Discussion Draft - March 30, 2012
Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

Background

On February 3, 2012, staff held a workshop to initiate the rulemaking for amendments to the Cap-and-Trade Regulation (Regulation) to allow for the use of Quebec issued compliance instruments for meeting the compliance obligation by entities in California subject to the Regulation.

As part of the public process for this rulemaking, staff is providing this discussion draft of the proposed amendments. Stakeholders are invited to review and provide comments on the proposed amendments by April 13, 2012. Those comments can be electronically submitted at:

http://www.arb.ca.gov/cc/capandtrade/comments.htm

The list below provides a summary of the substantive proposed amendments.

Proposed Amendments

- Allow for use of Quebec's compliance instruments by entities subject to the California cap-and-trade program
- Allow entities complying with Quebec's regulation to use California GHG allowances and offsets
- One auction in 2012, on November 14
- Know-your–customer requirements for account registration
- Consolidated accounts for corporate affiliates
- Increase of number of individuals associated with a set of accounts
- Additional detail around auction process
- Removal of beneficial holdings provisions
- Purchase limits for all covered entities
- Changes to Holding Limit for Future Vintage allowances
- Process for adjustments to the Holding Limit Exemption
- Adjustments to compliance instrument transfer process

Discussion Draft – March 30, 2012

Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023, Title 17, California Code of Regulations, to read as follows:

Article 5: AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS TO ALLOW FOR THE USE OF COMPLIANCE INSTRUMENTS ISSUED BY LINKED JURISDICTIONS

Note: ARB is providing this discussion draft to provide stakeholders an opportunity to review staff thinking on the potential amendments to the cap-and-trade regulation to link the California cap-and-trade program with the Quebec program. All new proposed text is in underline. All existing text proposed for deletion is in ~~strikethrough.~~ Please note areas of discussion where staff is seeking input on specific areas of the draft regulation.

Subarticle 2: Purpose and Definitions

§ 95801. Purpose.

The purpose of this article is to reduce emissions of greenhouse gases associated with entities identified in this article through the establishment, administration, and enforcement of the California Greenhouse Gas Cap-and-Trade Program by applying an aggregate greenhouse gas allowance budget on covered entities and providing a trading mechanism for compliance instruments.

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.

§ 95802. Definitions.

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

“Account Viewing Agent” means an individual authorized by a registered entity to view all the information on the entity’s accounts contained in the tracking system.

(1) “Accounts Administrator” means the entity acting in the capacity to administer the accounts identified in this regulation. This may be ARB, or could be an entity ARB enters into a contract with.

(2) “Activity-Shifting Leakage” means increased GHG emissions or decreased GHG removals that result from the displacement of activities or resources from inside the offset project’s boundary to locations outside the offset project’s boundary as a result of the offset project activity.

(3) “Additional” means, in the context of offset credits, greenhouse gas emission *reductions or removals that exceed any greenhouse gas reduction or* removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-usual scenario.

(4) "Adjusted Clinker and Mineral Additives Produced" means annual amount of clinker and mineral additives (limestone and gypsum) derived by using the following metric: Adjusted clinker and mineral additives produced = clinker produced x (1 + (limestone and gypsum consumed)/clinker consumed)).

(5) “Adverse Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement, or that it cannot attest that the Offset Project Data Report conforms to the requirements of this article or applicable Compliance Offset Protocol.

~~(6) “Agent” in a beneficial holdings relationship pursuant to 95834 means the registered entity acquiring and holding compliance instruments to be transferred to another entity under an agreement disclosed to ARB.~~

(7) “Air Dried Ton of Paper” means paper with 6 percent moisture content.

(8) “Allowance” means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

(9) “Alternate Authorized Account Representative” means the single entity identified during the account application process who may act on behalf of the authorized account representative.

(10) “Annual Allowance Budget” means the number of California Greenhouse Gas Allowances associated with one year of the Cap-and-Trade Program in subarticle 6.

(11) "API Gravity" means a scale used to reflect the specific gravity (SG) of a fluid such as crude oil, water, or natural gas. The API gravity is calculated as [(141.5/SG) - 131.5], where SG is the specific gravity of the fluid at 60℉, where API refers to the American Petroleum Institute.

(12) “ARB Offset Credit” means a tradable compliance instrument issued by ARB that represents a GHG reduction or GHG removal enhancement of one metric ton of CO_2e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable.

(13) "Asphalt" means a dark brown-to-black, cement-like material obtained by petroleum processing and containing bitumens as the predominant component. It includes crude asphalt as well as the following finished products: cements, fluxes, the asphalt content of emulsions (exclusive of water), and petroleum distillates blended with asphalt to make cutback asphalts.

(14) “Asset Controlling Supplier” means any entity that owns or operates electricity generating facilities or serves as an exclusive marketer for certain generating facilities even though it does not own them, and is assigned a supplier-specific identification number and specified source emission factor by ARB for the wholesale electricity procured from its system and imported into California. Bonneville Power Administration (BPA) is recognized by ARB as an asset controlling supplier.

(15) "Assigned Emissions" or "Assigned Emissions Level" means an amount of emissions, in CO_2e, assigned to the reporting entity by the Executive Officer under the requirements of section 95103(g) of MRR.

(16) "Associated Gas" or "Produced Gas" means a natural gas that is produced from gas wells or gas produced in association with the production of crude oil.

(17) "Auction" means the process of selling California Greenhouse Gas Allowances, along with allowances from external Greenhouse Gas emissions trading systems with which California has linked its Cap-and-Trade program, by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

(18) "Auction Purchase Limit" means the limit on the number of allowances one entity or a group of affiliated entities may purchase from the share of allowances sold at a quarterly auction.

(19) "Auction Reserve Price" means a price for allowances below which bids at auction would not be accepted.

(20) "Auction Settlement Price" means the price announced by the auction administrator at the conclusion of each quarterly auction. It is the price which all successful bidders will pay for their allowances and also the price to be paid to those entities which consigned allowances to the auction.

(21) "Authorized Account Representative" means an individual authorized by a registered entity through a registration process outlined in 95832 ~~and able to legally bind each entity that owns compliance instruments held in the account~~ to make submissions to the Executive Officer and the tracking system in all matters pertaining to this article that legally bind the authorizing entity.

(22) "Authorized Project Designee" means an entity authorized by an Offset Project Operator to act on behalf of the Offset Project Operator.

(23) "Aviation Gasoline" means a complex mixture of volatile hydrocarbons, with or without additives, suitably blended to be used in aviation

reciprocating engines. Specifications are as stated in MRR, section 95102(a).

(24) “Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

(25) “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.

(26) “Banking” means the holding of compliance instruments from one compliance period for the purpose of sale or surrender in a future compliance period.

(27) "Barrel of Oil Equivalent," with respect to reporting of oil and gas production, means barrels of crude oil produced, plus associated gas produced converted to barrels at 5.8 MMbtu per barrel.

(28) ~~“Beneficial Holding” means the acquisition and holding of compliance instruments by a registered entity to be transferred to another registered entity under an agreement disclosed to ARB.~~

(29) “Biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel that is all of the following:

(A) Registered as a motor vehicle fuel or fuel additive under 40 CFR Part 79 (June 27, 1994);

(B) A mono-alkyl ester;

(C) Meets American Society for Testing and Material designation ASTM D 6751-08 (*Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, 2008*);

(D) Intended for use in engines that are designated to run on conventional diesel fuel; and

(E) Derived from nonpetroleum renewable resources.

(30) “Biogas” means gas that is produced from the breakdown of organic material in the absence of oxygen. Biogas is produced in processes including anaerobic digestion, anaerobic decomposition, and thermochemical decomposition. These processes are applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, green waste, and waste from energy crops, to produce landfill gas, digester gas, and other forms of biogas.

(31) “Biomass” means non-fossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material. For the purpose of this article, biomass includes both California Renewable Portfolio Standard (RPS) eligible and non-eligible biomass as defined by the California Energy Commission.

(32) "Biomass-Derived Fuels” or “Biomass Fuels” or “Biofuels” means fuels derived from biomass.

(33) “Biomethane” means biogas that meets pipeline quality natural gas standards.

(34) “Blendstocks” are petroleum products used for blending or compounding into finished motor gasoline. These include RBOB (reformulated blendstock for oxygenate blending) and CBOB (conventional blendstock for oxygenate blending), but exclude oxygenates, butane, and pentanes plus.

(35) “Budget Year” means the annual allowance budget assigned pursuant to subarticle 6.

(36) “Business-as-Usual Scenario” means the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.

(37) "Calcium Ammonium Nitrate Solution" means calcium nitrate that contains ammonium nitrate and water. Calcium ammonium nitrate solution is generally used as agricultural fertilizer.

(38) “Calendar Year” means the time period from January 1 through December 31.

(39) “California Balancing Authority” shall have the same meaning ascribed in section 95102(a) of MRR.

(40) “California Electricity Transmission and Distribution System” means the combination of the entire infrastructure within California that delivers electric power from electric generating facilities to end users over single or multiple paths.

(41) “California Greenhouse Gas Emissions Allowance” or “CA GHG Allowance” means an allowance issued by ARB and equal to up to one metric ton of CO_2 equivalent.

(42) “Cap” means the total number of California GHG Allowances that the Executive Officer issues over a given period of time.

(43) “Cap-and-Trade Program” means the requirements of this article.

(44) “Carbon Dioxide” or “CO_2” means the most common of the six primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.

(45) “Carbon Dioxide Equivalent" or “CO_2 equivalent” or “CO_2e” means the number of metric tons of CO_2 emissions with the same global warming potential as one metric ton of another greenhouse gas. Global warming potential values shall be determined consistent with the definition of Carbon Dioxide Equivalent in MRR section 95102(a).

(46) "Carbon Stock" means the quantity of carbon contained in an identified GHG reservoir.

(47) "Carbon Dioxide Supplier" or "CO_2 Supplier" means (a) facilities with production process units located in the State of California that capture a CO_2 stream for purposes of supplying CO_2 for commercial applications or that capture the CO_2 stream in order to utilize it for geologic sequestration where capture refers to the initial separation and removal of CO_2 from a manufacturing process or any other process, (b) facilities with CO_2 production wells located in the State of California that extract or produce a CO_2 stream for purposes of supplying CO_2 for commercial applications or that extract a CO_2 stream in order to utilize it for geologic sequestration, (c) exporters (out of the State of California) of bulk CO_2 that export CO_2 for the purpose of geologic sequestration, (d) exporters (out of the State of California) of bulk CO_2 that export for purposes other than geologic sequestration, and (e) importers (into the State of California) of bulk CO_2. This source category is focused on upstream supply and is not intended to place duplicative compliance obligations on CO_2 already covered upstream. The source category does not include transportation or distribution of CO_2; purification, compression, or processing of CO_2; or on-site use of CO_2 captured on-site.

(48) "Carbon Dioxide Weighted Tonne" or "CO_2 Weighted Tonne" or "CWT" means a metric created to evaluate the greenhouse gas efficiency of petroleum refineries and related processes stated in units of metric tons. The CWT value for an individual refinery is calculated using actual refinery throughput to specified process units and emission factors for these process units. The emission factor is denoted as the CWT factor and is representative of the greenhouse gas emission intensity at an average level of energy efficiency, for the same standard fuel type for each process unit for production, and for average process emissions of the process units across a sample of refineries.

Each CWT factor is expressed as a value weighted relative to crude distillation.

(49) “Cement” means a building material that is produced by heating mixtures of limestone and other minerals or additives at high temperatures in a rotary kiln to form clinker, followed by cooling and grinding with blended additives. Finished cement is a powder used with water, sand, and gravel to make concrete and mortar.

(50) “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.

(51) “Cold Rolling of Steel" means the changes in the structure and shape of steel through rolling, hammering or stretching the steel at a low temperature.

(52) “Cold Rolled and Annealed Steel Sheet" means steel that is cold rolled and then annealed. Cold rolling means the changes in the structure and shape of steel through rolling, hammering or stretching the steel at a low temperature. Annealing is a heat or thermal treatment process by which a previously cold-rolled steel coil is made more suitable for forming and bending. The steel sheet is heated to a designated temperature for a sufficient amount of time and then cooled.

(53) “Combustion Emissions” means greenhouse gas emissions occurring during the exothermic reaction of a fuel with oxygen.

(54) “Compliance Account” means an account created by the accounts administrator for a covered entity or opt-in covered entity with a compliance obligation, to which the entity transfers compliance instruments to meet its annual and triennial compliance obligations.

(55) “Compliance Instrument” means an allowance <u>issued by ARB or by an external greenhouse gas emissions trading system to which California</u>

has linked its Cap-and-Trade program, ARB offset credit or sector-based offset credit. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO_2e.

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

(57) "Compliance Offset Protocol" means an offset protocol adopted by the Board.

(58) "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.

(59) "Conflict of Interest" means, for purposes of this article, a situation in which, because of financial or other activities or relationships with other persons or organizations, a person or body is unable or potentially unable to render an impartial Offset Verification Statement of a potential client's Offset Project Data Report, or the person or body's objectivity in performing offset verification services is or might be otherwise compromised.

(60) "Conservative" means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

(61) "Consumer Price Index for All Urban Consumers" means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers, and is published by the U.S. Bureau of Labor Statistics.

(62) "Container Glass Pulled" means the quantity of glass removed from the melting furnace in the container glass manufacturing process where "container glass" is defined as glass products used for packaging.

(63) “Counterparty” means the opposite party in a bilateral agreement, contract, or transaction.

(64) “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 2008 or any subsequent year more than the applicable threshold level specified in section 95812 (a) of this rule.

(65) “Crediting Baseline” refers to the reduction of absolute GHG emissions below the business-as-usual scenario or reference level across a jurisdiction’s entire sector in a sector-based crediting program after the imposition of greenhouse gas emission reduction requirements or incentives.

(66) “Crediting Period” means the pre-determined period for which an offset project will remain eligible to be issued ARB offset credits or registry offset credits for verified GHG emission reductions or GHG removal enhancements.

(67) “Data Year” means the calendar year in which emissions occurred.

(68) “Deforestation” means direct human-induced conversion of forested land to non-forested land.

(69) “Delivered Electricity” means electricity that was distributed from a PSE and received by a PSE or electricity that was generated, transmitted, and consumed.

(70) “Diesel Fuel” means Distillate Fuel No. 1 and Distillate Fuel No. 2, including dyed and non-taxed fuels.

(71) “Direct Delivery of Electricity” or “directly delivered” has the same meaning as ascribed to MRR section 95102(a).

(72) “Direct GHG Emission Reduction” means a GHG emission reduction from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of the Offset Project Operator or Authorized Project Designee.

(73) “Direct GHG Removal Enhancement” means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the Offset Project Operator or Authorized Project Designee.

(74) “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).

(75) “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).

(76) “Distillate Fuel No. 4” is a distillate fuel oil made by blending distillate fuel oil and residual fuel oil, with a minimum flash point of 131 F.

(77) “Distillate Fuel Oil” means a classification for one of the petroleum fractions produced in conventional distillation operations and from crackers and hydrotreating process units. The generic term “distillate fuel oil” includes kerosene, kerosene-type jet fuel, diesel fuels (Diesel Fuels No. 1, No. 2, and No. 4), and fuel oils (Fuel Oils No. 1, No. 2, and No. 4).

(78) "Dolime" is calcined dolomite.

(79) “Dry Gas” means a natural gas that is produced from gas wells not associated with the production of crude oil.

(80) “Early Action Offset Credit” means a tradable credit issued by an Early Action Offset Program that represents a GHG reduction or GHG removal enhancement equivalent to one metric ton of CO_2e and meets the requirements of section 95990(c).

(81) “Early Action Offset Program” means a program that meets the requirements of section 95990(a) and is approved by ARB.

(82) “Early Action Offset Project” means an offset project that is registered with an Early Action Offset Program and has been issued early action offset credits.

(83) “Early Action Verification Report” means a verification report submitted to an Early Action Offset Program that covers GHG reductions or GHG removal enhancements achieved by an early action offset project over a specific time period.

(84) "Electric Arc Furnace" or "EAF" means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. Furnaces that continuously feed direct-reduced iron ore pellets as the primary source of iron are not affected facilities within the scope of this definition.

(85) “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.

(86) “Electricity Generating Facility” means a facility that generates electricity and includes one or more generating units at the same location.

(87) “Electricity Importers” are marketers and retail providers that deliver imported electricity. For electricity delivered between balancing authority areas, the electricity importer is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the last segment of the tag’s physical path with the point of receipt located outside the state of California and the point of delivery located inside the state of California. For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority’s transmission and distribution system, 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).

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

(89) “Emissions” means the release of greenhouse gases into the atmosphere from sources and processes in a facility, including from the combustion of transportation fuels such as natural gas, petroleum products, and natural gas liquids. In the context of offsets, "emissions" means the release of greenhouse gases into the atmosphere from sources and processes within an offset project boundary.

(90) “Emissions Data Report” or “greenhouse gas emissions data report” or “report” means the report prepared by an operator or supplier each year and submitted by electronic means to ARB that provides the information required by MRR.

(91) “Emissions Efficiency Benchmark” or “GHG emissions efficiency benchmark” means a performance standard used to evaluate GHG emissions efficiency between and amongst similar facilities or operations in the same industrial sector.

(92) “End User” means a final purchaser of an energy product, such as electricity, thermal energy, or natural gas not for the purposes of retransmission or resale. In the context of natural gas consumption, an “end user” is the point to which natural gas is delivered for consumption.

(93) “Enforceable” means the authority for ARB to hold a particular party liable and to take appropriate action if any of the provisions of this article are violated.

(94) “Enhanced Oil Recovery” or “EOR” means the use of certain methods such as steam (thermal EOR), water flooding or gas injection into existing wells to increase the recovery of crude oil from a reservoir. In the context of this rule, EOR also applies to injection of critical phase carbon dioxide into a crude oil reservoir to enhance the recovery of oil.

(95) “Enterer” means an entity that imports, into California, motor vehicle fuel, diesel fuel, fuel ethanol, biodiesel, or non exempt biomass-derived fuel or renewable fuel and who is the importer of record under federal customs law or the owner of fuel upon import into California, if the fuel is not subject to federal customs law.

(96) “Entity” means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

(97) “Environmental Impact Assessment” means a detailed public disclosure statement of potential environmental and socioeconomic impacts associated with a proposed project. Such disclosure is a matter of public record and provides detailed information to public agencies and the general public about the effect that a proposed project is likely to have on the environment and ways in which the significant effects of such a project might be minimized, and to indicate alternatives to such a project.

(98) “Executive Officer” means the Executive Officer of the California Air Resources Board, or his or her delegate.

(99) “Exported Electricity” shall have the same meaning ascribed in section 95102(a) of MRR.

(100) “External Greenhouse Gas Emissions Trading System” or “External GHG ETS” means an administrative system, other than the California Cap-and-Trade Program, that controls greenhouse gas emissions from sources in its program.

(101) “Facility” means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(102) "Fiberglass Glass Pulled" means the quantity of glass removed from the melting furnace in the fiberglass manufacturing process where "Fiberglass" is defined as insulation products for thermal, acoustic and fire applications manufactured using glass.

(103) “First Deliverer of Electricity” or “First Deliverer” means the operator of an electricity generating facility in California or an electricity importer.

(104) “Flash Point” of a volatile liquid is the lowest temperature at which it can vaporize to form an ignitable mixture in air.

(105) "Flat Glass Pulled" means the quantity of glass removed from the melting furnace in the flat glass manufacturing process where "flat glass" is defined as glass initially manufactured in a sheet form.

(106) “Fluorinated Greenhouse Gas” means sulfur hexafluoride (SF6), nitrogen trifluoride (NF3), and any fluorocarbon except for controlled substances as defined at 40 CFR Part 82 (May 10, 1995), subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 C. With these exceptions, “fluorinated GHG” includes any hydrofluorocarbon; any perfluorocarbon; any fully fluorinated linear,

branched, or cyclic alkane, ether, tertiary amine, or aminoether; any perfluoropolyether; and any hydrofluoropolyether.

(107) "Fluting" means the center segment of corrugated shipping containers, being faced with linerboard (testliner/kraftliner) on both sides. Fluting covers mainly papers made from recycled fiber but this group also holds paperboard that is made from chemical and semichemical pulp.

(108) "Forest Buffer Account" means a holding account for ARB offset credits issued to forest offset projects. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a Compliance Offset Protocol.

(109) "Forest Owner" means the owner of any interest in the real (as opposed to personal) property involved in a forest offset project, excluding government agency third party beneficiaries of conservation easements. Generally, a Forest Owner is the owner in fee of the real property involved in a forest offset project. In some cases, one entity may be the owner in fee while another entity may have an interest in the trees or the timber on the property, in which case all entities or individuals with interest in the real property are collectively considered the Forest Owners, however, a single Forest Owner must be identified as the Offset Project Operator.

(110) "Fossil Fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

(111) "Fractionates" means the process of separating natural gas liquids into their constituent liquid products.

(112) "Fuel" means solid, liquid, or gaseous combustible material. Volatile organic compounds burned in destruction devices are not fuels unless they can sustain combustion without use of a pilot fuel, and such destruction does not result in a commercially useful end product.

(113) "Fuel Analytical Data" means data collected about fuel usage (including mass, volume, and flow rate) and fuel characteristics

(including heating value, carbon content, and molecular weight) to support emissions calculation.

(114) “Fuel supplier” means a supplier of petroleum products, a supplier of biomass-derived transportation fuels, a supplier of natural gas, or a supplier of liquid petroleum gas as specified in MRR.

(115) “Fugitive Emissions” means those emissions which are unintentional and could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(116) "Galvanized Steel Sheet" means steel coated with a thin layer of zinc to provide corrosion resistance for such products as garbage cans, storage tanks, or framing for buildings. Sheet steel normally must be cold-rolled prior to the galvanizing stage.

(117) “Gas” means the state of matter distinguished from the solid and liquid states by: relatively low density and viscosity; relatively great expansion and contraction with changes in pressure and temperature; the ability to diffuse readily; and the spontaneous tendency to become distributed uniformly throughout any container.

(118) "Gaseous Hydrogen" means hydrogen in a gaseous state.

(119) “Geologic Sequestration” means the process of injecting CO_2 captured from an emissions source into deep subsurface rock formations for long-term storage.

(120) “Global Warming Potential” or “GWP” means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., CO_2.

(121) “Greenhouse Gas” or “GHG” means carbon dioxide (CO_2), methane (CH_4), <u>nitrogen trifluoride (NF_3),</u> nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases as defined in this section.

(122) “Greenhouse Gas Emission Reduction” or “GHG Emission Reduction” or “Greenhouse Gas Reduction” or “GHG Reduction” means a

calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

(123) “Greenhouse Gas Emissions Source” or “GHG Emissions Source” means, in the context of offset credits, any type of emitting activity that releases greenhouse gases into the atmosphere.

(124) “Greenhouse Gas Removal” or “GHG Removal” means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.

(125) “Greenhouse Gas Removal Enhancement” or “GHG Removal Enhancement” means a calculated increase in GHG removals relative to a project baseline.

(126) “Greenhouse Gas Reservoir” or “GHG Reservoir” means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

(127) “Greenhouse Gas Sink” or “GHG Sink” means a physical unit or process that removes a GHG from the atmosphere.

(128) “HD-5” or “Special Duty Propane” has the same meaning as contained in MRR.

(129) “HD-10” has the same meaning as contained in MRR.

(130) "Heavy Crude Oil" means a category of crude oil characterized by relatively high viscosity, a higher carbon-to-hydrogen ratio, and a relatively higher density having an API gravity of less than 20.

(131) “Hold,” in the context of a compliance instrument, is to have the serial number assigned to that instrument registered into an account assigned to an entity registered into the California cap-and-trade program <u>or an external greenhouse gas emissions trading system to which California has linked its Cap-an-Trade program,</u> or an account under the control of the Executive Officer.

(132) "Horsepower Tested" means the total horsepower of all turbine and generator set units tested prior to sale.

(133) "Hot Rolled Steel Sheet" means steel produced from the rolling mill that reduces a hot slab into a coil of specified thickness at a relatively high temperature.

(134) “Hydrocarbon” means a chemical compound containing predominantly carbon and hydrogen.

(135) “Hydrofluorocarbon” or “HFC” means a class of GHGs consisting of hydrogen, fluorine, and carbon.

(136) “Hydrogen” means the lightest of all gases, occurring chiefly in combination with oxygen in water; it exists also in acids, bases, alcohols, petroleum, and other hydrocarbons.

(137) “Imported Electricity” means electricity generated outside the state of California and delivered to serve load located inside the state of California. Imported electricity includes electricity delivered across balancing authority areas from a first point of receipt located outside the state of California, to the first point of delivery located inside the state of California, having a final point of delivery in California. Imported electricity includes electricity imported into California over a multi-jurisdictional retail provider’s transmission and distribution system, or electricity imported into the state of California from a facility or unit physically located outside the state of California with the first point of interconnection into a California balancing authority’s transmission and distribution system. Imported electricity includes electricity that is a result of cogeneration located outside the state of California. Imported electricity does not include electricity wheeled through California, defined pursuant to MRR section 95102(a). Imported electricity does not include electricity imported into the CAISO balancing authority area to serve retail customers that are located within the CAISO balancing authority area, but outside the state of California.

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

(139) “Intentional Reversal” means any reversal caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary.

(140) "Intrastate Pipeline" means any pipeline wholly within the state of California that is not regulated as a public utility gas corporation by the California Public Utility Commission (CPUC), not a publicly owned natural gas utility and is not regulated as an interstate pipeline by the Federal Energy Regulatory Commission.

(141) “Interstate Pipeline” means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in the state and is subject to rate regulation by the Federal Energy Regulatory Commission.

(142) “Inventory Position” means a contractual agreement with the terminal operator for the use of the storage facilities and terminaling services for the fuel.

(143) “Issue” or “Issuance” means, in the context of offset credits, the creation of ARB offset credits or registry offset credits equivalent to the number of verified GHG reductions or GHG removal enhancements for an offset project over a specified period of time. In the context of allowances, issue means the placement of an allowance into an account under the control of the Executive Officer.

(144) “Joint Powers Agency(ies)” or “JPA” means an public agency that is formed and created pursuant to the provisions of Government Code sections 6500. et seq.

(145) “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.

(146) "Kerosene-Type Jet Fuel" means a kerosene-based product used in commercial and military turbojet and turboprop aircraft. The product has a maximum distillation temperature of 400 ℉ at the 10 percent recovery point and a final maximum boiling point of 572 ℉. Included are Jet A, Jet A–1, JP–5, and JP–8.

(147) “Lead Verifier” means, for purposes of this article, a person that has met all of the requirements in section 95132(b)(2) of MRR and who may act as the lead verifier of an offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

(148) “Lead Verifier Independent Reviewer” or “Independent Reviewer” means, for purposes of this article, a lead verifier within a verification body who has not participated in conducting offset verification services for an Offset Project Developer or Authorized Project Designee for the current Offset Project Data Report and who provides an independent review of offset verification services rendered for an Offset Project Developer or Authorized Project Designee as required in section 95977.1(b)(3)(R).

(149) “Less Intensive Verification” means, for the purposes of this article, the offset verification services provided in interim years between full verifications of an Offset Project Data Report; less intensive verification of an Offset Project Data Report only requires data checks and document reviews of an Offset Project Data Report based on the analysis and risk assessment in the most current sampling plan developed as part of the most recent full offset verification services.

This level of verification may only be used if the offset verifier can provide findings with a reasonable level of assurance.

(150) "Light Crude Oil" means a category of crude oil characterized by relatively low viscosity, a lower carbon-to-hydrogen ratio, and a relatively lower density having an API gravity of greater than or equal to 20.

(151) “Limited Use Holding Account” means an account in which allowances are placed after an entity qualifies for a direct allocation under section 95890(b). Allowances placed in this account can only be removed for consignment to the auction pursuant to section 95831(a)(3).

(152) “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.

(153) "Liquefied Hydrogen" means hydrogen in a liquid state.

(154) “Liquefied Petroleum Gas” or “LPG” means a flammable mixture of hydrocarbon gases used as a fuel. LPG is primarily mixtures of propane, butane, propene (propylene) and ethane. The most common specification categories are propane grades, HD-5, HD-10, and commercial grade propane. LPG also includes both odorized and non-odorized liquid petroleum gas, and is also referred to as propane.

(155) “Listed Industrial Sector” means covered industrial sectors that are eligible for industry assistance specified in Table 8-1 of subarticle 8.

(156) "Long-Term Contract" means a contract for the delivery of electricity entered into before January 1, 2006, for the term of five years or more.

(157) “Mandatory Reporting Regulation” or “MRR” means ARB’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 2 (commencing with section 95100).

(158) “Market Index” means any published index of quantities or prices based on results of market transactions.

(159) “Marketer” means a purchasing-selling entity that delivers electricity and is not a retail provider.

(160) “Market-Shifting Leakage,” in the context of an offset project, means increased GHG emissions or decreased GHG removals outside an offset project’s boundary due to the effects of an offset project on an established market for goods or services.

(161) “Methane” or “CH_4” means a GHG consisting on the molecular level of a single carbon atom and four hydrogen atoms.

(162) “Metric Ton” or “MT” means a common international measurement for mass, equivalent to 2,204.6 pounds or 1.1 short tons.

(163) "Mixed Crude Oil" means a mix of both heavy and light crude oil.

(164) “Monitoring” means, in the context of offset projects, the ongoing collection and archiving of all relevant and required data for determining the project baseline, project emissions, and quantifying GHG reductions or GHG removal enhancements that are attributable to the offset project.

(165) "Motor Gasoline (finished)" has the same definition as MRR.

(166) “Multi-Jurisdictional Retail Provider” means a retail provider that provides electricity to consumers in California and in one or more other states in a contiguous service territory or from a common power system.

(167) “Municipal Solid Waste” or “MSW” means solid-phase household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, non-manufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material

discarded by schools, nonmedical waste discarded by hospitals, material discarded by non-manufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional wastes include yard waste, refuse-derived fuel, and motor vehicle maintenance materials. Insofar as there is separate collection, processing, and disposal of industrial source waste streams consisting of used oil, wood pallets, construction, renovation, and demolition wastes (which includes, but is not limited to, railroad ties and telephone poles), paper, clean wood, plastics, industrial process or manufacturing wastes, medical waste, motor vehicle parts or vehicle fluff, or used tires that do not contain hazardous waste identified or listed under 42 U.S.C. §6921, such wastes are not municipal solid waste. However, such wastes qualify as municipal solid waste where they are collected with other municipal solid waste or are otherwise combined with other municipal solid waste for processing and/or disposal.

(168) “Natural Gas” means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface, of which its constituents include methane, heavier hydrocarbons, and carbon dioxide. Natural gas may be field quality (which varies widely) or pipeline quality. For the purposes of this rule, the definition of natural gas includes similarly constituted fuels such as field production gas, process gas, and fuel gas.

(169) “Natural Gas Liquids” or “NGLs”, means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods. Generally, such liquids consist of ethane, propane, butanes, and pentanes plus. Bulk NGLs refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.

(170) “NERC E-tag” means North American Electric Reliability Corporation (NERC) energy tag representing transactions on the North American

bulk electricity market scheduled to flow between or across balancing authority areas.

(171) "Nitric Acid" means HNO_3 of 100% purity.

(172) “Non-exempt Biomass derived CO_2” means CO_2 emissions resulting from the combustion of fuel not listed under section 95852.2(a), or that is not verifiable under section 95131(i) of MRR.

(173) “Notice of Delegation” means a formal notice used to delegate authority to make an electronic submission to the accounts administrator.

(174) “Offset Material Misstatement” means a discrepancy, omission, misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to believe that an Offset Project Data Report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements greater than 5 percent. Discrepancies, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the Offset Project Data Report is not an offset material misstatement.

(175) “Offset Project” means all equipment, materials, items, or actions that are directly related to or have an impact upon GHG reductions, project emissions, or GHG removal enhancements within the offset project boundary.

(176) “Offset Project Boundary” is defined by and includes all GHG emission sources, GHG sinks or GHG reservoirs that are affected by an offset project and under control of the Offset Project Operator or Authorized Project Designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the Offset Project Operator or Authorized Project Designee are not included in the offset project boundary.

(177) "Offset Project Commencement" means, unless otherwise specified in a Compliance Offset Protocol, the date of the beginning of construction, work, or installation for an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials. For an offset project that involves the implementation of a management activity, "offset project commencement" means, unless otherwise specified in a Compliance Offset Protocol, the date on which such activity is first implemented.

(178) "Offset Project Data Report" means the report prepared by an Offset Project Operator or Authorized Project Designee each year that provides the information and documentation required by this article or a Compliance Offset Protocol.

(179) "Offset Project Operator" means the entity(ies) with legal authority to implement the offset project.

(180) "Offset Project Registry" means an entity that meets the requirements of section 95986 and is approved by ARB that lists offset projects, collects Offset Project Data Reports, facilitates verification of Offset Project Data Reports, and issues registry offset credits for offset projects being implemented using a Compliance Offset Protocol.

(181) "Offset Protocol" means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and calculate the project baseline. Offset protocols specify relevant data collection and monitoring procedures, emission factors, and conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.

(182) "Offset Verification" means a systematic, independent, and documented process for evaluation of an Offset Project Operator's or Authorized Project Designee's Offset Project Data Report against ARB's Compliance Offset Protocols and this article for calculating and

reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.

(183) "Offset Verification Services" means services provided during offset verification as specified in sections 95977.1 and 95977.2, including reviewing an Offset Project Operator's or Authorized Project Designee's Offset Project Data Report, verifying its accuracy according to the standards specified in this article and applicable Compliance Offset Protocol, assessing the Offset Project Operator's or Authorized Project Designee's compliance with this article and applicable Compliance Offset Protocol, and submitting an Offset Verification Statement to ARB or an Offset Project Registry.

(184) "Offset Verification Statement" means the final statement rendered by a verification body attesting whether an Offset Project Operator's or Authorized Project Designee's Offset Project Data Report is free of an offset material misstatement, and whether the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol.

(185) "Offset Verification Team" means all of those working for a verification body, including all subcontractors, to provide offset verification services for an Offset Project Operator or Authorized Project Designee.

(186) "Operational Control" for a facility subject to this article means the authority to introduce and implement operating, environmental, health, and safety policies. In any circumstance where this authority is shared among multiple entities, the entity holding the permit to operate from the local air pollution control district or air quality management district is considered to have operational control for purposes of this article.

(187) "Operator" means the entity, including an owner, having operational control of a facility, or other entity from which an emissions data report is required under article 2, section 95104, title 17, Greenhouse Gas Emissions Data Report. For onshore petroleum and natural gas production, the operator is the operating entity listed on the state well

drilling permit, or a state operating permit for wells where no drilling permit is issued by the state.

(188) "Opt-in Covered Entity" means an entity that meets the requirements of 95811 that does not exceed the inclusion thresholds set forth in section 95812 and may elect to voluntarily opt-in to the Cap-and-Trade Program and be willing to be subject to the requirements set forth in this article.

(189) "Oxidation" means a reaction in which the atoms in an element lose electrons and the valence of the element is correspondingly increased.

(190) "Ozone Depleting Substances" or "ODS" means a compound that contributes to stratospheric ozone depletion.

(191) "Perfluorocarbons" or "PFCs" means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.

(192) "Permanent" means, in the context of offset credits, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least 100 years.

(193) "Permanent Retirement Registry" means the publicly available registry in which the Executive Officer will record the serial numbers of the retired compliance instruments.

(194) "Petroleum" means oil removed from the earth and the oil derived from tar sands, and/or shale.

(195) "Petroleum Refinery" or "Refinery" means any facility engaged in producing gasoline, gasoline blending stocks, naphtha, kerosene, distillate fuel oils, residual fuel oils, lubricants, or asphalt (bitumen) through distillation of petroleum or through re-distillation, cracking, or reforming of unfinished petroleum derivatives. Facilities that distill only pipeline transmix (off-spec material created when different specification

products mix during pipeline transportation) are not petroleum refineries, regardless of the products produced.

(196) "Pickled Steel Sheet" means hot rolled steel sheet that is sent through a series of hydrochloric acid baths that remove the oxides.

(197) “Pipeline Quality Natural Gas” means, for the purpose of calculating emissions under MRR, natural gas having a high heat value greater than 970 Btu/scf and equal to or less than 1,100 Btu/scf, and which is at least ninety percent (90%) methane by volume, and which is less than five percent (5%) carbon dioxide by volume.

(198) "Plaster" is calcined gypsum that is produced and sold as a finished product and is not used in the production of plasterboard at the same facility.

(199) "Plasterboard" is a panel made of gypsum plaster pressed between two thick sheets of paper.

(200) “Point of Delivery” means the point on an electricity transmission or distribution system where a deliverer makes electricity available to a receiver or available to serve load. This point can be an interconnection with another system or a substation where the transmission provider’s transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into California over a multi-jurisdictional retail provider’s distribution system.

(201) “Point of Receipt” means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a deliverer. This point can be an interconnection with another system or a substation where the transmission provider’s transmission and distribution systems are connected to another system.

(202) “Portable” means designed and capable of being carried or moved from one location to another. Indications of portability include wheels, skids, carrying handles, dolly, trailer, or platform. Equipment is not portable if any one of the following conditions exists:

(A) The equipment is attached to a foundation;

(B) The equipment or a replacement resides at the same location for more than 12 consecutive months;

(C) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year; or

(D) The equipment is moved from one location to another in an attempt to circumvent the portable residence time requirements of this definition.

(203) "Position Holder" means an entity that holds an inventory position in motor vehicle fuel, ethanol, distillate fuel, biodiesel, or renewable diesel as reflected in the records of the terminal operator or a terminal operator that owns motor vehicle fuel or diesel fuel in its terminal.

(204) "Positive Emissions Data Verification Statement" means a verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the emissions data in the submitted emissions data report is free of material misstatement and that the emissions data conforms to the requirements of MRR. For purposes of this definition, 'material misstatement' shall have the same meaning as ascribed to it in section 95102(a) of MRR.

(205) "Positive Product Data Verification Statement" means a verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the product data in the submitted emissions data report is free of material misstatement and that the product data conforms to the requirements of MRR. For purposes of this definition, 'material misstatement' shall have the same meaning as ascribed to it in section 95102(a) of MRR.

(206) "Positive Offset Verification Statement" means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted Offset

Project Data Report is free of an offset material misstatement and that the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol.

(207) “Power” means electricity, except where the context makes clear that another meaning is intended.

(208) "Primary Refinery Products" means aviation gasoline, motor gasoline, kerosene-type jet fuel, distillate fuel oil, renewable liquid fuels, and asphalt. For the purpose of calculating this value for each refinery ARB will convert blendstocks into their finished fuel volumes by multiplying blendstocks by an assumed blending ratio.

(209) ~~“Principal” means the registered entity in a beneficial holding relationship to which compliance instruments will be transferred by an agent under an agreement with the principal that is disclosed to ARB.~~

(210) “Proceeds” means monies generated as a result of an auction or from sales from the Allowance Price Containment Reserve.

(211) “Process” means the intentional or unintentional reactions between substances or their transformation, including the chemical or electrolytic reduction of metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock.

