

**APPENDIX A**

**STAFF REPORT: INITIAL STATEMENT OF REASONS**

**Proposed Amendments to the California Cap on Greenhouse Gas Emissions and  
Market-Based Compliance Mechanisms Regulation**

**Proposed Regulation Order**

**State of California**

**AIR RESOURCES BOARD**

**Release Date: September 4, 2018**

**PROPOSED REGULATION ORDER  
CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED  
COMPLIANCE MECHANISMS**

NOTE: Set forth below is proposed amendments to title 17, of the California Code of Regulations. Amendments to existing sections proposed and subject to comment in this rulemaking are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.

Amend Subchapter 10 Climate Change, Article 5, sections 95802, 95811, 95812, 95813, 95820, 95830, 95831, 95833, 95834, 95841, 95841.1, 95851, 95852, 95854, 95856, 95870, 95871, 95890, 95891, 95892, 95893, 95894, 95911, 95912, 95913, 95914, 95920, 95921, 95942, 95943, 95973, 95974, 95976, 95977.1, 95979, 95981, 95981.1, 95982, 95983, 95984, 95985, 95987, 95990, 96011, 96014, 96021, 96022, Appendix B, and Appendix E; and adopt new sections 95915 and 95989, title 17, California Code of Regulations, to read as follows:

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

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**Subarticle 2: Purpose and Definitions**

**§ 95802. Definitions.**

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

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“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) ~~u~~Steam turbines generating electricity as a byproduct of steam generation through a

fired boiler; and (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.

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“Direct environmental benefits in the State” refers to 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.

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“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: 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 eE-Tag to a final point of delivery inside the state of California, the electricity importer is identified on the NERC eE-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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“Energy Imbalance Market Outstanding Emissions” or “EIM Outstanding Emissions” shall have the same meaning as MRR section 95111(h)(1) until March 31, 2019. Starting on April 1, 2019, EIM Outstanding Emissions shall have the same meaning as MRR section 95111(h)(2).

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“Energy Imbalance Market Purchaser” or “EIM Purchaser” means an entity that purchases electricity through the EIM either to serve California load or to deliver or sell the purchased electricity to an entity, or on behalf of an entity, serving California load.

“Energy Imbalance Market Purchaser Emissions” or “EIM Purchaser Emissions” shall have the same meaning as MRR section 95111(h)(3)(A).

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“Environmental Stringency” means, for purposes of this article, the ability of the California Cap-and-Trade Program to deliver the GHG emission reductions contemplated by this article, including the allowance budgets established in this article.

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“First Deliverer of Electricity” or “First Deliverer” means the owner or operator of an electricity generating facility in California, ~~or an electricity importer, or an EIM Purchaser.~~

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“Initial Crediting Period” means the crediting period that begins with the first day of the first reporting period which receives a 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 and has that is received by ARB-Offset Verification Statement approved by ARB.

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“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.

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“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.

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“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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“Lobbying” for the purposes of sections 95892(d)(7) and 95893(d)(7) means communicating directly or through an agent with any federal or State elective official, agency official, or legislative official for the purpose of influencing legislative or administrative action.

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“NERC eE-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.

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“Price Ceiling” means the maximum fixed price at which allowances and price ceiling units would be available for sale to covered entities in the Program, pursuant to section 95915.

“Price Ceiling Account” means the holding account under the control of the Executive Officer in which allowances and price ceiling units would be transferred pursuant to this Article.

“Price Ceiling Unit” means the additional greenhouse gas emission reductions that are offered for sale at the price ceiling. Moneys generated from issuance of price ceiling units will be expended to achieve emission reductions, on at least a metric ton for metric ton basis, that are real, permanent, quantifiable, verifiable, enforceable by the state board and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur.

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“Renewable Energy Credit” or “REC” has the same meaning as defined in the California Energy Commission’s “Renewables Portfolio Standard Eligibility,” 7<sup>th</sup> edition, Commission Guidebook, pp. 85-86. April, 2013; ~~CEC-300-2013-005-ED7-CMF~~, January, 2017; CEC-300-2016-ED9-CMF-REV, which is hereby incorporated by reference.

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“Reporting Period” means, in the context of offsets, the period of time for which an Offset Project Operator or Authorized Project Designee quantifies and reports GHG reductions or GHG removal enhancements covered in an Offset Project Data Report. An offset project’s Reporting Period is established in the project listing documentation, but may be modified by notifying ARB and the OPR (if applicable) in writing or by providing updated listing information with the submittal of the Offset Project Data Report. Modifications to the Reporting Period are only allowed if ARB and the OPR (if applicable) are notified prior to any deadlines being missed. The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting period and all reporting periods in any renewed crediting period must consist of 12 consecutive months, with the following exception: 1) Offset projects that submitted a first reporting period in the initial crediting period that was less than 24 consecutive months may include any months not included in the first reporting period in the final reporting period of the initial crediting period, such that the combined duration of the initial and final reporting periods in the initial crediting period do not exceed 36 months total; and 2) Offset projects using a Compliance Offset Protocol in section 95973(a)(2)(C)2 may have one reporting period less than 12 consecutive months to allow the project to transition to a Low Carbon Fuel Standard pathway. For offset projects developed using the Compliance Offset Protocol in section 95973(a)(2)(C)1., there may only be one Reporting Period per offset project. The Reporting Period may not be longer than 12 months and there is no minimum timeframe imposed for the Reporting Period. For offset projects developed using the compliance offset protocol in section 95973(a)(2)(C)6., the Reporting Period is approximately 12 months; it may be less than or exceed 12 months.

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“Reserve Allowance” means the allowances directly allocated to the Allowance Price Containment Reserve pursuant to sections 95870(a) and 95871(a), or non-

vintaged allowances issued by an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, allocated to a reserve account.

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“True-up allowance amount” is a quantity of California GHG allowances allocated for changes in production or allocation not properly accounted for in prior allocations pursuant to 95891(b), 95891(c), 95891(c)(2)(B), 95891(f)(1), or 95894(c)-(e).

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“Volumetric,” with respect to sections 95892 and 95893, describes an electrical distribution utility’s or natural gas supplier’s distribution of allocated allowance auction proceeds 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.

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

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

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### **Subarticle 3: Applicability**

#### **§ 95811. Covered Entities**

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- (b) First Deliverers of Electricity.
- (1) Electricity generating facilities: the operator of an electricity generating facility located in California; or
  - (2) Electricity importers; and
  - (3) EIM Purchasers.



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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.

## § 95812. Inclusion Thresholds for Covered Entities.

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(c) The requirements apply as follows:

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(2) First Deliverers of Electricity.

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(C) EIM Purchasers. The applicability threshold for an EIM Purchaser is based on all EIM Purchaser Emissions. All EIM Purchaser Emissions reported for an EIM Purchaser are considered to be above the threshold.

(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), or (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<sub>2</sub>e 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<sub>2</sub>e 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 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.

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- (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 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.

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- (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 Ppogram must apply to the Executive Officer by September 1 of the last year of a compliance period.

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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.

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#### **Subarticle 4: Compliance Instruments**

##### **§ 95820. Compliance Instruments Issued by the Air Resources Board.**

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(d) Compliance instruments issued by ARB may only be used for the purposes expressly set forth in this article.

(e) Price ceiling units.

(1) The Executive Officer may issue price ceiling units pursuant to section 95915.

(2) Surrender of price ceiling units shall be subject to the requirements of section 95915.

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.**

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

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(5) An individual registering as a voluntarily associated entity and having a primary residence in the United States, but not located in California, must designate an agent for service of process in California. The agent may be an

individual who resides in California, or a corporation, that has previously filed a certificate pursuant to California Corporations Code section 1505.

- (6) An entity applying for registration that is not an individual or an entity supplying exchange clearing services pursuant to section 95814(a)(1)(C) must designate, pursuant to section 95832, either:

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(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 a~~ prospective primary account representative, alternate account representatives, or account viewing agents for a registered entity, 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.

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

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(D) If an individual fails to comply with section 95834 Know-Your-Customer Requirements or does not provide the documentation required pursuant to section 95834 within 30 days of submitting a user registration request in the tracking system;

(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.

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- (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.

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

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(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:~~

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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.

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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.

**§ 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.

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(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.

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- (6) Annual Allocation Holding Account. When an entity qualifies for a direct allocation under subarticle 9, the accounts administrator will create an annual allocation holding account for the entity.

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(F) Allocation of allowances to industrial entities, universities, public service facilities, waste-to-energy facilities, and legacy contract generators pursuant to subarticles 8 and 9 will be transferred to the entity's holding account on January 1 of the vintage year of the allowances.

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~~(H) Allocation of allowances to waste-to-energy facilities will be transferred on January 1 of the vintage year of the allowances to the entity's compliance account pursuant to section 95852(k).~~

~~(l) Allocation of allowances to suppliers of liquefied natural gas will be transferred on January 1 of the vintage year of the allowances to the entity's holding account or compliance pursuant to section 95852(l)(1).~~

- (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:

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- (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

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- (8) A holding account to be known as the Price Ceiling Account, which will contain allowances transferred pursuant to section 95913(h)(1)(C) and price ceiling units approved by the Executive Officer pursuant to section 95915.

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.

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- (5) A publicly-owned electric utility or joint powers ~~agency~~authority 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~~authority 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.

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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.

### § 95834. Know-Your-Customer Requirements.

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(b) The individual must provide, within 30 days of submitting a user registration request in the tracking system, documentation of the following:

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(4) Proof of an open bank account in the United States, except as provided in section 95834(b)(4)(B) below;

(A) The proof must be in the form of a bank statement dated no earlier than 3 months prior to submission, must identify the individual holding the account, and must contain the name and business ~~address~~ contact information of the bank.

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(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.

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(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.

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**Subarticle 6: California Greenhouse Gas Allowance Budgets**

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

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

<b>Compliance Period</b>	<b>Budget Year</b>	<b>Annual Allowance Budget (mMillions of CA GHG Allowances)</b>
4	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**

<b>Compliance Period</b>	<b>Budget Year</b>	<b>Annual Allowance Budget (millions of CA GHG allowances)</b>
4	2021	320.8
	2022	307.5
5	2023	294.1
	2024	280.7
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 not 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.

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

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(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."

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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.

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## **Subarticle 7: Compliance Requirements for Covered Entities**

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### **§ 95851. Phase-in of Compliance Obligation for Covered Entities.**

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~~(d) Operators of eligible Waste-to-Energy Facilities, pursuant to section 95852(k), that meet or exceed the annual threshold in section 95812(d), will have a compliance obligation beginning in 2018.~~

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## **§ 95852. Emission Categories Used to Calculate Compliance Obligations.**

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(b) First Deliverers of Electricity. A first deliverer of electricity covered under sections 95811(b) and 95812(c)(2) has a compliance obligation for every metric ton of CO<sub>2</sub>e emissions calculated pursuant to section 95852(b)(1) for which a positive or qualified positive emissions data verification statement is issued pursuant to MRR, or for which there are assigned emissions, when such emissions are from a source in California or in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12, and when such emissions are EIM Purchaser Emissions.

(1) Calculation of emissions for compliance obligation.

~~\*\*\*~~

~~(D) EIM Outstanding Emissions. Beginning January 1, 2018, ARB will retire current vintage allowances designated by ARB for auction pursuant to section 95911(f)(3) that remain unsold in the Auction Holding Account for more than 24 months in the amount of EIM Outstanding Emissions as defined in section 95111(h) of MRR.~~

~~1. EIM Outstanding Emissions are equal to the annual metric tons of CO<sub>2</sub>e from electricity that is imported into California through CAISO's EIM but not otherwise accounted for by emissions reported by the EIM participating resource scheduling coordinators. These emissions are calculated pursuant to the requirements in MRR section 95111(h)(1).~~

2. ~~On an annual basis, ARB will retire these allowances no later than the surrender deadlines specified in sections 95856(d) and (f). ARB will retire allowances starting with the earliest vintages first.~~
3. ~~Current vintage allowances retired by ARB pursuant to this section do not include allowances consigned to auction pursuant to section 95910(d).~~

(D) For first deliverers of electricity that are EIM Purchasers, the compliance obligation shall begin April 1, 2019 and shall be calculated pursuant to MRR section 95111(h)(3).

(E) EIM Outstanding Emissions. EIM Outstanding Emissions are the annual metric tons of CO<sub>2</sub>e emissions from electricity imported into California through EIM but not reported by EIM Participating Resource Scheduling Coordinators.

1. For data reported through March 31, 2019, EIM Outstanding Emissions are calculated pursuant to MRR section 95111(h)(1).
2. Starting on April 1, 2019, and for all subsequent data years, EIM Outstanding Emissions are calculated pursuant to MRR section 95111(h)(2).

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(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 CO<sub>2</sub>e 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.

(i) The compliance obligation for sources specified in sections 95852(a) through (h), and 95852(~~h~~) is calculated based on the sum of the following, as applicable:

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

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- (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, calculated using the following equation, are less than 25,000 metric tons of CO<sub>2</sub>e:

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

Where:

"GHG<sub>QTO</sub>" is the annual covered emissions for each calendar year, in metric tons of CO<sub>2</sub>e, associated with the production of qualified thermal output;

"Q<sub>produced</sub>" 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<sub>produced</sub> 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 ~~emission~~ pursuant to Subarticle 7, then Q<sub>produced</sub> 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,

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- (4) A facility with a cogeneration unit or a district heating facility must apply to the Executive Officer for the emissions exemption by providing the following data by September 2, 201420:

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~~(k) Limited Exemption of Emissions for Waste-to-Energy Facilities. Emissions reported and verified in the first and second compliance periods for the direct combustion of municipal solid waste in a waste-to-energy facility that had started operations before 2009 and that meets the requirements of this section do not have a compliance obligation and shall not count toward the inclusion threshold of section 95812(d)(3). The Executive Officer will place the number of true-up allowances equal to the facility's reported, verified, and covered emissions from municipal solid waste for the 2016 and 2017 data years into their compliance account. These allowances will be used to meet the facility's 2016 and 2017 compliance obligations. The 2018 vintage true-up allowances will be deposited by October 24, 2017 for the 2016 data year's reported and verified emissions. The 2019 vintage true-up allowances will be deposited by October 24, 2018 for the 2017 year's reported and verified emissions. The Executive Officer will retire the allowances placed into the account according to the surrender dates in section 95856. The exempted waste-to-energy facility must meet the following criteria:~~

- ~~(1) Operators of waste-to-energy facilities must register in the tracking system pursuant to section 95830;~~
- ~~(2) Report and verify emissions pursuant to MRR;~~
- ~~(3) Must be operating under a current permit issued by the local Air Pollution Control District or Air Quality Management District; and~~
- ~~(4) Fuel must be derived from municipal solid waste, as defined in the section 95802 of this article and MRR.~~

(k) Suppliers of Liquefied Natural Gas and Compressed Natural Gas. A supplier of liquefied natural gas and/or compressed natural gas covered under sections 95811(g) or 95812(d) has a compliance obligation for every metric ton CO<sub>2e</sub> of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of the quantities of liquefied natural gas or compressed natural gas imported into California and/or produced in California from gas received from an interstate

pipeline, excluding products for which a final destination outside California can be demonstrated, less the emissions from liquefied natural gas delivered to other covered entities as determined by ARB based on end-user delivery information reported by the supplier.

