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LEGAL DISCLAIMER & USER'S NOTICE

**PRELIMINARY DISCUSSION DRAFT of Potential Changes to
the Regulation for the California Cap on Greenhouse Gas Emissions and Market-
Based Compliance Mechanisms**

Discussion Draft

This document is a preliminary discussion draft of potential changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Cap-and-Trade Regulation or Regulation), and the language following this Disclaimer was produced by California Air Resources Board (CARB) staff for the purpose of soliciting stakeholder feedback on potential 2018 revisions to the Regulation. The following version is neither an official legal edition of title 17, California Code of Regulations (CCR), sections 95801-96022 nor an unofficial version of the current Regulation. This preliminary discussion draft is intended to help inform an upcoming formal rulemaking, but all potential changes included in the document continue to be subject to discussion and may not reflect what is ultimately included in the formal rulemaking.

Note: CARB staff is using underline-strikeout formatting to show proposed changes. The pre-existing regulation text is set forth below in normal type. The potential revisions are shown in underline to indicate additions and strikethrough to indicate deletions. "****" indicates that sections of regulation not printed are not being proposed for changes in this preliminary discussion draft. For some provisions, staff may include concept boxes to solicit stakeholder feedback, in lieu of potential regulatory changes.

An unofficial copy of the regulation can be found at
https://www.arb.ca.gov/cc/capandtrade/capandtrade/unofficial_ct_100217.pdf.

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**ARTICLE 5: CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND
MARKET-BASED COMPLIANCE MECHANISMS**

§ 95802. Definitions.

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

“Cogeneration” means an integrated system that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential or simultaneous use of the original fuel energy. Cogeneration must involve onsite generation of electricity and useful thermal energy and some form of waste heat recovery. Some examples of cogeneration include: (a) a gas turbine or reciprocating engine generating electricity by combusting fuel, which then uses a heat recovery unit to capture useful heat from the exhaust stream of the turbine or engine; (b) ~~s~~Steam turbines generating electricity as a byproduct of steam generation through a fired boiler; and (c) ~~c~~Cogeneration systems in which the fuel input is first applied to a thermal process such as a furnace and at least some of the heat rejected from the process is then used for power production. For the purposes of this article, a combined-cycle power generation unit, where none of the generated thermal energy is used for industrial, commercial, or heating and cooling purposes (these purposes exclude any thermal energy utilization that is either in support of or a part of the electricity generation system), is not considered a cogeneration unit.

“Distillate Fuel No. 1” has a maximum distillation temperature of 550 °F at the 90 percent recovery point and a minimum flash point of 100 °F and includes fuels commonly known as Diesel Fuel No. 1 and Fuel Oil No. 1, but excludes kerosene. This fuel is further subdivided into categories of sulfur content:

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High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

“Distillate Fuel No. 2” has a minimum and maximum distillation temperature of 540 °F and 640 °F at the 90 percent recovery point, respectively, and includes fuels commonly known as Diesel Fuel No. 2 and Fuel Oil No. 2. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

“Electricity Importers” deliver imported electricity. For electricity that is scheduled with a NERC ~~e~~-Tag to a final point of delivery inside the state of California, the electricity importer is identified on the NERC ~~e~~-Tag as the purchasing-selling entity (PSE) on the last segment of the tag’s physical path with the point of receipt located outside the state of California and the point of delivery located inside the state of California. For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority’s transmission and distribution system when the electricity is not scheduled on a NERC e-Tag, the importer is the facility operator or scheduling coordinator. Federal and state agencies are subject to the regulatory authority of ARB under this article, and include Western Area Power Administration (WAPA), Bonneville Power Administration (BPA) and California Department of Water Resources (DWR). For electricity that is imported into California through the CAISO Energy Imbalance Market, the electricity importer is identified as the EIM Participating Resource Scheduling Coordinators serving the EIM market whose transactions result in electricity imports into California.

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“Initial Crediting Period” means the crediting period that begins with the date that the first GHG emission reductions or GHG removal enhancements took place according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by ARB results in ARB offset credit issuance.

“Kerosene” is a light petroleum distillate with a maximum distillation temperature of 400 °F at the 10-percent recovery point, a final maximum boiling point of 572 °F, a minimum flash point of 100 °F, and a maximum freezing point of -22 °F. Included are No. 1-K and No. 2-K, distinguished by maximum sulfur content (0.04 and 0.30 percent of total mass, respectively), as well as all other grades of kerosene called range or stove oil. Kerosene does not include kerosene-type jet fuel.

“Legacy Contract Emissions” means the covered emissions calculated, based on a positive or qualified positive emissions data verification statement issued pursuant to MRR, by the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty, that are a result of either electricity and/or legacy contract qualified thermal output sold to a legacy contract counterparty, and calculated pursuant to section 95894 of this regulation.

“Legacy Contract Generator without an Industrial Counterparty” means a covered entity that generates and sells electricity, thermal energy, or both, subject to a legacy contract, and does not also sell electricity or thermal energy under the legacy contract to a covered entity eligible for allowance allocation pursuant to section 95891.

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“NERC ~~e~~E-tag” means North American Electric Reliability Corporation (NERC) energy tag representing transactions on the North American bulk electricity market scheduled to flow between or across balancing authority areas.

“Renewable Energy Credit” or “REC” has the same meaning as defined in the California Energy Commission’s “Renewables Portfolio Standard Eligibility,” 7th edition, Commission Guidebook, ~~April, 2013; CEC-300-2013-005-ED7-CMF.~~ January, 2017; CEC-300-2016-ED9-CMF-REV.

“Volumetric,” with respect to sections 95892 and 95893, describes an electrical distribution utility or natural gas supplier's distribution of funds to one or more of its ratepayers based on the current or recent amount of electricity, natural gas, or other relevant utility service delivered to those ratepayers, such that higher usage results in ratepayers' receipt of more funds.

- (b) For the purposes of sections 95801 through 96023, the following acronyms apply:

“ARB” or “CARB” means the California Air Resources Board.

§ 95812. Inclusion Thresholds for Covered Entities.

- (d) If an entity’s annual, assigned, or reported and verified emissions from any data year between 2011-2014 equal or exceed the thresholds identified below from the categories specified in sections 95851(a), (b), and (d), then that entity is classified as a covered entity as of January 1, 2015, for the year in which the threshold is reached and for all future years until all requirements set forth in section 95835(c) are met.

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- (2) Electricity importers. The threshold for an electricity importer of specified source of electricity is zero metric tons of CO_{2e} per year and for unspecified sources is zero MWhs per year as of January 1, 2015.
- (3) Waste-to-Energy-Facilities. If a waste-to-energy facility's annual, assigned, or reported and verified emissions from any data year between 2011-2015 equal or exceed 25,000 metric tons or more of CO_{2e} annually, then that entity is classified as a covered entity as of January 1, 2016, for the year in which the threshold is reached and for all years until the requirement set forth in section 95835(c) ~~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.

§ 95813. Opt-In Covered Entities.

- (b) An entity that does not qualify to opt in to the Program pursuant to section 95813(h) and that voluntarily elects to participate in this Program under this section must submit its request to the Executive Officer for approval by March 1 of the calendar year immediately preceding the first year in which it voluntarily elects to be subject to a compliance obligation pursuant to this section. The request for approval to be an opt-in covered entity shall specify the first year in which the entity elects to be subject to a compliance obligation. The Executive Officer shall evaluate such applications, designate approved applicants as opt-in covered entities, and, for approved applicants, specify the first year in which the opt-in covered entity will be subject to a compliance obligation.
- (c) An entity that voluntarily elects to participate in this Program under section 95813(b) may rescind its request to opt in to the Program by October 1 of the calendar year prior to the first year in which it voluntarily elects to be subject to a

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compliance obligation pursuant to section 95813**(b)**. An entity that voluntarily elects to participate in the Cap-and-Trade Program under section 95813(h) may rescind its request to opt in to the Program by October 1 of the calendar year in which it requests approval to be an opt-in covered entity.

- (g) Opting out. At the end of any given compliance period, an opt-in covered entity may choose to opt out of the Program provided its annual emission levels for any data year remain below the inclusion thresholds set forth in section 95812. An entity choosing to opt out of the Program must either fulfill its compliance obligations as required pursuant to subarticle 7 or surrender allowances equivalent to all the directly allocated allowances it has received from the budget years for the compliance period in question. An opt-in covered entity that wishes to opt-out of this Program must apply to the Executive Officer by September 1 of the last year of a compliance period.

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 5: Registration and Accounts

§ 95830. Registration with ARB.

- (c) Requirements for Registration. Registration is complete when the Executive Officer approves the registration and the accounts administrator informs the entity of the approval.

- (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

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- 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:

- (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.
- (7) Any individual who requires access to the tracking system, including the primary account representative, alternate account representatives, or account viewing agents, must first register as a user in the tracking system.
- (A) An individual qualified to register as a user in the tracking system, whether through the California Cap-and-Trade Program or an External GHG ETS, cannot apply for more than one user registration.

- (8) An entity or individual applicant may be denied registration:

- (E) If an individual is already registered and has a user account under the same or a different name. This provision applies to individuals registered in an ~~approved~~ external ~~linked~~ GHG emissions trading system that uses the tracking system.
- (f) 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:

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(g) Linking.

(4) Entities With a Compliance Obligation in More than One Jurisdiction.

- (B) If an entity registered with an external GHG ETS to which California has linked pursuant to subarticle 12 has a compliance obligation with California, then the entity must register with California and provide the following information ~~in paragraphs 1. to 6. below:~~

6. An individual who is approved by an external GHG ETS with a user account and who intends to be designated as a primary account representative, alternate account representative, or account viewing agent for an entity registering or registered in California must submit all California-specific registration attestations and other applicable information required by sections 95832, 95833, and 95834.

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, one aAnnual aAllocation hHolding aAccount, or one exchange clearing holding account for each entity registered pursuant to 95830.

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- (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.

- (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)(3), then the accounts administrator will create an exchange clearing holding account for the entity.

- (A) Entities may transfer compliance instruments to exchange clearing holding accounts only for the purpose of transferring control of the instruments to the entity performing the clearing function.

- (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:

- (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 sections 95870(a) and 95871(a) will be transferred; and

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.

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§ 95833. Disclosure of Corporate Associations.

(a) Criteria for Determining Corporate Associations.

- (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.

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.

- (c) An individual who will become an account representative or viewing agent of a covered entity or opt-in covered entity as defined in section 95802 may choose to provide documentation pursuant to section 95834(b) directly to their employer instead of to ARB. An entity's director or officer disclosed pursuant to section 95830(c)(1)(B) must confirm that the individual meets the Know-Your-Customer Requirements described in section 95834 and that the entity will retain the documentation.

- (2) A director or officer ~~disclosed pursuant to section 95830(c)(1)(B)~~ of the covered entity who has been disclosed pursuant to section 95830(c)(1)(B) must complete an attestation to verify the accuracy and veracity of the documentation submitted pursuant to section 95834(b).

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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.

§ 95835. Changes to Entity Type and Reassignment of Facilities Already Registered to Different Entity Accounts.

- (b) Change of Facility Ownership. When the ownership of a facility changes, whether by merger, acquisition, or any other means, the successor entity after the change in ownership is expressly liable for the unsurrendered compliance obligation of the predecessor covered entity that is party to the change in ownership transaction. For the avoidance of doubt, the unsurrendered compliance obligation of the predecessor covered entity consists of the quantity of verified reported emissions, assigned emissions, and emissions that have been released from the subject facility but not reported yet for which the covered entity would be required to submit compliance instruments to CARB absent the change of ownership, but that the covered entity has not surrendered to CARB at the time of the change of ownership. Subarticle 7 compliance requirements are interpreted and enforced in light of the successor entity being expressly liable for the unsurrendered compliance obligation of the predecessor covered entity. When the ownership of a facility changes, the following information must be submitted to CARB within 30 calendar days of finalization of the ownership change:[¹]

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

¹ This section refers to a concurrently occurring regulatory amendment process that will likely conclude before this regulatory amendments process occurs.

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

§ 95841. Annual Allowance Budgets for Calendar Years 2013-2050.

- (b) The California GHG Allowance Budgets for the years 2032 to 2050 are calculated by the following equation:

Table 6-1: 2013-2020 California GHG Allowance Budgets

Compliance Period	Budget Year	Annual Allowance Budget (<u>m</u>Millions of CA GHG <u>a</u>Allowances)
1	2013	162.8
	2014	159.7
2	2015	394.5
	2016	382.4
	2017	370.4
3	2018	358.3
	2019	346.3
	2020	334.2

Table 6-2: 2021-2031 California GHG Allowance Budgets

Compliance Period	Budget Year	Annual Allowance Budget (<u>m</u>illions of CA GHG allowances)
4	2021	320.8
	2022	307.5
5	2023	294.1
	2024	280.7

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6	2025	267.4
	2026	254.0
	2027	240.6
7	2028	227.3
	2029	213.9
8	2030	200.5
	2031	193.8

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.

