

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information

PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

Public Hearing Date: September 22, 2016
Public Availability Date: December 21, 2016
Deadline for Public Comment: January 20, 2017

At the September 22, 2016, public hearing, the Air Resources Board (ARB or Board) considered staff's proposed sections 95801 to 96022, title 17, California Code of Regulations (CCR). These sections comprise the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (Cap-and-Trade Regulation or Regulation).

The Board did not take action on the proposal at the September 22, 2016, Board hearing. Comments received prior to, and during, the public hearing, as well as further staff analysis, are reflected in proposed modifications in this Notice. The changes are described below and are incorporated in the modified regulatory text.

All regulatory documents for this rulemaking are available online at the following ARB website:

<https://www.arb.ca.gov/regact/2016/capandtrade16/capandtrade16.htm>

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this Notice are shown in ~~double-strikethrough~~ and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to the modifications to the originally proposed amendments that are described in this Notice or identified by the double-underline and double-strikethrough formatting in Attachment A. Staff will also respond to comments relating to the documents added to the rulemaking file, as identified later in this notice.

Summary of Proposed Modifications

The staff's proposed modifications to the originally proposed amendments to sections 95802, 95803, 95811, 95812, 95813, 95814, 95830, 95831, 95832, 95833, 95834, 95835, 95840, 95841, 95841.1, 95851, 95852, 95852.1, 95852.2, 95853, 95856, 95857, 95858, 95859, 95870, 95871, 95890, 95891, 95892, 95893, 95894, 95895, 95910, 95911, 95912, 95913, 95914, 95920, 95921, 95922, 95941, 95943, 95944, 95945, 95972, 95973, 95974, 95975, 95976, 95977, 95977.1, 95978, 95979, 95980, 95980.1, 95981, 95981.1, 95983, 95985, 95987, 95990, 96014, Appendix C, Appendix D, and Appendix E, title 17, CCR are summarized below and attached to this notice as Attachment A.

As the initial notice for this rulemaking explained, staff continues to work to further develop the proposed amendments. The set of amendments noticed for this public comment period in this proposal address some, but not all, of the matters originally noticed. Additional proposed amendments within the scope of this rulemaking may be issued in a second package of proposed amendments, with an additional 15-day comment period.

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity. For a complete account of all modifications in the originally proposed regulatory amendments, refer to the double underline and double strikeout sections of the regulation in Attachment A.

A. Modifications to Section 95802. Definitions.

The definitions of "Calcium Ammonium Nitrate Solution," "Lead and lead alloys," and "Nitric Acid" are modified only to eliminate previous amendment text stating that staff may propose a revision to this definition after reviewing the benchmark. The definitions that existed prior to the originally proposed amendments are retained.

Non-substantive changes are made to the definition of "Calyx" to correct grammatical errors.

The definition of "Importer of fuel" is amended to ensure consistency with changes proposed to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) to address stakeholder concerns that fuel importers could avoid a reporting obligation by disaggregating imported volumes through simple contractual changes.

The definition of "Imported Electricity" is changed to restore language associated with the First Point of Receipt. Consistent with changes proposed to MRR related to the Energy Imbalance Market (EIM) of the California Independent System Operator (CAISO), the proposed definition for "energy imbalance market purchaser" is also deleted, and language in the "imported electricity" definition is changed to reflect

proposed regulatory changes in MRR for reporting EIM imports.

The definition of “Milk Powder (medium heat)” is changed to include milk powder with undenatured whey protein nitrogen content greater than or equal to 1.5 mg/g powder instead of 1.51 mg/g powder. This change is made to make this definition consistent with the definition of “Milk Powder (high heat).”

The definition of “Public Wholesale Water Agency” is changed to modify a criterion for evaluating if a covered entity qualifies as a public wholesale water agency. Consistent with the amendments proposed in the 45-day amendments related to the 2021-2030 timeframe, the definition is changed to expand the time period during which the covered entity must incur a compliance obligation from 2013–2020 to 2013–2030.

The definition of “Unintentional Reversal” is changed to clarify that salvage harvest can occur for all types of unintentional reversal, not just wildfires.

The 45-day amendments provided notice that several product definitions (e.g., the definitions for “Buttermilk Powder” and “Soda Ash Equivalent”) may be revised as a result of reviewing the product-based benchmarks related to those products. The benchmark review is ongoing, and staff may propose further changes to these definitions as part of this rulemaking process. Any change proposed will be circulated for a 15-day public comment period.

B. Modifications to Section 95814. Voluntarily Associated Entities and Other Registered Participants.

Section 95814(a)(3)(A) is modified to shorten the disclosure requirement to 30 days rather than three months in order to harmonize the timing of disclosure for individuals registered as a voluntarily associated entity in the tracking system who provide Cap-and-Trade consulting services with the disclosure requirement as described in section 95923.

Section 95814(a)(4) is modified to clarify a reporting requirement for individuals who are registered in the tracking system and intend to provide Cap-and-Trade Program advisory services to other registrant(s) prior to providing the advisory services to ensure ARB fully understands the relationship between the registered entities.

Section 95814(a)(6) is modified to reflect the new disclosure requirement described in section 95814(a)(3) and to confirm that only those disclosed individuals may be eligible to register as a voluntarily associated entity. An additional change is made to registration eligibility to clarify that individuals designated as account representatives or viewing agents are not be eligible to register as voluntarily associated entities.

C. Modifications to Section 95830. Registration with ARB.

Section 95830(b)(3)(B) is modified to remove a proposed requirement for a controlling entity that applies for a consolidated entity account as the proposed requirement is redundant. The change does not alter the current requirements for a consolidated entity account. When establishing a consolidated account for currently unregistered entities, only the controlling entity must conduct all applicable registration requirements and corporate disclosures; the unregistered entities or unregistered direct corporate associates are not required to provide any information directly to ARB unless they are registering for separate entity accounts in the tracking system.

Section 95830(c) is modified to include reference to the Accounts Administrator to ensure consistency with section 95830(a)(3) and with the current notification process in the Compliance Instrument Tracking System Service (CITSS).

Section 95830(c)(1)(B) is modified to clarify that the officers and directors that must be disclosed are only those with legal authority to make binding decisions on behalf of any entity, and that partners in a partnership are not only individuals, but also limited and general partners.

Section 95830(c)(1)(E) is modified to maintain current registration requirements for applicants within the United States and to explicitly require the identification of a U.S. Federal Tax Employer Identification Number, if assigned. The changes proposed in the 45-day comment period sought to clarify an existing requirement related to government identification numbers for applicants outside the United States. The newly proposed text still allows for identification of a government issued identification number for those entities outside the United States that may not be assigned a U.S. Federal Tax Employer Identification Number, but retains the requirement for U.S. entities to use their federal tax number.