- ~~(1) Limited Exemption for Emissions from LNG Suppliers. Emissions reported and verified in the second compliance period for LNG by suppliers that meet the requirements of this section do not have a compliance obligation. The Executive Officer will allocate the total number of vintage 2018 true-up allowances equal to the supplier's reported, verified, and covered emissions from supplying LNG for the 2015 and 2016 data years by October 24, 2017. The vintage 2018 allowances will be allocated by first placing an amount of allowances up to the number of allowances in the LNG supplier's compliance account on the allocation date, plus allowances equal to the amount of allowances retired for the suppliers' 2015 compliance obligation, into the LNG supplier's annual holding account, and then placing any remaining allowances from the total vintage 2018 true-up allocation into the LNG supplier's compliance account. The Executive Officer will place the number of vintage 2019 true-up allowances equal to the facility's reported, verified, and covered emissions from supplying LNG for the 2017 data year into the supplier's compliance account by October 24, 2018. These true-up allowances will be used to meet the supplier's 2015, 2016, and 2017 compliance obligations for these covered emissions. The Executive Officer will retire the allowances placed into the account according to the surrender dates in section 95856. To receive these true-up allowances, the exempted LNG supplier must meet the following criteria:~~
- ~~(A) Register in the tracking system pursuant to section 95830;~~
  - ~~(B) Report and verify emissions pursuant to MRR for each year; and~~
  - ~~(C) During the second compliance period, be the California consignee of imported LNG and also be the operator of an LNG production facility that makes LNG products by liquefying natural gas received from interstate pipelines.~~



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

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- (b) Except as otherwise specified in section 95854(c), 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<sub>o</sub>" is = the tTotal number of compliance instruments identified in section 95854(a) submitted to fulfill the entity's compliance obligation for the compliance period.

"S" is = the cCovered entity's compliance obligation.

"L<sub>o</sub>" is = the qQuantitative usage limit on compliance instruments identified in section 95854(a) set at 0.08 for the first, second, and the third compliance periods as defined in section 95840(a)-(c); 0.04 for the fourth compliance period as defined in section 95840(e); and 0.06 for the sixth and subsequent compliance periods, as defined in section 95840(e).

- (c) For the fifth compliance period as defined in section 95840(e), covering data years 2024-2026, the total number of compliance instruments identified in section 95854(a) that each covered entity may surrender to fulfill the entity's compliance obligation must not exceed the quantitative usage limit (L<sub>o</sub>) of 0.04 for data years 2024 and 2025 and 0.06 for data year 2026.

(e)(d) The number of sector-based offset credits that each covered entity may surrender to meet the entity's compliance obligation for a compliance period must not be greater than 0.25 of the L<sub>0</sub> for the first and second compliance periods and not more than 0.50 of the L<sub>0</sub> for subsequent compliance periods.

(e) Direct Environmental Benefits in the State. Beginning with offsets surrendered to meet compliance obligations for emissions from data years 2021-2030, no more than one-half of the L<sub>0</sub> may be sourced from projects that do not provide direct environmental benefits in the state, as defined in section 95802. In order to demonstrate that an offset project provides these direct environmental benefits in the state, the Offset Project Operator or Authorized Project Designee, or the holder of offset credits, must comply with section 95989.

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

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(b) Compliance Instruments Valid for Surrender.

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(2) To fulfill a compliance obligation, a compliance instrument issued pursuant to sections 95820(a) and 95821(a) must be issued from an allowance budget year within or before the year for which an annual compliance obligation is calculated or the last year of a compliance period for which a full compliance period compliance obligation is calculated, unless:

(A) The allowance ~~is a Reserve Allowance was purchased from a California Allowance Price Containment Reserve sale, is any other California-issued non-vintage compliance instrument, or is any Allowance Price Containment Reserve Allowance or other a non-~~ is a Reserve Allowance ~~California Allowance Price Containment Reserve Allowance or other a non-~~ vintage allowance issued by a program approved by ARB pursuant to section 95941 as specified in section 95821(a);

\*\*\*

- (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 full compliance period compliance obligation pursuant to section 95853.

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- (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:

\*\*\*

- (B) ~~Reserve Allowances purchased from a California Allowance Price Containment Reserve sale followed by Allowance Price Containment Reserve Allowances and then other~~ non-vintage allowances issued by a program approved by ARB pursuant to section 95941 as specified in section 95821(a);
- (C) Allowances specified in sections ~~95820(a) and~~ 95821(a) with earlier vintage allowances retired first; ~~and~~
- (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), 95891(c)(2)(B), 95891(f)(1), or 95894(c)-~~(e)~~ if an entity was eligible to

receive true up allowances pursuant to section 95891(b), 95891(c),  
95891(c)(2)(B), 95891(f)(1), or 95894(c)-(e); and

(E) Price ceiling units specified in section 95915.

(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;

(B) ~~Reserve Allowances purchased from a California Allowance Price Containment Reserve sale followed by Allowance Price Containment Reserve Allowances and then other~~ non-vintage allowances issued by a program approved by ARB pursuant to section 95941 as specified in section 95821(a);

(C) Allowances specified in sections 95820(a) and 95821(a) with earlier vintage allowances retired first; and

(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), 95891(c)(2)(B), 95891(f)(1), or 95894(c)-(e) if an entity was eligible to receive true up allowances pursuant to section 95891(b), 95891(c), 95891(c)(2)(B), 95891(f)(1), or 95894(c)-(e); and

(E) Price ceiling units specified in section 95915.

(3) An entity that is not eligible to receive true up allowances pursuant to section 95891(b), 95891(c), 95891(c)(2)(B), 95891(f)(1) or 95894(c)-(e) cannot use the current calendar year's vintage allowances or allowances allocated just before the current surrender deadline to meet the timely surrender of compliance instrument requirements in section 95856.

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- (4) An electric distribution utility will not be in violation of section 95892(d)(~~57~~) 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)(~~57~~).

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 8: Disposition of Allowances**

### **§ 95870. Disposition of Vintage 2013-2020 Allowances.**

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- (b) Advance Auction. Upon creation of the Auction Holding Account, the Executive Officer shall transfer 10 percent of the allowances from budget years 2015-2020 to the Auction Holding Account.
- (1) These allowances will be eligible to be sold pursuant to section ~~95913(f)(5)~~ 95910(c)(2).
- (2) All Advance Auction allowances not sold pursuant to section ~~95913(f)(5)~~ 95910(c)(2) will be auctioned pursuant to section 95910.

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- (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.

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- (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.

\*\*\*

- (i) Auction Proceeds for AB 32 Statutory Objectives.
- ~~(1) Beginning in 2015, 10 percent of all remaining allowances from each vintage not allocated for uses specified in section 95870(a) are eligible to be sold pursuant to section 95913(f)(5).~~
- (2) All remaining allowances not allocated for uses specified in sections 95870(a) through (h), ~~or section 95870(i)(1),~~ section 95870(j), or section 95911(h) will be designated for sale at auction. The proceeds from the sale of these allowances will be deposited into the Greenhouse Gas Reduction Fund created pursuant to Government Code section 16428.8, and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq. and consistent with the requirements of Chapter 4.1 (commencing with Section 39710) of Part 2 of Division 26 of the California Health and Safety Code and Article 9.7 (commencing with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.
- ~~(j) Allocation to Waste-to-Energy Facilities. Vintage 2020 allowances available for allocation to waste-to-energy facilities shall be calculated as set forth in section 95891(f)(1). The Executive Officer will place vintage 2020 allowances in the annual allocation holding account of each eligible waste-to-energy facility by~~

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

**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 <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
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>
	Paperboard Mills	322130	Recycled Boxboard Manufacturing	100%	100%	100%	<u>100%</u>
			Recycled Linerboard (Testliner) Manufacturing	100%	100%	100%	<u>100%</u>



Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
High			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	<u>Nitrogenous Fertilizer Manufacturing</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>
			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	<u>Lime Manufacturing</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>
			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>
Rolled Steel Shape Manufacturing	331221	Hot Rolled Steel Sheet Production	100%	100%	100%	<u>100%</u>	
	Other Food Crops Grown Under Cover	111419	Other Food Crops Grown Under Cover	100%	100%	<u>100%-75%</u>	<u>100%</u>

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
Medium	Food Manufacturing	311	Food Manufacturing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
	Fruit and vegetable canning	311421	Aseptic Tomato Paste Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Aseptic Whole and Diced Tomato Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Non-Aseptic Tomato Paste and Tomato Puree Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Non-Aseptic Whole and Diced Tomato Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Non-Aseptic Tomato Juice Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
	Poultry Processing	311615	Whole Chicken and Chicken Parts Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Poultry Deli Product Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Protein Meal and Fat Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
	Dried and Dehydrated Food Manufacturing	311423	Dehydrated Garlic Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Dehydrated Onion Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Dehydrated Chili Pepper Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Dehydrated Spinach Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
			Dehydrated Parsley Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>
	Dairy Product Manufacturing	31151	Fluid Milk Product Processing	100%	100%	<u>100%</u> <del>75%</del>	<u>100%</u>

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
Medium			Butter processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Condensed Milk Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Milk Powder (Low Heat) Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Milk Powder (Medium Heat and High Heat) Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Buttermilk Powder Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Intermediate Dairy Ingredients Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Cheese Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Lactose Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Whey Protein Concentrate Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Deproteinized Whey Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
	Roasted Nuts and Peanut Butter Manufacturing	311911	Almond Blanching	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Almond Flavoring	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Almond Pasteurizing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Pistachio Flavoring	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Pistachio Hulling and Drying	100%	100%	<del>100%</del> 75%	<u>100%</u>
Snack Food Manufacturing	31191	Fried Potato Chips Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>	

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
Medium			Baked Potato Chips Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Corn Chips Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Corn Curls Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Pretzel Processing	100%	100%	<del>100%</del> 75%	<u>100%</u>
	Beet sugar manufacturing	311313	Beet sugar manufacturing	100%	100%	<del>100%</del> 75%	<u>100%</u>
	Cut and Sew Apparel Manufacturing	3152	Cut and Sew Apparel Manufacturing	100%	100%	<del>100%</del> 75%	<u>100%</u>
	Breweries	312120	Brewing	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Lager Beer Manufacturing	100%	100%	<del>100%</del> 75%	<u>100%</u>
	Wineries	312130	Distilled Spirits Production	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Dry Color Concentrate Production	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Grape Juice Concentrate Production	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Grape Seed Extract Production	100%	100%	<del>100%</del> 75%	<u>100%</u>
			Liquid Color Concentrate Production	100%	100%	<del>100%</del> 75%	<u>100%</u>
Petroleum Refineries	324110	Petroleum Refining	100%	100%	<del>100%</del> 75%	<u>100%</u>	
Asphalt Paving Mixture and Block Manufacturing	324121	Asphalt Paving Mixture and Block Manufacturing	100%	100%	<del>100%</del> 75%	<u>100%</u>	
Industrial Gas Manufacturing	325120	On-Purpose Hydrogen Gas Production	100%	100%	<del>100%</del> 75%	<u>100%</u>	

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
Medium			Liquid Hydrogen Production	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
	Ethyl Alcohol Manufacturing	325193	Ethyl Alcohol Manufacturing	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
	Biological Product (Except Diagnostic) Manufacturing	325414	Biological Product (Except Diagnostic) Manufacturing	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
	Gypsum Product Manufacturing	327420	Plaster Manufacturing	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
			Stucco Manufacturing	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
	Rolled Steel Shape Manufacturing	331221	Pickled Steel Sheet Production	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
			Cold Rolled and Annealed Steel Sheet Production	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
			Galvanized Steel Sheet Production	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
			Tin Steel Plate Production	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
	Secondary Smelting and Alloying of Aluminum	331314	Aluminum and Aluminum Alloy Billet Manufacturing	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (Except Copper and Aluminum)	331492	Lead Acid Battery Recycling	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
	Iron Foundries	331511	Iron Foundries	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>
			Ductile Iron Pipe Manufacturing	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>
Hardware Manufacturing	332510	Hardware Manufacturing	100%	100%	<del>100%</del> <sup>75</sup>	<u>100%</u>	
Turbine and Turbine Generator Set Units Manufacturing	333611	Testing of Turbines and Turbine Generator Sets	100%	100%	<del>100%</del> <sup>75</sup> %	<u>100%</u>	
Low	Pharmaceutical and Medicine Manufacturing	325412	Pharmaceutical and Medicine Manufacturing	100%	100%	<del>100%</del> <sup>50</sup> %	<u>100%</u>
	Nonferrous Forging	332112	Nonferrous Metal Forging	100%	100%	<del>100%</del> <sup>50</sup> %	<u>100%</u>
			Seamless Rolled Ring	100%	100%	<del>100%</del> <sup>50</sup> %	<u>100%</u>

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity (a)	Assistance Factor (AF <sub>a</sub> ) by Budget Year			
				2013-2014	2015-2017	2018-2020	2021-2030
	Automobile Manufacturing	336111	Automobile Manufacturing	100%	100%	<del>100%</del> 50%	<u>100%</u>
	Aircraft Manufacturing	336411	Aircraft Manufacturing	100%	100%	<del>100%</del> 50%	<u>100%</u>
	Guided Missile and Space Vehicle Manufacturing	336414	Guided Missile and Space Vehicle Manufacturing	100%	100%	<del>100%</del> 50%	<u>100%</u>
	Support Activities for Air Transportation	4881	Support Activities for Air Transportation	100%	100%	<del>100%</del> 50%	<u>100%</u>
TBD <sup>#</sup>	<u>Textile and Fabric Finishing Mills</u>	<u>313310</u>	<u>Textile and Fabric Finishing</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>
TBD <sup>#</sup>	<u>Other Structural Clay Product Manufacturing</u>	<u>327123</u>	<u>Other Structural Clay Product Manufacturing</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

<sup>#</sup> TBD means that this leakage risk classification is yet to be determined. Staff may propose a change to this leakage risk classification as part of this rulemaking process. Any change proposed will be circulated for a 15-day public comment 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 and Section 16428.8, Government Code.