§ 95841.1 Voluntary Renewable Electricity.

(a) Voluntary Renewable Electricity Program Requirements. The end-user, or VRE participant acting on behalf of the end-user, must meet the requirements of this section. Generation must be ~~new and~~ have an online date or have served load prior to July 1, 2005. Allowance retirement for purposes of voluntary renewable electricity will begin in 2014 for 2013 generation, and will continue in the same manner for subsequent years. Allowances will be retired annually from the Voluntary Renewable Electricity Reserve Account for the preceding year's eligible and approved generation in order of increasing vintage year until the account has been exhausted. For the year in which available allowances are exhausted, allowance retirement will be pro-rated among all eligible and approved generation. Voluntary renewable electricity must be directly delivered to California. RECs must represent generation that occurred during the year for which allowance retirement is requested. RECs shall be retired before the submittal of the request to retire allowances pursuant to this section.

(b) Reporting Requirements. The end-user, or the VRE participant acting on behalf of the end-user, requesting allowance retirement for eligible generation must

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meet the following requirements for the period in which allowance retirement is being requested:

- (1) By July 1 of each year, provide a written request for allowance retirement from the Voluntary Renewable Electricity Reserve Account and all required documentation for the previous year's eligible generation or REC purchases. The Rrequest must meet the requirements below:

(E) Contract or settlement data demonstrating the sale to and purchase of the electricity or RECs associated with the generation of the electricity to the end-user or entity purchasing on behalf of the end-user; and

~~(E)~~(F) Submit the following attestations:

1. ~~Attest, in writing,~~ Submit a signed attestation to ARB as follows: "I certify under penalty of perjury of the laws of the State of California that I have not authorized use of, or sold, any renewable electricity credits or any claims to the emissions, or lack of emissions, for electricity for which I am seeking ARB allowance retirement, in any other voluntary or mandatory program."
2. ~~Attest, in writing,~~ Submit a signed attestation to ARB as follows: "I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, Cal. Code of Regs. article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this voluntary renewable electricity program and subject myself to the jurisdiction of California as the exclusive venue to resolve any and all disputes."

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.

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§ 95852. Emission Categories Used to Calculate Compliance Obligations.

- (h) Petroleum and Natural Gas Systems. Operators of the facilities specified in section 95101(e)(2)-(5) of MRR have a compliance obligation for every metric ton of CO₂e from the source types specified in sections 95152(c)-(f) of MRR, except as specified in section 95852.2 of this article, that is contained in an emissions data report that has received a positive or qualified positive emissions data verification statement ~~report~~, or for which emissions have been assigned.

- (j) Limited Exemption of Emissions from the Production of Qualified Thermal Output.

- (1) A facility with a cogeneration unit may apply for the emissions exemption if it meets the following two conditions for each year from 2008-2013, starting with the first year that a cogeneration unit was operational at the facility, and will remain eligible until the year in which either condition is not met, based on data reported pursuant to MRR:
- (A) The facility's annual covered emissions ~~as defined in MRR~~ associated with the production of qualified thermal output, as defined in MRR and calculated using the following equation, are less than 25,000 metric tons of CO₂e:

$$GHG_{QTO} = Q_{produced} * 0.06244$$

Where:

“GHG_{QTO}” is the annual covered emissions for each calendar year, in metric tons of CO₂e, associated with the production of qualified thermal output;

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“Q_{produced}” is the annual amount of qualified thermal output produced for each calendar year, from fuels that result in covered emissions, measured in MMBtu, at the cogeneration facility. If Q_{produced} is produced from a cogeneration unit that burns both fuels that result in covered emissions and fuels that result in emissions without a compliance ~~obligation~~commission pursuant to Subarticle 7, then Q_{produced} is calculated as total qualified thermal output multiplied by ~~the ratio of~~ the MMBtus of fuel that produces covered emissions divided by the total MMBtus of all fuels combusted in the unit; and,

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.

**§ 95854. Quantitative Usage Limit on Designated Compliance Instruments—
Including Offset Credits.**

- (b) The total number of compliance instruments identified in section 95854(a) that each covered entity may surrender to fulfill the entity’s compliance obligation for a compliance period must conform to the following limit:

O_o/S must be less than or equal to L_o

In which:

“O_o” is ~~the t~~ Total number of compliance instruments identified in section 95854(a) submitted to fulfill the entity’s compliance obligation for the compliance period.

“S” is ~~the c~~ Covered entity’s compliance obligation.

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“Lo” is the quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08 for the first, second, and the third compliance periods; 0.04 for surrendering offset credits for 2021-2025 emissions; and 0.06 for surrendering offset credits for 2026-2030 emissions.

**Additional Regulatory Text in section 95854
“Direct Environmental Benefits in State”**

With respect to the quantitative usage limits post-2020, AB 398 further specifies that “no more than one-half may be sourced from projects that do not provide direct environmental benefits in the state.” AB 398 defines “direct environmental benefits in the state” (DEBS) as “the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state.” While science supports that a GHG reduction anywhere is a benefit everywhere, AB 398 directs CARB to require additional attributes of offset projects to meet the new legislative requirement.

In developing regulatory language to conform to this AB 398 requirement, there are several considerations CARB staff is seeking stakeholder feedback on, including:

Legislative intent: Senate Environmental Quality, Appropriations, and Floor reports and Assembly Floor, Appropriations, and Natural Resources reports provide some indication of what the Legislature intended by this DEBS language. See https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB398.

Challenges: Due to the diverse nature of adopted offset protocols, it will be difficult to find a single DEBS criterion that applies appropriately to each offset protocol type. Moreover, CARB staff will also need to apply criteria retroactively to the tens of millions of offsets already issued in the system that may be used for compliance surrender for emissions for the year 2021 and forward.

Potential Staff Proposal: Use the exact words in the statute to define DEBS in the Regulation. Because each project type will require further details when implementing this new direction, staff is currently focused on developing a general approach to be

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utilized in the Compliance Offset Program. The following text is only meant to initiate discussion on how to implement a general approach.

Require each new project to provide additional information regarding:

- Location of reduction or avoided emissions of any air pollutant.
- Location of reduction or avoidance of any pollutant that could have an adverse impact on the waters of the state.
 - If location of reduction or avoided emissions are physically located in California, no further information is needed.
 - If project is located adjacent to a water body that flows within or into California, no further information is needed.

A project that does not meet the requirements above is not automatically disqualified from being considered as having direct environmental benefits in the state. The project would have an opportunity to demonstrate it does meet the legislative direction by providing additional information. If the project is not able to demonstrate it meets the legislative direction, it would be considered as not meeting the DEBS requirement.

Additional information could be as follows:

- Provide additional material for how project meets the DEBS requirement:
 - Scientific, peer-reviewed material
 - Intergovernmental Panel on Climate Change or government agency reports
 - Monitoring or other analytical data
 - What other information should we list? Or is there a general statement we could add that captures only using high quality information or data to be submitted in this demonstration?
- For existing projects for which credits have been issued, CARB staff will also need to develop a process to meet the DEBS requirements. A potential process could include the following steps:
 - The same submittal requirements as for new projects so that all projects that exist where the resulting offsets have not been used for compliance are assessed against the same criteria as new projects moving forward. Staff is seeking feedback on whether there are other ways to address existing projects where the offsets have not been used for compliance,
 - Submittal and verification deadline. Staff would propose existing projects must submit such information starting within six months of credit issuance, but no later than December 31, 2021, to ensure projects

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recognized as meeting DEBS can be identified prior to any surrender of compliance instruments in 2022 to meet a compliance obligation for 2021 emissions.

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.

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

- (e) Determination of Full Compliance Period Compliance Obligation.
- (1) When a positive or qualified positive emissions data verification statement or assigned emissions for any year is received by ARB, then those emissions for the source categories in section 95852 contribute to equal the full compliance period compliance obligation pursuant to section 95853.
 - (2) If a positive or qualified positive emissions data verification statement for any year of the compliance period is not received by ARB by the applicable verification deadline as set forth in MRR, ARB will assign emissions according to the requirements set forth in section 95103(g) of MRR for the emissions for the source categories in section 95852. The assigned emissions value then contributes to equals the compliance obligation.

- (h) Annual and Full Compliance Period Compliance Instrument Requirements.
- (1) When a covered entity or opt-in covered entity surrenders compliance instruments to meet its annual compliance obligation pursuant to section 95856(d), the Executive Officer will retire them from the Compliance Account in the following order:

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- (D) The current calendar year's vintage allowances and allowances allocated just before the annual surrender deadline up to the true-up allowance amount as determined in sections 95891(b), 95891(c)(2)(B), 95891(f)(1), or 95894(c) if an entity was eligible to receive true up allowances pursuant to section 95891(b), 95891(c)(2)(B), or 95894(c).
- (2) When a covered entity or opt-in covered entity surrenders compliance instruments to meet its full compliance period compliance obligation pursuant to section 95856(f), the Executive Officer will retire them from the Compliance Account in the following order:
- (A) Offset credits specified in section 95820(b) and sections 95821(b) through (d) with oldest credits retired first and subject to the quantitative usage limit set forth in section 95854;~~;~~
 - ***
 - (D) The current calendar year's vintage allowances and allowances allocated just before the full compliance period surrender deadline up to the true-up allowance amount as determined in section 95891(b), 95891(c)(2)(B), 95891(f)(1), or 95894(c) if an entity was eligible to receive true up allowances pursuant to section 95891(b), 95891(c)(2)(B), or 95894(c).
 - ***
- (4) An electric distribution utility will not be in violation of section 95892(d)(5) when the Executive Officer retires compliance instruments; if the electric distribution utility has a ~~sufficient~~ quantity of eligible compliance instruments not allocated pursuant to section 95870(d) in its compliance account; at the time the timely surrender of compliance instruments by a covered entity is due, pursuant to section 95856, that is at least equal to its compliance obligation for any transactions for which the use of allocated allowance value is prohibited under section 95892(d)(5).

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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 8: Disposition of Allowances

§ 95870. Disposition of Vintage 2013-2020 Allowances.

- (e) Allocation to Industrial Covered Entities. Allowances allocated for the purposes of industry assistance shall be transferred to annual allocation holding accounts for industrial sectors listed in Table 8-1. Allowances in the annual allocation holding account are transferred to the Holding Account on January 1 of the vintage year of the allowances.

- (3) The total amount of allowances allocated for the purposes of industry assistance shall not exceed the available amount of allowances after accounting for allocations made pursuant to sections 95870(a) through (d) and sections 95870(f) and (h). If the amount calculated under the methodology set forth in section 95891 exceeds the amount of allowances available, the number of allowances available will be prorated equally across all eligible industrial covered entities. The proration will be calculated using the share of allowances available after accounting for all allocations made pursuant to sections 95870(a) through (d) and sections 95870(f) and (h) compared to total allowances that would be distributed according to the methodology set forth in section 95891.

- (j) Allocation to Waste-to-Energy Facilities. Allowances available for allocation to waste-to-energy facilities each budget year shall only be calculated as set forth in sections 95852(k) and 95891(f). The Executive Officer will place an annual allocation in the annual allocation holding account of each eligible waste-to-

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energy facility by October 24, 2019 for allocation from the 2020 annual allowance budget. 2018 and 2019 vintage true-up allowances will be placed in the annual allocation holding account of each eligible waste-to-energy facility by October 24, 2019.

**Additional Regulatory Text in section 95870 and 95871
Retirement for Bankruptcy Situations**

CARB has initiated a separate, more narrow rulemaking to further clarify that the Cap-and-Trade Regulation requires a successor entity after a change in ownership to be responsible for the outstanding, pre-transfer compliance obligation of the predecessor covered entity. This separate rulemaking is scheduled to be considered and voted on by the Board at the March 2018 Board hearing. In addition to that clarification, CARB staff intends to include regulatory amendments to section 95870 to ensure that any unaccounted-for emissions due to bankruptcy or other circumstances such as EIM Outstanding Emissions are retired from the allowance budget prior to designation of allowances to auction. CARB staff has not yet developed proposed language to accomplish this, and is interested in stakeholder feedback on the concept.

