowances remaining, rounding the number down to the nearest whole number; and
- (C) To distribute any remaining allowances, the auction administrator will assign a random number to each entity bidding at the auction settlement price. Beginning with the lowest random number, the auction administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.
- ~~(A) If the quantity of allowances contained in the bids placed at the lowest bid is greater than the quantity of allowances available to be sold at that price, then the auction operator will assign a random number to each bundle of 1,000 CA GHG Allowances contained in each of the bids at that price.~~
- ~~(B) Beginning with the lowest random number assigned and working in increasing order of the random numbers assigned, the auction operator shall sell allowances to the bidder assigned the random number until the remaining allowances are sold.~~
- (f) If the quantity of bids accepted by the Auction Administrator is less than the number of allowances offered for sale then some allowances will remain unsold.

- (1) If allowances remain unsold at auction, the auction administrator will fulfill winning bids with allowances from consignment sources in the following order:
 - (A) Allowances consigned to auction pursuant to section 95910(d)(2);
 - (B) Allowances consigned from limited use holding accounts pursuant to section 95910(d)(1);
 - (C) Allowances redesignated to the auction pursuant to section 95911(f)(3); and
 - (D) Allowances designated by ARB for auction pursuant to section 95910(c)(1)(B) and (c)(2)(B) and (C).
- (2) When there are insufficient winning bids to exhaust the allowances from a consignment source in section 95911(f)(1), the auction operator will sell an equal proportion of allowances from each consigning entity in that source.
- (3) Disposition of Allowances Designated by ARB for Auction Which Remain Unsold.
 - (A) Allowances designated by ARB pursuant to section 95910(c)(1)(B) and (c)(2)(B) and (c)(2)(C) for an auction which remain unsold shall be kept in the Auction Holding Account for later auction.
 - (B) Allowances designated by ARB for auction which remain unsold will be re-designated for auction after two consecutive auctions have resulted in an auction settlement price above the Auction Reserve Price. If future vintage allowances remain unsold at the end of the calendar year for which they were designated for sale at Advance Auction, they will remain in the Auction Holding Account until their vintage year. They will then be designated for the Current Auction.

- (C) The number of allowances re-designated to a subsequent current or Advance Auction will not exceed 25 percent of allowances already designated by ARB for that auction. Allowances which remain unsold above that level will be held in the Auction Account for later auction.
- (D) Allowances designated for Advance Auction which remain unsold until their vintage year equals the current calendar year will be designated for Current Auction pursuant to section 95910(c)(1)(B).
- (4) Disposition of Consigned Allowances Remaining Unsold at Auction.
 - (A) Allowances consigned to auction from limited use holding accounts that remain unsold at auction will be held in the Auction Holding Account until the next auction.
 - (B) Allowances consigned to auction pursuant to section 95921(g)(3) that remain unsold at auction will be held in the Auction Holding Account until the next auction.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95912. Auction Administration and Participant ApplicationRegistration.

- (c) Auction Notification. At least 60 days prior to each auction, the auction administrator shall publish the following information:
 - (1) The date and time of the auction;
 - (2) Auction application requirements and instructions;
 - (3) The form and manner for submitting bids;
 - (4) The procedures for conducting the auction;

- (5) The administrative requirements for participation; and
 - (6) The number of allowances from California that will be available at the auction.
 - (7) For the announcement of the first quarter auction, the number of allowances to be available for sale during the calendar year and the Auction Reserve Price in effect for the calendar year pursuant to section 95911(c).
- ~~(d)(e)~~ Auction Registration Participant Application Requirements. An entity that intends to participate in the auction must complete an auction registration at least 30 days prior to the auction.
- ~~(4)~~ The details of the auction and the requirements for auction registration will be provided in a public notice by the auction administrator no later than 60 days prior to the auction.
 - (1) The Executive Officer must approve an entity's auction participant application before that entity may participate in an auction.
 - (2) An entity applying for approval as an auction participant must be registered into the Cap-and-Trade Program as provided in section 95830.
 - (3) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction. An individual associated pursuant to sections 95830, 95832, and 95833 with an entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.
 - ~~(4)(2)~~ An entity will be required to complete an auction participant registration application at least 30 days prior to an auction in which it intends to participate. The entity must provide information and documentation including:
 - (A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;

- (B) The existence of any direct or indirect corporate associations pursuant to sections 95833 and 95914(~~de~~);
- ~~(C)~~ ~~Declarations as to the beneficial holding, pursuant to section 95914, of any compliance instrument that may be acquired through the auction or that already exists prior to the auction;~~
- ~~(D)~~(C) The identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market or exchange; and
- ~~(E)~~(D) The applicant's holding account number.
- ~~(3)~~ The Executive Officer must approve an entity's auction registration before that entity may participate in an auction.
- (5) Prior to participating in an auction, any primary or alternate account representative that will be submitting bids on behalf of entities eligible to participate in Reserve sales must have already:
 - (A) Complied with the Know-Your-Customer requirements of section 95834; and
 - (B) Submitted the additional information required by the financial services administrator contained in Appendix A of this subarticle.
- ~~(e)~~(d) Maintenance and Modification of Auction Participation Approval Registration.
 - (1) Once the Executive Officer has approved an entity's auction participant application~~registration~~, the entity need not complete another application for subsequent auctions unless there is a material change to the information contained in the approved application, there is a material change in the entity's Cap-and-Trade Program registration pursuant to section 95830, or the Executive Officer has made a determination restricting an entity's auction participation pursuant to section 95914(~~e~~).

