MRR Definitions that Refer to C&T Definitions (§95102(a) and §95802) and Compliance Requirements for Covered Entities (§95850-§95852.2)

Article 5: California Cap on Greenhouse Gas Emissions and Market- Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions.

Sections included here:

Excerpts from § 95802. Definitions

Subarticle 3: Applicability

§ 95811. Covered Entities.

§ 95812. Inclusion Thresholds for Covered Entities.

Subarticle 7: Compliance Requirements for Covered Entities

§ 95850. General Requirements

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

§ 95852. Emission Categories Used to Calculate Compliance Obligations

§ 95852.1. Compliance Obligations for Biomass-Derived Fuel

§ 95852.1.1. Eligibility Requirements for Biomass-Derived Fuels

§ 95852.2. Emissions without a Compliance Obligation

Definitions and Section from the Cap-and-Trade Regulation that are Referenced in the MRR:

All referenced definitions are from §95802 of the Cap-and-Trade Regulation:

§95802(a)(69) “Compliance Instrument” means an allowance or offset, issued by ARB or by an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, or sector- based offset credit. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO2e.

(70) “Compliance Obligation” means the quantity of verified reported emissions or assigned emissions for which an entity must submit compliance instruments to ARB.

(72) “Compliance Period” means the three-year period for which the compliance obligation is calculated for covered entities except for the first compliance period. The compliance obligation for the first compliance period only considers emissions from data years of 2013 and 2014.

(84) “Covered Entity” means an entity within California that has one or more of the processes or operations and has a compliance obligation as specified in subarticle 7 of this regulation; and that has emitted, produced, imported, manufactured, or delivered in 2009 or any subsequent year more than the applicable threshold level specified in section 95812(a) of this rule.

(120) “Electrical Distribution Utility(ies)” means an entity that owns and/or operates an electrical distribution system, including: 1) a public utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU); or 2) a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3 or 3) an Electrical Cooperative (COOP) as defined in Public Utilities Code section 2776, that provides electricity to retail end users in California.

(123) “Eligible Renewable Energy Resource” has the same meaning as defined in Section 399.12 of the Public Utilities Code:

(e) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources Code, subject to the following:
(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility that commences generation of electricity after December 31, 2005, is not
an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy
resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
(C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a "renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code.
(D) (i) A small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system is an eligible renewable energy resource only for the retail seller or local publicly owned electric utility that procured the electricity from the unit as of December

31, 2005. No unit shall be eligible pursuant to this subparagraph if an application for certification is submitted to the Energy Commission after January 1, 2013. Only one retail seller or local publicly owned electric utility shall be deemed to have procured electricity from a given unit as of December 31, 2005.
(ii) Notwithstanding clause (i), a local publicly owned electric utility that meets the criteria of subdivision (j) of Section 399.30 may sell to another local publicly owned electric utility electricity from small hydroelectric generation units that qualify as eligible renewable energy resources under clause (i), and that electricity may be used by the local publicly owned electric utility that purchased the electricity to meet its renewables portfolio standard procurement requirements. The total of all those sales from the utility shall be no greater than 100,000 megawatt hours of electricity.
(iii) The amendments made to this subdivision by the act adding this subparagraph are intended to clarify existing law and apply from December 10, 2011.
(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(211) “Linkage” means the approval of compliance instruments from an external greenhouse gas emission trading system (GHG ETS) to meet compliance obligations under this article, and the reciprocal approval of compliance instruments issued by California to meet compliance obligation in an external GHG ETS.

(310) “Qualified Export” means electricity that is exported in the same hour as imported electricity and documented by NERC E-tags. When imports are not documented on NERC E-tags, because a facility or unit located outside the state of California has a first point of interconnection with a California balancing authority area, the reporting entity may demonstrate hourly electricity delivery consistent with the record keeping requirements of the California balancing authority area, including records of revenue quality meter data, invoices, or settlements data. Only electricity exported within the same hour and by the same importer as the imported electricity is a qualified export. It is not necessary for the imported and exported electricity (as defined in the MRR) to enter or leave California at the same intertie. Qualified exports shall not result in a negative compliance obligation for any hour.

§ 95811. Covered Entities.

This article applies to all of the following entities with associated GHG emissions pursuant to section 95812:

(a) Operators of Facilities. The operator of a facility within California that has one or more of the following processes or operations:

(1) Cement production;

(2) Cogeneration;

(3) Glass production;

(4) Hydrogen production;

(5) Iron and steel production;

(6) Lead Production;

(7) Lime manufacturing;

(8) Nitric acid production;

(9) Petroleum and natural gas systems, as specified in section 95852(h);

(10) Petroleum refining;

(11) Pulp and paper manufacturing;

(12) Self-generation of electricity; or

(13) Stationary combustion.