Section 95830(c)(1)(G) (proposed as section 95830©(1)(F)) is modified for clarification and no changes are being made to current registration requirements in this section. The change substitutes the language “identification of qualifications” for “statement of the basis of qualifying” in order to better capture the type of registration information required for covered entities, opt-in covered entities, and voluntarily associated entities, which may include facility information or identification of an agent for service of process.

Section 95830(c)(1)(H) is modified to add in the term “registered” in front of each usage of “entity” to clarify that the provision applies to registered entities. This modification does not change the application of the section.

Section 95830(c)(1)(I) is modified to provide additional clarity to applicants that choose to opt-out of account consolidation and instead apply for their own separate entity accounts. Additional language is added to clarify an existing registration requirement that each registered direct corporate associate must provide an

allocation of its holding and purchase limit shares such that the total allocation sums to 100 percent before the applicant can be approved for an account.

Section 95830(c)(1)(J) is modified to ensure consistency with the change in terminology proposed for section 95814(a)(7). The change is needed to clarify the existing disclosure requirement, which applies to an employee and not to a consultant or advisor, or to a self-employed contractor who may be considered to be “employed by” an entity, but is not an actual employee of the entity as would be defined by federal tax employment standards.

Section 95830(c)(1)(K) is modified to improve clarity. The changes do not alter any registration requirements for an opt-in covered entity. The text changes are minor and are consistent with terminology referenced in section 95813.

Section 95830(c)(2) is modified to improve clarity, and no new requirements are proposed. The changes more explicitly state that the eligibility requirement affects entities applying for registration as compared to entities already registered in the California Cap-and-Trade Program.

Section 95830(c)(3) is modified to improve the clarity and readability of the Regulation text describing the account consolidation process. The text is consistent with the registration requirements described in section 95830.

Section 95830(c)(3)(A)-(D) is modified to include specific references to the account requirements established in section 95831. The changes refer to existing requirements.

Section 95830(c)(4) is modified to provide additional clarity and readability on the registration requirements for an individual who has applied to register as a voluntarily associated entity. There change does not introduce any new requirement.

Section 95830(d)(1) is modified to change the December 31 deadline, which was proposed in the 45-day amendment package, back to the original deadline of “within 30 calendar days of the reporting deadline contained in MRR.” The original deadline for an entity to complete registration ensures that entities eligible for allowance allocation or true-up allowance allocation will receive these allowances pursuant to the timing described in section 95870.

Section 95830(d)(3) is modified to clarify the intent of the regulatory text by including a reference to the requirements of existing section 95814.

Section 95830(e)(1) is modified to keep existing registration update requirements applicable to section 95830(c), including the designation of primary and alternate account representatives and the disclosure of an agent for service of process. This designation and disclosure information must be updated within 30 days of a change.

Section 95830(e)(2) is modified to correct an incorrect reference to section 95833(c)(1)(G). The reference to corporate association disclosure requirements is appropriately changed to section 95830(c)(1)(G).

A new paragraph number, section 95830(g)(4)(B)(1), is added under section 95830(g)(4)(B) to improve clarity on requirements and better organize the regulatory text. This change does not introduce any new requirement.

Paragraph 95830(g)(4)(B)(2) is added to further clarify the requirements for an entity with a compliance obligation in more than one jurisdiction. The proposed text allows users approved by a linked external GHG ETS system to be designated as a primary account representative, alternate account representative, or account viewing agent of a California covered entity or opt-in covered entity. Individuals are only able to maintain one user account in the tracking system and are prohibited from applying for another user account under the same or different name in an approved external linked GHG ETS as described in section 95830(c)(8)(E). The modifications expressly allow individuals to represent entities that have compliance obligations in more than one jurisdiction by specifying California-specific requirements, which require that the individual still meet the Know-Your-Customer attestation and information disclosure requirements of sections 95832, 95833, and 95834.

D. Modifications to Section 95832. Designation of Representatives and Agents.

Section 95832(a) is modified to specify that a change or redesignation of initially designated representatives and agents can be done through a request rather than submission of a complete application. This change is consistent with the primary account representative and alternate account representative redesignation requirements described in section 95832(f).

Section 95832(a)(4) is modified to clarify that either a director or officer of the entity disclosed pursuant to section 95830(c)(1)(B) must sign the attestation. This change is necessary to allow both directors and officers to appoint representatives and agents on behalf of the entity.

Section 95832(f)(1) and (f)(2) are modified to describe the attestation requirements to change a primary account representative or alternate account representative, except when swapping account representatives as described in section 95832(f)(3). The regulatory text requires that the new account representative complete an attestation, that an active primary or alternate account representative submit an attestation, and that a director or officer authorize the new representative and submit an attestation as described in section 95832(a)(3)-(6). The changes are intended to clarify the modifications released during the 45-day comment period and are necessary to clarify the existing process to redesignate or change account representatives or agents and eliminate the burden for entities to submit a superseding complete application.

Section 95832(f)(3) is modified to clarify the requirement that a redesignation of account representatives requires approval by the accounts administrator rather than just receipt of the request.

Section 95832(f)(3)(A) is modified to allow either a director or officer's existing attestation to remain applicable for representatives requesting to switch roles (i.e., PAR/AAR swap) as long as the director or officer is disclosed pursuant to section 95830(c)(1)(B). A subsequent attestation from a director or officer of the entity would be required only if the signing director or officer is new to the entity and has not yet been disclosed to ARB. This change streamlines the process to change account representatives without losing any information necessary for efficient market monitoring and operations.

Section 95832(f)(3)(C) is modified to further clarify that an attestation, whether from a director or officer, is not required to swap a PAR for an AAR or vice versa if the director or officer has previously been disclosed. The additional modification clarifies that if the director or officer has not been disclosed previously, then a new attestation is required. This change ensures that the authorized designation is made and appropriately disclosed.

Section 95832(f)(4) is modified to more clearly address the situation where a registered entity no longer has at least one active account representative. The proposed changes clarify the important distinction from the provisions in section 95832(f)(3)(A) regarding PAR/AAR swaps and maintain that a complete application is required to ensure that information required to designate account representatives is up to date. This is not a new requirement and was formerly described in section 95832(f). These changes allow ARB to take quick and effective action with registered entities who fail to update registration information by the applicable deadline described in section 95830(e)(4).

Proposed sections 95832(f)(4)(A)-(C) are removed as they are repetitive of requirements described in section 95832(f)(3) and do not apply to the modified language in section 95832(f)(4).