- (2) An entity approved for auction participation must inform the auction ~~administrator~~~~operator~~ at least 30 days prior to an auction when reporting a change to the information disclosed, otherwise the entity may not participate in that auction.
- ~~(f)~~(e) An ~~registered~~ entity approved for auction participation may not communicate information on auction participation with any other entity that is not part of an association disclosed pursuant to section 95914, except as requested by the auction ~~administrator~~~~operator~~ to remediate an auction application.
- ~~(g)~~(f) Protection of Confidential Information. To the extent permitted by state law, the Executive Officer, the auction administrator, and the financial services administrator will treat the information contained in the auction application and not listed for release pursuant to section 95912(j)(5) as confidential business information.
- ~~(1)~~ ~~To the extent permitted by state law, the Executive Officer, the auction administrator, and the financial services administrator will treat the information contained in the auction application as confidential business information.~~
- ~~(2)~~ Following the auction, the Executive Officer will release the following information:
- ~~(A)~~ The names of the bidders;
 - ~~(B)~~ Auction settlement price; and
 - ~~(C)~~ Aggregated or distributional information on purchases with the names of the entities withheld.
- ~~(h)~~(g) All bids shall be submitted to the Executive Officer and will be considered binding offers for the purchase of allowances under the rules of the auction.
- ~~(i)~~(h) Auction participants~~Registrants~~ must provide a bid guarantee to the financial services administrator at least 12 days~~one week~~ prior to the auction.

- (1) The bid guarantee must be in one or a combination of the following forms:
 - ~~(A)~~ A bond issued by a financial institution with a United States banking license;
 - ~~(B)~~(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;
 - ~~(B)~~(C) An irrevocable letter of credit issued by a financial institution with a United States banking license; or
 - (C) A bond issued by a financial institution with a United States banking license.
 - ~~(D)~~ If California participates in a joint auction with one or more Canadian Provinces pursuant to section 95912(b) then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.The bid guarantee submitted by any entity registered with California will be in U.S. dollars.
- (2) ~~The amount of the bid guarantee must be greater than or equal to the sum of the value of the bids submitted by the auction participant.~~The amount of the bid guarantee must be greater than or equal to the maximum value of the bids to be submitted.
 - (A) The value of a set of bids equals the cumulative quantity of bids submitted at or above a price times that price. The value of the set of bids is calculated at each price at which the bidder will submit a bid.
 - (B) The maximum value of a set of bids is the highest value of a set of bids calculated at each price at which the bidder will submit a bid.
- (3) The bid guarantee will be made payable to the financial services administrator.
- (4) The bid guarantee will expire no sooner than 21 days after the auction date.

- (5) The financial services administrator will evaluate the bid guarantee and inform the auction administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Executive Officer.
 - (6) If an entity has submitted more than one form of bid guarantee then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in section 95912(i)(1).
 - (7) If the auction participant submits a single bid guarantee instrument to cover bids in both the Current and Advance Auctions, the auction administrator will apply the value of the bid guarantee to the Current Auction first when accepting bids pursuant to section 95911(e)(3). The remaining value of the bid guarantee will be used to determine acceptance of bids into the Advance Auction.
- (i) ~~At least 60 days prior to each auction the auction administrator shall publish the following information:~~
- ~~(1) The date and time of the auction;~~
 - ~~(2) Application instructions for applying to participate in the auction;~~
 - ~~(3) The form and manner for submitting bids;~~
 - ~~(4) The procedures for conducting the auction;~~
 - ~~(5) The administrative requirements for participation; and~~
 - ~~(6) The number of CA GHG Allowances that will be available at each auction.~~
- (j) ~~To conduct the auction the auction administrator will:~~
- ~~(1) Obtain a determination from the financial services administrator of the acceptance of the registration bid guarantees;~~
 - ~~(2) Determine that bids and bid quantities conform with purchase limits set for the auction pursuant to section 95911(c), the holding limit pursuant to section 95920(b), and the amount of the bid guarantee provided by the registrant;~~
 - ~~(3) Determine the winning bids and auction price; and~~