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Table 8-1: Assistance Factors by Industrial Activity and Covered Industrial Sectors for 2013-2020

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
High	Crude Petroleum and Natural Gas Extraction	211111	Thermal EOR Crude Oil Extraction	100%	100%	100%	<u>100%</u>
			Non-Thermal Crude Oil Extraction	100%	100%	100%	<u>100%</u>
			Natural Gas Processing >25 MMscf/day	100%	100%	100%	<u>100%</u>
	Natural Gas Liquid Extraction	211112	Natural Gas Liquid Processing	100%	100%	100%	<u>100%</u>
	All Other Metal Ore Mining	212299	Rare Earth Production	100%	100%	100%	<u>100%</u>
	Potash, Soda, and Borate Mineral Mining	212391	Mining and Manufacturing of Soda Ash and Related Products	100%	100%	100%	<u>100%</u>
			Mining and Manufacturing of Borates	100%	100%	100%	<u>100%</u>
	All Other Nonmetallic Mineral Mining	212399	Diatomaceous Earth Mining	100%	100%	100%	<u>100%</u>
			Freshwater Diatomite Filter Aids Manufacturing	100%	100%	100%	<u>100%</u>
	Wet Corn Milling	311221	Wet Corn Milling	100%	100%	100%	<u>100%</u>
Paper (except Newsprint) Mills	322121	Paper (except Newsprint) Mills	100%	100%	100%	<u>100%</u>	

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
High	Paperboard Mills	322130	Recycled Boxboard Manufacturing	100%	100%	100%	<u>100%</u>
			Recycled Linerboard (Testliner) Manufacturing	100%	100%	100%	<u>100%</u>
			Recycled Medium (Fluting) Manufacturing	100%	100%	100%	<u>100%</u>
	All Other Petroleum and Coal Products Manufacturing	324199	Coke Calcining	100%	100%	100%	<u>100%</u>
	All Other Basic Inorganic Chemical Manufacturing	325188	Sulfuric Acid Regeneration	100%	100%	100%	<u>100%</u>
	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	100%	100%	100%	<u>100%</u>
	All Other Basic Organic Chemical Manufacturing	325199	All Other Basic Organic Chemical Manufacturing	100%	100%	100%	<u>100%</u>
	Nitrogenous Fertilizer Manufacturing	325311	Nitric Acid Production	100%	100%	100%	<u>100%</u>
			Calcium Ammonium Nitrate Solution Production	100%	100%	100%	<u>100%</u>
	Flat Glass Manufacturing	327211	Flat Glass Manufacturing	100%	100%	100%	<u>100%</u>
	Glass Container Manufacturing	327213	Container Glass Manufacturing	100%	100%	100%	<u>100%</u>
	Cement Manufacturing	327310	Cement Manufacturing	100%	100%	100%	<u>100%</u>
	Lime Manufacturing	327410	Dolime Manufacturing	100%	100%	100%	<u>100%</u>
	Mineral Wool Manufacturing	327993	Fiber Glass Manufacturing	100%	100%	100%	<u>100%</u>
Iron and Steel Mills	331111	Steel Production Using an Electric Arc Furnace	100%	100%	100%	<u>100%</u>	

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
	Rolled Steel Shape Manufacturing	331221	Hot Rolled Steel Sheet Production	100%	100%	100%	<u>100%</u>
Medium	Other Food Crops Grown Under Cover	111419	Other Food Crops Grown Under Cover	100%	100%	75%	<u>100%</u>
	Food Manufacturing	311	Food Manufacturing	100%	100%	75%	<u>100%</u>
	Fruit and vegetable canning	311421	Aseptic Tomato Paste Processing	100%	100%	75%	<u>100%</u>
			Aseptic Whole and Diced Tomato Processing	100%	100%	75%	<u>100%</u>
			Non-Aseptic Tomato Paste and Tomato Puree Processing	100%	100%	75%	<u>100%</u>
			Non-Aseptic Whole and Diced Tomato Processing	100%	100%	75%	<u>100%</u>
			Non-Aseptic Tomato Juice Processing	100%	100%	75%	<u>100%</u>
			Poultry Processing	311615	Whole Chicken and Chicken Parts Processing	100%	100%
	Poultry Deli Product Processing	100%	100%		75%	<u>100%</u>	
	Protein Meal and Fat Processing	100%	100%		75%	<u>100%</u>	
	Dried and Dehydrated Food Manufacturing	311423	Dehydrated Garlic Processing	100%	100%	75%	<u>100%</u>
			Dehydrated Onion Processing	100%	100%	75%	<u>100%</u>
			Dehydrated Chili Pepper Processing	100%	100%	75%	<u>100%</u>

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
Medium			Dehydrated Spinach Processing	100%	100%	75%	<u>100%</u>
			Dehydrated Parsley Processing	100%	100%	75%	<u>100%</u>
	Dairy Product Manufacturing	31151	Fluid Milk Product Processing	100%	100%	75%	<u>100%</u>
			Butter processing	100%	100%	75%	<u>100%</u>
			Condensed Milk Processing	100%	100%	75%	<u>100%</u>
			Milk Powder (Low Heat) Processing	100%	100%	75%	<u>100%</u>
			Milk Powder (Medium Heat and High Heat) Processing	100%	100%	75%	<u>100%</u>
			Buttermilk Powder Processing	100%	100%	75%	<u>100%</u>
			Intermediate Dairy Ingredients Processing	100%	100%	75%	<u>100%</u>
			Cheese Processing	100%	100%	75%	<u>100%</u>
			Lactose Processing	100%	100%	75%	<u>100%</u>
			Whey Protein Concentrate Processing	100%	100%	75%	<u>100%</u>
	Deproteinized Whey Processing	100%	100%	75%	<u>100%</u>		
	Roasted Nuts and Peanut Butter Manufacturing	311911	Almond Blanching	100%	100%	75%	<u>100%</u>
Almond Flavoring			100%	100%	75%	<u>100%</u>	

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
Medium			Almond Pasteurizing	100%	100%	75%	<u>100%</u>
			Pistachio Flavoring	100%	100%	75%	<u>100%</u>
			Pistachio Hulling and Drying	100%	100%	75%	<u>100%</u>
	Snack Food Manufacturing	31191	Fried Potato Chips Processing	100%	100%	75%	<u>100%</u>
			Baked Potato Chips Processing	100%	100%	75%	<u>100%</u>
			Corn Chips Processing	100%	100%	75%	<u>100%</u>
			Corn Curls Processing	100%	100%	75%	<u>100%</u>
			Pretzel Processing	100%	100%	75%	<u>100%</u>
	Beet sugar manufacturing	311313	Beet sugar manufacturing	100%	100%	75%	<u>100%</u>
	Cut and Sew Apparel Manufacturing	3152	Cut and Sew Apparel Manufacturing	100%	100%	75%	<u>100%</u>
	Breweries	312120	Brewing	100%	100%	75%	<u>100%</u>
			Lager Beer Manufacturing	100%	100%	75%	<u>100%</u>
	Wineries	312130	Distilled Spirits Production	100%	100%	75%	<u>100%</u>
			Dry Color Concentrate Production	100%	100%	75%	<u>100%</u>
			Grape Juice Concentrate Production	100%	100%	75%	<u>100%</u>

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
Medium			Grape Seed Extract Production	100%	100%	75%	<u>100%</u>
			Liquid Color Concentrate Production	100%	100%	75%	<u>100%</u>
	Petroleum Refineries	324110	Petroleum Refining	100%	100%	75%	<u>100%</u>
	Asphalt Paving Mixture and Block Manufacturing	324121	Asphalt Paving Mixture and Block Manufacturing	100%	100%	75%	<u>100%</u>
	Industrial Gas Manufacturing	325120	On-Purpose Hydrogen Gas Production	100%	100%	75%	<u>100%</u>
			Liquid Hydrogen Production	100%	100%	75%	<u>100%</u>
	Ethyl Alcohol Manufacturing	325193	Ethyl Alcohol Manufacturing	100%	100%	75%	<u>100%</u>
	Biological Product (Except Diagnostic) Manufacturing	325414	Biological Product (Except Diagnostic) Manufacturing	100%	100%	75%	<u>100%</u>
	Gypsum Product Manufacturing	327420	Plaster Manufacturing	100%	100%	75%	<u>100%</u>
			Stucco Manufacturing	100%	100%	75%	<u>100%</u>
	Rolled Steel Shape Manufacturing	331221	Pickled Steel Sheet Production	100%	100%	75%	<u>100%</u>
			Cold Rolled and Annealed Steel Sheet Production	100%	100%	75%	<u>100%</u>
			Galvanized Steel Sheet Production	100%	100%	75%	<u>100%</u>
			Tin Steel Plate Production	100%	100%	75%	<u>100%</u>
	Secondary Smelting and Alloying of Aluminum	331314	Aluminum and Aluminum Alloy Billet Manufacturing	100%	100%	75%	<u>100%</u>
Secondary Smelting, Refining, and Alloying of Nonferrous Metal (Except Copper and Aluminum)	331492	Lead Acid Battery Recycling	100%	100%	75%	<u>100%</u>	

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Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF _a) by Budget Year			
				2013-2014	2015-2017	2018-2020	<u>2021-2030</u>
	Iron Foundries	331511	Iron Foundries	100%	100%	75%	<u>100%</u>
			Ductile Iron Pipe Manufacturing	100%	100%	75%	<u>100%</u>
	Hardware Manufacturing	332510	Hardware Manufacturing	100%	100%	75%	<u>100%</u>
	Turbine and Turbine Generator Set Units Manufacturing	333611	Testing of Turbines and Turbine Generator Sets	100%	100%	75%	<u>100%</u>
Low	Pharmaceutical and Medicine Manufacturing	325412	Pharmaceutical and Medicine Manufacturing	100%	100%	50%	<u>100%</u>
	Nonferrous Forging	332112	Nonferrous Metal Forging	100%	100%	50%	<u>100%</u>
			Seamless Rolled Ring	100%	100%	50%	<u>100%</u>
	Automobile Manufacturing	336111	Automobile Manufacturing	100%	100%	50%	<u>100%</u>
	Aircraft Manufacturing	336411	Aircraft Manufacturing	100%	100%	50%	<u>100%</u>
	Guided Missile and Space Vehicle Manufacturing	336414	Guided Missile and Space Vehicle Manufacturing	100%	100%	50%	<u>100%</u>
Support Activities for Air Transportation	4881	Support Activities for Air Transportation	100%	100%	50%	<u>100%</u>	

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 and Section 16428.8, Government Code.

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**Additional Regulatory Text in section 95870
Potential Changes to Table 8-1**

AB 32 and AB 398 require that CARB minimize leakage, which in this context refers to the relocation of emissions outside of the State in response to the Cap-and-Trade Program. Allowances are allocated to industry to mitigate against emissions leakage. Covered sectors affiliated with specific NAICS codes have been categorized as high, medium, and low leakage risk according to CARB's 2010 assessment of industrial leakage risk (1). For the period 2018-2020, the current regulation sets assistance factors to 100 percent for high leakage risk, 75 percent for medium leakage risk, and 50 percent for low leakage risk. This means that the calculated allowances for covered entities are adjusted by those percentages. With respect to assistance factors for budget years 2018 to 2020, Board Resolution 17-21 directs staff to "... propose subsequent regulatory amendments to provide a quantity of allocation, for the purposes of minimizing emissions leakage, to industrial entities for 2018 through 2020 by using the same assistance factors in place for 2013 through 2017." Assistance factors from 2013 to 2017 were 100 percent for all industry sectors and all leakage classifications.

For background, when the Program was initially designed, assistance factors were set at 100 percent and were proposed to drop each compliance period as there was an expectation for carbon pricing or carbon regulations to phase-in in other regions. Board resolutions 11-32 (2) and 12-33 directed CARB staff to evaluate and "if necessary, ... modify the leakage risk determinations to be implemented prior to the allocation of allowances for the second compliance period." (3) During the 2013 regulatory amendment process, in an abundance of caution, staff proposed delaying the reduction in the assistance factor by one compliance period so they would not reduce until the 2018 to 2020 compliance period. This was to allow for the completion of new research commissioned by CARB (4, 5, 6) that would improve understanding of the specific factors that increase potential leakage risk posed by the long-term implementation of the Program on industrial sectors.

Staff has continued to evaluate data from focused studies and continues to discuss leakage risk with each industrial sector as part of developing proposals for assistance factors for the third compliance period. Moving forward, we are hopeful actions under the Paris Agreement will help increase the use of regional policies aimed at addressing GHGs, which would mean that California industry and competitors in other regions will face similar requirements.

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At this time, with AB 398 setting the assistance factors at 100 percent commencing in 2021, with data that shows we are on track to achieve the 2020 target early, and given the much deeper reductions needed in the next decade, staff believes a smooth allocation path between 2017 and 2021 is the most conservative approach to protect against emissions leakage, enable earlier investments in onsite equipment upgrades, and allow for economic growth.

Importantly, a 100 percent assistance factor does not mean businesses get all the allowances they need to comply with the Program—they still need to reduce emissions onsite or seek out additional allowances. By 2030, businesses will receive about half of the allowances they receive today: allocation continues to drop each year at the same rate as the overall California emission budget declines in the Program. Between 2021 and 2030, the cap decline rate almost doubles from what it is today.

