

CALIFORNIA AIR RESOURCES BOARD

Notice of Public Availability of Cap-and-Trade Discussion Draft and Workshop

ARB staff is holding a public workshop to discuss draft changes to the greenhouse gas Cap-and-Trade regulation.

DATE: Thursday, July 18, 2013

TIME: 9:00 a.m. to 4:00 p.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

WEBCAST: <http://www.calepa.ca.gov/broadcast/?BDO=1>

During the workshop, stakeholders may email questions to auditorium@calepa.ca.gov. A discussion draft including proposed changes to the Cap-and-Trade Regulation is now available for download on the program webpage at:

<http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>

Staff plans to propose regulatory amendments for Board consideration this fall. When amendments are proposed, a notice of regulation will be released for a 45-day public comment period in advance of the Board item. This item is scheduled to be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 24, 2013 and may continue at 8:30 a.m., on October 25, 2013. Please consult the agenda for the meeting, which will be available at least 10 days before October 24, 2013 to determine the day on which this item will be considered.

Background

The California Cap-and-Trade Regulation (Regulation) was formally adopted by the Air Resources Board (ARB or Board) in 2011. In June 2012, the Board approved a limited set of amendments focused on implementation of the regulation. In addition, a second

set of amendments related to jurisdictional linkage with Quebec was approved by the Board in April 2013. In response to continued Board direction and further discussions with stakeholders, staff began a public process to propose additional amendments for Board consideration in Fall 2013. This document provides a discussion of the regulatory amendments staff is proposing and their underlying rationale. This discussion draft of the Regulation also provides the public with the opportunity to discuss related changes to the Mandatory Greenhouse Gas Reporting Regulation (MRR) (Subchapter 10, Article 2, sections 95100-95158, title 17, California Code of Regulations), which provides the emissions and product data that are the basis for the compliance obligation and allocation of allowances provided to covered entities, respectively. The potential updates to the Regulation can be found at:

<http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>

This version of the Regulation shows proposed additions in underline and proposed deletions in strikeout. Based on public comments provided at and following the workshop, it is expected that additional proposed adjustments will be made to the language and released for public review in September prior to consideration by the Board at its October Board hearing.

Summary of Proposed Modifications

The following sections provide a description of proposed changes, many of which were initially described in the public document *Topics Subject to Potential Regulatory Amendments California Cap-and-Trade Regulation* (May 2013).¹ Areas of proposed amendments include allocation, market program implementation, and offset program implementation. For purposes of allocation, staff is considering allocation for new sectors and changes to transition assistance for existing sectors. Proposed amendments for market provisions relate to implementation, additional information reporting, cost containment, and enhancements to support market oversight. Staff is planning to propose two new offset protocols, Rice Cultivation Practices and Mine Methane Capture, which are not included in this discussion draft. These will be released at a later date. Staff is also proposing clarifications and new provisions to help implement the offset program. In addition, proposed amendments will shift the scheduled reduction in allowance allocation assistance factors by one compliance period. This shift is intended to provide additional time and certainty to industry in making necessary investments in efficiency and emission reducing technologies.

¹ <http://www.arb.ca.gov/cc/capandtrade/2013summary.pdf>.

The staff's proposed modifications in this discussion draft to the amended regulations are summarized below and are set forth in detail in Attachment 1 to this notice. All references to sections 95800, 95801, 95802, 95810, 95811, 95812, 95813, 95814, 95820, 95821, 95830, 95831, 95832, 95840, 95841, 95850, 95851, 95852, 95852.1, 95852.2, 95852.3, 95853, 95854, 95855, 95856, 95857, 95870, 95890, 95891, 95892, 95893, 95894, 95910, 95911, 95912, 95913, 95914, 95915, 5920, 95921, 95922, 95940, 95941, 95942, 95943, 95970, 95971, 95979.1, 95972, 95973, 95974, 95975, 95976, 95977, 95978, 95979, 95980, 95981, 95982, 95983, 95984, 95985, 95986, 95987, 95988, 95990, 95991, 95992, 95993, 95994, 95995, 5996, 95997, 95998, 96010, 96011, 96012, 96013, 96020, 96021, and 96022 are to title 17, CCR. The following summary does not include modifications to correct typographical or grammatical errors, changes in numbering or formatting; nor does it include all of the non-substantive revisions made to improve clarity. For the purposes of this summary, the term "tracking system" refers to the "Compliance Instrument Tracking System Service (CITSS)".

A. Modifications to section 95801. Purpose.

No modifications made to section 95801.

B. Modifications to section 95802. Definitions.

Section 95802 includes modifications to existing definitions and new definitions to support proposed amendments.

C. Modifications to section 95810. Covered Gases.

No modifications made to section 95810.

D. Modifications to 95811. Covered Entities.

Section 95811(a) was modified to include coverage of lead acid battery recyclers. This modification is necessary to be consistent with new reporters pursuant to the requirements in MRR.

E. Modifications to section 95812. Inclusion Thresholds for Covered Entities.

Section 95812(b) was clarified to require a covered entity to be defined as any entity that exceeds the applicability thresholds from years 2009-2012. This section was inconsistent with the existing definition of a covered entity.

Section 95812(d) was modified to accommodate the exemption of eligible waste-to-energy facilities and facilities approved for a limited exemption of emissions from qualified thermal output from a compliance obligation until 2015. This change was made to clarify the requirements for waste-to-energy facilities with qualified thermal output, pursuant to the direction provided in Board Resolution 12-33.

New section 95812(f) was added as a placeholder while staff considers how to treat allowances that were freely allocated to an entity if the facility shuts down prior to being subject to an actual compliance surrender.

F. Modifications to section 95813. Opt-In Covered Entities.

Section 95813(b) was modified to amend the date for entities to apply with the Executive Officer to opt-into the Cap-and-Trade Program. The modifications propose that an entity choosing to participate as an opt-in participant must register by March 1 of the year prior to the year it chooses to participate in the program. This date was chosen to be before the MRR industrial reporting deadline to allow data to be collected and verified for allowance allocation.

New section 95813(c) was added to require opt-in covered entities to rescind their opt-in request prior to receiving their first allowance allocation. This addition was necessary to ensure that entities that no longer wish to opt-in to the Program do not automatically receive a direct allocation of allowances.

Section 95813(d) was modified to clarify the first year in which an opt-in covered entity must report and verify their covered emissions.

G. Modifications to section 95814. Voluntarily Associated Entities and Other Registered Participants.

Section 95814(a)(3)-(4) was modified to require that an individual VAE with a job related to the Cap-and-Trade Program provide a notarized letter from his/her employer stating the employers knowledge of the employee's intent to participate in the Cap-and-Trade Program and the existence of a conflict of interest policy. This is necessary to acknowledge that individuals with access to potential market-related data as part of their normal work duties are not using that information for personal gain.

New section 95814(a)(6) was added to prohibit individuals disclosed by registered entities pursuant to section 95830(c) from registering as VAEs. The individuals identified as part of the registration process are those that staff believes would have knowledge of the registered entity's compliance strategy or its compliance instruments

transactions and holdings. Staff is concerned that if those individuals were eligible to register as VAE they would be able to take actions on behalf of their individual accounts based on their knowledge of the registered entity's actions. These individuals could also undermine ARB's market surveillance by undertaking coordinated actions with the registered entity.

Section 95814(b) was modified to place restrictions on which entities can voluntarily register in the tracking system and hold compliance instruments. Each of the excluded entities provide important functions to ensure the accuracy of the reported MRR emissions data reports and offset project data reports. It is important that their review be unbiased without any potential for personal gain in the outcome of their functions under the MRR and Cap-and-Trade Regulation.

H. Modifications to section 95820. Compliance Instruments Issued by the Air Resources Board.

No modifications made to section 95820.