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

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- (b) Advance Auction. The Executive Officer shall transfer 10 percent of the allowances from budget years 2021 and beyond to the Auction Holding Account.
- (1) These allowances will be eligible to be sold pursuant to section ~~95913(f)(5)~~ 95910(c)(2).
  - (2) All Advance Auction allowances not sold pursuant to section ~~95913(f)(5)~~ 95910(c)(2), will be auctioned pursuant to section 95910.

\*\*\*

- (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 beginning in 2020 for allocation from the 2021 annual allowance budget.
  - (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. Allowances will be allocated to legacy contract generators with an industrial counterparty and legacy contract generators without 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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- (h) Auction Proceeds for AB 32 Statutory Objectives.

~~(1) Beginning in 2021, 10 percent of all remaining allowances from each vintage not allocated for uses specified in section 95871(a) are eligible to be sold pursuant to section 95913(l).~~

~~(2)~~ All remaining allowances not allocated for uses specified in sections 95871(a)-(g), ~~or section 95871(h)(1),~~ section 95871(i), or section 95911(h) will be designated for sale at auction. The proceeds from the sale of these allowances will be deposited into the Greenhouse Gas Reduction Fund created pursuant to Government Code section 16428.8, and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq. and consistent with the requirements of Chapter 4.1 (commencing with Section 39710) of Part 2 of Division 26 of the California Health and Safety Code and Article 9.7 (commencing with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

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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.

**Table 8-2: Number of California GHG Allowances Allocated to the APCR for Budget Years 2021 to 2031**

Budget year	Number of California GHG Allowances Allocated to the APCR (millions of allowances)
2021	<del>10.5</del> <u>12,772,600</u>
2022	<del>9.3</del> <u>11,572,600</u>
2023	<del>8.1</del> <u>10,372,600</u>
2024	<del>7.0</del> <u>9,272,600</u>
2025	<del>5.8</del> <u>8,072,600</u>
2026	<del>4.7</del> <u>6,972,600</u>
2027	<del>3.5</del> <u>5,772,600</u>
2028	<del>2.3</del> <u>4,572,600</u>
2029	<del>1.2</del> <u>3,472,600</u>
2030	<del>0</del> <u>2,272,600</u>
2031	0

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<sub>7</sub> 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 have the same leakage risk as the general 311 food processing NAICS code in Table 8-1.

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- (c) **Energy-Based Allocation Calculation Methodology.** The Executive Officer shall calculate the amount of California GHG Allowances directly allocated under the energy-based methodology annually using the following formula:

$$A_t = (S_{Consumed} * B_{Steam} + F_{Consumed} * B_{Fuel} - e_{Sold} * B_{Electricity}) * AF_{a,t} * c_{a,t}$$

$$A_t = (S_{Consumed} * B_{Steam} + F_{Consumed} * B_{Fuel} - e_{Sold} * B_{Electricity} + ProcessEmissions) * AF_{a,t} * c_{a,t} + TrueUp_{t,CP3}$$

Where:

“A<sub>t</sub>” is the amount of California GHG allowances directly allocated to the operator of an industrial facility with an energy-based allocation from budget year “t”;

“t” is the budget year from which the direct allocation occurs;

“S<sub>Consumed</sub>” is the historical baseline annual arithmetic mean amount of steam consumed, measured in MMBtu, at the industrial facility for any industrial process, including heating or cooling applications. This value shall exclude any

steam used to produce electricity. This value shall exclude steam produced from an onsite cogeneration unit;

“ $B_{\text{Steam}}$ ” is the emissions efficiency benchmark per unit of steam, 0.06244 California GHG Allowances/MMBtu Steam;

“ $F_{\text{Consumed}}$ ” is the historical baseline annual arithmetic mean amount of energy produced due to fuel combustion at a ~~given~~the facility, measured in MMBtu. The Executive Officer shall calculate this value based on measured higher heating values or the default higher heating value of the applicable fuel in Table C-1 of subpart C, title 40, Code of Federal Regulations, Part 98 (October 20, 2009). This value shall include any energy from fuel combusted in an onsite electricity generation or cogeneration unit. This value shall exclude energy to generate the steam accounted for in the “ $S_{\text{Consumed}}$ ” term;

“ $B_{\text{Fuel}}$ ” is the emissions efficiency benchmark per unit of energy from fuel combustion, 0.05307 California GHG Allowances/MMBtu;

“ $e_{\text{Sold}}$ ” is the historical baseline annual arithmetic mean amount of electricity sold or provided for off-site use, measured in MWh;

“ $B_{\text{Electricity}}$ ” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“ProcessEmissions” is the historical baseline annual arithmetic mean process emissions, as defined in section 95802(a), for the industrial facility, measured in metric tons of CO<sub>2</sub> equivalent

“ $AF_{a,t}$ ” is the assistance factor for budget year “t” assigned to the facility for activity “a” as specified in Table 8-1; and

“c<sub>a,t</sub>” is the cap adjustment factor for budget year “t” assigned to the facility for activity “a” to account for cap decline as specified in Table 9-2; and

“TrueUp<sub>t,CP3</sub>” is the amount of true-up allowances allocated from budget years 2020 and 2021. This value shall only be calculated if the entity has received an initial allowance allocation from budget year t-2. These true-up allowances from budget year “t” may be used for compliance for budget year “t-2” or subsequent budget years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D). This value shall be zero for all budget years except 2020 and 2021. For budget years 2020 and 2021, this value is calculated using the following formula:

$$\text{TrueUp}_{t,CP3} = (S_{\text{Consumed}} * B_{\text{Steam}} + F_{\text{Consumed}} * B_{\text{Fuel}} - e_{\text{Sold}} * B_{\text{Electricity}} + \text{ProcessEmissions}) * AF_{a,t-2} * c_{a,t-2} - A_{t-2}$$

Where:

“AF<sub>a,t-2</sub>” is the assistance factor for budget year “t-2” assigned to each activity “a” as specified in Table 8-1;

“c<sub>a,t-2</sub>” is the cap adjustment factor for budget year “t-2” assigned to each activity “a” to account for cap decline as specified in Table 9-2; and

“A<sub>t-2</sub>” is the amount of California GHG allowances directly allocated to the operator of the industrial facility with an energy-based allocation from budget year “t-2”;

\*\*\*

- (2) New Entrants Energy-Based Allocation Methodology. For covered facilities that are eligible for free allocation pursuant to section 95891(c) and either were not allocated InitialAllocation from budget year t-1 or were allocated pursuant to section 95891(c)(2) from budget year t-1, allowance allocation shall be determined by the Executive Officer using the following methodology.

- (A) Opt-In Covered Entities without Historical Baseline Emissions Data.  
 For opt-in covered entities of facilities that have no historical emissions data reported to ARB under MRR, the Executive Officer shall calculate the amount of California GHG Allowances directly allocated under the energy-based methodology annually using the following formula:

$$A_{a,t} = (F_{Consumed,est} * B_{Fuel} - e_{Sold,est} * B_{Electricity}) * AF_{a,t} * c_{a,t}$$

$$A_{a,t} = (F_{Consumed,est} * B_{Fuel} - e_{Sold,est} * B_{Electricity} + ProcessEmissions_{est}) * AF_{a,t} * c_{a,t}$$

Where:

“A<sub>a,t</sub>” is the amount of California GHG Allowances directly allocated to the operator of an industrial facility for activity “a” with an energy-based allocation from budget year “t”;

“t” is the budget year from which the direct allocation occurs;

“F<sub>Consumed,est</sub>” is the estimated amount of energy produced due to fuel combustion at a ~~the given~~ facility, measured in MMBtu. This value shall exclude fuel used to produce steam that is provided or sold offsite. The Executive Officer shall calculate this value based on measured higher heating values or the default higher heating value of the applicable fuel in Table C–1 of subpart C, title 40, Code of Federal Regulations, Part 98 (December 17, 2010). The Executive Officer shall calculate this value utilizing any available data on the design of the facility and equipment;

“B<sub>Fuel</sub>” is the emissions efficiency benchmark per unit of energy from fuel combustion, 0.05307 California GHG Allowances/MMBtu;

“ $e_{\text{Sold,est}}$ ” is the estimated amount of electricity sold or provided for off-site use, measured in MWh. The Executive Officer shall calculate this value utilizing any available data on the design of the facility and equipment;

“ $B_{\text{Electricity}}$ ” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“ $\text{ProcessEmissions}_{\text{est}}$ ” is the estimated annual process emissions, as defined in section 95802(a), for the industrial facility, measured in metric tons of CO<sub>2</sub> equivalent;

“ $AF_{a,t}$ ” is the assistance factor for budget year “t” assigned to the facility activity “a” as specified in Table 8-1; and

“ $C_{a,t}$ ” is the cap adjustment factor for budget year “t” assigned to the facility activity “a” to account for cap decline as specified in Table 9-2.

- (B) Entities with Transitional Emissions Data. For covered entities or opt-in covered entities that are classified as transitional in the stability formula in section 95891(c)(2)(D), the Executive Officer shall calculate the amount of California GHG Allowances directly allocated under the energy-based methodology annually using the following formula:

$$A_{a,t} = \text{InitialAllocation}_t + \text{TrueUp}_t$$

Where:

“ $A_{a,t}$ ” is the amount of California GHG Allowances directly allocated to the operator of an industrial facility with activity “a” with an energy-based allocation from budget year “t”;

“InitialAllocation<sub>t</sub>” is the amount of allowances allocated to an entity in advance of budget year “t” for industry assistance for budget year “t.” This amount is based on energy use in year “t-2,” which is an estimate of year “t” energy use. These allowances shall be returned to the Executive Officer pursuant to section 95890(k) if the entity does not incur a compliance obligation for year “t” or does not perform activity “a” listed in Table 8-1, in year “t”; and

“t” is the budget year from which the direct allocation occurs.

*InitialAllocation<sub>t</sub>*

$$= (F_{t-2} * 0.05307 + (S_{Purchased,t-2} - S_{Sold,t-2}) * 0.06244 - e_{Sold,t-2} * 0.431) * AF_{a,t} * c_{a,t}$$

*InitialAllocation<sub>t</sub>*

$$= (F_{t-2} * 0.05307 + (S_{Purchased,t-2} - S_{Sold,t-2}) * 0.06244 - e_{Sold,t-2} * 0.431 + ProcessEmissions_{t-2}) * AF_{a,t} * c_{a,t}$$

Where:

“t-2” is the year two years prior to year “t”;

“F<sub>t-2</sub>” is the annual amount of energy produced due to fuel combustion at a the facility for year “t-2”, measured in MMBtu. The Executive Officer shall calculate this value based on measured higher heating values or the default higher heating value of the applicable fuel in Table C-1 of subpart C, title 40, Code of Federal Regulations, Part 98 (November 29, 2013). This value shall include any energy from fuel combusted in an onsite electricity generation or cogeneration unit;



“ $S_{\text{Purchased},t-2}$ ” is the annual amount of steam purchased for year “t-2” by the facility in MMBtu as reported to ARB under MRR;

“ $S_{\text{Sold},t-2}$ ” is the annual amount of steam provided or sold for year “t-2” from the facility in MMBtu as reported to ARB under MRR;

“ $e_{\text{Sold},t-2}$ ” is the annual amount of electricity sold for year “t-2” from the facility in MWh as reported to ARB under MRR;

“ $\text{ProcessEmissions}_{t-2}$ ” is the annual process emissions, as defined in section 95802(a), in year “t-2” for the industrial facility measured in metric tons of CO<sub>2</sub> equivalent;

“ $AF_{a,t}$ ” is the assistance factor for budget year “t” assigned to the facility activity “a” as specified in Table 8-1;

“ $C_{a,t}$ ” is the cap adjustment factor for budget year “t” assigned to the facility activity “a” to account for cap decline as specified in Table 9-2; and

“ $\text{TrueUp}_t$ ” is the amount of true-up allowances allocated to account for changes in production or allocation not properly accounted for in prior allocations. This value shall only be calculated if the entity was covered under the Cap-and-Trade Program in year “t-2” or if the entity received an initial allocation of vintage t-2 allowances but was not a covered entity in year “t-2.” In the latter case, a negative true-up will be calculated. This value of allowances for budget year “t” shall be allowed to be used for compliance for budget year “t-2” or subsequent budget years pursuant to section 95856(h)(1)(D) and 95856(h)(2)(D). This value is calculated using the following formula:

$$TrueUp_t = BE_{t-2} * AF_{a,t-2} * c_{a,t-2} - InitialAllocation_{t-2}$$

Where:

“t-2” is the year two years prior to year “t”;

“AF<sub>a,t-2</sub>” is the assistance factor for budget year “t-2” assigned to the facility activity “a” as specified in Table 8-1;

“c<sub>a,t-2</sub>” is the cap adjustment factor for budget year “t-2” assigned to the facility activity “a” to account for cap decline as specified in Table 9-2;

“BE<sub>t-2</sub>” is the baseline annual greenhouse gas emissions for year “t-2” adjusted for steam purchases and sales and electricity sales using the following equation:

~~$$BE_{t-2} = F_{t-2} * 0.05307 + (S_{Purchased,t-2} - S_{Sold,t-2}) * 0.06244 - e_{Sold,t-2} * 0.431$$~~

$$BE_{t-2} = F_{t-2} * 0.05307 + (S_{Purchased,t-2} - S_{Sold,t-2}) * 0.06244 - e_{Sold,t-2} * 0.431 + ProcessEmissions_{t-2}$$

Where:

“F<sub>t-2</sub>” is the annual amount of energy produced due to fuel combustion in year “t-2” at the facility, measured in MMBtu. The Executive Officer shall calculate this value based on measured higher heating values or the default higher heating value of the applicable fuel in Table C-1 of subpart C, title 40, Code of Federal Regulations, Part 98 (November 29, 2013). This value shall include any energy from fuel combusted in an onsite electricity generation or cogeneration unit;

“S<sub>Purchased,t-2</sub>” is the annual amount of steam purchased for year “t-2” by the facility in MMBtu;

“S<sub>Sold,t-2</sub>” is the annual amount of steam sold for year “t-2” from the facility in MMBtu; ~~and~~

“e<sub>Sold,t-2</sub>” is the annual amount of electricity sold for year “t-2” from the facility in MWh; and

“ProcessEmissions<sub>t-2</sub>” is the annual process emissions, as defined in section 95802(a), in year “t-2” for the industrial facility measured in metric tons of CO<sub>2</sub> equivalent.