- (4) ~~Inform the Executive Officer of the auction results.~~
- ~~(j)~~(k) Following the auction, After the auction administrator has notified the Executive Officer of the results of the auction the Executive Officer will:
- (1) ~~Certify whether the auction was operated pursuant to this article~~Review the conduct of the auction by the auction administrator, then certify whether the auction met the requirements of this article;
 - (2) After certification, direct the financial services administrator to:
 - (A) Notify each winning bidder of the auction settlement price, the number of allowances purchased, the total purchase cost, and the deadline and method for submitting payment;
 - ~~(B)~~(A) Collect cash payments from winning bidders within seven days of notifying them of the auction results;
 - (B) ~~Declare forfeit and retain the bid guarantee mechanism submitted pursuant to section 95912(h) for any bidder that fails to tender full full payment when due for allowances awarded at auction, in an amount equal to any unpaid balance;~~
 - (C) Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make cash payment within seven days after bidders are notified of results and place the proceeds into the Air Pollution Control Fund;
 - ~~(D)~~(C) Deposit auction proceeds from sales of ARB allowances sold at auction into the Air Pollution Control Fund; and
 - ~~(E)~~(D) Distribute auction proceeds to entities that consigned allowances for auction pursuant to section 95910(d); and
 - (F) Return any unused bid guarantee.
 - (3) Upon determining that the payment for allowances has been deposited into the Air Pollution Control Fund or transferred to entities that consigned allowances, transfer the serial numbers of the allowances purchased into each winning bidder's Holding Account, or to its Compliance Account if needed to comply with the holding limit;

- (4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances purchased at auction; and
- (5) ~~Publish the auction results in the manner set forth in section 95912 at www.arb.ca.gov.~~ Following the auction, the Executive Officer will publish at www.arb.ca.gov the following information:
 - (A) The names of the bidders;
 - (B) Auction settlement price; and
 - (C) Aggregated or distributional information on purchases with the names of the entities withheld.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95913. Sale of Allowances from the Allowance Price Containment Reserve.

- (c) Only entities registered into the California GHG Cap-and-Trade Program as provided in sections 95811 or 95813 shall be eligible to purchase allowances from the Reserve. Prior to participating in a Reserve sale, any primary or alternate account representative that will be submitting bids on behalf of entities eligible to participate in Reserve sales must have already:
 - (1) Complied with the Know-Your-Customer requirements of section 95834; and
 - (2) Submitted the additional information required by the financial services administrator contained in Appendix A of this subarticle.
- (e) ~~Timing, Eligible Participants, and Limitations.~~

- ~~(1) Eligible Participants. Only covered entities (including opt-in covered entities) registered as provided in sections 95811 or 95813 shall be eligible to purchase allowances from the Reserve.~~
- ~~(2) The reserve sale administrator of the Reserve shall offer all of the allowances in the Reserve at each reserve sale.~~
- ~~(3) Timing of Reserve Sale.~~
 - ~~(A) The first Reserve sale will be conducted on March 8, 2013.~~
 - ~~(B) Subsequent sales shall be conducted six weeks after each quarterly allowance auction pursuant to section 95910.~~
 - ~~(C) The Reserve sale administrator shall provide all eligible participants with written notice of the number of allowances available for sale and the terms of the sale at least four weeks prior to the sale.~~
- ~~(4) Limitation. Allowances purchased from the Reserve are subject to the Holding Limit established pursuant to section 95920.~~

(d) Timing of Reserve Sales.

- (1) The first Reserve sale will be conducted on March 8, 2013.
- (2) Subsequent Reserve sales shall be conducted on the first business day six weeks after each quarterly allowance auction scheduled pursuant to section 95910.
- (3) The Reserve sale administrator shall provide all eligible participants with notice of the number of allowances available for sale and the terms of the sale at least four weeks prior to the sale.

(e)(d) Reserve Tiers.

- (1) Creation of Reserve Tiers. Prior to the first Reserve sale, the Executive Officer/reserve sale administrator shall divide allowances allocated to the Reserve into three equal-sized tiers.
- (2) The Reserve sale administrator shall offer all of the allowances in the Reserve at each Reserve sale.
- (3)(2) Reserve Tier Prices. Sales of Reserve allowances in calendar year 2013 shall be conducted at the following prices:

- (A) Allowances from the first tier shall be offered for \$40 per allowance;
- (B) Allowances from the second tier shall be offered for \$45 per allowance; and
- (C) Allowances from the third tier shall be offered for \$50 per allowance.

~~(4)(3)~~ Increase in Reserve Tier Release Prices. In calendar years subsequent to 2013, allowances from each tier shall be offered at prices equal to the ~~offer tier prices~~ for each tier from the previous calendar year increased by five percent plus the rate of inflation as measured by the most recently available twelve month value of the Consumer Price Index for All Urban Consumers.

- (f) At least 12 days before the scheduled sale an entity intending to participate in a Reserve sale must submit to the financial services administrator a bid guarantee, payable to the financial services administrator, in an amount greater than or equal to the sum of the maximum value of the bids to be submitted by the entity.
- (1) The maximum value of a set of bids is the quantity bid at each tier times the tier price, summed across the three tiers.
 - (2) The bid guarantee must be in one or a combination of the following forms:
 - (A) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;
 - (B) An irrevocable letter of credit issued by a financial institution with a United States banking license; or
 - (C) A bond issued by a financial institution with a United States banking license.
 - (3) The bid guarantee will be made payable to the financial services administrator.
 - (4) The bid guarantee will expire no sooner than twenty-one days after the Reserve sale.

(5) The financial services administrator will evaluate the bid guarantee and inform the Reserve sale administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Executive Officer.

