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August 11, 2011

Chairman Mary Nichols and Members of the Air Resources Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

**Subject: Comment Letter- Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanism Regulation, Including Compliance Offset Protocols**

The California Council for Environmental and Economic Balance (CCEEB) is a coalition of business, labor, and public leaders that advances strategies for a strong economy and a healthy environment. On behalf, of CCEEB, we want to thank the California Air Resources Board (ARB) for this opportunity to comment on the proposed 15-day changes to the California Cap-and-Trade Program.

CCEEB supports adoption of a cap-and-trade program as the best means to achieve greenhouse gas (GHG) reductions at the lowest possible cost and we appreciate the work that ARB staff has done over the last year. The proposed changes are an improvement from the previously adopted regulation. The delayed start, phased approach towards auctions, acknowledgement of trade exposure, and recognition of enforcement issues in these proposed changes are positive steps toward a workable program with environmental integrity.

However, CCEEB believes that the proposed changes require additional modifications and an expressed commitment to develop additional tools and the necessary details to have an operable market. CCEEB is committed to working with the ARB to build a workable regulation that balances the environmental and economic needs for a healthy and vibrant California. As such, CCEEB comments include the following 10 key recommendations:

1. Revise the cap reduction slope to allow for a smoother transition.
2. Remove unnecessary constraints on the market that increase the cost of compliance; increase holding limits and offset limits.
3. Establish a program to monitor the health of California's economy and market.
4. Establish a trade exposure test.
5. Establish a process to refill the Allowance Reserve using offsets.

6. Establish a workplan to ensure that the tools, guidance, training, market tests, and infrastructure that are necessary to comply with the regulation are in place before requiring entities to comply with the requirements.
7. Begin the process to delegate approval of offsets to third party registries and adopt additional offset protocols as rapidly as possible.
8. Revise enforcement penalties, align with federal reporting requirements, and establish a dispute resolution process.
9. Expedite linking to other GHG markets.
10. Clearly state the intent of the ARB to seek equivalency to the Environmental Protection Agency's (EPA) emerging GHG programs, or other alternatives to ensure California's businesses are not subject to duplicative National, State, and Local GHG regulations.

In addition to these ten items there are additional specific recommendations addressed in this comment letter.

**Comment 1: Design the program elements to ensure a smooth transition**
CCEEB recognizes that the ARB has proposed several program elements designed to create a smooth transition to a market, such as the transition assistance. However, design elements, such as the benchmarking methodology and the stringency of the benchmark can place some facilities in a position that will require reductions or compliance obligations that are 5 to 10 times more than the average cap reduction for industry, beginning in the first year. The benchmarking methodology and stringency should be carefully considered to provide a smooth transition period for entities.

CCEEB also believes that because it is unlikely that California's program will be broadly linked with other state, federal or international programs in the early years, the combined effects of the cap slope and the allowance reserve deductions in the first and second compliance periods are likely to result in serious impacts to the economy. In the Functional Equivalency Document for the Cap-and-Trade, ARB reported 2010 emissions, which are far below projections made to justify the capped reductions. Since there are no linkages and there is a reduced need for emission reductions, CCEEB recommends that the cap slope be revised to reflect a smoother transition of 1% in 2013 and 2014, and 2% per year in the second compliance period. This creates a smoother transition and realistically addresses the potential that California's cap-and-trade program will operate without the possibility of broad linkage to other state or federal programs in the first 5 years.

Additionally, CCEEB is concerned that the cap in this regulation exceeds previously defined scoping plan levels, driving the program reductions below 1990 emissions levels. This is particularly evident given the new 2010 emissions levels that are roughly half of the projected emissions for 2012. CCEEB recommends that the ARB clearly articulate the rational for this increased compliance obligation and the reasons why the emission estimates are higher when the economy, production, and business are down, and reconcile this data with the updated GHG forecast and the recent Legislative Analyst Office analysis.