(b) First Deliverers of Electricity.

(1) Electricity generating facilities: the operator of an electricity generating facility located in California; or

(2) Electricity importers.

(c) Suppliers of Natural Gas. An entity that distributes or uses natural gas in California as described below:

(1) A public utility gas corporation operating in California;

(2) A publicly owned natural gas utility operating in California; or

(3) The operator of an intrastate pipeline not included in section 95811(c)(1) or section 95811(c)(2) that distributes natural gas directly to end users.

(d) Suppliers of RBOB and Distillate Fuel Oil. A position holder of one or more of the following fuels, or an enterer that imports one or more of the following fuels into California:

(1) RBOB;

(2) Distillate Fuel Oil No. 1; or

(3) Distillate Fuel Oil No. 2.

(e) Suppliers of Liquefied Petroleum Gas.

(1) The operator of a refinery that produces liquid petroleum gas in California;

(2) The operator of a facility that fractionates natural gas liquids to produce liquid petroleum gas; or

(3) A consignee of liquefied petroleum gas into California as defined under MRR.

(f) Sections 95811(c), (d), and (e) apply to suppliers of blended fuels that contain the fuels listed above.

(g) Suppliers of Liquefied Natural Gas.

(1) Operators of liquefied natural gas production facilities that produce liquefied natural gas products from natural gas received from interstate pipelines as described in section 95122 of MRR;

(2) Importers of liquefied natural gas.

(h) Carbon dioxide suppliers.

§ 95812. Inclusion Thresholds for Covered Entities.

(a) The inclusion threshold for each covered entity is based on the subset of greenhouse gas emissions that generate a compliance obligation for that entity as specified in section 95852. The entity must report and verify annual emissions pursuant to sections 95100 through 95157 of MRR.

(b) If an entity's reported or reported and verified annual emissions in any data year from 2009 through 2012 from the categories specified in section 95852(a) or (b) equal or exceed the thresholds identified below, that entity is classified as a covered entity as of January 1, 2013, and for all future years until any requirement set forth in section 95812(e) is met.

(c) The requirements apply as follows:

(1) Operators of Facilities. The applicability threshold for a facility is 25,000 metric tons or more of CO2e per data year.

(2) First Deliverers of Electricity.

(A) Electricity Generating Facilities. The applicability threshold for an electricity generating facility is based on the annual emissions from which the electricity originated. The applicability threshold for an electricity generating facility is 25,000 metric tons or more of CO_2e per data year.

(B) Electricity importers. The applicability threshold for an electricity importer is based on the annual emissions from each of the electricity importer's sources of delivered electricity.

1. All emissions reported for imported electricity from specified sources of electricity that emit 25,000 metric tons or more of CO_2e per year are considered to be above the threshold.
2. All emissions reported for imported electricity from unspecified sources are considered to be above the threshold.

(3) Carbon Dioxide Suppliers. The applicability threshold for a carbon dioxide supplier is 25,000 metric tons or more of CO2e per year. For purpose of comparison to this threshold, the supplier must include the sum of the CO2 that it captures from its production process units for purposes of supplying CO_2 for commercial applications or that it captures from a CO_2 stream to utilize for geologic sequestration, and the CO_2 that it extracts or produces from a CO_2 production well for purposes of supplying for commercial applications or that it extracts or produces to utilize for geologic sequestration.

(4) Petroleum and Natural Gas Facilities. The applicability threshold for a petroleum and natural gas facility 25,000 metric tons or more of CO2e per data year. This threshold is applied for each facility type specified in section 95852(h).

(d) If an entity's annual, assigned, or reported and verified emissions from any data year between 2011-2014 equal or exceed the thresholds identified below from the categories specified in sections 95851(a), (b), and (d) then that entity is classified as a covered entity as of January 1, 2015, for the year in which the threshold is reached and for all future years until any requirement set forth in section 95812(e) is met.

(1) Fuel Suppliers. The threshold for a fuel supplier is 25,000 metric tons or more of CO2e annually from the emissions of GHG that would result from full combustion or oxidation of the quantities of the fuels, identified in section 95811(c) through (g), which are imported and/or delivered to California.

(2) Electricity importers. The threshold for an electricity importer of specified source of electricity is zero metric tons of CO2e 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 CO2e 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.

(e) Effect of Reduced Emissions on an Entity's Compliance Obligation. A covered entity continues to have a compliance obligation for each data year of a compliance period, until the subsequent compliance period after one of the following conditions occurs:

(1) Annual reports demonstrate GHG emissions less than 25,000 metric tons of CO2e per year during one entire compliance period; or

(2) A covered entity has ceased reporting and shuts down all processes, units, and supply operations subject to reporting, and has followed the requirements of section 95101(h) of MRR.