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- (D) Stability Formula for New Entrants. The following formula classifies the allocation methodology for budget year “t”:

$$0.10 \geq \frac{BE_{t-2} - \frac{BE_{t-4} + BE_{t-3}}{2}}{BE_{t-2}} \quad (\text{Stable})$$

$$0.10 < \frac{BE_{t-2} - \frac{BE_{t-4} + BE_{t-3}}{2}}{BE_{t-2}} \quad (\text{Transitional})$$

Where:

“t” is the budget year from which the direct allocation occurs;

“t-2” is the year two years prior to year “t”;

“t-3” is the year three years prior to year “t”;

“t-4” is the year four years prior to year “t”; and

“BE<sub>t</sub>” is the baseline annual greenhouse gas emissions for year “t” adjusted for steam purchases and sales and electricity sales. If the entity was not a covered entity in year “t,” then BE<sub>t</sub> is equal to zero. If

the entity was a covered entity in year “t,” then BE<sub>t</sub> is calculated using the following equation:

$$BE_t = F_t * 0.05307 + (S_{Purchased,t} - S_{Sold,t}) * 0.06244 - e_{Sold,t} * 0.431$$

$$BE_t = F_t * 0.05307 + (S_{Purchased,t} - S_{Sold,t}) * 0.06244 - e_{Sold,t} * 0.431 + \underline{ProcessEmissions_t}$$

Where:

“F<sub>t</sub>” is the annual amount of energy produced due to fuel combustion in year “t” at the facility, measured in MMBtu. The Executive Officer shall calculate this value based on measured higher heating values or the default higher heating value of the applicable fuel in Table C-1 of subpart C, title 40, Code of Federal Regulations, Part 98 (November 29, 2013). This value shall include any energy from fuel combusted in an onsite electricity generation or cogeneration unit;

“S<sub>Purchased,t</sub>” is the annual amount of steam purchased for year “t” by the facility in MMBtu;

“S<sub>Sold,t</sub>” is the annual amount of steam sold for year “t” from the facility in MMBtu; and

“e<sub>Sold,t</sub>” is the annual amount of electricity sold for year “t” from the facility in MWh; and

“ProcessEmissions<sub>t</sub>” is the annual process emissions, as defined in section 95802(a), in year “t” for the industrial facility measured in metric tons of CO<sub>2</sub> equivalent.

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- (d) Allocation to University Covered Entities and Public Service Facilities. The Executive Officer shall calculate the amount of allowances directly allocated to a university covered entity or a public service facility using the following methods.

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- (2) Data Sources. In determining the appropriate baseline values, the Executive Officer may employ all available data reported to ARB under MRR for data years 2008 through 2013. If a facility ownership change causes an entity to change from an opt-in covered entity to a covered entity, the Executive Officer may employ all data reported to ARB pursuant to MRR to determine the appropriate baseline values.
- (3) Reporting on the Use of Allowance Value. No later than June 30, 2016, and each calendar year thereafter, each university and public service facility shall submit a report to the Executive Officer describing the disposition of any allowance value from allowances from the previous budget year, and how the allowance value was used to achieve additional environmental and economic benefits for California. This report shall include:
- (A) The monetary value of allowances received by the university or public service facility. The university or public service facility shall calculate the value of these allowances based on the average market clearing price of the four Current Auctions held in the same budget year from which the allowances are allocated; and
- (B) How the university or public service facility's disposition of the monetary value of allowances complies with the requirements of California Health and Safety Code sections 38500 et seq.

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- (f) Allocation to Waste-to-Energy Facilities. The Executive Officer shall calculate the amount of allowances directly allocated to waste-to-energy facilities using the following methods.

- (1) Allocation for Budget Year 2020. For budget year 2020, the Executive Officer shall calculate the amount of California GHG Allowances directly allocated to waste-to-energy covered facilities using the following equation:

$$A_{2020} = \text{BaselineAllocation} \times c_t + \sum_{t=2018}^{2019} \text{TrueUp}_t$$

Where:

“A<sub>2020</sub>” is the amount of California GHG allowances directly allocated to a facility for budget year 2020;

“BaselineAllocation” is the historical arithmetic mean of annual covered emissions for the 2015-2017 data years, as defined in MRR, for the facility based on a positive or qualified positive emissions data verification statement and adjusted for the GHG emissions from the historical arithmetic mean of annual electricity sold or provided for off-site use that was generated from non-biogenic fuel. This value is calculated by the following equation:

$$\text{BaselineAllocation} = \text{GHG} - e_{\text{Sold,Non-Biogenic}} \times B_{\text{Electricity}}$$

Where:

“GHG” is the historical arithmetic mean of annual covered emissions, as defined in MRR, for the facility based on a positive or qualified positive emissions data verification statement;

“e<sub>Sold,Non-Biogenic</sub>” is the historical arithmetic mean of annual electricity sold or provided for off-site use that is generated from non-biogenic fuel, measured in MWh. This equals the historical arithmetic mean of total annual electricity sold or provided for off-site use multiplied by the historical arithmetic mean of annual covered (non-biogenic) emissions divided by annual total emissions;

“B<sub>Electricity</sub>” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“c<sub>t</sub>” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2;

“t” is the budget year from which the direct allocation occurs; and

“TrueUp<sub>t</sub>” is the amount of true-up allowances allocated to account for allocation not properly accounted for in prior allocations. This value of allowances from budget year “t” shall be allowed to be used for compliance for budget year t-2 and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D). This value is calculated by the following equation:

$$\text{Trueup}_t = \text{BaselineAllocation} \times c_t$$

- (2) Allocation for Budget Years 2021 and beyond. For budget years 2021 and beyond, the Executive Officer shall calculate the amount of California GHG Allowances directly allocated to eligible waste-to-energy covered entities using the following formula:

$$A_t = \text{BaselineAllocation} \times c_t$$

Where:

“A<sub>t</sub>” is the amount of California GHG allowances directly allocated to a facility for budget year “t”;

“t” is the budget year from which the direct allocation occurs;

“BaselineAllocation” is the historical arithmetic mean of annual covered emissions for the 2015-2017 data years, as defined in MRR, for the facility based on a positive or qualified positive emissions data verification statement and adjusted for the GHG emissions from the historical arithmetic mean of

annual electricity sold or provided for off-site use that was generated from non-biogenic fuel. This value is calculated by the following equation:

$$BaselineAllocation = GHG - e_{Sold,Non-Biogenic} \times B_{Electricity}$$

“GHG” is the historical arithmetic mean of annual covered emissions for the data years 2015-2017, as defined in MRR, for the facility based on a positive or qualified positive emissions data verification statement;

“e<sub>Sold,Non-Biogenic</sub>” is the historical arithmetic mean of annual electricity sold or provided for off-site use that is generated from non-biogenic fuel, measured in MWh. This equals the historical arithmetic mean of total annual electricity sold or provided for off-site use multiplied by the historical arithmetic mean of annual covered (non-biogenic) emissions divided by annual total emissions;

“B<sub>Electricity</sub>” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh; and

“c<sub>t</sub>” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

- (3) Data Sources. To determine the appropriate baseline values, the Executive Officer employed data reported to ARB pursuant to MRR for the data years 2015-2017. The Executive Officer may solicit additional data as needed.

**Table 9-2: Cap Adjustment Factors for Allowance Allocation**

Budget Year	Cap Adjustment Factor, c	
	Standard Activities	Industrial Activities with NAICS codes 325311, 327310, and 327410 <sup>#</sup>
2013	0.981	0.991
2014	0.963	0.981
2015	0.944	0.972



2016	0.925	0.963
2017	0.907	0.953
2018	0.888	0.944
2019	0.869	0.935
2020	0.851	0.925
<b>Budget Year</b>	<b><u>Cap Adjustment Factor, c</u></b>	
	<b><u>All Standard Activities</u></b>	<b><u>Industrial Activities with NAICS codes 324199 (coke calcining only), 325311, 327310, 327410<sup>#</sup></u></b>
2021	0.817	<u>0.909</u>
2022	0.783	<u>0.892</u>
2023	0.749	<u>0.875</u>
2024	0.715	<u>0.858</u>
2025	0.681	<u>0.841</u>
2026	0.647	<u>0.824</u>
2027	0.613	<u>0.807</u>
2028	0.579	<u>0.790</u>
2029	0.545	<u>0.773</u>
2030	0.511	<u>0.756</u>
2031	0.494	<u>0.747</u>

<sup>#</sup>These are activities with over 50 percent of total emissions from process emissions, high emissions intensity and a high leakage risk classification in Table 8-1. The activities are coke calcining under the NAICS code 324199, nitric acid production activities under the (NAICS code 325311), cement manufacturing activities under the (NAICS code 327310), and dolime manufacturing the activities under the (NAICS code 327410).

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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.

**§ 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 allowance allocation, it shall inform the Executive Officer of the allowance amounts to be placed into the compliance account of an electrical generating facility, the compliance account of an electric power entity, and the limited use holding account of the publicly owned electric utility or electrical cooperative. The Executive Officer shall place the amount of allowances not destined for the publicly owned electric utility or electrical cooperative's own limited use holding account into the publicly owned electric utility or electrical cooperative's annual allocation holding account, and these allowances shall be transferred by the Executive Officer into the requested compliance accounts pursuant to section 95831(a)(6). Allowances may be placed into the compliance account of an electrical generating facility or electric power entity only if the electrical generating facility or electric power entity is the accounts below:
- (A) ~~In the compliance account of an electrical generating facility o~~Operated by ~~a~~the publicly owned electric utility, ~~an~~the electrical cooperative, or a Joint Powers Agency ~~Authority~~ in which the electrical distribution publicly owned electric utility or electrical cooperative is a member and with which it has a power purchase agreement; or
  - (B) Operated by a federal power authority with which the publicly owned utility or electrical cooperative has an agreement to purchase imported electricity or a power purchase agreement.
  - ~~(B) In the publicly owned electric utility's or electrical cooperative's limited use holding account.~~
- (3) Publicly owned electric utilities or electrical cooperatives receiving a direct allocation must inform the Executive Officer 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.

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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)~~(8) 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)~~(8) and 95892(e).
  - (3) ~~Auction proceeds and Allowance value, including any allocated allowance auction proceeds,~~ obtained by an electrical distribution utility ~~shall~~ must be used ~~exclusively~~ for the primary benefit of retail electricity ratepayers of each electrical distribution utility, consistent with the goals of AB 32, and may not be used for the primary 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 sections 95892(d)(3)(A)-(D) and may also be used to pay for administrative and outreach costs described in section 95892(d)(4). ~~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 programs or activities in the following categories:

1. Construction of eligible renewable energy resources that will directly deliver electricity to California and meet the requirements of Public Utilities Code section 399.16(b)(1), or purchase of generation from eligible renewable energy resources directly delivered to California that meet the requirements of Public Utilities Code section 399.16(b)(1) or under Public Utilities Code section 399.16(d);

2. Support for renewable energy resources, as defined by Public Resources Code section 25741(a)(1), that are ratepayer-owned or located within the electrical distribution utility's service territory; or
3. Construction or support of energy storage projects designed to support the electrical distribution utility's integration of renewable electricity.

(B) Energy Efficiency and Fuel-Switching. Funding programs or activities designed to reduce greenhouse gas emissions through reductions in energy use or changes to lower emission intensity energy sources in the following categories:

1. Energy-efficient equipment rebates;
2. Energy-efficient building retrofits;
3. Other projects that reduce energy demand;
4. Public or private electric vehicle infrastructure;
5. Switching from natural gas, propane, or diesel to electric equipment; or
6. Infrastructure projects or other projects supporting active transportation, zero-emission vehicles, or public transportation.

(C) Other GHG Emission Reduction Activities. Funding programs or activities other than renewable energy, integration of renewable energy, energy efficiency, or fuel-switching, for which the electrical distribution utility can demonstrate GHG emission reductions per section 95892(d)(5). This includes funding:

1. Projects or activities that reduce emissions of sulfur hexafluoride.

(D) 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.

(4) Administrative and Outreach Costs. Allocated allowance auction proceeds may be used for administrative costs only in so far as those costs are solely limited to necessary costs for the implementation of sections 95892(d)(3)(A)-(D). Allocated allowance auction proceeds may be used for outreach that

supports implementation of the approaches described in sections 95892(d)(3)(A)-(D).

- (5) Electrical distribution utilities must demonstrate GHG emissions reductions, pursuant to section 95892(e)(4)(B), for each use of allocated allowance auction proceeds described in sections 95892(d)(3)(A)-(C) that is undertaken.
- (46) Investor owned utilities shall ensure equal treatment of their own customers and customers of electricity service providers and community choice aggregators.
- (57) Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to an electrical distribution utility other than for the primary benefit of retail electricity 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 sections 95892(d)(3)-(4). Use of allocated allowance auction proceeds to pay for costs of lobbying, employee bonuses, or shareholder dividends is prohibited. Returning allocated allowance auction proceeds to ratepayers in a volumetric manner is prohibited.
- (68) Deadline for Use of Allocated Allowance Value. For allocated allowances received on or after October 1, 2017, the proceeds received from the sale of allowances allocated to an EDU must be spent by December 31 of the year ten years after the vintage year of the allowances, and the value of allocated allowances received prior to October 1, 2017 must be spent by December 31, 2027. To be spent, the proceeds must not remain in any account owned or controlled by the EDU or its corporate associates. If the proceeds have not been spent within ten years, they must be returned to ratepayers in a non-volumetric manner by December 31 of the year eleven years after the vintage year of the allowances.