I. Modifications to section 95821. Compliance Instruments Issued by Approved Programs.

No modifications made to section 95821.

J. Modifications to section 95830. Registration with ARB.

Section 95830(b)-(c) was modified to clarify that registration means registration in the tracking system.

Section 95830(b)(1) was modified to clarify the operator identified for the reporting requirements for a covered or opt-in entity under MRR is responsible for registering for an account in the tracking system and complying with the applicable requirements of the Cap-and-Trade Regulation. Section 95830(b)(4) was added to ensure accounts of developers of offset projects located on the categories of land in section 95973(d) are covered by the limited waiver of sovereign immunity requirement of section 95975(l).

Section 95830(c)(1)(H) was modified to clarify that an entity must identify all of its corporate associates and not just associates who are also registered in the tracking system.

New section 95830(c)(1)(I) requires entities registering with ARB or updating their registration to disclose names and contact information for all persons employed by the

entity in a capacity which would give them knowledge of decisions on compliance instrument transactions or holdings. Existing disclosures of individuals by the registering entity are designed to allow ARB to determine whether two different registered entities are in fact coordinating their actions through having individuals participating in the decision making of both entities. The existing requirements focus mainly on those in a decision-making capacity, either as officers, owners, or account representatives. The new text would add disclosure requirements for individuals who gain knowledge of a registered entity's compliance and transaction strategy through their work as employees.

New section 95830(c)(1)(J) requires entities that employ auction bidding advisors or as consultants for Cap-and-Trade activities to disclose the information required under new section 95923 as part of the registration process. The new text would add disclosure requirements for individuals who gain knowledge of a registered entity's compliance and transaction strategy through their work as consultants. These individuals may serve as consultants for multiple registered entities, giving them extensive knowledge of confidential information. Staff needs to be aware of these consultant-client relationships to monitor for collusive activity.

New section 95830(c)(7)-(8) was added to clarify what individual user information must be submitted as a condition of registration in the tracking system and provides reasons for why an applicant may be denied registration in the tracking system.

Section 95830(d)(2) was deleted, and the opt-in application date was moved to 95813(b).

New section 95830(i) was added to provide the requirements for change of ownership of a covered entity.

K. Modifications to section 95831. Account Types.

Text was added to section 95831(c), in the event of the closure of an entity's CITSS account, to clarify that allowances needed for the entity's compliance obligation would be withdrawn first from the entity's Compliance Account and then, if necessary, from the entity's Holding Account. This section was also modified to correct a reference to section 95814(a)(1)(C) contained in section 95831(a)(5).

L. Modifications to section 95832. Designation of Authorized Account Representative.

No modifications made to section 95832.

M. Modifications to section 95833. Disclosure of Corporate Associations.

Sections 95833(a)(1), 95833(a)(2), and 95833(a)(3) were modified to specify that corporate associations in the Regulation are not limited to entities registered in the Cap-and-Trade Program, but include any entity. Sections 95833(a)(1)(F) and 95833(a)(2)(F) were added to provide clarity for Limited Liability Corporations - which may not have listed shares - regarding the criteria for determining corporate associations. These provisions are needed to ensure the correct application of holding and purchase limits for entities that have a direct corporate association.

Section 95833(f)(5) was added to clarify that an entity may change its account consolidation or decision to opt-out of account consolidation only once per compliance period.

N. Modifications to 95834. Know-Your-Customer Requirements.

No modifications made to section 95834.

O. Modifications to section 95840. Compliance Instruments.

No modifications made to section 95840.

P. Modifications to section 95841. Allowance Budgets Calendar Years 2013-2020.

No modifications made to section 95841.

Q. Modifications to section 95841.1. Voluntary Renewable Electricity.

Section 95841.1(a) was modified to explicitly state that Renewable Energy Credits (REC) must be retired within the year for which VRE requirements are requested.

Section 95841.1(b)(1)(A) was modified to clarify the requirements for REC retirement. This subsection was also modified to clarify electricity delivery requirements.

Section 95841.1(b)(1)(B) and (b)(2)(B) were modified to update the reference to the most current California Energy Commission (CEC) Guidebook. In addition, Section 95841.1(b)(2)(D) was modified to clarify the documents that will satisfy the REC retirement requirement report. These changes are necessary to ensure that RECs are not used in multiple programs.

R. Modifications to section 95850. General Requirements.

No modifications made to section 95850.

S. Modifications to section 95851. Phase-in of Compliance Obligation for Covered Entities.

New section 95851(c) was added to clarify that operators of cogeneration facilities and district energy facilities that have been approved for a limited exemption of qualified thermal emissions will have a compliance obligation beginning in 2015. This modification is made in response to the direction provided in Board Resolution 12-33.

New section 95851(d) was added to clarify that operators of waste-to-energy facilities will have a compliance obligation beginning in 2015. This modification is made in response to the direction provided in Board Resolution 12-33.

T. Modifications to section 95852. Emission Categories Used to Calculate Compliance Obligations.

Section 95852(b)(2) was modified to delete the requirement to submit annual attestations regarding resource shuffling. The attestation of 95892(b)(2)(A) was removed and replaced by a provision that lists substitutions of electricity deliveries from lower emission resources with electricity deliveries from higher emission resources that do not constitute resource shuffling. The list includes 13 kinds of substitutions that were included as “safe harbors” in Appendix A of the Cap-and-Trade Guidance document. Section 95892(b)(2)(B) was replaced by a provision that identifies two kinds of substitutions of electricity deliveries that are prohibited as resource shuffling. Both of these involve substituting lower emission electricity for electricity generated at a power plant that does not meet California’s Emission Performance Standard under certain conditions; however, the resource shuffling prohibition is not limited to these two substitutions. These changes are necessary to provide increased clarity on the definition of resource shuffling, pursuant to the direction provided in Board Resolution 12-33.

Section 95852(b)(3) was modified to add the title “Specified Sources” and the reference to a default emission factor was removed to clarify that specified factors could be more or less than the default emission factor. In addition, this section was also modified to clarify that the requirements to report and comply with MRR, and meet requirements under 95852(b)(3) to be able to claim a specific emission factor, also apply to asset controlling suppliers. These changes are necessary to provide clarity to electricity importers with specified source emissions that are higher than the default emission factor, and to clarify the requirements for asset controlling suppliers.

Section 95852(b)(3)(D) is modified to add the requirement to report REC serial numbers to MRR, and remove the REC retirement requirement. These changes are necessary to acknowledge the direct delivery and zero emissions attribute of the renewable electricity, while continuing to require the reporting of information on the RECs generated so that other programs are aware that the underlying electricity was accounted for in California’s Cap-and-Trade Program.

Section 95852(b)(4) was modified to clarify that a RPS adjustment only applies to electricity that is procured. This subsection was also modified to clarify the contract requirements and REC retirement requirements when using the RPS adjustment. These changes are necessary to facilitate the original intent of the provision and clarify requirements to meet the intent.

New section 95852(b)(4)(F) was added to state that only RECs for electricity generated after 2012 are eligible for use in the RPS adjustment.

New section 95852(j) was added to provide a limited exemption for emissions from the production of qualified thermal output for cogeneration facilities and district heating facilities during the first compliance period. A facility must apply for the exemption. A cogeneration facility is eligible for the exemption only if both its emissions associated with the production of qualified thermal output, and the remaining facility emissions, are below the 25,000 MTCO₂e threshold. A district heating facility is eligible only if the emissions associated with all thermal energy supplied to each individual customer are below the threshold. These changes are made in response to the direction provided in Board Resolution 12-33.

New sections 95852(j)(1) and 95852(j)(2) provide equations used to determine eligibility for the limited exemption. New section 95852(j)(3) states the data sources that will be used by ARB to determine eligibility, and new section 95852(j)(4) explains the process of application for the exemption, including a requirement for an attestation that application information is accurate and complete. New section 95852(j)(5) explains that

if a facility that is approved for the limited exemption has previously been awarded industrial allocations in 2013 or 2014, the same quantity of allowances will be subtracted from the facility's future year's allocations.