E. Modifications to Section 95833. Disclosure of Corporate Associations.

Section 95833(a)(1)(B) is modified to include a reference to officers as well as directors, as staff believe these individuals have considerable control or binding authority on behalf of the registering entity. Officers disclosed pursuant to section 95830(c)(1)(B) are considered to have similar control over an entity as the owners or directors, and staff considers this to be an important criteria in determining the level of ownership or control by one entity over another.

Proposed Section 95833(d)(1)(B) (formerly section 95833(d)(1)(C)) is modified to clarify that the tracking system entity identification is the code or four digit number

assigned to the registered entity.

Proposed section 95833(d)(1)(C) (formerly section 95833(d)(1)(F)) is modified to keep the current requirement that an entity submit a U.S. Federal Tax Employer Identification Number, if assigned. For non-U.S. based entities, the option to submit any available government-issued identification number is still proposed to broaden the disclosure requirement.

F. Modifications to Section 95834. Know-Your Customer Requirements.

Section 95834(b)(5) is modified to clarify the intent of the identification of any employment or relationship that an individual has or will have with an entity that is registered or registering. This clarifying change ensures that ARB has sufficient information during the user registration process to identify the entity accounts with which the user intends to be associated.

Section 95834(c) is modified to include the requirement that a director or officer of the covered entity confirm if an employee intends to use the alternate disclosure process of 95834(c). The director or officer of the covered entity thereby acknowledges responsibility for verifying the individual's identity and ensuring that the individual has no felony convictions in any jurisdiction in the last five years. Additionally, the director or officer of the entity disclosed pursuant to section 95830(c)(1)(B) also attests that the entity will retain the documentation and provide it for review to ARB upon request.

Section 95834(c)(2) is modified to clarify that the disclosed officer or director must attest to the accuracy of the documentation retained.

Section 95834(d) is modified to clarify the requirement for an individual to obtain notarization of only one single proof-of-identity document, rather than all documentation submitted pursuant to section 95834. The proposed text keeps the current requirement and allows for any copy of a document to be notarized.

G. Modifications to Section 95835. Changes to Entity Type and Reassignment of Facilities Already Registered to Different Entity Accounts.

Section 95835 is modified to provide clarity for entities changing entity types and applying for new accounts due to a change in reported emissions. The term "entity type" used in the section header and throughout the section is more accurate and clear than the previous term "registration type." An entity may not automatically change its registration in the tracking system from a covered entity or opt-in covered entity account to a voluntarily entity account; instead, the entity must submit a new account application in order to change entity types. Further, a covered entity and an opt-in covered entity are considered the same entity type in the current design and functionality of the tracking system.

Section 95835(a)(3) is modified to directly reference the account consolidation requirements provided in section 95830(b)(3). This reference is not a new requirement; it merely adds clarity to this section.

Section 95835(b)(1) is modified by including the term “merger,” as that is a common type of change in facility ownership. The addition of this term adds clarity to the relevant changes of ownership.

Section 95835(b)(4) is modified to change an incorrect reference. The incorrect reference to section 95833(f) is changed to a correct reference to section 95830(b)(3).

Section 95835(b)(5) is modified to clearly state that signatures from a director or officer of the entity owning the facility or facilities and from a director or officer of the purchasing entity are required for a change of ownership. This is not a new requirement. The changes are made to ensure consistency in terminology used in section 95835(b)(2).

Section 95835(b)(7) is modified to add clarity for entities requesting an administrative transfer of compliance instruments. Such requests must be submitted as a one-time request within a five business day time frame after the facility is transferred in the tracking system to the purchasing entity. This change reflects current administrative procedures for transferring instruments between facilities undergoing in a change of ownership.

Section 95835(b)(8) is modified to add clarity for entities that are no longer covered entities in the Program due to a change of facility ownership. The covered entity is able to exit the Program immediately and should request to close its tracking system accounts within five business days after the facility is transferred in the tracking system to the purchasing entity. This change reflects current administrative procedures for entities that no longer require tracking system accounts due to a change of facility ownership.

Section 95835(c)(1)(A) is modified to improve clarity by explicitly stating that an opt-in covered entity must apply for a new tracking system account in order to change its entity type to a voluntarily associated entity. This is not a new requirement and reflects the current design and functionality of the tracking system.

Section 95835(c)(2)(A) is modified to further clarify the process for when a facility is automatically considered a voluntarily associated entity. If a covered entity does not complete its change in entity type by the deadline specified in section 95835(e)(1), then the entity will be reassigned with the purchase limit and holding limit applicable to that of a voluntarily associated entity. Also the change explicitly allows the Executive Officer to revoke or suspend an entity’s tracking system accounts and transfer any compliance instruments pursuant to section 95835(b)(8) if an entity fails to update its registration information.

Section 95835(d)(1) is modified to explicitly state that an entity registered in the tracking system does not need to apply for a new set of accounts if the entity is changing entity types from a covered entity to an opt-in covered entity. These two types of entities maintain the same type of tracking system accounts based on current design and functionality.

Section 95835(d)(3) is modified to remove the reference to an entity's eligibility for a change in entity type since fuel suppliers and electric power entities (EPEs) may not claim eligibility for a change in entity type pursuant to section 95835(b)(2), but may still be able to exit the Cap-and-Trade Program if all operations are ceased and no further activity is anticipated.

Section 95835(e)(1)(B) is modified to ensure consistency in treatment of circumstances under which a covered or opt-in covered entity may request to change entity type during the calendar year. Staff considers the change to be necessary to ensure that registration information is up-to-date for adequate market monitoring activities. Further, the reference to 30 calendar days is consistent with the existing requirement of section 95830(f) for entities to update registration information.

Section 95835(e)(1)(D) is modified to improve clarity in the proposed requirement. An opt-in covered entity seeking to exit the program would make a request to the Executive Officer to exit, rather than a request to change its registration or entity type.

Section 95835(e)(2)(A) is modified to describe the actual process for a qualifying entity to remain in the Program, which requires that a covered or opt-in covered entity apply for a new tracking system account as a voluntarily associated entity. The entity may not retain its existing tracking system account due to the current functionality and design of the tracking system.

Section 95835(e)(2)(B) is modified to provide a direct reference to the regulatory requirements for the account consolidation process described in section 95830.

Section 95835(e)(2)(C) is modified to clarify a timeline for exiting the Program.

Section 95835(f)(2)(B) is modified to clarify that entities that request to close their account in the tracking system, but that have a remaining balance of compliance instruments in the compliance account, may request that ARB retire those instruments to the ARB Retirement Account per a one-time administrative transfer.