- (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 any unspent allocated allowance auction proceeds remaining from prior years at the start of the previous calendar year.
  - ~~(2)~~ The monetary value of allocated allowance auction proceeds received by the electrical distribution utility from the sale of allowances ~~from~~ during the previous calendar year's vintage; ~~and any other~~
  - ~~(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.~~
  - (3) The monetary value of all auction proceeds spent during the previous calendar year and the monetary value of all auction proceeds remaining unspent at the end of the previous calendar year;
  - ~~(4)~~ How each use of 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.; This includes:
    - (A) Describing the nature and purpose of each use of allocated allowance auction proceeds, including how it benefits ratepayers, and specifying the amount of allocated allowance auction proceeds spent on that use;
    - (B) Estimating the GHG emission reductions from each use of allocated allowance auction proceeds allowed pursuant to sections 95892(d)(3)(A)-(C). The portion of total GHG emission reductions attributable to the use of the proceeds shall be based on the percentage of total project costs covered by the use of the proceeds. The total GHG emission reductions shall be based on comparing the

expected GHG emissions with and without the use of the proceeds.

The calculation shall use:

1. Use-specific information on equipment efficiency, kilowatt hours of electricity generated or saved, MMBtu of fuel saved, and vehicle miles travelled, as applicable.
2. GHG emission factors applicable to the electricity or fuel used or saved or vehicle miles travelled, calculated as follows:
  - a. Electricity GHG Emission Factor. ARB will calculate or approve an electricity GHG emission factor for each reporting year and will publish it on the ARB website.
  - b. GHG Emission Factors for Non-Transportation Fuels. The GHG emission factor for each fuel used or saved, if the fuel is not used to produce electricity, shall be as listed in Table C-1 of Subpart C of 40 CFR Part 98 (December 2010), which is hereby incorporated by reference, or calculated by means that can be demonstrated to the Executive Officer to be comparably accurate.
  - c. GHG Emission Factors for Vehicle Miles Travelled. If the use of allocated allowance auction proceeds reduces transportation-related GHG emissions, the GHG emission factor for the vehicles used with and without the use of proceeds shall be calculated using the methods in CARB's *California Climate Investments Quantification Methodology Emission Factor Database Documentation (August 2018)*, which is hereby incorporated by reference, or by comparable means that can be demonstrated to the Executive Officer to be consistent with these methods. Active transportation may be assumed to have zero GHG emissions.
3. The expected time frame over which the emissions reductions will occur.

4. The percentage of total project costs covered by the use of allocated allowance auction proceeds.

(C) Itemizing any use of allocated allowance auction proceeds on administrative and outreach costs described in section 95892(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

### **§ 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~~ compliance account and ~~Limited Use Holding Account~~ 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 Account~~ Limited Use Holding Account:

(A) The quantity of allowances placed into the ~~Limited Use Holding Account~~ 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 Account~~ Limited Use Holding Account will be placed into the entity's ~~allowance~~ annual 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)(8) 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)(8) and 95893(e).
- (3) Auction proceeds and a Allowance value, including any allocated allowance auction proceeds, obtained by a natural gas supplier must ~~shall~~ be used exclusively for the primary benefit of retail natural gas 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 sections 95893(d)(3)(A)-(C) and may also be used to pay for administrative and outreach costs described in section 95893(d)(4). ~~Any allocated allowance auction proceeds returned to ratepayers must be done in a non-volumetric manner.~~
  - (A) Energy Efficiency. Funding programs or activities designed to reduce greenhouse gas emissions through reductions in energy use in the following categories:
    1. Energy efficient equipment rebates;
    2. Energy-efficient building retrofits;
    3. Other projects that reduce energy demand;
  - (B) Other GHG Emission Reduction Activities. Funding programs or activities other than energy efficiency, for which the natural gas supplier can demonstrate GHG emission reductions per section 95893(d)(5). This includes funding projects or activities that reduce emissions of uncombusted natural gas and that are not mandated by any federal, state, or local health and safety requirements, legal

settlement, enforcement action, Senate Bill 1371 (Morrell, 2014), or the Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (California Code of Regulations, sections 95665-95677).

- (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.
- (4) Administrative and Outreach Costs. Allocated allowance auction proceeds may be used for administrative costs only in so far as those costs are solely limited to necessary costs for the implementation of sections 95893(d)(3)(A)-(C). Allocated allowance auction proceeds may be used for outreach that supports the implementation of the approaches described in sections 95893(d)(3)(A)-(C).
- (5) Natural gas suppliers must demonstrate GHG emissions reductions, pursuant to section 95893(e)(4)(B), for each use of allocated allowance auction proceeds described in sections 95893(d)(3)(A)-(B) that is undertaken.
- (46) Public utility gas corporations shall ensure equal treatment of their procurement and delivery customers and delivery-only customers.
- (57) Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to a natural gas supplier other than for the primary benefit of retail natural gas 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 the costs allowable pursuant to sections 95893(d)(3)-(4). Use of allocated allowance auction proceeds to pay for costs of lobbying, employee bonuses or shareholder dividends is prohibited. Returning allocated allowance auction proceeds to ratepayers in a volumetric manner is prohibited.
- (68) Deadline for Use of Allocated Allowance Value. For allocated allowances received on or after October 1, 2017, tThe proceeds received from the sale of allowances allocated to a natural gas supplier must be spent by December 31

of the year ten years after the vintage year of the allowances, and the value of allocated allowances received prior to October 1, 2017 must be spent by December 31, 2027. To be spent, the proceeds must not remain in any account owned or controlled by the natural gas supplier or its corporate associates. If the proceeds have not been spent within ten years, they must be returned to ratepayers in a non-volumetric manner by December 31 of the year eleven years after the vintage year of the allowances.

(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 any unspent allocated allowance auction proceeds remaining from prior years at the start of the previous calendar year.
- ~~(2)~~ The monetary value of auction proceeds received by the natural gas supplier from the sale of allowances during ~~from~~ the previous calendar year; ~~and any other~~
- ~~(3)~~ ~~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.~~
- (3) The monetary value of all auction proceeds spent during the previous calendar year and the monetary value of all auction proceeds remaining unspent at the end of the previous calendar year;
- (24) How each use of ~~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. This includes:
  - (A) Describing the nature and purpose of each use of allocated allowance auction proceeds, including how it benefits ratepayers, and specifying the amount of allocated allowance auction proceeds spent on that use;

(B) Estimating the GHG emission reductions from each use of allocated allowance auction proceeds allowed pursuant to sections 95893(d)(3)(A)-(B). The portion of total GHG emission reductions attributable to the use of the proceeds shall be based on the percentage of total project costs covered by the use of the proceeds. The total GHG emission reductions shall be based on comparing the expected GHG emissions with and without the use of the proceeds. The calculation shall use:

1. Use-specific information on equipment efficiency, MMBtu of fuel saved, and vehicle miles travelled, as applicable.
2. GHG emissions factors applicable to the fuel used or saved, vehicle miles travelled or electricity saved, calculated as follows:
  - a. GHG Emission Factor for Natural Gas Saved. The GHG emission factor for natural gas shall be calculated using the emission factor and annual average high heating value used in the natural gas supplier's MRR reporting for the same reporting year.
  - b. GHG Emission Factors for Non-Transportation Fuels. The GHG emission factor for each fuel used or saved, other than natural gas, shall be as listed in Table C-1 of Subpart C of 40 CFR Part 98 (December 2010), which is hereby incorporated by reference, or calculated by means that can be demonstrated to the Executive Officer to be comparably accurate.
  - c. GHG Emission Factors for Vehicle Miles Travelled. If the use of allocated allowance auction proceeds reduces transportation-related GHG emissions, the GHG emission factor for the vehicles used with and without the use of proceeds shall be calculated using the methods in ARB's *California Climate Investments Quantification Methodology Emission Factor Database Documentation (August 2018)*,

which is hereby incorporated by reference, or by comparable means that can be demonstrated to the Executive Officer to be consistent with these methods. Active transportation may be assumed to have zero GHG emissions.

d. Electricity GHG Emission Factor. ARB will calculate or approve an electricity GHG emission factor for each reporting year and will publish it on the ARB website.

3. The expected time frame over which the emissions reductions will occur.

4. The percentage of total project costs covered by the use of allocated allowance auction proceeds.

(C) Itemizing any use of allocated allowance auction proceeds on administrative and outreach costs described in section 95893(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.

#### **§ 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 a 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 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 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:

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

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;

\*\*\*

- (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:

$$A_{\bar{t}} = ((Q_{lc,\bar{t}-2} * B_s + E_{lc,\bar{t}-2} * B_e) * AF_{lcc,\bar{t}} * c_{\bar{t}}) + TrueUp_{\bar{t}}$$

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

Where:

\*\*\*

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output<sub>1</sub> in MMBtu<sub>1</sub> sold under a legacy contract in the data year two years prior to year “ $t$ ,” as reported under MRR;

\*\*\*

~~“ $C_{a,t}$ ”~~“ $C_{a,t}$ ” 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

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

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

Where:

\*\*\*

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output<sub>1</sub> in MMBtu<sub>1</sub> 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;

\*\*\*

~~“ $C_{a,t-2}$ ”~~“ $C_{a,t-2}$ ” 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

\*\*\*

- (d) Allocation to Legacy Contract Generators without an Industrial Counterparty.  
Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2021 through the life of the legacy contract.



- (1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$A_t = EEm_{ic} \times c_t$$

Where:

“A<sub>t</sub>” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“EEm<sub>ic</sub>” is the emissions reported, in MTCO<sub>2e</sub>, associated with electricity sold under the legacy contract in 2012; and

“c<sub>t</sub>” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

- (2) For legacy contract generators without an industrial counterparty not subject to either section 95894(c) or section 95894(d)(1), allowance allocation is calculated by the following equation:

$$A_t = (Q_{ic} \times B_s + E_{ic} \times B_e) \times c_t$$

Where:

“A<sub>t</sub>” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty, for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a)

and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“Q<sub>lc</sub>” is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in data year 2012, as reported pursuant to MRR;

“E<sub>lc</sub>” is the electricity, in MWh, sold under the legacy contract in data year 2012;

“B<sub>e</sub>” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“B<sub>s</sub>” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu; and

“c<sub>t</sub>” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

- (e) Legacy Contract Natural Gas True-up Allocation. Entities that received allowance allocation pursuant to section 95894 for vintage years 2015-2017, used natural gas rates subject to CPUC jurisdiction as part of their legacy contract pricing, and had a percentage of their vintage 2015-2017 legacy contract transition assistance discounted to reflect anticipated compensation for GHG costs in rates corresponding with the natural gas consignment percentage shall receive a legacy contract natural gas true-up allocation that equals the total quantity of allowances that were discounted from the vintage 2015-2017 allocations. This legacy contract natural gas true-up allocation shall only be provided in 2019 with vintage 2020 allowances. Entities shall receive this true-up allocation as a legacy contract generator with an industrial counterparty or a legacy contract generator without an industrial counterparty, as applicable, regardless of their current eligibility for legacy contract transition assistance pursuant to sections 95894(a)-(d). Legacy contract counterparties will have

vintage 2020 allocation adjusted by the legacy contract natural gas true-up allocation pursuant to section 95891(e).

- ~~(d)~~(f) Data Sources. In determining the appropriate values for sections 95894(c)-(e), 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 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)~~(g) 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.

## **Subarticle 10: Auction and Sale of California Greenhouse Gas Allowances**

### **§ 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.~~

\*\*\*

(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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(3) Beginning with the highest bid price, bids from each bidder will be considered in declining order by price, and the auction operator shall reject a bid for a bundle of 1,000 allowances:

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(C) If acceptance of the bid would result in a total value of accepted bids for an auction participant greater than the value of the bid guarantee submitted by the auction participant pursuant to section 95912(jh).

- (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:

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- (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:

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- (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)<sub>1</sub> and (c)(2)(B)<sub>1</sub> 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)<sub>1</sub> and (c)(2)(B)<sub>1</sub> 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 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.

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(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.

\*\*\*

(g) Disposition of Allowances Remaining Unsold at Auction for More than Twenty-Four Months. ARB will transfer current vintage allowances that remain unsold in the Auction Holding Account for more than 24 months to the Reserve. ARB will transfer these allowances no later than the surrender deadlines specified in sections 95856(d) and (f).

~~Transfer of Unsold Allowances to the Allowance Price Containment Reserve (Reserve). Beginning January 1, 2018, and unless otherwise retired to compensate for EIM Outstanding Emissions pursuant to section 95852(b)(1)(D), current vintage allowances designated by ARB for auction pursuant to section 95911(f)(3) that remain unsold in the Auction Holding Account for more than 24 months will be transferred to the Reserve.~~ Current vintage allowances designated by ARB pursuant to this section do not include allowances consigned to auction pursuant to section 95910(d).

- (h) ~~The auction bidding window may be delayed, rescheduled, or cancelled due to technical systems failures.~~
- (1) ~~The opening of the auction bidding window may be delayed or paused for no more than one hour by the Executive Officer due to technical systems failures.~~
- (2) ~~The bidding window may be rescheduled by the Executive Officer due to technical systems failures.~~
- (3) ~~Rescheduled Auctions.~~
- (A) ~~The auction bidding window must be rescheduled to ensure the financial services administrator can use any bid guarantees submitted pursuant to section 95912 prior to the expiration date required by section 95912.~~
- (B) ~~No additional auction applications may be accepted.~~
- (C) ~~The financial services administrator will keep all bid guarantees to complete financial settlement of the auction after the rescheduled bidding window.~~
- (D) ~~No bid guarantees provided pursuant to section 95912 may be amended.~~
- (E) ~~If technical systems failures cannot be resolved and a bidding window cannot be rescheduled to meet the requirements of this section, then the Executive Officer will cancel the auction bidding window.~~

Retirement of Future Vintage Allowances to Cover Unresolved Emissions Obligations Resulting from Covered Entity Bankruptcy or EIM Outstanding Emissions.

- (1) Starting in 2019, ARB will retire future vintage allowances equivalent to the unsurrendered compliance obligation of any bankrupt entity, where such compliance obligation is not otherwise accounted for by section 95835(b). For the avoidance of doubt, the unsurrendered compliance obligation of the bankrupt 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 bankruptcy, but that the covered entity has not surrendered to CARB at the time of completion of the bankruptcy proceeding. ARB will retire allowances from the allowance budget two years after the current allowance budget year that is not already allocated to entities pursuant to sections 95870(a) and 95871(a).

- (2) Starting in 2019, ARB will retire allowances from the allowance budget two years after the current allowance budget year that is not already allocated to entities pursuant to sections 95870(a) and 95871(a) in the amount of EIM Outstanding Emissions as defined in section 95111(h)(1) of MRR for data year 2018 and for January 1 through March 31 of data year 2019. Each year, ARB will retire these allowances no later than the surrender deadlines specified in section 95856(d) and (f).