U. Modifications to section 95852.1. Compliance Obligations for Biomass-Derived Fuels.

No modifications made to section 95852.1.

V. Modifications to section 95852.1.1. Eligibility Requirements for Biomass-Derived Fuels.

Section 95852.1.1(a) was modified to clarify the contract timing for biomass-derived fuel eligibility. Section 95852.1.1(a)(2) specifies that biomass-derived fuel that does not meet the requirements of 95852.1.1(a)(1) must meet one of the requirements listed in 95852.1.1(a)(2)(A) and (B). New requirements specify that recovery of the fuel must occur at a site where the fuel was previously being vented or destroyed for at least three years, or since commencement of fuel recovery operations, whichever is shorter. In addition, 95852.1.1(a) was also modified to clarify that if biogas or biomethane is used at the site of production, and not transferred to another operator, the operator must demonstrate that the fuel was not previously used to produce useful energy transfer for at least three years, or since commencement of fuel recovery operations, whichever is shorter. Section 95852.1.1(a)(4) was also added to specify that any fuel being provided for under a contract must have been previously eligible under sections 95852.1.1(a)(1),(2) or (3), and that the verifier must be able to track the fuel to the previously eligible contract.

Section 95852.1.1(b) was modified to remove the specific numerical value for total crediting and tie it to the MRR global warming potential for methane plus the combustion emissions to clarify the maximum amount of credits ARB would provide for the destruction of methane relative to MRR. The Low Carbon Fuel Standard was also explicitly called out for calculating the maximum crediting.

W. Modifications to section 95852.2. Emissions without a Compliance Obligation.

Section 95852.2(b)(10) was modified to list MRR 95153(o) and (p), rather than MRR 95153(q).

New section 95852.2(b)(11) was added to clarify that offshore oil and natural gas production facilities will remain exempt from having a compliance obligation under the

Cap-and-Trade Program. These changes are necessary to ensure consistency between the Cap-and-Trade and MRR regulations.

Section 95852.2(c) was modified to remove the exemption sunset date for military facilities. Staff believes it is appropriate to exempt military facilities as this sector has other mechanisms already in place that have the potential to achieve equivalent reductions through a broad-based approach that encompasses sources that are below applicability thresholds for both MRR and the Cap-and-Trade Program. Section 95852(c) also includes an exemption for waste-to-energy facilities from the first compliance period which meet specific criteria. These changes are made in response to the direction provided in Board Resolution 11-32.

X. Modifications to section 95853. Calculation of Covered Entity’s Triennial Compliance Obligation.

Section 95853(e) was deleted. This section was redundant as true-up allowances correct historical allocation for new entrants.

Y. Modifications to section 95854. Quantitative Usage Limit On Designated Compliance Instruments—including Offset Credits.

No modifications made to section 95854.

Z. Modifications to section 95855. Annual Compliance Obligation.

No modifications made to section 95855.

AA. Modifications to 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

Section 95856(b)(2) was modified to clarify that allowances issued by ARB or a linked jurisdiction must be issued for an allowance budget year within or before the year for which the annual compliance obligation is calculated, or the last year of the compliance period for which a triennial compliance obligation is calculated, to be used for compliance obligation surrender.

New section 95856(b)(2)(C) was added to allow for the limited use of “future” allowances provided for allocation true-up for compliance obligation surrender, as discussed in the June 25 workshop.

New section 95856(h) was added to include the retirement order of compliance instruments in annual and triennial compliance periods. This is necessary to ensure clarity in compliance instrument retirement order and is needed to support the retirement process in the tracking system, as discussed in the June 25 workshop.

BB. Modifications to section 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

No modifications made to section 95857.

CC. Modifications to 95858. Compliance Obligation for Under-Reporting in a Previous Compliance Period.

No modifications made to section 95858.

DD. Modifications to Section 95870. Disposition of Allowances.

Section 95870(b) was modified to identify an additional source of allowances available for the Reserve. Section 95870(b)(1) makes allowances designated for the Advance Auction available to the Reserve. New section 95870(b)(2) was added to clarify that allowances not sold at advanced auction will be sold when their vintage becomes current. New section 95870(b)(3) was added to update language on the treatment of auction proceeds as reflected in current statute. These modifications are necessary to meet the objectives of Board Resolution 12-51.

Section 95870(d) was modified to change the allocation date to October 15 from November 1 so that entities would have any true-up allowances in their accounts at least two weeks prior to the November 1 timely surrender deadline to be able to use the true-up allowances for the compliance deadline on November 1, as provided in section 95856(b)(2)(c).

Table 8-1 was modified to shift the assistance factor change by one compliance period. The assistance factor will be maintained at 100% for all leakage risk classifications for the second compliance period. The assistance factor for the third compliance period will be 100% for high, 75% for medium, and 50% for low leakage risk classification, but will be further evaluated and may be adjusted based on work underway described below. Shifting the assistance factor by one compliance period does not change the program cap or its annual decline.

ARB is making this change in order to provide additional certainty and time to industry to successfully transition to lower-carbon production methods. In addition, ARB is

awaiting new research results that will improve the data, measurement, and metrics of economic leakage risk and will provide additional insights into the potential leakage risk posed by the long-term implementation of the Program on industrial sectors. This research will inform ARB's evaluation of leakage risk factors for the third compliance period.

Table 8-1 has also been modified to include new leakage risk classifications and modify one leakage risk classification. These changes are necessary to allow new industrial sectors to receive appropriate allocations and to account for new data for existing sectors, pursuant to Board Resolutions 12-33 and 11-32.

Section 95870(e)(1) was modified to reflect the new allocation date of October 15 and remove references to which specific account in the tracking system allowances would be placed. Staff is considering a new account type in the tracking system to "shield" allocated allowances from the current and future holding limits until the vintage of the allocated allowances is the current year for the purposes of evaluating the holding limit.

Section 95870(e)(2)(B) may be modified depending on the selected approach to refinery allowance allocation in the second compliance period. Under the current Regulation, refinery allowance allocations occurring in 2014 for 2015 will be calculated based on Carbon-Weighted Tonnes, as stated in Table 9-1. ARB is considering changes to this approach, including use of the Complexity-Weighted Barrel concept, which would result in different benchmarking methods and resulting allocations. Hydrogen production and calcining benchmarks may also be reconsidered as part of this process. Note that whichever method is chosen, in no case will allowances be allocated twice for production of the same hydrogen. Changes to the approach could also result in changes to Table 9-1 and section 95891(e). Any changes to these sections will occur in coordination with changes to the MRR to ensure that data appropriate for the selected allocation method will be collected.

New section 95870(e)(4) was added to describe an allocation adjustment to the industrial allocation if the industrial entity is a Legacy Contract Counterparty.

New section 95870(f) was added to provide allocations to university covered entities and public service facilities. The eligibility requirements are provided in section 95890(c) and the provision for the calculation of this allocation is in section 95891(e). These allocations provide transition assistance to universities and public service facilities in recognition of their leadership in reducing GHG emissions, pursuant to the direction provided in Board Resolution 12-33.

New section 95870(g) was added to provide for the Executive Officer to retire a quantity of allowances equal to emissions from those that are exempt from a compliance obligation pursuant to section 95852(j).

New section 95870(h) includes an allowance allocation to eligible Legacy Contract Generators. These allocations provide transition assistance to legacy contract generators, pursuant to the direction provided in Board Resolution 12-33.

New section 95870(i) includes provisions for allowance allocation to natural gas suppliers, pursuant to the calculations set forth in section 95893.