(212) “Process Emissions” means the emissions from industrial processes (e.g., cement production, ammonia production) involving chemical or physical transformations other than fuel combustion. For example, the calcination of carbonates in a kiln during cement production or the oxidation of methane in an ammonia process results in the release of process CO_2 emissions to the atmosphere. Emissions from fuel combustion to provide process heat are not part of process emissions, whether the combustion is internal or external to the process equipment.

(213) “Process Unit” means the equipment assembled and connected by pipes and ducts to process raw materials and to manufacture either a

final or intermediate product used in the onsite production of other products. The process unit also includes the purification of recovered byproducts.

(214) “Producer” means a person who owns leases, operates, controls, or supervises a California production facility.

(215) “Product Data Verification Statement” means the final statement rendered by a verification body attesting whether a reporting entity’s product data in their emissions data report is free of material misstatement, and whether the product data conforms to the requirements of the MRR. For purposes of this definition, ‘material misstatement’ shall have the same meaning as ascribed to it in section 95102(a) of MRR.

(216) “Professional Judgment” means the ability to render sound decisions based on professional qualifications and relevant greenhouse gas accounting and auditing experience.

(217) “Project Baseline” means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project’s GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

(218) “Project Emissions” means any GHG emissions associated with the implementation of an offset project that must be accounted for in the Offset Project Data Report.

(219) “Propane” is a paraffinic hydrocarbon with molecular formula C_3H_8.

(220) “Property Right” means any type of right to specific property whether it is personal or real property, tangible or intangible.

(221) “Public Utility Gas Corporation” is a gas corporation defined in California Public Utilities Code section 222 that is also a public utility as defined in California Public Utilities Code section 216.

(222) “Publicly Owned Natural Gas Utility” means a municipality or municipal corporation, a municipal utility district, a public utility district, or a joint

powers authority that includes one or more of these agencies that furnishes natural gas services to end users.

(223) "Purchase Limit" means the maximum percentage of allowances that may be purchased by an entity of a group of affiliated entities at an allowance auction.

(224) "Purchasing-Selling Entity" or "PSE" means the same meaning as ascribed in MRR.

(225) "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 electriticy 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.

(226) "Qualified Positive Offset Verification Statement" means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement, but the Offset Project Data Report may include one or more nonconformance(s) with the quantification, monitoring, or metering requirements of this article and applicable Compliance Offset Protocol which do not result in an offset material misstatement.

(227) "Qualified Positive Emissions Data Verification Statement" means a statement rendered by a verification body attesting that the verification

body can say with reasonable assurance that the emissions data in the submitted emissions data report is free of material misstatement, but the emissions data may include one or more nonconformance(s) with requirements of MRR which do not result in a material misstatement. For purposes of this definition, 'material misstatement' shall have the same meaning as ascribed to it in section 95102(a) of MRR.

(228) "Qualified Positive Product Data Verification Statement" means a statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the product data in the submitted emissions data report is free of material misstatement, but the product data may include one or more nonconformance(s) with the requirements of MRR which do not result in a material misstatement. For purposes of this definition, 'material misstatement' shall have the same meaning as ascribed to it in section 95102(a) of MRR.

(229) "Quantifiable" means, in the context of offset projects, the ability to accurately measure and calculate GHG reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.

(230) "Quantitative Usage Limit" means a limit on the percentage of an entity's compliance obligation that may be met by surrendering offset credits, sector-based credits, or other compliance instruments designated to be subject to the limit under this article.

(231) "Rack" means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer.

(232) "Radiative Forcing" means the change in the net vertical irradiance at the atmospheric boundary between the troposphere and the stratosphere due to an internal change or a change in the external

forcing of the climate system such as a change in the concentration of carbon dioxide or the output of the Sun.

(233) “Real” means, in the context of offset projects, that GHG reductions or GHG enhancements result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage.

(234) “Reasonable Assurance” means a high degree of confidence that submitted data and statements are valid.

(235) "Recycled Boxboard" means containers of solid fiber made from recycled fibers, including cereal boxes, shoe boxes and protective paper packaging for dry foods. It also includes folding paper cartons, set-up boxes, and similar boxboard products. Recycled boxboard is made from recycled fibers.

(236) "Recycled Linerboard" means types of paperboard made from recycled fibers that meet specific tests adopted by the packaging industry to qualify for use as the outer facing layer for corrugated board, from which shipping containers are made.

(237) “Recycled Medium" means the center segment of corrugated shipping containers, being faced with linerboard on both sides. Recycled medium is made from recycled fibers.

(238) “Reference Level” means the quantity of GHG emission equivalents that have occurred during the normal course of business or activities during a designated period of time within the boundaries of a defined sector and a defined jurisdiction.

(239) “Reformulated Gasoline Blendstock for Oxygenate Blending” or “RBOB” has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).

(240) "Register," in the context of a compliance instrument, means the act of entering the serial number of a compliance instrument into an account.

(241) "Registrant" or "Registered Entity" means an entity that has completed the process for registration.

(242) "Registry Offset Credit" means a credit issued by an Offset Project Registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable and may only be issued for offset projects using Compliance Offset Protocols. Pursuant to section 95981.1, ARB may determine that a registry offset credit may be removed and issued as an ARB offset credit.

(243) "Registry Services" means all services provided by an ARB approved Offset Project Registry in section 95987.

(244) "Renewable Energy" means energy from sources that constantly renew themselves or that are regarded as practically inexhaustible. Renewable energy includes energy derived from solar, wind, geothermal, hydroelectric, wood, biomass, tidal power, sea currents, and ocean thermal gradients.

(245) "Renewable Energy Credit" or "REC" means a certificate of proof, issued through the accounting system established by the California Energy Commission pursuant to Public Utilities Code Section 399.13, that one megawatt hour of electricity was generated and delivered by an eligible renewable energy resource. As specified in Public Utilities Code Section 399.12, Subdivision (g)(2), a REC includes all renewable and environmental attributes associated with the production of electricity from an eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(246) "Renewable Liquid Fuels" means fuel ethanol, biomass-based diesel fuel, other renewable diesel fuel and other renewable fuels.

(247) “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. 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 and all reporting periods in any renewed crediting period must consist of 12 consecutive months.

(248) “Reporting Year” means data year.

(249) “Reserve Price” see “Auction Reserve Price.”

(250) “Reserve Sale Administrator” means the operator of sales from the Allowance Price Containment Reserve account, which may be the Executive Officer or an entity designated by the Executive Officer.

(251) “Resource Shuffling” means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid.

(252) “Retail Provider” means an entity that provides electricity to retail end users in California and is an electrical corporation as defined in Public Utilities Code section 218, electric service provider as defined in Public Utilities Code section 218.3, local publicly owned electric utility as defined in Public Utilities Code section 224.3, a community choice aggregator as defined in Public Utilities Code section 331.1, or the Western Area Power Administration. For purposes of this article, electrical cooperatives, as defined by Public Utilities Code section 2776, are excluded.

(253) “Retire” or “Retired” or “Retirement” means that the serial number for a compliance instrument is registered into the Retirement Account under the control of the Executive Officer. Compliance instruments registered into this account cannot be removed.

(254) “Reversal” means a GHG emission reduction or GHG removal enhancement for which an ARB offset credit or registry offset credit has been issued that is subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.

(255) “Sector” or “Sectoral,” when used in conjunction with sector-based crediting programs, means a group or subgroup of an economic activity, or a group or cross-section of a group of economic activities, within a jurisdiction.

(256) “Sector-Based Crediting Program” is a GHG emissions-reduction crediting mechanism established by a country, region, or subnational jurisdiction in a developing country and covering a particular economic sector within that jurisdiction. A program’s performance is based on achievement toward an emissions reduction target for the particular sector within the boundary of the jurisdiction.

(257) “Sector-Based Offset Credit” means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.

(258) “Self-Generation of Electricity” means electricity dedicated to serving an electricity user on the same location as the generator. The system may be operated directly by the electricity user or by an entity with a contractual arrangement.

(259) “Serial Number” means a unique number assigned to each compliance instrument for identification.

(260) “Sequestration” means the removal and storage of carbon from the atmosphere in GHG sinks or GHG reservoirs through physical or biological processes.

(261) "Soda Ash Equivalent" means the total mass of all soda ash, biocarb, borax, V-Bor, DECA, PYROBOR, Boric Acid, and Sulfate produced.

(262) “Solomon Energy Intensity Index®” or “Solomon EII” or “EII” means a petroleum refinery energy efficiency metric that compares actual energy consumption for a refinery with the “standard” energy

consumption for a refinery of similar size and configuration. The "standard" energy is calculated based on an analysis of worldwide refining capacity as contained in the database maintained by Solomon Associates. The ratio of a facility's actual energy to the standard energy is multiplied by 100 to arrive at the Solomon EII for a refinery. "Solomon Energy Review" means a data submittal and review conducted by a petroleum refinery and Solomon Associates. This process uses the refinery energy utilization, throughput and output to determine the Solomon EII of the refinery.

(263) "Source" means greenhouse gas source; or any physical unit, process, or other use or activity that releases a greenhouse gas into the atmosphere.

(264) "Specified Source of Electricity" or "Specified Source" means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility/unit or a written power contract as defined in MRR section 95102(a) to procure electricity generated by that facility/unit. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by ARB.

(265) "Standing Live Carbon Stocks" means the above ground carbon in live tree biomass. Live trees include the bole, stem, branches, roots, and leaves or needles.

(266) "Stationary" means neither portable nor self-propelled, and operated at a single facility.

(267) "Steel Produced Using an Electric Arc Furnace" means steel produced by electric arc furnace or "EAF". EAF means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes.

(268) “Supplier” means a producer, importer, exporter, position holder, or local distribution company of a fossil fuel or an industrial greenhouse gas.

(269) “Terminal” means a motor vehicle fuel or diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which fuel may be removed at a rack. “Terminal” includes a fuel production facility where motor vehicle or diesel fuel is produced and stored and from which fuel may be removed at a rack.

(270) "Testliner" means types of paperboard that meet specific tests adopted by the packaging industry to qualify for use as the outer facing layer for corrugated board, from which shipping containers are made. Testliner is made primarily from fibers obtained from recycled fibers.

(271) “Tin Plate" means thin sheet steel with a very thin coating of metallic tin. Tin plate also includes Tin Free Steel or TFS which has an extremely thin coating of chromium, metallic, and oxide. Tin plate is used primarily in can making.

(272) “Tissue” means a class of papers which are characteristically gauzy in texture and, in some cases, fairly transparent. They may be glazed, unglazed, or creped and are used for a variety of purposes. Examples of different types of tissue papers include sanitary grades such as toilet, facial, napkin, towels, wipes, and special sanitary papers.

(273) “Transaction,” when referring to an arrangement between registered entities regarding allowances, means an understanding among registered entities to transfer the control of an allowance from one entity to another, either immediately or at a later date.

(274) “Transfer” of a compliance instrument means the removal of the serial number of a compliance instrument from one account and placement into another account.

(275) “Transfer Request” means the communication by an authorized account representative or an alternate authorized account

representative to the accounts administrator to register into the tracking system the transfer of allowances between accounts.

(276) "Tribe" means a federally-recognized Indian tribe and any entity created by a federally-recognized Indian Tribe.

(277) "Unintentional Reversal" means any reversal, including wildfires or disease that is not the result of the forest owner's negligence, gross negligence, or willful intent.

(278) "Unspecified Source of Electricity" or "Unspecified Source" means electricity generation that cannot be matched to a specific electricity generating facility or electricity generating unit or matched to an asset-controlling supplier recognized by ARB. Unspecified sources contribute to the bulk system power pool and typically are dispatchable, marginal resources that do not serve baseload.

(279) "Vented Emissions" means intentional or designed releases of CH_4 or CO_2 containing natural gas or hydrocarbon gas (not including stationary combustion flue gas), including process designed flow to the atmosphere through seals or vent pipes, equipment blowdown for maintenance, and direct venting of gas used to power equipment (such as pneumatic devices).

(280) "Verifiable" means that an Offset Project Data Report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body.

(281) "Verification Body" means a firm accredited by ARB, which is able to render an offset verification statement and provide offset verification services for Offset Project Operators or Authorized Project Designees subject to providing an Offset Project Data Report under this article.

(282) "Verifier" means an individual accredited by ARB to carry out offset verification services as specified in sections 95977.1 and 95977.2.

(283) "Vintage Year" means the budget year to which an individual Californian GHG allowance is assigned pursuant to subarticle 6.

(284) "Voluntarily Associated Entity" means any entity which does not meet the requirements of section 95811 or 95813 in this article and that intends to purchase, hold, sell, or voluntarily retire compliance instruments or an entity operating an offset project or early action offset project that is registered with ARB pursuant to subarticle 13 or 14 in this article.

(285) "Voluntary Renewable Electricity" or "VRE" means electricity produced or RECs associated with electricity, produced by a voluntary renewable electricity generator, and which has not and will not be sold or used to meet any other mandatory requirements in California or any other jurisdiction.

(286) "Voluntary Renewable Electricity Aggregator" or "VRE Aggregator" means the entity that is aggregating systems for the purpose of allowance retirement pursuant to section 95841.1.

(287) "Voluntary Renewable Electricity Generator" means any entity that produces renewable electricity and applies for allowance retirement pursuant to section 95841.1.

(288) "Voluntary Renewable Electricity Participant" or "VRE Participant" means a voluntary renewable electricity generator, a REC marketer, or entity that purchases voluntary renewable electricity or RECs as an end-user or on behalf of an end-user and is seeking allowance retirement pursuant to section 95841.1.

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

(1) "AB 32" means Assembly Bill 32, the California Global Warming Solutions Act of 2006.

(2) "ARB" means the California Air Resources Board.

(3) "BAU" means business as usual.

(4) "BPA" means Bonneville Power Administration.

(5) "CAISO" means the California Independent System Operator.

(6) "CAR" means Climate Action Reserve.

(7) “CEC” means California Energy Commission.

(8) “CFR” means Code of Federal Regulations.

(9) “CH_4” means methane.

(10) “CO_2” means carbon dioxide.

(11)"CO_2e" means carbon dioxide equivalent.

(12) “CRT” means Climate Reserve Tonne.

(13) “DWR” means California Department of Water Resources.

(14) “EII” means the Solomon Energy Intensity Index®

(15) “ETS” means Emission Trading System

(16) “F” means Fahrenheit.

(17) “GHG" means greenhouse gas.

(18) “GHG ETS” means greenhouse gas emissions trading system.

(19) “GWP” means global warming potential.

(20) “HFC” means hydrofluorocarbon.

(21) “LPG” means liquefied petroleum gas.

(22) “MMBtu” means one million British thermal units.

(23) “MRR” means the Air Resources Board’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions.

(24) “Mscf” means one thousand standard cubic feet.

(25) “MWh” means megawatt-hour.

(26) “MT” means metric tons.

(27) “NAICS” means North American Industry Classification System.

(28) “NGLs” means natural gas liquids.

(29) “NERC” means North American Electric Reliability Corporation.

(30) “N_2O” means “nitrous oxide.”

(31) ”PFC” means perfluorocarbon.

(32) “PSE” means purchasing-selling entity.

(33) “PUC” means the Public Utilities Commission.

(34) “QE” means Qualified Export as defined in section 95802(a)(225).

(35) “REC” means Renewable Energy Credit.

(36) “REDD” means reducing emissions from deforestation and degradation.

(37) "RPS" means the Renewable Portfolio Standard

(38) "SCF" means standard cubic foot.

(39) "SF_6" means sulfur hexafluoride.

(40) "WAPA" means Western Area Power Administration.

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 3: Applicability

This Article 5 applies to all of the entities identified in this subarticle.

§ 95810. Covered Gases.

This article applies to the following greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF_3), and other fluorinated greenhouse gases.

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.

§ 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) Lime manufacturing;

(7) Nitric acid production;

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

(9) Petroleum refining;

(10) Pulp and paper manufacturing;

(11) Self-generation of electricity; or

(12) 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) Carbon dioxide suppliers.

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.

(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 2008 to 2011 from the categories specified in section 95852(a) 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 CO_2e 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 CO_2e per year. For purpose of comparison to this threshold, the supplier must include the sum of the CO_2 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 CO_2e 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) and (b), 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 CO_2e 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 (f), 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 CO_2e per year and for unspecified sources is zero MWhs per year as of January 1, 2015.

(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 CO_2e 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.

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.

(a) An entity that meets the requirements of section 95811, but does not exceed the inclusion thresholds set forth in section 95812 may elect to voluntarily opt-in to the Cap-and-Trade Program.

(b) An entity that voluntarily elects to participate in this program under this section must submit its request to the Executive Officer for approval pursuant to section 95830(c). The Executive Officer shall evaluate such applications and designate approved applicants as opt-in covered entities.

(c) An opt-in covered entity is subject to all reporting, verification, enforcement, and compliance obligations that apply to covered entities.

(d) An opt-in covered entity may be eligible to receive freely allocated allowances subject to subarticles 8 and 9.

(e) Opt-in participation shall not affect the allowance budgets set forth in subarticle 6.

(f) Opting out. After the end of any given compliance period an opt-in covered entity may choose to opt out of the program provided its annual emission levels for any data year remain below the inclusion thresholds set forth in section 95812. An entity choosing to opt out of the program must either fulfill its compliance obligations as required pursuant to

subarticle 7 or surrender allowances equivalent to all the directly allocated allowances it has received from the budget years for the compliance period in question. An opt-in covered entity that wishes to opt-out of this program must apply to the Executive Officer.

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.

§ 95814. Voluntarily Associated Entities and Other Registered Participants.

(a) Voluntarily Associated Entities (VAE). An entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments may apply to the Executive Officer pursuant to section 95830(c) for approval as a voluntarily associated entity. The following entities may qualify as voluntarily associated entities:

(1) An entity that does not meet the requirements of sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments;

(2) An entity operating an offset project or early action offset project that is registered with ARB pursuant to subarticles 13 or 14; or

(3) An entity providing clearing services in which it takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered with the Cap-and-Trade Program. A qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C. § 1a(9)) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. § 7a-1(a)).

(b) Other Registered Participants.

(1) The following entities do not qualify to hold compliance instruments but may qualify as a Registered Participant:

(A) An offset verifier accredited pursuant to section 95978;

(B) A verification body accredited pursuant to section 95978;

(C) Offset Project Registries; or

(D) Early Action Offset Programs approved pursuant to subarticle 14.

(2) To qualify as a Registered Participant the entity must obtain registration approval from the Executive Officer pursuant to section 95830(c).

(c) A registered entity that has had its holding account revoked pursuant to section 95921(f)(3) may not hold compliance instruments or register with the accounts administrator in the Cap-and-Trade Program in any capacity.

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 4: Compliance Instruments

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

(a) California Greenhouse Gas Emissions Allowances.

(1) The Executive Officer shall create California GHG allowances pursuant to the schedule set forth in subarticle 6.

(2) The Executive Officer shall assign each California GHG allowance a unique serial number that indicates the annual allowance budget from which the allowance originates.

(3) The Executive Officer shall place these allowances into a holding account under the control of the Executive Officer pursuant to section 95831(b).

(b) Offset Credits Issued by ARB.

(1) The Executive Officer shall issue and register ARB offset credits pursuant to the requirements of subarticles 13 and 14.

(2) Surrender of ARB offset credits shall be subject to the quantitative usage limit set forth in section 95854.

(c) Each compliance instrument issued by the Executive Officer represents a limited authorization to emit up to one metric ton in CO_2e of any

greenhouse gas specified in section 95810, subject to all applicable limitations specified in this article. No provision of this article may be construed to limit the authority of the Executive Officer to terminate or limit such authorization to emit. A compliance instrument issued by the Executive Officer does not constitute property or a property right.

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.

§ 95821. Compliance Instruments Issued by Approved Programs.

The following compliance instruments may be used to meet a compliance obligation under this article:

(a) Allowances specified in section 95942(b) and issued by a program approved by ARB pursuant to section 95941;

(b) Offset credits specified in section 95942(c) and issued by a program approved by ARB pursuant to section 95941;

(c) ARB offset credits issued for purposes of early action pursuant to section 95990;

(d) Sector-based offset credits recognized pursuant to subarticle 14; and

(e) Compliance instruments specified in sections 95821(b) through (d) are subject to the quantitative usage limit set forth in section 95854.

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.

(a) The Executive Officer shall serve as accounts administrator or may contract with an entity to serve as accounts administrator.

(b) Eligibility and Restrictions:

(1) An entity must qualify for registration pursuant to section 95811,

95813, or 95814.

(2) An entity qualified to register cannot apply for more than one registration.

(3) An entity cannot hold a compliance instrument until the Executive Officer approves the entity's registration with ARB.

(c) Requirements for Registration.

(1) An entity must complete an application that contains the following information:

(A) Name, address and contact information, ~~and~~ type of organization, date and place of incorporation;

(B) Names and addresses of the entity's directors and officers.

(C) A list of persons controlling over 10% of the voting rights attached to all the outstanding voting securities of the entity.

(D) A business number, if assigned, to the entity by a California state agency.

(E) A U.S. federal tax Employer Identification Number, if assigned.

(F) Data Universal Numbering System number, if assigned.

~~(B)~~(G) Statement of basis for qualifying for registration pursuant to sections 95811, 95813, or 95814;

~~(C)~~(H) Identification of all other entities registered pursuant to this article with whom the entity has a corporate association, direct corporate association, ~~direct~~ or indirect corporate association pursuant to section 95833, and a brief description of the association;

~~(D)~~(I) Applicants may be denied registration (i) based on information provided; or (ii) if the Executive Officer determines the applicant has provided false or misleading information, or (iii) has withheld information material to its application.

~~Identification of all entities registered pursuant to this article for whose benefit the entity holds compliance instruments pursuant to section 95834; and~~

~~(E) Applicants may be denied registration based on (i) information provided; or (ii) if the Executive Officer determines the applicant has provided false or misleading information, or has withheld information pertinent to its application.~~

(2) Any individual listed by the registering entity in its registration application in a capacity requiring access to the tracking system must comply with the Know-Your-Customer requirements pursuant to section 95834 before access to the tracking system will be granted. ~~If an entity qualifies as a voluntarily associated entity pursuant to section 95814(a)(3), then it does not need to include in its registration application pursuant to section 95830(c)(1)(D) information on entities for which it only takes temporary possession of allowances for the purpose of providing a market clearing service for transactions between two entities registered into the Cap-and-Trade Program. It must provide information pursuant to section 95830(c)(1)(D) if it has a corporate association with another registered entity pursuant to section 95833.~~

(3) An entity must designate an authorized account representative pursuant to section 95832.

(d) Registration Deadlines.

(1) An entity that meets or exceeds the inclusion thresholds in section 95812 must register with the accounts administrator pursuant to this section:

(A) Within 30 calendar days of the reporting deadline contained in MRR if the entity is not a covered entity as of January 1, 2013; or

(B) By January 31, 2012 or within 30 calendar days of the effective date of this regulation, whichever is later, for an entity that exceeds the inclusion thresholds in section 95812 for any data year 2008 through 2011.

(2) An opt-in covered entity must register with the accounts administrator by November 30 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.

(3) Any voluntarily associated entity that intends to hold an ARB-issued compliance instrument must register with the accounts administrator prior to acquiring such compliance instruments.

(e) Completion of Registration. Registration is completed when the Executive Officer approves the registration and informs the entity and the accounts administrator of the approval.

(f) Updating Registration Information.

(1) Registrants must update their registration information within 10 working days of changes to the information listed in section 95830(c).

(2) Information may be directly entered into the tracking system operated by the accounts administrator or, if that is not available, submitted to the accounts administrator by the entity.

(3) Registration may be revoked, suspended, or restricted if an entity does not update its registration within 10 days of a change pursuant to section 95921(g)(3). ~~95921(f)(3).~~

(g) Information Confidentiality.

(1) Except when necessary in the course of oversight, investigation, enforcement and prosecution, information relating to the identity of real persons not registered as voluntarily associated entities will be treated by ARB and the accounts administrator as confidential.

~~Except when necessary in the course of enforcement investigation and prosecution, the following registration information will be treated by ARB and the accounts administrator as confidential:~~

~~(A) Beneficial holding as described in section 95830(c)(1)(D); and~~

~~(B) Information relating to the identity of real persons.~~

(2) All other registration information collected pursuant to section 95830(c) may be made publicly available by the accounts administrator.

(h) Linking. When California links to an external GHG ETS, an entity must register into a jurisdiction based on the location information the entity must provide pursuant to section 95830(c)(1)(A).

(1) An entity located in the United States may only register with California.

(2) An entity located in Canada may only register with a GHG ETS operated by a Canadian province to which California has linked pursuant to Subarticle 12.

(3) An entity located outside of the United States and Canada may register with California or any GHG ETS operated by a Canadian province to which California has linked pursuant to Subarticle 12.

(4) California will recognize the registration of an entity that registers into an external GHG ETS operated by a Canadian province to which California has linked pursuant to Subarticle 12.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 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, or one exchange clearing holding account for each entity registered pursuant to 95830.

(2) Holding Accounts. When the Executive Officer approves a registration for a covered entity, an opt-in covered entity, or a voluntarily associated entity, the accounts administrator will create a holding account for the registrant.

(3) Limited Use Holding Accounts. When an entity qualifies for a direct allocation under section 95890(b) the accounts administrator will create a limited use holding account for the entity that shall be subject to the following restrictions:

(A) The entity may not transfer compliance instruments from other accounts into the limited use holding account; and

(B) The entity may not transfer compliance instruments from the limited use holding account to any account other than the Auction Holding Account.

(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.

(A) A covered entity or opt-in covered entity may transfer compliance instruments to its compliance account at any time.

(B) A compliance instrument transferred into a compliance account may not be removed by the entity.

(C) The Executive Officer may transfer compliance instruments into a compliance account. The Executive Officer may remove compliance instruments to satisfy a compliance obligation, or when closing an account.

(5) Exchange Clearing Holding Accounts. When the Executive Officer approves registration for an entity identified as a voluntarily associated entity pursuant to section 95814(a)(3), then the accounts administrator will create an exchange clearing holding account for the entity.

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

(B) The clearing entity may only transfer the compliance instruments in its exchange clearing holding account to the account designated by the entity receiving the allowances under the transaction being cleared.

(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:

(1) A holding account to be known as the Allocation Holding Account into which the serial numbers of compliance instruments will be registered when the compliance instruments are created.

(2) A holding account to be known as the Auction Holding Account into which allowances are transferred to be sold at auction from:

(A) The Allocation Holding Account;

(B) The holding accounts of those entities for which allowances are being auctioned on consignment pursuant to section 95921(f)(3);

(C) The limited use holding accounts of those entities consigning allowances to auction pursuant to section 95910; and

(D) The compliance accounts of entities fulfilling an untimely surrender obligation pursuant to section 95857(d)(1)(A).

(3) A holding account to be known as the Retirement Account to which the Executive Officer will transfer compliance instruments from compliance accounts or from holding accounts under the control of the Executive Officer for the purpose of permanently retiring them. Alternatively, entities may voluntarily retire compliance instruments by transferring the serial numbers of compliance instruments they are retiring to the Retirement Account.

(A) When compliance instruments are registered into the Retirement Account, these compliance instruments cannot be returned to any other holding or compliance account.

(B) When compliance instruments are registered into the Retirement Account, any external ETS to which California links pursuant to subarticle 12 will be informed of the retirements.

(C) The Executive Officer will record the serial numbers of the retired instruments to a publicly available Permanent Retirement Registry.

(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 section 95870(a) will be transferred; and

(B) From which the Executive Officer will authorize the withdrawal of allowances for sale to covered entities pursuant to section 95913.

(5) A holding account to be known as the Forest Buffer Account:

(A) Into which ARB will place ARB offset credits pursuant to section 95983(a); and

(B) From which ARB may retire ARB offset credits pursuant to sections 95983(b)(2), (c)(3), and (c)(4) and place them into to the Retirement Holding Account.

(6) A holding account to be known as the Voluntary Renewable Electricity Reserve Account, which will be closed when it is depleted of the following originally allocated allowances:

(A) Into which the Executive Officer will transfer allowances allocated pursuant to section 95870(c); and

(B) From which the Executive Officer may retire allowances pursuant to section 95841.1.

(c) Account Closure.

(1) A registered entity's accounts will be closed after the Executive Officer receives a report that an entity has ceased operation pursuant to MRR section 95101(h).

(2) A voluntarily associated entity's accounts may be closed if no compliance instruments are transferred into or out of the accounts for a period of three years.

(3) Compliance instruments remaining in accounts closed by the Executive Officer and not needed to fulfill a compliance obligation will be consigned to auction pursuant to section 95910(d) on behalf of the registered 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.

§ 95832. Designation of Authorized Account Representative.

(a) An application for registration into the California Cap-and-Trade system for an account must designate a single authorized account representative and between one and four ~~a single~~ alternate authorized account representatives who may act on behalf of the authorized account representative, and up to five account viewing agents. Any e-mail communication between the accounts administrator and an alternate authorized account representative must also be addressed to the authorized account representative. The agreement by which an ~~the~~ alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative. A complete application for an account shall be submitted to the accounts administrator and shall include the following elements:

(1) Name, address, E-mail address, and telephone number~~, and facsimile transmission number~~ of the authorized account representative and any alternate authorized account representatives and account viewing agents;

(2) Name of the organization subject to the agreement for the authorized account representative or any alternate authorized account representative to represent its ownership interest with respect to the compliance instruments held in the account.

~~(2) Organization name;~~

~~(3) A list of all entities subject to a binding agreement for the authorized account representative or any alternate authorized account representative to represent their ownership interest with respect to the compliance instruments held in the account, including a statement of each beneficial owner's percentage ownership interest and a statement of affiliations between beneficial owners~~;

(3)~~(4)~~ The authorized account representative and any alternate authorized account representative must attest, in writing, to ARB as follows: "I certify under penalty of perjury under the laws of the State of California that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in title 17, article 5, sections 95800 et seq. on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the accounts administrator or a court regarding the account";

(4) An attestation verifying the selection of the authorized account representative, alternate account representatives, and account viewing agents, signed by the officer of the entity who is responsible for the conduct of the authorized account representative, alternate account representatives, and account viewing agents, and is one of the officers disclosed pursuant to section 95830(c)(1)(B).

(5) The signature of the authorized account representative and any alternate authorized account representative and the dates signed; and

(6) An attestation as follows: "I certify that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. I also certify under penalty of

perjury of the laws of the State of California that all information required to be submitted to ARB is true, accurate, and complete."

(b) Unless otherwise required by the Executive Officer, documents of agreement referred to in section 95832(a) in the application for an account shall not be submitted to the accounts administrator. The accounts administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) Authorization of authorized account representative. Upon receipt by the accounts administrator of a complete application for an account under section 95830(c):

(1) The accounts administrator will establish an account or accounts for the person or persons for whom the application is submitted pursuant to section 95831.

(2) The authorized account representative and any alternate authorized account representative for the account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article, notwithstanding any agreement between the authorized account representative or any alternate authorized account representative and such entity.

(3) Any such entity shall be bound by any decision or order issued to the authorized account representative or any alternate authorized account representative by the Executive Officer or a court regarding the account. Any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative or any alternate authorized account representative.

(d) Each submission concerning the account shall be submitted, signed, and attested to by the authorized account representative or any alternate authorized account representative for the entity ~~entities~~ that owns the ~~own~~

compliance instruments held in the account. Each such submission shall include the following attestation statement by the authorized account representative or any alternate authorized account representative: "I certify under penalty of perjury under the laws of the State of California that I am authorized to make this submission on behalf of the entity ~~entities~~ that owns the ~~own~~ compliance instruments held in the account. I certify under penalty of perjury under the laws of the State of California that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of California that the statements and information submitted to ARB are true, accurate, and complete." I consent to the jurisdiction of California and its courts for purposes of enforcement of the laws, rules and regulations pertaining to title 17, article 5, sections 95800 et seq., and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(e) The accounts administrator will accept or act on a submission concerning the account only if the submission has been made, signed, and attested to in accordance with this section.

(f) Changing authorized account representative and alternate authorized account representative; changes in entities that own compliance instruments.

(1) The authorized account representative for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative, or the previous alternate authorized account representative prior to the time and date when the accounts

administrator receives the superseding application for an account shall be binding on the new authorized account representative and the entities that own the compliance instruments in the account.

(2) The alternate authorized account representative for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative, or the previous alternate authorized account representative, prior to the time and date when the accounts administrator receives the superseding application for an account shall be binding on the new alternate authorized account representative and the entities that own the compliance instruments in the account.

~~(3) In the event that a new entity owning compliance instruments in the account is not included in the list of entities in the application for an account, the new entity shall be subject to and bound by the application for an account; the representations, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative; and the decisions, orders, actions, and inactions of the accounts administrator, as if the new entity were included in such list.~~

~~(4) Within one day following any change in the entities that own compliance instruments in the account, including the addition or deletion of entities, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for an account amending the list of entities that own the compliance instruments in the account to include the change.~~

(g) Objections Concerning Authorized Account Representative.

(1) Once a complete application for an account under section 95830(c) has been submitted and received, the accounts administrator will rely on the application unless and until a superseding complete application

for an account under section 95830(c) is received by the accounts administrator.

(2) Except as provided in section~~s~~ 95832(f)(1), no objection or other communication submitted to the accounts administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative for an account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the accounts administrator under this article.

(3) The accounts administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative for an account, including private legal disputes concerning the proceeds of compliance instrument transfers.

(h) Delegation by authorized account representative and alternate authorized account representative<u>s</u>.

(1) An authorized account representative<u> or an alternate authorized account representative for a registered entity</u> may ~~delegate, to~~ <u>authorize up to five natural persons per account to view all information contained in the tracking system involving the entity's accounts, information, and transfer records (account viewing authority).</u> ~~one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c)(2).~~

~~(2) An alternate authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c)(2).~~

(2)~~(3)~~ In order to delegate account viewing authority ~~delegate authority to make an electronic submission to the accounts administrator~~ in accordance with section 95832(h)(1) ~~and (2)~~ the authorized account representative or alternate authorized account representative, as appropriate, must submit to the accounts administrator a notice of delegation, that includes the following elements:

(A) The name, address, email address, and telephone number~~, and facsimile transmission number~~ of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, and telephone number~~, and facsimile transmission number~~ of each such natural person, herein referred to as "account viewing agent." ~~"electronic submission agent;"~~

(C) An attestation verifying the slectection of the account viewing agent, signed by the officer of the entity who is responsible for the conduct of the account viewing agent, and is one of the officers disclosed pursuant to section 95830(c)(1)(B).

~~(A) For each such natural person, a list of the type of electronic submissions for which authority is delegated to him or her; and~~

~~(B) The following attestations by such authorized account representative or alternate authorized account representative:~~

~~1. "I agree that any electronic submission to the accounts administrator that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under section 95832(h)(3) shall be deemed to be an electronic submission by me;" or~~

~~2. "Until this notice of delegation is superseded by another notice of delegation under section 95832(h)(3), I agree to maintain an email account and to notify the accounts administrator immediately of any change in my email address unless all delegation authority by me is terminated."~~

(3)~~(4)~~ A notice of delegation submitted under section 95832(h)(2) shall be effective, with regard to the accounts ~~authorized account representative or alternate authorized account representative~~ identified in such notice, upon receipt of such notice by the accounts administrator and until receipt by the accounts administrator of a superseding notice of delegation by such authorized account representative or alternate authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified account viewing agent, add a new account viewing agent, ~~electronic submission agent, add a new electronic submission agent,~~ or eliminate entirely any delegation of authority.

~~(4) Any electronic submission covered by the attestation in section 95832(h)(3)(D) and made in accordance with a notice of delegation effective under section 95832(h)(3) shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.~~

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.

§ 95833. Disclosure of ~~Direct and Indirect~~ Corporate Associations.

(a) Entities registered or applying to register pursuant to section 95830 must disclose ~~direct and indirect~~ corporate associations with other registered entities.

(1) An entity has a corporate association with another entity if either one of these entities:

(A) Holds more than 20 percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;

(B) Holds or can appoint more than 20 percent of common directors of the other entity;

(C) Holds more than 20 percent of the voting power of the other entity;

(D) In the case of a partnership other than a limited partnership, holds more than 20 percent of the interests of the partnership; or

(E) In the case of a limited partnership, controls the general partner.

(2)~~(1)~~ An entity has a "direct corporate association" with another entity if either ~~any~~ one of these entities:

(A) Holds more than 50 percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;

(B) Holds or can appoint more than 50 percent of common directors of the other entity; ~~or~~

(C) Holds more than 50 percent of the voting power of the other entity~~.~~;

(D) In the case of a partnership other than a limited partnership, holds more than 50% of the interests of the partnership; or

(E) In the case of a limited partnership, controls the general partner.

(3)~~(2)~~ An entity (A) has a "direct corporate association" with another entity (B) if the two entities share a common parent that is not registered into the California cap-and-trade program and that parent has a direct corporate association with each entity (A and B) ~~pursuant to~~ when applying the indicia of control contained in section 95833(a)(2). ~~95833(a)(1).~~

(4) An entity with a direct corporate association with a second registered entity has a direct corporate association with any registered entity with whom the second registered entity has a direct corporate association.

(5)~~(3)~~ An entity has an "indirect corporate association" with another entity if: ~~when:~~

(A) The two entities do not have a direct corporate association;

(B)~~(A)~~ The two entities are connected through a line of more than one ~~direct~~ corporate association; and

(C)~~(B)~~ The controlling entity's percentage of ownership or other indicia of control under section 95833(a)(1)(A), (B), (C) or ~~(C)~~ (D) of the indirectly controlled entity is more than 20 ~~50~~ percent after multiplying the percentages at each link in the chain of ~~direct~~ corporate associations.

(6)~~(4)~~ Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates other rules.

(b) If California links to one or more GHG ETS pursuant to subarticle 12, then entities shall disclose corporate associations with entities registered with those linked programs.

~~(c) An entity has a disclosable corporate association if any of the criteria in section 95833(a)(1), (2), or (3) yields a value above 25 percent.~~

(c)~~(d)~~ Each registered entity with a ~~disclosable, direct or~~ corporate association, direct corporate association, or indirect corporate association with another registered entity must disclose the following information:

(1) The name, holding account number, authorized account representative, address, and contact information for ~~of~~ the other entity;

(2) The type of corporate association and a brief description of the association, to include ~~the following:~~ information sufficient to explain the entity's evaluation of the measures contained in sections 95833(a) used to determine the type of corporate association disclosed.

~~(A) Corporate parent;~~

~~(B) Subsidiary;~~

~~(C) Sister company;~~

~~(D) Partnership; and~~

~~(E) Other information that describes the relationship.~~

(d)~~(e)~~ The entity must disclose the information pursuant to section 95833(c) to the Executive Officer:

(1) When registering pursuant to section 95830;

(2) At any time after registering when a corporate ~~disclosable~~, direct, or indirect association is created or exists;

(3) Within 30 days of a change to the information disclosed on corporate ~~disclosable~~, direct and indirect corporate associations; and

(4) No later than the auction registration deadline established in section 95912 when reporting a change to the information disclosed, otherwise the entity may not participate in that auction.