~~(e) Submissions of Bids to Purchase. At least two weeks prior to the scheduled sale, an entity shall submit:~~

~~(1) To the reserve sale administrator a bid consisting of a price equal to one of the three tier prices and a quantity of allowances; and~~

~~(2) To the financial services administrator a bid guarantee in an amount greater than or equal to the sum of the maximum value of the bids submitted by the entity, in one or a combination of the following forms:~~

~~(A) A bond issued by a financial institution with a United States banking license;~~

~~(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;~~

~~(C) An irrevocable letter of credit issued by a financial institution with a United States banking license; or~~

~~(D) If California participates in a joint Allowance Price Containment Reserve with one or more GHG ETS programs in the Canadian Provinces to which it links and covered entities from linked systems are eligible to purchase from the Reserve pursuant to section 95913(b), then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.~~

~~(E) The financial services administrator will evaluate the bid guarantee and inform the reserve sale administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the financial services administrator.~~

(g)(f) Purchase Determinations.

- (1) The reserve sale administrator will conduct sales from each tier in succession, beginning with the lowest priced tier and proceeding to the highest priced tier, until either all allowances are sold from the reserve or all the accepted bids are filled.
- (2) The Reserve sales window will open at 10 a.m. Pacific Standard Time (or Pacific Daylight Time, when in effect) on the day of sale, and bids may be submitted until the window closes at 1 p.m. Pacific Standard Time (or Pacific Daylight Time, when in effect).
 - (A) Each bid will consist of the price, in U.S. dollars, equal to one of the three tiers and a quantity of allowances in multiples of 1,000 allowances.
 - (B) An entity may submit multiple bids.
- (3)(2) The reserve sale administrator will only accept a bid for a bundle of 1,000 allowances:
 - (A) If acceptance of the bid would not result in violation of the holding limit pursuant to section 95920(b); ~~or~~
 - (B) If acceptance of the bid would not result in a total value of accepted bids for a covered entity greater than the value of the bid guarantee submitted by the covered entity pursuant to section 95913(f)(e)(2); or -
 - (C) If the bid entered by an entity for a tier is for a quantity less than or equal to the number of allowances available for sale in that tier.
- (4)(3) If the sum of bids at the tier price which are accepted by the reserve sale administrator is less than or equal to the number of allowances in the tier, then:
 - (A) The reserve sale administrator will sell to each covered entity the number of allowances for which the entity submitted bids for that tier which were accepted by the reserve sale administrator; and

(B) If allowances remain in the tier after the sales pursuant to section 95913(g)(4)(A)(f)(3)(A) are completed, the reserve sale administrator will assign a random number to each bundle of 1,000 allowances for which entities submitted a bid for the tier above the current tier being sold. Beginning with the lowest random number assigned and working in increasing order of the random numbers assigned, the reserve sale administrator shall sell allowances to the bidder assigned the random number until the remaining allowances in the tier are sold or all bids have been fulfilled. The price for the allowances sold under this procedure will be the price for the tier from which they are sold, not the bid placed.

~~(5)(4)~~ If the sum of bids accepted by the reserve sale administrator for a tier is greater than the number of allowances in the tier, the reserve sale administrator will determine the total amount to be distributed from the tier to each covered entity using the following procedure:

(A) The reserve sale administrator will calculate the share of the tier to be distributed to each bidding entity by dividing the quantity bid by that entity and accepted by the reserve sale administrator by the total quantity of bids which were accepted by the reserve sale administrator; and

(B) The reserve sale administrator will calculate the number of allowances distributed to each bidding entity from the tier by multiplying the bidding entity's share calculated in section 95913(g)(5)(A)(f)(4)(A) above by the number of allowances in the tier, rounding the number down to the nearest whole number.

~~(6)(5)~~ After completing the sales for each tier the reserve sale administrator will repeat the processes in sections 95913(g)(4) and (g)(5)(f)(3) and (f)(4) above for the next highest price tier until all bids have been filled or until the Reserve is depleted. At that time the reserve sale

administrator will inform the Executive Officer of the sales from the Reserve to each participant.

~~(h)(g)~~ Resolution of Sales. ~~Following each sale of allowances from the Reserve, the Executive Officer shall:~~

- (1) After reviewing the conduct of the sale by the Reserve sale administrator, the Executive Officer will certify whether the Reserve sale met the requirements of this article. Certify that the reserve sale administrator conducted the reserve sale pursuant to this article;
- (2) Upon certification of the sale results, the Executive Officer will authorize the financial services administrator to:
~~Upon certification of the sale results, authorize the financial services administrator to process payments from covered entities and deposit proceeds into the Air Pollution Control Fund;~~
 - (A) Notify Reserve sale participants of their purchases and total purchase cost;
 - (B) Process cash payments from participants and deposit proceeds into the Air Pollution Control Fund up to seven days after bidders are notified of results;
 - (C) Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make cash payment within seven days after bidders are notified of results and place the proceeds into the Air Pollution Control Fund. If an entity has submitted more than one form of bid guarantee then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in section 95913(f)(2); and
 - (D) Return any unused bid guarantee.