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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.

## **§ 95912. Auction Administration and Participant Application.**

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

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

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- (8) If California has linked to a jurisdiction operating an External GHG ETS pursuant to subarticle 12, the number of allowances in section 95912(c)(6) may will also include the allowances made available by the linked jurisdiction. The auction administrator may modify the auction notice to reflect changes in allowances made available by any linked jurisdictions up until 30 days prior to an auction.



(d) Auction Eligibility Participation Application Requirements.

- (1) The Executive Officer must approve an entity's auction eligibility participant application before that entity may participate in an auction.
- (2) Only an ~~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 is eligible for auction participation.
- (3) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 is not eligible to ~~cannot~~ participate in an auction. An individual associated pursuant to sections 95830, 95832, and 95833 with an entity whose holding account has been revoked or is currently suspended pursuant to section 96011 is not eligible to ~~cannot~~ participate in an auction.
- (4) ~~An entity will be required to complete an auction participant application at least 30 days prior to an auction in which it intends to participate. The entity must provide information and documentation including:~~ An entity must provide auction eligibility information, including any changes required by subarticle 5, at least 30 days prior to an auction in which it intends to participate, including:
  - ~~(A)~~ (A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;
  - ~~(BA)~~ (BA) Except as otherwise provided in section 95833(e)(4), the The existence of any direct or indirect corporate associations pursuant to sections 95833 and 959114(d);
  - ~~(CB)~~ (CB) An allocation of the purchase limit among associated entities as defined in section 95833, or a change in the existing allocation of the purchase limit among associated entities, if applicable;
  - ~~(DC)~~ (DC) An allocation of the holding limit among associated entities as defined in section 95833, or a change in the existing allocation of the holding limit among associated entities, if applicable; and
  - ~~(ED)~~ (ED) An attestation disclosing the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or

financial market for the entity participating in the auction, and all other entities with whom the entity has a direct corporate association pursuant to section 95833 that participate in a carbon, fuel, or electricity market. The attestation must be updated to reflect any change in the status of an investigation that has occurred since the most recent auction application attestation was submitted.

- (5) An entity with any changes to the auction eligibility application information listed in subsection 95912(d)(4) within 30 days prior to an auction may be denied eligibility for participation in the auction if the updated information represents a material change. 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) 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.

~~(e) — Maintenance and Modification of Auction Participation Approval.~~

- ~~(1) — Once the Executive Officer has approved an entity's auction participant application, the entity need not 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) 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.~~

~~(fe) Auction Intent to Bid Notification Requirements~~ Auction Participation Approval.

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. An entity must be declared eligible for auction participation pursuant to section 95912(d) before it can be approved for auction participation.

~~(g) 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 the Auction Administrator to remediate an auction application.~~

~~(hf) Protection of Confidential Information. To the extent permitted by state law, the Executive Officer, the Auction Administrator, and the financial services administrator will treat the auction eligibility information submitted pursuant to section 95912(d)(4) contained in the auction application and not listed for release pursuant to section 95912(k)(5) as confidential business information.~~

~~(ig) All bids will be considered binding offers for the purchase of allowances under the rules of the auction.~~

~~(jh) 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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- (2) The bid guarantee submitted by any entity registered with California will be in U.S. dollars.

- (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.

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- (9) If an entity has submitted more than one form of bid guarantee then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in section 95912(jh)(1).

\*\*\*

- (ki) After the auction administrator has notified the Executive Officer of the results of the auction the Executive Officer will:

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- (i) The auction bidding window may be delayed, rescheduled, or cancelled due to technical systems failures and to protect the environmental stringency of the California Cap-and-Trade Program.

- (1) The opening of the auction bidding window may be delayed or paused for no more than one hour by the Executive Officer due to technical systems failures.

- (2) The bidding window may be rescheduled by the Executive Officer due to technical systems failures or to protect the environmental stringency of the California Cap-and-Trade Program.

- (3) Rescheduled Auctions.

- (A) The auction bidding window must be rescheduled to ensure the financial services administrator can use any bid guarantees submitted pursuant to section 95912 prior to the expiration date required by section 95912.

- (B) No additional auction applications may be accepted.

- (C) The financial services administrator will keep all bid guarantees to complete financial settlement of the auction after the rescheduled bidding window.

- (D) No bid guarantees provided pursuant to section 95912 may be amended.

- (E) If technical systems failures cannot be resolved and a bidding window cannot be rescheduled to meet the requirements of this section, then the Executive Officer will cancel the auction bidding window.

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.**

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(d) Timing of Reserve Sales.

(1) Reserve sales shall be conducted pursuant to the schedule in Appendix C.

(A) Except for the Reserve sale immediately preceding the compliance obligation instrument surrender deadline on November 1, a Reserve sale will only be offered if the Current Auction held in the preceding quarter resulted in a settlement price greater than or equal to 60% of the lowest Reserve tier price. The Executive Officer may revise the timing of reserve sales, including the date an entity must inform the Reserve Sale Administrator of its intent to participate in a reserve sale pursuant to section 95913(f) and the date an entity must submit to the financial services administrator a bid guarantee pursuant to section 95913(g), by up to four business days. ~~Beginning in 2021, the first, second, and final Reserve sales scheduled for each year will only be offered if the Current Auction held in the preceding quarter results in an auction settlement price greater than or equal to 60% of the Reserve Sale Price.~~

\*\*\*

(2) For any Reserve sale that will be offered, the Reserve sale administrator shall provide all eligible participants with notice of the number of allowances available for sale and the terms of the sale at least 30 days prior to the sale.

(A) The Reserve sale administrator shall offer all of the allowances in the Reserve for any Reserve sale offered.

~~(e) Reserve Sale 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.~~

(e) Reserve Sale Eligibility

- (1) The Executive Officer must approve an entity's reserve sale eligibility before that entity may participate in a reserve sale.

(f) Reserve Sale Participation Approval.

- (1) 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 participate in a reserve sale, otherwise the entity may not participate in that reserve sale. An entity must be declared eligible for reserve sale participation before it can be approved for reserve sale participation.

~~(f) Sales from Reserve Tiers from 2013-2020.~~

- ~~(1) Creation of Reserve Tiers. Prior to the first Reserve sale, the Executive Officer shall divide allowances allocated to the Reserve from section 95870(a) into three equal-sized tiers. All allowances from vintages 2016 and subsequent years that are transferred to the Reserve pursuant to section 95911(g) shall be offered at the highest-priced tier.~~
- ~~(2) The Reserve sale administrator shall offer all of the allowances in the Reserve at each Reserve sale.~~
- ~~(3) Reserve Tier Prices. Sales of Reserve allowances in calendar year 2013 shall be conducted at the following prices:~~
- ~~(A) Allowances from the first tier shall be offered for \$40 per allowance;~~
- ~~(B) Allowances from the second tier shall be offered for \$45 per allowance;~~
- ~~and~~
- ~~(C) Allowances from the third tier shall be offered for \$50 per allowance.~~
- ~~(4) Increase in Reserve Tier Prices. In calendar years subsequent to 2013, allowances from each tier shall be offered at prices equal to the tier prices from the previous calendar year increased by five percent plus the rate of inflation as measured by the most recently available twelve-month value of the Consumer Price Index for All Urban Consumers.~~
- ~~(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.~~

- ~~(A) If the quantity of allowances from section 95870(a) allocated to the highest price tier plus the allowances defined in section 95870(i)(1) is equal to or greater than the quantity of accepted bids in the highest price tier then all accepted bids for the highest price tier will be filled.~~
- ~~(B) If the quantity of accepted bids at the highest price tier exceeds the allowances from section 95870(a) plus the allowances defined in section 95870(i)(1), allowances will be sold through the procedure outlined in section 95913(h)(5).~~
- ~~(C) The accepted bids at the highest price tier will be filled first with allowances from section 95870(a) allocated to the highest price tier if available.~~
- ~~(D) The allowances defined in section 95870(i)(1) will be sold beginning with the latest vintage and then the preceding vintages, from latest to most recent, until all accepted bids at the highest price tier are filled or until all the allowances defined in section 95870(i)(1) have been sold. The allowances defined in section 95870(i)(1) sold pursuant to this section shall first reduce the quantity of allowances defined in section 95870(b) if available and then will reduce the quantity of allowances defined in section 95870(i)(2).~~
- ~~(E) Allowances sold pursuant to this section will be surrendered as allowances purchased from an Allowance Price Containment Reserve sale as specified in section 95856(b)(2)(A) and section 95856(h).~~

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- (g) At least 12 days before the scheduled sale, an entity intending to participate in a Reserve sale must submit to the financial services administrator a bid guarantee, payable to the financial services administrator, in an amount greater than or equal to the sum of the maximum value of the bids to be submitted by the entity.

\*\*\*

~~(7) The Executive Officer may revise the timing of reserve sales intent to bid notification requirements in subsection 95913(e) and bid guarantee submittal requirements in subsection 95913(g) to ensure a minimum of four business days is available between the intent to bid notification and bid guarantee submittal due dates.~~

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(h) Reserve Tiers.

(1) Creation of the Reserve Tiers.

(A) The Executive Officer shall divide one-third of the allowances allocated to the Reserve from section 95870(a) into three equal-sized Reserve tiers. The remaining two-thirds of the allowances allocated to the Reserve from section 95870(a) will not be made available at Reserve sales until 2021, pursuant to section 95913(h)(1)(D).

(B) In 2021, the Executive Officer will replace the existing three tier Reserve with a new Reserve consisting of two tiers.

(C) In 2021, the Executive Officer shall transfer all of the allowances remaining in the existing Reserve as of December 31, 2020 into the price ceiling account to be made available pursuant to section 95915.

(D) In 2021, the Executive Officer shall place 22,726,000 allowances allocated pursuant to section 95871(a) to the second Reserve tier.

(E) In 2021, the Executive Officer shall divide evenly between the two new Reserve tiers the allowances allocated pursuant to section 95871(a), less the allowances allocated pursuant to section 95913(h)(1)(D), as well as the remaining two-thirds of the allowances allocated pursuant to section 95870(a).

(2) Disposition of Allowances Unsold at Auction for More than 24 Months.

(A) Through December 31, 2020, all allowances transferred to the Reserve pursuant to section 95911(g) shall be transferred evenly to each of the three tiers of the Reserve.



- (B) Beginning in 2021, all allowances transferred to the Reserve pursuant to section 95911(g) shall be transferred evenly between the two new Reserve tiers.
- (3) In 2013, sales of allowances from the Reserve shall be conducted at the following prices:
- (A) Allowances from the first tier shall be offered for \$40 per allowance;
- (B) Allowances from the second tier shall be offered for \$45 per allowance;
- and
- (C) Allowances from the third tier shall be offered for \$50 per allowance.
- (4) Increase in Reserve Tier Prices In calendar years from 2014 through 2020. Tier prices from the previous calendar year will be increased by five percent plus the rate of inflation as measured by the most recently available twelve month value of the Consumer Price Index for All Urban Consumers.
- (5) In 2021, sales of allowances from the Reserve shall be conducted at the following prices:
- (A) Allowances from the first tier shall be offered for \$41.40 per allowance.
- (B) Allowances from the second tier shall be offered for \$53.20 per allowance.
- (6) Increase in Reserve Tier Prices in calendar years after 2021. Tier prices from the previous calendar year will be increased by five percent plus the rate of inflation as measured by the most recently available twelve month value of the Consumer Price Index for All Urban Consumers.
- (iH) Purchase Determinations.
- (1) The reserve sale administrator will conduct sales from each tier in succession, beginning with the lowest priced tier and proceeding to the highest priced tier.
- (A) The Reserve sale will continue until either all allowances ~~made available pursuant to sections 95870(a), 95871(a), and 95911(g)~~ are sold from the Reserve or all the accepted bids are filled.

~~(B) Pursuant to section 95913(f)(5), the Reserve sale immediately preceding the compliance obligation instrument surrender on November 1 will continue until all accepted highest price tier bids are filled or the allowances made available pursuant to section 95870(i)(1) are sold pursuant to section 95913(f)(5).~~

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- (4) If the sum of bids at the tier price which are accepted by the reserve sale administrator is less than or equal to the number of allowances in the tier, then:

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

\*\*\*

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

\*\*\*

(B) The reserve sale administrator will calculate the number of allowances distributed to each bidding entity from the tier by multiplying the bidding entity's share calculated in section 95913(ih)(5)(A) by the number of

allowances in the tier, rounding the number down to the nearest whole number.

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

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- (j) Resolution of Sales.

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~~(j) Entities registered in an External GHG ETS to which California has linked pursuant to subarticle 12 are not eligible to purchase from the Reserve.~~

~~(k) Operation of the Reserve After 2020.~~

~~(1) On January 1, 2021, all allowances remaining in the Reserve and all allowances transferred to the Reserve pursuant to sections 95871(a) and 95911(g) will be combined into a single price tier.~~

~~(2) Determination of the Reserve Sale Price.~~

~~(A) Beginning in 2021, each year ARB will set a U.S. dollar Base Reserve Sale Price equal to the annual auction reserve price determined for that year pursuant to section 95911(c)(3)(A), plus a fixed dollar amount. In 2021 the fixed dollar amount will equal the difference between the highest Reserve tier price determined in 2020 and the Annual Auction Reserve Price determined in 2020, increased by the rate of inflation for 2020 as measured by the most recently available twelve months of the Consumer Price Index for all Urban Consumers. In each subsequent year the fixed dollar amount will be the previous year's fixed dollar amount adjusted for the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for all Urban Consumers.~~

- ~~(B) — The Canadian dollar Base Reserve Sale Price for the corresponding year, as determined by the governments of the Canadian Provinces that have linked their GHG ETS with California pursuant to subarticle 12, will be converted into U.S. dollars using as an exchange rate the most recently available daily buying rate for U.S. and Canadian dollars as published by the Bank of Canada.~~
- ~~(C) — The Reserve Sale Price used each year will be the larger of the U.S. dollar Base Reserve Sale Price and the Canadian dollar Base Reserve Sale Price as converted into U.S. dollars.~~
- ~~(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.~~
- ~~(1) — If the quantity of allowances from sections 95870(a) and 95871(a) plus the allowances defined in sections 95870(i)(1) and 95871(h)(1) is equal to or greater than the quantity of accepted bids then all accepted bids will be filled.~~
- ~~(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) and 95871(h)(1), allowances will be sold through the procedure outlined in section 95913(n)(3).~~
- ~~(3) — The accepted bids will be filled first with allowances from sections 95870(a) and 95871(a) if available.~~
- ~~(4) — The allowances defined in sections 95870(i)(1) and 95871(h)(1) will be sold until all accepted bids are filled or until all the allowances defined in section 95870(i)(1) and 95871(h)(1) have been sold. The allowances defined in section 95870(i)(1) and 95871(h)(1) that are sold pursuant to this section shall first reduce the quantity of allowances defined in section 95871(b) if available~~

and then will reduce the quantity of allowances defined in section 95871(h)(2).