Section 95835(f)(3) is modified to clarify how ARB will transfer any remaining compliance instruments from a closed entity account to the ARB Retirement Account if an entity chooses not to consign or to request an administrative transfer of compliance instruments before the account closes. This change ensures ARB's

ability to fully account for compliance instruments for market liquidity and overall market balance.

H. Modifications to Section 95851. Phase-in of Compliance Obligation for Covered Entities.

No new changes are proposed for section 95851. Under the current Regulation, waste-to-energy facilities had a limited exemption from a compliance obligation during the first compliance period, and that exemption was set to expire beginning in 2016. In the 45-day amendments released as part of this rulemaking process, changes to section 95851(d) proposed to delay the end of this limited exemption from 2016 to 2018, effectively extending the exemption through the second compliance period. The limited exemption for waste-to-energy facilities was discussed at the September Board Hearing and at an October 21, 2016 workshop, during which time the Board and staff received comments supporting and opposing the change to the limited exemption timing. All workshop materials are available at the ARB website¹ and in Attachment E to this Notice.

Although staff is not proposing changes to section 95851 as part of this 15-day comment period, staff believes that it is appropriate that waste-to-energy facilities begin incurring a compliance obligation by no later than the second compliance period. Discussions of the treatment of waste-to-energy facilities in the Program are ongoing, and staff may propose further regulatory changes to this section as part of this rulemaking process, in part based on any additional stakeholder comments received in this 15-day comment period. Any future proposed changes will be circulated for another 15-day public comment period.

I. Modifications to Section 95852. Emission Categories Used to Calculate Compliance Obligations.

Sections 95852(b)(1)(B) and 95852(b)(1)(D) are modified to better address GHG emissions associated with CAISO's EIM market. As the 45-day notice for this package outlined, ARB is working to address these issues. In short, the EIM as currently constituted is not providing ARB or the EIM's participating members (some of which are reporting entities under MRR) all of the data necessary to support full accounting of GHG emissions emitted to the atmosphere when there is dispatch to serve California load during periods of imbalances. Specifically, the greenhouse gas bid adder system now in use does not completely identify all resources that may alter their dispatch (and, hence, their emissions) to support imports to California. As a result, the Cap-and-Trade Regulation also needs to be modified to ensure that compliance obligations and market design properly account for GHG emissions that result from electricity generation that serves California load. Staff released an EIM Discussion Paper, attached to this notice as Attachment F, which explains these issues in more detail.

¹ <https://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm>

CAISO is in the process of developing amendments to its EIM tariff and underlying tracking systems to address this issue. CAISO's proposed changes are intended to more accurately capture incremental behavior, and emissions, from power plants importing power to California in response to changes in California load. However, these proposed changes are still being developed and will not be in place during data year 2017, and potentially not during reporting year 2018.²

Staff has therefore developed a solution intended to act as a bridge to support accurate accounting while a longer-term approach is being developed by CAISO staff. The proposed changes are based on extensive coordination with CAISO and stakeholders, including through public workshops. The new compliance and reporting approach for EIM imported electricity requires EIM participating resource scheduling coordinators to continue reporting as they currently do under MRR, and requires CAISO to report information annually to ARB that would allow ARB to calculate the amount of emissions ("outstanding emissions") to support full accounting of GHG emissions emitted to the atmosphere when there is dispatch to serve California load during periods of imbalances. The outstanding emissions will be calculated by determining the amount of electricity transferred into California by EIM, and multiplying that amount by the default emission factor ARB uses for unspecified market transactions, and then subtracting known emissions associated with specific EIM imports. This is appropriate because this factor reflects the emissions of power plants on the margin of Western electricity markets, and so reasonably approximates the emissions effect of marginal changes in that market in response to California demand. Staff has determined that this calculation reasonably captures GHG emissions from EIM market operations, pending further improvements to the EIM algorithm. This data can then be used to appropriately determine compliance obligations in the Cap-and-Trade Regulation, as is described below. Staff will continue to coordinate with CAISO and stakeholders to refine the proposed amendments. The specific changes proposed in this package are described below.

At this time, staff has not modified the initial proposal in the 45-day notice package that would alter the applicability of resource shuffling safe harbors with regard to the EIM. However, staff anticipate that the amendments now being proposed to the regulation, along with those that may be proposed in subsequent notice packages, and via anticipated changes to the CAISO tariff, will ultimately address this issue. If this proves to be the case, staff anticipate, depending on this progress and stakeholder feedback, that the safe harbor proposed revision may be addressed in a future 15-day notice package.

Section 95852(b)(1)(B) is modified to delete specific calculations proposed in the 45-day comment period for calculating the CAISO EIM adjustment. This language is no longer necessary given the modifications being proposed for MRR to better account

² <http://www.caiso.com/Documents/StrawProposal-RegionallIntegration-EIMGreenhouseGasCompliance.pdf>

for EIM outstanding emissions. Compliance obligations incurred for EIM imports as currently structured in the Regulation will continue to be part of an entity's specified emissions. This accounts for the portion of the GHG emissions resulting from serving California load that EIM now attributes to importers.

Section 95852(b)(1)(D) is added to reflect changes to the EIM-related provisions in MRR and to address stakeholder concerns with the initial EIM-related options proposed in the 45-day comment period. The additional language follows from staff's indication in the Initial Statement of Reasons, the 45-day notice, and the originally proposed 45-day amendments that staff would continue working with stakeholders and CAISO to develop a more refined option for accounting for previously unaccounted EIM emissions that result from imports that serve California load. As previously discussed, CAISO's EIM model does not currently capture and report the full quantity of GHG emissions that are emitted to the atmosphere for imports that serve California load. These provisions address the outstanding emissions not fully accounted for in the EIM model outputs. Staff had proposed options for addressing these unaccounted emissions during the 45-day comment period, and after further comment from stakeholders has proposed the changes to section 95852 to clarify an option that accomplishes the accounting necessary for reporting and verification under MRR and ensuring environmental and market integrity in the Cap-and-Trade Program and addresses stakeholder and CAISO concerns. Section 95852(b)(1)(D) proposes to direct some unsold allowances to the Retirement Account to fully account for emissions from electricity imported through the CAISO EIM and ensure environmental and market integrity of the Program. The changes clarify which allowances would be retired, the order and timing of retirement, and how the outstanding emissions are calculated (with specific reference to the changes in MRR).

In response to stakeholder comments, section 95852(b)(4)(E) is modified to delete the provision that would have terminated the RPS adjustment after 2020. As has always been the intent, the purpose of the RPS adjustment is to allow for a reduction of the compliance obligation for electrical distribution utilities (EDUs) or for entities that import electricity on behalf of EDUs. The RPS adjustment was originally created to recognize investments in out-of-State renewable resources, and is allowed when RPS-eligible electricity is purchased along with renewable electricity credits and the electricity is not directly delivered to California. Staff considered deleting the provision and instead allocating allowances to EDUs to compensate for the resulting compliance obligation. However, because the RPS adjustment will treat EDUs more equitably than the proposal for free allowance allocation, staff proposes to retain it after 2020.