Through past rulemakings, which included significant stakeholder engagement on this topic, and evaluation of current circumstances and legislation, CARB has analysed this issue and considered many factors to date. Staff requests feedback on what additional factors should be considered in evaluating this issue. Staff will need to make a determination as to whether we consider those factors, or maintain the conservative approach as we did in the second compliance period and set assistance factors to 100 percent to ensure smooth operation of the Program going into 2021.

- (1) ARB (2010) Staff Report: Initial Statement of Reasons (ISOR) Part 1. Volume IV: Appendix K. Leakage Analysis. Retrieved from:
<https://www.arb.ca.gov/regact/2010/capandtrade10/capv4appk.pdf>
- (2) Board Resolution 11-32: <https://www.arb.ca.gov/board/res/2011/res11-32.pdf>
- (3) Board Resolution 12-33: <https://arb.ca.gov/board/res/2012/res12-33.pdf>
- (4) Fowlie et al. (May 2016), “Measuring Leakage Risk,” Retrieved from:
<https://www.arb.ca.gov/cc/capandtrade/meetings/20160518/ucb-intl-leakage.pdf>
- (5) Gray, et al. (May 2016), “Employment and Output Leakage under California’s Cap-and-Trade Program.” Retrieved from:
<https://www.arb.ca.gov/cc/capandtrade/meetings/20160518/rff-domestic-leakage.pdf>
- (6) Hamilton et al. (May 2016), “Production and Emissions Leakage from California’s Cap-and-Trade Program in Food Processing Industries: Case Study of Tomato, Sugar, Wet Corn and Cheese Markets.” Retrieved from:
<https://www.arb.ca.gov/cc/capandtrade/meetings/20160518/calpoly-food-process-leakage.pdf>

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§ 95871. Disposition of Allowances from Vintage Year 2021 and Beyond.

- (d) Allocation to Industrial Covered Entities. Allowances allocated for the purposes of industry assistance shall be transferred to annual allocation holding accounts for industrial sectors listed in Table 8-1. Allowances in the annual allocation holding account are transferred to the holding account on January 1 of the vintage year of the allowances.
- (1) The Executive Officer will allocate allowances to each eligible covered entity by October 24 of each calendar year 2020-2029 for allocations from 2021-2030 annual allowance budgets.
- (2) Allocation to eligible covered entities shall be conducted using the assistance factors specified for each listed industrial activity found in Table 8-1 and the methodology set forth in section 95891.
- (3) The total amount of allowances allocated for the purposes of industry assistance shall not exceed the available amount of allowances after accounting for allocations made pursuant to sections 95871(a) through (c) and sections 95871(e) and (g). If the amount calculated under the methodology set forth in section 95891 exceeds the amount of allowances available, the number of allowances available will be prorated equally across all eligible industrial covered entities. The proration will be calculated using the share of allowances available after accounting for all allocations made pursuant to sections 95871(a) through (c) and sections 95871(e) and (g) compared to total allowances that would be distributed according to the methodology set forth in section 95891.
- (4) Industrial entities that purchase electricity or legacy contract qualified thermal output pursuant to a legacy contract and who receive allocation under this section shall have their allocation reduced as specified in section 95891(e).

- (f) Allocation to Legacy Contract Generators.

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[(1) Placeholder for further clarification on allocation to legacy contract generators without an industrial counterparty.]

(2) Allowances will be allocated to legacy contract generators with an industrial counterparty pursuant to section 95894 for the term of the contract. The Executive Officer will transfer allowance allocations into each eligible generator's annual allocation holding account by October 24 of each calendar year during the term of the contract for eligible legacy contract emissions pursuant to the methodology set forth in section 95894 beginning in 2020 for allocation from the 2021 annual allowance budget.

(i) Allocation to Waste-to-Energy Facilities. Allowances available for allocation to waste-to-energy facilities each budget year shall only be calculated as set forth in section 95891(f). The Executive Officer will place an annual individual allocation in the annual allocation holding account of each eligible waste-to-energy facility by October 24 of each calendar year beginning in 2020 for allocation from the 2021 annual allowance budget and ending in 2023 for allocation from the 2024 annual allowance budget. Annual allocation to eligible waste-to-energy facilities will end when landfill organics diversion is required to achieve a 75 percent diversion rate by 2025.

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 and Section 16428.8, Government Code.

Subarticle 9: Direct Allocations of California GHG Allowances

§ 95890. General Provisions for Direct Allocations.

(e) Eligibility Requirements for Legacy Contract Generators. A legacy contract generator with an industrial counterparty or legacy contract generator without an

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industrial counterparty that has demonstrated its eligibility to the satisfaction of the Executive Officer pursuant to section 95894 ~~of this regulation~~ shall be eligible for direct allocation of allowances if it has complied with the requirements of MRR and has obtained a positive or a qualified positive emissions data verification statement pursuant to MRR.

- (g) Eligibility Requirements for Public Wholesale Water Agencies. A public wholesale water agency shall be eligible for direct allocations of California GHG allowances if it has complied with the requirements of MRR, and has obtained a positive or qualified positive emissions data verification statement for the prior year pursuant to MRR.

- (l) Eligibility Requirements for Waste-to-Energy Facilities. A waste-to-energy facility that is a covered entity shall be eligible for direct allocations of California GHG allowances if it has a compliance obligation for the year for which it is receiving allocation, has complied with the requirements of MRR, and has obtained a positive or qualified positive emissions data verification statement for the prior year pursuant to MRR. A waste-to-energy facility shall not be eligible for any direct allocation of allowances for any data year for which it is not a covered entity or an opt-in covered entity.

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.

§ 95891. Allocation for Industry Transition Assistance and Leakage Minimization.

- (a) The Executive Officer shall determine the amount of allowances directly allocated to each eligible covered entity or opt-in covered entity using the product output-based allocation calculation methodology specified in section 95891(b) if the entity conducts an activity listed in both Table 8-1 and Table 9-1. The Executive Officer shall determine the amount of allowances directly allocated to each

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eligible covered entity or opt-in covered entity using the energy-based allocation calculation methodology specified in section 95891(c) if the entity conducts an activity listed in Table 8-1 but not listed in Table 9-1.

- (1) **New Entrant Industrial Allocation Without Leakage Risk.** Covered facilities that do not have a leakage risk in Table 8-1 are eligible to receive allocated allowances under the new entrant energy-based allocation methodology pursuant to section 95891(c)(2) if the first three digits of the facility NAICS code matches a NAICS code in Table 8-1. The leakage risk classification for these new entrant facilities shall be low until a leakage risk classification is added to Table 8-1 for the industrial activity in which the facility operates~~for that sector~~. Food processors that are only classified by a three digit NAICS code are exempt from this classification and shall be classified by the general 311 food processing NAICS code or sub-category as applicable in Tables 8-1 and 8-2.

- (f) Allocation to Waste-to-Energy Facilities. [Reserved for Waste-to-Energy methodology.]

**Additional Regulatory Text in section 95891
Potential Changes to Table 9-2**

Activities with over 50 percent of total emissions from process emissions and a high leakage risk classification are subject to different cap adjustment factors relative to other sectors covered in the Cap-and-Trade Program through 2020. Board Resolution 17-21 directs staff to "...evaluate and propose, as necessary, post-2020 cap adjustment factors consistent with the methodology used in 2015-2017 allocation calculations for sectors that have been determined to be highly trade exposed with highly emissions intensive products that have greater than 50 percent process emissions."

The pre-2021 alternate cap adjustment factors were calculated based on specific criteria for these sectors and recognition of the currently-limited options

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that exist for reducing process emissions. We continue to evaluate whether alternate cap adjustment factors for these sectors are appropriate post-2020. The criteria that CARB originally set in considering sector eligibility for the alternate cap adjustment factors are as follows: over 50 percent of total emissions are from process emissions; the sector has a high leakage risk classification; and the sector has high emissions intensity, defined as 5,000 MTCO_{2e} per million dollars value added (1) (see Appendix K from the 2010 Initial Statement of Reasons for more detail on emissions leakage calculations) (2).

Staff plans to work with affected sectors to gather new data for use in calculating, if necessary, post-2020 alternate cap adjustment factors.

(1) ARB (October 2011) “California’s Cap-and-Trade Program Final Statement of Reasons” p1952. Retrieved from:

<https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>

(2) ARB (2010) Staff Report: Initial Statement of Reasons (ISOR) Part 1. Volume IV: Appendix K. Leakage Analysis. Retrieved from:

<https://www.arb.ca.gov/regact/2010/capandtrade10/capv4appk.pdf>

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.

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

(b) Transfer to Utility Accounts.

(2) Publicly Owned Electric Utilities or Electrical Cooperatives. 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 into the accounts below:

(A) In the compliance account of an Electric Power Entity or electrical generating facility which must be either:

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1. 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
2. a federal power authority, that is importing electricity on behalf of the electrical distribution utility.

(B) The Executive Officer shall place this amount of allowances into the entity's allowance allocation holding account to be transferred by the Executive Officer into the entity's compliance account pursuant to section 95831(a)(6).

(BC) 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 by September 1 of the accounts in which the allocations are to be placed. If an entity fails to submit its distribution preference by September 1, ARB will automatically place all directly allocated allowances for the following budget year in the entity's Limited Use Holding Account.

(d) Limitations on the Use of Auction Proceeds and Allowance Value.

- (1) Proceeds obtained from the monetization of allowances directly allocated to a publicly owned electric utility or electrical cooperative shall be subject to any limitations imposed by the governing body of the utility and to the additional requirements set forth in sections 95892(d)(3)-~~(5)~~(6) and 95892(e).
- (2) Proceeds obtained from the monetization of allowances directly allocated to investor owned utilities shall be subject to any limitations imposed by the California Public Utilities Commission and to the additional requirements set forth in sections 95892(d)(3)-~~(5)~~(6) and 95892(e).
- (3) Auction proceeds and Allowance value, including any allocated allowance auction proceeds, obtained by an electrical distribution utility shall be used

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exclusively for the benefit of retail electricity ratepayers of each electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers. Allocated allowance auction proceeds ~~may~~ must be used to reduce greenhouse gas emissions or returned to ratepayers, using one or more of the following approaches:~~- Any allocated allowance auction proceeds returned to ratepayers must be returned in a non-volumetric manner.~~

- (A) Renewable Energy or Integration of Renewable Energy: Funding the construction or purchase of generation from eligible renewable energy resources directly delivered to California, including product content category 1 or 2 under Public Utilities Code section 399.16(b) or support for customer-owned eligible renewable energy resources. Funding energy storage projects designed to support the electrical distribution utilities' integration of renewable energy.
- (B) Energy Efficiency and Fuel-Switching: Funding programs designed to reduce greenhouse gas emissions through reductions in energy use, changes to lower emission intensity energy sources or other GHG emission reduction activities. This includes funding:
1. energy-efficient equipment rebates;
 2. energy-efficient building retrofits;
 3. public or private electric vehicle infrastructure;
 4. switching from natural gas or propane to electric equipment; or
 5. infrastructure or projects supporting active transportation, zero-emission vehicles or public transportation.
- (C) Non-Volumetric Return to Ratepayers: Distribution of allocated allowance auction proceeds to some or all ratepayers in a non-volumetric manner, either on- or off-bill. If on-bill, it must be identified as a line item, and the line item or off-bill written description must indicate that the Cap-and-Trade Program is the source of the allowance value.

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- (D) Administrative Costs: Allocated allowance proceeds may be used for administrative costs only in so far as those costs are solely limited to and required for the implementation of sections 95892(d)(3)(A)-(C).
- (E) Use of allocated allowance auction proceeds authorized under sections 95892(d)(3)(A) and (B) must demonstrate quantifiable GHG emission reductions.

- (5) Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to an electrical distribution utility other than for the benefit of retail ratepayers consistent with the goals of AB 32 is prohibited, including use of such allowances to meet compliance obligations for electricity sold into the California Independent System Operator markets. Use of allocated allowance auction proceeds to pay for the costs of complying with MRR₁ ~~or~~ the AB 32 Cost of Implementation Fee Regulation (California Code of Regulations, sections 95200-95207), or the Cap-and-Trade Regulation is prohibited, except for the costs allowable pursuant to section 95892(d)(3)(D). Returning allocated allowance auction proceeds to ratepayers in a volumetric manner is prohibited.