(f) If a covered entity or opt-in covered entity ceases all operation or "shuts down," the following shall apply:

(1) The entity must comply with MRR cessation of reporting provisions per 95101(h).

(2) Within 30 days of shut down, the entity must inform ARB in writing that it has shut down. If not part of a consolidated tracking system account, the entity will become a voluntarily associated entity. If part of a consolidated tracking system account, the entity that has shut down will become a voluntarily associated entity within the consolidated tracking system account.

(3) For a formerly covered or opt-in covered entity, within 30 days of fulfilling its compliance obligation for its final year of operations, the entity must request (in writing) permission from ARB to:

(A) remain in the tracking system account as a voluntarily associated entity pursuant to 95814(a)(1), or

(B) close its tracking system account (if not part of a consolidated tracking system account), or remove the covered entity or opt-in covered entity from its tracking system account (if part of a consolidated tracking system account).

(4) Return of future free allocation. If an entity received allocation of a vintage subsequent to the calendar year that the facility ceased operation, the facility shall return to the Executive Officer the number of allowances equal to the directly allocated allowances for the corresponding budget years in which it had no production. The submission of request to return allowances must occur within five days of settlement of the first auction or reserve sale conducted by ARB following the applicable surrender date, whichever is later, and for which the registration deadline has not passed at the time of the final compliance obligation for its final year of operation. The returned allowances will be auctioned pursuant to section 95910.

(5) Prorated final free allocation. In calendar year following shut down, if a facility receives allocation that includes a true-up pursuant to sections 95852(k), 95870(e), 95870(f), 95891(b), 95891(c), 95891(d), 95891(e), or 95894(c) only the true-up shall be calculated. This value shall include any previous negative balance of allowance allocation pursuant to 95870(i).

(A) If true-up is positive, the calculated true-up amount shall be directly distributed to the facility in the vintage of the calendar year following shut down.

(B) If true-up is negative, the facility shall return to the Executive Officer the number of allowances equal to the negative amount in the vintage of or before the calendar year following shut down. The submission for retirement must occur within five days of settlement of the first auction or reserve sale conducted by ARB following the applicable surrender date, whichever is later, and for which the registration deadline has not passed at the time of the final compliance obligation for its final year of operation. The Executive Officer will auction the returned allowances pursuant to section 95910.

(6) If the entity requests that ARB close its account in the tracking system and there are compliance instruments remaining in the entity's accounts, ARB will auction the allowances pursuant to 95831(c)(4).

(g) Change of Entity Type. At the end of any compliance period, a covered entity may apply to change its entity type in the program, if its annual emission levels for each year in the compliance period remain below the inclusion thresholds set forth in section 95812. This application must be made to the Executive Officer by September 1 of the last calendar year of the compliance period. If an entity does not apply to the Executive Officer, the facility will automatically become an voluntarily associated entity pursuant to 95812(g)(2). A covered entity that applies to change its entity type may choose one of the following:

(1) Remain in the Cap-and-Trade Program as an opt-in covered entity pursuant to 95813;

(2) Remain in the Cap-and-Trade Program as a voluntarily associated entity pursuant to 95814;

(A) If the entity has a negative balance of allowance allocation pursuant to 95870(i), the entity shall submit to the Executive Officer for the retirement of the number of allowances equal to the negative amount in the vintage of or before the final calendar year of the compliance period. The submittal for retirement must occur within five days of settlement of the first auction or reserve sale conducted by ARB following the applicable surrender date, whichever is later, and for which the registration deadline has not passed at the time of the final compliance obligation for its final year of operation.

(3) Opt out of the Cap-and-Trade Program.

(A) An entity choosing to opt out of the program must continue to report pursuant to MRR in the calendar year following the final year of a compliance period and fulfill its compliance obligations as required pursuant to 95856.

(B) If the entity has a negative balance of allowance allocation pursuant to 95870(i), the entity shall return to the Executive Officer the number of allowances equal to the negative amount in the vintage of or before the final calendar year of the compliance period. The submittal for retirement must occur within five days of settlement of the first auction or reserve sale conducted by ARB following the applicable surrender date, whichever is later, and for which the registration deadline has not passed at the time of the final compliance obligation for its final year of operation.

(C) If the entity closes its account in the tracking system and there are compliance instruments remaining in the entity's accounts, ARB will auction the allowances pursuant to 95831(c)(4).

§ 95852. Emission Categories Used to Calculate Compliance Obligations.

(a) Operators of Facilities.