- (3) Upon determining that the financial services administrator has deposited the payment for allowances into the Air Pollution Control Fund, the Executive Officer shall transfer the serial numbers of the allowances purchased from the Allowance Price Containment Reserve Account into each winning bidder's compliance account;
- (4) The Executive Officer shall inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances sold; and
- (5) The Executive Officer shall publish the sale results at www.arb.ca.gov.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95914. Auction Participation and Limitations.

- ~~(a) An entity registering as an auction participant must be registered as provided in sections 95830.~~
- ~~(b) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.~~
- (a) The Executive Officer may cancel or restrict a previously approved auction participation application or reject a new application if the Executive Officer determines that an entity has:
 - (1) Provided false or misleading facts;
 - (2) Withheld material information from its application, with material meaning information that could probably influence a decision by the Executive Officer, the Board, or the Board's staff;
 - (3) Violated any part of the auction rules pursuant to subarticle 10;
 - (4) Violated the registration requirements pursuant to subarticle 5; or
 - (5) Violated the rules governing trading pursuant to subarticle 11.

- (b) If the Executive Officer determines an entity has committed any of the violations listed in section 95914(a), then:
- (1) The Executive Officer may instruct the auction administrator to cancel a previously approved auction application or to not accept auction applications from the entity;
 - (2) The Executive Officer may instruct the auction administrator to restrict the auction application approval for any corporate associate of the entity to prevent the purchase of allowances at auction for subsequent transfer to the violator;
 - (3) Any cancellation or restriction imposed by the Executive Officer may be permanent or for a specified number of auctions; and
 - (4) The cancellation or restriction imposed by the Executive Officer shall be in addition to any other penalties, fines, and additional remedies available at law.
- (c) ~~If the Executive Officer determines that a bidder has provided false or misleading facts, or has withheld material information in its application, or has violated any part of the auction rules set forth in subarticle 10, then:~~
- (1) ~~The Executive Officer may instruct the auction operator to not accept auction applications from the bidder or any agent or affiliate of the bidder intending to purchase allowances at auction for subsequent transfer to the bidder through either a beneficial holding or corporate association pursuant to sections 95833 and 95834.~~
 - (2) ~~This exclusion from auction participation shall be in addition to any other penalties, fines, and additional remedies available at law.~~
 - (3) ~~This exclusion from auction participation may be permanent or for a specified number of auctions.~~
 - (4) ~~A fact is material if it could probably influence a decision by the Executive Officer, the Board, or the Board's staff.~~

~~(c)~~(d) Non-disclosure of Bidding Information Among Auction Participants.

- (1) Unless it is to an auction advisor or other members of a direct corporate association not subject to auction participation restriction or cancellation pursuant to section 95914(b), an entity approved for auction participation shall not release any confidential information related to its auction participation, including:
 - (A) Qualification status;
 - (B) Bidding strategy;
 - (C) Bid price or bid quantity information;
 - (D) Information on the bid guarantee~~financial security~~ it provided to the financial services~~auction~~ administrator; and
 - (E) Other information identified as confidential information in the auction application by the auction administrator.
- (2) If an entity participating in an auction has retained the services of an advisor regarding auction bidding strategy, then:
 - (A) The entity must ensure against the advisor transferring information to other auction participants or coordinating the bidding strategy among participants;
 - (B) The entity will inform the advisor of the prohibition of sharing information to other auction participants and ensure the advisor has read and acknowledged the prohibition under penalty of perjury; and
 - (C) Any entity that has retained the services of an advisor must inform ARB of the advisor's retention.
- ~~(3) Restrictions on disclosure of information on auction participation between members of a beneficial holding relationship.~~
 - ~~(A) A principal may only disclose confidential information related to its auction participation with another principal in the beneficial holding relationship or with more than one agent.~~

~~(B) An agent in a beneficial holding relationship may not disclose confidential information related to auction participation to anyone other than the principal who made the original disclosure.~~

~~(4) Any disclosure of auction participation information to entities that are not subject to exclusion pursuant to section 95914(d)(1) shall be a violation of this article and subject to penalties pursuant to section 96013.~~

~~(d)~~(e) Application of the Corporate Association to the Auction Purchase Limit.

(1) The total number of compliance instruments which may be purchased in a single auction by a group of entities with a direct ~~or indirect~~ corporate association is limited pursuant to section 95911 ~~(ed)~~.

(2) Entities that are part of a direct ~~or indirect~~ corporate association may allocate shares of the purchase limit amongst themselves. Each entity will then have a specified percentage share of the association's purchase limit. The sum of the shares allocated among the entities must sum to one. Each associated entity's allocated purchase limit share times the auction purchase limit assigned to the association becomes the purchase limit for that entity.