(e) Consolidation of Accounts for Corporate Associations.

(1) By January 1, 2013 the Executive Officer will consolidate the accounts held by entities that are part of a direct corporate association into a consolidated set of accounts.

(2) By October 1, 2012 the authorized account representative or alternate authorized account representative for all entities that are part of a direct corporate association and intend to have their accounts consolidated must provide to the Executive Officer:

(A) Confirmation of the corporate association if not already provided;

(B) Confirmation of the entity's intent to have its account consolidated with that of the other entities within the corporate association; and

(C) A change of authorized account representative and alternate authorized account representative to new representatives that will serve as the authorized account representative and

alternate authorized account representatives for the consolidated accounts.

(3) To opt out of consolidation of accounts, the authorized account representative or alternate authorized account representative for an entity within the corporate association must provide to the Executive Officer by October 1, 2012:

(A) Confirmation of the corporate association if not already provided;

(B) An attestation, signed by the officer of the entity who is responsible for the conduct of the account viewing agent and is one of the officers disclosed pursuant to section 95830(c)(1)(B), that the entity seeks exclusion of its account from the consolidated set of accounts to be created ; and

(C) Confirmation of the opt-out decision by the authorized account representative or alternate authorized account representative designated for the corporate association pursuant to section 95832(a). This confirmation will include a distribution of the purchase and holding limits between the consolidated corporate association and any associated entities opting out of consolidation.

(4) To consolidate the accounts for a corporate association the Executive Officer shall instruct the accounts administrator to:

(A) Create a single consolidated set of accounts for members of a corporate association that accept consolidation;

(B) Include a compliance account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a compliance account;

(C) Include a limited use holding account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a limited use holding account;

(D) Complete all valid transfer requests in the system involving any accounts for the members of the corporate association;

(E) Transfer all compliance instruments in the existing accounts held by the member entities to the appropriate corporate association accounts.

(F) Close the accounts held by the individual member entities of the corporate association that have not opted out.

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 ~~Disclosure of Beneficial Holding Relationships.~~

This section is still under development. Staff has provided a framework for the types of information that may be required as part of the 'Know-Your-Customer' process. This requirement will ensure that individuals who apply for accounts really are who they claim to be. This is critical to the integrity and security of the tracking system. Most of the requirements being considered are similar to the requirements in the registration process for the European Union Emissions Trading System. Staff is also considering disallowing individuals from having accounts if they have been convicted of certain activities (securities theft, fraud, moral turpitude) within the previous ten years. Should ARB request notorized copies of the valid government identification or background checks? Stakeholders are encouraged to share their thoughts on these requirements.

(a) General Requirements.

(1) The accounts administrator cannot provide an individual access to the tracking system until the Executive Officer has determined that the individual applying for participation has complied with the requirements of this section. This includes all individuals acting on behalf of the Executive Officer.

(2) Completion of the requirements of this section does not remove additional requirements contained elsewhere in this article that apply to the functions the individual will undertake in the tracking system.

(3) All documents submitted to the Executive Officer pursuant to this section shall be in English.

(b) The individual must provide documentation of the following:

(1) Name

(2) The address of the permanent residence of the applicant, which may include:

(A) A valid identity card issued by a state or province with an expiration date;

(B) Any other government-issued identity document containing an individual's permanent address; or

(C) Any other document that is customarily accepted in the State of California, or any jurisdiction operating an external GHG ETS to which California has linked, as evidence of the permanent residence of the individual.

(3) Date of Birth

(4) Employer name and Address

(5) Passport number (if issued)

(6) Driver's license number

(7) An open bank account in the United States or Canada.

(8) Employment or other relationship to an entity that has registered or has applied to register with the California GHG cap-and-trade program or an external GHG ETS to which California has linked, if the individual is listed by an entity registering pursuant to section 95830.

(9) A government-issued document providing photographic evidence of identity of the applicant which may include:

(A) A valid identity card issued by a state or province with an expiration date; or

(B) A passport.

(c) Verification of information

(1) Verification of identity and all required information will be through hardcopy documentation presented in person by the individual at a location designated by the Executive Officer. And/Or

(2) Any copy of a document submitted pursuant to this section must be certified as a true copy by a notary public or a similar person as identified by the Executive Officer at least three months before submittal.

~~(a) There are two types of participants in a beneficial holding relationship, an agent and a principal:~~

~~(1) The agent in the beneficial holding relationship is the registered entity acquiring and holding compliance instruments to be transferred to another entity under an agreement with that entity that is disclosed to ARB; and~~

~~(2) The principal in the beneficial holding relationship is the registered entity to whom the compliance instruments will be transferred by an agent under an agreement with that entity that is disclosed to ARB.~~

~~(3) An electrical distribution utility may serve as the agent in a beneficial holding relationship for a second registered entity with whom it has a contract for the delivery of electricity for the sole purpose of supplying the second entity with compliance instruments to cover emissions resulting from satisfying the electricity contract.~~

~~(A) This disclosure must be made to ARB prior to any such purchases, and must include the terms of the contract governing the eventual transfer.~~

~~(B) This disclosure must include the principal's confirmation that the electrical distribution utility is authorized to serve as an agent on its behalf.~~

~~(C) An entity serving as an agent in this type of a beneficial holding relationship may not also serve as the agent in a beneficial holding relationship with an entity with whom it does not have a contract for the delivery of electricity.~~

~~(4) An entity may acquire compliance instruments for the eventual transfer to registered entities that are part of a corporate association to be used for the affiliated entities' compliance obligations. An entity cannot have~~

~~this type of beneficial holding relationship unless the corporate association is disclosed pursuant to section 95833.~~

~~(b) Disclosure of Beneficial Holding.~~

~~(1) An entity that establishes an agreement to participate in a beneficial holdings arrangement as either an agent or a principal must report the identity of the second entity in the arrangement, its account information, and the nature of the relationship to the Executive Officer within 10 days of establishing the agreement, notwithstanding the other disclosure requirements in section 95834(a).~~

~~(2) The agent will disclose the identity and account number of the principal when acquiring compliance instruments on behalf of a principal when submitting a transfer request to the accounts administrator pursuant to section 95921. The accounts administrator will notify the principal of the transaction and the principal must confirm the transfer within the time limit specified pursuant to section 95921(a).~~

~~(3) After confirmation of the transfer by the principal, the compliance instruments acquired under the transfer and held by the agent will count against the holding limit of the principal and must be transferred to the principal within one year after the agent acquired them.~~

~~(c) Multiple Beneficial Holding Relationships. If an entity with a beneficial holding relationship pursuant to section 95834(a)(1) serves as an agent for more than one principal then the entity must either:~~

~~(1) Submit a statement to the Executive Officer, under penalty of perjury under the laws of the State of California, that it:~~

~~(A) Does not share information on one principal's transaction strategies or holdings with any other principal with whom it has a beneficial holding relationship; and~~

~~(B) Conducts separate transactions for each principal with whom it has a beneficial holding relationship; or~~

~~(2) Submits a statement to the Executive Officer, that it has a direct or indirect corportate association with the principals with whom it has a beneficial holding relationship.~~

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 6: California Greenhouse Gas Allowance Budgets

§ 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.

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. Annual Allowance Budgets for Calendar Years 2013-2020.

The California GHG Allowance Budgets are set as described in Table 6-1.

Table 6-1: California GHG Allowances Budgets

	Budget Year	*Annual Allowance Budget (Millions of CA GHG Allowances)*
First Compliance Period	2013	162.8
	2014	159.7
Second Compliance Period	2015	394.5
	2016	382.4
	2017	370.4
Third Compliance Period	2018	358.3
	2019	346.3
	2020	334.2

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) 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 served load prior to July 1, 2005. Allowance retirement for purposes of voluntary renewable electricity will begin in 2014 for 2013 generation. Voluntary renewable electricity must be directly delivered to California.

(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 for the previous year's generation or REC purchases. Request must meet the requirements below and include the following information:

(A) Report to ARB the quantity of renewable electricity in MWhs, and/or the number of RECs generated during the previous year from an eligible renewable electricity generator that meets the requirements of 95841.1(b)(2) or (3), as applicable;

(B) Generator of the renewable electricity or RECs must be certified as RPS eligible by the California Energy Commission, or must meet design and installation standards pursuant to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs, third edition, June 2010;

(C) End-users, or the VRE participants acting on behalf of the end-user choosing to meet (B) above by meeting the California Energy Commission's design and installation standards pursuant to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs, third edition, June 2010, must submit an approval of incentive claim;

(D) Contract, tracking system data, or settlement data for the purchase of the electricity or RECs associated with the generation of the electricity;

(E) Contract, tracking system data, or settlement data for sale 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

(F) Submit the following attestations:

1. Attest, in writing, 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, 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."

(2) VRE Participants seeking allowance retirement for renewable electricity generation from an eligible facility > 200 KW nameplate capacity must submit the following with the report required in this section, for which the VRE participant is seeking allowance retirement:

(A) Provide the generator's RPS certification identification number, as determined by the California Energy Commission, or proof that each facility or system has met design and installation standards pursuant to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs, third edition, June 2010;

(B) MWhs of renewable electricity generated designated for VRE retirement;

(C) Number of RECs designated for VRE retirement, as applicable; and

(D) REC retirement report or tracking system data.

(3) VRE participants seeking allowance retirement for renewable electricity generating from an eligible facility ≤ 200 KW nameplate capacity must submit the following with the report required in this section. Applicants

may aggregate eligible systems, but must submit one application under one entity:

(A) Provide the generator's RPS certification identification number, as determined by the California Energy Commission, or must meet design and installation standards pursuant to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs, third edition, June 2010;

(B) MWhs of renewable electricity generated;

(C) Number of RECs, as applicable; and

(D) REC retirement report or tracking system data, as applicable.

(c) The allowances requested to be retired, calculated as follows:

$$\text{Number of MT } CO_2e = \text{MWh} \times \text{EF}$$

Where:

"Number of MT CO_2e," rounded down to the nearest whole ton, is the number of allowances to be retired from the Voluntary Renewable Electricity Reserve Account;

"MWh" is the MWh of voluntary renewable electricity claimed and generated from a generator that meets the requirements of this article; and

"EF" is the CO_2e emissions factor equivalent to the default emission factor for unspecified power, pursuant to section 95111(b)(1) of MRR.

ARB shall determine the actual MWh of voluntary renewable electricity purchases that occurred during the period indicated in the documentation. ARB shall retire allowances from the Voluntary Renewable Electricity Reserve Account in an amount up to the number of MT CO_2e represented

by actual voluntary renewable electricity purchases, based on actual MWh purchases and the emissions factor determined pursuant to this section.

(d) Once a voluntary renewable electricity tracking system is approved by the Executive Officer and it is in place, a voluntary renewable electricity generator or REC marketer which meets requirements section 95841.1(b) will always be considered to have satisfied section 95841.1(b), if they participate in the tracking system.

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 7: Compliance Requirements for Covered Entities

§ 95850. General Requirements.

(a) Reporting Requirements. Each covered entity identified in section 95811 is subject to MRR.

(b) An entity's compliance obligation is based on the emissions number for the emissions subject to a compliance obligation for every metric ton of CO_2e for which a positive or qualified positive emissions data verification statement is issued, rounded to the nearest whole ton, or for which there are assigned emissions pursuant to MRR.

(c) Record Retention Requirements. Each entity must retain all of the following records for at least 10 consecutive years and must provide such records within 20 calendar days of receiving a written request from ARB, including:

(1) Copies of all data and reports submitted under this article and section 95105 of MRR;

(2) Records used to calculate a compliance obligation as specified in section 95853;

(3) Emissions data and product data verification statements as required pursuant to section 95103(f) of MRR; and

(4) Detailed verification reports as required pursuant to section 95131 of MRR.

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.

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

(a) Operators of facilities and first deliverers of electricity specified in sections 95811(a) and (b) and carbon dioxide suppliers specified in section 95811(g) that meet or exceed the annual emissions threshold in section 95812(c) have compliance obligations beginning with the first compliance period.

(b) Suppliers of natural gas, suppliers of RBOB and distillate fuel oils, and suppliers of liquefied petroleum gas specified in sections 95811(c), (d), (e), and (f) that meet or exceed the annual threshold in section 95812(d) will have a compliance obligation beginning with the second compliance period.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 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:

$$CO_2e_{covered} = CO_2e_{unspecified} + (CO_2e_{specified} - CO_2e_{specified_notcovered}) - CO_2e_{RPS_adjustment} - CO_2e_{QE_adjustment} - CO_2e_{linked}$$

Where:

$CO_2e_{covered}$ = 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(b)(1) 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 MRR section 95111(b)(1).

(2) Resource shuffling is prohibited and is a violation of this article. First Deliverers must submit the following attestations annually to ARB, by June 1, in writing, by certified mail only:

(A) “I certify under penalty of perjury of the laws of the State of California that [facility or company name] for which I am an agent has not engaged in the activity of resource shuffling to reduce compliance obligation for emissions, based on emission reductions that have not occurred as reported under MRR.”

(B) “I understand [facility or company name], for which I am an agent, is participating in the Cap-and-Trade Program under title 17, California Code of Regulations, article 5, and by doing so, it

now subjects itself to all regulatory requirements and enforcement mechanisms of this program and subjects itself to the jurisdiction of California as the exclusive venue to resolve disputes."

(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 less than the default 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 RECs must be retired and verified pursuant to MRR.

(4) RPS adjustment. Electricity imported or procured by an electricity importer 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 either:

1. Ownership or contract rights to procure the electricity generated by the eligible renewable energy resource; or
2. Have a contract to import electricity on behalf of a California entity that has ownership or contract rights to the electricity generated by the eligible renewable energy resource, as verified under MRR.

(B) The RECs associated with the electricity claimed for the RPS adjustment must be used to comply with California RPS

requirements during the same year in 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.

(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 according to section 95122 of MRR using the reported deliveries (in mmBtu) in emissions data reports that received a positive or qualified positive emissions data verification statement, or the assigned emissions from natural gas delivered to the covered entity by the supplier of natural gas;

(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 Natural Gas Liquids:

(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 (defined in section 95802(a)(47) covered under sections 95811(g) 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 and which are defined in sections 95802(a)(47)(a), 95802(a)(47)(b), and 95802(a)(47)(c), 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.

(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) is calculated based on the sum of the following, as applicable:

(1) Emissions of CO_2, CH_4, and N_2O which resulted from combustion of fossil fuel;

(2) Emissions of CH_4 and N_2O 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).

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.

§ 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 CO_2 under MRR.

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.

§ 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 CO_2 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 95103(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) The fuel being provided under a contract dated on or after January 1, 2012 must only be for an amount of fuel that is associated with:

(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 without producing useful energy transfer.

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

(4) 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.

(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 CO_2 emissions from complete combustion of the fuel, result in more CO_2e 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 23.75 metric tons of CO_2e per ton of captured methane. All calculations of CO_2e 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.

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.

§ 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) D6751-08 (Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, 2008):

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;

(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 section 95153 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 emissions are estimated using leak detection and leaker emission factors, as required by section 95153(o) of MRR; and

(11) Carbon dioxide that is imported, or that is exported for purposes other than geologic sequestration.

(c) Additional Exemption. The operators of facilities with the NAICS code 92811 are exempt from compliance with this article through December 31, 2013.

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.

§ 95853. Calculation of Covered Entity's Triennial Compliance Obligation.

(a) A covered entity that exceeds the threshold in section 95812 in any of the three data years preceding the start of a compliance period is a covered entity for the entire compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total of the emissions with a compliance obligation that received a positive or qualified positive emissions data verification statement, or were assigned emissions

pursuant to section 95131 of MRR from all data years of the compliance period.

(b) A covered entity that initially exceeds the threshold in section 95812 in the first year of a compliance period is a covered entity for the entire compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total of the emissions that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR from all data years of the compliance period.

(c) A covered entity that initially exceeds the threshold in section 95812 in the second year of the second or subsequent compliance period is a covered entity for the second and third years of this compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total of the emissions that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR for the second and third data years of the compliance period.

(d) A covered entity that initially exceeds the threshold in section 95812 in the second year of the first compliance period or the third year of a later compliance period has a compliance obligation for its emissions that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR for that year, but the entity's triennial compliance obligation for the current compliance period is not due the following year. Instead the entity's reported and verified or assigned emissions for this year will be added to the entity's triennial obligation for the subsequent compliance period.

(e) For a new entrant that is eligible to receive free allowances pursuant to subarticles 8 and 9, the first year for this entity to receive free allowances is the year following the first year in which its emissions exceed the threshold in section 95812. The number of free allowances for this new

entrant to receive in that year is twice the number calculated pursuant to section 95891.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

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

(a) Compliance instruments identified in section 95820(b) and sections 95821 (b), (c), and (d) are subject to a quantitative usage limit when used to meet a compliance obligation.

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

$$O_O/S \text{ must be less than or equal to } L_O$$

In which:

O_O = Total number of compliance instruments identified in section 95854(a) submitted to fulfill the entity's compliance obligation for the compliance period.

S = Covered entity's compliance obligation.

L_O = Quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08.

(c) 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_O for the first and second compliance periods and not more than 0.50 of the L_O for subsequent compliance periods.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95855. Annual Compliance Obligation.

(a) An entity has an annual compliance obligation for any year when the entity is a covered entity except for the condition specified in section 95853(d); and

(b) The annual compliance obligation for a covered entity equals 30 percent of emissions with a compliance obligation reported from the previous data year that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

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

(a) A covered entity must surrender one compliance instrument for each metric ton of CO_2e of GHG emissions for the annual and triennial compliance obligations calculated pursuant to this subarticle beginning with the emissions data report for 2013 emissions and each subsequent year in which the covered entity has a compliance obligation.

(b) Compliance Instruments Valid for Surrender.

(1) A compliance instrument listed in subarticle 4 may be used to satisfy a compliance obligation.

(2) To fulfill a~~ny~~ compliance obligation, a compliance instrument 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 triennial compliance obligation is calculated, unless:

(A) The allowance was purchased from the Allowance Price Containment Reserve pursuant to section 95913; or

(B) The allowance is used to satisfy an excess emissions obligation.

(c) A covered entity must transfer from its holding account to its compliance account a sufficient number of compliance instruments to meet the compliance obligation set forth in sections 95853 and 95855.

(d) Deadline for Surrender of Annual Compliance Obligations. For any year in which a covered entity has an annual compliance obligation pursuant to section 95855, it must fulfill that obligation:

(1) By November 1 of the calendar year following the year for which the obligation is calculated if the entity reports by April 10 pursuant to section 95103 of MRR; or

(2) By November 1 of the calendar year following the year for which the obligation is calculated if the entity reports by June 1 pursuant to section 95103 of MRR.

(3) In years 2015, 2018, and 2021 there is no annual compliance obligation for the preceeding compliance period, only a triennial compliance obligation.

(e) Determination of Triennial 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 equal the triennial 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 equals the compliance obligation.

(f) Surrender of Triennial Compliance Obligation.

(1) The covered entity must transfer sufficient valid compliance instruments to its compliance account to fulfill its triennial compliance obligation by November 1 of the calendar year following the final year of the compliance period.

(2) The total number of compliance instruments submitted to fulfill the triennial compliance obligation is subject to the quantitative use limit pursuant to section 95854.

(3) The surrender of compliance instruments must equal the triennial compliance obligation calculated pursuant to section 95853 less compliance instruments surrendered to fulfill the annual compliance obligation for the years in the compliance period.

(g) When the Executive Officer has determined the covered entity has met its compliance obligations, the Executive Officer shall:

(1) Retire the compliance instruments surrendered; and

(2) Inform programs to which California is linked or recognizes, pursuant to subarticles 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

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.

§ 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

(a) Applicability.

(1) A covered entity or opt-in covered entity that does not meet the compliance deadline for surrendering its annual or triennial compliance obligation pursuant to section 95856 is subject to the compliance obligation for untimely surrender as described in this section; and

(2) The compliance obligation for untimely surrender ("excess emissions") will not apply to a covered entity or opt-in covered entity which is determined to have transferred insufficient instruments to meet the compliance obligations of section 95856 solely because of the invalidation of an ARB offset credit by the Executive Officer pursuant to section 95985 until six months after notice of invalidation.

(b) Calculation of the Untimely Surrender Obligation.

(1) The quantity of excess emissions is the difference between the compliance obligation calculated pursuant to this section and any compliance instruments timely surrendered by the entity;

(2) The entity's compliance obligation for untimely surrender is calculated as four times the entity's excess emissions;

(3) At least three-fourths of an entity's compliance obligation for untimely surrender may only be fulfilled with CA GHG allowances or allowances issued by a GHG ETS pursuant to subarticle 12;

(4) Up to one-fourth of an entity's compliance obligation for untimely surrender may be fulfilled with ARB offset credits or compliance instruments listed in sections 95821(b), (c), and (d);

(5) The quantitative usage limit provided in section 95854 will apply to the compliance instruments listed in section 95857(b)(4) for the compliance period for which the untimely surrender obligation applies; and

(6) The untimely surrender obligation is due within five days of the first auction or reserve sale conducted by ARB following the applicable surrender date, whichever is the latter, and for which the registration deadline has not passed when the untimely surrender obligation is assessed.

(c) If an entity with an untimely surrender obligation fails to satisfy this obligation pursuant to section 95857(b)(6) then:

(1) ARB will determine the number of violations pursuant to section 96014;

(2) If a portion of the untimely surrender obligation is not surrendered as required, the entity will have a new untimely surrender obligation equal to the amount of the previous untimely surrender obligation which was not satisfied by the deadline stated in section 95857(b)(6) upon which the number of violations will be calculated pursuant to section 96014. The new untimely surrender obligation is due immediately; and

(3) The calculation of the untimely surrender obligation shall only apply once for each untimely surrender of compliance instruments per annual or triennial compliance obligation.

(d) When the covered entity or opt-in covered entity meets its untimely surrender obligations pursuant to sections 95857(a) through (c), the Executive Officer shall:

(1) Transfer the compliance instruments used to fulfill the untimely surrender obligation in the following manner:

(A) At least three fourths of the compliance instruments to the Auction Holding Account. The three fourths of the compliance instruments transferred to the Auction Holding Account shall only be comprised of allowances; and

(B) The remaining one fourth of compliance instruments to the Retirement Account.

(2) Inform programs to which California is linked or recognizes, pursuant to subarticles 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

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.

§ 95858. Compliance Obligation for Under-Reporting in a Previous Compliance Period.

If, after an entity has surrendered its compliance instruments for a compliance period pursuant to section 95856, the Executive Officer determines, through an audit or other information, that the entity under-reported its emissions under MRR for any emissions sources that form the basis for entity's the compliance obligation, then the following shall apply:

(a) If the difference between the emissions used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to section 95856 and the emissions determined by the Executive Officer to be under-reported for the sum of

those emissions is less than five percent of the emissions number used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to section 95856, then the entity is not required to take any further action.

(b) If the difference between the emissions used to calculate the compliance obligation and subsequently calculate the number of compliance instruments surrendered pursuant to section 95856 and the emissions determined by the Executive Officer to be under-reported for the sum of those emissions is more than five percent of the emissions number used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to section 95856, then the entity must surrender compliance instruments in the following amount:

$$\mathrm{Cla} = \mathrm{EMd} - \mathrm{CO} - (\mathrm{CO} * 0.05)$$

Where:

'Cla' is the number of additional compliance instruments that must be surrendered to ARB to cover under-reported emissions;

'CO' is the emissions number used to determine the compliance obligation surrendered pursuant to section 95856 for any previous compliance period; and

'EMd' is the number of the emissions determined by the Executive Officer for the sum of the emissions sources subject to a compliance obligation;

(c) The entity will have six months from the time of notification by the Executive Officer to surrender additional compliance instruments for under- reporting emissions under MRR for the previous compliance period as determined pursuant to this section. The provisions of sections 95857 and 96014 shall not apply during these six months. The entity may use compliance instruments from subsequent compliance periods to meet

these requirements. The entity may only use CA GHG allowances or allowances issued by a GHG ETS approved pursuant to subarticle 12 to meet the requirements of this section.

(d) Any determination that an entity under-reported its emissions for a previous compliance period shall be made by the Executive Officer no later than eight years from the applicable verification deadline for the emissions data report which contained the under-reporting of 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 8: Disposition of Allowances

§ 95870. Disposition of Allowances.

(a) Allowance Price Containment Reserve. Upon creation of the Allowance Price Containment Reserve Account, the Executive Officer shall transfer allowances to the Allowance Price Containment Reserve, as follows:

(1) One percent of the allowances from budget years 2013-2014;

(2) Four percent of the allowances from budget years 2015-2017; and

(3) Seven percent of the allowances from budget years 2018-2020.

(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 shall be auctioned pursuant to section 95910.

(2) The proceeds from the sale of these allowances will be deposited into the Air Pollution Control Fund and will be available upon appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq.

(c) Upon creation of the Voluntary Renewable Electricity Reserve Account, the Executive Officer shall transfer allowances to the Voluntary Renewable Electricity Reserve Account, as follows:

(1) 0.5 percent of the allowances from budget years 2013-2014; and

(2) 0.25 percent of the allowances from budget years 2015-2020.

(d) Electrical Distribution Utility Sector Allocation. Allowances available for allocation to electrical distribution utilities each budget year shall be 97.7 million metric tons multiplied by the cap adjustment factor in Table 9-2 for each budget year 2013-2020. The Executive Officer will allocate to electrical distribution utilities on September 14, 2012 ~~July 15, 2012, or the first business day thereafter,~~ for vintage 2013 allowances and November 1, or the first business day thereafter, of each calendar year from 2013-2019 for allocations from 2014-2020 annual allowance budgets.

(e) Allocation to Industrial Covered Entities. Allowances allocated for the purposes of industry assistance shall be transferred to holding accounts for industrial sectors listed in Table 8-1.

(1) The Executive Officer will place an annual individual allocation in the holding account of each eligible covered entity on or before November 1, or the first business day thereafter, of each calendar year 2012-2019 for allocations from 2013-2020 annual allowance budgets.

(2) Allocation to eligible covered entities shall be conducted using the assistance factors specified for each listed industrial activity found in Table 8-1 and the methodology set forth in section 95891.

(A) First Compliance Period Refining Sector Allocation. Allowances available for allocation to petroleum refineries from the 2013-2014 allowance budgets shall be calculated using the following equation. Individual petroleum refiners will receive a portion of this sector allocation under the method calculated pursuant to section 95891(d).

$$SA_t = O_{t-2} * B_R * AF_{R,t} * c_t$$

Where:

"SA_t" is the allocation to the refining sector from budget year "t";

"O_{t-2}" is the output of primary refinery products, in barrels, from the refining sector in year "t-2";

"B_R" is the benchmark for primary products produced by the refining sector, equal to 0.0462 metric tons of allowances per barrel of primary refinery product;

"$AF_{R,t}$" is the assistance factor for budget year "t" assigned to petroleum refining as specified in Table 8-1; and

"c_t" is the cap adjustment factor for budget year "t" assigned to petroleum refining to account for cap decline as specified in Table 9-2 in section 95891.

(B) Second and Third Compliance Period Refining Sector Allocation. For budget years 2015-2020, allowances available for allocation to individual petroleum refineries shall be calculated using the product output-based allocation calculation methodology in section 95891(b).

(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 section 95870(a) through (d). 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) compared to total allowances that would be distributed according to the methodology set forth in section 95891.

Table 8-1: Industry Assistance

Leakage Risk Classification	*NAICS Sector Definition*	*NAICS Code*	*Activity(a)*	*Industry Assistance Factor (AF_a) by Budget Year*		
				2013-2014	*2015-2017*	*2018-2020*
High	Crude Petroleum and Natural Gas Extraction	211111	Thermal EOR Crude Oil Extraction	100%	100%	100%
			Non-Thermal Crude Oil Extraction	100%	100%	100%
	Natural Gas Liquid Extraction	211112	Natural Gas Liquid Processing	100%	100%	100%
	Potash, Soda, and Borate Mineral Mining	212391	Mining and Manufacturing of Soda Ash and Related Products	100%	100%	100%
	All Other Nonmetallic Mineral Mining	212399	Diatomaceous Earth Mining	100%	100%	100%
	Paper (except Newsprint) Mills	322121	Tissue Manufacturing	100%	100%	100%
	Paperboard Mills	322130	Recycled Boxboard Manufacturing	100%	100%	100%
			Recycled Linerboard (Testliner) Manufacturing	100%	100%	100%
			Recycled Medium (Fluting) Manufacturing	100%	100%	100%
	All Other Petroleum and Coal Products Manufacturing	324199	Coke Calcining	100%	100%	100%
	All Other Basic Inorganic Chemical Manufacturing	325188	All Other Basic Inorganic Chemical Manufacturing	100%	100%	100%
	All Other Basic Organic Chemical Manufacturing	325199	All Other Basic Organic Chemical Manufacturing	100%	100%	100%
	Nitrogenous Fertilizer Manufacturing	325311	Nitric Acid Production	100%	100%	100%
			Calcium Ammonium Nitrate	100%	100%	100%

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity(a)	Industry Assistance Factor (AF_a)		
			Solution Production			
	Flat Glass Manufacturing	327211	Flat Glass Manufacturing	100%	100%	100%
	Glass Container Manufacturing	327213	Container Glass Manufacturing	100%	100%	100%
	Cement Manufacturing	327310	Cement Manufacturing	100%	100%	100%
	Lime Manufacturing	327410	Dolime Manufacturing	100%	100%	100%
	Iron and Steel Mills	331111	Steel Production Using Electric Arc Furnace	100%	100%	100%
	Rolled Steel Shape Manufacturing	331221	Hot Rolled Steel Sheet Production	100%	100%	100%
Medium	Food Manufacturing	311	Food Manufacturing	100%	75%	50%
	Cut and Sew Apparel Manufacturing	3152	Cut and Sew Apparel Manufacturing	100%	75%	50%
	Breweries	312120	Brewing	100%	75%	50%
	Petroleum Refineries	324110	Petroleum Refining	100%	75%	50%
	Industrial Gas Manufacturing	325120	Gaseous Hydrogen Production	100%	75%	50%
			Liquefied Hydrogen Production	100%	75%	50%
	Biological Product (Except Diagnostic) Manufacturing	325414	Biological Product (Except Diagnostic) Manufacturing	100%	75%	50%
	Gypsum Product Manufacturing	327420	Plaster Manufacturing	100%	75%	50%
			Plaster Board Manufacturing	100%	75%	50%
	Mineral Wool Manufacturing	327993	Fiber Glass Manufacturing	100%	75%	50%
	Rolled Steel Shape Manufacturing	331221	Picked Steel Sheet Production	100%	75%	50%
			Cold Rolled and Annealed Steel Sheet Production	100%	75%	50%
			Galvanized Steel Sheet Production	100%	75%	50%

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity(a)	Industry Assistance Factor (AF_a)		
			Tin Steel Plate Production	100%	75%	50%
	Secondary Smelting and Alloying of Aluminum	331314	Secondary Smelting and Alloying of Aluminum	100%	75%	50%
	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (Except Copper and Aluminum)	331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (Except Copper and Aluminum)	100%	75%	50%
	Iron Foundries	331511	Iron Foundries	100%	75%	50%
	Turbine and Turbine Generator Set Units Manufacturing	333611	Testing of Turbines and Turbine Generator Sets	100%	75%	50%
Low	Pharmaceutical and Medicine Manufacturing	325412	Pharmaceutical and Medicine Manufacturing	100%	50%	30%
	Aircraft Manufacturing	336411	Aircraft Manufacturing	100%	50%	30%
	Support Activities for Air Transportation	4881	Support Activities for Air Transportation	100%	50%	30%

(f) Auction Proceeds for AB 32 Statutory Objectives. All remaining allowances not allocated for uses specified in sections 95870(a) through (e) will be designated for sale at auction. The proceeds from the sale of these allowances will be deposited into the Air Pollution Control Fund and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq.

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 9: Direct Allocations of California GHG Allowances

§ 95890. General Provisions for Direct Allocations.

(a) Eligibility Requirements for Industrial Facilities. A covered entity or opt-in covered entity from the industrial sectors listed in Table 8-1 shall be eligible for direct allocations of California GHG allowances if it has complied with the requirements of MRR and has obtained a positive or qualified positive product data verification statement for the prior year pursuant to MRR.

(b) Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of MRR and has obtained a positive or qualified positive emissions data verification statement for the prior year pursuant to MRR.

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 Assistance.

(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) First Compliance Period Refining Sector Allocation Exception. For budget years 2013-2014 petroleum refineries shall receive their allocation of allowances pursuant to the methodology stated in section 95891(d).

(2) Second and Third Compliance Period Refining Sector Allocation. For buget years 2015-2020 petroleum refineries shall receive their allocation of allowances pursuant to the product output-based allocation calculation methodology stated in section 95891(b).

(b) Product Output-Based Allocation Calculation Methodology. The Executive Officer shall calculate the amount of California GHG Allowances directly allocated under a product output-based methodology annually using the following formula:

$$A_t = \sum_{a=1}^{n} O_{a,initial} * B_a * AF_{a,t} * c_{a,t} + \sum_{a=1}^{n} O_{a,trueup} * B_a * AF_{a,t-2} * c_{a,t-2}$$

Where:

"A_t" is the amount of California GHG allowances directly allocated to the operator of an industrial facility for all activities with a product output-based allocation from budget year "t";

"t" is the budget year from which the direct allocation occurs;

"t-2" is the year two years prior to year "t";

"t-4" is the year four years prior to year "t";

"a" is each eligible activity as defined in Table 9-1;

"n" is the number of eligible activities at a facility;

"$O_{a,\ initial}$" will be calculated by the Executive Officer as the output in year "t-2" as reported to ARB.

"$O_{a,trueup}$" adjusts for any output in year "t" not properly accounted for in prior allocations. The Executive Officer will calculate this term using the difference between the output reported in data year "t-2" and the output reported in data year "t-4."

"B_a" is the emissions efficiency benchmark per unit of output for each eligible activity defined in Table 9-1;

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

"$c_{a,t}$" is the adjustment factor for budget year "t" assigned to each activity

"a" to account for cap decline as specified in Table 9-2.

Table 9-1: Product-Based Emissions Efficiency Benchmarks

NAICS Sector Definition	NAICS code	Activity (a)	Benchmark (B_a)	Benchmark Units
Crude Petroleum and Natural Gas Extraction	211111	Thermal EOR Crude Oil Extraction	0.0816	Allowances / Barrel of Thermal Crude Oil Eqv.
		Non Thermal Crude Oil Extraction	0.0082	Allowances / Barrel of Non Thermal Crude Oil Eqv.
Natural Gas Liquid Extraction	211112	Natural Gas Liquid Processing	0.0146	Allowances / Barrel of Natural Gas Liquids Produced
Potash, Soda, and Borate Mineral Mining	212391	Mining and Manufacturing of Soda Ash and Related Products	0.948	Allowances / Short Ton of Soda Ash Equivalent (Soda Ash, Biocarb, Borax, V-Bor, DECA, PYROBOR, Boric Acid, and Sulfate)

NAICS Sector Definition	NAICS code	Activity (a)	Benchmark (B_a)	Benchmark Units
Paper (except Newsprint) Mills	322121	Tissue Manufacturing	1.14	Allowances / Air Dried Short Ton of tissue
Paperboard Mills	322130	Recycled Boxboard Manufacturing	0.499	Allowances / Air Dried Short Ton of recycled boxboard
		Recycled Linerboard (Testliner) Manufacturing	0.562	Allowances / Air Dried Short Ton of recycled linerboard
		Recycled Medium (Fluting) Manufacturing	0.392	Allowances / Air Dried Short Ton of recycled medium
Petroleum Refineries	324110	Petroleum Refining (CO_2 Weighted Tonne)	0.0295	Allowances / CO_2 Weighted Tonne
All Other Petroleum and Coal Products Manufacturing	324199	Coke Calcining	0.341	Allowances/Short Ton Calcined Coke
Industrial Gas Manufacturing	325120	Gaseous Hydrogen Production	8.85	Allowances / Metric Ton of Hydrogen Gas
		Liquid Hydrogen Production	8.85	Allowances / Metric Ton of Liquid Hydrogen

NAICS Sector Definition	NAICS code	Activity (a)	Benchmark (B_a)	Benchmark Units
Nitrogenous Fertilizer Manufacturing	325311	Nitric Acid Production	0.349	Allowances / Short ton of nitric acid (HNO3 100%)
		Calcium Ammonium Nitrate Solution Production	0.0902	Allowances / Short ton of calcium ammonium nitrate solution
Flat Glass Manufacturing	327211	Flat glass Manufacturing	0.471	Allowances / Short Ton of Flat Glass Pulled
Glass Container Manufacturing	327213	Container Glass Manufacturing	0.264	Allowances / Short Ton of Container Glass Pulled
Mineral Wool Manufacturing	327993	Fiber Glass Manufacturing	0.394	Allowances / Short Ton of Fiberglass Pulled
Cement Manufacturing	327310	Cement Manufacturing	0.718	Allowances / Short ton of adjusted clinker and mineral additives produced
Lime Manufacturing	327410	Dolime Manufacturing	1.40	Allowances / Short Ton of Dolime Produced
Gypsum Product Manufacturing	327420	Plaster Manufacturing	0.0454	Allowances / Short Ton of Plaster
		Plaster Board Manufacturing	0.134	Allowances / Short Ton of Plaster Board
Iron and Steel Mills	331111	Steel Production Using an Electric Arc Furnace	0.170	Allowances / Short ton of Steel produced using EAF

NAICS Sector Definition	NAICS code	Activity (a)	Benchmark (B_a)	Benchmark Units
Rolled Steel Shape Manufacturing	331221	Hot Rolled Steel Sheet Production	0.0843	Allowances / Short ton of hot rolled steel
		Picked Steel Sheet Production	0.0126	Allowances / Short ton of pickled steel
		Cold Rolled and Annealed Steel Sheet Production	0.0313	Allowances / Short ton of cold rolled and annealed steel
		Galvanized Steel Sheet Production	0.0504	Allowances / Short ton of galvanized steel
		Tin Steel Plate Production	0.0610	Allowances / Short ton of tin plate
Turbine and Turbine Generator Set Units Manufacturing	333611	Testing of Turbines and Turbine Generator Sets	0.00782	Allowances / Horsepower tested

(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:

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

Where:

"A_t" 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;

"$S_{Consumed}$" 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_{Steam}" is the emissions efficiency benchmark per unit of steam, 0.06244 California GHG Allowances/MMBtu Steam;

"$F_{Consumed}$" is the historical baseline annual arithmetic mean amount of energy produced due to fuel combustion at a given facility, measured in MMBtus. 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 30, 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 "$S_{Consumed}$" term;

"B_{Fuel}" is the emissions efficiency benchmark per unit of energy from fuel combustion, 0.05307 California GHG Allowances/MMBtu**;**

"e_{Sold}" is the historical baseline annual arithmetic mean amount of electricity sold or provided for off-site use, measured in MWhs;

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

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

"$c_{a,t}$" is the adjustment factor for budget year "t" assigned to each activity "a" to account for cap decline as specified in Table 9-2.

(1) Data Sources.