No new changes are proposed for section 95852(k). Under the current Regulation, waste-to-energy facilities had a limited exemption from a compliance obligation during the first compliance period, and that exemption was set to expire beginning in 2016. In the 45-day amendments released as part of this rulemaking process, changes to sections 95851(d) and 95852(k) proposed to delay the end of this limited

exemption from 2016 to 2018, effectively extending the exemption through the second compliance period. The limited exemption for waste-to-energy facilities was discussed at the September Board Hearing and at an October 21, 2016 workshop, during which time the Board and staff received comments supporting and opposing the change to the limited exemption timing. All workshop materials are available at the ARB website³ and in Attachment E to this Notice.

Although staff is not proposing changes to section 95851 as part of this 15-day comment period, staff believes that it is appropriate that waste-to-energy facilities begin incurring a compliance obligation by no later than the second compliance period. Discussions of the treatment of waste-to-energy facilities in the Program are ongoing, and staff may propose further regulatory changes to this section as part of this rulemaking process, in part based on any additional stakeholder comments received in this 15-day comment period. Any future proposed changes will be circulated for another 15-day public comment period.

J. Modifications to Section 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

Section 95857(b)(5) is modified to correct grammar and improve clarity.

K. Federal Clean Power Plan Requirements.

Staff is not proposing changes to this section. Staff continues to monitor ongoing federal litigation regarding the Clean Power Plan (CPP) and will propose any changes as necessary with an additional 15-day comment period. The CPP amendments, in any event, are designed so that they will only be implemented for regulated entities if the U.S. EPA approves them as part of a CPP compliance plan.

L. Modifications to Section 95870. Assistance Factors by Industrial Activity for 2013-2020.

Table 8-1 is modified to include new leakage risk categorizations and assistance factors for four industrial sectors that had undetermined assistance factors when the original 45-day amendments were released. The sector Automobile Manufacturing (NAICS Code 336111) was determined to have low leakage risk and was assigned a third compliance period assistance factor equal to 50%. The sector Other Food Crops Grown Under Cover (NAICS Code 111419) was determined to have medium leakage risk and was assigned a third compliance period assistance factor equal to 75%. The sectors Wet Corn Milling (NAICS Code 311221) and Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing (NAICS Code 325194) were determined to have high leakage risk and were assigned a third compliance period assistance factor equal to 100%. The entries for these sectors in Table 8-1 are re-located within the table so that they are grouped in the appropriate leakage

³ <https://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm>

risk category. These assistance factors were calculated by the methodology described in Appendix L of the 2010 Initial Statement of Reasons.⁴

Some specific activities are eliminated from Table 8-1. Under NAICS Code 322121, the specific activities Bathroom Tissue Manufacturing, Facial Tissue Manufacturing, Delicate Task Wipers Manufacturing, and Paper Towel Manufacturing are removed. Under NAICS Code 311911, the specific activities Almond Processing and Pistachio Processing are removed. Product-based benchmarks for these activities were eliminated from Table 9-1 in the 45-day amendments, so it is no longer necessary to include these specific activities in Table 8-1 and Table 8-3.

In response to the 45-day regulatory proposal, some stakeholders requested that ARB modify third compliance period assistance factors to retain the 100 percent assistance factors for sectors in the medium and low leakage risk categorizations. These stakeholders argue that these sectors are at high risk of leakage and therefore require 100 percent allocation to prevent emissions leakage. These requested changes are outside of the scope of the current regulatory changes, as the 45-day regulatory proposal did not address assistance factors for those sectors during the third compliance period. Therefore, no changes to those assistance factors are being proposed within this rulemaking package. Further, leakage analyses performed for the initial Regulation in 2010/2011 and those performed for the current regulatory changes demonstrate that all sectors currently in the medium- and low-leakage risk categorizations do not require 100 percent allocation to protect them from emissions leakage. The assistance factors proposed for the post-2020 period (Table 8-3 of this 15-day proposal) demonstrate that the third compliance period assistance factors are either at the level needed to prevent against emissions leakage or they are higher than needed.

M. Modifications to Section 95871. Disposition of Allowances from Vintage Year 2021 and Beyond.

Section 95871(c)(1) is modified to limit the distribution of post-2020 allowance allocation to EDUs pursuant to section 95892(a) to the budget years 2012 through 2030. The 45-day amendments extend the distribution of these EDU allocations indefinitely, but section 95892(a) only defines EDU allocation through budget year 2030, so this change is made to maintain consistency with section 95892(a).

The numbers of allowances allocated to the Allowance Price Containment Reserve (APCR) for vintage years 2022 through 2029, which are specified in Table 8-2, are updated to correct an error in the original calculation of APCR allocations for these vintage years. The same methodology for calculating the vintage 2021-2031 APCR allocations that was presented in the Initial Statement of Reasons is used to calculate the newly proposed values in Table 8-2, but a mathematical error in the original calculations is now corrected.

⁴ <https://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm>

Table 8-3 is modified to include assistance factors for industrial sectors in the post-2020 Program. Details about the calculation of the assistance factors are discussed in Attachment B. Staff's initial approach for calculating industrial assistance factors, based in part on ARB-commissioned emissions leakage potential studies, was described in Appendix E of the Initial Statement of Reasons. This initial calculation methodology was further discussed during an October 21, 2016 workshop. The workshop materials, including all written stakeholder comments, are available at the ARB website⁵ and are also included as Attachment E to this Notice. The assistance factors in Table 8-3 build upon staff's initial approach, as described in the 45-day regulatory proposal, and are proposed after taking full consideration of stakeholder comments during the 45-day comment period, during the September 2016 Board hearing, and in response to the October 21, 2016 workshop.

The title of Table 8-3 is changed to correct a typographical error. The table title is changed to indicate that the assistance factors in the table apply to the years 2021 and beyond, not 2020 and beyond. The assistance factors included in Table 8-1 will be applicable in 2020.

Some specific activities are eliminated from Table 8-3. Under NAICS Code 322121, the specific activities Bathroom Tissue Manufacturing, Facial Tissue Manufacturing, Delicate Task Wipers Manufacturing, and Paper Towel Manufacturing are removed. Under NAICS Code 311911, the specific activities Almond Processing and Pistachio Processing are removed. Product-based benchmarks for these activities are being eliminated from Table 9-1, so it is not necessary to include these specific activities in Table 8-1 and Table 8-3.