New section 95870(j) was modified to update language on the treatment of auction proceeds as reflected in current statute. Section 95870(j)(1) has been added to identify the source of additional allowances that will be eligible for the Reserve (10% of all vintages in the Auction Holding Account). These modifications are necessary to meet the price containment and environmental integrity objectives of Board Resolution 12-51.

EE. Modifications to section 95890. General Provisions for Direct Allocations.

New section 95890(c) was added to specify that electricity distribution utilities without compliance obligations receiving allocation of allowances must register in the tracking system.

New section 95890(d) was added to state the eligibility requirements for allocations to university covered entities and public service facilities, per Board Resolution 12-33.

New section 95890(e) was added to allow the Executive Officer to allocate allowances to operators of legacy contract generators, if they meet the eligibility requirements in new section 95894. This addition was also made pursuant to Board Resolution 12-33.

FF. Modifications to section 95891. Allocation for Industry Assistance.

Section 95891(a)(2) was modified to correct the spelling of “budget.”

New section 95891(a)(3) was added to clarify the provisions for direct allocation of allowances for new entrants into the program under the energy-based allocation methodology.

Section 95891(b) was modified to define and calculate true-up allowances in order to account for changes in benchmarks and allocation methodology. Subsection (b) also proposes a revised true-up for new entrants into the program.

Table 9-1 has been modified to account for a number of new or modified product benchmarks based on stakeholder input and pursuant to Board Resolution 11-32. New product-based benchmarks are being considered for the following sectors: food processing, diatomaceous earth extraction, lead acid battery recycling, foundries, metal casting and metal forging. Revised product-based benchmarks are being considered for the following sectors: upstream crude petroleum and natural gas extraction, natural gas liquid extraction, petroleum refining, hydrogen production, coke calcining, flat glass manufacturing, container glass manufacturing, tissue manufacturing, and cold steel rolling. Lastly, Table 9-1 has also been modified to clarify some benchmark units and activity names.

Section 95891(c) was modified to propose that entities wishing to submit data request spreadsheets to ARB under energy-based allocation methodology must do so by July 1. Section 95891(c) was also modified to include an energy-based allocation methodology for new entrants into the program. This methodology includes three new allocation equations for new entrants based on data availability and stability of energy usage. For opt-in covered entities that have no historical emissions, allocation is based on engineering estimates of energy usage. For new entrant facilities that are growing, allocation is based on historical energy usage and will scale with the facility until the energy usage is stable. For new entrant facilities that have stable energy usage for three years, allocation is based on the average energy usage of those three years. Stable energy use is determined when the difference in energy use from the average of the two previous years is less or equal to 10%. These changes are necessary to provide a detailed methodology for allocation to new entrants under the energy-based methodology.

Section 95891(d)(2)(B) was modified to correct the error in the definition of “AEY,t” to be adjusted on electricity sales rather than electricity purchases. Subsection (d) proposes a true-up term for refineries without an Energy Intensity Index (EII) and proposes a revision to the true-up term for refineries with an EII. Subsection (d) was also modified to clarify that refineries will not receive a direct allocation of allowances for both primary refinery products and on-site hydrogen, as hydrogen is considered an intermediate product under these circumstances. These changes are necessary to ensure that refineries do not receive a double allocation for on-site hydrogen, and to introduce and correct true-up terms for refinery allocation.

New section 95891(e) was added to provide the methodology for calculation of allowance allocations to universities, pursuant to Board Resolution 12-33, and to public service facilities. The methodology includes a true-up that provides 2015 vintage allowances for allocations for calendar years 2013 and 2014. The section provides formulas for calculating university and public service facility allocations, which include a cap adjustment factor that reduces annual allocations in proportion to the cap decline. The Executive Officer may consider MRR data from calendar years 2008-2013 in determining allocations, in order to choose a baseline appropriate for each university covered entity. Additional language will be added to required universities and public service facilities to report annually on their use of allowance value.

New section 95891(f) was added to allow the Executive Officer to adjust the allowance allocation to exclude eligible legacy contract emissions, pursuant to Board Resolution 12-33.

GG. Modifications to section 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.

Minor modifications are proposed to Table 9-3 to account for sales of electricity distribution utilities (EDU), correct errors in EDU names, and to correct utility type designations as either a Publically Owned Utility (POU) or Investor Owned Utility (IOU). A modification to Table 9-3 is also proposed for a redistribution of allowances between two cooperatives due to a miscalculation for those two entities.

HH. New section 95893. Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers.

New section 95893 was added to propose allocation for natural gas suppliers. The proposal is a phased-in approach to consignment and the use of any resulting funds. The approach proposes 100% allocation to natural gas suppliers in all compliance periods, with the requirement to consign at least 25% in 2015, and gradually leading to a minimum of 50% consignment by 2020. This section is needed to ensure proper transitional assistance to protect rate payers for natural gas utilities.

II. New section 95894. Allocation to Legacy Contract Generators for Transition Assistance

New section 95894 was added to include a provision listing the eligibility requirements for transition assistance for legacy contract generators, pursuant to Board Resolution 12-33. This addition is necessary to clarify the application requirements and deadlines

for applying for transition assistance. Provisions in this section also include equations for the calculation of allowances.

Approximately 19 generators currently claim that a portion of their electricity or steam output is subject to a contract that does not provide reasonable means to recover GHG costs pursuant to Cap-and-Trade Program requirements. In response to these concerns, the Board directed staff to evaluate the need for transition assistance to resolve legacy contract concerns. In all cases, ARB has encouraged resolution through contract renegotiation between the parties. In several cases, renegotiation has resolved the legacy contract concern. ARB understands the approximately 19 remaining contracts to be in various stages of renegotiation. ARB continues to encourage private resolution.

Staff evaluated several solutions to the direction in Resolution 12-33 to provide transition assistance to legacy contract generators and held a workshop on May 1, 2013 to discuss this issue with stakeholders. At that workshop, several stakeholders requested that ARB provide relief to all legacy contract generators regardless of counterparty. Subsequently, CPUC President Peevey sent a letter to ARB Chairman Nichols requesting that a common solution be provided to all legacy contract generators regardless of counterparty. In consultation with CPUC, staff made a determination that transition assistance, limited to the 2013 and 2014 emissions for the portion of a generator's output subject to legacy contract, appropriately recognizes those that have remaining legacy contracts concerns while maintaining a strong incentive to continue renegotiation. In addition, this solution does not undermine the efforts of those that already renegotiated contracts to resolve disputes over carbon costs. In the case where a legacy contract counterparty is an industrial producer that receives allocation pursuant to subarticle 8, Subsection 95870(e)(4) was modified to provide a true-up calculation to lessen the industrial allocation if the industrial entity is an Industrial Sector Legacy Contract Counterparty in proportion to allowances provided to the legacy contract generator.

JJ. Modifications to section 95910. Auction of California GHG Allowances.

Section 95910(a)(2) clarifies the current auction schedule applies through 2014.

Section 95910(a)(3) was added to establish a prescribed auction schedule after 2015 included in new Appendix C. Staff believes specified dates for auction helps participants and staff better implement the Program, especially once linked auctions occur.

Section 95910(c)(1)(B) was added to specify that future vintage allowances for sale at an Advance Auction, which remain unsold until their vintage equals the current year, will be sold at a Current Auction. In section 95910(c)(1)(D), staff is considering adding language to specify that multiple “current auctions” may occur in order to accommodate potential price spread for different “current vintages.”

A section reference was corrected in section 95910(d)(2). Section 95910(d)(4)(B) was modified to specify that the deadline for consignment is 5 p.m. Pacific time, 75 days before the auction. Section 95910(d)(4)(C) requires consignment to take place 75 days prior to the auction schedule specified in new Appendix C.

KK. Modifications to section 95911. Format for Auction of California GHG Allowances.

No modifications made to section 95911.