~~(A) The group of associated entities must inform the Executive Officer when submitting the auction application of an allocation of the purchase limit among the associated entities, if applicable;~~

~~(B) The purchase limit allocation will be in effect for the auction for which the associated entities submitted the application; and~~

~~(C) Each associated entity's allocated purchase limit share times the auction purchase limit becomes the purchase limit for that entity.~~

(3) If a corporate association consists of entities with a compliance obligation and voluntarily associated entities, then the following additional restrictions apply:

- (A) The total purchase limit for the association is 15 percent, unless some of the included covered entities are electrical distribution utilities, in which case the purchase limit is 40 percent.
- (B) The total purchase limit assigned to voluntarily associated entities within the corporate association must be less than or equal to 4 percent.
- (C) The purchase limit to be divided among the covered or opt-in entities is the purchase limit assigned to the corporate association less the value assigned to the voluntarily associated entities within the corporate association.
- (4) The group of associated entities must inform the Executive Officer when submitting the auction participant application of an allocation of the purchase limit among the associated entities, if applicable.
- (5) The purchase limit allocation will be in effect for the auction for which the associated entities submitted the application.
- (6)(3) If entities with a direct or indirect corporate association do not allocate shares of the purchase limit among themselves, then the auction administrator will apply the purchase limit to the entities as follows:
 - (A) The administrator will order the associated entities' bids from highest to lowest bid price;
 - (B) Working from the highest to the lowest bid, the auction administrator will accept bids until the purchase limit for the associated entities is met;
 - (C) The auction operator will conduct this procedure before conducting the auction pursuant to section 95911.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Appendix A

<u>Entity Information</u>
<u>Legal Name</u>
<u>Operating Name</u>
<u>U.S. Federal Tax Employer Identification Number</u>
<u>Value Added Tax Identification Number</u>
<u>Data Universal Numbering System Number</u>
<u>Date of incorporation</u>
<u>Place of Incorporation:</u>
<u>Country of Incorporation</u>
<u>Business Number (Assigned by California Agency)</u>
<u>Physical Address (City, State, postal code)</u>
<u>Mailing Address (City, State, postal code)</u>
<u>Country</u>
<u>Contact Information (Name, address, phone , email)</u>
<u>Website Address</u>
<u>Type of Organization</u>

<u>Individual Information</u>
<u>First Name</u>
<u>Middle Name</u>
<u>Last Name</u>
<u>Personal Residence Address</u>
<u>Phone number</u>
<u>Email</u>
<u>Social Security Number</u>
<u>Date of Birth</u>
<u>Citizenship</u>
<u>Employer Name</u>
<u>Employer Address</u>
<u>Copy of a valid identity card issued by a state or province with an expiration date</u>
<u>Copy of a government-issued identity document</u>
<u>Copy of a Passport</u>
<u>Documentation of an open bank account</u>
<u>Documentation of any felony convictions during the previous five years</u>

Subarticle 11: Trading and Banking

§ 95920. Trading.

- (a) The holding limit is the maximum number of California GHG allowances that may be held by an entity or jointly held by a group of entities with a ~~direct or indirect~~ corporate association, as defined in section 95833 at any point in time.
- (b) Application of the Holding Limit.
- (1) The holding limit will apply to each entity registered as a covered, opt-in covered, or voluntarily associated entity pursuant to section 95830.
 - (2) The holding limit calculation will not include allowances contained in limited use holding accounts created pursuant to section 95831.
 - (3) Application of the Holding Limit to Exchange Clearing Holding Accounts. Compliance instruments ~~transferred out of~~contained in an exchange clearing holding account will count against the holding limit of the destination account listed in the transfer request submitted by an exchange clearing holding account at the time the transfer request is confirmed.~~will be included in the calculation of the holding limit for the entity listed as the purchaser in the transfer request reported to the accounts administrator pursuant to section 95921 for the transfer request being cleared.~~
 - (4) If the Executive Officer determines that a reported transfer request not yet recorded into the tracking system would result in an entity's holdings exceeding the applicable holding limit, then the Executive Officer shall not approve the transfer request pursuant to section 95921(a)(1).~~If the violation is not discovered until after the transfer request is recorded, then the transfer request may be reversed pursuant to section 95921(b)(2) and penalties may be imposed pursuant to section 96013.~~

- (5) If the violation is not discovered until after a transfer request is recorded, or the holding limit is exceeded at the beginning of a compliance year when allowances purchased at Advance Auction now fall under the current vintage holding limit pursuant to section 95920(c)(1)(C), then:
- (A) The accounts administrator will inform the violator; and
 - (B) The violator will have five business days to bring its account balances within the holding limit. After that, the Executive Officer may transfer allowances in excess of the holding limit to the Auction Holding Account for consignment to auction pursuant to section 95910(d).
- (6) Penalties may be applied whenever the holding limit is exceeded or transfer requests are filed with the accounts administrator that would violate the holding limit.
- (c) The holding limit will be separately calculated to holdings of:
- (1) ~~Allowances which may be used to fulfill a compliance obligation during the current compliance year pursuant to section 95856(b), including:~~
 - (A) ~~Allowances issued for previous compliance years;~~ Allowances with a vintage year corresponding to the current or previous calendar years;
 - (B) Allowances from any vintage purchased from the Allowance Price Containment Reserve pursuant to section 95913; and
 - (C) Allowances originally purchased at the ~~a~~Advance ~~a~~Auction but ~~now usable for compliance during the current compliance year~~ of a vintage year equal or prior to the current calendar year; and
 - (2) (D) ~~Allowances issued for future compliance years that may not be used for compliance during the current compliance year pursuant to section 95856(b)~~ that were purchased at the Advance Auction and still have a vintage year greater than the current calendar year.