(A) In determining the appropriate baseline values, the Executive Officer may employ all available data reported to ARB under MRR for data years 2008-2010. If necessary, the Executive Officer will solicit additional data to establish a representative baseline allocation.

(B) Recognition of California Climate Action Registry membership. If a facility reported facility level, third-party verified, greenhouse gas emissions data to the California Climate Action Registry for data years 2000-2007, the Executive Officer may consider these years in determining the representative annual baseline value. If necessary the Executive Officer will solicit additional data for these data years.

(2) Maximum Free Allocation. The Executive Officer shall ensure that the annual amount of California GHG Allowances directly allocated under the energy-based methodology to a covered entity for operations at a facility shall not exceed 110% of the maximum annual level of greenhouse gas emissions, adjusted for steam purchases and sales and electricity sales, emitted during the historical data years used in establishing the baseline allocation for the facility in question.

(3) New Entrants. Covered entities of facilities that were not in operation prior to 2011 and are eligible for free allocation under the energy-based methodology shall be assessed a baseline annual allocation based on expected activity levels as determined by the Executive Officer.

(4) Facility Closures. Covered entities that are no longer subject to the Cap-and-Trade Program due to reduced emissions or facility closure as determined pursuant to section 95812(e) shall no longer be eligible to receive allowances.

(d) First Compliance Period Refining Sector Allocation Calculation Methodology. For the budget years 2013-2014, the Executive Officer shall calculate the amount of California GHG allowances allocated to an individual petroleum refinery annually using the following methodology.

(1) Facilities without an EII value. For refineries that did not participate in the 2008 Solomon Energy Review, or that do not have a representative EII value as determined by the Executive Officer, allowances will be allocated using the following equation:

$$\text{If: } O_{X,t-2} * B_R * c_{\ t} * AF_{R,t} \leq BE_X * c_{\ t} * AF_{R,t}$$
$$\text{Then: } A_{X,t} = O_{X,t-2} * B_R * c_{\ t} * AF_{R,t}$$

$$\text{If: } O_{X,t-2} * B_R * c_{\ t} * AF_{R,t} > BE_X * c_{\ t} * AF_{R,t}$$
$$\text{Then: } A_{X,t} = BE_X * c_{\ t} * AF_{R,t}$$

Where:

"$A_{X,t}$" is the allocation to refinery "X" without an EII value for year "t";

"$O_{X,t-2}$" is the output of primary refinery products, in barrels, from refinery "X" in year "t-2";

"B_R" is the benchmark for primary products produced by the refining sector, equal to 0.0462 metric tons of allowances per barrel of primary product;

"$AF_{R,t}$" is the assistance factor for budget year "t" assigned to petroleum refining as specified in Table 8-1; and

"c_t" is the adjustment factor for budget year "t" assigned to petroleum refining to account for cap decline as specified in Table 9-2.

"BE_X" is the baseline average annual greenhouse gas emissions for refinery "X" adjusted for steam purchases and sales and electricity sales using the following equation:

$$BE_X = GHG + (S_{Purchased} - S_{Sold}) * 0.06244 - e_{Sold} * 0.431$$

"GHG" is the annual arithmetic mean amount of greenhouse gas emissions from the refinery;

"$S_{Purchased}$" is the annual arithmetic mean amount of steam purchased by the refinery in MMBtu;

"S_{Sold}" is the annual arithmetic mean amount of steam sold from the refinery in MMBtu;

"e_{Sold}" is the annual arithmetic mean amount of electricity sold from the refinery in MWh;

To calculate these values, the Executive Officer may employ data reported to ARB for data years 2008-2010. If the facility reported facility-level, third-party verified, greenhouse gas emissions data to the

California Climate Action Registry for data years 2006-2007, the Executive Officer may consider these years in determining representative baseline values. If necessary, the Executive Officer will solicit data to establish a representative baseline.

(2) Facilities with an EII value. For refineries that participated in the 2008 Solomon Energy Review and have a representative EII value, allowances will be allocated using the following approach:

(A) Initial Allocations. 2013 and 2014 vintage allowances will be allocated using the following equation:

$$A_{Y,t} = BE_Y * DF_{Y,t} * F_t$$

Where:

"$A_{Y,t}$" is the initial allocation to refinery "Y" that has an EII value for year "t";

"BE_Y" is the baseline average annual greenhouse gas emissions for refinery "Y" adjusted for steam purchases and sales and electricity sales using the following equation:

$$BE_Y = GHG + (S_{Purchased} - S_{Sold}) * 0.06244 - e_{Sold} * 0.431$$

"GHG", for the purposes of this calculation,is the annual arithmetic mean amount of greenhouse gas emissions from the refinery;

"$S_{Purchased}$" is the annual arithmetic mean amount of steam purchased by the refinery in MMBtu;

"S_{Sold}" is the annual arithmetic mean amount of steam sold from the refinery in MMBtu;

"e_{Sold}" is the annual arithmetic mean amount of electricity sold from the refinery in MWh;

To calculate these values, the Executive Officer may employ data reported to ARB for data years 2008-2010. If the facility reported facility level, third-party verified, greenhouse gas emissions data to the California Climate Action Registry for data years 2006-2007, the Executive Officer may consider these years in determining representative baseline values. If necessary, the Executive Officer will solicit data to establish a representative baseline allocation;

"$DF_{Y,t}$" is a distribution factor calculated as:

$$DF_{Y,t} = ((Avg \,/\, EII_Y) + Adj_t) \,/\, (1 + Adj_t)$$

"Avg" is the weighted average EII for all facilities with EII values calculated as:

$$Avg = \frac{\sum BE_Y}{\sum (BE_Y / EII_Y)}$$

"EII_Y" is the Solomon Energy Intensity Index (EII) for facility Y for 2008, 2009 or 2010 as determined to be representative by the Executive Officer. For the purposes of this calculation, EII values shall be rounded to one digit after the decimal;

"Adj" is an adjustment factor designed to provide the facility with the best EII the most allowances relative to its baseline level:

$$Adj_t = ((Avg/EII_{Best}) * F_t - 1) \,/\, (1 - F_t)$$

"EII_{Best}" is the EII of most efficient facility (lowest EII in sector);

"F_t" is a fraction calculated as:

$$F_t = \frac{SA_t - \sum A_{X,t}}{\sum BE_Y}$$

"SA_t" is the allocation to refining sector for year "t" specified in section 95870(e)(2)(A);

(B) True-up Debit. If actual 2013 and 2014 emissions are less than the amount of allowances allocated, the entity will need to surrender additional allowances according to the following equation:

If: $(AE_{Y,2013} + AE_{Y,2014}) < (\mathrm{A}_{Y,2013} + \mathrm{A}_{Y,2014})$

Then: $\mathrm{A}_{Y,Debit} = 0.8 * \left[(AE_{Y,2013} + AE_{Y,2014}) - (\mathrm{A}_{Y,2013} + \mathrm{A}_{Y,2014})\right]$

Where:

"$AE_{Y,t}$" = Actual GHG emissions from a facility in year "t" adjusted for heat sales and purchases and electricity purchases.

"$A_{Y,Debit}$" = A debit (shown as a negative value in the equation above) to be surrendered in addition to the triennial compliance obligation for refinery "Y."

(C) True-up Credit. If actual 2013 and 2014 emissions are greater than the assumed baseline emissions, a true-up allocation will be conducted using 2015 vintage allowances and the following equation:

If: $(2 * BE_Y) < (AE_{Y,2013} + AE_{Y,2014})$

Then: $\mathrm{A}_{Y,Credit} = (AE_{Y,2013} * DF_{Y,2013} * F_{2013} * AF_{2013} + AE_{Y,2014} * DF_{Y,2014} * F_{2014} * AF_{2014}) - (\mathrm{A}_{Y,2013} + \mathrm{A}_{Y,2014})$

Where:

"$A_{Y,Credit}$" = An additional true-up allocation distributed by the Executive Officer to refinery "Y" using 2015 vintage allowances.

Table 9-2: Cap Adjustment Factors for Allowance Allocation

Budget Year	***Cap Adjustment Factor (c) for All Other Direct Allocation***	***Cap Adjustment Factor (c) for Sectors with Process Emissions Greater Than 50%***		
		Sector	**NAICS**	**Activity**
		Nitrogenous Fertilizer Manufacturing	325311	Nitric Acid Production
				Calcium Ammonium Nitrate Solution Production
		Cement manufacturing	327311	Cement manufacturing
		Lime manufacturing	327410	Dolime Manufacturing
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		

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.

(a) Allocation to Individual Electrical Distribution Utilities. The allowances allocated to each electrical distribution utility from each budget year shall be the electrical distribution utility sector allocation calculated pursuant to section 95870(d) for the budget year multiplied by the percentage allocation factors specified in Table 9-3. Any allowance allocated to electrical distribution utilities must be used exclusively for the benefit of retail ratepayers of each such electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers.

(b) Transfer to Utility Accounts.

(1) Investor Owned Utilities. The Executive Officer will place allowances in the limited use holding account created for each electrical corporation.

(2) Publicly Owned Electric Utilities or Electrical Cooperatives. <u>When a publicly owned electric utility or electrical cooperative is eligible for a direct allocation it shall inform the Executive Officer of the amounts to be placed:</u> ~~When allocating to a publicly owned electric utility or an electrical cooperative, the Executive Officer will place allowances in either a limited use holding account or in a compliance account per the entity's preference. Prior to receiving a direct allocation of allowances, publicly owned electric utilities or electrical cooperatives shall inform the Executive Officer of the share of their allowances that is to be placed:~~

(A) In the compliance account of an electrical generating facility operated by a publicly owned electric utility, an electrical cooperative, or a Joint Powers Agency in which the electrical distribution utility or electrical cooperative is a member and with which it has a power purchase agreement; or

(B) In the publicly owned electric utility's or electrical cooperative's limited use holding account.

(3) Publicly owned electric utility or electrical cooperatives receiving a direct allocation must inform the Executive Officer of the accounts in which the allocations are to be placed by September 1, or the first business day thereafter.

(c) Monetization Requirement.

(1) In 2012 an electrical distribution utility must offer one third ~~sixth~~ of the allowances placed in its limited use holding account in 2012 for sale at the ~~each of the two auctions~~ auction scheduled for 2012.

(2) Within each calendar year after 2012, an electrical distribution utility must offer for sale at auction all allowances in ~~a~~ its limited use holding account that were issued:

(A) From budget years that correspond to the current calendar year; and

(B) From budget years prior to the current calendar year.

(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 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) 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) and 95892(e).

(3) Auction proceeds and allowance value obtained by an electrical distribution utility shall be used exclusively for the benefit of retail ratepayers of each electrical distribution utility, consistent with the

goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers.

(4) Investor owned utilities shall ensure equal treatment of their own customers and customers of electricity service providers and community choice aggregators.

(5) Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to an electrical distribution utility, other than for the benefit of retail ratepayers consistent with the goals of AB 32 is prohibited, including use of such allowances to meet compliance obligations for electricity sold into the California Independent System Operator markets.

(e) Reporting on the Use of Auction Proceeds and Allowance Value. No later than June 30, 2014 ~~June 30, 2013,~~ and each calendar year thereafter, each electrical distribution utility shall submit a report to the Executive Officer describing the disposition of any auction proceeds and allowance value received in the prior calendar year. This report shall include:

(1) The monetary value of auction proceeds received by the electrical distribution utility;

(2) How the electrical distribution utility's disposition of such auction proceeds complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.;

(3) The monetary value of allowances received by the electrical distribution utility which were deposited directly into electrical generating facility compliance accounts. The electrical distribution utility shall calculate the value of these allowances based on the average market clearing price of the four quarterly auctions held in the same calendar year that the allowances are allocated; and

(4) How the electrical distribution utility's disposition of the monetary value of allowances, deposited directly into compliance accounts, complies with

the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.

Table 9-3: Percentage of Electric Sector Allocation Allocated to Each Utility

Utility Name	Utility Type (1)	Annual % of Total Electric Sector Allocation to Utility							
		2013	2014	2015	2016	2017	2018	2019	2020
PG&E	IOU	26.02909%	26.34522%	26.01510%	26.21500%	27.21147%	26.91164%	27.21091%	27.22981%
LADWP	POU	14.18332%	14.18925%	14.00829%	14.43473%	14.91438%	15.28169%	14.96326%	14.04837%
SCE	IOU	34.01733%	33.58115%	34.04480%	32.69831%	30.32124%	29.84140%	29.46661%	29.71342%
SDG&E	IOU	7.21940%	6.96087%	6.96792%	7.08933%	7.29010%	7.24815%	7.28721%	7.38964%
SMUD	POU	3.28172%	3.28283%	3.21338%	3.30147%	3.44817%	3.57259%	3.70519%	3.83415%
City of Anaheim	POU	2.07532%	2.12074%	2.11355%	2.19270%	2.20963%	2.27089%	2.30639%	2.35434%
City of Azusa (Azusa Light & Water)	POU	0.18055%	0.18489%	0.18858%	0.19402%	0.20119%	0.20555%	0.21082%	0.21761%
City of Banning	POU	0.09772%	0.10169%	0.10327%	0.10646%	0.11074%	0.11334%	0.11631%	0.12050%
City of Burbank	POU	0.65354%	0.66027%	0.66532%	0.67128%	0.68296%	0.68319%	0.68787%	0.69354%
City of Cerritos	POU	0.01827%	0.01887%	0.01945%	0.02004%	0.02090%	0.02128%	0.02186%	0.02240%
City of Colton	POU	0.24485%	0.25185%	0.25876%	0.26535%	0.27437%	0.27891%	0.28559%	0.29302%
City of Glendale (Water and Power)	POU	0.65850%	0.66238%	0.66100%	0.67150%	0.69049%	0.69592%	0.68391%	0.70039%

Utility Name	Utility Type (1)	Annual % of Total Electric Sector Allocation to Utility							
		2013	2014	2015	2016	2017	2018	2019	2020
City of Pasadena (Pasadena Water and Power)	POU	0.80141%	0.80710%	0.80920%	0.82057%	0.83784%	0.86949%	0.87876%	0.89190%
City of Riverside	POU	1.12865%	1.13669%	1.13121%	1.17999%	1.20482%	1.24829%	1.27103%	1.30954%
City of Vernon	POU	0.41385%	0.42014%	0.42987%	0.43256%	0.44276%	0.44174%	0.42961%	0.42477%
Imperial Irrigation District	POU	1.77241%	1.81456%	1.82936%	1.90056%	1.97281%	2.00476%	2.05350%	2.11597%
Modesto ID	POU	1.26426%	1.28335%	1.27289%	1.30523%	1.34388%	1.35267%	1.36746%	1.40098%
City of Alameda	POU	0.05321%	0.05746%	0.05675%	0.06140%	0.06253%	0.07244%	0.07403%	0.07561%
City of Biggs	POU	0.00680%	0.00729%	0.00674%	0.00681%	0.00733%	0.00711%	0.00710%	0.00721%
City of Gridley	POU	0.01517%	0.01551%	0.01571%	0.01601%	0.01650%	0.01657%	0.01654%	0.01666%
City of Healdsburg	POU	0.03290%	0.03271%	0.03126%	0.03325%	0.03567%	0.03777%	0.03889%	0.04195%
City of Lodi	POU	0.16616%	0.16780%	0.16385%	0.16740%	0.17419%	0.17518%	0.17494%	0.17995%
City of Lompoc	POU	0.04956%	0.04985%	0.04887%	0.05136%	0.05400%	0.05438%	0.05442%	0.05635%

Utility Name	Utility Type (1)	Annual % of Total Electric Sector Allocation to Utility							
		2013	2014	2015	2016	2017	2018	2019	2020
City of Palo Alto	POU	0.35530%	0.35717%	0.34944%	0.35460%	0.36639%	0.36628%	0.36537%	0.37403%
City of Redding	POU	0.44750%	0.50262%	0.50106%	0.51053%	0.52983%	0.54582%	0.54607%	0.55913%
City of Roseville	POU	0.48831%	0.50123%	0.50861%	0.53058%	0.55609%	0.54800%	0.54623%	0.55111%
City of Ukiah	POU	0.03536%	0.03503%	0.03265%	0.03550%	0.03905%	0.04202%	0.04340%	0.04460%
Plumas-Sierra Rural Electric Cooperation	COOP	0.06414%	0.06559%	0.06670%	0.06763%	0.06929%	0.06923%	0.06894%	0.06892%
Port of Oakland	POU	0.03277%	0.03345%	0.03411%	0.03438%	0.03491%	0.03467%	0.03451%	0.03432%
Silicon Valley Power	POU	1.13125%	1.14819%	1.13895%	1.20823%	1.29624%	1.33330%	1.33645%	1.38438%
Truckee-Donner Public Utility District	POU	0.12089%	0.12415%	0.12749%	0.13067%	0.13480%	0.13722%	0.14051%	0.14406%
Turlock Irrigation District	POU	0.94012%	0.97157%	0.98772%	1.01291%	1.05443%	1.06803%	1.06840%	1.08659%
Anza Electric Cooperative, Inc.	COOP	0.02028%	0.02102%	0.02181%	0.02237%	0.02320%	0.02348%	0.02405%	0.02443%
Bear Valley Electric Service	IOU	0.00006%	0.00006%	0.00006%	0.00007%	0.00007%	0.00007%	0.00007%	0.00007%

Utility Name	Utility Type (1)	Annual % of Total Electric Sector Allocation to Utility							
		2013	2014	2015	2016	2017	2018	2019	2020
City of Needles	POU	0.01027%	0.01086%	0.01148%	0.01183%	0.01248%	0.01250%	0.01284%	0.01316%
City of Rancho Cucamonga	POU	0.02559%	0.02653%	0.02753%	0.02822%	0.02928%	0.02961%	0.03034%	0.03104%
City and County of San Francisco	POU	0.09929%	0.11620%	0.13435%	0.15375%	0.17430%	0.19643%	0.22009%	0.24157%
City of Shasta Lake (Shasta Dam Area Public Utility District)	POU	0.05182%	0.05360%	0.05499%	0.05689%	0.05994%	0.06088%	0.06253%	0.06489%
Lassen Municipal Utility District	POU	0.05079%	0.05279%	0.05492%	0.05638%	0.05866%	0.05927%	0.06075%	0.06219%
Merced Irrigation District	POU	0.17105%	0.17687%	0.18268%	0.18770%	0.19525%	0.19791%	0.20285%	0.20835%
Moreno Valley Utilities	POU	0.03929%	0.04073%	0.04227%	0.04334%	0.04495%	0.04547%	0.04657%	0.04765%
Mountain Utilities	IOU	0.00306%	0.00317%	0.00329%	0.00337%	0.00350%	0.00354%	0.00362%	0.00369%
Port of Stockton	POU	0.00538%	0.00558%	0.00579%	0.00594%	0.00616%	0.00623%	0.00638%	0.00648%
Power and Water Resource Pooling Authority	POU	0.06650%	0.06899%	0.07018%	0.07365%	0.07980%	0.08118%	0.08378%	0.08727%
Sierra Pacific Power Company	POU	0.22625%	0.23453%	0.24340%	0.24957%	0.25888%	0.26194%	0.26839%	0.27259%

Utility Name	Utility Type (1)	Annual % of Total Electric Sector Allocation to Utility							
		2013	2014	2015	2016	2017	2018	2019	2020
Surprise Valley Electrical Corporation	COOP	0.05381%	0.05578%	0.05789%	0.05936%	0.06158%	0.06230%	0.06384%	0.06484%
Trinity Public Utility District	POU	0.00000%	0.00000%	0.00000%	0.00000%	0.00000%	0.00000%	0.00000%	0.00000%
WAPA	POU	0.33271%	0.35496%	0.37846%	0.39096%	0.41612%	0.41522%	0.42716%	0.43040%
Valley Electric Association, Inc.	COOP	0.00012%	0.00012%	0.00013%	0.00013%	0.00014%	0.00014%	0.00014%	0.00014%
Victorville Municipal	POU	0.02385%	0.02472%	0.02566%	0.02631%	0.02729%	0.02761%	0.02829%	0.02873%
Hercules	POU	0.00656%	0.00674%	0.00687%	0.00711%	0.00747%	0.00761%	0.00782%	0.00813%
City of Industry	POU	0.00910%	0.00945%	0.00982%	0.01008%	0.01047%	0.01058%	0.01085%	0.01101%
Corona	POU	0.06050%	0.06248%	0.06438%	0.06621%	0.06897%	0.06999%	0.07176%	0.07331%
Pittsburg Power (Island)	POU	0.00407%	0.00429%	0.00452%	0.00466%	0.00492%	0.00494%	0.00507%	0.00513%
Eastside	POU	0.00487%	0.00522%	0.00558%	0.00577%	0.00616%	0.00613%	0.00631%	0.00635%
PacifiCorp	IOU	0.75511%	0.77388%	0.79208%	0.81600%	0.84143%	0.86742%	0.89439%	0.92339%
(1) IOU = Investor Owned Electric Utility, POU = Publicly Owned Electric Utility, COOP = Rural Electric Cooperative									

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

§ 95910. Auction of California GHG Allowances.

(a) Timing of the Allowance Auctions.

(1) In 2012, an auction will be held on November 14.

~~(1) In 2012, auctions will be held on August 15 and November 14.~~

(2) Beginning in 2013, auctions shall be conducted on the twelfth business day of the second month of each calendar quarter.

(b) General Requirements. ~~An allowance may be designated for auction prior to its vintage year.~~

(1) Allowances allocated to the Auction Holding Account pursuant to section 95870(f) will be designated to specific auctions pursuant to section 95910(c).

(2) An allowance may be designated for auction prior to or after its vintage year.

(3) The allowances that are sold at auction may include allowances issued by California and by any external GHG ETS to which California has linked.

(c) Allowances from future vintages will be auctioned separately from allowances from current and previous vintages each quarter. ~~The Executive Officer will conduct two separate auctions each quarter.~~

(1) Auction of Allowances from the Current and Previous Budget Years.

(A) This auction will be known as the Current Auction.

~~(A)~~(B) Beginning in 2013, one quarter of the allowances allocated ~~designated~~ for auction from the current calendar year's budget will be ~~offered~~ designated for sale at each Current Auction ~~pursuant to section 95870(f)~~.

~~(B)~~(C) The Current Auction ~~This auction~~ will include allowances consigned to auction pursuant to section 95910(d).

~~(C)~~(D) ~~Advanced a~~ The Current Auction may include allowances from the current and previous budget years which remained unsold at previous auctions ~~which were returned to the Auction Holding Account following an auction~~ ~~which resulted in unsold allowances~~, and which are ~~returned to~~ designated for auction pursuant to section 95911(f)(3). ~~95911(b)(4).~~

(2) Auction of Allowances from Future Budget Years.

(A) This auction will be known as the Advance Auction.

~~(A)~~(B) At ~~each~~ the one Advance Auction ~~auction~~ taking place in 2012, the Executive Officer will designate for sale ~~one half~~ all of the allowances ~~designated~~ allocated for advance auction from the 2015 budget ~~pursuant to section 95870(b) will be offered from the 2015 budget~~.

~~(B)~~(C) Beginning in 2013, one quarter of the allowances allocated ~~designated~~ for advance auction ~~pursuant to 95870(b)~~ from the budget year three years subsequent to the current calendar year will be designated for sale ~~offered~~ at each Advance Auction ~~auction~~.

~~(C)~~(D) ~~This~~The Advance ~~A~~auction will include allowances which were returned to the Auction Holding Account following an Advance Auction ~~auction~~ which resulted in unsold allowances, and which are designated for ~~returned to~~ auction pursuant to section 95911(f)(3). ~~95911(b)(4).~~

~~(3) Auctions of allowances from different budget years will be conducted separately.~~

(d) Auction of Consigned Allowances.

(1) An entity may consign allowances to the Executive Officer for sale at the quarterly auctions only from a limited use holding account.

(2) When the Executive Officer withdraws compliance instruments from accounts closed pursuant to section 95831(c), accounts containing allowances in excess of the holding limit pursuant to section

95920(b)(5), or accounts suspended or revoked pursuant to section 95921(f)(3):

(A) Allowances shall be consigned to the next auction;

(B) If, after review, the Executive Officer determines the withdrawn ARB offset credits are valid, the Executive Officer will retire them, withdraw a similar number of allowances from the Auction Holding Account, and consign those allowances to auction in place of the retired ARB offset credits.

(3) Each consigning entity agrees to accept the auction settlement price for allowances sold at auction.

(4) Deadline for Consignment.

(A) For the auction~~s~~ conducted in 2012, allowances designated for consignment pursuant to section 95892(c) must be transferred to the Auction Holding Account at least 10 days before the ~~each~~ auction.

(B) Beginning in 2013, allowances consigned to auction through a transfer to the Auction Holding Account at least 75 days prior to the regular quarterly auction will be offered for sale at that auction.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95911. Format for Auction of California GHG Allowances.

(a) Auction Bidding Format.

(1) The auction will consist of a single round of bidding.

(2) Bids will be sealed.

(3) Bid quantities must be submitted as multiples of 1,000 ~~California GHG~~ allowances.

(4) Entities registered into the California Cap-and-Trade program must submit bids in whole dollars and whole cents. ~~Bid prices must be submitted in whole dollars and whole cents.~~

(b) Auction Reserve Price Schedule.

(1) Each auction will be conducted with an auction reserve price.

(2) No allowances will be sold at bids lower than the auction reserve price.

~~(3) If an auction settlement price equals the reserve price:~~

~~(A) The auction operator will fulfill winning bids with allowances from consignment sources in the following order:~~

~~1. Allowances consigned to auction pursuant to section 95910(d)(2);~~

~~2. Allowances consigned from limited use holding accounts pursuant to section 95910(d)(1);~~

~~3. Allowances directly allocated by ARB to auction pursuant to subarticle 8 and allowances returned to the auction pursuant to section 95911(b)(4).~~

~~(B) When there are insufficient winning bids to exhaust the allowances from a consignment source in section 95911(b)(3)(A), the auction operator will sell an equal proportion of allowances from each consigning entity in that source.~~

~~(4) Disposition of Allowances Allocated for Auction when an Auction Settlement Price Equals the Reserve Price.~~

~~(A) Allowances designated by ARB for an auction which remain unsold when the auction settlement price equals the Auction Reserve Price shall be returned to the Auction Holding Account to be re-auctioned.~~

~~(B) Allowances returned to the Auction Holding Account will be re-designated for auction after two consecutive auctions have resulted in an auction settlement price greater than the applicable Auction Reserve Price. This requirement applies separately to the current vintage and future vintage auctions.~~

~~(C) The number of allowances returned to each subsequent current vintage or future vintage auction will not exceed 25 percent of allowances already designated by ARB for that auction.~~

~~(5) Disposition of Consigned Allowances Remaining Unsold at Auction.~~

~~(A) Allowances consigned to auction from limited use holding accounts that remain unsold at auction will be returned to the respective source accounts.~~

~~(B) Allowances consigned to auction pursuant to section 95921(f)(3) that remain unsold at auction will be held in the Auction Holding Account until the next auction.~~

~~(6) Method for Setting the Auction Reserve Price.~~

~~(A) For auctions conducted in calendar year 2012 and 2013 the Reserve Price shall be $10 per metric ton of CO_2e for vintage 2013 allowances. For auctions conducted in 2012, the Reserve Price shall be $10 per metric ton of CO_2e for vintage 2015 allowances.~~

~~(B) For auctions conducted in calendar years after 2013 the Reserve Prices shall be the Auction Reserve Prices for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.~~

(c) Method for Setting the Auction Reserve Price.

(1) The Auction Reserve Price for vintage 2013 allowances auctioned in 2012 will be $10 per allowance. For advance auctions conducted in 2012, the Reserve Price shall be $10 per allowance for vintage 2015 allowances.

(2) 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 and Quebec. The Reserve Price shall be stated in U.S. dollars and in the currency (or currencies) used in external greenhouse trading systems to which California has linked pursuant to Subarticle 12.

(3) The auction administrator will calculate the Auction Reserve Price using the following procedure:

(A) The Auction Reserve Price in U.S. dollars shall be the U.S. dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

(B) The Auction Reserve Price in Canadian dollars shall be the Canadian dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus adjusted in the manner provided for in section 83.3 of the Financial Administration Act (R.S.Q., c. A-6.001) of Quebec.

(C) At noon Eastern Standard Time on the day of the auction, the Auction Administrator shall announce the exchange rate to be used to determine the Auction Reserve Price. The exchange rate shall be the most recently available noon daily buying rate for U.S. and Canadian dollars as published by the Bank of Canada.

(D) The auction administrator will use the announced exchange rate to convert to a common currency the Auction Reserve Prices previously calculated separately in U.S. and Canadian dollars. The auction administrator will set the Auction Reserve Price equal to the higher of the two values.

(4) The Auction Reserve Price will be announced prior to the opening of the auction window at 1 pm Eastern Standard Time on the day of auction, and will be in effect until the window closes at 4 pm Eastern Standard Time.

(d)~~(c)~~ Auction Purchase Limit.

(1) The auction purchase limit is the maximum number of allowances offered at each quarterly auction which can be purchased by any entity

or group of entities with a ~~disclosable~~ direct corporate association pursuant to section 95833.

(2) The auction purchase limit will apply to auctions conducted from January 1, 2012 through December 31, 2014.

(3) For the advance auction of future vintage allowances conducted pursuant to section 95910(c)(2) the purchase limit is 25 percent of the allowances offered for auction.

(4) For the auction of current vintage allowances conducted pursuant to section 95910(c)(1):

(A) The purchase limit for covered entities and opt-in covered entities will be 15 percent of the allowances offered for auction;

(B) The purchase limit ~~does not apply to~~ for electrical distribution utilities will be 40 percent of the allowances offered for auction; ~~receiving a direct allocation of allowances pursuant to section 95892(b) and subject to the monetization requirement pursuant to section 95892(c). This provision shall not be interpreted to exempt said electrical distribution utilities from any other requirements of this article;~~ and

(C) The purchase limit for all other auction participants is four percent of the allowances offered for auction.

(e)~~(d)~~ Determination of Winning Bidders and Settlement Price. The following process shall be used to determine winning bidders, amounts won, and a single auction settlement price:

(1) Each bid will consist of a price and the quantity of allowances, in multiples of 1,000 allowances ~~CA GHG Allowances~~, desired at that price.

(2) Each bidder may submit multiple bids.

(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:

(A) If acceptance of the bid would result in violation of the purchase limit pursuant to sections 95911(c) and 95914;

(B) If acceptance of the bid would result in violation of the holding limit pursuant to sections 95914 and 95920(b); or

(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(i).

(4) Bids from all bidders will be converted to a single currency using the exchange rate announced pursuant to section 95911(c)(3) and then ranked from highest to lowest by price. Beginning with the highest bid and proceeding to successively lower bids, entities submitting bids at each price will be sold allowances until:
~~Beginning with the highest bid price, bids will be considered in declining order by price and entities submitting bids at that price will be sold allowances until either:~~

(A) The next lower bid price is less than the auction reserve price, in which case the current price becomes the auction settlement price; or

(B) The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of allowances yet to be sold, in which instance, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in section 95911(e)(5) shall apply.

(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:

(A) The auction administrator will calculate the share of the remaining allowances to be distributed to each entity bidding at the auction settlement price by dividing the quantity bid by that entity and accepted by the auction administrator by the total

quantity of bids at the settlement price which were accepted by the auction administrator; and

(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 95912(e)(4)(A) above by the number of allowances in the tier, rounding the number down to the nearest whole number.

(C) To distribute any remaining allowances, the auction administrator will assign a random number to each entity bidding at the auction settlement price. Beginning with the lowest random number, the auction administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.

~~(A) If the quantity of allowances contained in the bids placed at the lowest bid is greater than the quantity of allowances available to be sold at that price, then the auction operator will assign a random number to each bundle of 1,000 CA GHG Allowances contained in each of the bids at that price.~~

~~(B) Beginning with the lowest random number assigned and working in increasing order of the random numbers assigned, the auction operator shall sell allowances to the bidder assigned the random number until the remaining allowances are sold.~~

(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:

(A) Allowances consigned to auction pursuant to section 95910(d)(2);

(B) Allowances consigned from limited use holding accounts pursuant to section 95910(d)(1);

(C) Allowances redesignated to the auction pursuant to section 95911(f)(3); and

(D) Allowances designated by ARB for auction pursuant to section 95910(c).

(2) When there are insufficient winning bids to exhaust the allowances from a consignment source in section 95911(b)(3)(A), the auction operator will sell an equal proportion of allowances from each consigning entity in that source.

(3) Disposition of Allowances Designated by ARB for Auction Which Remain Unsold.

(A) Allowances designated by ARB pursuant to section 95910(c) for an auction which remain unsold shall be kept in the Auction Holding Account for later auction.

(B) 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 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.

(C) 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.

(A) Allowances consigned to auction from limited use holding accounts that remain unsold at auction will be held in the Auction Holding Account until the next auction.

(B) Allowances consigned to auction pursuant to section 95921(g)(3) that remain unsold at auction will be held in the Auction Holding Account until the next auction.

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 ~~Registration~~.

(a) Administration of the Auctions.

(1) The Executive Officer may serve as auction administrator or designate an entity to serve as auction administrator.

(2) The Executive Officer may serve as financial services administrator or may designate a qualified financial services administrator to conduct all financial transactions required by this article.

(b) The Executive Officer may direct that the California GHG allowances designated for auction be offered through an auction conducted jointly with other jurisdictions to which California links pursuant to subarticle 12, provided the joint auction conforms with this article.

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

(1) The date and time of the auction;

(2) Auction application requirements and instructions;

(3) The form and manner for submitting bids;

(4) The procedures for conducting the auction;

(5) The administrative requirements for participation; and

(6) The number of allowances from California and any external GHG ETS to which California has linked that will be available at each auction.

(7) For the announcement of the first quarter auction, the number of allowances to be available for sale during the calendar year and the Auction Reserve Price in effect for the calendar year per Section 95911(c).

(d)~~(c)~~ Auction Participant Application ~~Registration~~ Requirements. ~~An entity that intends to participate in the auction must complete an auction registration at least 30 days prior to the auction.~~

~~(1) The details of the auction and the requirements for auction registration will be provided in a public notice by the auction administrator no later than 60 days prior to the auction.~~

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

(2) An entity applying for approval as an auction participant must be registered into the cap-and-trade system as provided in section 95830.

(3) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction. An individual associated pursuant to Subarticle 5 with an entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.

(4)~~(2)~~ An entity will be required to complete an auction participant ~~registration~~ application at least 30 days prior to an auction in which it intends to participate. The entity must provide information and documentation including:

(A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;

(B) The existence of any direct or indirect corporate associations pursuant to sections 95833 and 95914(d) ~~95914(e)~~;

~~(C) Declarations as to the beneficial holding, pursuant to section 95914, of any compliance instrument that may be acquired through the auction or that already exists prior to the auction;~~

~~(D)~~(C) The identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market ~~or exchange~~; and

~~(E)~~(D) The applicant's holding account number.

~~(3) The Executive Officer must approve an entity's auction registration before that entity may participate in an auction.~~

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

(1) Once the Executive Officer has approved an entity's auction participant application ~~registration~~, the entity need not complete another application for subsequent auctions unless there is a material change to the information contained in the approved application, there is a material change in the entity's cap-and-trade system registration pursuant to section 95830, or the Executive Officer has made a determination restricting an entity's auction participation pursuant to section 95914~~(c)~~.

(2) An entity approved for auction participation must inform the auction administrator ~~operator~~ 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.

(f)~~(e)~~ An ~~registered~~ entity approved for auction participation may not communicate information on auction participation with any other entity that is not part of an association disclosed pursuant to section 95914, except as requested by the auction administrator ~~operator~~ to remediate an auction application.

(g)~~(f)~~ 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 information contained in the auction application and not listed for release pursuant to section 95912(j)(5) as confidential business information.

~~(1) To the extent permitted by state law, the Executive Officer, the auction administrator, and the financial services administrator will treat the information contained in the auction application as confidential business information.~~

~~(2) Following the auction, the Executive Officer will release the following information:~~

~~(A) The names of the bidders;~~

~~(B) Auction settlement price; and~~

~~(C) Aggregated or distributional information on purchases with the names of the entities withheld.~~

(h)~~(g)~~ All bids ~~shall be submitted to the Executive Officer and~~ will be considered binding offers for the purchase of allowances under the rules of the auction.

(i)~~(h)~~ Auction participants ~~Registrants~~ must provide a bid guarantee to the financial services administrator at least twelve days ~~one week~~ prior to the auction.

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

(A) A bond issued by a financial institution with a United States banking license;

(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;

(C) An irrevocable letter of credit issued by a financial institution with a United States banking license; or

(D) If California participates in a joint auction with one or more external GHG ETS programs to which it has linked, and entities from all linked programs are eligible to purchase from the auction, then the auction administrator will accept any financial

instruments accepted by any linked external GHG ETS for allowance purchases. ~~If California participates in a joint auction with one or more Canadian Provinces pursuant to section 95912(b) then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.~~

(2) ~~The amount of the bid guarantee must be greater than or equal to the sum of the value of the bids submitted by the auction participant.~~ The amount of the bid guarantee must be greater than or equal to the maximum value of the bids submitted.

(A) The value of a set of bids, evaluated at any potential auction settlement price, equals the quantity of bids submitted at or above that price times that price.

(B) The maximum value of a set of bids is the highest value of a set of bids calculated at any potential auction settlement price.

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

(4) The bid guarantee will expire no sooner than twenty-one days after the auction date.

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

(6) If the auction participant submits more than one form of bid guarantee the auction participant will inform the financial services administrator of the order in which the bid guarantees should be applied to settlement.

(7) If the auction participant submits a single bid guarantee instrument to cover bids in both the current and advance auctions, the financial services administrator will apply the value of the bid guarantee to the current auction first when accepting bids pursuant to section

95911(e)(3). The remaining value of the bid guarantee will be used to determine acceptance of bids into the advance auction.

~~(i) At least 60 days prior to each auction the auction administrator shall publish the following information:~~

~~(1) The date and time of the auction;~~

~~(2) Application instructions for applying to participate in the auction;~~

~~(3) The form and manner for submitting bids;~~

~~(4) The procedures for conducting the auction;~~

~~(5) The administrative requirements for participation; and~~

~~(6) The number of CA GHG Allowances that will be available at each auction.~~

~~(j) To conduct the auction the auction administrator will:~~

~~(1) Obtain a determination from the financial services administrator of the acceptance of the registration bid guarantees;~~

~~(2) Determine that bids and bid quantities conform with purchase limits set for the auction pursuant to section 95911(c), the holding limit pursuant to section 95920(b), and the amount of the bid guarantee provided by the registrant;~~

~~(3) Determine the winning bids and auction price; and~~

~~(4) Inform the Executive Officer of the auction results.~~

(j)~~(k)~~ After the auction administrator has notified the Executive Officer of the results of the auction ~~Following the auction~~, the Executive Officer will:

(1) Certify whether the auction was operated pursuant to this article;

(2) After certification, direct the financial services administrator to:

(A) Notify each winning bidder of the auction settlement price, the number of allowances purchased, the total purchase cost, and the deadline and method for submitting payment.