**Comment 2: Remove unnecessary constraints on the Market that increase cost**
Portions of the proposed regulation will unnecessarily constrain the market. The advantage of a cap-and-trade program is to allow market pressures to create solutions that best fit business models and consumer behaviors. Due to the small market currently proposed initially, some limitations are necessary. However, care must be taken to ensure market liquidity. Of particular concern are:

- The holding limit is too low. As currently written, significant amounts of allowances, for large compliance entities will be locked in compliance accounts. This creates an uneven playing field that favors traders over regulated entities. Compliance entities must be able to hold and trade a larger portion of their allowances to adequately manage their risk throughout the cap-and-trade program.

- CCEEB recommends that the program allow compliance entities to hold sufficient allowances to cover their obligation for the entire compliance period based on a rolling 3-year emissions obligation. This change would free up allowances for the major compliance entities and enable a much more liquid market where an entity could adequately hedge its forward risk without major complications. While there are still allowances locked in compliance accounts in some years, the increase in holding limits makes these limitations much more manageable.

- Business fluctuations at the end of a compliance period are anticipated. These fluctuations could adversely impact the smooth operation of the market. CCEEB recommends that vintage allowances (i.e. borrowing from current year) be allowed to be used during the true-up period. This will provide a mechanism for the end of compliance truing-up that will increase market confidence.

- ARB should fix the "buyer liability" issues with regard to offsets and allow carryover of the 8% compliance limit across years and compliance periods. CCEEB would recommend amending the regulation to read:

> § 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:
>
> $O_O/S$ must be less than or equal to $L_O$
> In which:
> $O_O$ = Total number of compliance instruments identified in section 95854(a) submitted since January 1, 2013 to fulfill the entity's total compliance obligation ~~for the compliance period~~ through the current compliance year.

S = Covered entity's total compliance obligation beginning January 1, 2013 through the current compliance year.
$L_O$ = Quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08.

**Comment 3: Establish a program to monitor California's economic health and market operation**

Market Monitoring

ARB should provide more clarity as to the responsibility and authority of the market monitor. In addition, the role of the market monitor should be transparent to the market.

We understand that ARB is planning to hire an independent market monitor. This is important because market monitoring is essential to help ensure reasonable market behavior and results, and to instill confidence with market participants and other stakeholders. CCEEB recommends that the Independent Market Monitor that ARB selects be established with authority to: (1) review bids prior to the running of any auction; (2) provide analysis of the competitiveness of any auction, preferably on an ex-ante basis (e.g. prior to running the auction); and (3) report findings and concerns to the ARB.

Economic Health Monitoring and Program Review

This regulation impacts a significant portion of California's businesses and consumers. It is imperative that the State monitor leading indicators that reflect the economic health of California. California must be positioned to identify any potential problems that may be inadvertently caused by this regulation, before they cause significant damage to the economy so that any regulatory structural problems can be corrected in a timely manner. CCEEB recommends that the ARB include provisions in the cap-and-trade regulation to:

(1) monitor specific economic indicators, including the following cap-and-trade market elements,:

- the price in the auctions,
- the functioning of secondary markets,
- adequacy of the Allowance Price Containment Reserve,
- detection of market manipulation,
- offset supply,
- evidence of contract shuffling,
- progress towards achieving the 2020 target,
- total cost of the program,
- jobs in manufacturing,
- vacancy rates,
- home sales,
- volume of trade through ports,
- Gross State Product,
- energy prices, and
- other indicators used by the Department of Finance to monitor the health of California's economy;

(2) establish formal reviews of the regulation at least once each compliance period; and

(3) develop and implement a more structured process and approach for evaluating the comparative cost-effectiveness of program measures, as well as the relative cost-effectiveness of those measures vis-à-vis the cap-and-trade program and identify any potential problems.