~~(5) Allowances sold pursuant to this section are immediately eligible to satisfy any compliance obligation, regardless of the vintage of the allowance.~~

~~(m) At least 12 days before the scheduled sale, an entity intending to participate in a Reserve sale must submit to the financial services administrator a bid guarantee, payable to the financial services administrator, in an amount greater than or equal to the sum of the maximum value of the bids to be submitted by the entity.~~

~~(1) The maximum value of a set of bids is the quantity bid times the Reserve Sale Price.~~

~~(2) The bid guarantee must be in one or a combination of the following forms:~~

~~(A) Cash in the form of a wire transfer; or~~

~~(B) An irrevocable letter of credit; or~~

~~(C) A bond.~~

~~(D) All forms of bid guarantee must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices.~~

~~(3) A bid guarantee submitted in any form other than cash must be payable within three business days of payment request.~~

~~(4) The bid guarantee will be made payable to the financial services administrator.~~

~~(5) The bid guarantee will expire no sooner than 26 days after the Reserve sale.~~

~~(6) The financial services administrator will evaluate the bid guarantee and inform the Reserve sale administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Executive Officer.~~

~~(7) The Executive Officer may revise the timing of reserve sales intent to bid notification requirements and bid guarantee submittal requirements to ensure a minimum of four business days is available between the intent to bid notification and bid guarantee submittal due dates.~~

~~(n) Sale Operations.~~

- ~~(1) The Reserve sales window will open at 10 a.m. Pacific Standard Time (or Pacific Daylight Time, when in effect) on the day of the sale, and bids may be submitted until the window closes at 1 p.m. Pacific Standard Time (or Pacific Daylight Time, when in effect).~~
- ~~(A) Each bid will consist of a quantity of allowances in multiples of 1,000 allowances.~~
- ~~(B) An entity may submit multiple bids.~~
- ~~(2) The reserve sale administrator will only accept a bid for a bundle of 1,000 allowances:~~
- ~~(A) If acceptance of the bid would not result in violation of the holding limit pursuant to section 95920(b); or~~
- ~~(B) If acceptance of the bid would not result in a total value of accepted bids for an entity greater than the value of the bid guarantee submitted by the entity pursuant to section 95913(g).~~
- ~~(3) Filling Accepted Bids.~~
- ~~(A) For a Reserve sale not occurring immediately preceding the compliance instrument surrender on November 1, the Reserve sale will continue until either all allowances made available pursuant to sections 95870(a), 95871(a), and 95911(g) are sold from the Reserve or all the accepted bids are filled.~~
- ~~(B) For a Reserve sale immediately preceding the compliance obligation instrument surrender deadline on November 1, the Reserve sale will continue until all accepted bids are filled or the allowances made available pursuant to sections 95870(a), 95870(i)(1), 95871(a), 95871(h)(1), and 95911(g) are sold.~~
- ~~(C) If the sum of bids accepted by the Reserve Sale Administrator is greater than the number of allowances in the Reserve, the Reserve Sale Administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share of the total number of accepted bids by the number of allowances in the Reserve, rounding the number to the nearest whole number. To~~

~~distribute any remaining allowances, the Reserve Sale Administrator will assign a random number to each entity bidding in the Reserve sale. Beginning with the lowest random number, the Reserve Sale Administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.~~

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.**

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#### **(c) Disclosure of Auction Participation Information.**

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(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-

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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.

### **§ 95915. Price Ceiling Sales.**

#### **(a) Administration of Price Ceiling Sales.**

- (1) The Executive Officer may serve as sale administrator to conduct price ceiling sales or designate an entity to serve as the sale administrator.
  - (2) The Executive Officer may designate a financial services administrator to conduct the financial transactions required to operate price ceiling sales.
- (b) Eligibility.
- (1) Only California covered entities and opt-in covered entities may participate in price ceiling sales.
  - (2) Purchases shall be limited to entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts for the next compliance surrender deadline and these entities may only purchase what they need to meet their compliance obligation at the next surrender deadline.
- (c) Price ceiling sales may be held beginning in 2021.
- (d) The sale administrator will not conduct price ceiling sales if allowances remain in the first tier of the Reserve.
- (e) The sale administrator will only conduct a price ceiling sale between the last Reserve sale before a compliance event and the compliance event itself.
- (f) Price Ceiling Sales Procedure.
- (1) Terms of sale.
    - (A) Beginning in 2021, entities may purchase allowances or price ceiling units from the price ceiling account at \$65 per allowance or price ceiling unit.
    - (B) After 2021, the purchase price will increase annually by five percent plus the rate of inflation as measured by the most recently available twelve month value of the Consumer Price Index for All Urban Consumers.
    - (C) The financial services administrator will begin to accept cash payment for purchases from price ceiling sales no earlier than ten business days after the previous Reserve sale and will cease accepting payments no later than seven business days thereafter.



- (2) The financial services administrator will inform the Executive Officer of the amounts of payments received from covered entities no later than one business day after it ceases to accept payments.
- (3) The Executive Officer will determine the number of allowances or price ceiling units purchased by each entity by dividing the payment submitted by the entity by the purchase price prevailing at the time of the sale, and rounding down to the nearest whole allowance or price ceiling unit. The Executive Officer will then take one of the following actions:
  - (A) If there are sufficient allowances in the price ceiling account to fulfill the purchases of all entities submitting payment, the Executive Officer will transfer the appropriate number of allowances to each purchasing entity's compliance account.
  - (B) If there are insufficient allowances remaining in the price ceiling account to fulfill the purchases of all entities submitting payment, the Executive Officer will prorate the available allowances equally among all purchasing entities to the extent possible, and transfer the prorated allowances and sufficient price ceiling units to fulfill the purchases of all entities submitting payment into each entity's compliance account. The proration will be calculated using the share of allowances available for purchase in the price ceiling account in the sum of the purchases.
  - (C) If there are no allowances remaining in the price ceiling account to fulfill the purchases, the Executive Officer will transfer the appropriate number of price ceiling units to each purchasing entity's compliance account.
- (g) Beginning in 2021, price ceiling units will be valid for surrender against a compliance obligation upon transfer to a compliance account and will be retired after all other compliance instruments specified in sections 95856(h)(1) and 95856(h)(2), as applicable, have been retired.
- (h) Procedure for Issuance of Price Ceiling Units.
  - (1) The Executive Officer will issue price ceiling units into the Price Ceiling Account as needed. Upon issuance into the Price Ceiling Account, price

ceiling units are eligible for purchase at price ceiling sales pursuant to section 95915(f).

- (2) Moneys generated from the sale of price ceiling units will be expended to achieve emissions reductions on at least a metric ton for metric ton basis that are real, permanent, quantifiable, verifiable, enforceable by the state board and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur.

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 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:

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- (2) Limited Exemption from the Holding Limit.

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- (B) Calculation of the Limited Exemption for Entities Already Registered as of January 1, 2017 as Covered Entities or Opt-in Covered Entities. 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 Limited Exemption for Entities Registering as Covered Entities or Opt-in Covered Entities ~~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 qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to section 95851.

\*\*\*

- (G) Allowances allocated pursuant to sections 95870(e), (f), and (g) ~~and sections 95871(d), (e), and (f)~~, 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).

\*\*\*

- (h) The "Annual Allowance Budget" in section 95920(d) is calculated as the sum for the current budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12. The "Annual Allowance Budget" in section 95920(e) is calculated as the sum for a budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12. In the event that an External GHG ETS program to which California has linked pursuant to subarticle 12 has taken an official act to revoke,

repeal, or indefinitely suspend its ETS program or the Executive Officer has prohibited transfer to and from that program's entities to California entities, the "Annual Allowance Budget" in section 95920(d) is calculated as the sum for the current budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12 that continue in full force and effect. ARB will provide written notification to all California participants should a change to the holding limit be required.

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.**

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- (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:

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- (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:

\*\*\*

- (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 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.

\*\*\*

(g) Restrictions on Registered Entities and Tracking System. If an entity registered pursuant to section 95830 violates any provision specified in this article, or in order to protect the environmental stringency of the California Cap-and-Trade Program, the Executive Officer may:

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

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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 12: Linkage to External Greenhouse Gas Emissions Trading Systems**

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### **§ 95942. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.**

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(i) If an approved External GHG ETS has taken an official act to revoke, repeal, or indefinitely suspend its ETS program or one of the linkage findings made pursuant to Government Code section 12894(f) is no longer supported, the Executive Officer may suspend, revoke, or repeal the approved linkage. In taking such action, the Executive Officer may limit transfers in or out of holding

accounts pursuant to sections 95921 or 96011, modify auction notices pursuant to section 95912, and modify holding limits pursuant to section 95920, and cancel or issue additional allowances to ensure the environmental stringency of the California Cap-and-Trade Program is maintained as if there had not been a linkage approved with the External GHG ETS.

(1) Within 24 hours of taking action to suspend, revoke, or repeal the approved linkage, the Executive Officer shall post publicly the specific action taken with an explanation of why it was necessary to the Cap-and-Trade Program website.

(2) The public information will include:

(A) A contact name for questions regarding the action;

(B) Duration of the action, if known;

(C) Any details on the status of existing compliance instruments in accounts; and

(D) Any other relevant information.

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 12894, Government Code.

### **§ 95943. Linked External GHG ETS or External GHG Program.**

(a) Pursuant to section 95941, covered or opt-in covered entities may use compliance instruments issued by the following programs to meet their compliance obligation under this article:

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(2) Government of Ontario (effective January 1, 2018 through June 15, 2018). Compliance instruments issued by the Government of Ontario that are held in California covered entity, opt-in covered entity, and general market participant accounts, or that are held in approved external GHG ETS (other than Ontario) covered entity, opt-in covered entity, and general

market participant accounts, as of June 15, 2018 continue to remain valid for compliance and trading purposes.

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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 12894, Government Code.

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### **Subarticle 13: ARB Offset Credits and Registry Offset Credits**

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

(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:

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(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:

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(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 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). Projects may only transition to the latest version of the Compliance Offset Protocol during a reporting period that is subject to a full offset verification. A project will be considered to have completed the transition to the most recent version of the Compliance Offset Protocol at the time a Positive or Qualified Positive Offset Verification Statement for the applicable reporting period has been approved by ARB. 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.

\*\*\*

(b) Local, Regional, State, and National Regulatory Compliance and Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, state, and national requirements on environmental impact assessments that apply based on the offset project location. In addition, an offset project must also fulfill all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project,

including as specified in a Compliance Offset Protocol. The project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period, although whether such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance.

- (1) An offset project using a protocol from sections 95973(a)(2)(C)1., 2., 4., or 5. that is out of regulatory compliance is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements that occurred during the period that the offset project is out of regulatory compliance. The Offset Project Operator or Authorized Project Designee must provide documentation indicating the beginning and end of the time period that the offset project is out of regulatory compliance to the satisfaction of ARB.

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- (B) For determining the end date when the offset project returned to regulatory compliance, the Offset Project Operator or Authorized Project Designee must provide documentation from the relevant local, state, or federal regulatory oversight body stating that the offset project is back in regulatory compliance. The date when the offset project is deemed to have returned to regulatory compliance is the date that the relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance. This date is not necessarily the date that the activity ends or the device is repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the regulatory oversight body, as determined by the regulatory oversight body. If the regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of ARB, the Offset Project Operator or Authorized Project Designee may provide documentation to ARB clearly identifying the date the project returned to regulatory compliance.

Documentation should be dated, official correspondence, with the relevant regulatory agency, such as a consent decree, inspection report, or other such documentation, identifying that the project has returned to regulatory compliance. If the relevant regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of ARB, and the Offset Project Operator or Authorized Project Designee is unable to provide documentation clearly identifying the date the project returned to regulatory compliance to the satisfaction of ARB, then for purposes of the applicable Reporting Period, the Offset Project Operator or Authorized Project Designee must use the end of the Reporting Period for the end date when the offset project returned to regulatory compliance.

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- (E) For determining GHG emission reductions or GHG removal enhancements for the Reporting Period as modified to reflect any period the offset project was out of regulatory compliance, the Offset Project Operator or Authorized Project Designee must remove the days when the project was out of regulatory compliance from the Reporting Period using the following methods:
1. ~~F~~from the modeled or measured project baselines for projects using a protocol in sections 95973(a)(2)(C)2. or 5., ~~T~~the entire calendar day during which any portion of the project was not in regulatory compliance must be removed from the modeled or measured project baseline;
  2. For projects using a protocol in section 95973(a)(2)(C)1., the entire destruction(s) under a Certificate of Destruction that contains any time the project is out of regulatory compliance must be removed. For projects using a protocol in section 97973(a)(2)(C)1. that consist of a destruction under a single Certificate of Destruction that

contains any time the project is out of regulatory compliance, the entire project will be ineligible for ARB or registry offset credits; and

3. For projects using a protocol in section 95973(a)(2)(C)4., the entire calendar day during which any portion of the project was not in regulatory compliance must be removed by dividing the total calculated emissions reductions for the 12 month period from the end of the previous Reporting Period, by the total number of days in the previous 12 months, either 365 days or 366 days, to calculate a daily emissions reductions. The daily emissions reductions will be multiplied by the number of days the project was not in regulatory compliance and this number will be added to the project baseline for the end of the Reporting Period and the emissions reductions for the Reporting Period, excluding the days the project was out of regulatory compliance, will be calculated.

- (2) An offset project using a protocol from sections 95973(a)(2)(C)3., 4., or 6., is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements for the entire Reporting Period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the Reporting 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.~~

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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.