LL. Modifications to section 95912. Auction Administration and Participant Application.

Section 95912(d)(4) was modified to include, as part of the auction application, an allocation of the purchase limit and holding limit among entities in a corporate association when one or more entities has opted out of a joint account in CITSS. Another change amended the regulatory language so that entities are required to report changes in the status of an ongoing investigation with respect to any alleged violation of the rules, regulations or law governing commodities, securities or financial markets consistent with current implementation. Section 95912(d)(4) was also modified to set the deadline for an auction participation application at 5 p.m. Pacific time, 30 days prior to the auction.

95912(d)(5) was added to specify that entities with changes to their auction application information which occur 30 days before (or 15 days after) the auction may be denied auction participation.

New section 95912(f) was added to set a deadline of 30 days before an auction for entities to inform the Auction Administrator of their intent to bid.

Section 95912(j) was modified to specify that bid guarantees are due by 5 p.m. Pacific time 12 days before the auction.

Section 95912(j)(1)(A) was modified to disallow the use of certified funds, such as a bank check or cashier’s check, as a bid guarantee. While acceptable as a bid

guarantee, these instruments are not acceptable for settlement following an auction and their acceptance as a bid guarantee could delay financial settlement of the auction.

Section 95912(j)(1)(D) was added to allow certain surety bonds to be used as a bid guarantee, in response to stakeholder request.

In the event that the financial services administrator must draw on the bid guarantee, section 95912(j)(3) was modified to state that bid guarantees must be payable within one day of payment request for purchased allowances if they are not in cash form. This requirement facilitates the completion of the financial settlement of the auction within seven days as required in the Regulation, allowing ARB to proceed with as little delay as possible in transferring allowance purchases to entity accounts in CITSS.

Section 95912(k) was modified to update the treatment of auction proceeds.

MM. Modifications to section 95913. Sale of Allowances from the Allowance Price Containment Reserve.

Modifications were made to section 95913 pursuant to Board Resolution 12-51.

Section 95913(b) was modified to state that entities participating in the Cap-and-Trade Program as part of a linked jurisdiction cannot participate in a California Reserve sale.

Section 95913(d)(2) clarifies that the current Reserve sale schedule is applicable through 2014.

Section 95913(d)(3) was added establish a prescribed Reserve sale schedule included in new Appendix C.

Section 95913(d)(4) was modified to state that the Reserve sale administrator will tell participants of the number of allowances for sale 30 days before the sale, rather than four weeks.

New section 95913(d)(6) was added to state that the existing schedule located in (d)(5) will not apply after January 2015.

New section 95913(e)(1) was added to set deadlines for entities to notify the Reserve sale administrator of their intent to bid.

Section 95913(e)(2) was added to specify that entities whose auction application information changed within 30 days of a Reserve sale cannot participate in that sale.

New section 95913(f)(5) was added to outline the availability of additional allowances for the Reserve, while text was added to section 95913(f)(1) to clarify the source of allowances for the Reserve tiers. These changes are made in response to the cost containment objectives in Board Resolution 12-51

Section 95913(g) was modified was modified to disallow the use of certified funds, such as a bank check or cashier's check, as a bid guarantee. This subsection was also modified to allow certain surety bonds to be used as a bid guarantee within one day of payment request, in response to stakeholder comment.

Additions to section 95913(h) clarify the purchase determinations of allowances at Reserve sales given the additional allowances specified in section 95913(f)(5).

NN. Modifications to section 95914. Auction Participation and Limitations.

Section 95914(c) was modified to clarify the information that must not be disclosed by auction participants. Section 95914(c)(1)(A) was modified to expand the information on qualification status to include the intent to participate at auction, auction approval status, and maintenance of continued auction approval. Section 95914(c)(1)(E) was removed because only ARB will inform auction participants about which information is confidential. This is not a role for the Auction Administrator.

New section 95914(c)(2) was added to specify specific circumstances in which auction participation information in section 95914(c)(1) may be released. Disclosures regarding auction participation to members of a direct corporate association or to auction bid advisors already disclosed to ARB are already listed as exceptions in the existing regulation.

Two new exceptions were added. The first exception recognizes that POU's may be required to release some information on auction participation related to their participation in generation projects operated by a Joint Powers Authority or with other POU's. The second exception addresses releases of information that may be required by the California Public Utilities Commission.

Section 95914(c)(3) was modified to include additional information about advisors to auction participants to enhance ARB's oversight ability.

Section 95914(d)(4), (5) and (6) were deleted. Information on the purchase limit allocation among corporate associates, if needed, is now submitted in the Auction Participation Application covered in section 95912(d). Section 95914(d)(6) is no longer required, as entities cannot participate in an auction without submitting a purchase limit allocation among corporate associates that maintain separate CITSS accounts.

OO. Modifications to section 95920. Trading.

New section 95920(b)(5) was added to clarify that allowances withdrawn by the Executive Officer would come initially from the entity's Holding Account and then, if necessary, from the entity's Compliance Account in the event of a holding limit violation discovered after the transfer request is recorded.

Section 95920(d)(2)(A), (B), and (D) are modified to clarify the definition and procedure for calculating the Limited Exemption from the Holding Limit. This clarification is made to address stakeholder comments that the definition was unclear and that section 95921(d)(2)(B) conflicts with section 95921(d)(2)(A)

Section 95920(d)(2)(C) was modified to allow the limited exemption to be updated any time prior to the last quarterly auction in that year using the most recent MRR reported and verified emissions.

New section 95920(d)(2)(I) is added to address how the Limited Exemption from the Holding Limit is calculated for entities that become opt-in covered entities during the first compliance period, but do not have emissions that would create a compliance obligation for the first compliance period pursuant to section 95851(a). The new text clarifies that the Limited Exemption from the Holding Limit will be zero for these entities throughout the first compliance period. Beginning January 1, 2015, the Limited Exemption from the Holding Limit will be calculated for these entities using the emissions that would create a compliance obligation for the second compliance period pursuant to section 95851(b). Opt-in covered entities that have no first compliance period compliance obligation do not need to accumulate allowances for first compliance period surrender.

New section 95920(d)(2)(J) is added to ensure that allowances allocated to covered entities under section 95870 do not inadvertently put the recipients over the Holding Limit for future vintages, as the allowances will be allocated prior to their vintage year (e.g., 2015-vintage allowances are allocated October 15, 2014).

PP. Modifications to section 95921. Conduct of Trade.

New section 95921(a)(4) was added to prohibit entities from submitting a transfer request in the absence of a transaction agreement with the entity listed as the destination account in the transfer request. Stakeholders have raised concerns that the process for remedying deficient transfer requests could be used to determine another entity's account balances. The main concern is that a large transfer request could place the destination account over the holding limit, which would be revealed to the submitting entity when the transfer is deemed deficient. This could conceivably allow the submitting entity to calculate the destination account's current balance. The provision would make the ploy a violation.

Existing section 95921(b) was modified to remove the existing list of information that must be included in transfer requests submitted to the tracking system.

New section 95921(b)(1) was added. It lists three fields that must be completed for all transfer requests. These include the holding account number and identification of two account representatives for the entity submitting the transfer request, and the account number and account representative for the destination account. These fields are required under the existing regulation. The account representative for the destination account is only needed if the transfer requires confirmation.

The transfer request will also require the vintage and type (allowance versus offset) of the compliance instrument. These two fields are required because the account representatives cannot designate serial numbers of the instruments they wish to transfer based on how the tracking system works.

New section 95921(b)(2) was added to require the identification of the type of transaction agreement for which the transfer request is submitted. The transaction agreements fall into three categories. The first category includes over-the-counter contracts for sale of compliance instruments that have a delivery date no more than three days after the parties enter into the agreement. The second category includes over-the-counter contracts for sales that have a delivery date of no less than four days after the parties enter into the agreement. Contracts that involve multiple transfers of compliance instruments or involve the sale of other products along with compliance instruments will also fall into this category. Finally, the third category includes spot or futures contracts arranged through an exchange or Board of Trade. Corresponding definitions have been added to explain these new terms.