In a letter to the ARB on May 17, 2007, regarding *Proposed Early Actions to Mitigate Climate Change in California*, CCEEB stated, "that it is important to view the market mechanisms as a continuum that continually examines the economic impact of the program and allows for realistic turnover of capital investments." CCEEB suggested that, "the [ARB] consider recommending additional details surrounding the implementation of the cap-and-trade program in its report so that any market system failure can be properly mitigated with as minimal impact to the California economy as possible. This detail should include identification of the criteria and data that will be needed to determine that there is a working market and the information that needs to be tracked to identify market system failures before they cause significant harm."

**Comment 4: Establish a Trade Exposure Test**

In the absence of national and global GHG policies, all California sectors will be trade exposed. because they are competitively disadvantaged compared to companies that are not subject to any carbon costs. The only way to mitigate this exposure is 100% free allocations. The cost of carbon will be set by the direct measures adopted under AB 32 and the cost of purchasing offsets. In the absence of national and global policies, an auction of allowances will further and unnecessarily increase the costs of the program without providing additional environmental benefits, and perhaps lead to environmental degradation due to leakage of emissions and jobs to states or countries with less stringent environmental policies. The CPUC estimates the electricity-only auction revenues at $50 billion and the LAO estimates revenues around $60 billion, ARB should give consideration of how to most effectively return this money to the economy and benefit all Californians (H&S code §38561(d)). These estimates are likely to go higher as other sectors allocations are determined or the threshold for capped sources is lowered.

CCEEB believes that the 2018 trajectory towards 25~50% reduction in free allowances only three years into the program is a significant step and should not be taken without clear indications that it will not result in leakage. We are concerned that the analysis for trade exposure on a state level is an untested new process with potential for inadvertent oversight and errors and/or the cumulative impact of the other technology forcing complementary measures on California businesses may impact trade exposure in ways not fully accounted.

To remedy this problem, CCEEB recommends that the ARB establish a test to determine if an industry is trade exposed. The ARB's trade exposure test should rely on two criteria: (1) is there a federal program; and (2) is there linkage to broad markets (i.e., larger or equal to the California market)? Allocations should be evaluated every three years in relation to the trade exposure test and other market indicators, such as the reports and recommendations by an independent market monitoring committee.

**Comment 5: Establish a process to refill the Allowance Reserve**

In addition to the primary cost containment mechanism of using offsets, CCEEB supports the allowance reserve as an insurance policy against events such as unexpected market dynamics or

difficulties obtaining ARB-approved offsets. We understand that it is the ARB's intent to fix any problems through the regulatory process or initiate the emergency provision of the Health and Safety Code, Section 38599 if the reserve is depleted. We believe that the regulatory process may be too time consuming to respond in a timely manner and that relying on the emergency trigger creates undue disruptions and is unwarranted when it can be handled in a less draconian manner through preplanning. CCEEB recommends that the ARB include language in the regulation to backfill the reserve before it is completely depleted. The refill mechanism should trigger once the reserve is 50% depleted to bring more supply into the market, recognizing that use of the reserve indicates scarcity in the market and potential liquidity problems.

**Comment 6: Establish a workplan for compliance tools, guidance, and infrastructure**
This regulation places many requirements on regulated entities, which must be able to plan for and comply within a timely manner. Entities will be unable to do so without the necessary enabling compliance tools, guidance, and infrastructure (e.g., compliance instrument tracking systems, a registration process, verified offsets, adequate third party verifiers, IT systems, training, and a dispute resolution process) in place from the onset of this regulation. Recent regulations, such as the AB 32 administrative fee and LCFS, have relied on regulatory enforcement advisories to minimize enforcement exposure when compliance tools and guidance have not been provided in a timely manner. Such delays and uncertainties will unnecessarily increase costs and exposure to violations. CCEEB appreciates the 2013 start date and believes this should help implementation of this regulation.

CCEEB recommends that:

1) The ARB develop a workplan with a clear lists of tools, guidance, policies, trainings, and systems that they must develop, along with completion deadlines for each activity that must be in place for the regulated entities to comply.