(B)~~(A)~~ Collect cash payments from winning bidders within 7 days of notifying them of the auction results;

(C)~~(B)~~ Declare forfeit and retain the bid guarantee ~~mechanism~~ submitted pursuant to section 95912(i) ~~95912(h)~~ for any bidder

that fails to tender full cash payment within 7 days of notification of results~~ when due for allowances awarded at auction~~, in an amount equal to any unpaid balance;

(D)~~(C)~~Deposit auction proceeds from sales of ARB allowances sold at auction into the Air Pollution Control Fund; ~~and~~

(E)~~(D)~~ Distribute auction proceeds to entities that consigned allowances for auction pursuant to section 95910(d); and

(F) Return any unused bid guarantee.

(3) Upon determining that the payment for allowances has been deposited into the Air Pollution Control Fund or transferred to entities that consigned allowances, transfer the serial numbers of the allowances purchased into each winning bidder's Holding Account, or to its Compliance Account if needed to comply with the holding limit;

(4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances purchased at auction; and

(5) ~~Publish the auction results in the manner set forth in section 95912 at www.arb.ca.gov.~~

Following the auction, the Executive Officer will publish at www.arb.ca.gov the following information:

(A) The names of the bidders;

(B) Auction settlement price; and

(C) Aggregated or distributional information on purchases with the names of the entities withheld.

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.

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

(a) The Executive Officer may serve as reserve sale administrator to conduct sales from the Allowance Price Containment Reserve (Reserve) or

designate an entity to serve as reserve sale administrator. The financial services administrator designated by the Executive Officer pursuant to section 95912(a) will conduct the financial transactions required to operate sales from the Reserve.

(b) If California links to an external GHG ETS pursuant to subarticle 12, entities registered in the linked GHG ETS will not be eligible to purchase from the Reserve. ~~If California links to an external greenhouse gas emissions trading system (GHG ETS) pursuant to subarticle 12, the linkage agreement will specify whether covered entities in the linked GHG ETS will be eligible to purchase from a jointly operated Reserve, or whether each GHG ETS will operate separate Reserves.~~

(c) Only entities registered into the California GHG cap-and-trade system as provided in sections 95811 or 95813 shall be eligible to purchase allowances from the Reserve.

~~(c) Timing, Eligible Participants, and Limitations.~~

~~(1) Eligible Participants. Only covered entities (including opt-in covered entities) registered as provided in sections 95811 or 95813 shall be eligible to purchase allowances from the Reserve.~~

~~(2) The reserve sale administrator of the Reserve shall offer all of the allowances in the Reserve at each reserve sale.~~

~~(3) Timing of Reserve Sale.~~

~~(A) The first Reserve sale will be conducted on March 8, 2013.~~

~~(B) Subsequent sales shall be conducted six weeks after each quarterly allowance auction pursuant to section 95910.~~

~~(C) The Reserve sale administrator shall provide all eligible participants with written notice of the number of allowances available for sale and the terms of the sale at least four weeks prior to the sale.~~

~~(4) Limitation. Allowances purchased from the Reserve are subject to the Holding Limit established pursuant to section 95920.~~

(d) Timing of Reserve Sales.

(1) The first Reserve sale will be conducted on March 8, 2013.

(2) Subsequent Reserve sales shall be conducted on the first day six weeks after each quarterly allowance auction scheduled pursuant to section 95910 that is also a business day in California and Quebec.

(3) 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 four weeks prior to the sale.

(e)~~(d)~~ Reserve Tiers.

(1) Creation of Reserve Tiers. Prior to the first Reserve sale, the Executive Officer ~~reserve sale administrator~~ shall divide allowances allocated to the Reserve into three equal-sized tiers.

(2) The Reserve sale administrator shall offer all of the allowances in the Reserve at each Reserve sale.

(3)~~(2)~~ 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)~~(3)~~ Increase in Reserve Tier ~~Release~~ Prices. In calendar years subsequent to 2013, allowances from each tier shall be offered at prices equal to the ~~offer~~ tier prices ~~for each tier~~ 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.

(f) At least twelve 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 submitted by the entity.

(1) The maximum value of a set of bids is the quantity bid at each tier times the tier price, summed across the three tiers.

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

(A) A bond issued by a financial institution with a United States banking license;

(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check; or

(C) An irrevocable letter of credit issued by a financial institution with a United States banking license.

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

(4) The bid guarantee will expire no sooner than twenty-one days after the Reserve sale.

(5) 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.

~~(e) Submissions of Bids to Purchase. At least two weeks prior to the scheduled sale, an entity shall submit:~~

~~(1) To the reserve sale administrator a bid consisting of a price equal to one of the three tier prices and a quantity of allowances; and~~

~~(2) To the financial services administrator a bid guarantee in an amount greater than or equal to the sum of the maximum value of the bids submitted by the entity, in one or a combination of the following forms:~~

~~(A) A bond issued by a financial institution with a United States banking license;~~

~~(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;~~

~~(C) An irrevocable letter of credit issued by a financial institution with a United States banking license; or~~

~~(D) If California participates in a joint Allowance Price Containment Reserve with one or more GHG ETS programs in the Canadian Provinces to which it links and covered entities from linked systems are eligible to purchase from the Reserve pursuant to section 95913(b), then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.~~

~~(E) 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 financial services administrator.~~

(g)~~(f)~~ 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, until either all allowances are sold from the reserve or all the accepted bids are filled.

(2) The Reserve sales window will open at 10 am Pacific Standard Time on the day of sale, and bids may be submitted until the window closes at 1 pm Pacific Standard Time.

(A) Each bid will consist of the price equal to one of the three tiers and a quantity of allowances in multiples of 1,000 allowances.

(B) An entity may submit multiple bids.

(C) Bid prices will be in the currency of the jurisdiction into which the entity is registered.

(3) The reserve sale administrator will only accept a bid:

(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 a covered entity greater than the value of the

bid guarantee submitted by the covered entity pursuant to section 95913(f) ~~95913(e)(2)~~; or ~~.~~

(C) If the bid entered by an entity for a tier is for a quantity less than or equal to the number of allowances available for sale in that tier.

(4)~~(3)~~ 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:

(A) The reserve sale administrator will sell to each covered entity the number of allowances for which the entity submitted bids for that tier which were accepted by the reserve sale administrator; and

(B) If allowances remain in the tier after the sales pursuant to section 95913(g)(4)(A) ~~95913(f)(3)(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 allowances to the bidder assigned the random number until the remaining allowances in the tier are sold or all 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)~~(4)~~ 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:

(A) The reserve sale administrator will calculate the share of the tier to be distributed to each bidding entity by dividing the quantity bid by that entity and accepted by the reserve sale administrator

by the total quantity of bids which were accepted by the reserve sale administrator; and

(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(g)(5)(A) ~~95913 (f)(4)(A)~~ above by the number of allowances in the tier, rounding the number down to the nearest whole number.

(6)~~(5)~~ After completing the sales for each tier the reserve sale administrator will repeat the processes in sections 95913(g)(4) and (g)(5) ~~95913(f)(3) and (f)(4)~~ 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.

(h)~~(g)~~ Resolution of Sales~~. Following each sale of allowances from the Reserve, the Executive Officer shall:~~

(1) After reviewing the conduct of the sale by the Reserve sale administrator, the Executive Officer will certify whether the Reserve sale met the requirements of this article.~~Certify that the reserve sale administrator conducted the reserve sale pursuant to this article;~~

(2) Upon certification of the sale results, the Executive officer will authorize the financial services administrator to: ~~Upon certification of the sale results, authorize the financial services administrator to process payments from covered entities and deposit proceeds into the Air Pollution Control Fund;~~

(A) Notify Reserve sale participants of their purchases and total purchase cost;

(B) Process cash payments from participants and deposit proceeds into the Air Pollution Control Fund up to seven days after bidders are notified of results; and

(C) Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make cash payment within seven days after bidders are notified of results and place the proceeds into the Air Pollution Control Fund.

(D) Return any unused bid guarantee.

(3) Upon determining that the financial services administrator has deposited the payment for allowances into the Air Pollution Control Fund, transfer the serial numbers of the allowances purchased from the Allowance Price Containment Reserve Account into each winning bidder's compliance account.~~;~~

(4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances sold; and

(5) Publish the sale results at www.arb.ca.gov.

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.

~~(a) An entity registering as an auction participant must be registered as provided in sections 95830.~~

~~(b) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.~~

(a) The Executive officer may cancel or restrict a previously approved auction participation application or reject a new application if the Executive Officer determines that an auction participant has:

(1) Provided false or misleading facts;

(2) Withheld material information from its application, with material meaning information that could probably influence a decision by the Executive Officer, the Board, or the Board's staff;

(3) Violated any part of the auction rules pursuant to subarticle 10;

(4) Violated the registration requirements pursuant to subarticle 5; or

(5) Violated the rules governing trading pursuant to subarticle 11.

(b) If the Executive Officer determines an entity has committed any of the violations listed in section 95914(a), then:

(1) The Executive Officer may instruct the auction administrator to cancel a previously approved auction application or to not accept auction applications from the entity;

(2) The Executive Officer may instruct the auction administrator to restrict the auction application approval for any agent or corporate associate of the entity to prevent the purchase of allowances at auction for subsequent transfer to the violator;

(3) Any cancellation or restriction imposed by the Executive Officer may be permanent or for a specified number of auctions; and

(4) The cancellation or restriction imposed by the Executive Officer shall be in addition to any other penalties, fines, and additional remedies available at law.

~~(c) If the Executive Officer determines that a bidder has provided false or misleading facts, or has withheld material information in its application, or has violated any part of the auction rules set forth in subarticle 10, then:~~

~~(1) The Executive Officer may instruct the auction operator to not accept auction applications from the bidder or any agent or affiliate of the bidder intending to purchase allowances at auction for subsequent transfer to the bidder through either a beneficial holding or corporate association pursuant to sections 95833 and 95834.~~

~~(2) This exclusion from auction participation shall be in addition to any other penalties, fines, and additional remedies available at law.~~

~~(3) This exclusion from auction participation may be permanent or for a specified number of auctions.~~

~~(4) A fact is material if it could probably influence a decision by the Executive Officer, the Board, or the Board's staff.~~

(c)~~(d)~~ Non-disclosure of Bidding Information Among Auction Participants.

(1) Unless it is to an auction advisor or other members of a direct corporate association not subject to auction participation restriction or cancellation pursuant to section 95914(b), an ~~An~~ entity approved for auction participation shall not release any confidential information related to its auction participation, including:

(A) Qualification status;

(B) Bidding strategy;

(C) Bid price or bid quantity information;

(D) Information on the financial security it provided to the auction administrator; and

(E) Other information identified as confidential information in the auction application by the auction administrator.

(2) If an entity participating in an auction has retained the services of an advisor regarding auction bidding strategy, then:

(A) The entity must ensure against the advisor transferring information to other auction participants or coordinating the bidding strategy among participants;

(B) The entity will inform the advisor of the prohibition of sharing information to other auction participants and ensure the advisor has read and acknowledged the prohibition under penalty of perjury; and

(C) Any entity that has retained the services of an advisor must inform ARB of the advisor's retention.

~~(3) Restrictions on disclosure of information on auction participation between members of a beneficial holding relationship.~~

~~(A) A principal may only disclose confidential information related to its auction participation with another principal in the beneficial holding relationship or with more than one agent.~~

~~(B) An agent in a beneficial holding relationship may not disclose confidential information related to auction participation to~~

~~anyone other than the principal who made the original disclosure.~~

~~(4) Any disclosure of auction participation information to entities that are not subject to exclusion pursuant to section 95914(d)(1) shall be a violation of this article and subject to penalties pursuant to section 96013.~~

(d)~~(e)~~ Application of the Corporate Association to the Auction Purchase Limit.

(1) The total number of compliance instruments which may be purchased in a single auction by a group of entities with a direct ~~or indirect~~ corporate association is limited pursuant to section 95911(d). ~~95911(c).~~

(2) Entities that are part of a direct ~~or indirect~~ corporate association may allocate shares of the purchase limit amongst themselves. Each entity will then have a specified percentage share of the association's purchase limit. The sum of the shares allocated among the entities must sum to one.~~:~~ Each associated entity's allocated purchase limit share times the auction purchase limit assigned to the association becomes the purchase limit for that entity.

(3) If a corporate association consists of entities with a compliance obligation and voluntarily associated entities, then the following additional restrictions apply:

(A) The total purchase limit for the association is 15%, unless some of the included covered entities are electrical distribution utilities, in which case the purchase limit is 40%.

(B) The total purchase limit assigned to voluntarily associated entities within the corporate association must be less than or equal to 4%.

(C) The purchase limit to be divided among the covered or opt-in entities is the purchase limit assigned to the corporate association less the value assigned to the voluntarily associated entities within the corporate association.

(4) The group of associated entities must inform the Executive Officer when submitting the auction application of an allocation of the purchase limit among the associated entities, if applicable.

(5) The purchase limit allocation will be in effect for the auction for which the associated entities submitted the application.

~~(A) The group of associated entities must inform the Executive Officer when submitting the auction application of an allocation of the purchase limit among the associated entities, if applicable;~~

~~(B) The purchase limit allocation will be in effect for the auction for which the associated entities submitted the application; and~~

~~(C) Each associated entity's allocated purchase limit share times the auction purchase limit becomes the purchase limit for that entity.~~

(6)~~(3)~~ If entities with a direct ~~or indirect~~ corporate association do not allocate shares of the purchase limit among themselves, then the auction administrator will apply the purchase limit to the entities as follows:

(A) The administrator will order the associated entities' bids from highest to lowest bid price;

(B) Working from the highest to the lowest bid, the auction administrator will accept bids until the purchase limit for the associated entities is met;

(C) (C) The auction operator will conduct this procedure before conducting the auction pursuant to section 95911.

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, and allowances from external GHG ETS programs to which California has linked pursuant to section 95940, that may be held by an entity or jointly held by a group of entities with a direct ~~or indirect~~ corporate association, as defined in section 95833 at any point in time.

(b) Application of the Holding Limit.

(1) The holding limit will apply to each entity registered as a covered, opt-in covered, or voluntarily associated entity pursuant to section 95830.

(2) The holding limit calculation will not include allowances contained in limited use holding accounts created pursuant to section 95831.

(3) Application of the Holding Limit to Exchange Clearing Holding Accounts. Compliance instruments transferred out of~~contained in~~ an exchange clearing holding account will count against the holding limit of the destination account listed in the transfer request submitted by an exchange clearing holding account at the time the transfer request is confirmed. ~~will be included in the calculation of the holding limit for the entity listed as the purchaser in the transfer request reported to the accounts administrator pursuant to section 95921 for the transfer request being cleared.~~

(4) If the Executive Officer determines that a reported transfer request not yet recorded into the tracking system would result in an entity's holdings exceeding the applicable holding limit, then the Executive Officer shall not approve the transfer request pursuant to section 95921(a)(1). ~~If the violation is not discovered until after the transfer request is recorded, then the transfer request may be reversed pursuant to section 95921(b)(2) and penalties may be imposed pursuant to section 96013.~~

(5) If the violation is not discovered until after a transfer request is recorded, or the holding limit is exceeded at the beginning of a compliance year when allowances purchased at advance auction now fall under the current vintage holding limit pursuant to section 95920(c)(1)(C), then:

(A) The accounts administrator will inform the violator.

(B) The violator will have five business days to bring its account balances within the holding limit. After that the Executive Officer may transfer allowances in excess of the holding limit to the Auction Holding Account for consignment to auction using the procedure pursuant to section 95910(d).

(6) Penalties may be applied whenever the holding limit is exceeded or transfer requests are filed with the accounts administrator that would violate the holding limit.

(c) The holding limit will be separately calculated to holdings of:

(1) ~~Allowances which may be used to fulfill a compliance obligation during the current compliance year pursuant to section 95856(b),~~ Allowances including:

(A) ~~Allowances issued for previous years;~~ Allowances with a vintage year corresponding to the current or previous calendar years;

(B) Allowances from any vintage purchased from the Allowance Price Containment Reserve pursuant to section 95913; and

(C) Allowances originally purchased at the advance auction ~~now usable for compliance during the current compliance year~~ but of a vintage year equal or prior to the current calendar year.

(2) ~~Allowances issued for future compliance years that may not be used for compliance during the current compliance year pursuant to section 95856(b).~~ Allowances that were purchased at the advance auction and still have a vintage year greater than the current calendar year.

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

(1) The number given by the following formula:

Holding Limit = 0.1*Base + 0.025*(Annual Allowance Budget – Base)

In which:
"Base" equals 25 million metric tons of CO_2e.
"Annual Allowance Budget" is the number of allowances issued for the current budget year. It is calculated as the sum for the current budget year of the compliance budgets of California and all external GHG ETS to which California has linked pursuant to section 95940.

(2) A Limited Exemption from the Holding Limit is calculated as:

(A) The limited exemption is the number of allowances which are exempt from the holding limit calculation after they are transferred by a covered entity or an opt-in covered entity to its compliance account.

(B) On June 1, 2012 the limited exemption will equal the annual emissions most recent emissions data report that has received a positive or qualified positive emissions data verification statement.

(C) Beginning in 2013 on October 1 of each year the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year.

(D) If for any year ARB has assigned emissions to an entity in the absence of a positive or qualified positive emissions data verification statement the calculation of the limited exemption will use the assigned emissions.

(E) For the first compliance period all reported emissions or assigned emissions used to calculate the limited exemption will

include only the emissions associated with the scope for the program during the first compliance period.

(F) Beginning in 2015, all reported emissions or assigned emissions used to calculate the limited exemption will include the emissions associated with the change in scope taking place in 2015.

(G) On January 1, 2015 the limited exemption will be increased by the amount of emissions included in the emissions data report received during 2014 but not yet included in the limited exemption pursuant to section 95920(d)(2)(E).

(H) On December 31 of the calendar year following the end of a compliance period, the limited exemption will be reduced by the sum of the entity's compliance obligation over that compliance period.

(3) Petition to Adjust the Limited Exemption.

(A) Prior to October 1 of any year, a covered entity may submit to the Executive Officer evidence demonstrating an increase in emissions for that year over the previous year and request a temporary increase in the limited exemption until verified data for that year are available.

(B) The amount of the increase must be at least 250,000 metric tons CO_2e on an annualized basis.

(C) The Executive Officer will review the evidence and determine whether an adjustment is needed.

(D) If an adjustment is granted, then the limited exemption for that covered entity will be increased immediately by the amount determined by the Executive officer.

(E) When the verified emissions data are received for the year for which an adjustment was granted, the Executive Officer will use the verified emissions value when calculating the limited exemption.

(e) The holding limit will be calculated separately for each vintage year for allowances qualifying pursuant to section 95920(c)(2) as the number given by the following formula:

Holding Limit = 0.1*Base + 0.025*(Annual Allowance Budget ~~Compliance Period Budget~~ – Base)

In which:
"Base" equals 25 ~~75~~ million metric tons of CO_2e.
"Annual Allowance Budget" is the number of allowances issued for the current budget year. It is calculated as the sum for the current budget year of the compliance budgets of California and all ETS programs to which California has linked pursuant to section 95940.

~~"Compliance Period Budget" is the number of allowances issued for the future compliance period from which the allowances were sold at the advance auction.~~

(f) Application of the Corporate Association Disclosure to the Holding Limit.

(1) The total number of allowances held by a group of entities with a direct ~~or indirect~~ corporate association pursuant to section 95833 ~~in their holding accounts~~ must sum to less than the holding limit pursuant to section 95920(e).

(2) The limited exemption for each entity which is part of a direct ~~or indirect~~ corporate association is the same as defined in section 95920(d).

(3) Entities that are part of a direct corporate association may allocate shares of the holding limit among themselves. This holding limit allocation results in each entity having a specified percentage share of the group's holding limit. The sum of the shares allocated among the entities must sum to one.

(A) The ~~group~~ authorized account representatives or alternate authorized account representatives of each of the associated entities must inform the accounts administrator of the allocation of the holding limit when registering pursuant to section 95833.

(B) The holding limit allocation will remain in effect until the ~~group~~ authorized account representatives or alternate authorized account representatives of each of the associated entities informs the accounts administrator of subsequent changes to the allocation of the holding limit.

~~(4) If entities with a direct or indirect corporate association do not allocate shares of the holding limit among themselves, the accounts administrator will not record any transfer request which would result in the entities with a direct or indirect corporate association exceeding the holding limit.~~

~~(g) The application of the holding limit will treat beneficial holding by an agent as part of the holding of the principal.~~

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.

(a) Transfers of Compliance Instruments Between Accounts.

(1) ~~Except when a transfer is undertaken by the Executive Officer, the~~ The accounts administrator will not register a transfer of compliance instruments between two registered entities ~~accounts~~ into the tracking system unless: ~~until:~~

(A) ~~The two parties to the transfer submit a request for the transfer~~ One individual who is the authorized account representative or an alternate authorized account representative of the source account for the transfer submits a transfer request, confirmed by another alternate authorized account representative for the

same entity, to the accounts administrator within 48 hours ~~three calendar days~~ of settlement of the transaction agreement for which the transfer request was submitted; ~~and~~

(B) The authorized account representative or an alternate authorized account representative for the destination account submits a confirmation to the transfer request to the accounts administrator within 24 hours of receiving the transfer request;

(C)~~(B)~~ The transfer is between holding accounts and/or an exchange clearing holding account.

(D) The Executive Officer has determined the transfer request and the transaction for which the transfer request was submitted meet the requirements of this article based on the information available at the time of approval.

(2) Transfers initiated by the Executive Officer do not require confirmation pursuant to section 95921(a)(1)(B).

(3) Transfers between a single entity's holding and compliance accounts do not require confirmation pursuant to section 95921(a)(1)(B).

~~(2) Except when a transfer is undertaken by the Executive Officer, all transfers between two entities will involve transfers between holding accounts and/or an exchange clearing holding account.~~

~~(b) Deficient Transfer Requests~~

~~(1) If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:~~

~~(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency;~~

~~(B) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to section 95921(a)(1)(A); and~~

~~(C) If the entities fail to submit an acceptable transfer request within the time limit, then they must either withdraw the transfer request or submit a new request for transfer.~~

~~(2) If the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system:~~

~~(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency; and~~

~~(B) If the entities that submitted the deficient transfer request cannot correct the deficiency within 5 business days after notification by the accounts administrator, the Executive Officer may instruct the accounts administrator to reverse the transfer.~~

~~(c)~~(b) Information Requirements. 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:

(1) Holding account number of the source account and identification of two individuals who are the authorized account representative and/or alternate authorized account representatives initiating the transfer request ~~of seller~~;

(2) Holding account number of destination account and identification of an authorized account representative or alternate authorized account representative confirming the transfer request ~~of purchaser~~;

(3) Serial numbers of the compliance instruments;

(4) Date of the transaction agreement for which the transfer request is submitted;

(5) Settlement date, if not the same as date of the transaction agreement;

(6) Price of the compliance instrument in U.S. dollars.

(A) If California links to Canadian provinces pursuant to subarticle 12, the price of the compliance instrument may be reported in Canadian dollars along with the exchange rate between the U.S. dollar and Canadian dollar as reported for the day by the Bank of Canada.

(B) Disclosure of price is not required for transfers between entities with a direct corporate association or from an entity's holding account to its compliance account. ~~If California links to~~

~~Canadian provinces pursuant to subarticle 12, the price of the compliance instrument may be reported in Canadian dollars; and~~

(7) Parties to the transfer request agree to provide documentation on the transaction for which the transfer request was submitted upon the request of the Executive Officer.

~~(7) Holding account number and authorized representative of an entity for whom the compliance instrument is to be held in benefit;~~

(c) Transfer Request Deficiencies

(1) If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:

(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency;

(B) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to section 95921(a)(1)(A); and

(C) If the entities fail to submit an acceptable transfer request within the time limit, then they must either withdraw the transfer request or submit a new transfer request.

(2) If the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system:

(A) The accounts administrator will inform the entities submitting the request and the Executive Officer of the deficiency; and

(B) If the entities that submitted the transfer request cannot correct the deficiency within 5 business days after notification by the accounts administrator, the Executive Officer may instruct the accounts administrator to reverse the transfer.

(d) Transfers Involving Exchange Clearing Holding Accounts

(1) A request to transfer compliance instruments to an exchange clearing holding account will list the exchange clearing holding account as the destination account.

(2) All of the compliance instruments received by an exchange clearing holding account must be transferred to one or more destination accounts within five days of receiving them.

~~(d)~~(e) Protection of Confidential Information. The Executive Officer will will protect confidential information to the extent permitted by law by ensuring ~~ensure~~

that the accounts administrator:

(1) Releases information on the ~~transaction~~ transfer price and quantity of compliance instruments in a ~~timely~~ manner that is timely and maintains the confidentiality of the parties to a transfer;

(2) Except as needed for market oversight and investigation by the Executive Officer, protects as confidential all other information obtained through ~~transaction~~ transfer requests ~~reports~~;

(3) Protects as confidential the quantity and serial numbers of compliance instruments contained in holding accounts; and

(4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner.

~~(e)~~(f) General Prohibitions on Trading.

(1) An entity cannot acquire allowances and hold them in its own holding account on behalf of ~~for~~ another entity~~, except when part of a disclosed beneficial holdings relationship pursuant to section 95834~~.

~~(2) A registered entity acquiring a compliance instrument on behalf of another registered entity not part of a disclosed beneficial holdings relationship must designate the holding account of the second entity as the destination account in the transfer request.~~

~~(3)~~(2) A trade involving, related to, or associated with any of the following are prohibited:

(A) Any manipulative or deceptive device in violation of this article;

(B) A corner or an attempt to corner the market for a compliance ~~regulated~~ instrument;

(C) Fraud, or an attempt to defraud any other entity;

(D) A false, misleading or inaccurate report concerning information or conditions that affects or tends to affect the price of a compliance instrument;

(E) An application, report, statement, or document required to be filed pursuant to this article which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading; or

(F) Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity on or through which transactions in compliance instruments occur, are settled, or are cleared.

(G) A fact is material if it could probably influence a decision by the Executive Officer, the Board, or the Board's staff.

~~(f)~~(g) Restrictions on Registered Entities. If an entity registered pursuant to section 95830 violates any provision specified in this article the Executive Officer may:

(1) Reduce the number of compliance instruments a covered entity or opt-in covered entity may have in its holding account below the amount allowed by the holding limit pursuant to section 95920;

(2) Increase the annual surrender obligation for a covered entity or an opt-in covered entity to a percentage of its reported and verified or assigned emissions above the 30% obligation pursuant to section 95855;

(3) Suspend or revoke the registration of opt-in covered entities, voluntarily associated entities, and other entities registered pursuant to section 95830;

(A) If registration is revoked or suspended the entity must sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation; and

(B) If registration is revoked or suspended and the entity fails to sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation, the accounts administrator will transfer the remaining instruments into the Auction Holding Account for sale at auction on behalf of the entity pursuant to section 95910(d);

(4) Limit or prohibit transfers in or out of the holding account; or

(5) All of the above.

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

(1) Holders of exchange clearing holding accounts must make the transaction records available to ARB within 10 calendar days of a request from the Executive Officer.

(2) Holders of exchange clearing holding accounts must retain transaction records containing the information listed in 95921(b)~~(c)~~ for 10 years.

(3) ~~ARB~~ Holders of exchange clearing holding accounts are not required to include the information listed in 95921(b)~~(c)~~(4), (5), (6), and (7) in transfer requests to the accounts administrator.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95922. Banking, Expiration, and Voluntary Retirement.

(a) Allowances Issued for a Current or Previous Compliance Period. A CA GHG allowance or an allowance issued by an approved GHG ETS pursuant to subarticle 12 may be held ("banked") by an entity registered pursuant to section 95830.

(b) Allowances Issued for a Future Compliance Period. A CA GHG Allowance or an allowance approved pursuant to subarticle 12 issued from an allowance budget year within a future compliance period may be held by an entity registered pursuant to section 95830.

(c) Expiration of Compliance Instruments. A California compliance instrument does not expire and is not retired in the tracking system until:

(1) It is surrendered by a covered entity or opt-in covered entity and retired by the Executive Officer;

(2) An entity voluntarily submits the instrument to the Executive Officer for retirement; or

(3) The instrument is retired by an approved external GHG emissions trading system to which the Cap-and-Trade Program is linked pursuant to subarticle 12.

(d) Voluntary Retirement of Compliance Instruments.

(1) An entity registered pursuant to section 95830 may voluntarily submit any compliance instrument for retirement.

(2) To voluntarily retire a compliance instrument, the registered entity submits a transaction report to the accounts administrator listing its account number, the serial numbers of the instruments to be retired, and the ARB Retirement Account as the destination account.

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

§ 95940. General Requirements.

A compliance instrument issued by an external greenhouse gas emissions trading system (GHG ETS) may be used to meet the requirements of this Article if the external GHG ETS and the compliance instrument have been approved pursuant to this section and section 95941.

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.

§ 95941. Procedures for Approval of External GHG ETS.

The Board may approve a linkage with an external GHG ETS after public notice and opportunity for public comment in accordance with the Administrative Procedure Act (Government Code sections 11340 et seq.). Provisions set forth in this Article shall specify which compliance instruments issued by a linked GHG ETS may be used to meet a compliance obligation under this Article.

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.

§ 95942. ~~Approval~~ Interchange of Compliance Instruments ~~from~~ with Linked External GHG ETS.

(a) Once a linkage is approved, a compliance instrument issued by the approved external GHG ETS, as specified in this section, may be used to meet a compliance obligation under this Article.

(b) An allowance issued by an approved external GHG ETS and specified in this section is not subject to the quantitative usage limit specified in section 95854.

(c) An offset credit or sector-based credit issued by an external GHG ETS is subject to the quantitative usage limit specified in section 95854, when used to meet a compliance obligation under this Article.

(d) Once a linkage is approved, a compliance instrument issued by California may be used to meet a compliance obligation within the approved external GHG ETS.

(e) Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in California.

(f) The administrator of the approved external GHG ETS must agree to inform the Executive Officer of the serial numbers of any California compliance instruments that the external GHG ETS accepts for compliance.

(g) The Executive Officer will agree to inform the appropriate official in the approved external GHG ETS of the serial numbers of any compliance instrument accepted by California for compliance.

(h) The Executive Officer will register into the Retirement Account compliance instruments issued by California that are used for compliance within the approved external GHG ETS, along with information identifying the ETS actually retiring them.

§ 95943. Linked External GHG ETS

Covered or opt-in entities may use compliance instruments issued by the following programs to meet their compliance obligation under this article:

(a) Government of Quebec

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 13: ARB Offset Credits and Registry Offset Credits

§ 95970. General Requirements for ARB Offset Credits.

An Offset Project Operator or Authorized Project Designee must ensure the requirements for ARB offset credits and registry offset credits are met as follows:

(a) A registry offset credit must:

(1) Represent a GHG emission reduction or GHG removal enhancement that is real, additional, quantifiable, permanent, verifiable, and enforceable;

(2) Result from the use of a Compliance Offset Protocol that meets the requirements of section 95972 and is adopted by the Board pursuant to section 95971;

(3) Result from an offset project that meets the requirements specified in section 95973;

(4) Result from an offset project that is listed pursuant to section 95975;

(5) Result from an offset project that follows the monitoring, reporting and record retention requirements pursuant to section 95976;

(6) Result from an offset project that is verified pursuant to sections 95977 through 95978; and

(7) Be issued pursuant to section 95980.1 by an Offset Project Registry approved pursuant to section 95986.

(b) An ARB offset credit must meet the requirements in sections 95970(a)(1) through (a)(6) and:

(1) Be issued pursuant to section 95981.1;

(2) Be registered pursuant to section 95982; and

(3) When used for compliance under this article, be subject to the quantitative usage limit pursuant to section 95854.

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.

§ 95971. Procedures for Approval of Compliance Offset Protocols.

(a) The Board shall provide public notice of and opportunity for public comment prior to approving any Compliance Offset Protocols, including updates or modifications to existing Compliance Offset Protocols.

(b) All Compliance Offset Protocols shall be reviewed and periodically revised if needed and in compliance with the California Administrative Procedure Act, if 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.

§ 95972. Requirements for Compliance Offset Protocols.

(a) To be approved by the Board, a Compliance Offset Protocol must:

(1) Accurately determine the extent to which GHG emission reductions and GHG removal enhancements are achieved by the offset project type;

(2) Establish data collection and monitoring procedures relevant to the type of GHG emissions sources, GHG sinks, and GHG reservoirs for that offset project type;

(3) Establish a project baseline that reflects a conservative estimate of business-as-usual performance or practices for the offset project type;

(4) Account for activity-shifting leakage and market-shifting leakage for the offset project type, unless the Compliance Offset Protocol stipulates eligibility conditions for use of the Compliance Offset Protocol that eliminate the risk of activity-shifting and/or market-shifting leakage;

(5) Account for any uncertainty in quantification factors for the offset project type;

(6) Ensure GHG emission reductions and GHG removal enhancements are permanent;

(7) Include a mechanism to ensure permanence of GHG removal enhancements for sequestration offset project types;

(8) Establish the length of the crediting period pursuant to section 95972(b) for the relevant offset project type; and

(9) Establish the eligibility and additionality of projects using standard criteria, and quantify GHG reductions and GHG removal enhancements using standardized baseline assumptions, emission factors, and monitoring methods.

(b) Crediting Periods. The crediting period for a non-sequestration offset project must be no less than 7 years and no greater than 10 years, unless specified otherwise in a Compliance Offset Protocol. The crediting period for a sequestration offset project must be no less than 10 years and no greater than 30 years.

(c) Geographic Applicability. A Compliance Offset Protocol must specify where the protocol is applicable. The geographic boundary must be within the United States or its Territories, Canada, or Mexico.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

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

(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:

(1) Meets all of the requirements in a Compliance Offset Protocol approved by the Board pursuant to section 95971;

(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:

(A) The activities that result in GHG reductions and GHG removal enhancements are not required by law, regulation, or any legally binding mandate applicable in the offset project's jurisdiction, and would not otherwise occur in a conservative business-as-usual scenario;

(B) The Offset Project Commencement date occurs after December 31, 2006, unless otherwise specified in the applicable Compliance Offset Protocol, except as provided in section 95973(c); and

(C) The GHG reductions and GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the Compliance Offset Protocol for that offset project type as set forth in the following:

1. Compliance Offset Protocol Ozone Depleting Substances Projects, incorporated by reference October 20, 2011;
2. Compliance Offset Protocol Livestock Projects, incorporated by reference October 20, 2011;
3. Compliance Offset Protocol Urban Forest Projects, incorporated by reference October 20, 2011; and
4. Compliance Offset Protocol U.S. Forest Projects, incorporated by reference October 20, 2011.

(3) Is located in the United States or its Territories, Canada, or Mexico.

(b) Local, Regional, and National Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, and national requirements on environmental impact assessments that apply based on the offset project location.

(c) Early Action Offset Project Commencement Date. Offset projects that transition to Compliance Offset Protocols pursuant to section 95990(k) may have an Offset Project Commencement date before December 31, 2006.

(d) Any Offset Project Operator or Authorized Project Designee seeking to list an offset project situated on any of the following categories of land must demonstrate the existence of a limited waiver of sovereign immunity between ARB and the governing body of the Tribe entered into pursuant to section 95975(l):

(1) Land that is owned by, or subject to, an ownership or possessory interest of the Tribe;

(2) Land that is "Indian lands" of the Tribe, as defined by 25 U.S.C, §81(a)(1); or

(3) Land that is owned by any person, entity, or tribe, within the external borders of such Indian lands.

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). The Offset Project Operator must identify to ARB or an Offset Project Registry the rights and responsibilities they are assigning or delegating to an Authorized Project Designee.

(1) The Offset Project Operator may assign ownership rights of ARB offset credits or registry offset credits to the following:

(A) Authorized Project Designee; or

(B) Any other third party not otherwise prohibited by this article.

(2) The Offset Project Operator may delegate responsibility to the Authorized Project Designee for performing or meeting the requirements of sections 95975, 95976, 95977, 95977.1, 95977.2, 95981, 95981.1, 95983, and, where specifically identified, sections 95985, and 95990.

(b) Modifications to Authorized Project Designee and Activities. An Offset Project Operator may modify or change an Authorized Project Designee, or any other third party authorized pursuant to section 95974(a)(1) for a listed offset project once within each calendar year after the offset project has been listed by ARB or an Offset Project Registry by submitting a request, in writing, to ARB or an 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.

§ 95975. Listing of Offset Projects Using ARB Compliance Offset Protocols.

(a) General Requirements for Offset Project Operators or Authorized Project Designees Who Are Submitting an Offset Project for Listing. Before an offset project can be listed by ARB or an Offset Project Registry the Offset Project Operator, its Authorized Project Designee and, if applicable, another third party as provided in section 95974(a)(1) must:

(1) Register with ARB pursuant to section 95830; and

(2) Not be subject to any Holding Account restrictions imposed pursuant to section 96011.

(b) If the offset project is not listed by ARB, it must be listed by an Offset Project Registry approved pursuant to section 95986.

(c) General Requirements for Offset Project Listing. For offset projects being listed by ARB or an Offset Project Registry in an initial or renewed crediting period, the Offset Project Operator and any Authorized Project Designees approved pursuant to section 95974 must:

(1) Attest, in writing, to ARB as follows:
"I certify under penalty of perjury under the laws of the State of California the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] will be measured in accordance with the [appropriate ARB Compliance Offset Protocol] and all information required to be submitted to ARB is true, accurate, and complete;"

(2) Attest, in writing, to ARB as follows:
"I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this article.";

(3) Attest in writing to ARB as follows:
"I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety laws that apply to the offset project location. I understand that offset projects are not eligible to receive ARB or registry offset credits for GHG reductions and GHG removal enhancements that are not in compliance with the requirements of the cap-and-trade program.";

(4) Provide all documentation required pursuant to section 95975(e) to ARB or an Offset Project Registry; and

(5) Disclose GHG reductions and GHG removal enhancements issued credit by any voluntary or mandatory programs for the same offset project being listed or any GHG reductions and GHG removal enhancements used for any GHG mitigation requirement.

(d) The attestations in section 95975(c)(1), 95975(c)(2), and 95975(c)(3) may be provided to an Offset Project Registry with the listing information but must be provided to ARB when the requirements in section 95981(b) apply.

(e) Offset Project Listing Information Requirements. Before an offset project is publicly listed for an initial or renewed crediting period the Offset Project Operator or Authorized Project Designee must provide the listing information in a Compliance Offset Protocol for that offset project type as set forth in and incorporated by reference:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011;

(2) Compliance Offset Protocol Livestock Projects, October 20, 2011;

(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011; and

(4) Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

(f) Notice of Completeness for Offset Project Listing Information. The Offset Project Operator or Authorized Project Designee will be notified after review by ARB or the Offset Project Registry, if the information submitted pursuant to section 95975(e) is complete and may be listed. If it is determined that the information submitted pursuant to section 95975(e) is incomplete, the Offset Project Operator or Authorized Project Designee will be notified within 30 calendar days by ARB or an Offset Project Registry.

