Legal Disclaimer: This is an unofficial electronic version of *a preliminary discussion draft* of the Cap-and-Trade Regulation that contains potential underline-strikeout text revisions for the purpose of soliciting stakeholder feedback on possible changes.

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
	Rolled Steel Shape Manufacturing	331221	Hot Rolled Steel Sheet Production	100%	100%	100%	100%
Medium	Other Food Crops Grown Under Cover	111419	Other Food Crops Grown Under Cover	100%	100%	75%	100%
	Food Manufacturing	311	Food Manufacturing	100%	100%	75%	100%
	Fruit and vegetable canning	311421	Aseptic Tomato Paste Processing	100%	100%	75%	100%
			Aseptic Whole and Diced Tomato Processing	100%	100%	75%	100%
			Non-Aseptic Tomato Paste and Tomato Puree Processing	100%	100%	75%	100%
			Non-Aseptic Whole and Diced Tomato Processing	100%	100%	75%	100%
			Non-Aseptic Tomato Juice Processing	100%	100%	75%	100%
	Poultry Processing	311615	Whole Chicken and Chicken Parts Processing	100%	100%	75%	100%
			Poultry Deli Product Processing	100%	100%	75%	100%
			Protein Meal and Fat Processing	100%	100%	75%	100%
	Dried and Dehydrated Food Manufacturing	311423	Dehydrated Garlic Processing	100%	100%	75%	100%
			Dehydrated Onion Processing	100%	100%	75%	100%
			Dehydrated Chili Pepper Processing	100%	100%	75%	100%

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>

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>

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>

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
	Iron Foundries	331511	Iron Foundries	100%	100%	75%	100%
			Ductile Iron Pipe Manufacturing	100%	100%	75%	100%
	Hardware Manufacturing	332510	Hardware Manufacturing	100%	100%	75%	100%
	Turbine and Turbine Generator Set Units Manufacturing	333611	Testing of Turbines and Turbine Generator Sets	100%	100%	75%	100%
Low	Pharmaceutical and Medicine Manufacturing	325412	Pharmaceutical and Medicine Manufacturing	100%	100%	50%	100%
	Nonferrous Forging	332112	Nonferrous Metal Forging	100%	100%	50%	100%
			Seamless Rolled Ring	100%	100%	50%	100%
	Automobile Manufacturing	336111	Automobile Manufacturing	100%	100%	50%	100%
	Aircraft Manufacturing	336411	Aircraft Manufacturing	100%	100%	50%	100%
	Guided Missile and Space Vehicle Manufacturing	336414	Guided Missile and Space Vehicle Manufacturing	100%	100%	50%	100%
	Support Activities for Air Transportation	4881	Support Activities for Air Transportation	100%	100%	50%	100%

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.

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.

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

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

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(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).

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(f) Allocation to Legacy Contract Generators.

[(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.

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(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.

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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 and Section 16428.8, Government Code.

Subarticle 9: Direct Allocations of California GHG Allowances

§ 95890. General Provisions for Direct Allocations.

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

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(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.

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(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 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.

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

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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 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.

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(b) Transfer to Utility Accounts.

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(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 <u>Electric Power Entity or</u> electrical generating facility <u>which must be either:</u>

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).

(~~B~~C) 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 ~~L~~limited ~~U~~use ~~H~~holding ~~A~~account.

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(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~~ A~~a~~llowance value, including any allocated allowance auction proceeds, obtained by an electrical distribution utility shall be used

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.

(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.

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(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 MRR, ~~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~~2~~) 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~~3~~) 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.

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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

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

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(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~~ <u>compliance account</u> and ~~L~~<u>l</u>imited ~~U~~<u>u</u>se ~~H~~<u>h</u>olding ~~A~~<u>a</u>ccount 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 ~~L~~<u>l</u>imited ~~U~~<u>u</u>se ~~H~~<u>h</u>olding ~~A~~<u>a</u>ccount :

(A) The quantity of allowances placed into the ~~L~~<u>l</u>imited ~~U~~<u>u</u>se ~~H~~<u>h</u>olding ~~A~~<u>a</u>ccount 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 <u>total</u> allowances allocated in section 95893(a) which are not placed into the ~~L~~<u>l</u>imited ~~U~~<u>u</u>se ~~H~~<u>h</u>olding ~~A~~<u>a</u>ccount 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).

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(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)~~<u>(6)</u> and 95893(e).

(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) A~~uction proceeds and a~~llowance 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.~~

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(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 MRR,~~ 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.

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(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 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~~s' reports.

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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.

§ 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 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).

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

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(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.

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(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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(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:

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

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

Where:

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

***

~~"c_t"~~"$c_{a,t}$" 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

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

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

Where:

***

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

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

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~~“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

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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 ~~it~~the legacy 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.

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§ 95911. Format for Auction of California GHG Allowances.

(a) Auction Bidding Format.

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

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(c) Method for Setting the Auction Reserve Price.

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(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~~

~~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:

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(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.~~

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(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.~~

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(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:

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