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

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- (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 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:

\*\*\*

- (7) The Primary Account Representative or Alternate Account Representative on the Offset Project Operator's tracking system account or Authorized Project Designee must attest, in writing, to ARB as follows:

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- (8) ~~All~~An Offset Project Data Reports must be submitted within four months after the conclusion of each Reporting Period. For a submission to be considered valid, the submitted 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).

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- (g) General Procedure for Approving Alternate Monitoring and Measurement Methods Pursuant to Compliance Offset Protocols. This section applies only to alternate methods for monitoring and measurement that were not in common usage at the time when ARB adopted the Compliance Offset Protocol under which an Offset Project Data Report is being submitted. Alternate methods may include remote sensing methods for forestry or other alternate methods that meet the requirements of this section.
- (1) An Offset Project Operator or Authorized Project Designee seeking approval of an alternate monitoring and measurement method must, at least 30 days prior to the beginning of the reporting period in which the alternate method will be used, submit a written request to CARB that includes all of the following:
- (A) The name and identification numbers of the offset project for which the alternate method is proposed;
- (B) The beginning and end dates for the reporting period for which the alternate method is proposed;
- (C) A detailed description of the alternate method. This description must include:
1. The purpose for which the alternate method is proposed;
  2. A discussion of the accuracy of the alternate method, including any peer-reviewed literature or other information that the Offset Project Operator or Authorized Project Designee believes may aid CARB in making a determination of the eligibility of the method; and
  3. A detailed analysis identifying how the alternate method is consistent with the relevant requirements, and not explicitly prohibited by the applicable Compliance Offset Protocol.
- (2) ARB may approve an alternate method on an interim basis for one reporting period to review the accuracy of the method. Approval of an alternate method on an interim basis in itself does not provide any right to approval on a longer-term basis. ARB may also include other conditions as part of its interim approval.



- (3) Before approving an alternate method, ARB shall determine that the accuracy of the alternate method is at least reasonably equivalent to the accuracy of the method(s) commonly employed when the Compliance Offset Protocol was adopted and that the alternate method is capable of being verified to a reasonable level of assurance.
- (4) Data collected pursuant to an approved alternate method shall be considered in compliance with the requirements of the relevant Compliance Offset Protocol.
- (5) ARB may request additional information from the Offset Project Operator or Authorized Project Designee seeking approval of an alternate method prior to approving any request. CARB shall provide written notification to the Offset Project Operator or the Authorized Project Designee of approval or disapproval of the interim alternate method within 30 days of receipt of the request, or within 30 days of receipt of any additional information requested by CARB, whichever is later.
- (6) A request for approval of an alternate method may only be submitted for a reporting period for which a project is receiving a full offset verification.
- (7) If information comes to ARB's attention subsequent to approving an alternate method indicating that the alternate method is not at least reasonably equivalent to the accuracy of the method(s) commonly employed when the Compliance Offset Protocol was adopted, or is not capable of being verified to a reasonable level of assurance, ARB may rescind approval of the alternate method at any time. If after using the alternate method for one reporting period ARB has not determined that the alternate method is not at least reasonably equivalent to the accuracy of the method(s) commonly employed when the Compliance Offset Protocol was adopted, or is not capable of being verified to a reasonable level of assurance, ARB may approve the alternate method, including any conditions, on a permanent basis.
- (8) For the purposes of this section "common usage" means a method that is demonstrated to be in use by an offset project using the same protocol type

(e.g., U.S. Forests, livestock, etc.) on the compliance or voluntary market in the U.S. at the time of adoption of the Compliance Offset Protocol version.

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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.

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### **§ 95977.1. Requirements for Offset Verification Services.**

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- (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 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:

(A) ~~The name of the offset project type~~name and its identification numbers, including the length of the offset project crediting period, and title of the Compliance Offset Protocol and its version under which used to implement the offset project ~~is reporting, indication of whether a single or multiple reporting periods will receive offset verification services, the reporting period start and end dates, and the crediting period start date;~~

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

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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 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.

- (3) Offset verification services must include the following:

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- (M) Offset Project Data Report Modifications. As a result of review by the offset verification team and prior to completion of an Offset Verification Statement, the Offset Project Operator or Authorized Project Designee must make any possible improvements and fix ~~any~~-correctable errors that affect GHG emissions reductions or removal enhancements into the submitted Offset Project Data Report, and a revised Offset Project Data Report must be submitted to ARB or the Offset Project Registry. Correctable errors that, when summed, result in less than a three percent overstatement of the GHG emissions reductions or removal enhancements do not need to be fixed. Errors subject to the three percent exception still constitute errors for purposes of this Regulation, and the Offset Project Operator and Authorized Project Designee, if applicable, are still subject to the requirements of sections 96013 and 96014(d), especially if ARB determines the errors have been repeated across multiple Offset Project Data Reports or the errors were intentional in nature. The revised Offset Project Data Report must include all components required in section 95976(d). If the Offset Project Operator or Authorized Project Designee does not make all

possible improvements and fix any correctable errors to the Offset Project Data Report, the verification body must issue an Adverse Offset Verification Statement. The offset verification team shall use professional judgment in the determination of correctable errors, including whether differences are not errors but result from truncation or rounding. The offset verification team must document in the issues log the source of any difference identified, including whether the difference results in a correctable error. Documentation for all Offset Project Data Report submittals must be retained by the Offset Project Operator or Authorized Project Designee for the length of time specified in section 95976(e)(2).

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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.

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

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- (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 independent, third-party 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:

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(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;

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(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.

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(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 days 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.

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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.

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### **§ 95981. Issuance of ARB Offset Credits.**

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- (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 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.

(1E) 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.

~~(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).~~

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(d) Before ARB issues an ARB offset credit pursuant to section 95981.1 for GHG reductions and GHG removal enhancements achieved by an offset project in a Reporting Period, the Primary Account Representative or Alternate Account Representative on the Offset Project Operator's tracking system account must attest ~~Offset Project Operator or Authorized Project Designee must provide the following attestations, in writing, to ARB as follows:~~

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



**§ 95981.1 Process for Issuance of ARB Offset Credits.**

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- (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.

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- (d) Requests for Additional Information. ARB may request additional information for offset projects submitted through an Offset Project Registry seeking issuance of ARB offset credits.
- (1) ARB will notify the Offset Project Operator, Authorized Project Designee, or other third party identified in section 95981(b)~~(5)(B)~~ within 15 calendar days of its determination pursuant to section 95981(c) if the information submitted pursuant to section 95981(b), (c), and (d) is incomplete and request additional specific information.

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- (e) A registry offset credit issued pursuant to section 95980.1(a) must be removed or cancelled by the Offset Project Registry within ~~40 calendar days~~ one year 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 registry offset credits are not cancelled within one year, 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.

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### **§ 95982. Registration of ARB Offset Credits.**

An ARB offset credit will be registered by:

- (a) Creating a unique ARB serial number; and
- (b) Transferring the ARB offset credits to the Holding Account of the listed Offset Project Operator, Authorized Project Designee, or another third party as requested by the Offset Project Operator pursuant to section 95981(b)(5)(B) to receive ARB offset credits, unless otherwise required by section 95983.

### **§ 95983. Forestry Offset Reversals.**

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- (e) Change of Forest Owner or Offset Project Operator. When a Forest Owner or Offset Project Operator changes, whether by merger, acquisition, or any other means, the successor Forest Owner or Offset Project Operator, after the change in ownership, as applicable, is expressly liable for all obligations of the predecessor Forest Owner or Offset Project Operator to submit compliance instruments as determined pursuant to sections 95983(c)(3). For the avoidance of doubt, this obligation of the successor Forest Owner or Offset Project Operator, as applicable, consists of the difference between the number of metric tons of CO<sub>2</sub>e determined pursuant to sections 95983(c)(3) and the number of valid ARB offset credits or other approved compliance instruments submitted by the predecessor forest owner pursuant to sections 95983(c)(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.

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**§ 95984. Ownership and Transferability of ARB Offset Credits.**

- (a) Initial ownership of an ARB offset credit will be with the registered Offset Project Operator, Authorized Project Designee, or another third party as requested by the Offset Project Operator pursuant to section 95981(b)(5)(B) to receive ARB offset credits, unless otherwise required by section 95983. An ARB offset credit may be sold, traded, or transferred, unless:

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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.

**§ 95985. Invalidation of ARB Offset Credits.**

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- (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:

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- (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.

- (c) Grounds for Initial Determination of Invalidation. ARB may determine that an ARB offset credit is invalid for the following reasons:

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- (2) The offset project activity and implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in the applicable Compliance Offset Protocol, as determined pursuant to section 95973(b), during the Reporting Period for which the ARB offset credit was issued.
- (A) For offset projects using a protocol from sections 95973(a)(2)(C)1., 2., 4., or 5., if ARB finds that the offset project is out of regulatory compliance, then ARB shall determine how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period. Within 10 calendar days of this determination, ARB will notify the verification body that performed the offset verification and the Offset Project Operator or Authorized Project Designee. Within 25 calendar days of receiving the written notification by ARB, the verification body shall provide any available offset verification services information or correspondence related to the relevant Offset Project Data Report(s). Within 25 calendar days of

receiving the written notification by ARB, the Offset Project Operator or Authorized Project Designee shall provide data that is required to calculate GHG reductions and GHG removal enhancements for the offset project according to the requirements of this article, the detailed offset verification report prepared by the verification body, and other information requested by ARB. The Offset Project Operator or Authorized Project Designee shall also make available personnel who can assist ARB's determination of how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period.

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- (B) For offset projects using a protocol from sections 95973(a)(2)(C)3., 4., or 6., if ARB finds that the offset project is out of regulatory compliance, then ARB shall determine that all ARB offset credits issued for the applicable Reporting Period are subject to invalidation; or

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- (k) Change of Forest Owner or Offset Project Operator. When a Forest Owner or Offset Project Operator changes, whether by merger, acquisition, or any other means, the successor Forest Owner or Offset Project Operator, after the change in ownership, as applicable, is expressly liable for all obligations of the predecessor Forest Owner or Offset Project Operator to submit compliance instruments as determined pursuant to sections 95985(h)(1)(A), 95985(h)(2)(B)(1), and/or 95985(i), as applicable. For the avoidance of doubt, this obligation of the successor Forest Owner or Offset Project Operator, as applicable, consists of the difference between the number of metric tons of CO<sub>2</sub>e determined pursuant to sections 95985(h), and/or 95985(i), as applicable, and the number of valid ARB offset credits or other approved compliance instruments submitted by the predecessor forest owner pursuant to sections 95985(h), and/or 95985(i), as applicable.

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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### § 95987. Offset Project Registry Requirements.

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

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- (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 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.

(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; and
- (F) 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), (4) the project is no longer required to monitor, report, and verify the permanence of its GHG emission reductions or GHG removal enhancements, and (5) 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).

- (6) An Offset Project Registry may update an offset project's listing status to "Monitored" if (1) ARB offset credits have been issued for the offset project, (2) no further ARB offset credits will be issued to the project, and (3) the project is still required to monitor, report, and verify the permanence of its GHG emission reductions or GHG removal enhancements,

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- (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;

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- (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.

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- (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 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.

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### **§ 95989. Direct Environmental Benefits in the State.**

- (a) Offset projects using a protocol listed in section 95973(a)(2)(C) that are located within, or that avoid GHG emissions within, the State of California are considered to provide direct environmental benefits in the State.
- (b) Any project located outside the State of California may submit the following information to ARB to enable a determination of whether the project provides direct environmental benefits in the State. Such determination must be based on a showing that the offset project or offset project type provides for the reduction or avoidance of emissions of any air pollutant that is not credited pursuant to the

applicable Compliance Offset Protocol in the State or a reduction or avoidance of any pollutant that could have an adverse impact on waters of the State.

(1) Scientific, peer-reviewed information or reports supporting a claim that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the State;

(2) Governmental reports from local, state, or national environmental, health, or energy agencies, or multinational bodies (such as the Intergovernmental Panel on Climate Change) supporting a claim that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the State; or

(3) Monitoring or other analytical data supporting a claim that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the State.

(c) New offset projects. In order to be eligible to demonstrate that an offset project located outside the State of California provides direct environmental benefits in the State, the Offset Project Operator or Authorized Project Designee shall submit all relevant materials listed in this section along with the first reporting period Offset Project Data Report as specified in section 95976(d).

(d) Existing offset projects. For offset projects located outside the State of California which have already received ARB offset credits that would like to demonstrate that they provide direct environmental benefits in the State, the Offset Project Operator, Authorized Project Designee, or holder of the offset credits must submit all relevant materials listed in this section to ARB no later than December 31, 2021, to ensure that projects recognized as providing direct environmental benefits in the state can be identified prior to any surrender of compliance instruments in November 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.

## 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:

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- (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:

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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 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 Registry, and ARB must 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.

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

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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.

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## **Subarticle 15: Enforcement and Penalties**

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### **§ 96011. Authority to Suspend, Revoke, or Modify.**

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(d) Nothing in this section prevents the Executive Officer from taking such other actions as are necessary to protect the environmental stringency of the California Cap-and-Trade Program, including limiting transfers in or out of holding accounts.

(1) Within 24 hours of taking action to protect the environmental stringency of the California Cap-and-Trade Program, the Executive Officer shall post publicly to the Cap-and-Trade Program website the specific action taken with an explanation of why it was necessary.

(2) The public information will include:

(A) A contact name for questions regarding the action;

(B) Duration of the action, if known;

(C) Any details on the status of existing compliance instruments in accounts; and

(D) Any other relevant information.

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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### **§ 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).

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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 16: Other Provisions**

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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.

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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.

### **§ 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.

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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.

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## **Appendix B. CITSS User Terms and Conditions**

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2.4 User further agrees that it will immediately inform ARB or the CITSS administrator by emailing ~~help@wei-citss.org~~ [CACITSSHelpdesk@arb.ca.gov](mailto:CACITSSHelpdesk@arb.ca.gov) or calling at ~~1-866-682-7561~~ [916-324-7659](tel:916-324-7659) if any of the following occurs:

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### **Appendix E: Offset Project Activities Within the Scope of Regulatory Compliance Evaluation.**

For all project types, projects that were not in compliance with requirements regarding occupational health and safety regulations, statutes, or laws, or the timely submittal of periodic reports required by permits, regulations, statutes, or laws, during the reporting period, are still eligible to receive ARB offset credits if the noncompliance has been resolved prior to the submittal of a request for issuance of ARB offset credits pursuant to section 95981. This appendix identifies the specific project activities considered for regulatory compliance by project type.

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