New section 95921(b)(3) was added. It lists the information that must be submitted for transfer requests resulting from over-the-counter transaction agreements for sale of compliance instruments that have a delivery date no more than three days after the parties enter into the agreement. These requirements include two fields that exist in the current regulation, namely the date the entity entered into the transaction agreement and the price of the instrument in U.S. or Canadian dollars. The date of settlement of the agreement is required, as in the current regulation. However, the new text provides two conditions that determine how the entity enters the date. If completion of the transfer request is the last step of the agreement, the entity should enter the submission date of the transfer request as the settlement date. If there are terms that must be fulfilled after submissions of the transfer request, then the date those terms are expected to be completed should be entered.

New section 95921(b)(4) was added. It lists the information that must be submitted for transfer requests resulting from over-the-counter transaction agreements for sales that have a delivery date of no less than four days after the parties enter into the agreement, or involve multiple transfers or products under the same agreement. Similar to current regulation requirements, the entity must enter the date it entered into the transaction agreement, as well as the date the agreement terminates. If the transaction agreement provides for subsequent transfers after the current request is submitted, staff is proposing to have the entity enter the frequency at which transfers would occur (e.g. monthly, quarterly, etc.) if such a schedule exists. If the transaction agreement provides for the transfer of other products in addition to compliance instruments, staff is proposing that the entity identify the other products specified in the agreement.

Transactions agreements in this category may contain varying methods of setting the price for the compliance instruments. If the price is a fixed value in the contract, then staff proposes the entity enter that value. If the price is not a single fixed value, staff is proposing that the transfer request require more information than under the existing Regulation. If the price is specified as a base plus a margin, staff proposes the entity enter the base and the margin. If the agreement uses some other method, staff proposes the entity enter a brief description of the method.

New section 95921(b)(5) was added. It lists the information that must be submitted for transfer requests resulting from exchange-based contracts. Staff proposes to require information that more clearly identify the type of contract involved. First, the entity should enter the name of the exchange and the exchange code for the contract, and identify the contract as spot or futures. Entities would also have to enter the date of closing and price at closing for the contract. Staff believes that all the required information should be made available to the account representatives by the exchanges.

New section 95921(b)(6) was added. It contains a list of instances in which entities will not be required to enter a price, but may enter a price of zero. The entities will need to indicate why they qualify for the exemption based on the nature of their transaction agreement. Two of these instances, transfers between direct corporate associates and between holding and compliance accounts, are in the existing regulation. Two of the exemptions concern contractual relationships between publicly-owned utilities. The last two involve agreements that bundle the sale of compliance instruments with the sale of other products.

Section 95921(c) was modified to clarify the process the accounts administrator and account representatives will follow in case a transfer request is found to be deficient. The changes address stakeholder concerns that account representatives could find out an entity's account balances by sending spurious transfer requests. Under the existing regulation, account representatives of both accounts would be informed of the deficiency. Staff is proposing a process that would prevent the account representative submitting a transfer request from gaining information about the receiving entity's account. In addition, the new text of section 95921(a)(4) was added to make filing a transfer request in the absence of an underlying transaction agreement a violation.

Section 95921(f)(1) has been expanded to clarify the prohibition on beneficial holdings. The new text gives a more precise definition of what constitutes a beneficial holding. It also makes clear that the prohibition on beneficial holdings does not apply to compliance instruments held for delivery under a forward or futures contract, nor does it apply to transfers between direct corporate associates.

QQ. Modifications to section 95922. Banking, Expiration, and Voluntary Retirement.

No modifications made to section 95922.

RR. New section 95923. Disclosure of Cap-and-Trade Contractors.

Section 95923 was added to aid market monitoring efforts of the Cap-and-Trade Program. This section defines contractors in the program, and requires registered entities to disclose their contractor relationship if it relates to the Cap-and-Trade program. This will allow the market monitor to regulate conflicts of interests, such as if a contractor is working for several registered entities and coordinating market behavior between these entities

SS. Modifications to section 95940. General Requirements.

No modifications made to section 95940.

TT. Modifications to section 95941. Procedures for Approval of External GHG ETS.

No modifications made to section 95941.

UU. Modifications to section 95942. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.

Sections 94952(f) and (g) were modified to ensure linked jurisdictions share serial numbers of compliance instruments with each other that were retired in the tracking system.

VV. Modifications to section 95943. Linked External GHG ETS.

No modifications made to section 95943.

WW. Modifications to section 95970. General Requirements for ARB Offset Credits.

No modifications made to section 95970.

XX. Modifications to section 95971. Procedures for Approval of Compliance Offset Protocols.

Section 95971 was modified to explicitly state the already-existing requirement that the review of compliance offset protocols will comply with any applicable California Administrative Procedure Act. This change is necessary to improve clarity of the Regulation.

YY. Modifications to Section 95972. Requirements for Compliance Offset Protocols

Section 95972 was modified to clarify the eligible geographical location for offset projects located in U.S. Territories. These changes are necessary to clarify that U.S. Territories are included in the geographical scope.

ZZ. Modifications to section 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

Section 95973(a) was modified to include additional protocols proposed by staff that may be approved by the Board. These changes are necessary to support the potential adoption of new offset protocols.

This section was also modified to clarify the eligible geographical location for offset projects located in U.S. Territories. These changes are necessary to clarify that U.S. Territories are included in the geographical scope.

Section 95973(b) was also modified to include the requirement for regulatory compliance with all national, state, and local laws in the Cap-and-Trade Regulation. These changes are necessary to clarify that the requirements do not only apply to environmental impact assessments. This is not a new requirement as each Compliance Offset Protocol already includes this requirement.

AAA. Modifications to Section 95974. Authorized Project Designee.

Section 95974 was modified to clarify the timing for which an Offset Project Operator (OPO) may designate another party to receive ARB offset credits. These changes are necessary to clarify that OPOs do not have to designate another party to receive ARB offset credits at the time of Authorized Project Designee (APD) designation.

This section was also modified to clarify the APD's role and the requirements that must be met in ARB's market tracking system for Authorized Project Designees. These changes are necessary for implementation purposes.

Various minor and non-substantive clarifications were also made to section 95974 to ensure consistency in references throughout the Regulation.

BBB. Modifications to Section 95975. Listing of Offset Projects Using ARB Compliance Offset Protocols.

Section 95975 was modified to clarify the timing for when the attestations associated with listing an offset project must be submitted to ARB and/or an Offset Project Registry (OPR). These changes are necessary to streamline OPR and ARB procedures when processing information related to an offset project.

This section was also modified to clarify the administrative process for an OPR's review of listing information, and the timing for conducting their review. These changes are necessary for implementation purposes and to streamline the process for the OPRs' review processes.

This section was also modified to include a timeframe for submitting listing information within one year of offset project commencement. These changes are necessary to ensure projects are making reasonable progress towards ARB offset credit issuance. This section was also modified to include procedures and requirements for transferring an offset project between OPRs. These changes were made in response to stakeholder comments and will provide a procedure for and rules for when and OPO or APD transfers an offset project between OPRs.

Section 95975(l) specifies that a Tribe, in addition to meeting the other offset project listing requirements, must also enter into a limited waiver of sovereign immunity with ARB related to the Tribe's participation in the Cap-and-Trade Program prior to the listing of any offset project being developed on lands related to the Tribe as specified in section 95973(d). This ensures ARB's ability to pursue judicial remedies, if necessary, regarding these offset projects when enforcing the requirements of the compliance offset protocols and the Regulation. The proposed amendment to section 95975(l) is made pursuant to Board direction and to clarify ARB's intent for purposes of relief under a limited waiver of sovereign immunity. Tribal governments, as sovereign public entities, will be treated the same as other public entities under California law.