**Additional Regulatory Text in section 95892(d)(5) and 95893(d)(5)
Prohibited Use of Allocated Allowance Value**

CARB staff is exploring how to more clearly assess and reduce ambiguity as to whether allowances purchased with allocated allowance proceeds are benefitting ratepayers in accordance with the goals of AB 32. This includes ensuring compliance with the prohibition on using allowance value for electricity sold in the California Independent System Operator markets and ensuring allowance proceeds are not returned to ratepayers volumetrically. CARB staff is looking to meet these objectives in a manner that increases clarity for EDUs and natural gas suppliers and streamlines oversight. One approach under consideration is prohibiting the purchase of allowances using allocated allowance proceeds. CARB is interested in stakeholder feedback on this approach and other concepts that meet these objectives.

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- (e) Reporting on the Use of Auction Proceeds. No later than June 30, 2014, and June 30 of each calendar year thereafter, each electrical distribution utility shall submit a report to the Executive Officer describing the disposition of all ~~how any~~ allocated allowance auction proceeds ~~were spent~~ during the previous calendar year. This report shall include:
- (1) The monetary value of allocated allowance auction proceeds received by the electrical distribution utility from the sale of allowances from the previous calendar year's vintage; ~~and any other~~
 - (2) The disposition of all allocated allowance auction proceeds not previously reported as spent pursuant to section 95892(e); including auction proceeds spent during the previous calendar year and auction proceeds which remained unspent at the end of the previous calendar year;
 - (3) ~~How the electrical distribution utility's disposition of any allocated allowance auction proceeds which were spent during the previous calendar year complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.; including quantification of the GHG emission reductions from use of allocated allowance auction proceeds under sections 95892(d)(3)(A) and (B);~~
 - (4) Copies of public plans or resolutions adopted or public reports issued by the electrical distribution utility on the usage or disposition of allocated allowance value; and
 - (5) In the report due by June 30, 2018 only, for amounts spent by December 31, 2016, the amount of allocated allowance auction proceeds not previously reported as spent pursuant to section 95892(e) or not optionally reported as spent in prior year's reports.

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

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§ 95893. Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers.

(b) Transfer to Natural Gas Supplier Accounts.

(1) When a natural gas supplier as defined in section 95811(c) is eligible for a direct allocation, it shall inform the Executive Officer by September 1, ~~or the first business day thereafter~~ of the amount of allowances to be placed into its ~~Compliance~~ compliance account and ~~Limited Use Holding A~~limited Use Holding Account with the following constraints. If an entity fails to submit its distribution preference by this deadline, ARB will automatically place all directly allocated allowances for the following budget year in the entity's ~~Limited Use Holding A~~limited Use Holding Account :

- (A) The quantity of allowances placed into the ~~Limited Use Holding A~~limited Use Holding Account will equal at least the amount of allowances provided in section 95893(a) multiplied by the applicable percentage in Table 9-5 or Table 9-6, rounded down to the nearest whole allowance.
- (B) The remaining allowances from the total allowances allocated in section 95893(a) which are not placed into the ~~Limited Use Holding A~~limited Use Holding Account will be placed into the entity's allowance allocation holding account to be transferred by the Executive Officer into the entity's compliance account pursuant to section 95831(a)(6).

(d) Limitations on the Use of Auction Proceeds and Allowance Value.

- (1) Proceeds obtained from the monetization of allowances directly allocated to a publicly owned natural gas utility shall be subject to any limitations imposed by the governing body of the utility and to the additional requirements set forth in sections 95893(d)(3) through 95893(d)~~(5)~~(6) and 95893(e).

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- (2) Proceeds obtained from the monetization of allowances directly allocated to public utility gas corporations shall be subject to any limitations imposed by the California Public Utilities Commission and to the additional requirements set forth in sections 95893(d)(3) through 95893(d)~~(5)~~(6) and 95893(e).
- (3) ~~Auction proceeds and allowance value, including any allocated allowance auction proceeds,~~ obtained by a natural gas supplier shall be used exclusively for the benefit of retail ratepayers of each natural gas supplier, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers. Allocated allowance auction proceeds ~~may~~must be used to reduce greenhouse gas emissions or returned to ratepayers, using one or more of the approaches described in section 95892(d)(3)(A)-(D) and meet the requirements of section 95892(d)(3)(E). ~~Any allocated allowance auction proceeds returned to ratepayers must be done in a non-volumetric manner.~~

- (5) Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to a natural gas supplier other than for the benefit of retail ratepayers consistent with the goals of AB 32 is prohibited. Use of allocated allowance auction proceeds to pay for the costs of complying with MRR₁ ~~or~~ the AB 32 Cost of Implementation Fee Regulation (California Code of Regulations, sections 95200-95207), or the Cap-and-Trade Regulation is prohibited, except for necessary costs pursuant to section 95892(d)(3)(D). Returning allocated allowance auction proceeds to ratepayers in a volumetric manner is prohibited.

- (e) Reporting on the Use of Auction Proceeds. No later than June 30, 2016, and June 30 of each calendar year thereafter, each natural gas supplier shall submit a report to the Executive Officer describing ~~how any~~ the disposition of all allocated

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allowance auction proceeds ~~were spent~~ during the previous calendar year. This report shall include:

- (1) The monetary value of auction proceeds received by the natural gas supplier from the sale of allowances from the previous calendar year's vintage; ~~and any other~~
- (2) The disposition of all allocated allowance auction proceeds not previously reported as spent pursuant to section 95893(e);, including auction proceeds spent during the previous calendar year and auction proceeds which remained unspent at the end of the previous calendar year;
- (~~2~~3) How the natural gas supplier's disposition of any allocated allowance auction proceeds which were spent during the previous calendar year complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq., including quantification of the GHG emission reductions from use of allocated auction proceeds under sections 95892(d)(3)(A) and (B);
- (4) Copies of public plans or resolutions adopted or public reports issued by the electrical distribution utility on the usage or disposition of allocated allowance value; and
- (~~3~~5) In the report due by June 30, 2018 only, for amounts spent prior to December 31, 2016, the amount of allocated allowance auction proceeds not previously reported as spent pursuant to section 95893(e) or not optionally reported as spent in prior year's' reports.

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.

§ 95894. Allocation to Legacy Contract Generators for Transition Assistance.

- (a) Demonstration of Eligibility. Opt-in covered entities are not eligible for transition assistance due to legacy contract emissions. To be eligible to receive a direct

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allocation of allowances under this section, the primary or alternate account representative of a legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty shall submit the following in writing via certified mail to the Executive Officer by June 1 of each year as applicable:

- (1) A letter to ARB stating covered entity's name and ARB ID, ~~identification~~identity of legacy contract counterparty, and statement requesting transition assistance for the previous data year's legacy contract emissions.
 - (A) Previous data year's legacy contract emissions, pursuant to section 95894(c).
 - (B) 2012 data year's legacy contract emissions, pursuant to section 95894(d).

- (3) An attestation under penalty of perjury under the laws of the State of California that:

- (C) The operator of the legacy contract generator with an industrial counterparty or the legacy contract generator without an industrial counterparty made a good faith effort, but failed to renegotiate the legacy contract with the counterparty to address recovery of the costs of compliance with this ~~r~~Regulation. The renegotiation effort began at least 60 days, but no earlier than a year, before the date of this attestation.

- (b) Determination of Eligibility. Upon receipt of the information required by paragraph (a) of this section, the Executive Officer shall determine whether the party submitting such information has demonstrated that it is eligible to receive a direct allocation of allowances pursuant to this section and shall notify that party

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by October 10 each year if it is eligible to receive an allocation calculated pursuant to section 95894(c) or 95894(d) for the following compliance year.

(c) Allocation to Legacy Contract Generators with an Industrial Counterparty. If the counterparty (or entity in a direct corporate association with the counterparty) is a covered entity or opt-in covered entity that is in a sector listed in Table 8-1, the following formulae apply based on the type of generation facility:

(1) For stand-alone generation facilities that are legacy contract generators with an industrial counterparty, the following equations apply:

$$A_t = (EEm_{lc,t-2} * c_{a,t} * AF_{lcc,t}) + TrueUp_t$$

Where:

“ $c_{a,t}$ ” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty;

$$TrueUp_t = (EEm_{lc,t-2} * c_{a,t-2} * AF_{lcc,t-2}) - A_{t-2,no\ trueup}$$

Where:

“ $c_{a,t-2}$ ” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for the year two years prior to year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty;

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- (2) For legacy contract generators with an industrial counterparty subject to section 95894(c), but not covered by section 95894(c)(1), the following equations apply:

$$A_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lcc,t} * c_t) + TrueUp_t$$

$$A_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lcc,t} * c_{a,t}) + TrueUp_t$$

Where:

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output_t in MMBtu_t sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

“ $C_{a,t}$ ” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

$$TrueUp_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lcc,t-2} * c_{t-2}) - A_{t-2, no trueup}$$

$$TrueUp_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lcc,t-2} * c_{a,t-2}) - A_{t-2, no trueup}$$

Where:

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output_t in MMBtu_t sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

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“B_s” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu-thermal;

~~“C_{t-2}”~~“C_{a,t-2}” is the is the cap adjustment factor for the budget year two years prior to year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

**Additional Regulatory Text in Section 95894
Potential Changes to Allocation to Legacy Contract Generators with Non-Industrial Counterparties**

Board Resolution 17-21 directs CARB staff to “...work with any remaining entities with legacy contracts and their non-industrial counterparties to resolve the parties' issues related to recovery of greenhouse gas costs, or, as necessary, to propose regulatory amendments to be in place no later than the allocation of vintage 2021 allowances to ensure reasonable transition assistance for greenhouse gas costs throughout the term of the legacy contract.”

CARB Staff will continue to work with legacy contract generators with non-industrial counterparties to encourage renegotiation and to determine if post-2020 allocation is necessary and appropriate.

[(d) Placeholder for “Allocation to Legacy Contract Generators with Non-Industrial Counterparties.”]

~~(d)~~(e) Data Sources. In determining the appropriate values for section 95894(c), the Executive Officer may employ all available data reported to ARB under MRR and all other relevant data, including invoices, that demonstrate the amount of electricity and legacy contract qualified thermal output sold or provided for off-site use does not include a carbon cost in the budget year for which ~~the~~ the legacy

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contract generator is seeking an allocation. If necessary, the Executive Officer will solicit additional data to establish a representative allocation. The operator of the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty must provide the additional data upon request by the Executive Officer.

- (e)(f) Contract Expiration or Generator Closure. Once a legacy contract expires or the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty closes operations, the generator will no longer be eligible for free allocation pursuant to 95890(e), and allocation will be prorated for the time in which the contract was eligible.

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.

- (4) Entities registered into the California Cap-and-Trade Program must submit bids in ~~whole~~ U.S. dollars and whole cents.

- (c) Method for Setting the Auction Reserve Price.

- (2) The Auction Reserve Price will be announced on the first day in December that is a business day in California and in any jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12. ~~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~~

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~~California.~~ The Auction Reserve Price shall be stated in U.S. dollars and in the currency (or currencies) used in any External GHG ETS to which California has linked pursuant to subarticle 12.

- (3) The Auction Administrator will calculate the Auction Reserve Price using the following procedure:

(D) The Auction Reserve Price in Canadian dollars shall be the highest of the minimum prices set and published in Canadian dollars in any jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12.^[1] ~~Canadian dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus adjusted in the manner provided for in section 83.3 of the Financial Administration Act (R.S.Q., c. A-6.001) of Quebec.~~

- (5) ~~The Auction Reserve Price in section 95911(c)(2) will be announced on the first day in December that is a business day in California and in any jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 and the Reserve Price shall also be stated in the currency (or currencies) used in an External GHG ETS to which California has linked pursuant to subarticle 12.~~

- (e) 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 This section refers to a concurrently occurring regulatory amendment process that will likely conclude before this regulatory amendments process occurs.

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- (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:

- (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

- (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:

- (C) Allowances designated to auction pursuant to section 95910(e);
~~(C)(D)~~ Allowances redesignated to the auction pursuant to section 95911(f)(3); and
~~(D)(E)~~ Allowances designated by ARB for auction pursuant to sections 95910(c)(1)(B), ~~and (c)(2)(B)~~, and (c)(2)(C).

- (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 used to fulfill an untimely surrender obligation transferred by the Executive Officer pursuant to section 95857(d) for an auction

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which remain unsold shall be kept in the Auction Holding Account for later auction.

- ~~(B)~~(C) 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 pursuant to section 95910(c)(1)(B).
- ~~(C)~~(D) 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.

- (B) Allowances consigned to auction pursuant to section 95910(d)(2) ~~95921(g)(3)~~ that remain unsold at auction will be held in the Auction Holding Account and offered for sale at each auction until sold.

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**Additional Regulatory Text in section 95911
EIM Outstanding Emissions**

Staff proposes to retire EIM Outstanding Emissions directly from the state allowance budget rather than retiring current vintage non-consigned allowances designated for auction that remain unsold in the Auction Holding Account for more than 24 months. The state allowance budget is the initial pool from which these allowances would have originated if EIM Outstanding Emissions were included in the compliance obligations of specific covered entities. Therefore, it is reasonable to retire EIM Outstanding Emissions directly from the state allowance budget.