2) The ARB include a mechanism that links an entity's compliance deadlines directly to availability of theses compliance tools, allowing for sufficient lead time for facility compliance.

3) The ARB should release a "formal declaration of readiness" at least 60 or 90 days prior to "going live" with their first auction. The CAISO for the Market Redesign and Technology Upgrade underwent this process including system testing by market participants and CAISO ran into some software problems. It is important for ARB to have the same type of formal action to notify market participants. Furthermore, this declaration would be an opportunity for stakeholders to raise to ARB's attention any concerns they may have about the status of the program and readiness to go live.

Additionally, ARB should clearly announce the full schedule from now to the end of this rulemaking in October 2011.

**Comment 7: Adopt offset protocols as quickly as possible, avoid unnecessary limitations**
CCEEB supports the idea of unlimited, high-quality offsets to constrain costs. Essentially all of the studies on the economics of cap-and-trade show that offsets are critical to minimize costs. In

some models (most notably those by USEPA, CRS and CRA), cap-and-trade program cost reductions range from 40% to 80% depending on the model and the restrictions (or lack thereof) on the use of offsets. Limiting offsets increases costs to California businesses and consumers leading to leakage of both jobs and emissions out of the state. Within California and the nation, economic modeling has demonstrated that offset projects will provide near-term opportunities for cost-effective, verifiable GHG reductions that deliver long-term, sustained emissions reduction benefits. Although the ARB adjusted its limits on the use of offsets, from 4% to 8%, this limitation is still unnecessary.

Previous adverse local impact arguments for offset limitations have been eliminated by the ARB Co-Pollutant Emission Assessment that indicates de minimis co-pollutant co-benefits from quantitative and geographic restrictions of offsets. This analysis has dispelled concerns over greater potential increases in co-pollutant emissions as well as assumptions that communities could significantly benefit from additional co-pollutant reductions. Geographic restrictions and quantitative restrictions do not provide co-benefits. Unlimited and geographically unrestricted offsets will NOT cause environmental degradation. As such, there is no reason to limit the use of offsets as a compliance instrument. Abundant offsets will ultimately provide environmental benefits and effectively contain costs, yet this regulation unreasonably restricts their use.

Offset credits should be allowed without any geographical or quantitative restrictions. Restricting offsets generation to projects located within a certain geographic sphere or to those that provide co-benefits is contrary to what should be the fundamental aim of an offsets program, i.e. maximizing GHG reductions at the least cost to mitigate the effects of global warming.

Developing economies are using more energy to fuel their economic growth, thereby increasing global GHG emissions, while at the same time rejecting binding caps on emissions. If we place constraints on finding low-cost offsets in the name of obtaining local co-benefits or creating local "green jobs," California will inhibit the adoption of similar GHG policies in other nations. Moreover, imposing limits on the use of offsets—either quantitative or geographic—simply raises the cost of the emission reduction program to California residents. This increased cost will affect the ability to reach longer term and increasingly challenging emission reduction targets at a cost that is acceptable to society.

Instead, the ARB should move rapidly to begin the process to delegate approval of offsets to third party registries, adopt offset protocols, and recognize other national and international offset programs, while establishing a process early for developing projects in California. This will ensure that local benefits are captured while still leading the developing world towards a low-carbon future. In addition, the restriction on carrying over unused portions of an entity's offset limit into subsequent compliance periods should be removed.

CCEEB recommends that the ARB begin the process to delegate approval of offsets to third party registries and adopt new protocols rapidly to ensure that adequate supply is available in the first compliance period. Additional supply options should include:

a) Use of five additional Climate Action Reserve Protocols;
b) Use of offsets from Western Climate Initiative Partners;
c) Support the development of Pilot REDD Projects;

d) Allow use of Climate Action Reserve Landfill Credits generated before 2012;
e) Approve protocols developed by California air districts, as appropriate.