CCC. Modifications to Section 95976. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

Section 95976 was modified to include the addition of Rice Cultivation Practices and Mine Methane Capture as protocols proposed by staff that may be approved by the Board. These changes are necessary to support the potential adoption of these new offset protocols.

This section was also modified to clarify the requirements for Offset Project Data Reports for projects developed under Compliance Offset Protocol Ozone Depleting Substances. These changes are necessary to explain how the requirements in the Compliance Offset Protocol interact with the requirements in the Regulation.

This section was also modified to clarify the timing for when the attestations associated with Offset Project Data Reports must be submitted to ARB and/or an Offset Project

Registry. These changes are necessary to streamline OPR and ARB procedures when processing information related to an offset project.

Various minor and non-substantive clarifications were also made to section 95976 to ensure consistency in terminology and references throughout the Regulation.

DDD. Modifications to Section 95977. Verification of GHG Emission Reductions and GHG Removal Enhancements from Offset Projects.

Section 95977 was modified to clarify the verification timing requirements for offset projects. These changes are necessary to clarify how the timing requirements apply to projects less than or equal to 25,000 metric tons CO₂e, reforestation projects, and urban forest projects.

This section was also modified to allow for the deferment of verification for projects that produce an Offset Project Data Report with zero emission reductions. These changes are necessary to allow an OPO or APD to defer verification of a non-sequestration offset project in years where no reductions are made.

This section was also modified to clarify that for each Offset Project Data Report one Offset Verification Statement and one detailed verification report must be submitted. These changes are necessary to clarify which documents must be submitted by the verification body, and that Offset Verification Statements and detailed verification reports must be submitted for each Reporting Period.

EEE. Modifications to Section 95977.1. Requirements for Offset Verification Services.

Section 95977.1 was modified to clarify the requirements for the rotation of verification bodies. These changes are necessary to clarify how the rotation requirements for verification bodies and offset verifiers apply to ODS destruction, reforestation, and urban forest offset projects.

This section was also modified to change the timing from 10 days to 30 days for submitting a Notice of Offset Verification Services to ARB and an Offset Project Registry. These changes are necessary so that ARB and the OPR have more notice to plan their audit activities.

This section was also modified to specify which services are not covered under offset verification services and clarify which services must be conducted on site visits. These

changes are necessary so verification bodies understand what services they may and may not perform prior to submitting a Notice of Offset Verification Services.

This section was also modified to clarify the requirements for modifying Offset Project Data Reports during offset verification services. These changes are necessary to ensure that an OPO or APD makes all possible changes to the Offset Project Data Report and to streamline the requirements in coordination with the mandatory reporting program's requirements.

This section was also modified to clarify the requirements for conducting data checks. These changes are necessary to ensure that the verification body includes their calculations and narrative in the detailed verification report.

In addition, this section was modified to clarify the offset material misstatement calculation as it relates to offset projects. These changes are necessary to fix technical errors in the equation and to ensure that verification bodies are calculating offset material misstatement correctly.

Various minor and non-substantive clarifications were also made to section 95977.1 to ensure consistency in terminology and references throughout the Regulation.

FFF. Modifications to Section 95977.2. Additional Project Specific Requirements for Offset Verification Services.

No modifications made to section 95977.2.

GGG. Modifications to section 95978. Offset Verifier and Verification Body Accreditation.

Section 95978 was modified to clarify how requirements for verification body and offset verifier accreditation requirements in the MRR apply to the offset program. These changes are necessary to ensure verification bodies are accredited and trained in the compliance offset program.

This section was also modified to include requirements related to ARB audits of ARB-accredited verification bodies. These changes are necessary to ensure that ARB has access to relevant materials while on the site of an audit.

HHH. Modifications to section 95979. Conflict of Interest Requirements for Verification Bodies for Verification of Offset Project Data Reports.

The title of section 95979 has been modified to accurately reflect the requirements of the section. These changes are necessary to clarify that this section also applies to offset verifiers.

Section 95979 was modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable, and any subcontractors working as part of the offset verification team. These changes are necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project. This section was also modified to include a high level of conflict of interest for work related to verifying the Technology and Economic Assessment Panel of the Montreal Protocol (TEAP) facility requirements. These changes are necessary to ensure a verification body is not verifying work that they previously conducted. A new definition for TEAP is included in 95802.

This section was also modified to clarify the timing for submitting conflict of interest self-evaluations and to include a process and requirements for OPR approval of conflict of interest self-evaluations. These changes are necessary to ensure that there is no conflict of interest before offset verification services begin, and that a streamlined process is in place for OPR review of project information.

This section was also modified to make the timeframe for assessing conflict of interest consistent throughout the section. These changes are necessary to streamline the timeframe for assessing conflict of interest.

Various minor and non-substantive clarifications were also made to section 95979 to ensure consistency in terminology and references throughout the Regulation.

III. New section 95979.1. Additional Requirements for Air Quality Management and Air Pollution Control Districts.

Section 95979.1 was added to recognize the unique regulatory stature of air quality management and air pollution control districts in California. As these entities are not covered sources and are created by statute, they may participate in the Cap-and-Trade Program under multiple roles. An air quality management or air pollution control district is eligible to register in the tracking system as a VAE and hold compliance instruments, be accredited as an offset verification body, and approved as an offset project registry after meeting all specified requirements in the Cap-and-Trade Regulation. An air quality

management or air pollution control district that chooses to have more than one function will only be able to play one role for a specific offset project developed using a compliance offset protocol which will be considered for issuance of ARB offset credits. This separation of roles ensures a system of independent reviews of the offset project keeping the design of the Cap-and-Trade Program consistent with international standards and other regulatory offset programs, and supports a rigorous process for compliance offset credit issuance.

JJJ. Modifications to section 95980. Issuance of Registry Offset Credits.

Section 95980 was modified to clarify the offset project commencement date. These changes are necessary to ensure that if there are any requirements in a Compliance Offset Protocol that are more specific for the offset project type than the requirements of the Regulation related to offset project commencement, the protocol requirements are followed.

KKK. Modifications to section 95980.1. Process for Issuance of Registry Offset Credits.

Section 95980.1 was modified to include a process for OPRs to request additional information for the issuance of registry offset credits. These changes are necessary to provide OPRs a standardized process for requesting information when making a determination to issue registry offset credits.

This section was also modified to include a dispute resolution process with ARB for an OPO or APD if an OPR denies issuance of registry offset credits. These changes are necessary to specify that ARB is the final arbiter of decisions related to offset credit issuance.

Various minor and non-substantive clarifications were also made to section 95980.1 to ensure consistency in terminology and references throughout the Regulation.

LLL. Modifications to section 95981. Issuance of ARB Offset Credits.

Section 95981 was modified to clarify the process for requesting issuance of ARB offset credits and the types of information that must be submitted to ARB with the issuance request. These changes are necessary for ease of implementation and to ensure that the OPO or APD submits the correct information to ARB when requesting issuance of ARB offset credits.

This section was also modified to clarify the offset project commencement date. These changes are necessary to ensure that if there are any requirements in a Compliance Offset Protocol that are more specific for the offset project type than the requirements of the Regulation related to offset project commencement, the protocol requirements are followed.

MMM. Modifications to section 95981.1. Process for Issuance of ARB Offset Credits.

Section 95981.1 was modified to clarify the timing for ARB notification to parties that are receiving ARB offset credits. These changes are necessary for clarification and implementation purposes.

This section was also modified to clarify the requirements that OPRs must meet when ARB issues ARB offset credits. These changes are necessary to ensure that OPRs have retired registry offset credits before ARB offset credits are issued.

This section was also modified to include various minor and non-substantive clarifications to ensure consistency in terminology and references throughout the Regulation.