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 Application.

- (c) Auction Notification. At least 60 days prior to each auction, the auction administrator shall publish the following information:

- (5) The administrative requirements for participation; ~~and~~
- (6) The number of allowances from California that will be available at the auction; and-

- (d) Auction Participation Application Requirements.

- (2) An entity applying for approval as an auction participant must be registered into the Cap-and-Trade Program pursuant to ~~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

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- whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.
- (4) An entity must complete an auction participant application to inform the Auction Administrator of its intent to bid in an auction at least 30 days prior to an auction in which it intends to participate. ~~The entity must provide information and documentation including:~~
- (5) The entity must provide auction participant application information and documentation at least 30 days prior to an auction in which it intends to participate, including:
- (A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;
 - (B) Except as otherwise provided in section 95833 (e)(4), the ~~The~~ existence of any direct or indirect corporate associations pursuant to sections 95833 and 95911~~4~~(d);
- ***
- (~~5~~6) An entity with any changes to the auction application information listed in subsection 95912(d)~~(5)~~(4) within 30 days prior to an auction may be denied participation in the auction. For the purposes of changes to indirect and direct corporate associations, this section only applies to those corporate associates with entities registered in the tracking system.
- (~~6~~7) 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 an auction 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 ~~suba~~Article.

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- (e) Maintenance and Modification of Auction Participant Application Information
~~Participation Approval.~~
- (1) Once the Executive Officer has approved an entity's auction participant application, the entity need not provide information and documentation required pursuant to section 95912(d)(5) ~~complete another application~~ for subsequent auctions unless there is a material change to the information contained in the approved application pursuant to section 95912(d)(4)-(5) ~~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.
- ~~(2) An entity approved for auction participation must inform the Auction Administrator 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. The change should be reported by 5 p.m. Pacific Standard Time (or Pacific Daylight Time, when in effect) on the 30th day before an auction.~~
- ~~(f) Auction Intent to Bid Notification Requirements. An entity that intends to participate in an auction must inform the Auction Administrator at least 30 days prior to an auction of its intent to bid in an auction, otherwise the entity may not participate in that auction.~~
- (fg) An entity approved for auction participation may ~~not~~ communicate information on auction participation with any entity that is not part of an association disclosed pursuant to section 95914, ~~except as requested by~~ to the Auction Administrator to remediate an auction application.
- ***
- (ij) Auction participants must provide a bid guarantee to the financial services administrator at least 12 days prior to the auction.
- (1) The bid guarantee must be in one, or a combination of, the following forms:

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- (3) A bid guarantee submitted in any form other than cash must be payable within three business days of payment request submitted by physical presentment or electronically by facsimile, or other electronic form accepted by the financial services 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 and Section 16428.8, Government Code.

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

- (e) Reserve Sale Participation Application Requirements. ~~Intent to Bid Notification Requirements. An entity that intends to participate in a reserve sale must inform the Reserve Sale Administrator at least 20 days prior to a reserve sale of its intent to bid in that reserve sale, otherwise the entity may not participate in that reserve sale.~~

(1) The Executive Officer must approve an entity's Reserve sale participant application before that entity may participate in a Reserve sale.

(2) An entity must complete a Reserve sale participant application to inform the Auction Administrator of its intent to bid in a Reserve sale at least 20 days prior to the Reserve sale in which it intends to participate.

- (f) Reserve Tiers from 2013-2020.

- (5) This provision only applies to the Reserve sale immediately preceding the compliance obligation instrument surrender on November 1. Pursuant to sections 95870(i)(1) ~~and 95871(h)(1)~~, allowances will be made available at the highest price tier of the Allowance Price Containment Reserve if the amount of accepted bids at the highest price tier exceeds the number of allowances in that tier.

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(h) Purchase Determinations.

- (6) After completing the sales for each tier the reserve sale administrator will repeat the processes in sections 95913(h)(4) and (h)(5) ~~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.

(k) Operation of the Reserve After 2020.

**Additional Regulatory Text in section 95913
AB 398 Price Containment Points and Price Ceiling**

CARB staff will propose changes starting with section 95913(k) to reflect the direction in AB 398 regarding establishing two price containment points and a ceiling price that would be applicable beginning in 2021. Please see the CARB staff preliminary concept paper released simultaneously with this Preliminary Discussion Document.

- (3) Starting January 1, 2021, the procedures ~~contained~~ in sections 95913(f), (g), and (h) are replaced by sections 95913(l), (m), and (n). The resolution of sales continue to follow the procedures ~~contained~~ in sections 95913(i) and (j).
- (l) This provision only applies to the Reserve sale immediately preceding the compliance obligation instrument surrender deadline on November 1. Pursuant to sections 95870(i)(1) and 95871(h)(1), allowances will be made available at the Reserve Sale Price if the amount of accepted bids exceeds the number of allowances available in the Reserve.

- (2) If the quantity of accepted bids exceeds the allowances from sections 95870(a) and 95871(a) plus the allowances defined in sections 95870(i)(1)

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and 95871(h)(1), allowances will be sold through the procedure ~~outlined~~ in section 95913(n)(3).

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.

(c) Disclosure of Auction Participation Information.

(2) Auction participation information listed in section 95914(c)(1) may be released under the following conditions:

- (A) When the release is to other members of a direct corporate association not subject to auction participation restriction or cancellation pursuant to section 95914(b)~~;~~
- (B) When the release is to a Cap-and-Trade Consultant or Advisor who has been disclosed to the Executive Officer pursuant to section 95914(c)(3)~~;~~
- (C) When the release is made by a publicly~~_~~-owned utility only as required by public accountability rules, statute, or rules governing participation in generation projects operated by a Joint Powers Authority or other publicly~~_~~-owned utilities; or

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.

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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 corporate association, as defined in section 95833, at any point in time.

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

- (2) Limited Exemption from the Holding Limit.

- (B) Calculation of the ~~L~~imited ~~E~~xemption for ~~E~~ntities ~~A~~lready ~~R~~egistered as of January 1, 2017 as ~~C~~overed ~~E~~ntities or ~~O~~pt-in ~~C~~overed ~~E~~ntities. The limited exemption for these entities is the sum of the emissions contained in the most recent annual emissions data reports that have received a positive or qualified positive emissions data verification statement for emissions for which the entity now has a compliance obligation pursuant to section 95851, plus the amount of emissions in the oldest emissions report for which the entity now has a compliance obligation, and less the amount of any annual compliance obligations already due in the current compliance period.
- (C) Calculation of the ~~L~~imited ~~E~~xemption for ~~E~~ntities ~~R~~egistering as ~~C~~overed ~~E~~ntities or ~~O~~pt-in ~~C~~overed ~~E~~ntities registering after January 1, 2017. The limited exemption for an entity that registers as a covered entity or opt-in covered entity after January 1, 2017 will be calculated as twice the annual emissions contained in the emissions report for the first year that the entity has a compliance obligation, provided that the emissions data report has received a positive or

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qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to section 95851.

- (G) Allowances allocated pursuant to sections 95870(d), (e), and (f), and ~~(g)~~, which are transferred to the receiving entity's annual allocation holding account in a year preceding their vintage year, will not count against the Holding Limit or limited exemption until January 1 of their vintage year.

- (f) Application of Corporate Association Provisions to the Holding Limit.
- (1) The total number of allowances held by a group of entities with a direct corporate association pursuant to section 95833 must ~~be sum to~~ less than or equal to the holding limits pursuant to sections 95920(d) and (e).

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.

- (b) Information Requirements for Transfer Requests. 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:

- (3) A transfer request submitted for an over-the-counter agreement for the sale of compliance instruments for which delivery will take place no more than three days from the date the parties enter into the transaction agreement must provide the following information:

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- (B) Expected Termination Date of the transaction agreement. If completion of the transfer request process is the last term of the transaction agreement to be completed, the date the transfer request is submitted should be entered as the Expected Termination Date. If there are financial, contingency, or other terms to be settled after the transfer request is completed, the date those terms are expected to be settled should be entered as the Expected Termination Date. If the transaction agreement does not specify a date for the settlement of financial, contingency, or other terms that would be completed after the transfer request is completed, the entity may enter the Expected Termination Date as “Not Specified.”

- (4) A transfer request submitted for an over-the-counter agreement for the sale of compliance instruments for which delivery is to take place more than three days from the date the parties enter into the transaction agreement or that involves multiple transfers of compliance instruments over time or incorporates compliance instrument requirements with other product sales or purchases, must provide the following information:

- (B) Expected Termination Date of the transaction agreement. If completion of the transfer request process is the last term of the transaction agreement to be completed, the date the transfer request is submitted should be entered as the Expected Termination Date. If there are financial, contingency, or other terms to be settled after the transfer request is completed, the date those terms are expected to be settled should be entered as the Expected Termination Date. If the transaction agreement does not specify a date for the settlement of financial, contingency, or other terms that would be completed after the

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transfer request is completed, the entity may enter the Expected Termination Date as “Not Specified.”

- (6) If the transaction agreements do not contain a price for compliance instruments, entities may enter a price of zero into the transfer request if the transfer request is submitted to fulfill one of the following transaction agreement types and the entity discloses the agreement type in the transfer request.

- (C) The proposed transfer is from a publicly-owned utility to an entity or a Joint Powers Authority operating a generation facility as a joint venture with the utility.

- (G) The proposed transfer is from a publicly-owned utility to an entity (including a Joint Powers Authority of which that utility is a member, or an operating agent acting on behalf of such a Joint Powers Authority) operating a generation facility from which the utility obtains electricity.

- (h) Information Reporting bBy Holders of Exchange Clearing Holding Accounts.

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.

§ 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

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(a) General Requirements for Offset Projects. To qualify under the provisions set forth in this article, an Offset Project Operator or Authorized Project Designee must ensure that an offset project:

(2) Meets the following additionality requirements, as well as any additionality requirements in the applicable Compliance Offset Protocol, as of the date of Offset Project Commencement:

(C) The GHG reductions and GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the applicable version of the Compliance Offset Protocol under which the offset project has been listed pursuant to section 95975 or under which the offset project has been transitioned to pursuant to section 95973(a)(2)(D) for that offset project type as set forth in the following:

1. Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011, and Compliance Offset Protocol Ozone Depeleting Substances Projects, November 14, 2014, which are hereby incorporated by reference;

(D) The Offset Project Operator or Authorized Project Designee may transition an offset project to the most recently incorporated version of the Compliance Offset Protocol by updating the listing information in an Offset Project Data Report pursuant to section 95976. ~~Projects may only transition at the initial submission of the Offset Project Data Report for a reporting period to ARB or the Offset Project Registry.~~ Projects transitioning to the most recent version of the Compliance Offset Protocol may only do so with an Offset Project Data Report submitted to ARB or the Offset Project Registry prior to the site visit, pursuant to section 95977.1(b)(3)(D). To properly transition to the

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most recent version of the Compliance Offset Protocol, the Offset Project Data Report for the transitioning project must specify the most recent protocol version as the version under which the project is reporting, pursuant to section 95976(d)(10). An offset projects that transitions to a new version of the Compliance Offset Protocol during a crediting period will continue in the same crediting period and not start a new crediting period.

- (e) Only a Primary Account Representative or Alternate Account Representative on the Offset Project Operator's tracking system account may sign any documents or attestations to ARB or an Offset Project Registry on behalf of the Offset Project Operator for an offset project.

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.

§ 95974. Authorized Project Designee.

- (a) General Requirements for Designation of Authorized Project Designee. An Offset Project Operator may designate an entity as an Authorized Project Designee at the time of offset project listing or any time after offset project listing as long as it meets the requirements of section 95974(b).

- (2) The director or officer, as identified in section 95830(c)(1)(B), of the Offset Project Operator may delegate responsibility to the Authorized Project Designee for performing or meeting all the requirements of sections 95975, 95976, 95977, 95977.1, 95977.2, 95980, 95980.1, 95981, 95981.1, and, where the Authorized Project Designee is specifically identified, the requirements in sections 95983, 95985, and the Program for Recognition of Early Action Offset Credits, on behalf of the Offset Project Operator.

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- (B) If an Authorized Project Designee is designated, the Offset Project Operator must designate an individual of the Authorized Project Designee as a Primary Account Representative or Alternate Account Representative on the Offset Project Operator's tracking system account before the Authorized Project Designee may act on behalf of the Offset Project Operator or submit any documentation to the Offset Project Registry and ARB. ~~Only an individual authorized on the Offset Project Operator's tracking system account may sign any documents or attestations to ARB on behalf of the Offset Project Operator for an offset project.~~

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.