In Table 8-3, the Dairy Product Manufacturing sector (five digit NAICS Code 31151) is divided into four more specific sectors: Fluid Milk Manufacturing (NAICS Code 311511), Creamery Butter Manufacturing (NAICS Code 311512), Cheese Manufacturing (NAICS Code 311513), and Dry, Condensed, and Evaporated Dairy Product Manufacturing (NAICS Code 311514). The emissions leakage studies commissioned by ARB to inform the development of new assistance factors evaluated emissions leakage for these more specific sectors, so it is appropriate to calculate and include assistance factors for these more specific sectors in Table 8-3. The activities "Cheese Processing" and "Condensed Milk Processing" are moved within Table 8-3 so that they are included under the appropriate six-digit NAICS Code.

In Table 8-3, more specific activities are included under the Potash, Soda, and Borate Mineral Mining sector (NAICS Code 212391). The activity "Mining and Manufacturing of Soda Ash and Related Products" is divided into "Mining and Manufacturing of Borates" and "Mining and Manufacturing of Soda Ash," and assistance factors are proposed for each specific activity.

⁵ <https://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm>

An entry for the sector Other Motor Vehicle Parts Manufacturing (NAICS Code 336390) is added to Table 8-3, and an assistance factor is proposed for this sector. Input from stakeholders suggest that there will be industrial entities operating in this sector after 2020, and this sector was evaluated by the emissions leakage studies, so staff believes that it is appropriate to include a post-2020 assistance factor for this sector in Table 8-3.

The assistance factor for the sector Other Food Crops Grown Under Cover (NAICS 111419) is yet to be determined. Staff may propose a change to this assistance factor as part of this rulemaking process. Any change proposed will be circulated for a 15-day public comment period.

N. Modifications to Section 95891. Allocation for Industry Assistance.

The benchmark for Nitric Acid Production (NAICS Code 325311) in Table 9-1 is changed to 0.0957 allowances per short ton of nitric acid (HNO_3 100%). The previous benchmark (0.349 allowances per short ton of nitric acid (HNO_3 100%)) is not representative of the emissions efficiency of current nitric acid production in the State, as it utilized data from years in which the facilities used to calculate the benchmark had abnormally high emissions. The new benchmark, which is based on updated emissions and production data, more accurately reflects the emissions efficiency of California facilities conducting this activity.

The benchmark for Calcium Ammonium Nitrate Solution Production in Table 9-1 is changed to zero allowances per short ton of calcium ammonium nitrate solution produced. Emissions from the use of carbonate during the production of calcium ammonium nitrate solution are not currently reported under the Mandatory Reporting Regulation, and therefore the emissions are not covered by the Cap-and-Trade Program. Because there are no covered emissions associated with this activity, the calculated benchmark is equal to zero allowances per short ton of calcium ammonium nitrate solution produced. There is no emissions leakage risk for production activities that do not incur covered emissions, so no free allowances should be provided to covered entities for the production of calcium ammonium nitrate solution.

The benchmark for Lead Acid Battery Recycling (NAICS Code 331492) in Table 9-1 is changed to 0.511 allowances per short ton of lead and lead alloys. Staff calculated the previous lead acid battery recycling benchmark (0.403 allowances per short ton of lead and lead alloys) based on industry survey data collected by ARB in 2013. In subsequent years, the makeup of the lead acid battery recycling industry in California has changed significantly. Also, staff has identified substantial variability in the emissions associated with lead acid battery recycling. In order to accommodate changes to the industry makeup and uncertainties regarding emissions variability, staff requested that industry provide more detailed data to explore recalculation of a new benchmark. Staff now proposes a new lead acid

battery recycling benchmark that is based on verified production and emissions data from MRR for the one year that yielded the most conservative (lowest) emissions intensity among the years for which these MRR data have been reported to ARB. Using the most conservative year's data ensures that lead acid battery recyclers receive sufficient allowance allocation to prevent emissions leakage, but that they are not overallocated.

The 45-day amendments provided notice that several product-based benchmarks in Table 9-1 (e.g., the benchmarks for "Buttermilk Powder Processing" and "Seamless Rolled Ring") may yet be revised. The benchmark review is ongoing, and staff may propose additional changes to these benchmarks as part of this rulemaking process. Any change proposed will be circulated for a 15-day public comment period.

Regulatory text from section 95853(e) that was proposed for deletion in the 45-day package is relocated to section 95891(c)(3) to be included with other industrial allocation equations. This language allows for true-up allocation to entities that are subject to a compliance obligation under the Program during years in which the Regulation did not have a leakage risk categorization or assistance factor for their sector.

Section 95891(d)(1) is modified so that annual allowance allocation to university covered entities and public service facilities does not terminate in budget year 2020, but continues indefinitely. This change is needed to enable allowance allocation to university covered entities and public service facilities after budget year 2020.

Table 9-2 is modified to add cap adjustment factors for all sectors for the years 2021 through 2031. The 2021–2031 cap adjustment factors are needed for all sectors so that allowance allocation for various facilities can be calculated for those budget years. For the 2013 through 2020 period, the cap adjustment factors for standard activities declined at the same annual rate as the annual allowance budgets. Staff proposes to continue alignment between the allowance budget rate of reduction and cap adjustment factor reduction post-2020 to incentivize emissions reductions and ensure equality amongst sectors. For the 2013 through 2020 period, the cap adjustment factors for industrial activities with over 50 percent of total emissions from process emissions and that were classified as having a high leakage risk⁶ (due to high emissions intensity) declined at half the rate of the annual allowance budget. Given that there are no leakage risk categorizations proposed for the post-2020 period, staff is evaluating what assistance factor cutoff might be used in place of the high leakage risk classification to determine if any sectors should have a lower rate of cap adjustment factor decline. Staff proposes to retain the >50 percent process emissions criterion to determine eligibility for a lower cap adjustment factor. Any change proposed will be circulated for a 15-day public comment period. The column headings of Table 9-2 are modified for clarity without changing any meaning, and the

⁶ As measured by the leakage risk assessment performed for the 2010 Regulation, <http://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>, p. 1952.

activities for which over 50 percent of total emissions are from process emissions, and which also have a high leakage risk classification, are listed in a footnote to the table rather than in the column heading.

O. Modifications to Section 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.

Section 95892(a)(2) is modified to refer to Table 9-4 for allocations to EDUs for 2021 through 2030. This is necessary to ensure that annual cost burden is accounted for in allocation to EDUs.

Section 95892(a)(3) is deleted. This section is no longer necessary because it is now superseded by section 95892(a)(2), which fully describes EDU allowance allocation for 2021 through 2030.