(d) The holding limit will be calculated for allowances qualifying pursuant to section 95920(c)(1) as the sum of:

(1) The number given by the following formula:

$$\text{Holding Limit} = 0.1 * \text{Base} + 0.025 * (\text{Annual Allowance Budget} - \text{Base})$$

In which:

“Base” equals 25 million metric tons of CO₂e.

“Annual Allowance Budget” is the number of allowances issued for the current budget year.

(2) A Limited Exemption from the Holding Limit is calculated as:

(A) The limited exemption is the number of allowances which are exempt from the holding limit calculation after they are transferred by a covered entity or an opt-in covered entity to its compliance account.

(B) On June 1, 2012 the limited exemption will equal the annual emissions most recent emissions data report that has received a positive or qualified positive emissions data verification statement.

(C) Beginning in 2013 on October 1 of each year the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year.

(D) If for any year ARB has assigned emissions to an entity in the absence of a positive or qualified positive emissions data verification statement the calculation of the limited exemption will use the assigned emissions.

(E) For the first compliance period all reported emissions or assigned emissions used to calculate the limited exemption will

include only the emissions associated with the scope for the program during the first compliance period.

- (F) Beginning in 2015, all reported emissions or assigned emissions used to calculate the limited exemption will include the emissions associated with the change in scope taking place in 2015.
- (G) On January 1, 2015 the limited exemption will be increased by the amount of emissions included in the emissions data report received during 2014 but not yet included in the limited exemption pursuant to section 95920(d)(2)(E).
- (H) On December 31 of the calendar year following the end of a compliance period, the limited exemption will be reduced by the sum of the entity's compliance obligation over that compliance period.

(3) Petition to Adjust the Limited Exemption.

- (A) Prior to October 1 of any year, a covered entity may submit to the Executive Officer evidence demonstrating an increase in emissions for that year over the previous year and request a temporary increase in the limited exemption until verified data for that year are available.
- (B) The amount of the increase must be at least 250,000 metric tons CO₂e on an annualized basis.
- (C) The Executive Officer will review the evidence and determine whether an adjustment is needed.
- (D) If an adjustment is granted, then the limited exemption for that covered entity will be increased immediately by the amount determined by the Executive officer.
- (E) When the verified emissions data are received for the year for which an adjustment was granted, the Executive Officer will use the verified emissions value when calculating the limited exemption.

- (e) The holding limit will be calculated separately for each vintage year for allowances qualifying pursuant to section 95920(c)(2) as the number given by the following formula:

$$\text{Holding Limit} = 0.1 * \text{Base} + 0.025 * (\text{Annual Allowance Budget} - \text{Compliance Period Budget} - \text{Base})$$

In which:

“Base” equals 2575 million metric tons of CO₂e.

“Annual Allowance Budget” is the number of California GHG allowances issued for a budget year.

~~“Compliance Period Budget” is the number of allowances issued for the future compliance period from which the allowances were sold at the advance auction.~~

- (f) Application of the Corporate Association Disclosure to the Holding Limit.
- (1) The total number of allowances held by a group of entities with a direct ~~or indirect~~ corporate association pursuant to section 95833 ~~in their holding accounts~~ must sum to less than or equal to the holding limits pursuant to sections 95920(d) and (e).
 - (2) The limited exemption for each entity which is part of a direct ~~or indirect~~ corporate association is the same as defined in section 95920(~~d~~e).
 - (3) Entities that are part of a direct corporate association that choose to opt out of account consolidation pursuant to section 95833(f)(3) ~~must~~ may allocate shares of the holding limit among themselves. This holding limit allocation results in each entity having a specified percentage share of the group’s holding limit. The sum of the shares allocated among the entities must sum to one.

- (A) ~~The group~~ primary account representatives or alternate account representatives of each of the associated entities must inform the accounts administrator of the allocation of the holding limit when registering pursuant to section 95833.
- (B) The holding limit allocation will remain in effect until the ~~group~~ primary account representatives or alternate account representatives of each of the associated entities informs the accounts administrator of subsequent changes to the allocation of the holding limit.
- ~~(4) If entities with a direct or indirect corporate association do not allocate shares of the holding limit among themselves, the accounts administrator will not record any transfer request which would result in the entities with a direct or indirect corporate association exceeding the holding limit.~~
- ~~(g) The application of the holding limit will treat beneficial holding by an agent as part of the holding of the principal.~~

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
 Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95921. Conduct of Trade.