(1) An operator of a facility covered under sections 95811(a) and 95812(c)(1) has a compliance obligation for every metric ton of CO_2e for which a positive or qualified positive emissions data verification statement is issued per section 95131 of MRR, including process emissions, stationary combustion emissions and vented emissions. If ARB has assigned emissions for the sources subject to a compliance obligation pursuant to this section, the facility will have a compliance obligation equal to the value of every metric ton of CO_2e assigned emissions. The entity's compliance obligation will be assessed at the facility level unless otherwise noted under section 95812(c).

(2) Beginning in 2015, combustion emissions resulting from burning RBOB, distillate fuel oils, or natural gas liquids are not included when calculating an operator's compliance obligation.

(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_2e 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.

(1) Calculation of emissions for compliance obligation.

(A) For first deliverers that are operators of an electricity generating facility in California, the calculation for compliance obligation includes all emissions reported and verified or assigned pursuant to MRR, except emissions without a compliance obligation pursuant to section 95852.2.

(B) For first deliverers that are electricity importers, emissions with a compliance obligation are calculated using the following equation:

Where:

$$CO_2e_{covered} = CO_2e_{unspecified} + \left(CO_2e_{specified} - CO_2e_{specified-not\ covered}\right) - CO_2e_{RPS\_adjustment} - CO_2e_{QE\_adjustment} - CO_2e_{linked}$$

$CO_2e_{covered}$ = Annual metric tons of CO_2e with a compliance obligation. $CO_2e_{unspecified}$ = Annual metric tons of CO_2e from unspecified imported electricity calculated pursuant to MRR 95111(b)(1).

$CO_2e_{specified}$ = Annual metric tons of CO_2e from imported electricity from specified sources that meet the requirements of MRR section 95111(b)(1).

$CO_2e_{specified\text{-}not\ covered}$ = Annual metric tons of CO_2e without a compliance obligation pursuant to section 95852.2. from specified sources that meet the requirements in MRR section 95111(b)(1).

$CO_2e_{RPS\_adjustment}$ = Annual metric tons of CO_2e calculated pursuant to MRR that meets the requirements of section 95852(b)(4).

$CO_2e_{QE\_adjustment}$ = Annual metric tons of CO_2e from qualified exports pursuant to MRR section 95111 that meet the requirements of section 95852(b)(5).

CO_2e_{linked} = Annual metric tons of CO_2e from electricity with a first point of receipt located in a jurisdiction where a GHG emissions trading

system has been approved for linkage by the Board pursuant to subarticle 12.

(C) All deliveries of electricity not meeting the requirements for specified sources pursuant to MRR will have emissions calculated using the default emission factor for unspecified electricity pursuant to section MRR 95111(b)(1).

(2) Resource shuffling is prohibited and is a violation of this article.

(A) The following substitutions of electricity deliveries from a lower emission resource for electricity deliveries from a higher emission resource shall not constitute resource shuffling:

1. Electricity deliveries that are caused by the procurement of electricity eligible to be counted towards and purchased for Renewable Portfolio Standard (RPS) compliance in California.
2. Electricity deliveries made for the purpose of compliance with state or federal laws and regulations, including the Emission Performance Standard (EPS) rules established by CEC and the CPUC pursuant to public utilities code section 8340 et. seq.
3. Electricity deliveries made for the purpose of compliance with requirements related to maintaining reliable grid operations, such as North American Electric Reliability Corporation (NERC) Reliability Standards, and Reliability Coordinator directives, including the provision of electricity between balancing authorities or load-serving entities when required to alleviate emergency grid conditions.
4. Electricity deliveries made for the purpose of compliance with either a judicially approved settlement of litigation or a settlement of a transaction dispute

pursuant to the dispute resolution terms and conditions of a contract for reasons other than reducing GHG compliance obligations.

5. Electricity deliveries that substitute for power previously supplied by a specified source that has been retired.
6. Electricity deliveries that substitute for deliveries that have been discontinued because of termination of a contract or divestiture of resources for reasons other than reducing a GHG compliance obligation.
7. Electricity deliveries that are necessitated by early termination of a contract for, or full or partial divestiture of, resources subject to the EPS rules.
8. Electricity deliveries that are necessitated by expiration of a contract.
9. Electricity deliveries pursuant to contracts for short-term delivery of electricity with terms of no more than 12 months, for either specified or unspecified power, linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electrical Distribution Utility has a contract, or in which a California Electrical Distribution Utility has an ownership share, and based on economic decisions including congestion costs but excluding implicit and explicit GHG costs. In evaluating these short-term deliveries of electricity, ARB will consider the levels of past sales and purchases from similar resources of electricity, among other factors, to judge whether the activity is resource shuffling.
10. Short-term transactions and contracts for delivery of electricity with terms of no more than 12 months, or resulting from an economic bid or self-schedule that clears the CAISO day-ahead or real-time market, for either specified or unspecified power, based on economic decisions including implicit and explicit GHG costs and congestion costs, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract, or in which a California Electricity Distribution Utility has an ownership share, that is not covered under paragraphs 11., 12., or 13. below.
11. Electricity deliveries that are necessitated by operational emergencies or transmission or distribution constraints, including constraints caused by the inability to obtain or retain transmission rights, transmission curtailments or outages, or emergencies.