NNN. Modifications to section 95982. Registration of ARB Offset Credits.

Section 95982 was modified for clarity and to include various minor and non-substantive clarifications to ensure consistency in terminology and references throughout the Regulation.

OOO. Modifications to section 95983. Forestry Offset Reversals.

Section 95983 was modified to clarify which ARB offset credits may be used to meet the Forest Buffer Account requirements. These changes are necessary to clarify the intent of the Regulation regarding which offset credits may be used for the Forest Buffer Account.

This section was also modified to clarify how many ARB offset credits will be retired from the Forest Buffer Account in the case of an unintentional reversal. These changes are necessary so program participants understand how ARB will calculate its retirement from the Forest Buffer Account in the event of an unintentional reversal.

This section was also modified to clarify the requirements for replacement of ARB offset credits in the case of intentional reversals and early project terminations. These changes are necessary so program participants understand how ARB will calculate the amount of ARB offset credits that must be replaced by the forest owner in the case of an intentional reversal.

Various minor and non-substantive clarifications were also made to section 95983 to ensure consistency in terminology and references throughout the Regulation.

PPP. Modifications to section 95984. Ownership and Transferability of ARB Offset Credits.

Section 95984 was modified to include various minor and non-substantive clarifications to ensure consistency in terminology and references throughout the Regulation.

QQQ. Modifications to section 95985. Invalidation of ARB Offset Credits.

Section 95985 was modified to clarify the timeframe for invalidation and the requirements that must be met to reduce the statute of limitations for invalidation from 8 years to 3 years. These changes are necessary to clarify the intent of the Regulation so program participants may have a clearer understanding of the invalidation rules.

This section was also modified to include consistent requirements for both non-sequestration and sequestration offset projects in relation to who must replace an invalidated ARB offset credit. These changes are necessary to implement ARB's buyer liability policy in the event of an invalidation for forestry projects.

Various minor and non-substantive clarifications were also made to section 95985 to ensure consistency in terminology and references throughout the Regulation.

RRR. Modifications to section 95986. Executive Officer Approval Requirements for Offset Project Registries.

Section 95986 was modified to clarify the requirements that OPRs must meet to be approved by ARB, specifically their experience operating a registry prior to approval, and the requirements for registering with ARB. These changes are necessary to ensure that registries approved to operate as an OPR have demonstrated experience in the functions of an approved OPR prior to approval by ARB.

In addition, this section was modified to clarify ARB's audit authority over Offset Project Registries and how the requirements for registry approval apply to designated subdivisions. These changes are necessary to ensure that ARB has access to relevant materials while auditing an OPR and to clarify that not just some, but all approval provisions, apply at the subdivision level if a designated subdivision is applying to be an OPR.

SSS. Modifications to section 95987. Offset Project Registry Requirements.

Section 95987 was modified to clarify the timing requirements that an OPR must meet for making offset project information publicly available and what information must be made publicly available. These changes are necessary to clarify the intent of the Regulation and to ensure that the correct information is made publicly available.

Additional modifications were made to this section to clarify how OPRs may give guidance on the compliance offset program. These changes are necessary to clarify the intent of the Regulation and the role of OPRs in helping to administer the program.

Various minor and non-substantive clarifications were also made to section 95987 to ensure consistency in terminology and references throughout the Regulation.

TTT. Modifications to section 95988. Record Retention Requirements for Offset Project Registries.

No modifications made to section 95988.

UUU. Modifications to section 95990. Recognition of Early Action Offset Credits.

Section 95990 was modified to allow the potential for additional early action quantification methodologies to be added to the Regulation, if approved by the Board. In addition, provisions regarding the deadline for listing projects developed under any new potential quantification methodologies were added. These changes are necessary to provide a placeholder for any new potential early action quantification methodologies that may be approved by the Board to allow projects developed under any new potential methodologies sufficient time to come into the program.

This section was also modified to clarify the process and timing for submitting information to ARB for early action projects, such as listing, evaluating conflict of

interest, and the issuance of ARB offset credits. These changes are necessary for program implementation.

This section was also modified to clarify the requirements for conducting a desk review and full offset verification services for early action projects. These changes were made in response to stakeholder comments that the provisions were unclear and not detailed enough. In response to stakeholder comments, these changes will also allow additional flexibility to bypass the desk review if full offset verification services must be conducted. This section was also modified to clarify the requirements that must be met for contributions to ARB's Forest Buffer Account by early action forest projects. These modifications also specify how many ARB offset credits will be placed into the Forest Buffer Account and holding accounts of those parties seeking issuance of ARB offset credits. The modifications also specify how many early action offset credits must be retired by the Early Action Offset Program, and when they must be retired. These changes were made in response to stakeholder comments and to provide more specificity for the process of determining buffer account contributions and any deductions that may need to be made to the number of ARB offset credits issued to the party seeking issuance.

This section was also modified to clarify how and to whom ARB offset credits are issued and how the ARB offset credits may be transferred to Holding Accounts. These changes were made in response to stakeholder comments, and clarify the process and the requirements for requesting issuance of ARB offset credits for early action. In response to stakeholder comments, these modifications allow for more flexibility in how ARB offset credits are issued to holders of early action offset credits.

This section was also modified to clarify how the baseline for early action projects originally developed under version 2.1 of the approved early action quantification methodology for forestry is calculated when transitioning to ARB's Compliance Offset Protocol. These changes are necessary to clarify the intent of the existing Regulation.

This section was also modified to streamline the requirements for invalidation of early action offset credits with the requirements in section 95985, and to clarify how invalidation requirements apply to early action offset projects. These changes were made in response to stakeholder comments and help clarify the intent of the Regulation in this area. In response to stakeholder comments, additional scenarios were also added to allow more flexibility for shortening the statute of limitations for ODS destruction, forestry, and urban forestry projects.

Various minor and non-substantive clarifications were also made to section 95990 to ensure consistency in terminology and references throughout the Regulation.

VVV. Modifications to section 95991. Sector-Based Offset Credits.

No modifications made to section 95991.

WWW. Modifications to section 95992. Procedures for Approval of Sector-Based Crediting Programs.

No modifications made to section 95992.

XXX. Modifications to section 95993. Sources for Sector-Based Offset Credits.

No modifications made to section 95993.

YYY. Modifications to section 95994. Requirements for Sector-Based Offset Crediting Programs.

No modifications made to section 95994.

ZZZ. Modifications to section 95995. Quantitative Usage Limit.

No modifications made to section 95995.

AAAA. Modifications to section 96010. Jurisdiction.

No modifications made to section 96010.

BBBB. Modifications to section 96011. Authority to Suspend, Revoke, or Modify.

No modifications made to section 96011.

CCCC. Modifications to section 96012. Injunctions.

No modifications made to section 96012.

DDDD. Modifications to section 96013. Penalties.

No modifications made to section 96013.

EEEE. Modifications to section 96014. Violations.

No modifications made to section 96014.

FFFF. Modifications to section 96020. Severability, Effect of Judicial Order.

No modifications made to section 96020.

GGGG. Modifications to section 96021. Confidentiality.

No modifications made to section 96021.

HHHH. Modifications to section 96022. Jurisdiction of California.

Section 96022 was modified to clarify that the regulation does not purport to infringe on rights some covered entities may assert pursuant to the Foreign Sovereign Immunities Act.

IIII. New Appendix B. Addition of Tracking System User Terms.

Appendix B was added to the Regulation. The user terms for those registered in the tracking system establishes rules for registered participants in the tracking system. This ensures that the rules are codified in the Regulation.

JJJJ. New Appendix C. Auction and Reserve Sale Calendar.

Appendix C was added to the Regulation to establish the dates of auctions and reserve sales. This addition gives certainty to the market about the timing of auctions and reserve sales and aids staff in Program implementation.