(g) Timing for Offset Project Listing in an Initial Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 95975(e) to ARB or an Offset Project Registry no later than the date at which the Offset Project Operator or Authorized Project Designee submits its required Offset Project Data Report to ARB or an Offset Project Registry pursuant to section 95976.

(h) Listing Status of Offset Projects in an Initial Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset

project for listing in an initial crediting period and the required documentation pursuant to section 95975(e) and ARB or the Offset Project Registry has reviewed the offset project against the additionality requirements in section 95973(a)(2), the offset project listing status will be "Proposed Project." If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request ARB to make a final determination if the offset project meets the requirements in section 95975 to be listed for an initial crediting period by the Offset Project Registry. In making this determination, ARB may consult with the Offset Project Registry before making the final determination.

(i) Timing for Offset Project Listing in a Renewed Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 95975(e) for a renewed crediting period to ARB or an Offset Project Registry no earlier than 18 months and no later than 9 months before conclusion of the initial crediting period or a previous renewed crediting period.

(j) Listing Status of Offset Projects in a Renewed Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset project for listing in a renewed crediting period and the required documentation pursuant to section 95975(e), and ARB or the Offset Project Registry has reviewed the offset project against the additionality requirements in section 95973(a)(2)(A) and 95973(a)(2)(C) as of the date of the commencement of the renewed crediting period, the offset project listing status will be "Proposed Renewal." If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request ARB to make a final determination if the project meets the requirements in section 95975 to be listed for a renewed crediting period by the Offset Project Registry. In making this determination, ARB may consult with the Offset Project Registry before making the final determination.

(k) Limitations for Crediting Period Renewals. A crediting period may be renewed if the offset project meets the requirements for additionality pursuant to section 95975(j).

(1) The crediting period for non-sequestration offset projects may be renewed twice for the length of time identified by the Compliance Offset Protocol.

(2) Sequestration offset projects are not subject to any renewal limits.

(l) Additional Offset Project Listing Requirements for Tribes. In addition to meeting the listing requirements in sections 95975(c)(1) through (5), Tribes must meet the following requirements before offset projects located on the categories of land specified in section 95973(d) can be listed with ARB or an Offset Project Registry pursuant to this section. The requirements of this article apply regardless of the category of land on which the offset project is located.

(1) The governing body of the Tribe must enter into a limited waiver of sovereign immunity with ARB related to its participation in the requirements of the Cap-and-Trade Program for the duration required by the applicable Compliance Offset Protocol(s). This waiver must include a consent to suit by the State of California, Air Resources Board, in the courts of the State of California, with respect to any action in law or equity commenced by the State of California, Air Resources Board to enforce the obligations of the Tribe with respect to its participation in the Cap-and-Trade Program, irrespective of the form of relief sought, whether monetary or otherwise.

(2) The Tribe must provide ARB with documentation demonstrating that the limited waiver of sovereign immunity entered into pursuant to section 95975(l)(1) has been properly adopted in accordance with the Tribe's Constitution or other organic law, by-laws and ordinances, and applicable federal laws.

(3) For offset projects located on Indian lands, as defined in 25 U.S.C. §81(a)(1), the Tribe must also provide ARB with proof of federal

approval of the Tribe's participation in the requirements of the Cap-and-Trade Program, or documentation from the U.S. Department of the Interior, Bureau of Indian Affairs that federal approval is not 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.

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

(a) General Requirements for Monitoring Equipment for Offset Projects. The Offset Project Operator or Authorized Project Designee must employ the procedures in the Compliance Offset Protocol for monitoring measurements and project performance for offset projects. All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer, unless otherwise specified in the applicable Compliance Offset Protocol. All modeling, monitoring, sampling, or testing procedures must be conducted in a manner consistent with the applicable procedure.

(b) The Offset Project Operator or Authorized Project Designee must use the missing data methods as provided in a Compliance Offset Protocol for that offset project type, if provided and applicable.

(c) An Offset Project Operator or Authorized Project Designee must put in place all monitoring equipment or mechanisms required by a Compliance Offset Protocol for that offset project type as set forth in:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011;

(2) Compliance Offset Protocol Livestock Projects, October 20, 2011;

(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011; and

(4) Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

(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 annually for each Reporting Period. 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. The Offset Project Operator or Authorized Project Designee must submit an Offset Project Data Report to ARB or an Offset Project Registry within 24 months of listing their offset project pursuant to section 95975. The Offset Project Data Report shall contain the information required by a Compliance Offset Protocol for that offset project type as set forth in:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011;

(2) Compliance Offset Protocol Livestock Projects, October 20, 2011;

(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011; and

(4) Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

(5) The Offset Project Operator or Authorized Project Designee must attest, in writing, to ARB as follows:

"I certify under penalty of perjury under the laws of the State of California the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] are measured in accordance with the [appropriate ARB approved protocol] and all information required to be submitted to ARB in the Offset Project Data Report is true, accurate, and complete."

This attestation may be provided to an Offset Project Registry with the Offset Project Data Report but must be provided to ARB when the requirements in section 95981(b) apply.

(6) All Offset Project Data Reports must be submitted within four months after the conclusion of each Reporting Period.

(7) If an Offset Project Data Report is not submitted to ARB or an Offset Project Registry by the applicable reporting deadline, the GHG reductions and GHG removal enhancements quantified and reported in

the Offset Project Data Report are not eligible to be issued ARB offset credits pursuant to section 95981.

(e) Requirements for Record Retention for Offset Projects. An Offset Project Operator or Authorized Project Designee must meet the following requirements:

(1) The Offset Project Operator or Authorized Project Designee must retain the following documents:

(A) All information submitted as part of the Offset Project Data Report;

(B) Documentation of the offset project boundary, including a list of all GHG emissions sources, GHG sinks, and GHG reservoirs included in the offset project boundary and the project baseline, and the calculation of the project baseline, project emissions, GHG emission reductions, and GHG removal enhancements;

(C) Fuel use and any other underlying measured or sampled data used to calculate project baseline emissions, GHG emission reductions, and GHG removal enhancements for each source, categorized by process and fuel, or material type;

(D) Documentation of the process for collecting fuel use or any other underlying measured or sampled data for the offset project and its GHG emissions sources, GHG sinks, and GHG reservoirs for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(E) Documentation of all project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(F) All point of origin and chain of custody documents required by a Compliance Offset Protocol, if applicable;

(G) All chemical analyses, results, and testing-related documentation for material and sources used for inputs to

project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(H) All model inputs or assumptions used for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(I) Any data used to assess the accuracy of project baseline emissions, GHG emission reductions, and GHG removal enhancements from each offset project GHG emissions source, GHG sink, and GHG reservoir, categorized by process;

(J) Quality assurance and quality control information including information regarding any measurement gaps, missing data substitution, calibrations or maintenance records for monitoring equipment, or models providing data for calculating project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(K) A detailed technical description of any offset project continuous measurement/monitoring system, including documentation of any findings and approvals by federal, state, and local agencies;

(L) Raw and aggregated data from any measurement system;

(M) Documentation of any changes over time and the log book on tests, down-times, calibrations, servicing, and maintenance for any measurement/monitoring equipment providing data for project baseline calculations, project emissions, GHG emission reductions, and GHG removal enhancements;

(N) For sequestration offset projects, documentation of inventory methodologies and sampling procedures including all calculation methodologies and equations used, and any data related to plot sampling; and

(O) Any other documentation or data required to be retained by a Compliance Offset Protocol, if applicable.

(2) Documents listed in section 95976(e)(1) associated with the preparation of an Offset Project Data Report shall be retained in paper, electronic, or other usable format for a minimum of 15 years following the issuance of ARB offset credits related to that Offset Project Data Report. All other documents shall be retained in paper, electronic, or other usable format for a minimum of 15 years.

(3) The documents retained pursuant to this section must be sufficient to allow for the verification of each Offset Project Data Report.

(4) Upon request by ARB or an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide to ARB or an Offset Project Registry all documents pursuant to this section, including data used to develop an Offset Project Data Report within 10 calendar days of the request.

(f) General Procedure for Interim Gas or Fuel Analytical and Monitoring Equipment Data Collection. This section only applies if a Compliance Offset Protocol does not already include methods for collecting or accounting for data in the event of missing data due to an unforeseen breakdown of gas or fuel analytical monitoring data equipment.

(1) In the event of an unforeseen breakdown of offset project data monitoring equipment and gas or fuel flow monitoring devices required for the GHG emission reductions and GHG removal enhancement estimation, ARB may authorize an Offset Project Operator or Authorized Project Designee to use an interim data collection procedure if ARB determines that the Offset Project Operator or Authorized Project Designee has satisfactorily demonstrated that:

(A) The breakdown may result in a loss of more than 20 percent of the source's gas or fuel data for the year covered by an Offset Project Data Report;

(B) The gas or fuel analytical data monitoring equipment cannot be promptly repaired or replaced without shutting down a process unit significantly affecting the offset project operations, or that

the monitoring equipment must be replaced and replacement equipment is not immediately available;

(C) The interim procedure will not remain in effect longer than is reasonably necessary for repair or replacement of the malfunctioning data monitoring equipment; and

(D) The request was submitted within 30 calendar days of the breakdown of the gas or fuel analytical data monitoring equipment.

(2) An Offset Project Operator or Authorized Project Designee seeking approval of an interim data collection procedure must, within 30 calendar days of the monitoring equipment breakdown, submit a written request to ARB that includes all of the following:

(A) The proposed start date and end date of the interim procedure;

(B) A detailed description of what data are affected by the breakdown;

(C) A discussion of the accuracy of data collected during the interim procedure compared with the data collected under the Offset Project Operator's or Authorized Project Designee's usual equipment-based method; and

(D) A demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.

(3) ARB may limit the duration of the interim data collection procedure or include other conditions for approval.

(4) Data collected pursuant to an approved interim data collection procedure shall be considered captured data for purposes of compliance with a Compliance Offset Protocol. When approving an interim data collection procedure, ARB shall determine whether the accuracy of data collected under the procedure is reasonably equivalent to data collected from properly functioning monitoring equipment, and if it is not, the relative accuracy to assign for purposes

of assessing possible offset material misstatement under section 95977.1(b)(3)(Q) of this article.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95977. Verification of GHG Emission Reductions and GHG Removal Enhancements from Offset Projects.

(a) General Requirements. An Offset Project Operator or Authorized Project Designee must obtain the services of an ARB-accredited verification body for the purposes of verifying Offset Project Data Reports submitted under this article.

(b) Schedule for Verification of Non-Sequestration Offset Projects. The verification of GHG emission reductions for non-sequestration offset projects must be performed annually and cover the Reporting Period for which the most recent Offset Project Data Report was submitted. For Reporting Periods in which an Offset Project Data Report for a non-sequestration offset project shows that the offset project produced fewer than 25,000 metric tons of GHG reductions, the Offset Project Operator or Authorized Project Designee may choose to perform verification that covers two consecutive Reporting Periods.

(c) Schedule for Verification of Sequestration Offset Projects. The verification of GHG emission reductions and GHG removal enhancements for sequestration offset projects must be performed at least once every six years and may cover up to six Reporting Periods for which Offset Project Data Reports were submitted. After an initial verification with a Positive Offset Verification Statement, reforestation offset projects may defer the second verification for twelve years, but verification of Offset Project Data Reports must be performed at least once every six years thereafter.

(d) Timing for Submittal of Offset Verification Statements to ARB or an Offset Project Registry. Any Offset Verification Statement must be received by

ARB or an Offset Project Registry within nine months after the conclusion of the Reporting Period for which offset verification services were performed. If the Offset Verification Statement is not submitted to ARB or an Offset Project Registry by the verification deadline, the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to be issued ARB offset credits or registry offset credits.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95977.1. Requirements for Offset Verification Services.

(a) Rotation of Verification Bodies. An offset project shall not have more than six consecutive years of offset project data verified by the same verification body or verifier(s). An Offset Project Operator or Authorized Project Designee may contract with a previous verification body or verifier(s) only if at least three years of the offset project data have been verified by a different verification body or verifier(s) before the previous verification body is selected again. The six year rotation requirement is applied between the Offset Project Operator or Authorized Project Designee and the verification body or verifier(s) on an offset project basis.

(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 may begin, 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 working days after the Notice for Offset Verification Services is received by ARB or the Offset Project

Registry, or earlier, if approved by ARB in writing. The Notice for Offset Verification Services must include the following information:

(A) The name of the offset project type, including the length of the offset project crediting period, and title of the Compliance Offset Protocol used to implement the offset project;

(B) A list of staff who will be designated to provide offset verification services as part of an offset verification team, including the names of each designated staff member, the lead verifier, independent reviewer, all subcontractors, and a description of the roles and responsibilities each team member will have during the offset verification process;

(C) Documentation that the offset verification team has the skills required to provide offset verification services for the Offset Project Operator or Authorized Project Designee. At least one offset verification team member must be accredited by ARB as an offset project specific verifier for an offset project of that type; and

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

1. The name of the Offset Project Operator or Authorized Project Designee, including contact information, address, telephone number, and email address;
2. The locations that will be subject to offset verification services;
3. The date(s) of on-site visits, with address and contact information; and
4. A brief description of expected offset verification services to be performed, including expected completion date.

(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, the verification body must notify ARB and the Offset Project Registry by submitting an updated conflict of interest self-evaluation form as soon as the change is made, but, at least five days prior to the start of offset verification services. 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. In either instance, the conflict of interest must be resubmitted to ARB or the Offset Project Registry, as applicable.

(3) Offset verification services must include the following:

(A) Offset Verification Plan. The Offset Project Operator or Authorized Project Designee must submit the following information necessary to develop an Offset Verification Plan:

1. Information to allow the offset verification team to develop a general understanding of offset project boundaries, operations, project baseline emissions, and annual GHG reductions and GHG removal enhancements;
2. Information regarding the training or qualifications of personnel involved in developing the Offset Project Data Report;
3. The name and date of the Compliance Offset Protocol used to quantify and report project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol; and
4. Information about any data management system, offset project monitoring system, and models used to track project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol.

(B) Timing of Offset Verification Services. Such information shall include:

1. Dates of proposed meetings and interviews with personnel related to the offset project;
2. Dates of proposed site visits;
3. Types of proposed document and data reviews; and
4. Expected date for completing offset verification services.

(C) Planning Meetings with the Offset Project Operator or Authorized Project Designee. The offset verification team must discuss with the Offset Project Operator or Authorized Project Designee the scope of the offset verification services and request any information and documents needed for initial offset verification services. The offset verification team must review the documents submitted and plan and conduct a review of original documents and supporting data for the Offset Project Data Report.

(D) Site Visits for Offset Projects. For a non-sequestration offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make at least one site visit every year to each offset project location for which an Offset Project Data Report is submitted, except for those non-sequestration offset projects that qualify for a two-year offset verification period pursuant to section 95977(b). In this case, at least one offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit to each offset project location in the year that offset verification services are performed. For a forest or urban forest offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit every year that offset verification services are provided, except for those offset projects approved for less intensive verification, for which a site visit must be performed at least once every six years. A site

visit is also required after the first full calendar year of operations of an offset project. During the site visit, the offset verification team member(s) must conduct the following:

1. During the initial site visit the offset verification team members must:
   a. Assess offset project eligibility and additionality according to section 95973 and the applicable Compliance Offset Protocol;
   b. Review the information submitted for listing pursuant to section 95975;
   c. Confirm that the offset project boundary is appropriately defined;
   d. Review project baseline calculations and modeling;
   e. Assess the operations, functionality, data control systems, and review GHG measurement and monitoring techniques; and
   f. Confirm that all applicable eligibility criteria to design, measure, and monitor the offset project conforms to the requirements of the applicable Compliance Offset Protocol.
2. During the initial and each subsequent site visit the offset verification team must:
   a. Check that all offset project boundaries, GHG emissions sources, GHG sinks, and GHG reservoirs in the applicable Compliance Offset Protocol are identified appropriately;
   b. Review and understand the data management systems used by the Offset Project Operator or Authorized Project Designee to track, quantify, and report GHG reductions, GHG removal enhancements, or other data required as applicable in the Compliance Offset

Protocol. This includes reviewing data collection processes and procedures, sampling techniques and metering accuracy, quality assurance/quality control processes and procedures, and missing data procedures. The offset verification team member(s) must evaluate the uncertainty and effectiveness of these systems;

c. Interview key personnel involved in collecting offset project data and preparing the Offset Project Data Report;

d. Make direct observations of equipment for data sources and equipment supplying data for GHG emission sources in the sampling plan determined to be high risk;

e. Collect and review other information that, in the professional judgment of the team, is needed in the offset verification process;

f. Confirm the offset project conforms with all local, state, or federal environmental regulatory requirements pursuant to section 95973(b), including health and safety regulations; and

g. Review all chain of custody documents as required in the Compliance Offset Protocol, if applicable.

h. If the offset project is found by the offset verification team to not meet the requirements of section 95977.1(b)(3)(D)2.f., the offset project is ineligible to receive ARB offset credits or registry offset credits for GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report.

i. The activities performed pursuant to sections 95977.1(b)(3)(D)2.f. through (b)(3)(D)2.h. may be

included in a site visit or, alternatively, may be conducted as part of a desk review.

(E) The offset verification team must review offset project operations to identify applicable GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs required to be included and quantified in the Offset Project Data Report as required by the applicable Compliance Offset Protocol. This must include a review of each type of GHG emissions source, GHG sink, and GHG reservoir to ensure that all GHG emissions sources, GHG sinks, and GHG reservoirs required to be reported for the offset project are properly included in the Offset Project Data Report.

(F) An Offset Project Operator or Authorized Project Designee must make available to the offset verification team all information and documentation used to calculate and report project baseline and annual GHG emissions, GHG reductions, and GHG removal enhancements and other information required by the applicable Compliance Offset Protocol.

(G) Sampling Plan for Offset Project Data Reports. As part of confirming the Offset Project Data Report, the offset verification team must develop a sampling plan that meets the following requirements:

1. The offset verification team must develop a sampling plan based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale, and complexity of the offset verification services for an Offset Project Operator or Authorized Project Designee. The analysis must review the inputs for the development of the submitted Offset Project Data Report, the rigor and appropriateness of the GHG data management systems, and the coordination within an Offset Project Operator's or

Authorized Project Designee's organization to manage the operation and maintenance of equipment and systems used to develop the Offset Project Data Reports;

2. The offset verification team must include a ranking of GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary by amount of contribution to total CO_2e emissions, GHG reductions, and GHG removal enhancements, and a ranking of GHG emissions sources, GHG sinks, or GHG reservoirs with the largest calculation uncertainty; and
3. The offset verification team must include a qualitative narrative of uncertainty risk assessment in the following areas as applicable to the Compliance Offset Protocol:
   a. Data acquisition equipment;
   b. Data sampling and frequency;
   c. Data processing and tracking;
   d. Project baseline and annual GHG emissions, GHG reductions, and GHG removal enhancement calculations;
   e. Data reporting;
   f. Chain of custody requirements; and
   g. Management policies or practices in developing Offset Project Data Reports.

(H) After completing the analysis in section 95977.1(b)(3)(G), the offset verification team must include in the sampling plan a list which includes the following:

1. GHG emissions sources, GHG sinks, and GHG reservoirs that will be targeted for document reviews to ensure conformance with the Compliance Offset Protocol and data checks as specified in section 95977.1(b)(3)(L) and an explanation of why they were chosen;

2. Methods used to conduct data checks for each GHG emissions source, GHG sink, and GHG reservoir; and
3. A summary of the information analyzed in the data checks and document reviews conducted for each GHG emissions source, GHG sink, and GHG reservoir.

(I) The sampling plan list, prepared pursuant to section 95977.1(b)(3)(H), must be updated and finalized prior to the completion of offset verification services. The final sampling plan must describe in detail how the GHG emissions sources, GHG sinks, and GHG reservoirs with identified risk, subject to data checks, were reviewed for accuracy.

(J) The offset verification team must revise the sampling plan to describe tasks completed or needed to be completed by the offset verification team as relevant information becomes available and potential issues emerge of offset material misstatement or nonconformance with the requirements of the Compliance Offset Protocol and this article.

(K) The verification body must retain the sampling plan in paper, electronic, or other format for a period of not less than 15 years following the submission of each Offset Verification Statement. The sampling plan must be made available to ARB or the Offset Project Registry within 10 days upon request. The verification body must also retain all material received, reviewed, or generated to render an Offset Verification Statement for an Offset Project Operator or Authorized Project Designee for 15 years following the submittal of each Offset Verification Statement. The documentation must allow for a transparent review of how a verification body reached its conclusion in the Offset Verification Statement.

(L) Data Checks for Offset Project Data Reports. To determine the reliability of the submitted Offset Project Data Report, the offset

verification team must use data checks. Such data checks must focus first on the largest and most uncertain estimates of project baseline GHG emissions, project emissions, GHG reductions, and GHG removal enhancements, and the offset verification team must:

1. Use data checks to ensure that the appropriate methodologies and GHG emission factors have been applied in calculating the project baseline and annual GHG emissions, project emissions, GHG reductions, and GHG removal enhancements calculations in the Compliance Offset Protocol;
2. Choose GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs for data checks based on their relative sizes and risks of offset material misstatement or nonconformance as indicated in the sampling plan;
3. Use professional judgment in the number of data checks required for the offset verification team to conclude with reasonable assurance whether the Offset Project Operator's or Authorized Project Designee's total reported GHG reductions and GHG removal enhancements are free of offset material misstatement and the Offset Project Data Report otherwise conforms to the requirements of the Compliance Offset Protocol and this article. At a minimum a data check must include the following:
    a. Tracing data in the Offset Project Data Report to its origin;
    b. Looking at the process for data compilation and collection;
    c. Reviewing all GHG inventory designs for GHG sources, GHG sinks, and GHG reservoirs, and sampling procedures, if applicable;

d. Recalculating GHG emissions, project emissions, GHG reductions, and GHG removal enhancements estimates to check original calculations;

e. Reviewing calculation methodologies used by the Offset Project Operator or Authorized Project Designee for conformance with the Compliance Offset Protocol and this article;

f. Reviewing meter and fuel analytical instrumentation calibration, if applicable; and

g. Reviewing the quantification from models approved for use in the Compliance Offset Protocol, if applicable; and

4. Compare its own calculated results with the reported offset project data in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be identified. The comparison of data checks must also include a narrative to indicate which GHG emissions sources, GHG sinks, and GHG reservoirs were checked, the types and quantity of data that were evaluated for each GHG emissions source, GHG sink, and GHG reservoir, and any discrepancies that were identified.

(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 or corrections to the submitted Offset Project Data Report, and a revised Offset Project Data Report must be submitted to ARB or the Offset Project Registry. 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).

(N) To verify that the Offset Project Data Report is free of offset material misstatement, the offset verification team must make its own determination of GHG reductions or GHG removal enhancements relative to the project baseline, and must determine whether there is reasonable assurance that the Offset Project Data Report does not contain an offset material misstatement for the Offset Project Operator or Authorized Project Designee, on a CO_2e basis. To assess conformance with this article and the Compliance Offset Protocol the offset verification team must review the methods and factors used to develop the Offset Project Data Report for adherence to the requirements of this article and the Compliance Offset Protocol and ensure that other requirements of this article are met.

(O) Issues Log. The offset verification team must keep a log of any issues identified in the course of offset verification services that may affect determinations of offset material misstatement and nonconformance. The issues log must identify the section of this article or Compliance Offset Protocol related to the nonconformance, if applicable, and indicate that the issues were corrected by the Offset Project Operator or Authorized Project Designee prior to completing the offset verification services. Any other concerns that the offset verification team has with the preparation of the Offset Project Data Report must be documented in the issues log. The issues log must indicate whether the issues could have any bearing on offset material misstatement or conformance.

(P) An assessment of offset material misstatement is conducted for annual net GHG reductions and GHG removal enhancements relative to the project baseline in metric tons of CO_2e.

(Q) The offset verification team must determine whether the GHG reductions and GHG removal enhancements quantified and

reported in the Offset Project Data Report contain an offset material misstatement using the following equation:

$$Percent\,error = \sum \frac{[Discrepancies + Omissions + Misreporting]\ x\ 100\%}{Total\ reported\ emissions}$$

Where:

"Discrepancies" means any differences between the reported GHG emissions, project emissions, GHG reductions, and GHG removal enhancements and GHG emissions, project emissions, GHG reductions, and GHG removal enhancements for a data source subject to data checks in 95977.1(b)(3)(L) calculated by the offset verification team.

"Omissions" means any GHG emissions, GHG reductions, project emissions, and GHG removal enhancements that the offset verification team concludes must be part of the Offset Project Data Report, but were not included by the Offset Project Operator or Authorized Project Designee in the Offset Project Data Report.

"Misreporting" means duplicative, incomplete, or other GHG emissions, project emissions, GHG reductions, and GHG removal enhancements the offset verification team concludes should, or should not, be part of the Offset Project Data Report.

"Total reported emissions" means annual reported net GHG reductions and GHG removal enhancements relative to the project baseline in metric tons CO_2e.

(R) Completion of offset verification services must include:

1. Offset Verification Statement. Upon completion of the offset verification services pursuant to section 95977.1(b), the verification body must complete an Offset Verification Statement and provide it to the Offset Project Operator or Authorized Project Designee and ARB or the Offset Project Registry by the verification deadline pursuant to section 95977(d). Before the Offset Verification Statement is completed, the verification body must have the offset verification services and findings of the offset verification team independently reviewed within the verification body by an independent reviewer not involved in offset verification services for that offset project.
2. The independent reviewer shall serve as the final check of the offset verification team's work to identify any significant concerns, including:
   a. Errors in planning;
   b. Errors in data sampling; and
   c. Errors in judgment by the offset verification team that are related to the draft offset verification statement.
3. The independent reviewer must maintain independence from the offset verification services by not making specific recommendations about how the offset verification services should be conducted. The independent reviewer will review documents applicable to the offset verification services provided and identify any failure to comply with the requirements of this article or with the verification body's internal policies and procedures for providing offset verification services. The independent reviewer must concur with the offset verification findings before the Offset Verification Statement can be issued.
4. When the offset verification team completes its findings:

a. The verification body must provide to the Offset Project Operator or Authorized Project Designee a detailed verification report. The detailed verification report must at a minimum include the Offset Verification Plan, the detailed comparison of the data checks conducted during offset verification services, the issues log identified in the course of offset verification activities and the issue resolutions, and any qualifying comments on findings during offset verification services. The detailed verification report must also include the calculations performed in 95977.1(b)(3)(Q) and be made available to ARB within 10 calendar days upon request. If the Offset Verification Statement is being submitted to an Offset Project Registry, then the verification body must submit the detailed verification report to the Offset Project Registry with the Offset Verification Statement. The detailed verification report must be submitted to the Offset Project Operator or Authorized Project Designee at the same time or before the Offset Verification Statement is submitted to ARB or the Offset Project Registry.

b. The verification body must provide the Offset Verification Statement to the Offset Project Operator or Authorized Project Designee and ARB or the Offset Project Registry, attesting to ARB whether the verification body has found the submitted Offset Project Data Report to be free of offset material misstatement, and whether the Offset Project Data Report is in conformance with the requirements of this article and the Compliance Offset Protocol.

c. A Compliance Offset Protocol may restrict the use of a Qualified Positive Offset Verification Statement for certain project types, in which case the verification body must submit either a Positive Offset Verification Statement or an Adverse Offset Verification Statement. In the case of a Qualified Positive Offset Verification Statement, when not restricted by a Compliance Offset Protocol, the verification body will qualify the Offset Verification Statement to indicate any non-conformances contained within the Offset Project Data Report and that these nonconformances do not result in an offset material misstatement.

d. The offset verification team must have a final discussion with the Offset Project Operator or Authorized Project Designee explaining their findings and notifying the Offset Project Operator or Authorized Project Designee of any unresolved issues noted in the issues log before the Offset Verification Statement is finalized.

e. The lead verifier in the offset verification team must attest to ARB in the Offset Verification Statement that the offset verification team has carried out all offset verification services as required by this article, and the lead verifier who has conducted the independent review of offset verification services and findings must attest to his or her independent review on behalf of the verification body and his or her concurrence with the offset verification findings.

f. The lead verifier must attest in the Offset Verification Statement, in writing, to ARB as follows:
“I certify under penalty of perjury under the laws of the State of California that the offset verification team has

carried out all offset verification services as required by sections 95977.1 and 95977.2 and the findings are true, accurate, and complete and have been independently reviewed by an independent reviewer as required under sections 95977.1(b)(3)(R)1. through 95977.1(b)(3)(R)3..”

5. Prior to the verification body providing an Adverse Offset Verification Statement to ARB or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must be provided at least 10 working days to modify the Offset Project Data Report to correct any offset material misstatement or nonconformance found by the offset verification team. The modified Offset Project Data Report and Offset Verification Statement must be submitted to ARB or the Offset Project Registry by the applicable verification deadline, unless the Offset Project Operator or Authorized Project Designee makes a request to ARB pursuant to section 95977.1(b)(3)(R)6.
6. If the Offset Project Operator or Authorized Project Designee and the verification body cannot reach agreement on modifications to the Offset Project Data Report that result in a Positive Offset or Qualified Positive Offset Verification Statement due to a disagreement on the requirements of this article or Compliance Offset Protocol, the Offset Project Operator or Authorized Project Designee may petition ARB to make a decision as to the verifiability of the submitted Offset Project Data Report.
7. If ARB determines that the Offset Project Data Report does not meet the standards and requirements specified in this article, the Offset Project Operator or Authorized Project Designee must provide any additional information within 30 calendar days of the ARB determination. ARB will review

the new information and notify the Offset Project Operator or Authorized Project Designee and verification body of its final decision. In re-verifying a revised Offset Project Data Report, the verification body and offset verification team shall be subject to the requirements in sections 95977.1(b)(3)(R)1. through 95977.1(b)(3)(R)4. and must submit the revised Offset Verification Statement to ARB or the Offset Project Registry within 15 calendar days.

(S) Upon submission of the Offset Verification Statement to ARB or the Offset Project Registry, the Offset Project Data Report must be considered final and no further changes may be made. All offset verification requirements of this article shall be considered complete.

(T) If the Executive Officer finds a high level of conflict of interest existed between a verification body and an Offset Project Operator or Authorized Project Designee pursuant to section 95979(b)(3) and section 95979(b)(4), or an Offset Project Data Report that received a Positive Offset or Qualified Positive Offset Verification Statement fails an ARB audit, the Executive Officer may set aside the Positive Offset or Qualified Positive Offset Verification Statement submitted by the verification body and require the Offset Project Operator or Authorized Project designee to have the Offset Project Data Report re-verified by a different verification body within 90 calendar days of this finding.

(U) Upon request by ARB or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the data used to generate an Offset Project Data Report, including all data available to the offset verification team in the conduct of offset verification services, within 10 working days of the request.

(V) Upon request by ARB or the Offset Project Registry the verification body must provide ARB or the Offset Project Registry the detailed verification report given to the Offset Project Operator or Authorized Project Designee, as well as the sampling plan, contracts for offset verification services, and any other supporting documentation. All documentation must be provided by the verification body to ARB or the Offset Project Registry within 10 working days of the request.

(W) Upon written notification by ARB the verification body and its staff must be available for an offset verification services audit when providing offset verification services for an offset project listed with ARB or an Offset Project Registry using a Compliance Offset Protocol.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95977.2. Additional Project Specific Requirements for Offset Verification Services.

In addition to meeting the offset verification requirements in sections 95977 and 95977.1, Offset Project Operators or Authorized Project Designees must ensure the GHG emission reductions and GHG removal enhancements resulting from an offset project meet any additional verification requirements in the Compliance Offset Protocol, if applicable, for an offset project of that type.

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.

§ 95978. Offset Verifier and Verification Body Accreditation.

An offset verifier or verification body must meet the accreditation requirements in section 95132 of MRR to provide offset verification services to verify GHG

emission reductions and GHG removal enhancements for offset projects listed pursuant to this article.

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.

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

(a) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, and offset verifiers accredited by ARB to perform offset verification services for Offset Project Operators or Authorized Project Designees.

(b) The potential for a conflict of interest must be deemed to be high where:

(1) The verification body and Offset Project Operator or Authorized Project Designee share any senior management staff or board of directors membership, or any of the senior management staff of the Offset Project Operator or Authorized Project Designee have been employed by the verification body, or vice versa, within the previous three years; or

(2) Within the previous five years, any staff member of the verification body or any related entity has provided to the Offset Project Operator or Authorized Project Designee 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, unless the review was part of providing GHG offset verification services;

(B) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a California Environmental Quality Act (CEQA) GHG analysis that includes offset project specific information;

(C) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions and GHG removal enhancements as a benefit;

(D) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;

(E) Owning, buying, selling, trading, or retiring shares, stocks, or ARB offset credits or registry offset credits from the offset project;

(F) Dealing in or being a promoter of ARB offset credits or registry offset credits on behalf of an Offset Project Operator or Authorized Project Designee;

(G) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the Offset Project Operator or Authorized Project Designee;

(H) Appraisal services of carbon or GHG liabilities or assets;

(I) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;

(J) Directly managing any health, environment or safety functions for the Offset Project Operator or Authorized Project Designee;

(K) Bookkeeping or other services related to the accounting records or financial statements;

(L) Any service related to information systems, including International Organisation for Standardization14001 Certification for Environmental Management (ISO 14001 Certification), unless those systems will not be reviewed as part of the offset verification process;

(M) Appraisal and valuation services, both tangible and intangible;

(N) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the information reviewed

in formulating the Offset Verification Statement will not be reviewed as part of the offset verification services;

(O) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;

(P) Any internal audit service that has been outsourced by the Offset Project Operator or Authorized Project Designee that relates to the Offset Project Operator's or Authorized Project Designee's internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(Q) Acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the Offset Project Operator or Authorized Project Designee;

(R) Any legal services; and

(S) Expert services to the Offset Project Operator or Authorized Project Designee or a legal representative for the purpose of advocating the Offset Project Operator's or Authorized Project Designee's interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.

"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.

(3) The potential for conflict of interest will be deemed to be high when any member of the verification body provides any type of incentive to an Offset Project Operator or Authorized Project Designee to secure an offset verification services contract.

(4) The potential for a conflict of interest will also be deemed to be high where any member of the verification body has provided offset verification services for the Offset Project Operator or Authorized Project Designee, except within the time periods in which the Offset Project Operator or Authorized Project Designee is allowed to use the same verification body as specified in section 95977.1(a).

(c) The potential for a conflict of interest must be deemed to be low where no potential for a conflict of interest is found under section 95979(b) and any non-offset verification services provided by any member of the verification body to the Offset Project Operator or Authorized Project Designee within the last five years are valued at less than 20 percent of the fee for the proposed offset verification, except where medium conflict of interest related to personal or family relationships is identified pursuant to section 95979(d).

(d) The potential for a conflict of interest must be deemed to be medium where the potential for a conflict of interest is not deemed to be either high or low as specified in sections 95979(b) and 95979(c), or where there are any instances of personal or familial relationships between the verification body and management or employees of the Offset Project Operator or Authorized Project Designee, and when a conflict of interest self-evaluation is submitted pursuant to section 95979(g). If a verification body identifies a medium potential for conflict of interest and intends to provide offset verification services for the Offset Project Operator or Authorized Project Designee for an offset project listed with ARB or an Offset Project Registry, the verification body must submit, in addition to the submittal requirements specified in section 95979(e), a plan to avoid, neutralize, or

mitigate the potential conflict of interest situation. At a minimum, the conflict of interest mitigation plan must include:

(1) A demonstration that any members with potential conflicts have been removed and insulated from the project;

(2) An explanation of any changes to the organizational structure or verification body to remove the potential conflict of interest. A demonstration that any unit with potential conflicts has been divested or moved into an independent entity or any subcontractor with potential conflicts has been removed; and

(3) Any other circumstance that specifically addresses other sources for potential conflict of interest.

(e) Conflict of Interest Submittal Requirements for Accredited Verification Bodies. Before providing any offset verification services, the verification body must submit to the Offset Project Operator or Authorized Project Designee, and ARB or the Offset Project Registry, a self-evaluation of the potential for any conflict of interest that the verification body, its staff, its related entities, or any subcontractors performing offset verification services may have with the Offset Project Operator or Authorized Project Designee for which it will perform offset verification services. The submittal must include the following:

(1) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in sections 95979(b), (c), and (d);

(2) Identification of whether any member of the offset verification team has previously provided offset verification services for the Offset Project Operator or Authorized Project Designee, and, if so, the years in which such offset verification services were provided; and

(3) Identification of whether any member of the offset verification team or related entity has engaged in any non-offset verification services of any nature with the Offset Project Operator or Authorized Project Designee either within or outside California during the previous three years. If

non-offset verification services have previously been provided, the following information must also be submitted:

(A) Identification of the nature and location of the work performed for the Offset Project Operator or Authorized Project Designee and whether the work is similar to the type of work to be performed during offset verification;

(B) The nature of past, present, or future relationships with the Offset Project Operator or Authorized Project Designee including:

1. Instances when any member of the offset verification team has performed or intends to perform work for the Offset Project Operator or Authorized Project Designee;
2. Identification of whether work is currently being performed for the Offset Project Operator or Authorized Project Designee, and if so, the nature of the work;
3. How much work was performed for the Offset Project Operator or Authorized Project Designee in the last three years, in dollars;
4. Whether any member of the offset verification team has any contracts or other arrangements to perform work for the Offset Project Operator or Authorized Project Designee or a related entity; and
5. How much work related to GHG reductions and GHG removal enhancements the offset verification team has performed for the Offset Project Operator or Authorized Project Designee or related entities in the last three years, in dollars;

(C) Explanation of how the amount and nature of work previously performed is such that any member of the offset verification team's credibility and lack of bias should not be under question;

(D) A list of names of the staff that would perform offset verification services for the Offset Project Operator or Authorized Project Designee, and a description of any instances of personal or family relationships with management or employees of the Offset Project Operator or Authorized Project Designee that potentially represent a conflict of interest;

(E) Identification of any other circumstances known to the verification body, or Offset Project Operator or Authorized Project Designee that could result in a conflict of interest; and

(F) Attest, in writing, to ARB as follows:
"I certify under penalty of perjury of the laws of the State of California the information provided in the Conflict of Interest submittal is true, accurate, and complete."

(f) Monitoring Conflict of Interest Situations.

(1) After commencement of offset verification services, the verification body must monitor and immediately make full disclosure, in writing, to ARB or the Offset Project Registry regarding any potential for a conflict of interest situation that arises for an offset project using a Compliance Offset Protocol. This disclosure must include a description of actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.

(2) The verification body must continue to monitor arrangements or relationships that may be present for a period of one year after the completion of offset verification services for an offset project using a Compliance Offset Protocol. During that period, within 30 days of the verification body or any verification team member entering into any contract with the Offset Project Operator or Authorized Project Designee for which the verification body has provided offset verification services, the verification body must notify ARB or the Offset Project Registry of the contract and the nature of the work to be performed. ARB or the Offset Project Registry, within 30 working days, will

determine the level or conflict using the criteria in sections 95979(a) through (d), if the Offset Project Operator or Authorized Project Designee must re-verify their Offset Project Data Report, and if accreditation revocation is warranted by ARB.