12. Electricity deliveries that are necessitated because a First Deliverer has more than enough electricity to meet demand as a result of the First Deliverer being required to take electricity from specific generating units, including requirements due to electricity contracts with "must-take" or "must-run" provisions.

13. Deliveries of electricity that are required to make up for transmission losses associated with electricity deliveries in California.

(B) Prohibited substitutions of electricity deliveries from a higher emission resource with electricity deliveries from a lower emission resource include:

(1) Substituting relatively lower emission electricity to replace electricity generated at a high emission power plant procured by a First Deliverer under a long-term contract or ownership arrangement, when the power plant does not meet California's EPS, and the substitution is made to reduce a First Deliverer's compliance obligation.

(2) Assigning a long-term contract for high emission electricity specified in section 95852(b)(2)(B)1. directly above to a third party, for the purpose of reducing a compliance obligation.

(3) The following criteria must be met for electricity importers to claim a compliance obligation for delivered electricity based on a specified source emission factor or asset controlling supplier emission factor.

(A) Electricity deliveries must be reported to ARB and emissions must be calculated pursuant to MRR section 95111.

(B) The electricity importer must be the facility operator or have right of ownership or a written power contract, as defined in MRR section 95102(a), to the amount of electricity claimed and generated by the facility or unit claimed;

(C) The electricity must be directly delivered, as defined in MRR section 95102(a), to the California grid; and

(D) If RECs were created for the electricity generated and reported pursuant to MRR, then the REC serial numbers must be reported and verified pursuant to MRR.

(4) RPS adjustment. Electricity procured from an eligible renewable energy resource reported pursuant to MRR must meet the following conditions to be included in the calculation of the RPS adjustment:

(A) The electricity importer must have:

1. Ownership or contract rights to procure the electricity

and the associated RECs generated by the eligible renewable energy resource; or

2. A contract with an entity subject to the California RPS that has ownership or contract rights to the electricity and associated RECs generated by the eligible renewable energy resource, as verified pursuant to MRR.

(B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the California RPS, and party to the contract in 95852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.25, and designated as retired for the purpose of compliance with the California RPS program within 45 days of the reporting deadline specified in section 95111(g) of MRR for the year for which the RPS adjustment is claimed.

(C) The quantity of emissions included in the RPS adjustment is calculated as the product of the default emission factor for unspecified sources, pursuant to MRR, and the reported electricity generated (MWh) that meets the requirements of this section, 95852(b)(4).

(D) No RPS adjustment may be claimed for an eligible renewable energy resource when its electricity is directly delivered.

(E) No RPS adjustment may be claimed for electricity generated by an eligible renewable energy resource in a jurisdiction where a GHG emissions trading system has been approved for linkage by the Board pursuant to subarticle 12.

(F) Only RECs representing electricity generated after 12/31/2012 are eligible to be used towards the RPS adjustment.

(5) QE adjustment. An adjustment to the compliance obligation pursuant to the calculation in 95852(b)(1) may be made for exported and imported electricity during the same hour by the same PSE. Emissions included in the QE adjustment for qualified exports claimed by a first deliverer must meet the following requirements:

(A) During any hour in which an electricity importer claims qualified exports and corresponding imports, the maximum amount of QE adjustment for the hour shall not exceed the product of:

1. The lower of either the quantity of exports or imports (MWh) for the hour; multiplied by

2. The lowest emission factor of any portion of the qualified exports or corresponding imports for the hour.

(B) Emissions and MWhs included in the QE adjustment must be reported and verified or assigned pursuant to MRR, and must be documented by hourly import and export data pursuant to MRR.

(c) Suppliers of Natural Gas. A supplier of natural gas covered under sections 95811(c) and 95812(d) has a compliance obligation for every metric ton CO_2e of GHG emissions that would result from full combustion or oxidation of all fuel delivered to end users in California contained in an emissions data report that

has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned, less the fuel that is delivered to covered entities, as follows:

(1) Suppliers of natural gas shall report the total metric tons CO_2e of GHG emissions delivered to all end users in California pursuant to section 95122 of MRR;