Offset Reversals

CCEEB is concerned that the risks associated with invalidation of approved offset credits will inhibit the development of the offset market. We appreciate the changes that ARB has made in establishing criteria and limitations to the invalidation process. However more must be done. CCEEB supports the IETA proposal and recommends that ARB should expand the Forest Buffer Account concept to create a compliance buffer account for all offset credits and allow the invalidation period to expire upon ARB's acceptance of the second verification.

**Comment 8: Revise enforcement penalties and establish a dispute resolution process**

Mandatory Reporting

The recently proposed enforcement provisions that consider failure to report every ton of excess emissions and submittal of inaccurate information as separate violations would potentially result in unwarranted and excessive penalties, relative to other criteria pollutant penalties. GHG emissions levels are a thousand times higher than criteria pollutant levels. The mandatory reporting rule is complex, and the volume of data collected is enormous; the sheer size and complexity significantly increases the potential for unintended reporting errors.

Dispute Resolution Process

Currently, the ARB Executive Officer and staff make significant enforcement decisions that are not subject to review. The only appeal process available to a regulated party is to sue the State. This requires significant resources and time that may not be reasonably available to the majority of regulated parties. Moreover, lawsuits frequently do not solve problems. In other situations, the ARB might wish to extend a compliance deadline, but there is no formal or public process to approve such an extension.

The AB 32 program requires that the ARB create a brand new, far reaching, and complex program under very tight statutory deadlines. The statutory deadlines are driving rapid development of regulations, which may have unintended consequences and unknowable problems at every individual facility. Since every facility is different these types of problems, which bridge both energy and air pollution issues, require a dispute resolution process to allow for considerations and solutions outside of the traditional enforcement process and litigation.

CCEEB recommends that the ARB establish an independent administrative dispute resolution process that will provide a fair, efficient, and predictable process available to all individual facilities. This will reduce the money and time spent defending lawsuits and in informal negotiations. It will also increase the transparency of the appeal process as all interested stakeholders can weigh-in during a hearing. The proposed dispute resolution process could be modeled after existing air pollution hearing processes for disputes at individual facilities that occur under local air district rules.

**Comment 9: Expedite linking to other GHG cap-and-trade programs**

California businesses will need access to a pool of verifiable offsets and allowances starting in 2012. Developing a new ARB offset review and approval process to review credits and

allowances for use in California that have already been reviewed in the EU is costly and unnecessary. The EU carbon markets produce robust offsets and allowances. Linking to the EU would ensure a supply of high-quality and tradable market instruments for California's carbon market.

Relying on a limited market CO2 cap-and-trade program to reduce emissions in California without linkage to a broad liquid market loses the economic efficiency of the market-based approach and undermines the policy goals.

CCEEB recommends expediting linkage and making it a priority to be completed. If linkage is not possible, then CCEEB believes that other cost-containments measures must be adopted to soften the economic impact of this regulation and limit leakage of jobs and emissions.

**Comment 10: Clearly state the intent of ARB to seek equivalency to EPA's emerging GHG program or other alternatives to ensure California's businesses are not subject to duplicative Federal and State GHG regulations**

CCEEB is concerned that California businesses will be subject to duplicative GHG regulations from the state and federal government. Although it is unlikely that a federal cap-and-trade regulation will be forthcoming in the near term, EPA has been working to develop GHG regulations such as GHG BACT and NSPS. Compliance with duplicative regulations will be costly and will not result in material benefit toward our GHG reduction goals.

CCEEB recommends that ARB clearly state its intent to not subject California's businesses to duplicative GHG regulations.

**Other Specific Recommendations**

The ARB should defer to the CPUC on the appropriate use of consignment auction revenues

The CPUC has exclusive jurisdiction over Investor-Owned Utility ratemaking and is solely responsible for determining how consignment auction proceeds are distributed to utility customers. Current rates and programs already send a strong conservation signal to customers, and an additional carbon cap-and-trade price signal will unfairly penalize a subset of customers who already see incentives to use less energy.