§ 95976. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

- (d) Offset Project Reporting Requirements. An Offset Project Operator or Authorized Project Designee shall submit an Offset Project Data Report to ARB or an Offset Project Registry for each Reporting Period as defined in section 95802. Each Offset Project Data Report must cover a single Reporting Period. Reporting Periods must be contiguous; there must be no gaps in reporting once the first Reporting Period has commenced. If the Offset Project Operator or Authorized Project Designee fails to submit an Offset Project Data Report, then the Offset Project will be considered terminated and not eligible for ARB offset credits. An Offset Project Data Report may be submitted after the deadline identified in section 95976(d)(8), but before the end of the next Reporting Period, to maintain continuous reporting; however, no ARB offset credits will be issued

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for the GHG emission reduction or removal enhancements quantified and reported in the Offset Project Data Report pursuant to section 95976(d)(9). For projects developed under the Compliance Offset Protocol in section 95973(a)(2)(C)1., there may be one Offset Project Data Report submitted for each offset project and the Offset Project Data Report may cover up to a maximum of 12 months of data. The Offset Project Operator or Authorized Project Designee must submit an Offset Project Data Report to ARB or an Offset Project Registry within 28 months of listing their offset project pursuant to section 95975 and must also meet all other applicable deadlines pertaining to submittal of the Offset Project Data Report. If the Offset Project Operator or Authorized Project Designee does not submit an Offset Project Data Report to ARB or an Offset Project Registry within 28 months of listing an offset project, then the Offset Project Operator or Authorized Project Designee must update the listing information in the Offset Project Data Report to reflect the most recent version of the Compliance Offset Protocol for that project type in order to remain eligible to be issued ARB offset credits. If an Offset Project Data Report that does not meet the 28 month deadline also fails to meet the deadline in section 95976(d)(8), an Offset Project Data Report covering the Reporting Period must be submitted using the most recent version of the Compliance Offset Protocol; however, no ARB offset credits will be issued for the GHG emission reductions or removal enhancements, pursuant to section 95976(d)(9). For forestry offset projects, when an Offset Project Data Report is not filed within the deadline specified in section 95976(d)(8), the values used for $AC_{\text{onsite},y-1}$ and $BC_{\text{onsite},y-1}$ in the Offset Project Data Report for the following Reporting Period will be the $AC_{\text{onsite},y}$ and $BC_{\text{onsite},y}$ values reported in the untimely Offset Project Data Report for the preceding Reporting Period. The Offset Project Data Report shall contain the information required by the applicable version of the Compliance Offset Protocol for that offset project type as set forth in:

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- (8) ~~All~~An Offset Project Data ~~Reports-Report~~ must be submitted within four months after the conclusion of each Reporting Period. To be considered valid, the Offset Project Data Report must include any required attestation(s) and must be signed by the Offset Project Operator's Primary Account Representative or Alternate Account Representative.
- (9) If an Offset Project Data Report is not submitted to ARB or an Offset Project Registry as required by this regulation by the applicable ~~four-month~~ reporting deadline in section 95976(d)(8), the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to be issued registry offset credits pursuant to section 95980 or ARB offset credits pursuant to section 95981.
- (10) Each version of an Offset Project Data Report submitted to ARB or an Offset Project Registry must specify the version number and the date submitted. For offset projects reporting under one of the Compliance Offset Protocols in section 95976(d)(1), 95976(d)(2), or 95976(d)(4), an Offset Project Data Report must include both the protocol version under which a project was listed pursuant to section 95975 and the protocol version under which a project is reporting pursuant to section 95976(d).

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.

§ 95977.1. Requirements for Offset Verification Services.

- (b) Offset Verification Services. Offset Verification Services shall be subject to the following requirements.
 - (1) Notice of Offset Verification Services for Offset Projects. Before offset verification services, as defined in section 95977.1(b)(3), may begin, the

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Offset Project Operator or Authorized Project Designee must submit the Offset Project Data Report to ARB or an Offset Project Registry, and the verification body must submit a Notice of Offset Verification Services to ARB and an Offset Project Registry, if applicable. The verification body may begin offset verification services for the Offset Project Operator or Authorized Project Designee 10 calendar days after the Notice for Offset Verification Services is received by ARB and the Offset Project Registry. The verification body may not conduct the site visit until at least ~~30~~15 calendar days after the Notice for Offset Verification Services is received by ARB and the Offset Project Registry, ~~or earlier, if the earlier site visit date is approved by ARB in writing.~~ If a verification is being audited by ARB pursuant to section 95977.1(b)(3)(W) or by an Offset Project Registry pursuant to section 95987(e) and if ARB or the Offset Project Registry notify the verification body of the audit in writing within five working days of receiving the Notice for Offset Verification Services, the verification body may not conduct the site visit until at least 40 calendar days after the Notice for Offset Verification Services is received by ARB and the Offset Project Registry, unless each auditing entity approves in writing an earlier site visit date. The Notice of Offset Verification Services must include the following information:

- (D) General information on the Offset Project Operator or Authorized Project Designee, including:

4. A brief description of expected offset verification services to be performed, including the expected completion date for submitting the Offset Verification Statement to ARB or the Offset Project Registry.

- (2) If any information submitted pursuant to sections 95977.1(b)(1)(B) and 95977.1(b)(1)(D) changes after the Notice for Offset Verification Services is

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submitted to ARB and the Offset Project Registry, if applicable, ~~and before~~
~~offset verification services begin,~~ the verification body must notify ARB and
the Offset Project Registry by submitting an updated Notice of Offset
Verification Services ~~as soon as the change is made, but, at least five working~~
~~days prior to the start of offset verification services, unless otherwise~~
~~approved by ARB in writing. If any information submitted pursuant to sections~~
~~95977.1(b)(1)(B) and 95977.1(b)(1)(D) changes during offset verification~~
~~services, the verification body must notify ARB and the Offset Project~~
~~Registry, if applicable, within 10 working days. In either instance, the Notice~~
~~of Offset Verification Services must be resubmitted to ARB and the Offset~~
~~Project Registry, as applicable. If the verification body has been notified by~~
~~ARB or the Offset Project Registry of an audit for the relevant verification,~~
~~then the verification body must notify the auditing entity at least two working~~
~~days prior to a revised start date for offset verification services and at least 15~~
~~working days prior to a revised site visit date(s), unless each auditing entity~~
~~approves in writing an earlier date.~~ If ARB and the Offset Project Registry, if
applicable, request revisions to the Notice of Offset Verification Services, the
verification body must resubmit the revised Notice of Offset Verification
Services within 10 working days of such request, or if there is a reason the
verification body cannot submit the revisions within 10 working days, the
verification body must communicate to ARB and the Offset Project Registry in
writing as to the reasons why and get approval from the Offset Project
Registry or ARB for an extension.

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.

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§ 95979. Conflict of Interest Requirements for Verification Bodies and Offset Verifiers for Verification of Offset Project Data Reports.

- (b) “Member” for the purposes of this section means any employee or subcontractor of the verification body or related entities of the verification body. “Member” also includes any individual with majority equity share in the verification body or its related entities. “Related entity” for the purposes of this section means any direct parent company, direct subsidiary, or sister company. “Non-offset verification services” for purposes of this section do not include certification or verification services which have been provided for ARB or any other voluntary or mandatory program; such certification and verification services may be counted as offset verification services for the purposes of this section. The potential for a conflict of interest must be deemed to be high where:

- (2) Within the previous five years, any staff member of the verification body or any related entity or any member of the offset verification team has provided to the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) any of the following non-offset verification services:

- (A) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions or development of a forest management plan, or timber harvest plan, unless the review was part of providing GHG offset verification services;

- (J) Directly ~~managing~~ responsible for developing any health, environment or safety ~~functions~~ policies for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

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- (f) Approval of Conflict of Interest Submittals. ARB or the Offset Project Registry must review the self-evaluation submitted by the verification body and determine whether the verification body is authorized to perform the offset verification services for the Offset Project Operator and Authorized Project Designee, if applicable.

- (2) If the offset project was listed with an Offset Project Registry, the conflict of interest self-evaluation acceptance or denial notification will be given by the Offset Project Registry. Within 15 calendar of approving a conflict of interest self-evaluation, the Offset Project Registry must notify ARB in writing of the date on which it approved the self-evaluation.

- (3) When a conflict of interest self-evaluation is updated before or during offset verification services to add a verification team member, ARB or the Offset Project Registry must approve the updated self-evaluation before any new team member participates in offset verification services. Within 15 calendar days of approving an updated self-evaluation, the Offset Project Registry must notify ARB in writing of the date on which it approved the updated self-evaluation.

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.

§ 95981. Issuance of ARB Offset Credits.

- (b) Requirements for Offset Projects Submitted Through an Offset Project Registry Seeking Issuance of ARB Offset Credits. ~~If an Offset Project Operator or Authorized Project Designee provides information for listing pursuant to section~~

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~~95975, monitors and reports pursuant to section 95976, and has their offset project verified pursuant to sections 95977, 95977.1, and 95977.2 through an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the following information to ARB for issuance of ARB offset credits pursuant to section 95981.1:~~

- ~~(1) The attestations required in sections 95975(c)(1), 95975(c)(2), 95975(c)(3), 95976(d)(7), 95977.1(b)(3)(R)4.b., 95977.1(b)(3)(R)4.e., 95977.1(b)(3)(R)4.f., and any in the applicable Compliance Offset Protocol;~~
- ~~(2) Offset project listing information submitted to an Offset Project Registry pursuant to sections 95975(c) and (e);~~
- ~~(3) The original and final Offset Project Data Reports submitted to an Offset Project Registry pursuant to sections 95976(d), 95977.1(b)(3)(M), and 95977.1(b)(3)(R)5.; and~~
- ~~(4) Offset Verification Statements submitted pursuant to section 95977.1(b)(3)(R)4.b.;~~
- ~~(5) The Offset Project Operator, or Authorized Project Designee, if applicable, must submit a request for issuance of ARB offset credits to ARB for each Offset Project Data Report for which they are seeking issuance of ARB offset credits identifying which Holding Accounts the ARB offset credits should be placed into and how many ARB offset credits will be placed into each Holding Account. The Offset Project Operator or Authorized Project Designee may request that ARB offset credits are placed into the Holding Account of any party not prohibited to hold compliance instruments under this Article. Any party receiving ARB offset credits at the time of ARB offset credit issuance must have a tracking system account with ARB.~~
- ~~(1G) An Offset Project Operator or Authorized Project Designee may request that only a portion of the eligible GHG reductions and removal enhancements for the applicable Reporting Period be issued ARB offset credits in the request for issuance.~~

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- (2D) ~~The request for issuance of ARB offset credits may be provided to ARB when the Offset Project Operator or Authorized Project Designee, if applicable, submits the information in sections 95981(b)(1) through (4) but must be provided to ARB before it will issue ARB offset credits pursuant to section 95981.1.~~ If the offset project was listed by an Offset Project Registry, the request for issuance of ARB offset credits may not be provided to ARB until the Offset Project Registry has issued registry offset credits for the applicable Offset Project Data Report(s).

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.

§ 95981.1 Process for Issuance of ARB Offset Credits.

- (c) Notice of ~~Determination of~~ Issuance of ARB Offset Credits. Not later than 45 ~~calendar~~ five working days after ARB ~~determines to issue~~ an ARB offset credit pursuant to section 95981(c), ARB will notify the Offset Project Operator, ~~or Authorized Project Designee, or any other third party requested by the Offset Project Operator pursuant to section 95981(b)(5)(B) to receive ARB offset credits,~~ of its intent to issue the issuance of ARB offset credits.

- (e) A registry offset credit issued pursuant to section 95980.1(a) must be removed or cancelled by the Offset Project Registry within ~~40~~ 90 calendar days after ARB issues an ARB offset credit pursuant to this section, such that the registry offset credit is no longer available for transaction on the Offset Project Registry system. Within five working days of the removal or cancellation of registry offset credits, ~~t~~The Offset Project Registry must provide proof to ARB that the registry offset credits have been permanently removed or cancelled from the registry system. If

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registry offset credits are not cancelled within 90 calendar days, ARB will cancel the ARB offset credits. ARB offset credits cancelled pursuant to this provision may not be re-issued.

- (f) Receipt of ARB Offset Credits. ARB will transfer ARB offset credits into the Holding Account of the Offset Project Operator, Authorized Project Designee, or any other third party requested by the Offset Project Operator pursuant to section 95981(b)(5)(B) to receive ARB offset credits, within 15 working days of the Offset Project Registry providing proof to ARB that the registry offset credits have been permanently removed or cancelled from the registry system~~notice of determination pursuant to sections 95981.1(c) and (d)(4).~~

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.

§ 95985. Invalidation of ARB Offset Credits.