(2) ARB shall calculate the metric tons CO_2e of GHG emissions for natural gas delivered to covered entities which are customers of the supplier. The emissions will be calculated using the reported deliveries (in MMBtu) contained in natural gas supplier emissions data reports that received a positive or qualified positive emissions data verification statement. Natural gas received data (in MMBtu) contained in covered facility emissions data reports that received positive or qualified positive emissions data verification statements will be used to cross check delivery data reported by natural gas suppliers, and will serve as a second source of data in instances of missing supplier data. In the event that a natural gas supplier receives an adverse verification statement, ARB will use the provisions described in section 95131(c)(5) of the MRR to calculate the supplier's assigned emission level;

(3) ARB shall provide the supplier of natural gas a listing of all customers and aggregate natural gas (in MMBtu) and emissions calculated from the supplier's natural gas delivered to covered entities; and

(4) The Executive Officer shall calculate the metric tons CO_2e for which the supplier will be required to hold a compliance obligation based on the supplier's reported emissions less ARB's calculated emissions from deliveries to covered entities which are customers of the supplier. The Executive Officer shall provide this value to the supplier of natural gas within 30 days of the verification deadline in section 95103 of MRR.

(d) Suppliers of RBOB and Distillate Fuel Oils. A supplier of petroleum products covered under sections 95811(d) or 95812(d) has a compliance obligation for every metric ton CO_2e 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 the following fuels that are removed from the rack in California, sold to entities not licensed by the California Board of Equalization as a fuel supplier, or imported into California and not directly delivered to the bulk-transfer/terminal system as defined in section 95102 of MRR, except for products for which a final destination outside California can be demonstrated:

(1) RBOB;

(2) Distillate Fuel Oil No. 1; and

(3) Distillate Fuel Oil No. 2.

(e) Suppliers of Liquefied Petroleum Gas:

(1) A producer of liquefied petroleum gas covered under sections 95811(e) and 95812(d) has a compliance obligation for every metric ton CO_2e 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 all fuel sold, distributed, or otherwise transferred for consumption in California; and

(2) An importer consignee, as defined under MRR, of liquefied petroleum gas covered under section 95811(e) has a compliance obligation for every metric ton CO_2e 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 all fuel imported into California.

(f) Suppliers of Blended Fuels. An entity that supplies any of the fuels covered under sections 95811(f) and 95812(d) as blended fuels has an aggregated compliance obligation for every metric ton of CO_2e of GHG emissions based on the separate constituents of the blend 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 fuel.

(g) Carbon Dioxide Suppliers. An entity that supplies carbon dioxide, “Carbon Dioxide Supplier” or CO_2 Supplier”, covered under sections 95811(h) and 95812(c)(3) has an aggregated compliance obligation based on the sum of MT CO_2 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 minus exported CO_2 that is not geologically sequestered, and minus CO_2 verified to be geologically sequestered through use of a Board-approved carbon capture and geologic sequestration quantification methodology that ensures that the emissions reductions are real,

permanent, quantifiable, verifiable, and enforceable. Emissions of CO_2 already covered with a compliance obligation upstream are not included.

(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_2e 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 report, or for which emissions have been assigned.

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

(1) Emissions of CO2, CH4, and N2O which resulted from combustion of fossil fuel;

(2) Emissions of CH4 and N2O which resulted from combustion of all biomass- derived fuel;

(3) Emissions of CO_2 which resulted from combustion of biomass-derived fuels that do not meet the requirements in section 95852.2(a);

(4) Emissions of CO_2 which resulted from combustion of biomass-derived fuels pursuant to section 95852.1; and

(5) All process and vented emissions of CO_2, CH_4, and N_2O as specified in the MRR except for those listed in section 95852.2(b).

(j) Limited Exemption of Emissions from the Production of Qualified Thermal Output During the First, Second, and Third Compliance Periods. During the first, second, and third compliance periods, emissions from the production of qualified thermal output from a district heating facility or a facility with a cogeneration unit that meets the requirements of this section and has been approved by the Executive Officer for an emissions exemption shall not have a compliance obligation and shall not count toward the inclusion threshold of section 95812(c)(1). A facility that qualifies for this limited exemption shall not be a covered entity during the first, second, and third compliance periods.

(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_2e:

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

Where:

"GHG_{QTO}" is the annual covered emissions for each calendar year, in metric tons of CO_2e, associated with the production of qualified thermal output;

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

(B) The facility's remaining covered emissions, calculated pursuant to the following equation, are less than 25,000 metric tons of CO2e:

$$GHG_R = {}_{tal} - GHG_{QT}$$

Where:

"GHG_R" is the annual remaining covered emissions, in metric tons of CO_2e.

"GHG_{Total}" is total annual covered emissions, in metric tons of CO_2e.