The previous Table 9-4 is replaced with a new Table 9-4 that shows the quantity of allowances allocated to each EDU for budget years 2021 through 2030. Allocation quantities are based on each EDU's projected direct and indirect costs of compliance with the Regulation, or cost burden. The quantity allocated each year is the cost burden multiplied by the cap adjustment factor. Attachment C provides details on the reasoning and methodology staff used to determine allocation amounts.

P. Modifications to Section 95893. Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers.

Section 95893(d)(6) is modified to remove a typographical error.

Table 9-6 is modified to specify that full (100 percent) consignment will be required for natural gas suppliers starting in budget year 2021 and continuing thereafter. The Initial Statement of Reasons for this rulemaking referenced achieving full consignment for natural gas suppliers, and indicated that staff could propose post-2020 consignment through a 15-day change in this rulemaking. Full consignment is needed to generate appropriate incentives to reduce natural gas-related GHG emissions, remove inequities between covered and non-covered entities that consume natural gas, and encourage GHG-reducing electrification. Requiring full consignment for natural gas suppliers is also consistent with the existing full consignment requirement for investor-owned electrical distribution utilities. Attachment D provides additional detail regarding the reasoning behind requiring full consignment in the context of natural gas allowance allocation.

Q. Modifications to Section 95895. Allocation to Public Wholesale Water Agencies for Protection of Water Ratepayers.

Section 95895(b) is modified to specify the calculation methodology for allowance allocation to public wholesale water agencies after 2020. Staff proposes to use the

same methodology as was used for the 2015 through 2020 period to allocate to these entities, as described in the Initial Statement of Reasons to the 2013 regulatory changes.⁷

R. Modifications to Section 95910. Auction of California GHG Allowances.

Section 95910(c)(1)(D) is modified to clarify that unsold allowances will be designated to the current auction pursuant to section 95911(f)(3). The change is proposed to clarify the regulatory language proposed in the 45-day amendments.

Similarly, section 95910(d)(2)(A) is modified to clarify that allowances will be consigned to the next auction for which the allowance vintage matches the definition of vintages for the current auction.

S. Modifications to Section 95911. Format for Auction of California GHG Allowances.

Section 95911(c)(3)(C) is modified to reflect additional changes made by the Bank of Canada to its publication of U.S. and Canadian exchange rates. The new text correctly identifies the data being published.

Section 95911(d)(2)(B) is modified to accommodate an activation date later than the expected effective date of the regulation. This change is needed due to the uncertainty over when the change may be accommodated in CITSS and the auction platform and to provide further certainty to market participants as to when the purchase limit modifications will take effect.

Sections 95911(f)(1)(C) and (D) are modified to restore the original regulatory text that existed before the 45-day amendments. ARB is making several concurrent changes to the handling of unsold allowances. Staff has concluded that the changes proposed in the 45-day amendments are not required.

Sections 95911(f)(4)(A) and (B) are modified to make clear that the consigned allowances that remain unsold at auction will be offered for sale at each subsequent auction until they are sold.

Section 95911(g) is modified to accommodate proposed amendments to section 95852. To address previous stakeholder comments, EIM-related provisions in section 95852(b)(1)(D) are modified in this 15-day amendment package to direct some unsold allowances to the Retirement Account to fully account for emissions from electricity imported through the CAISO EIM to ensure environmental and market integrity of the Program. The modifications to section 95911(g) are necessary to explicitly reference the changes to section 95852(b)(1).

⁷ <https://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13isor.pdf>

T. Modifications to Section 95912. Auction Administration and Participant Application.

Section 95912(j)(1)(D) is modified to clarify that all the types of bid guarantee methods listed in section 95912(f) must be acceptable to the financial services administrator based on banking law and bank practices. Without the change, the financial services administrator may be forced to reject bid guarantees that would otherwise meet the conditions of this regulation.

U. Modifications to Section 95913. Sale of Allowances from the Allowance Price Containment Reserve.

Section 95913(d)(A) is modified to better clarify the timing of Reserve sales with respect to a current auction settlement prices. The modifications further clarify that the third Reserve sale of each year will always be offered, and that the first, second, and final Reserve sales will be offered only if the immediately preceding Current Auction settled at or above 60% of the lowest Reserve tier price (between 2018-2020) or the Reserve Sale Price (starting in 2021).

Section 95913(g)(2) is modified to clarify that all the types of bid guarantee methods listed in section 95913(g) must be acceptable to the financial services administrator based on banking law and bank practices. Without the change, the financial services administrator may be forced to reject bid guarantees that would otherwise meet the conditions of this regulation.

Section 95913(l)(5) is modified to correct a formatting error – the section is correctly labelled 95913(l)(5), whereas the proposed regulation order released for the 45-day comment period mistakenly labeled the section 95913(l)(E) instead of 95913(l)(5).

V. Modifications to Section 95920. Trading.

Section 95920(b)(6)(A) is modified for clarity.

Section 95920(d)(2)(B) is modified for clarity. The intent of the proposed 45-day amendments to this section was to define the calculation of the limited exemption for entities that are registered as of January 1, 2017. The regulatory text from the 45-day amendments is ambiguous and could imply that the limited exemption calculation will start on January 1, 2017, which is not possible since the proposed amendments would not be effective on that date. The proposed modification removes this ambiguity. Section 95920(d)(2)(F) is modified to clarify that the emissions removed from the limited exemption calculation are covered emissions, not necessarily all of the emissions in the relevant reports.

Section 95920(f)(2)(A) is modified to clarify the text and to make the text consistent with the rest of the section.

W. Modifications to Section 95921. Conduct of Trade.

Section 95921(b) is modified to remove an obsolete date.

Section 95921(b)(6)(F) is modified to clarify that entities may enter a price of zero for transfer requests based on transaction agreements that specify a total cost or cost basis for the transaction but do not separately specify a price or cost basis for the sale of the compliance instruments. This modification ensures consistency within the section.

In the 45-day amendments, section 95921(d)(4) was modified to delete text allowing transfers from an Exchange Clearing Holding Account (ECHA) to proceed without confirmation by an account representative from the destination account. The currently proposed text in section 95921(d)(4) would require transfers from an ECHA to be actively confirmed by an account representative from the destination account. The operators of two exchanges on which California allowances are traded, the Intercontinental Exchange and Colonial Bourse, both commented that the proposal in the 45-day amendments would complicate their delivery systems. This change is proposed to address these comments.