- (b) Timeframe for Invalidation. ARB may invalidate an ARB offset credit pursuant to this section within the following timeframe if a determination is made pursuant to section 95985(f):
- (1) Within eight years of issuance of an ARB offset credit, if the ARB offset credit is issued for early action pursuant to the Program for Recognition of Early Action Offset Credits, or within eight years of the date that corresponds to the end of the Reporting Period for which the ARB offset credit is issued, if the ARB offset credit is issued pursuant to section 95981.1, unless one of the following requirements is met:
- ***
- (B) The Offset Project Operator or Authorized Project Designee for an offset project developed under one of the protocols listed in section 95985(b)(1)(B)5. does the following:

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2. The verification conducted by a different verification body for the subsequent Offset Project Data Report and used to reduce the invalidation timeframe of any ARB offset credits must be completed through the submittal of an Offset Verification Statement pursuant to section 95977.1(b)(3)(R)1. within, at a maximum, three years from the date that ~~corresponds to the last time~~ ARB offset credits were issued ~~to the offset project~~ for the Reporting Period, or as provided in section 95990(a)(3)(A) for projects developed under an approved early action quantification methodology. The verification of the subsequent Offset Project Data Report must result in a Positive or Qualified Positive Offset Verification Statement from the new verification body.

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.

§ 95987. Offset Project Registry Requirements.

- (b) The Offset Project Registry must make the following information publicly available for each offset project developed under a Compliance Offset Protocol:

- (3) Clear identification of which offset projects are listed and submitting Offset Project Data Reports using Compliance Offset Protocols. Once an Offset Project Registry has approved a project listing, the Offset Project Registry must continue to list the project but may update the project listing status to “Inactive” if the project has not been issued any registry offset credits or ARB offset credits or update the listing status to “Terminated” if the project has

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been issued any registry offset credits or ARB offset credits. The Offset Project Registry may update the listing status to “Inactive” or “Terminated” if any of the following circumstances exist:

- (A) The offset project has missed the 28-month reporting deadline in section 95976(d);
- (B) The offset project has missed the deadline for continuous reporting in section 95976(d);
- (C) The offset project, if listed under the Compliance Offset Protocol in section 95973(a)(2)(C)1., has submitted an Offset Project Data Report but has missed the 11-month verification deadline in section 95977(d);
- (D) The offset project terminates, as specified by the Compliance Offset Protocols in section 95973(a)(2)(C)4.; or
- (E) The Offset Project Operator submits a letter to the Offset Project Registry stating that it no longer intends to pursue registry offset credit issuance for this project. The letter must be signed by the Offset Project Operator’s Primary or Alternate Account Representative and must include the following:
 - 1. Offset Project Operator name and CITSS identification number;
 - 2. Offset project name and both ARB and Offset Project Registry identification numbers;
 - 3. Name and date of the Compliance Offset Protocol used by the offset project;
 - 4. Date on which the Offset Project Registry approved the listing;
 - 5. Indication that the the Offset Project Operator will no longer pursue any registry offset credits for the project;
 - 6. Request to change the project status to “Inactive” or “Terminated”; and
 - 7. Signature, printed name, title, and date signed.

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- (4) When an Offset Project Registry updates the listing status to “Inactive” or “Terminated,” the Offset Project Registry must make publicly available a copy of the letter submitted under section 95987(b)(3)(E) or must make publicly available a memo authored by the Offset Project Registry explaining the change of status. The memo must include the following:
- (A) Offset Project Operator name and CITSS identification number;
 - (B) Offset project name and both ARB and Offset Project Registry identification numbers;
 - (C) Name and date of the Compliance Offset Protocol used by the offset project;
 - (D) Date on which the Offset Project Registry approved the listing;
 - (E) Indication of the deadline(s) missed;
 - (F) Indication for when, if ever, the offset project may receive registry offset credits; and
 - (G) Date on which the Offset Project Registry has updated the status to “Inactive” or “Terminated.”
- (5) An Offset Project Registry may update an offset project’s listing status to “Completed” if (1) ARB offset credits have been issued for the offset project, (2) no further ARB offset credits will be issued to the project, (3) the project may no longer undergo offset verification services that could reduce the invalidation period for any ARB offset credits from eight years to three years pursuant to section 95985(b), and (4) the end of the project life has been reached as defined in the Compliance Offset Protocols in section 95973(a)(2)(C)4. (if applicable).

- (e) The Offset Project Registry must audit at least 10 percent of the annual full offset verifications developed for offset projects using a Compliance Offset Protocol.
- (1) The audit must include the following checks:

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(F) An investigative review of the conflict of interest assessment provided by the verification body, which includes the following:

1. Discussions with ~~both~~ the lead verifier, the verification body officer or staff person most knowledgeable about who submitted the conflict of interest assessment form ~~self-evaluation~~, and the Offset Project Operator or Authorized Project Designee to confirm the information on the conflict of interest assessment form is true, accurate, and complete;

(f) The Offset Project Registry must review each detailed verification report provided in section 95977.1(b)(3)(R)(4.) (a.) for completeness and accuracy and to ensure it meets the requirements of section 95977.1(b)(3)(R)(4.) (a.) before accepting the associated Offset Verification Statement for the Offset Project Data Report and issuing registry offset credits. The Offset Project Registry must maintain a log of all issues raised during its review of a detailed verification report and the corresponding Offset Project Data Report and Offset Verification Statement and how the issues are resolved. Within three working days of issuing registry offset credits, the Offset Project Registry must provide the following to ARB:

- (1) The attestations required in sections 95976(d)(7), 95977.1(b)(3)(R)4.b., 95977.1(b)(3)(R)4.e., 95977.1(b)(3)(R)4.f., and any in the applicable Compliance Offset Protocol;
- (2) The final Offset Project Data Reports submitted to an Offset Project Registry pursuant to sections 95976(d), 95977.1(b)(3)(M), and 95977.1(b)(3)(R)5.;
- (3) The final Offset Verification Statements submitted pursuant to section 95977.1(b)(3)(R)4.b.; and
- (4) The Offset Project Registry's log of all issues raised during its review.

(l) Within 10 working days of first receiving an Offset Project Data Report to meet the reporting deadline pursuant to section 95976(d)(8), an Offset Project Registry

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must provide ARB a copy of the Offset Project Data Report and confirm the date on which the Offset Project Data Report was submitted to the Offset Project Registry.

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 14: Recognition of Compliance Instruments from Other Programs

§ 95990. Recognition of Early Action Offset Credits.

- (a) An ARB offset credit issued pursuant to the Program for Recognition of Early Action Offset Credits may be invalidated pursuant to section 95985 as follows:

- (3) For an early action offset project developed under one of the quantification methodologies in the Program for Recognition of Early Action Offset Credits the invalidation timeframe will remain at eight years, unless one of the following applies and are met to reduce the invalidation timeframe to three years:

- (A) If an Offset Project Operator or Authorized Project Designee transitions an early action offset project to a Compliance Offset Protocol pursuant to the Program for Recognition of Early Action Offset Credits:

2. The ARB-accredited verification body must be a different verification body than the one that conducted any regulatory verification services of the early action offset project pursuant to the Program for Recognition of Early Action Offset Credits~~section 95990(f)~~ or that verified the early action offset project under the Early Action Offset Program, and must meet the requirements for

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- conflict of interest pursuant to section 95979 and for the rotation of verification bodies pursuant to section 95977.1(a); and
3. If the requirements in sections 95990(~~a~~)(3)(A) through (~~a~~)(3)(A)2. are met, the invalidation timeframe would be as specified in section 95985(b)(1)(B)3.b.; or
- (B) If an Offset Project Operator or Authorized Project Designee does not transition an early action offset project to a Compliance Offset Protocol pursuant to the Program for Recognition of Early Action Offset Credits, or the Offset Project Operator or Authorized Project Designee chooses to reduce the invalidation timeframe prior to the verification of a subsequent Offset Project Data Report being verified pursuant to the Program for Recognition of Early Action Offset Credits above:
1. An ARB-accredited verification body must conduct full offset verification services pursuant to sections 95977.1 and 95978, except for section 95977.1(b)(3)(M), based on the original data report and/or reporting information submitted to the Early Action Offset Program for the original offset verification conducted under the Early Action Offset Program for the applicable early action reporting period. Although the requirements in section 95977.1(b)(3)(M) do not need to be met under this section, any misreporting, discrepancies, and omissions found during the full offset verification services must be included in the offset material misstatement calculation performed pursuant to section 95977.1(b)(3)(Q). The full offset verification services must be in addition to any regulatory verification services conducted for the early action offset project pursuant to the Program for Recognition of Early Action Offset Credits~~section 95990(f)~~. The verification body must submit the verification materials pursuant to section 95985(b)(1)(A)2.a. and the Offset Project Registry₁ and ARB must

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- review the verification materials pursuant to sections 95985(b)(1)(A)2.b. through d.;
2. The ARB-accredited verification body must meet the requirements for conflict of interest pursuant to section 95979 and rotation of verification bodies pursuant to section 95977.1(a); and be a different verification body than the one that conducted any regulatory verification services of the applicable early action reporting period for the early action offset project pursuant to the Program for Recognition of Early Action Offset Credits or that verified the applicable early action reporting period for the early action offset project under the Early Action Offset Program; and
 3. The new ARB-accredited verification body must complete the full offset verification services; by submitting an Offset Verification Statement, pursuant to section 95977.1(b)(3)(R)1., within a maximum of three years following the issuance of ARB offset credits for the early action reporting period as a result of the regulatory verification services performed pursuant to the Program for Recognition of Early Action Offset Credits, and the Offset Project Operator or Authorized Project Designee must receive a Positive or Qualified Positive Offset Verification Statement from the new verification body for the same early action reporting period. The full offset verification services must include a site visit to the offset project location; and any other sites as specified in the applicable early action quantification methodology. The site visit must be performed only once for all qualifying early action reporting periods.

- (4) For an early action offset project developed under the quantification methodology in the Program for Recognition of Early Action Offset Credits,

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the invalidation timeframe will remain at eight years, unless the following criteria are met to reduce the invalidation timeframe to three years:

- (A) An ARB-accredited verification body must conduct full offset verification services pursuant to sections 95977.1 and 95978, except for section 95977.1(b)(3)(M), based on the original data report and/or reporting information submitted to the Early Action Offset Program for the original offset verification conducted under the Early Action Offset Program for the applicable early action reporting period. Although the requirements in section 95977.1(b)(3)(M) do not need to be met under this section, any misreporting, discrepancies, and omissions found during the full offset verification services must be included in the offset material misstatement calculation performed pursuant to section 95977.1(b)(3)(Q). The full offset verification services must be in addition to any regulatory verification services conducted for the early action offset project pursuant to the Program for Recognition of Early Action Offset Credits~~section 95990(f)~~. The verification body must submit the verification materials pursuant to section 95985(b)(1)(A)2.a. and the Offset Project Registry and ARB must review the verification materials pursuant to sections 95985(b)(1)(A)2.b. through d.;
- (B) The ARB-accredited verification body must meet the requirements for conflict of interest pursuant to section 95979 and the rotation of verification bodies pursuant to section 95977.1(a), and be a different verification body than the one that conducted any regulatory verification services of the applicable early action reporting period for the early action offset project pursuant to the Program for Recognition of Early Action Offset Credits or that verified the applicable early action reporting period for the early action offset project under the Early Action Offset Program; and

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- (C) The new ARB-accredited verification body must complete the full offset verification services, by submitting an Offset Verification Statement, pursuant to section 95977.1(b)(3)(R)1., within a maximum of three years following the issuance of ARB offset credits for the early action reporting period as a result of the regulatory verification services performed pursuant to the Program for Recognition of Early Action Offset Credits and the Offset Project Operator or Authorized Project Designee must receive a Positive or Qualified Positive Offset Verification Statement from the new verification body for the same early action reporting period. The full offset verification services must include a site visit to the offset project location, and any other sites as specified in the applicable early action quantification methodology. The site visit must only be performed once for all qualifying early action reporting periods.

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.

§ 96014. Violations.

- (a) If an entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 95856 or 95857, and the procedures in section 95857(c) have been exhausted, there is a separate violation of this article for each required compliance instrument that has not been surrendered, or otherwise obtained by the Executive Officer pursuant to section under 95857(c).

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.

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§ 96021. Confidentiality.

- (a) Emissions data submitted to ARB under this article ~~are~~ public information and shall not be designated as confidential.

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.

§ 96022. Jurisdiction of California.

- (a) Any party that participates in the Cap-and-Trade Program is subject to the jurisdiction of the State of California unless the party is subject to the jurisdiction of an External GHG ETS to which California has linked its Cap-and-Trade Program pursuant to section 95830(~~gh~~) and subarticle 12.

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.