Out of state Renewable Energy Credits should count as zero GHGs;

CCEEB recommends that ARB provide that resources eligible under the Renewable Electricity Standard ("RES") or Renewable Portfolio Standard ("RPS") are credited as zero GHG to ensure that the RES, RPS, cap-and-trade, and Mandatory Reporting Regulations are consistent and achieve GHG reductions in the most cost-effective manner.

CCEEB recommends the obligation to replace offset tons due to reversals should be treated differently depending on the cause of the reversal. For intentional or fraud-related reversals, such as when a forest offset developer decides to harvest the forest, then the developer who is making the business decision should be responsible for replacing the lost carbon sequestration. For unintentional reversals due to causes such as forest loss from fire, pests, disease, or bankruptcy, the lost carbon should be replaced from a reserve held back when credits are issued

for such projects. CCEEB recommends that the ARB provide for the establishment of such a reserve by itself or by another agency.

ARB Deadlines

Deadlines should be established for ARB decision-making processes to provide entities with a degree of certainty. Decision making processes include:

> section 95830(e) [pg A-58]
> Completion of Registration. Registration is completed when the Executive Officer approves the registration and informs the entity and the accounts administrator of the approval. *The executive officer shall approve or deny a registration application within 30 days of submittal.*
>
> section95912(k) [pg A-141]
> (l)(k) Following the auction, the Executive Officer will:
> (1) Certify whether the auction was operated pursuant to this article *within 5 days*;
> (2) After certification, *immediately* direct the auction operator financial services administrator to:
> (A) Collect payments from winning bidders;
> (B) Declare forfeit and retain the bid guarantee mechanism submitted pursuant to section 95912(ih) for any bidder that fails to tender full payment when due for allowances awarded at auction, in an amount equal to any unpaid balance.;
> (C) Deposit auction proceeds from sales of ARB allowances sold at auction into the Air Pollution Control Fund.; and
> (D) Distribute auction proceeds to entities that consigned allowances for auction pursuant to section 95910(d).;
> (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.

Include a process to add to the list of fuels without a compliance obligation

> § 95852.2. [pg A-89] Emissions from the following source categories and fuel types count toward applicable reporting thresholds but do not count toward a covered entity's compliance obligation set forth in this article unless those emissions are reported as Other Biomass CO2 under MRR. *The Executive Officer may add additional source categories meeting similar criteria.* Emissions without a compliance obligation include:

Re-insert into § 95852.2 the language the provides for existing waste-to-energy facilities to receive a full exclusion from compliance obligations

The 15-day modification discussion draft contained in § 95852.2, language that excluded from compliance obligations, "*Direct combustion of municipal solid waste with energy recovery in an existing permitted facility.*" CCEEB appreciated the insertion of this language, however, when the draft 15-day modification language was released, this exclusion was removed.

CCEEB request that the language contained in the discussion draft be re-inserted in § 95852.2. The owner/operators of these facilities have previously demonstrated to the satisfaction of CARB staff that the existing waste-to-energy facilities cannot spread the cost of allowances to a consumer base; haulers would simply take the post-recycled waste to the cheaper option, landfills, resulting in much higher levels of GHG. The facilities would have no choice but to absorb the cost of the allowances creating a huge financial burden for already financially strapped local governments.

It is not clear why CARB staff removed this language. Re-inserting the language is consistent with the resolution adopted at the 12/16/10 Board meeting requiring, "*the Board determine and report back to the Board a mechanism to satisfy all the risk of emissions leakage and compliance obligations of existing municipal waste-to-energy facilities in the proposed cap-and-trade program.*"

Section 95820 (c) [Pg A-55] There should be criteria on cause to terminate or limit authorization to emit or the sentence should be deleted.

(c) Each compliance instrument issued by the Executive Officer represents a limited authorization to emit up to one metric ton in CO2e 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.