(2) A district heating facility may apply for the qualified thermal output emissions exemption if the annual emissions associated with qualified thermal output distributed to each single facility on its system do not exceed 25,000 $MTCO_2e$ for each year from 2008 to 2013, and will remain eligible until the year in which this condition is not met:

(A) Emissions associated with a single facility are calculated using the following equation:

$$GHG_{sf} = Q_{sf} * 0.06244$$

Where:

"GHG_{sf}" is the emissions associated with a single facility.

"Q_{sf}" is the amount of Qualified Thermal Output provided to a single facility, measured in MMBtu.

(3) Data Sources. The Executive Officer may employ all available data reported to ARB under MRR for data years 2008-2013 to determine a facility's initial eligibility for the limited exemption of emissions from the production of qualified thermal output.

(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, 2014:

(A) Annual qualified thermal output for each year from 2008 to 2013, in MMBtu.

(B) A district heating facility must provide the amount of qualified thermal output provided to each single facility it serves.

(C) The application must include the following attestation:

"I certify under penalty of perjury of the laws of the State of California that I am duly authorized by [name of entity] to sign this attestation on behalf of [name of entity], and that the information submitted herein is true, accurate, and complete."

(D) Operators of facilities that meet the requirements of this section must register in the tracking system pursuant to section 95830.

(E) Operators of facilities that meet the requirements of this section must report and verify emissions pursuant to MRR.

(k) Limited Exemption of Emissions for Waste-to-Energy Facilities. Emissions reported and verified in the first compliance period and in data year 2015 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 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.

(5) 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 2013,2014, and 2015 data years into their compliance account. These allowances will be used to meet the facility's 2013, 2014, and 2015 compliance obligations. The 2015 vintage true-up allowances will be deposited by October 24, 2014 for the 2013 data year's reported and verified emissions. The 2016 vintage true-up allowances will be deposited by October 24, 2015 for the 2014 year's reported and verified emissions. The 2017 vintage true-up allowances will be deposited by October 24, 2016 for the 2015 data 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.

(l) Suppliers of Liquefied Natural Gas. A supplier of liquefied natural gas covered under sections 95811(g) or 95812(d) has a compliance obligation for every metric ton CO_2e 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 on liquefied natural gas or compressed natural gas imported into California, except for products for which a final destination outside California can be demonstrated.

§ 95852.1. Compliance Obligations for Biomass-Derived Fuels.

An entity that has emissions from combustion of biomass-derived fuels is required to report and verify its emissions pursuant to MRR and has a compliance obligation for every metric ton of CO_2e emissions:

(a) From combustion of fuel types that are not listed under section 95852.2; or

(b) From combustion of fuels that do not meet the requirements of section 95852.1.1; or

(c) That are reported as non-exempt biomass derived CO2 under MRR.

§ 95852.1.1. Eligibility Requirements for Biomass-Derived Fuels.

(a) Biomass-derived fuel procured under contracts for biogas and biomethane must meet one of the following criteria. Only the portion of the fuel that meets one of these criteria will be considered a biomass-derived fuel. Emissions from combustion of this fuel will not be subject to a compliance obligation when reported as Biomass CO2 in an emissions data report that has received a positive or qualified positive emissions data verification statement and determined as exempt pursuant to section 95852.2 and 95131(j) of MRR.

(1) The contract for purchasing any biomass-derived fuel must be executed prior to January 1, 2012 and remain in effect or have been renegotiated with the same California operator within one year of contract expiration. The delivery of the fuel under the contract must commence by one of the following dates to be eligible under this provision:

(A) 90 days after the execution date of the signed contract; or

(B) January 1, 2012; or

(C) 10 days after the date on which the CEC provides notice that the operator's electricity generating facility is certified as eligible for California's Renewables Portfolio Standard for the contracted biomass- derived fuel, or cannot be so certified, provided that the application for certification was submitted to the CEC before January 1, 2012.

(2) If the biomass-derived fuel does not meet the requirements of 95852.1.1(a)(1) then the biomass-derived fuel must meet one of the following requirements and the entity claiming the biomass-derived fuel must be the first entity to contract for the biomass-derived fuel:

(A) An increase in the biomass derived fuel production capacity, at a particular site, where an increase is considered any amount over the average production at that site over the last three years; or

(B) Recovery of the fuel at a site where the fuel was previously being vented or destroyed for at least three years or since commencement of fuel recovery operations, whichever is shorter, without producing useful energy transfer.

(3) If the biogas or biomethane is used at the site of production, and not transferred to another operator, thus not requiring a contract, the operator must demonstrate one of the following:

(A) The fuel has been combusted in California prior to January 1, 2012; or

(B) The fuel was not previously used to produce useful energy transfer for at least three years or since commencement of fuel recovery operations, whichever is shorter.

(4) The fuel being provided under a contract is for a fuel that was previously eligible under sections 95852.1.1(a)(1), (2) or (3), and the verifier is able to track the fuel to the previously eligible contract.