- (a) Transfers of Compliance Instruments Between Accounts.
 - (1) Except when a transfer is undertaken by the Executive Officer, the accounts administrator will not register a transfer of compliance instruments between accounts into the tracking system until the administrator receives a transfer request that the Executive Officer has determined meets the requirements of this article.:
 - (A) ~~The two parties to the transfer submit a request for the transfer to the accounts administrator within three calendar days of settlement of the transaction agreement; and~~ To initiate the process, the primary account representative or an alternate

- account representative of the source account for the transfer must submit a transfer request to the accounts administrator.
- (B) The primary account representative or another alternate account representative for the same entity must confirm the transfer request to the accounts administrator within two days of the initial submission of the transfer request.
- (C) The primary account representative or an alternate account representative for the destination account must confirm the transfer request to the accounts administrator within the time remaining in the three days following the initial submission of the transfer request in section 95921(a)(1)(A).
- ~~(D)~~(B) The Executive Officer must determine whether has determined the transfer request and the transaction for which the transfer request was submitted meet the requirements of this article based on the information available at the time of approval.
- (E) The completed transfer request must be received by the accounts administrator no more than three days following the day of settlement of the transaction agreement for which the transfer request is submitted.
- (2) The following transfers do not require confirmation by an account representative of the destination account pursuant to section 95921(a)(1)(C).
- (A) Transfers initiated by the Executive Officer.
- (B) Transfers between a single entity's holding and compliance accounts.
- (3) The parties to a transfer will be in violation and penalties may apply if the above process is completed:
- (A) More than three days after the initial submission of the transfer request; or
- (B) More than three days after the settlement day of the transaction for which the transfer request is submitted.

~~(2) Except when a transfer is undertaken by the Executive Officer, all transfers between two entities will involve transfers between holding accounts and/or an exchange clearing holding account.~~

~~(b) Deficient Transfer Requests~~

~~(1) If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:~~

~~(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency;~~

~~(B) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to section 95921(a)(1)(A); and~~

~~(C) If the entities fail to submit an acceptable transfer request within the time limit, then they must either withdraw the transfer request or submit a new request for transfer.~~

~~(2) If the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system:~~

~~(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency; and~~

~~(B) If the entities that submitted the deficient transfer request cannot correct the deficiency within 5 business days after notification by the accounts administrator, the Executive Officer may instruct the accounts administrator to reverse the transfer.~~

~~(e)(b) Information Requirements for Transfer Requests. Parties to the transfer request agree to provide documentation about the transaction for which the transfer request was submitted upon the request of the Executive Officer. The following information must be reported to the accounts administrator as part of a transfer request before any transfer of allowances can be recorded on the tracking system:~~

- (1) Holding account number of the source account and identification of two individuals who are the primary authorized-account representative and/or alternate account representatives initiating the transfer request of seller;
- (2) Holding account number of destination account and identification of a primary authorized account representative or alternate account representative for the destination account confirming the transfer request of purchaser;
- (3) Serial numbers of the compliance instruments;
- (4) Date of the transaction agreement for which the transfer request is submitted;
- (5) Actual or expected settlement date, if not the same as date of the transaction agreement;
- (6) Price of the compliance instrument in U.S. dollars. If California links to Canadian provinces pursuant to subarticle 12, the price of the compliance instrument may be reported in Canadian dollars; and Disclosure of price is not required for transfers between entities with a direct corporate association or from an entity's holding account to its compliance account.
- ~~(7) Holding account number and authorized representative of an entity for whom the compliance instrument is to be held in benefit;~~

(c) Transfer Request Deficiencies

- (1) If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:
 - (A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency;
 - (B) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to sections 95921(a)(1)(C) and (E); and

- (1) Releases information on the ~~transaction~~transfer price and quantity of compliance instruments in a ~~timely~~ manner that is timely and maintains the confidentiality of the parties to a transfer;
- (2) Except as needed for market oversight and investigation by the Executive Officer, protects as confidential all other information obtained through ~~transfer request~~transaction reports;
- (3) Protects as confidential the quantity and serial numbers of compliance instruments contained in holding accounts; and
- (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner.

~~(e)~~(f) General Prohibitions on Trading.

- (1) An entity cannot acquire allowances and hold them in its own holding account on behalf of another entity, ~~except when part of a disclosed beneficial holdings relationship pursuant to section 95834.~~
- ~~(2)~~ A ~~registered entity acquiring a compliance instrument on behalf of another registered entity not part of a disclosed beneficial holdings relationship must designate the holding account of the second entity as the destination account in the transfer request.~~
- ~~(3)~~(2) A trade involving, related to, or associated with any of the following are prohibited:
 - (A) Any manipulative or deceptive device in violation of this article;
 - (B) A corner or an attempt to corner the market for a compliance regulated instrument;
 - (C) Fraud, or an attempt to defraud any other entity;
 - (D) A false, misleading or inaccurate report concerning information or conditions that affects or tends to affect the price of a compliance instrument;
 - (E) An application, report, statement, or document required to be filed pursuant to this article which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading; or

- (F) Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity on or through which transactions in compliance instruments occur, are settled, or are cleared.
- (G) A fact is material if it could probably influence a decision by the Executive Officer, the Board, or the Board's staff.

[No changes were made to subsection (f) except to renumber to (g).]

(g)(h) Information Reporting By Holders of Exchange Clearing Holding Accounts.

- (1) Holders of exchange clearing holding accounts must make the transaction records available to ARB within 10 calendar days of a request from the Executive Officer.
- (2) Holders of exchange clearing holding accounts must retain transaction records containing the information listed in 95921(b)(e) for 10 years.
- (3) ~~ARB~~ Holders of exchange clearing holding accounts are not required to include the information listed in 95921(b)(e)(4), (5), (6), and (7) in transfer requests to the accounts administrator.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.