(3) The verification body must notify ARB or the Offset Project Registry within 30 calendar days, of any emerging conflicts of interest during the time offset verification services are being provided for an offset project using a Compliance Offset Protocol.

(A) If ARB or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium risk, and this risk can be mitigated, then the verification body meets the conflict of interest requirements to continue to provide offset verification services for the Offset Project Operator or Authorized Project Designee and will not be subject to suspension or revocation of accreditation as specified in section 95132(d) of MRR.

(B) If ARB or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium or high risk, and this risk cannot be mitigated, then the verification body will not be able to continue to provide offset verification services for the Offset Project Operator or Authorized Project Designee, and may be subject to the suspension or revocation of accreditation by ARB under section 95132(d) of MRR.

(4) The verification body must report to ARB and the Offset Project Registry, if applicable, any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of offset verification services.

(5) ARB may void a Positive Offset or Qualified Positive Offset Verification Statement received in section 95981 if it discovers a potential conflict of interest has arisen for any member of the offset verification team. In

such a case, the Offset Project Operator or Authorized Project designee shall be provided 90 calendar days to complete re-verification.

(6) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this article, the Executive Officer may rescind accreditation of the body, its verifier staff, or its subcontractor(s) for any appropriate period of time as provided in section 95132(d) of MRR.

(g) Specific Requirements for Air Quality Management Districts and Air Pollution Control Districts.

(1) If an air district has provided or is providing any services listed in section 95979(b)(2) as part of its regulatory duties, those services do not constitute non-verification services or a potential for high conflict of interest for purposes of this article;

(2) Before providing offset verification services, an air district must submit a conflict of interest self-evaluation pursuant to 95979(e) for each Offset Project Developer or Authorized Project Designee for which it intends to provide verification services. As part of its conflict of interest self-evaluation submittal under section 95979(e), the air district shall certify that it will prevent conflicts of interests and resolve potential conflict of interest situations pursuant to its policies and mechanisms submitted under section 95132(b)(1)(G) of MRR;

(3) If an air district hires a subcontractor who is not an air district employee to provide offset verification services, the air district shall be subject to all of the requirements of section 95979.

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.

§ 95980. Issuance of Registry Offset Credits.

(a) One registry offset credit, which represents one metric ton of CO_2e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued pursuant to section 95980.1 only if:

(1) An Offset Project Registry has listed the offset project pursuant to section 95975;

(2) The GHG emission reductions or GHG removal enhancements were issued a Positive Offset or Qualified Positive Offset Verification Statement pursuant to section 95977.1 and 95977.2; and

(3) An Offset Project Registry has received a Positive Offset or Qualified Positive Offset Verification Statement issued and attested to by an ARB-accredited verification body for the Offset Project Data Report for which registry offset credits would be issued.

(b) An Offset Project Registry will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of section 95980(a), the information submitted pursuant to section 95980(a) is complete, and the Positive Offset or Qualified Positive Offset Verification Statement meets the requirements of sections 95977, 95977.1, and 95977.2 within 45 calendar days of receiving it.

(c) Determination for Timing and Duration of Initial Crediting Periods for Offset Projects Submitted Through an Offset Project Registry. The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by an Offset Project Registry. An early action offset project that transitions pursuant to section 95990(k) will begin its initial crediting period pursuant to section 95990(k)(2).

(d) Determination for Timing and Duration of Renewed Crediting for Offset Projects Submitted through an Offset Project Registry. A renewed crediting period will begin the day after the conclusion of the prior crediting 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.

§ 95980.1 Process for Issuance of Registry Offset Credits.

(a) An Offset Project Registry may issue a registry offset credit that meets the requirements of section 95980(a) to an Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1), no later than 15 calendar days after an Offset Project Registry makes a determination pursuant to section 95980(b).

(b) Change of Listing Status at the Offset Project Registry. When an Offset Project Registry issues a registry offset credit for an offset project, the listing status for that offset project will be changed to either “Active Registry Project” or “Active Registry Renewal” at the Offset Project Registry and ARB.

(c) Notice of Determination of Issuance of Registry Offset Credits. Not later than 15 calendar days after an Offset Project Registry issues a registry offset credit, an Offset Project Registry will notify the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1) of the issuance.

(d) After notifying the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1) of the issuance, the Offset Project Registry will create a unique serial number for each registry offset credit.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95981. Issuance of ARB Offset Credits.

(a) One ARB offset credit, which represents one metric ton of CO_2e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued only if:

(1) ARB or an Offset Project Registry has listed the offset project pursuant to section 95975;

(2) The GHG emission reductions and GHG removal enhancements were issued a Positive Offset or Qualified Positive Offset Verification Statement pursuant to sections 95977.1 and 95977.2; and

(3) ARB or an Offset Project Registry has received a Positive Offset or Qualified Positive Offset Verification Statement issued and attested to by an ARB-accredited verification body for the Offset Project Data Report for which registry offset credits were issued pursuant to section 95980.1 or for which ARB offset credits would be issued pursuant to section 95981.1.

(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)(5), 95977.1(b)(3)(R)4.b., 95977.1(b)(3)(R)4.e., and 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) Offset Project Data Reports submitted to an Offset Project Registry pursuant to section 95976(d); and

(4) Offset Verification Statements submitted pursuant to section 95977.1(b)(3)(R)4.b.

(c) ARB will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of section 95981(a), the information submitted in sections 95981(b) and (c) is complete, and the Positive Offset or Qualified Positive Offset Verification Statement meets the requirements of sections 95977, 95977.1, and 95977.2 within 45 calendar days of receiving it.

(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 an Offset Verification Statement the Offset Project Operator or Authorized Project Designee must provide the following attestations, in writing, to ARB:

(1) “I certify under penalty of perjury under the laws of the State of California the GHG reductions or GHG removal enhancements for [project] from [date] to [date] have been measured in accordance with the [appropriate ARB Compliance Offset Protocol] and all information required to be submitted to ARB is true, accurate, and complete.”;

(2) “I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this article.”;

(3) “I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety regulations that apply based on the offset project location. I understand that offset projects are not eligible to receive ARB or registry offset credits for

GHG reductions and GHG removal enhancements that are not in compliance with the requirements of this Article.";

(4) "I certify under penalty of perjury under the laws of the State of California all information provided to ARB for issuance of ARB offset credits is true, accurate, and complete."; and

(5) "I certify under penalty of perjury under the laws of the State of California that the GHG reductions and GHG removal enhancements for which I am seeking ARB Offset Credits have not been issued any offset credits or been used for any GHG mitigation requirements in any other voluntary or mandatory program, except, if applicable, an Offset Project Registry pursuant to section 95980.1."

(e) Determination for Timing and Duration of Initial Crediting Periods for Offset Projects Submitted Through ARB. The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by ARB. An early action offset project that transitions pursuant to section 95990(k) will begin its initial crediting period pursuant to section 95990(k)(2).

(f) Determination for Timing and Duration of Renewed Crediting for Offset Projects Submitted Through ARB. A renewed crediting period will begin the day after the conclusion of the prior crediting 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.

§ 95981.1 Process for Issuance of ARB Offset Credits.

(a) ARB will issue an ARB offset credit for an offset project that meets the requirements of section 95981(a) to an Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1), no later than 15 calendar days after ARB makes a determination pursuant to section 95981(c).

(b) Change of Listing Status at ARB. When ARB issues an ARB offset credit for an offset project, the listing status for that offset project will be changed from “Active Registry Project” to “Active ARB Project” or “Active Registry Renewal” to “Active ARB Renewal” at the Offset Project Registry and ARB.

(c) Notice of Determination of Issuance of ARB Offset Credits. Not later than 15 calendar days after ARB issues an ARB offset credit, ARB will notify the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1) of the issuance.

(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 95974(a)(1) within 15 calendar days of its determination pursuant to section 95981(c) if the information in section 95981(b) and (c) is incomplete and request additional specific information.

(2) ARB may request any additional information from the Offset Project Operator, Authorized Project Designee, Offset Project Registry, or verification body before issuing ARB offset credits for an offset project that meets the requirements of section 95981.

(3) If ARB determines the information submitted in sections 95981(b), 95981(c), and 95981.1(d)(2) does not meet the requirements for issuance of ARB offset credits, then ARB may deny issuance of ARB offset credits. The Offset Project Operator or Authorized Project Designee may petition ARB within 10 days of denial for a review of submitted information in sections 95981(b), 95981(c), and 95981.1(d)(2) and respond to any issues that prevent the issuance of ARB offset credits.

(4) ARB must make a final determination within 30 calendar days of receiving the request in section 95981.1(d)(3) and may request additional information from the Offset Project Operator or Authorized Project Designee, verification body, or Offset Project Registry. This determination made by the Executive Officer is final.

(e) A registry offset credit issued pursuant to section 95980.1(a) must be removed or cancelled by the Offset Project Registry within 10 calendar days of ARB notification, such that the registry offset credit is no longer available for transaction on the Offset Project Registry system. Registry offset credits must be removed or cancelled by the Offset Project Registry before ARB issues an ARB offset credit pursuant to this section.

(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 authorized by the Offset Project Operator pursuant to section 95974(a)(1), within 15 working days of the 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.

§ 95982. Registration of ARB Offset Credits.

An ARB offset credit will be registered by:

(a) Creating a unique ARB serial number; and

(b) Transferring this serial number to the Holding Account of the listed Offset Project Operator, Authorized Project Designee, or another third party as provided in section 95974(a)(1) unless otherwise required by section 95983.

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.

§ 95983. Forestry Offset Reversals.

(a) For forest sequestration projects, a portion of ARB offset credits issued to the forest offset project will be placed by ARB into the Forest Buffer Account.

(1) The amount of ARB offset credits that must be placed in the Forest Buffer Account shall be determined as set forth in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

(2) ARB offset credits will be transferred to the Forest Buffer Account by ARB at the time of ARB offset credit registration pursuant to section 95982.

(3) If a forest offset project is originally submitted through an Offset Project Registry an equal number of registry offset credits must be removed or cancelled by the Offset Project Registry, such that the registry offset credit is no longer available for transaction on the Offset Project Registry system, and issued by ARB for placement in the Forest Buffer Account.

(b) Unintentional Reversals. If there has been an unintentional reversal, the Offset Project Operator or Authorized Project Designee must notify ARB and the Offset Project Registry, in writing, of the reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery.

(1) In the case of an unintentional reversal the Offset Project Operator or Authorized Project Designee shall provide in writing to ARB and an Offset Project Registry, if applicable, a verified estimate of current carbon stocks within the offset project boundary within one year of the discovery of the unintentional reversal.

(2) If ARB determines that there has been an unintentional reversal, and ARB offset credits have been issued to the offset project, ARB will retire a quantity of ARB offset credits in the amount of metric tons of CO_2e reversed from the Forest Buffer Account.

(c) Intentional Reversals. Requirements for intentional reversals are as follows:

(1) If an intentional reversal occurs, the Offset Project Operator or Authorized Project Designee shall, within 30 calendar days of the intentional reversal:

(A) Give notice, in writing, to ARB and the Offset Project Registry, if applicable, of the intentional reversal; and

(B) Provide a written description and explanation of the intentional reversal to ARB and the Offset Project Registry, if applicable.

(2) Within one year of the occurrence of an intentional reversal, the Offset Project Operator or Authorized Project Designee shall submit to ARB and the Offset Project Registry, if applicable, a verified estimate of current carbon stocks within the offset project boundary.

(3) If an intentional reversal occurs from a forest offset project, and ARB offset credits have been issued to the offset project, the forest owner must submit to ARB for placement in the Retirement Account a quantity of valid ARB offset credits or other approved compliance instruments pursuant to subarticle 4, in the amount of metric tons of CO_2e reversed within six months of notification by ARB.

(A) Notification by ARB will occur after the verified estimate of carbon stocks has been submitted to ARB, or after one year has elapsed since the occurrence of the reversal if the Offset Project Operator or Authorized Project Designee fails to submit the verified estimate of carbon stocks.

(B) If the forest owner does not submit valid ARB offset credits or other approved compliance instruments to ARB within six months of notification by ARB, ARB will retire a quantity of ARB offset credits in the amount of metric tons of CO_2e reversed from the Forest Buffer Account and the forest owner will be subject to enforcement action and each ARB offset credit retired

from the Forest Buffer Account will constitute a separate violation pursuant to section 96014.

(4) In the event of an early forest offset project termination ARB will retire from the Forest Buffer Account a quantity of ARB offset credits in the amount calculated pursuant to project termination provisions in Compliance Offset Protocol, U.S. Forest Projects, October 20, 2011. This provision only applies to ARB offset credits that have been issued to the offset project.

(A) ARB will notify the forest owner of retirement within 10 calendar days.

(B) The forest owner must submit to ARB for placement in the Retirement Account a valid ARB offset credit or another approved compliance instrument pursuant to subarticle 4 for each ARB offset credit retired by ARB from the Forest Buffer Account within six months of ARB's retirement.

(C) If the forest owner does not submit valid ARB offset credits or other approved compliance instruments to ARB within six months of ARB's retirement, they will be subject to enforcement action and each ARB offset credit retired from the Forest Buffer Account will constitute a separate violation pursuant to section 96014.

(d) Disposition of Forest Sequestration Projects After a Reversal. If a reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks, the forest offset project will be terminated by ARB or an Offset Project Registry.

(1) If the forest offset project is terminated due to an unintentional reversal, ARB will retire from the Forest Buffer Account a quantity of ARB offset credits equal to the total number of ARB offset credits issued pursuant to section 95981, and where applicable, all early action offset credits issued to the offset project pursuant to section 95990(i) over the preceding 100 years.

(2) If the forest offset project is terminated due to an unintentional reversal, another offset project may be initiated and submitted to ARB or an Offset Project Registry for listing within the same offset project boundary.

(3) If the forest offset project has experienced an unintentional reversal and its actual standing live carbon stocks are still above the approved baseline levels, it may continue without termination as long as the unintentional reversal has been compensated by the Forest Buffer Account. The Offset Project Operator or Authorized Project Designee must continue contributing to the Forest Buffer Account in future years as quantified in section 95983(a)(1).

(4) If the forest offset project is terminated due to any reason except an unintentional reversal, new offset projects may not be initiated within the same offset project boundary, unless otherwise specified in a Compliance Offset Protocol.

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.

§ 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 provided in section 95974(a)(1), unless otherwise required by section 95983. An ARB offset credit may be sold, traded, or transferred, unless:

(1) It has been retired, surrendered for compliance, or used to meet any GHG mitigation requirements in any voluntary or regulatory program;

(2) It resides in the Forest Buffer Account pursuant to section 95983; or

(3) It has been invalidated pursuant to section 95985.

(b) An ARB offset credit may only be used:

(1) To meet a compliance obligation under this article, except if used by a covered entity in a program approved for linkage pursuant to subarticle 12; or

(2) By a Voluntarily Associated Entity for purposes of voluntary retirement.

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.

(a) An ARB offset credit issued under this article will remain valid unless invalidated pursuant to this section.

(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 unless one of the following requirements is met;

(A) An offset project developed under Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011, may only be subject to invalidation within three years of issuance of an ARB offset credit if the Offset Project Data Report is re-verified pursuant to sections 95977 through 95978 by a different offset verification body within those three years; or

(B) An offset project developed under the protocols listed below, may only be subject to invalidation within three Reporting Periods if a subsequent Offset Project Data Report for that offset project is verified pursuant to sections 95977 through 95978 by a different offset verification body and issued a Positive Offset or Qualified Positive Offset Verification Statement within three years of issuance of the ARB Offset Credit. This provision applies if an offset project is developed under one of the following Compliance Offset Protocols;

1. Compliance Offset Protocol Livestock Projects, October 20, 2011;
2. Compliance Offset Protocol Urban Forest Projects, October 20, 2011; and
3. Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

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

(1) The Offset Project Data Report contains errors that overstate the amount of GHG reductions or GHG removal enhancements by more than five percent;

(A) If ARB finds that there has been an overstatement by more than five percent, 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 Offset Project Data Report. 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.

1. ARB will determine the actual GHG reductions and GHG removal enhancements achieved by the offset project for the applicable Reporting Period based on, at a minimum, the following information:
    a. The GHG sources, GHG sinks, and GHG reservoirs within the offset project boundary for that Reporting Period; and
    b. Any previous Offset Project Data Reports submitted by the Offset Project Operator or Authorized Project Designee, and the Offset Verification Statements rendered for those reports.
2. In determining how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period, ARB may use the following methods, as applicable:
    a. The applicable Compliance Offset Protocol;
    b. In the event of missing data, ARB will rely on the missing data provisions pursuant to section 95976, and, if applicable, the Compliance Offset Protocol; and
    c. Any information reported under this article for this Reporting Period and past Reporting Periods.
3. ARB shall determine how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period using the best information available, including the information in section 95985(c)(1)(A)1. and methods in section 95985(c)(1)(A)2., as applicable.

(B) If ARB determines that an overstatement has occurred pursuant to section 95985(c)(1), ARB shall determine the amount of ARB offset credits that correspond to the overstatement using the following equation, rounded to the nearest whole ton:

If: $I_{ARBOC} > R_{OPDR}$ X 1.05

Then: $O_R = I_{ARBOC} - R_{OPDR}$

Where:

"O_R" is the amount of overstated GHG reductions and GHG removal enhancements for the applicable Offset Project Data Report, rounded to the nearest whole ton;

"I_{ARBOC}" is the number of ARB offset credits issued under the applicable Offset Project Data Report pursuant to section 95981.1 or 95990(i);

"R_{OPDR}" is the number of GHG reductions and GHG removal enhancements determined by ARB pursuant to section 95985(c)(1) for the applicable Offset Project Data Report;

(2) The offset project activity and implementation of the offset project was not in accordance with all local, state, or national environmental and health and safety regulations during the Reporting Period for which the ARB offset credit was issued; or

(3) ARB determines that offset credits have been issued in any other voluntary or mandatory program within the same offset project boundary and for the same Reporting Period in which ARB offset credits were issued for GHG reductions and GHG removal enhancements.

(4) The following shall not be grounds for invalidation:

(A) An update to a Compliance Offset Protocol will not result in an invalidation of ARB offset credits issued under a previous version of the Compliance Offset Protocol; or

(B) A reversal that occurs under a forest offset project. If such a reversal occurs the provisions in section 95983 apply.

(d) Suspension of Transfers. When ARB makes an initial determination pursuant to section 95985(c) it will immediately block any transfers of ARB offset credits for the applicable Offset Project Data Report. Once ARB makes a final determination pursuant to section 95985(f) the block on transfers for any valid ARB offset credits will be cancelled.

(e) Identification of Affected Parties. If ARB makes an initial determination that one of the circumstances listed in section 95985(c) has occurred, ARB will identify the following parties:

(1) The current holders that hold any ARB offset credits in their Holding and/or Compliance Accounts from the applicable Offset Project Data Report;

(2) The entiies for which ARB transferred any ARB offset credits from the applicable Offset Project Data Report into the Retirement Account; and

(3) The Offset Project Operator and Authorized Project Designee, and, for forest offset projects the Forest Owner(s).

(f) Final Determination and Process of Invalidation. ARB will notify the parties identified in section 95985(e) of its initial determination pursuant to section 95985(c), and provide each party an opportunity to submit additional information to ARB prior to making its final determination, as follows:

(1) ARB will include the reason for its initial determination in its notification to the parties identified in section 95985(e).

(2) After notification the parties identified in section 95985(e) will have 25 calendar days to provide any additional information to ARB.

(3) ARB may request any information as needed in addition to the information provided under this section.

(4) The Executive Officer will have 30 calendar days after all information is submitted under this section to make a final determination that one or more conditions listed pursuant to section 95985(c) has occurred and whether to invalidate ARB offset credits.

(A) The parties identified pursuant to section 95985(e) will be notified of ARB's final determination of invalidation pursuant to this section.

(B) Any approved program for linkage pursuant to subarticle 12 will be notified of the invalidation at the time of ARB's final determination pursuant to this section.

(g) Removal of Invalidated ARB Offset Credits from Holding and/or Compliance Accounts. If the Executive Officer makes a final determination pursuant to section 95985(f) that an ARB offset credit is invalid, then:

(1) ARB offset credits will be removed from any Holding or Compliance Account, as follows;

(A) If an ARB offset credit is determined to be invalid due to the circumstance listed in section 95985(c)(1), then:

1. ARB will determine which ARB offset credits will be removed from the Compliance and/or Holding Accounts of each party identified in section 95985(e)(1) according to the following equation, rounded to the nearest whole ton:

$$H_{ARBOC} = \left|\frac{TOT_{Holding}}{I_{ARBOC}}\right| O_R$$

Where:

"O_R" is the amount of overstated GHG reductions and GHG removal enhancements for the applicable Offset Project Data Report calculated pursuant to section 95985(c)(1);

"I_{ARBOC}" is the number of ARB offset credits issued under the applicable Offset Project Data Report pursuant to section 95981.1 or 95990(i);

"$TOT_{Holding}$" is the total number of ARB offset credits currently being held in a Compliance and/or Holding Account by each party identified in section 95985(e)(1) for the applicable Offset Project Data Report;

"H_{ARBOC}" is the total number of ARB offset credits, rounded to the nearest whole ton, that will be removed from the Holding and/or Compliance Account of each party identified in section 95985(e)(1).

2. ARB will determine the lowest serial numbers assigned to ARB offset credits issued under the applicable Offset Project Data Report in the amount calculated pursuant to section 95985(g)(1)(A) and remove them from any Holding and/or Compliance Account of the parties identified in section 95985(e)(1).

(B) If an ARB offset credit is determined to be invalid due to the circumstances listed in sections 95985(c)(2) or (c)(3), ARB will remove all ARB offset credits issued under the applicable Offset Project Data Report from any Holding and/or Compliance Account of the parties identified in section 95985(e)(1).

(2) The parties identified pursuant to section 95985(e) will be notified of which serial numbers were removed from any Compliance and/or Holding Accounts.

(3) Any approved program for linkage pursuant to subarticle 12 will be notified of which serial numbers were removed from any Compliance and/or Holding Accounts.

(h) Requirements for Replacement of ARB Offset Credits for Non-Sequestration Offset Projects.

(1) If an ARB offset credit in the Retirement Account from a non-sequestration offset project is determined to be invalid pursuant to section 95985(f) for only the circumstance listed in section 95985(c)(1); then:

(A) Each party identified in section 95985(e)(2) must replace ARB offset credits in the amount calculated for the individual party according to the following equation, rounded to the nearest whole ton:

$$R_{ARBOC} = \left|\frac{TOT_{Retired}}{I_{ARBOC}}\right| O_R$$

Where:

"R_{ARBOC}" is the calculated total number of retired ARB offset credits for the applicable Offset Project Data Report, rounded to the nearest whole ton, that must be replaced by each individual party identified in section 95985(e)(2);

"$TOT_{Retired}$" is the total number of ARB offset credits for which ARB transferred the ARB offset credits from the applicable Offset Project Data Report into the Retirement Account for the individual party specified in section 95985(e)(2);

"I_{ARBOC}" is the number of ARB offset credits issued under the applicable Offset Project Data Report pursuant to section 95981.1 or 95990(i);

"O_R" is the amount of overstated GHG reductions and GHG removal enhancements calculated pursuant to section 95985(c)(1) for the applicable Offset Project Data Report.

(B) Each party identified in section 95985(e)(2) must replace ARB offset credits in the amount calculated pursuant to section 95985(h)(1)(A) with valid ARB offset credits or other approved compliance instruments pursuant to subarticle 4, within six months of notification by ARB pursuant to section 95985(g)(2).

(C) If each party identified in section 95985(e)(2) does not replace each invalid ARB offset credit in the amount calculated pursuant to section 95985(h)(1)(A) within six months of notice of invalidation pursuant to section 95985(g)(2), each unreplaced invalidated ARB offset credit will constitute a violation for that party pursuant to section 96014.

1. If the party identified in section 95985(e)(2) is no longer in business pursuant to section 95101(h)(2) of MRR, ARB will require the Offset Project Operator to replace each invalidated ARB offset credit~~s~~ and will notify the Offset Project Operator that they must replace them.
2. The Offset Project Operator must replace each ARB offset credit with a valid ARB offset credit or another approved compliance instrument pursuant to subarticle 4, within six months of notification by ARB pursuant to section 95985(h)(1)(C)1.
3. If the Offset Project Operator does not replace each invalid ARB offset credit within six months of notification by ARB pursuant to section 95985(h)(1)(C)1., each unreplaced invalidated ARB offset credit will constitute a violation for that Offset Project Operator pursuant to section 96014.

(D) ARB will determine the lowest serial numbers assigned to ARB offset credits issued under the applicable Offset Project Data Report in the amount calculated pursuant to section 95985(h)(1)(A) and invalidate those serial numbers.

(E) The parties identified pursuant to section 95985(e) will be notified of which serial numbers were invalidated.

(F) Any approved program for linkage pursuant to subarticle 12 will be notified of which serial numbers were invalidated.

(2) If an ARB offset credit in the Retirement Account from a non-sequestration offset project is determined to be invalid pursuant to section 95985(f) for any circumstance listed in sections 95985(c)(2) and (c)(3); then:

(A) The party identified in section 95985(e)(2) must replace each ARB offset credit it requested ARB to transfer into the Retirement Account for the applicable Offset Project Data Report with a valid ARB offset credit or another approved compliance instrument pursuant to subarticle 4, within six months of notification by ARB pursuant to section 95985(g)(2).

(B) If the party identified in section 95985(e)(2) does not replace each invalid ARB offset credit within six months of the notice of invalidation pursuant to section 95985(g)(2), each unreplaced invalidated ARB offset credit will constitute a violation for that party pursuant to section 96014.

1. If the party identified in section 95985(e)(2) is no longer in business pursuant to section 95101(h)(2) of MRR ARB will require the Offset Project Operator to replace each invalidated ARB offset credit and will notify the Offset Project Operator that they must replace them.

2. The Offset Project Operator must replace each ARB offset credit with a valid ARB offset credit or another approved compliance instrument pursuant to subarticle 4, within six

months of notification by ARB pursuant to section 95985(h)(2)(B)1.

3. If the Offset Project Operator does not replace each invalid ARB offset credit within six months of notification by ARB pursuant to section 95985(h)(2)(B)1., each unreplaced invalidated ARB offset credit will constitute a violation for that Offset Project Operator pursuant to section 96014.

(C) The parties identified pursuant to section 95985(e) will be notified of which serial numbers were invalidated.

(D) Any approved program for linkage pursuant to subarticle 12 will be notified of which serial numbers were invalidated.

(i) Requirements for Replacement of ARB Offset Credits for Forest Offset Projects.

(1) If an ARB offset credit in the Retirement Account from a forest offset project is determined to be invalid pursuant to section 95985(f) for only the circumstance listed in section 95985(c)(1):

(A) The Forest Owner identified in section 95985(e)(3) must replace ARB offset credits in the amount calculated according to the following equation, rounded to the nearest whole ton:

$$RF_{ARBOC} = \left|\frac{TF_{Retired}}{IF_{ARBOC}}\right| OF_R$$

Where:

"RF_{ARBOC}" is the total number of retired ARB offset credits for the applicable forest offset project's Offset Project Data Report, rounded to the nearest whole ton, that must be replaced by the Forest Owner;

"$TF_{Retired}$" is the total number of ARB offset credits issued for the applicable forest offset project's Offset Project Data Report for which ARB transferred any ARB offset credits from into the Retirement Account;

"IF_{ARBOC}" is the number of ARB offset credits issued under the applicable Offset Project Data Report for the forest offset project pursuant to section 95981.1 or 95990(i);

"OF_R" is the amount of overstated GHG reductions and GHG removal enhancements calculated pursuant to section 95985(c)(1) for the forest offset project for the applicable Offset Project Data Report.

(B) The Forest Owner identified in section 95985(e)(3) must replace ARB offset credits in the amount calculated pursuant to section 95985(i)(1)(A) with valid ARB offset credits or other approved compliance instruments pursuant to subarticle 4, within six months of notification by ARB pursuant to section 95985(g)(2).

(C) If the Forest Owner identified in section 95985(e)(3) does not replace each invalid ARB offset credit in the amount calculated pursuant to section 95985(i)(1)(A) within six months of notice of invalidation pursuant to section 95985(g)(2), each unreplaced invalidated ARB offset credit will constitute a violation for that Forest Owner pursuant to section 96014.

(D) ARB will determine the lowest serial numbers assigned to ARB offset credits issued under the applicable Offset Project Data Report in the amount calculated pursuant to section 95985(i)(1)(A) and invalidate those serial numbers.

(E) The Forest Owner identified pursuant to section 95985(e)(3) will be notified of which serial numbers were invalidated.

(F) Any approved program for linkage pursuant to subarticle 12 will be notified of which serial numbers were invalidated.

(2) If an ARB offset credit in the Retirement Account from a forest offset project is determined to be invalid pursuant to section 95985(f) for any circumstance listed in sections 95985(c)(2) and (c)(3):

(A) The Forest Owner must replace each ARB offset credit transferred by ARB into the Retirement Account for the applicable Offset Project Data Report with a valid ARB offset credit or another approved compliance instrument pursuant to subarticle 4, within six months of notification by ARB pursuant to section 95985(g)(2).

(B) If the Forest Owner does not replace each invalid ARB offset credit within six months of the notice of invalidation pursuant to section 95985(g)(2), each unreplaced invalidated ARB offset credit will constitute a violation for that Forest Owner pursuant to section 96014.

(C) The parties identified pursuant to section 95985(e) will be notified of which serial numbers were invalidated.

(D) Any approved program for linkage pursuant to subarticle 12 will be notified of which serial numbers were invalidated.

(j) Nothing in this section shall limit the authority of the State of California from pursuing enforcement action against any parties in violation of this article.

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.

§ 95986. Executive Officer Approval Requirements for Offset Project Registries.

(a) The approval requirements specified in this subarticle apply to all Offset Project Registries that will operate to provide registry services under this article.

(b) The Executive Officer may approve Offset Project Registries that meet the requirements specified in this section.

(c) The Offset Project Registry must be registered with ARB pursuant to section 95830.

(1) Offset Project Registry Approval Application. To apply for approval as an Offset Project Registry, the applicant shall submit the following information to the Executive Officer:

(A) Name of applicant;

(B) Name of president or chief executive officer;

(C) List of all board members, if applicable;

(D) Addresses of offices located in the United States;

(E) Documentation that the applicant carries at least five million U.S. dollars of professional liability insurance; and

(F) List of any judicial proceedings and administrative actions filed against the applicant within the previous five years, with a detailed explanation as to the nature of the proceedings.

(2) The applicant must submit, in writing, the procedures to screen and address internal conflicts of interest. The applicant must provide the following information to the Executive Officer:

(A) A staff, management, and board member conflict of interest policy where there are clear criteria for what constitutes a conflict of interest. The policy must:

1. Identify specific activities and limits on monetary and non-monetary gifts staff, management, or board members must not conduct or accept to meet the Offset Project Registry's internal policies of conflict of interest policy, or alternatively provide a comprehensive policy on the applicant's requirements for the reporting of any and all conflicts based on internal policies that guard against conflict of interest; and

2. Include a requirement for annual disclosure by each staff, management, or board member of any items or instances that are covered by the applicant's conflict of interest policy on an ongoing basis or for the previous calendar year.

3. The applicant must have appropriate conflict of interest and confidentiality requirements in place for any of its contractors;

(B) List of all service types provided by the applicant;

(C) The industrial sectors the applicant serves;

(D) Locations where services are provided; and

(E) A detailed organizational chart that includes the applicant and any parent, subsidiary, and affiliate companies.

(F) If the applicant under section 95986 is going to designate a subdivision of its organization to provide registry services, then the prohibition in section 95986(d)(1) on serving as an offset project consultant shall apply at the subdivision level and the applicant must provide the following general information for its self:

1. General types of services; and
2. General locations where services are provided.

(3) The applicant has the following capabilities for registration and tracking of registry offset credits issued under this article:

(A) A comprehensive registration requirement for all registry participants;

(B) Tracking ownership and transactions of all registry offset credits it issues at all times; and

(C) Possesses a permanent repository of ownership information on all transactions involving all registry offset credits it issues under this article from the time they are issued to the time they are retired or cancelled.

(d) The applicant's primary business must be operating an Offset Project Registry for voluntary or regulatory purposes and meet the following business requirements:

(1) The applicant may not act as an Offset Project Operator, Authorized Project Designee, or offset project consultant for offset projects

registered or listed on its own Offset Project Registry and developed using a Compliance Offset Protocol once approved as an Offset Project Registry. The applicant must annually disclose to ARB any non-offset project related consulting services it provides to an Offset Project Operator or Authorized Project Designee who lists a project using a Compliance Offset Project with the applicant as part of the information included in the annual report required in section 95987(j);

(2) The applicant may not act as a verification body or provide offset verification services pursuant to sections 95977.1 and 95977.2 once approved as an Offset Project Registry;

(3) If the applicant designates a subdivision of its organization to provide registry services, the applicant may not be an Offset Project Operator or Authorized Project Designee for offset projects listed at the subdivision's registry, act as a verification body, or be a covered entity or opt-in covered entity;

(4) The applicant must demonstrate experience in the continuous operation of a registry serving an environmentally-focused market for a minimum of two years in a regulatory and/or voluntary market; and

(5) The applicant's primary incorporation or other business formation and primary place of business, or the primary place of business of the designated subdivision, if the applicant designates a subdivision to provide registry services pursuant to this section, must be in the United States of America.

(e) The Offset Project Registry must continue to maintain the professional liability insurance required in section 95986(c) while it provides registry services to Offset Project Operators or Authorized Project Designees who are implementing offset projects using Compliance Offset Protocols.

(f) If any information submitted pursuant to sections 95986(c) through (e) changes after the approval of an Offset Project Registry, the Offset Project Registry must notify the Executive Officer within 30 calendar days and

provide updated information consistent with that required in sections 95986(c) through (e).

(g) The Offset Project Registry must attest, in writing, to ARB as follows:

(1) "As the authorized representative for this Offset Project Registry, I understand that the Offset Project Registry is voluntarily participating in the California Cap-and-Trade Program under title 17, article 5, and the Offset Project Registry is now subject to all regulatory requirements and enforcement mechanisms of this program.";

(2) "All information generated and submitted to ARB by the Offset Project Registry related to an offset project that uses a Compliance Offset Protocol will be true, accurate, and complete.";

(3) "All information provided to ARB as part of an ARB audit of the Offset Project Registry will be true, accurate, and complete.";

(4) "All registry services provided will be in accordance with the requirements of section 95987.";

(5) "The Offset Project Registry is committed to participating in all ARB training related to ARB's compliance offset program or Compliance Offset Protocols."; and

(6) The authorized representative of the Offset Project Registry must attest in writing, to ARB: "I certify under penalty of perjury under the laws of the State of California I have authority to represent the Offset Project Registry and all information provided as part of this application is true, accurate, and complete.".

(h) At least two of the management staff at the Offset Project Registry must take ARB provided training on ARB's compliance offset program and pass an examination upon completion of training.

(i) The Offset Project Registry must have staff members who have collectively completed ARB training and passed an examination upon completion of training in all Compliance Offset Protocols.

(j) The Offset Project Registry must have experience in, and requirements for, staff oversight of the offset project review, listing, and registry offset credit issuance process.

(k) ARB Approval.

(1) Within 60 calendar days of receiving an application for approval as an Offset Project Registry and completion by all management staff of the training required in section 95986(h), the Executive Officer will inform the applicant in writing either that the application is complete or that additional specific information is required to make the application complete.

(2) The applicant may be allowed to submit additional supporting documentation before a decision is made by the Executive Officer.

(3) Within 60 calendar days following completion of the application process, the Executive Officer shall approve an Offset Project Registry if evidence of qualification submitted by the applicant has been found to meet the requirements of section 95986 and issue an Executive Order to that effect.

(4) The Executive Officer and the applicant may mutually agree, in writing, to longer time periods than those specified in subsections 95986(k)(1) and 95986(k)(3).

(5) The Executive Officer approval for an Offset Project Registry is valid for a period of 10 years, whereupon the applicant may re-apply. At the time of re-application, the Offset Project Registry must:

(A) Demonstrate it consistently met all of the requirements in section 95986;

(B) Pass a performance review, which, at a minimum shows the Offset Project Registry consistently:

1. Demonstrates knowledge of the ARB compliance offset program and Compliance Offset Protocols;

2. Meets all regulatory deadlines; and

3. Provides registry services in accordance with the requirements of this article; and

(C) Not have been subject to enforcement action under this article.

(l) Modification, Suspension, and Revocation of an Executive Order Approving an Offset Project Registry. The Executive Officer may review, and, for good cause, modify, suspend, or revoke an Executive Order providing approval to an Offset Project Registry.

(1) During revocation proceedings, the Offset Project Registry may not continue to provide registry services for ARB.

(2) Within five working days of suspension or revocation of approval, an Offset Project Registry must notify all Offset Project Operators or Authorized Project Designees for whom it is providing registry services, or has provided registry services within the past 12 months, of its suspension or revocation of approval.

(3) An Offset Project Operator or Authorized Project Designee who has been notified by an Offset Project Registry of a suspended or revoked approval must re-submit its offset project information with a new Offset Project Registry or ARB. An offset project listed at ARB or a new Offset Project Registry will continue to operate under its originally approved crediting period, provided that ARB may extend the crediting period or the relevant deadline in section 95977(d) for one year if ARB determines that such extention is necessary to provide time for re-submission of information to the new Offset Project Registry or ARB.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95987. Offset Project Registry Requirements.

(a) The Offset Project Registry shall use Compliance Offset Protocols approved pursuant to section 95971 to determine whether an offset project may be listed with the Offset Project Registry for issuance of registry offset credits. The Offset Project Registry may list projects under

non-Compliance Offset Protocols, but must make it clear any GHG emission reductions and GHG removal enhancements achieved under those protocols are not eligible to be issued registry offset credits or ARB offset credits.

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

(1) Within 10 working days of the offset project listing requirements being deemed complete in section 95975(f):

(A) Offset project name;

(B) Offset project location;

(C) Offset Project Operator and, if applicable, the Authorized Project Designee;

(D) Type of offset project;

(E) Name and date of the Compliance Offset Protocol used by the offset project;

(F) Date of offset project listing submittal and Offset Project Commencement date; and

(G) Identification if the offset project is in an initial or renewed crediting period;

(2) Within 10 working days of the Offset Project Data Report being issued an Offset Verification Statement:

(A) Annual verified project baseline emissions;

(B) Annual verified GHG reductions and GHG removal enhancements achieved by the offset project;

(C) The unique serial numbers of registry offset credits issued to the offset project for the applicable Offset Project Data Report;

(D) Total verified GHG reductions and GHG removal enhancements for the offset project by Reporting Period for when an Offset Project Data Report was submitted;

(E) Offset Verification Statement for each year the Offset Project Data Report was verified; and

(3) Clear identification of which offset projects are listed and submitting Offset Project Data Reports using Compliance Offset Protocols.