(b) An entity may not sell, trade, give away, claim, or otherwise dispose of any of the carbon credits, carbon benefits, carbon emissions reductions, carbon offsets or allowances, howsoever entitled, attributed to the fuel production that would, when combined with the CO2 emissions from complete combustion of the fuel, result in more CO2e emissions than would have occurred in the absence of the fuel production. In the case of biomethane or biogas produced from digesters or landfills, the resulting credit for avoided methane emissions may not exceed the global warming potential as listed in MRR for methane plus 2.75 in metric tons of CO2e per ton of captured

methane. This includes any credit received by an entity in the Carbon Intensity calculation under the Low Carbon Fuel Standard Regulation (title 17, California Code of Regulations (CCR), sections 95480-95490) for methane capture. All calculations of CO2e emissions are based on the 100-year global warming potentials included in MRR. Generation of Renewable Energy Credits is excluded from this analysis and will not prevent a biomass-derived fuel that meets the requirements in this section from being exempt from a compliance obligation.

§ 95852.2. Emissions without a Compliance Obligation.

Emissions from the following source categories and from the combustion of the following fuel types count toward applicable reporting thresholds, as applicable in MRR, but do not count toward a covered entity's compliance obligation set forth in this article unless those emissions are reported as non-exempt biomass- derived CO_2 under MRR. Emissions without a compliance obligation include:

(a) CO_2 emissions from combustion of the following biomass-derived fuels:

(1) The biogenic fraction of solid waste materials as reported under MRR;

(2) Waste pallets, crates, dunnage, manufacturing and construction wood wastes, tree trimmings, mill residues, and range land maintenance residues;

(3) All agricultural crops or waste;

(4) Wood and wood wastes identified to follow all of the following practices:

(A) Harvested pursuant to an approved timber management plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 or other locally or nationally approved plan; and

(B) Harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(5) Biodiesel:

(A) Agri-biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds,

cottonseeds, canola, cramble, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(B) Biodiesel is defined as monoalkyl esters of long chain fatty acids derived from the following plant or animal matter that meets the requirements of the American Society of Testing Materials (ASTM) D6751:

1. Waste oils;
2. Tallow; or
3. Virgin oils.

(6) Fuel ethanol (including denaturant):

(A) Cellulosic biofuel produced from lignocellulosic or hemicellulosic material that has a proof of at least 150 without regard to denaturants;

(B) Corn starch; or

(C) Sugar cane.

(7) The biogenic fraction of municipal solid waste as reported under MRR, including MSW directly combusted or converted to a cleaner-burning fuel;

(8) Biomethane and biogas from the following sources:

(A) All animal, plant and other organic waste; or

(B) Landfills and wastewater treatment plants;

(9) Renewable diesel.

(b) The following additional process, vented, and fugitive emissions:

(1) Emissions from geothermal generating units and geothermal facilities, including geothermal geyser steam or fluids;

(2) Emissions from natural gas hydrogen fuel cells;

(3) Vented and fugitive emissions from storage tanks used in petroleum and natural gas production and natural gas transmission;

(4) Vented and fugitive emissions reported under sections 95152(e) and (i) of MRR by local distribution companies that report under section 95122 of MRR;

(5) Vented and fugitive emissions from natural gas transmission storage tanks used in petroleum and natural gas production and natural gas transmission, and from produced water;

(6) Emissions reported by petroleum refineries from asphalt blowing operations, equipment leaks, storage tanks, and loading operations;

(7) Emissions from low bleed pneumatic devices;

(8) Emissions from high bleed pneumatic devices reported prior to January 1, 2015;

(9) Vented emissions from well-site centrifugal and reciprocating compressors with a rated horsepower less than 250hp;

(10) Sources for which fugitive emissions are estimated using leak detection and leaker emission factors, as required by section 95153(o) of MRR, and sources for which vented and fugitive emissions are estimated using a population count and emissions factors, as required by section 95153(p) of MRR;

(11) Sources for which emissions originate from offshore petroleum and natural gas production facilities, as provided in section 95153(q) of MRR;

(12) Carbon dioxide that is exported for purposes other than geologic sequestration or enhanced oil recovery; and

(13) Carbon dioxide used in the carbonation process during sugar production in facilities with NAICS code 311313.

(c) Other Exemptions. The operators of facilities with any of the following activities are exempt from compliance with this article:

(1) NAICS Code 92811.

§ 95840. Compliance Periods.

Duration of Compliance Periods is as follows:

(a) The first compliance period starts on January 1, 2013, and ends on December 31, 2014.

(b) The second compliance period starts on January 1, 2015, and ends on December 31, 2017.

(c) The third compliance period starts on January 1, 2018, and ends on December 31, 2020.