The intent of the original proposed text was to ensure that CITSS would apply the holding limit calculation to transfers from ECHAs. Staff is proposing to clarify that the recipient of a transfer from an ECHA is responsible for holding limit violations, not the ECHA proposing the transfer. Without a confirmation by an account representative from the destination account, CITSS cannot block transfers from an ECHA that violate the holding limit as it can on bilateral transfers. Staff is therefore proposing that when a holding limit violation is detected after a transfer from an ECHA, ARB will prevent transfers from the account to any other entity until the Executive Officer has determined the cause of the violation. The entity would be allowed to transfer the instruments into its compliance account if it has room under its limited exemption to shield the instruments from the holding limit.

Section 95921(i)(2)(D) is modified to clarify that an entity with a holding limit violation that is not discovered until the transfer is registered into CITSS has five days to resolve the violation before the Executive Officer can order the transfer to be reversed. The five days does not constitute a “grace period” that shields the entity from penalties assessed for the violation.

X. Modifications to Section 95945. Retirement-Only Agreements With External GHG Program.

Section 95945(a) is modified to improve clarity and explicitly reference the rulemaking process that would be followed prior to the Board approving a retirement-only agreement with an external GHG program. Any such approval will require further rulemaking, which may include specific additions to the regulatory provisions and process in section 95945.

Y. Modifications to Section 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

Section 95973(a)(2)(G) is modified in response to stakeholder comments to clarify that if a law, regulation, or legally binding mandate requiring GHG emission reductions or GHG removal enhancements (e.g., local, state, or federal law) comes into effect in a jurisdiction outside California affecting the offset project then the offset project will remain eligible to receive ARB offset credits for the remainder of the crediting period, but not for future crediting periods. This change ensures consistent treatment of changes within California and outside California.

Section 95973(b)(1) is modified in response to stakeholder comments during the 45-day comment period to allow projects that use the Compliance Offset Protocols listed in section 95973(a)(2)(C)1. (Ozone Depleting Substances) and that have multiple destruction events to remove any destruction event that is out of regulatory conformance from the reporting period so that the remaining destruction events are eligible to receive registry and ARB offset credits.

Section 95973(b)(1)(A)1. is modified to remove text related to initiation of enforcement action since being out of regulatory compliance may not necessarily result in, or from, an enforcement action. This language is removed because the relevant regulatory authority for purposes of this provision may not be the agency that had, or could have, initiated enforcement action. This section is further modified to clarify that the relevant regulatory agency must identify the dates that the offset project is out of regulatory compliance in the documentation.

Section 95973(b)(1)(A)2. is modified to remove text related to initiation of enforcement action since being out of regulatory compliance may not necessarily result in, or from, an enforcement action. This language is removed because the relevant regulatory authority for purposes of this provision may not be the agency that had, or could have, initiated enforcement action. This section is further modified to clarify that the project will be considered out of regulatory compliance the day after the successful inspection for the purposes of this section.

Section 95973(b)(1)(A)3. is modified to remove the word “current” to avoid confusion about which Reporting Period is relevant. The appropriate Reporting Period is the Reporting Period covered by the Offset Project Data Report which is being verified

Section 95973(b)(1)(B) is modified to remove text related to initiation of enforcement action since being out of regulatory compliance may not necessarily result in, or from, an enforcement action. This language is removed because the relevant regulatory authority for purposes of this provision may not be the agency that had, or could have, initiated enforcement action.

Section 95973(b)(1)(E) is modified in response to stakeholder comments to allow

projects that use the Compliance Offset Protocols listed in section 95973(a)(2)(C)1. (Ozone Depleting Substances) and that have multiple destruction events to remove any destruction event that is out of regulatory conformance from the reporting period so that the remaining destruction events are eligible to receive registry and ARB offset credits.

Section 95973(b)(2) is modified in response to stakeholder comments to allow projects that use the Compliance Offset Protocols listed in section 95973(a)(2)(C)1. (Ozone Depleting Substances) and that have multiple destruction events to remove any destruction event that is out of regulatory conformance from the reporting period so that the remaining destruction events are eligible to receive registry and ARB offset credits.

Z. Modifications to Section 95977. Verification of GHG Emission Reductions and GHG Removal Enhancements from Offset Projects.

Section 95977(c) is modified in response to stakeholder comments to change the threshold trigger for allowing full offset verifications to occur only once every 12 years instead of once every six years. The threshold is reduced so that the Actual Onsite Carbon Stocks in the final Offset Project Data Report of the final crediting period must be 10% greater than, instead of 25% greater than, the Actual Onsite Carbon Stocks in the final Offset Project Data Report of the final crediting period. The section is also modified to improve clarity of the section.

AA. Modifications to Section 95977.1. Requirements for Offset Verification Services.

Section 95977.1(b) is modified to remove all references to the conflict of interest self-evaluation because any conflict of interest evaluation must already have been approved by ARB or the Offset Project Registry prior to starting offset verification services per section 95979(e).

BB. Modifications to Section 95985. Invalidation of ARB Offset Credits.

Section 95985(c)(2)(A) is modified in response to stakeholder comments to allow projects that use the Compliance Offset Protocols listed in section 95973(a)(2)(C)1. (Ozone Depleting Substances) and that have multiple destruction events to remove any destruction event that is out of regulatory conformance from the reporting period so that the remaining destruction events will not have the associated ARB offset credits invalidated as well.

Section 95985(c)(2)(B) is modified in response to stakeholder comments to allow projects that use the Compliance Offset Protocols listed in section 95973(a)(2)(C)1. (Ozone Depleting Substances) and that have multiple destruction events to remove any destruction event that is out of regulatory conformance from the reporting period so that the remaining destruction events will not have the associated ARB offset

credits invalidated as well.

Section 95985(h)(3) is modified to tie the number of ARB offset credits that the Offset Project Operator must replace in the Forest Buffer Account to the percentage of ARB offset credits in the Forest Buffer Account that have been retired by ARB for unintentional reversals. This modification is made in response to stakeholder comments.

In addition to the modifications described above, modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

Agency Contacts

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Jason Gray, Chief, Climate Change Program Evaluation Branch, at (916) 324-3507, Mary Jane Coombs, Manager, Program Development Section, at (916) 322-7554, or (designated back-up contact) Mark Sippola, Air Resources Engineer, at (916) 323-1095.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice and Attachment A. Written comments may be submitted by postal mail or by electronic submittal no later than 5:00 pm on January 20, 2017, to the following:

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

Electronic submittal: <https://www.arb.ca.gov/lispub/comm/bclist.php>

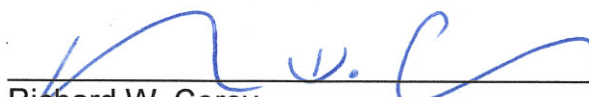
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m. on January 20, 2017 for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

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

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

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: December 21, 2016

Attachments

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