(c) Conflict of Interest Review by Offset Project Registries. The Offset Project Registry must apply the conflict of interest requirements in section 95979 when making a conflict of interest determination for a verification body proposing to conduct offset verification services under sections 95977.1 and 95977.2. The Offset Project Registry must review and make sure the conflict of interest submittal in section 95979(e) is complete. When an Offset Project Operator or Authorized Project Designee submits its information pursuant to section 95981(b) to ARB, the Offset Project Registry must provide ARB with the information and attestation identified in section 95979(e) within 15 calendar days.

(d) The Offset Project Registry may provide guidance to Offset Project Operators, Authorized Project Designees, or offset verifiers for offset projects using a Compliance Offset Protocol, if there is no clear requirement for the topic in a Compliance Offset Protocol, this article, or an ARB guidance document.

(1) An Offset Project Registry must maintain all correspondence and records of communication with an Offset Project Operator, Authorized Project Designee, or offset verifier when providing clarifications or guidance for an offset project using a Compliance Offset Protocol.

(2) Before providing such guidance, the Offset Project Registry may request ARB to provide clarification on the topic.

(3) Any Offset Project Operator or Authorized Project Designee requests for clarifications or guidance must be documented and the Offset Project Registry response must be submitted on an ongoing monthly basis to ARB beginning with the date of approval as an Offset Project Registry.

(e) The Offset Project Registry must audit at least 10 percent of the annual offset verifications developed for offset projects using a Compliance Offset Protocol.

(1) The audit must include the following checks:

(A) Attendance with the offset verification team on the offset project site visit;

(B) In-person or conference call attendance for the first offset verification team and Offset Project Operator or Authorized Project Designee meeting;

(C) In-person or conference call attendance to the last meeting or discussion between the offset verification team and Offset Project Operator or Authorized Project Designee;

(D) Documentation of any findings during the audit that cause the Offset Project Registry to provide guidance to, or require corrective action with, the offset verification team, including a list of issues noted during the audit and how those were resolved;

(E) A review of the detailed verification report and sampling plan to ensure that it meets the minimum requirements in sections 95977.1 and 95977.2 and documentation of any discrepancies found during the review; and

(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 who submitted the conflict of interest assessment form 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;

2. An internet-based search to ascertain the existence of any previous relationship between the verification body and the Offset Project Operator or Authorized Project Designee, and if so the nature and extent; and

3. Any other follow up by the Offset Project Registry to have reasonable assurance that the information provided on the conflict of interest assessment form is true, accurate, and complete.

(2) All information related to audits of offset projects developed using a Compliance Offset Protocol must be provided to ARB within 10 calendar days of an ARB request.

(3) The audits must be selected to provide a representative sampling of geographic locations of all offset projects, representative sampling of verification bodies, representative sampling of lead verifiers, representative sampling of offset project types, and representative sampling of offset projects by size.

(4) The Offset Project Registry must provide an annual report to ARB by January 31 for its previous year's audit program of offset projects developed using Compliance Offset Protocols that includes:

(A) A list of all offset projects audited;

(B) Locations of all offset projects audited;

(C) Verification bodies associated with each offset project and names of offset verification team members;

(D) Dates of site visits;

(E) Offset Project Registry staff that conducted the audit; and

(F) Audit findings as required in section 95987(e)(1)(D) through (F).

(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.

(g) The Offset Project Registry must provide all information in its possession, custody, or control related to a listed offset project under a Compliance Offset Protocol within 10 calendar days of request by ARB.

(h) The Offset Project Registry must make its staff and all information related to listed offset projects under Compliance Offset Protocols by the Offset Project Registry available to ARB during any audits or oversight activities initiated by ARB to ensure the requirements in section 95987 are being carried out as required by this article.

(i) The Offset Project Registry must remove or cancel any registry offset credits issued for an offset project using a Compliance Offset Protocol, such that the registry offset credits are no longer available for transaction on the Offset Project Registry system, once notified by ARB that the offset project is eligible to be issued ARB offset credits.

(j) The Offset Project Registry must provide an annual report by January 31 of the previous year's offset projects that are listed using a Compliance Offset Protocol. The report must contain the name of the offset project, type of offset project and applicable Compliance Offset Protocol, name of Offset Project Operator or Authorized Project Designee, location of offset project, status of offset project, associated verification body, crediting period, amount of any registry offset credits issued to date, amount of any registry offset credits retired or cancelled for the offset project by the Offset Project Registry to date.

(k) The Offset Project Registry may choose to offer insurance or other products to cover the risk of invalidation of ARB offset credits, but purchase or use of the insurance or other invalidation risk mechanisms will be optional for all entities involved with registry offset credits and ARB offset credit transactions.

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.

§95988. Record Retention Requirements for Offset Project Registries.

All information submitted, and correspondence related to, listed offset projects under Compliance Offset Protocols by the Offset Project Registry must be maintained by the Offset Project Registry for a minimum of 15 years.

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) Approval of Early Action Offset Programs. To qualify as an Early Action Offset Program, either the Executive Officer shall issue an Executive Order pursuant to section 95986(k) or the program must demonstrate to ARB that it meets the following requirements:

(1) The program must provide documentation that it carries at least one million U.S. dollars of professional liability insurance.

(2) The program must have the following capabilities for registration and tracking of offset credits:

(A) A registration requirement for all registry participants;

(B) A system for tracking ownership and transactions of all early action offset credits it issues under the quantification methodologies listed pursuant to section 95990(c)(5) at all times; and

(C) A permanent repository of ownership information on all transactions involving all early action offset credits that have been or will be issued for any early action offset project until they are retired or cancelled.

(3) The program's primary business (or that of the designated subdivision, if the Early Action Offset Program applicant designates a subdivision to provide services as an Early Action Offset Program pursuant to this section) is operating a registry for issuing offset credits for voluntary or regulatory purposes and must meet the following business requirements:

(A) The Early Action Offset Program may not act as an Offset Project Operator, Authorized Project Designee, or offset project consultant for early action offset projects registered on its own registry system and developed under protocols approved pursuant 95990(c)(5). The Early Action Offset Program applicant may act as an offset project consultant for early action offset projects as long as these are registered with an Early Action Offset Program or an Offset Project Registry unaffiliated with the applicant;

(B) The applicant may not act as a verification body and provide offset verification services pursuant to section 95990(f);

(C) If the applicant designates a subdivision of its organization to provide registry services, the applicant may not be an Offset Project Operator or Authorized Project Designee for offset projects listed at the subdivision's registry, act as a verification body, or be a covered entity or opt-in covered entity; and

(D) The applicant's primary incorporation or other business information and primary place of business, or the primary place of business of the designated subdivision, if the applicant designates a subdivision to be an Early Action Offset Program pursuant to this section, must be in the United States of America.

(4) The program must agree to submit to ARB the original documentation submitted by an Offset Project Operator or Authorized Project Designee or third-party verifier regarding the early action offset project, including registration documentation, sampling plans, and Early Action Verification Reports.

(5) The program must agree to retire, and not allow for further use, any early action offset credits it issues when retired or used in any voluntary or regulatory program, including when ARB requests retirement for ARB offset credit issuance pursuant to section 95990(i).

(6) An authorized representative of the Early Action Offset Program must attest in writing, to ARB, as follows:
"I certify under penalty of perjury under the laws of the State of California the information provided in demonstrating this program meets the requirements in section 95990(a) and is true, accurate, and complete."

(b) ARB shall accept early action offset credits from early action offset projects registered with Early Action Offset Programs approved pursuant to section 95990(a), if the early action offset credits meet the criteria set forth in this section.

(c) Criteria for Approval of Early Action Offset Credits Issued by Early Action Offset Programs. An early action offset credit may be issued an ARB offset credit pursuant to section 95990(i) if the early action offset credit results from a GHG reduction or GHG removal enhancement which:

(1) Occurred between January 1, 2005 and December 31, 2014;

(2) Is verified pursuant to section 95990(f);

(3) Results from an early action offset project that is listed or registered with an Early Action Offset Program prior to January 1, 2014;

(4) Results from an early action offset project located in the United States; and

(5) Results from the use of one of the following offset quantification methodologies and relied on the most recent version thereof at the time of offset project submittal:

(A) Climate Action Reserve U.S. Livestock Project Protocol versions 1.0 through 3.0;

(B) Climate Action Reserve Urban Forest Project Protocol versions 1.0 through 1.1;

(C) Climate Action Reserve U.S. Ozone Depleting Substances Project Protocol version 1.0; and

(D) Climate Action Reserve Forest Project Protocol versions 2.1 and 3.0 through 3.2, if the early action offset project contributes

early action offset credits into a buffer account based on its reversal risk calculated according to the Compliance Offset Protocol U.S. Forest Projects, October 20, 2011.

(d) The following parties must register with ARB pursuant to section 95830 before ARB offset credits may be issued pursuant to section 95990(i):

(1) The Offset Project Operator or Authorized Project Designee for a forest or urban forest early action offset project that does not transition to a Compliance Offset Protocol pursuant to section 95990(k); and

(2) The Offset Project Operator or Authorized Project Designee for the following early action offset projects, except as provided in section 95990(d)(3):

(A) A forest or urban forest early action offset project that transitions to a Compliance Offset Protocol pursuant to section 95990(k);

(B) An early action offset project developed under one of the protocols identified in section 95990(c)(5)(A) and (C).

(3) If the Offset Project Operator or Authorized Project Designees identified in section 95990(d)(2) do not register with ARB or list the early action offset project pursuant to section 95990(e), the holder of early action offset credits may register with ARB and seek issuance of ARB offset credits pursuant to section 95990(i), as long as the holder lists the early action offset project pursuant to section 95990(e) and provides ARB with the attestations required pursuant to section 95990(h)(6).

(e) Listing of Early Action Offset Projects. Before ARB can issue ARB offset credits pursuant to section 95990(i):

(1) The following parties must submit the information listed in section 95990(e)(2) to ARB:

(A) The Offset Project Operator or Authorized Project Designee for a forest or urban forest early action offset project that does not transition to a Compliance Offset Protocol pursuant to section 95990(k); and

(B) The Offset Project Operator or Authorized Project Designee for the following early action offset projects, except as provided in section 95990(e)(1)(C);

1. A forest or urban forest early action offset project that transitions to a Compliance Offset Protocol pursuant to section 95990(k);
2. An early action offset project developed under one of the protocols identified in section 95990(c)(5)(A) and (C).

(C) If the Offset Project Operator or Authorized Project Designees identified in section 95990(e)(1)(B) do not register with ARB pursuant to section 95990(d) or list the early action offset project, the holder of early action offset credits may list the early action offset credit by submitting the information listed in section 95990(e)(2) and seek issuance of ARB offset credits pursuant to section 95990(i), as long as the holder registers with ARB pursuant to section 95990(d) and provides ARB with the attestations required pursuant to section 95990(h)(6).

(2) The parties identified in section 95990(e)(1) must submit the following information to ARB:

(A) Early action offset project name;

(B) Early action offset project location;

(C) Offset Project Operator, or if applicable, the Authorized Project Designee;

(D) Name and date of protocol used by the early action offset project, including, if applicable, a version number;

(E) Date of early action offset project listing or registration date and Offset Project Commencement Date; and

(F) The name of any verification bodies associated with the early action offset project.

(3) The Early Action Offset Program must make the following information available on a publicly available website and clearly indicate which

early action offset projects and Offset Project Data Report years qualify for early action under this article:

(A) Early action offset project name;

(B) Early action offset project location;

(C) Offset Project Operator, or if applicable, the Authorized Project Designee;

(D) Name and date of protocol used by the early action offset project, including, if applicable, a version number;

(E) Date of early action offset project listing or registration date and Offset Project Commencement Date; and

(F) The name of any verification bodies associated with the early action offset project.

(f) Regulatory Verification of Early Action Offset Credits. Any early action offset credit issued by an Early Action Offset Program must be verified under the following requirements before being issued an ARB offset credit pursuant to section 95990(i):

(1) The project must be verified by an ARB-accredited verification body that meets the accreditation requirements in section 95978. The verification body performing regulatory verification pursuant to this section must be different than the verification body that conducted offset verification services for the early action offset project under the Early Action Offset Program.

(2) Conflict of interest must be assessed against parties identified pursuant to section 95990(g) and the conflict of interest assessment must meet the requirements of section 95979.

(3) A verification body must conduct a desk review for each Offset Project Data Report year eligible and applicable pursuant to section 95990(c)(1) for each early action offset project that generates early action offset credits under the quantification methodologies listed in section 95990(c)(5). The desk review of all Offset Project Data Reports for years eligible and applicable pursuant to section

95990(c)(1) for each early action offset project may be applied as one single desk review. The desk review must include the following:

(A) Review of the early action offset project original documentation, including the Early Action Verification Reports and Offset Verification Statements submitted to the Early Action Offset Program, to ensure that the previously provided offset verification services were sufficient to render a reasonable assurance to support the issuance of early action offset credits by the Early Action Offset Program;

(B) Review of the data checks conducted by the offset verification body for the Early Action Offset Program to ensure they were calculated correctly;

(C) If the verification body concludes with reasonable assurance that they concur that a positive verification statement should have been issued based on the Early Action Verification Report and the Offset Verification Statement submitted to the Early Action Offset Program for the applicable Offset Project Data Report year, the verification body must submit the attestation in section 95990(f)(3)(D) to ARB.

(D) The verification body must attest, in writing, to ARB as follows: "I certify under penalty of perjury under the laws of the State of California that I have conducted a desk review in accordance with the requirements of section 95990(f)(3) and concur with the issuance of a positive verification statement based on the Early Action Verification Report and Offset Verification Statement that was submitted to the Early Action Offset Program for the applicable Offset Project Data Report year."

(E) For each early action offset project the Offset Project Operator or Authorized Project Designee or the Early Action Offset Program must provide the Early Action Verification Report(s) for all years eligible and applicable pursuant to section 95990(c)(1)

to the offset verification team to assist in offset verification services and desk review.

(4) If during the desk review performed pursuant to section 95990(f)(3) the verification body cannot conclude with reasonable assurance that a positive verification statement should have been issued based on the Early Action Verification Report and the Offset Verification Statement submitted to the Early Action Offset Program for the applicable Offset Project Data Report year then the verification body must prepare a report for ARB and explain the reasons for this conclusion.

(5) ARB will review the information submitted by the verification body pursuant to section 95990(f)(4) and may request additional information from, and consult with, the Early Action Offset Program or the verification body as necessary.

(6) If ARB finds that the Offset Project Data Report should not have been issued a positive verification statement after reviewing the information submitted in section 95990(f)(5), the Offset Project Data Report must be verified and offset verification services pursuant to sections 95977.1 and any additional verification requirements in the applicable protocol identified in section 95990(c) must be conducted. The Offset verification services for each Offset Project Data Report year may be done by the same verification body that performed the desk review and may be applied as one single offset verification service and meet the following requirements:

(A) If the early action offset project is still in operation, the verification body must conduct a site visit as required in section 95977.1(b)(3)(D).

(B) If the early action offset project is no longer in operation, the verification body must conduct a desk review of the original documentation to confirm any previous verification findings related to the types of offset verification services required in section 95977.1(b)(3)(D).

(C) The sampling plan in section 95977.1(b)(3)(G) must cover all serialized early action offset credits issued to the early action offset project for all years eligible and applicable pursuant to section 95990(c)(1);

(D) The data checks in section 95977.1(b)(3)(L) must include checks across the sources identified in the sampling plan, covering all serialized early action offset credits issued to the early action offset project for all years eligible and applicable pursuant to section 95990(c)(1); and

(E) The verification body must submit an Offset Verification Statement pursuant to section 95977.1(b)(3)(R) to ARB covering all serialized early action offset credits issued to the early action offset project for all years eligible and applicable pursuant to section 95990(c)(1). For non-forestry offset projects, the verification body may submit a Positive, Qualified Positive, or Adverse Offset Verification Statement. Forestry Offset projects may only receive a Positive or Adverse Offset Verification Statement.

(7) Once ARB offset credits have been issued for an Offset Project Data Report pursuant to section 95990(i) subsequent offset verification services provided for additional Offset Project Data Reports for the same early action offset project will not trigger a desk review of those Offset Project Data Reports for which ARB offset credits have already been issued pursuant to section 95990(i).

(g) Conflict of Interest Requirements for Early Action. For each Early Action Verification Report that a verification body reviews pursuant to section 95990(f), the verification body must assess conflict of interest according to the following requirements against each party identified in section 95990(g)(2). The conflict of interest assessment for each Early Action Verification Report must be submitted to ARB before ARB issues an ARB offset credit pursuant to section 95990(i).

(1) The verification body is subject to the conflict of interest requirements in section 95979.

(2) The conflict of interest requirements in section 95979 must be assessed against the following parties at the time that offset verification services are conducted pursuant to section 95990(f):

(A) The Offset Project Operator or Authorized Project Designee for the project; and

(B) Any party that holds greater than 30 percent of the early action offset credits issued to an early action offset project for each individual Early Action Verification Report reviewed as part of offset verification services conducted pursuant to section 95990(f).

(h) Issuance of ARB Offset Credits for Early Action. ARB will issue ARB offset credits pursuant to section 95990(i) for early action if the following requirements are met:

(1) The early action offset credits meet the requirements of section 95990(c);

(2) The GHG reduction or GHG removal enhancement occurred by December 31, 2014;

(3) The GHG reduction or GHG removal enhancement was determined to meet the requirements for regulatory verification pursuant to section 95990(f);

(4) The early action offset project has been listed pursuant to section 95990(e); and

(5) The following parties must submit the attestations listed in section 95990(h)(6) to ARB:

(A) The Offset Project Operator or Authorized Project Designee for a forest or urban forest early action offset project that does not transition to a Compliance Offset Protocol pursuant to section 95990(k); and

(B) The Offset Project Operator or Authorized Project Designee for the following early action offset projects, except as provided in section 95990(h)(5)(C):

1. A forest or urban forest early action offset project that transitions to a Compliance Offset Protocol pursuant to section 95990(k);
2. An early action offset project developed under one of the protocols identified in section 95990(c)(5)(A) and (C).

(C) If the Offset Project Operator or Authorized Project Designees identified in section 95990(h)(5)(B) do not register with ARB pursuant to section 95990(d) and list the early action offset project pursuant to section 95990(e), the holder of early action offset credits may seek issuance of ARB offset credits pursuant to section 95990(i), as long as the holder provides ARB the attestations required pursuant to section 95990(h)(6).

(6) The parties identified in section 95990(h)(5) must submit the following information to ARB:

(A) Attest, in writing, to ARB as follows:
"I certify under penalty of perjury under the laws of the State of California the GHG reductions and GHG removal enhancements for [project] from [date] to [date] have been measured in accordance with the [appropriate Early Action Offset Program offset protocol] and all information required to be submitted to ARB is true, accurate, and complete;"

(B) Attest, in writing, to ARB as follows:
"I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as the exclusive venue to resolve any and all disputes;" and

(C) Attest in writing to ARB as follows:
"I understand that the offset project activity and the implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety regulations that apply based on the offset project location. I understand that offset projects are not eligible to receive ARB offset credits for GHG reductions or GHG removal enhancements that are not in compliance with the requirements of this Article."

(7) An ARB offset credit may not be issued for an early action offset credit that has been retired, canceled, used to meet a surrender obligation, used to meet a voluntary commitment, or used to meet any GHG mitigation requirements in any voluntary or regulatory system.

(i) Process for Issuance of ARB Offset Credits for Purposes of Early Action. ARB will issue an ARB offset credit that meets the requirements of section 95990(h) in the amount calculated pursuant to section 95990(i)(1) :

(1) ARB offset credits will be issued according to the following schedule:

(A) One ARB offset credit will be issued for one early action offset credit generated under Climate Action Reserve Urban Forest Project Protocol versions 1.0 through 1.1;

(B) One ARB offset credit will be issued for one early action offset credit generated under Climate Action Reserve U.S. Ozone Depleting Substances Project Protocol version 1.0;

(C) One ARB offset credit will be issued for one early action offset credit generated under Climate Action Reserve U.S. Livestock Project Protocol versions 1.0 through 3.0; and

(D) ARB offset credits will be issued for early action offset credits generated under Climate Action Reserve Forest Project Protocol version 2.1 and versions 3.0 through 3.2, pursuant to the following:

1. If any ARB offset credits are being issued to an early action forest offset project pursuant to this section, the Early Action Offset Program must transfer all of the early action offset credits in its buffer account for forest projects for that project to ARB by removing the early action offset credits, such that they are no longer available on the Early Action Offset Program's system.
   a. For vintages 2001-2004 early action offset credits in the Early Action Offset Program buffer account for forest projects transferred for the early action forest offset project, ARB will create a series of unique serial numbers that identify them as being from these vintage years.
   b. Vintage 2001-2004 serial numbers may only reside in the Forest Buffer Account and will only be retired by ARB in the event of a project termination pursuant to section 95983(d). These vintages will not be able to count towards the contribution to ARB's Forest Buffer Account pursuant to this section.
2. A specified number of the issued ARB offset credits must be placed in the Forest Buffer Account in the amount determined by the project-specific risk rating calculation in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011 for each Offset Project Data Report year eligible and applicable pursuant to section 95990(c)(1).
3. If the Offset Project Operator or Authorized Project Designee registers and lists the early action offset project pursuant to sections 95990(d) and (e) and is seeking issuance of ARB offset credits for an Offset Project Data Report year ARB will determine the number of ARB offset credits that will be issued to the Offset Project Operator or Authorized Project Designee as follows:

a. If the following condition applies, then ARB will issue one ARB offset credit for each early action offset credit:

$$EAOP_{Buffer} \geq EAOC_{Issue} \times RR_{COP}$$

Where:

"$EAOP_{Buffer}$" is the total number of early action offset credits in the Early Action Offset Program's buffer account for forest projects that meet the requirements of section 95990(h) and are being transferred to ARB for the applicable Offset Project Data Report;

"$EAOC_{Issue}$" is the total number of early action offset credits that meet the requirements of section 95990(h) for which the Offset Project Operator or Authorized Project Designee is seeking issuance of ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"RR_{COP}" is the percentage that must be applied for the early action forest offset project pursuant to the project-specific risk rating calculation in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011;

b. If the amount of early action offset credits being transferred to ARB from the Early Action Offset Program's buffer account for forest projects does not cover the number of ARB offset credits to be placed in the Forest Buffer Account, the following applies:

$$If: EAOP_{Buffer} < EAOC_{Issue} \times RR_{COP}$$

$$Then: ARB_{Issue} = EAOC_{Issue} - \left|(EAOC_{Issue} \times RR_{COP}) - EAOP_{Buffer}\right|$$

Where:

"ARB_{Issue}" is the total number of ARB offset credits that will be issued to the Offset Project Operator or Authorized Project Designee for the applicable Offset Project Data Report;

"$EAOC_{Issue}$" is the total number of early action offset credits that meet the requirements of section 95990(h) for which the Offset Project Operator or Authorized Project Designee is seeking issuance of ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"RR_{COP}" is the percentage that must be applied for the early action forest offset project pursuant to the project-specific risk rating calculation in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011;

"$EAOP_{Buffer}$" is the total number of early action offset credits in the Early Action Offset Program's buffer account for forest projects that meet the requirements of section 95990(h) and are being transferred to ARB for the applicable Offset Project Data Report;

4. If the holder of early action offset credits registers and lists the early action offset project pursuant to sections 95990(d) and (e), provides the attestations listed in section 95990(h)(6) to ARB, and is seeking issuance of ARB offset credits pursuant to this section for an Offset Project Data Report year, ARB will determine the number of ARB offset

credits that will be issued to each holder of the original early action offset credits as follows:

a. If the following condition applies, then ARB will issue one ARB offset credit for each early action offset credit for which the holder is seeking issuance of ARB offset credits:

$$EAOP_{Buffer} \geq EAOC_{Issue} \times RR_{COP}$$

Where:

"$EAOP_{Buffer}$" is the total number of early action offset credits in the Early Action Offset Program's buffer account for forest projects that meet the requirements of section 95990(h) and are being transferred to ARB for the applicable Offset Project Data Report;

"$EAOC_{PIssue}$" is the total number of early action offset credits that meet the requirements of section 95990(h) that would qualify to be issued ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"RR_{COP}" is the percentage that must be applied for the early action forest offset project pursuant to the project-specific risk rating calculation in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011;

b. If the amount of early action offset credits being transferred to ARB from the Early Action Offset Program's buffer account for forest projects does not cover the number of ARB offset credits to be placed in the Forest Buffer Account, the following applies:

$$If: EAOP_{Buffer} < EAOC_{PIssue} \times RR_{COP}$$

$$Then: ARB_{HIssue} = EAOC_{HIssue} - |(EAOC_{HIssue} \times RR_{COP}) - (EAOC_{HIssue} \times RR_{EAP})|$$

Where:

"$EAOP_{Buffer}$" is the total number of early action offset credits in the Early Action Offset Program's buffer account for forest projects that meet the requirements of section 95990(h) and are being transferred to ARB for the applicable Offset Project Data Report;

"$EAOC_{PIssue}$" is the total number of early action offset credits that meet the requirements of section 95990(h) that would qualify to be issued ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"ARB_{HIssue}" is the total number of ARB offset credits that will be issued to the holder of early action offset credits seeking issuance of ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"$EAOC_{HIssue}$" is the total number of early action offset credits that meet the requirements of section 95990(h) for which the holder of early action offset credits is seeking issuance of ARB offset credits pursuant to this section for the applicable Offset Project Data Report;

"RR_{COP}" is the percentage that must be applied for the early action forest offset project pursuant to the project-specific risk rating calculation in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011;

"RR_{EAP}" is the percentage that was calculated and applied for the early action forest offset project pursuant to the project-specific risk rating calculation in the applicable early action protocol;

5. If there is an unintentional reversal for any early action forest offset project, even after it transitions to ARB's Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, the provisions in section 95983(b) and (d) apply.
6. If there is an intentional reversal for any early action forest offset project, even after it transitions to ARB's Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, the provisions in section 95983(c) and (d) apply.

(E) If an early action offset project is issued ARB offset credits pursuant to section 95990(i)(1)(D) and transitions from Climate Action Reserve Forest Project Protocol version 2.1 to Compliance Offset Protocol U.S. Forest Projects, October 20, 2011 pursuant to section 95990(k) the early action offset project may calculate its project baseline pursuant to section 95990(k)(1)(D) and use the following method to determine if it could qualify for additional early action offset credits:

1. Based on the project baseline calculated in section 95990(k)(1)(D), the early action offset project must calculate and sum the net GHG emission reductions and GHG removal enhancements it achieves following all the provisions of the Compliance Offset Protocol U.S. Forest Projects, October 20, 2011 and the requirements in this article, from the date of offset project commencement under the Early Action Offset Program through the date the early

action offset project applies for transition pursuant to section 95990(k).

2. The early action offset project must subtract the number of early action offset credits issued by the Early Action Offset Program for the period from the date of offset project commencement through the time the early action offset project applies for transition pursuant to section 95990(k) from the number of sum determined pursuant to section 95990(i)(E)1.:

a. If the difference is positive, ARB will issue ARB offset credits equivalent to the difference at the time of offset project transition pursuant to section 95990(k) for the timeframe specified in section 95990(i)(1)(E)1.

b. If the difference is negative, ARB will only issue ARB offset credits pursuant to section 95990(i)(D)1. for the timeframe specified in section 95990(i)(1)(E)1.

(2) ARB will notify the Early Action Offset Program within 10 calendar days of ARB's determination of issuance of ARB offset credits pursuant to this section.

(3) Early action offset credits must be removed by the Early Action Offset Program within 10 calendar days of ARB notification, such that the early action offset credits are no longer available for transaction on the Early Action Offset Program registry system.

(4) Not later than 15 calendar days after ARB issues an ARB offset credit for purposes of early action, ARB will notify the Offset Project Operator, Authorized Project Designee, and holders of the original early action offset credits of the issuance.

(j) Registration and Transfer of ARB Offset Credits for Purposes of Early Action. An ARB offset credit issued pursuant to section 95990(i) will be registered by creating a unique ARB serial number. ARB will transfer the serial numbers into Holding Accounts as follows within 15 working days of

the notice of issuance pursuant to section 95990(i)(4), unless otherwise required in section 95990(i)(1)(D):

(1) If the Offset Project Operator or Authorized Project Designee registered the early action offset project pursuant to section 95990(d), lists the early action offset project pursuant to section 95990(e), provides ARB the attestations pursuant to section 95990(h)(6), and is issued ARB offset credits pursuant to section 95990(i), ARB will transfer the ARB offset credit into the Holding Account of the Offset Project Operator or Authorized Project Designee.

(2) If the holder registered the early action offset project pursuant to section 95990(d), lists the early action offset project pursuant to section 95990(e), provides ARB the attestations pursuant to section 95990(h)(6), and is issued ARB offset credits pursuant to section 95990(i), ARB will transfer the ARB offset credit into the Holding Account of the holder. The holder must prove ownership of the original early action offset credits, including the original serial numbers issued by the Early Action Offset Program, before ARB will transfer the ARB offset credits.

(k) Transition of Early Action Offset Projects to the Compliance Program.

(1) Early Action Offset Project Transition to ARB Compliance Offset Protocols. Early action offset projects must transition to ARB Compliance Offset Protocols no later than February 28, 2015:

(A) Early action offset projects using Climate Action Reserve U.S. Livestock Project Protocol versions 1.0 through 3.0 must use and meet all the requirements in Compliance Offset Protocol Livestock Projects, October 20, 2011;

(B) Early action offset projects using Climate Action Reserve Urban Forest Project Protocol versions 1.0 through 1.1 must use and meet all the requirements in Compliance Offset Protocol Urban Forest Projects, October 20, 2011;

(C) Early action offset projects using Climate Action Reserve U.S. Ozone Depleting Substances Project Protocol version 1.0 must use and meet all the requirements in Compliance Offset Protocol Ozone Depleting Substances, October 20, 2011;

(D) Early action offset projects using Climate Action Reserve Forest Project Protocol version 2.1 must use and meet all the requirements in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011. At the time of transition the early action offset project must calculate its project baseline according to all the provisions in Compliance Offset Protocol U.S. Forest Projects, October 20, 2011 and the requirements in this article from the date of offset project commencement under the Early Action Offset Program to the date the early action offset project applies for transition pursuant to section 95990(k). This project baseline will remain valid for the duration of the offset project life. Registry offset credits and ARB offset credits issued for the first Reporting Period after the early action offset project is listed pursuant to section 95975 using the Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, will only be for the increased carbon stocks beyond what was already issued early action offset credits in the last year before the early action offset project transitioned to a Compliance Offset Protocol pursuant to this section.

(E) Early action offset projects using Climate Action Reserve Forest Project Protocol versions 3.0 through 3.2 must use Compliance Offset Protocol U.S. Forest Projects, October 20, 2011 and subtract from the project baseline any carbon stocks from any optional pools that are excluded in the Compliance Offset Protocol beginning with the last reporting period under the Early Action Offset Program. Decreases will not constitute a reversal.

(2) Crediting Periods for Early Action Offset Projects. When an early action offset project transitions to a Compliance Offset Protocol pursuant to section 95990(k)(1), it will begin an initial crediting period. The initial crediting period will begin with the date that the first verified GHG emission reductions or GHG removal enhancements occur using a Compliance Offset Protocol approved pursuant to section 95971.

(3) Listing Requirements for Transition of Early Action Offset Projects. At the time an early action offset project transitions to a Compliance Offset Protocol pursuant to section 95990(k)(1), the Offset Project Operator or Authorized Project Designee must:

(A) Meet the requirements for offset projects pursuant to section 95973; and

(B) List the offset project pursuant to section 95975.

(C) To transition an early action offset project to the ARB compliance offset program, the offset project must be listed with ARB or an Offset Project Registry by February 28, 2015, but has until September 30, 2015 to complete the verification of GHG reductions and GHG removal enhancements pursuant to section 95990(f) that were achieved in 2014. These GHG reductions and GHG removal enhancements are eligible for early action offset credits.

(4) After an early action offset project lists with ARB pursuant to section 95990(k)(3), it must meet the following requirements:

(A) Monitoring, reporting, and record retention requirements pursuant to section 95976;

(B) GHG reduction and GHG removal enhancement verification requirements pursuant to sections 95977 through 95978;

(C) Be issued a registry offset credit pursuant to section 95980.1 or an ARB offset credit pursuant to section 95981.1 for any GHG reductions or GHG removal enhancements it achieves.

(l) An ARB offset credit issued pursuant to section 95990(i) may be invalidated pursuant to section 95985 as follows:

(1) ARB Offset Credits from Non-Sequestration Offset Projects. An ARB offset credit from a non-sequestration project may be invalidated pursuant to sections 95985(a) through (h) and section 95985(j):

(A) If an Offset Project Operator or Authorized Project Designee registers and lists the early action offset project pursuant to sections 95990(d) and (e), submits the attestations to ARB pursuant to section 95990(h)(6), and was issued offset credits pursuant to section 95990(i) and the party identified in section 95985(e)(2) is no longer in business pursuant to section 95101(h)(2), the provisions in sections 95985(h)(1)(C)1. through 3. and sections 95985(h)(2)(B)1. through 3. still apply to the Offset Project Operator; or

(B) If the holder of early action offset credits registers and lists the early action offset project pursuant to sections 95990(d) and (e), submits the attestations to ARB pursuant to section 95990(h)(6), and was issued ARB offset credits pursuant to section 95990(i) and the party identified in section 95985(e)(2) is no longer in business pursuant to section 95101(h)(2), the provisions in sections 95985(h)(1)(C)1. through 3. and sections 95985(h)(2)(B)1. through 3. apply to the holder that was issued ARB offset credits pursuant to section 95990(i) and not the Offset Project Operator.

(2) ARB Offset Credits from Forest Offset Projects. An ARB offset credit from a forest offset project may be invalidated pursuant to sections 95985(a) through (g) and sections 95985(i) and (j).

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.

§ 95991. Sector-Based Offset Credits.

Sector-based offset credits may be generated through reduced or avoided GHG emissions from within, or carbon removed and sequestered from the atmosphere by, a specific sector in a particular jurisdiction. The Board may consider for acceptance compliance instruments issued from sector-based offset crediting programs that meet the requirements set forth in section 95994 and originate from developing countries or from subnational jurisdictions within those developing countries, except as specified in subarticle 13.

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.

§ 95992. Procedures for Approval of Sector-Based Crediting Programs.

The Board may approve a sector-based crediting program in an eligible jurisdiction after public notice and opportunity for public comment in accordance with the Administrative Procedure Act (Government Code section 11340 et seq.). Provisions set forth in this article shall specify which compliance instruments issued by an approved sector-based crediting program may be used to meet a compliance obligation under this Article.

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.

§ 95993. Sources for Sector-Based Offset Credits.

Sector-based credits may be generated from:

(a) Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans.

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.

§ 95994. Requirements for Sector-Based Offset Crediting Programs.

(a) General Requirements for Sector-Based Crediting Programs. The Board may consider for approval a sector-based crediting program which may include the following sectoral requirements:

(1) Sector Plan. The host jurisdiction has established a plan for reducing emissions from the sector.

(2) Monitoring, Reporting, Verification, and Enforcement. The program includes a transparent system that regularly monitors, inventories, reports, verifies, and maintains accounting for emission reductions across the program's entire sector, as well as maintains enforcement capability over its reference activity producing credits.

(3) Offset Criteria. The program has requirements to ensure that offset credits generated by the program are real, additional, quantifiable, permanent, verifiable and enforceable.

(4) Sectoral Level Performance. The program includes a transparent system for determining and reporting when it meets or exceeds its crediting baseline(s), and evaluating the performance of the program's sector during each program's crediting period relative to the business as usual or other emissions reference level.

(5) Public Participation and Participatory Management Mechanism. The program has established a means for public participation and consultation in the program design process.

(6) Nested Approach. If applicable, the program includes:

(A) Offset project-specific requirements that establish methods to inventory, quantify, monitor, verify, enforce, and account for all project-level activities

(B) A system for reconciling offset project-based GHG reductions in sector-level accounting from the host jurisdiction.

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.

§ 95995. Quantitative Usage Limit.

Sector-based offset credits approved by ARB for compliance pursuant to section 95821(d) are subject to the quantitative usage limit specified in section 95854.

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 15: Enforcement and Penalties

§ 96010. Jurisdiction.

Any of the following actions shall conclusively establish a person's consent to be subject to the jurisdiction of the State of California, including the administrative authority of ARB and the jurisdiction of the Superior Courts of the State of California:

(a) Registration with ARB pursuant to subarticle 5;

(b) The purchase or holding of a compliance instrument issued by ARB, unless the entity holding the compliance instrument is registered in an approved external GHG ETS pursuant to article 12;

(c) Receipt of compensation of any kind, including sales proceeds and commissions, from any transfers of allowances or offset credits issued by ARB pursuant to subarticle 13 or recognized by ARB pursuant to subarticle 14; or

(d) Verification of an offset credit to be issued by ARB.

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.

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

(a) The Executive Officer may suspend, revoke, or place restrictions on the Holding Account of a voluntarily associated entity determined to be in violation of any provision of this article.

(b) The Executive Officer may place restrictions on a Holding Account of a covered entity or an opt-in covered entity determined to be in violation of any provision of this article or of article 2 of this subchapter.

(c) The Executive Officer may suspend, revoke, or modify any Executive Order issued under this article or under article 2 of this subchapter, including an order accrediting a verifier, for a violation of any provision of this article.

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.

§ 96012. Injunctions.

Any violation of this article may be enjoined pursuant to Health and Safety Code section 41513.

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.

§ 96013. Penalties.

Penalties may be assessed pursuant to Health and Safety Code section 38580 for any violation of this article as specified in section 96014. In determining any penalty amount, ARB shall consider all relevant circumstances, including the criteria in Health and Safety Code section 42403(b).

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.
Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 96014. Violations.

(a) If an entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 95856 or 95857, and the procedures in 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 under 95857(c).

(b) A separate violation accrues every 45 days after the end of the Untimely Surrender Period pursuant to section 95857 for each required compliance instrument that has not been surrendered.

(c) It is a violation to submit any record, information or report required by this article that:

(1) Falsifies, conceals, or covers up by any trick, scheme or device a material fact;

(2) Makes any false, fictitious or fraudulent statement or representation;

(3) Makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry; or

(4) Omits material facts from a submittal or record.

(5) A fact is material if it could probably influence a decision by the Executive Officer, the Board, or the Board's staff.

(d) The violations stated in section 96014(c) are additional to violations of any obligations of any entity subject to this regulation under other provisions of this article requiring submissions to ARB to be true, accurate and complete.

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

§ 96020. Severability, Effect of Judicial Order.

Each provision of this article shall be deemed severable, and in the event that any provision of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

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.

§ 96021. Confidentiality.

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

(b) Any entity submitting information to the Executive Officer pursuant to this subarticle may claim such information as "confidential" by clearly identifying such information as "confidential." Any claim of confidentiality by an entity submitting information must be based on the entity's belief that the information marked as confidential is either trade secret or otherwise exempt from public disclosure under the California Public Records Act (Government Code, section 6250 et seq.). All such requests for confidentiality shall be handled in accordance with the procedures specified in California Code of Regulations, title 17, sections 91000 to 91022.

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.

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 another jurisdiction by having registered into an external GHG ETS to which California has linked its Cap-and-Trade program pursuant to sections 95941 and 95830(h).

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.