Minimize unnecessary bureaucratic requirements

- Investment grade credit-rating should be permitted in lieu of bid guarantees. Section 95912(h) & section 95913(e)(2) [pg A-140 & A-144](
- Disclosure of unnecessary information will place significant unnecessary reporting burden (i.e. Time of transaction, time of settlement, price) and should be deleted – Section 95921 (c)(4&5) [pg A-162]

Enforcement

**§ 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 90 days 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 covered entity's compliance obligation for untimely surrender is calculated as four times the entity's excess emissions;

~~(3) 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; and~~

(43) 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)(4), 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)(43) 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 allowances used to fulfill the untimely surrender obligation in the following manner:

(A) Three fourths to the Auction Holding Account; and

(B) One fourth 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.

**§ 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 the entity's compliance obligation, then the following shall apply:

(a) If $EM_d - CO \leq 0.05CO$, then the entity is not required to take any further action.

~~(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, 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~~EMd - CO > 0.05CO, then upon the receipt of notice from the Executive Officer ~~to be under-reported for the sum of those emissions is more than five percent, then~~ the entity must surrender additional compliance instruments for the previous compliance period in the following amount:

$$Cla = EMd - CO - (CO * 0.05)$$

~~Where:~~

(c) Not later than six months from the date the entity receives notification from the Executive Officer that the entity must surrender additional compliance instruments due to under-reported emissions for a previous compliance period, the entity shall surrender the quantity of compliance instruments determined in accordance with subsection (b). The provisions of section 95857 shall not apply and the entity shall not be subject to penalties under this Article if the additional compliance instruments are surrendered during the six month period. The entity may use compliance instruments from subsequent compliance periods to meet this surrender obligation.

(d) For the purposes of this section:

'Cla' is the number of additional compliance instruments that must be surrendered to ARB ~~to cover under-reported emissions~~in accordance with this section;

'CO' is the ~~emissions number used to determine the~~quantity of compliance ~~obligation~~instruments surrendered pursuant to section 95856 ~~for any~~to meet the entity's compliance obligation for the previous compliance period; and

'EMd' is the ~~number of the~~entity's corrected total emissions for the previous compliance period, determined by the Executive Officer ~~for the sum of the emissions sources subject to a compliance obligation;~~.

~~(e) 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 as determined pursuant to this section. The provisions of section 95857 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.~~

(e) Any determination that an entity under-reported its emissions for a previous compliance period shall be made by the Executive Officer no later than five years from the deadline for submission to the Executive Officer of the verified emissions data report for that compliance year.

**§ 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), and the degree of culpability for the violation.

**§ 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 1000 required compliance ~~instrument~~instruments that ~~has~~have not been surrendered, or otherwise obtained by the Executive Officer under 95857(c).
~~(b) There is a separate violation for each day or portion thereof after the end of the Untimely Surrender Period that each required compliance instrument has not been surrendered.~~
(~~c~~b) 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.
(~~d~~c) The violations stated in section 96014(~~c~~b) are in addition to an entity's obligations under other provisions of this article requiring submissions to ARB to be true, accurate and complete. A submission may be considered a violation of section 96014(b) or of the obligations referenced in this section 96014(c), but not both.

**Drafting errors and clarifications**
Sector based offsets should not be limited to US, Canada & Mexico Section 95991 [pg276]
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~~

Conclusion

CCEEB would like to thank ARB for considering its comments on the proposed changes to the cap-and-trade regulation. CCEEB is a unique organization that represents a broad cross-section of the covered entities in California. As such, CCEEB is in a position to represent diverse industry sectors and would like to assist ARB in developing these ideas further. CCEEB looks forward to playing an integral role in the future development and operability of California's Cap-and-Trade Program. If there are any questions please call Robert Lucas at (916) 444-7337.

Sincerely,

Robert W. Lucas
Climate Change Project Manager

Gerald D. Secundy
President

cc: Matthew Rodriguez, Secretary, California Environmental Protection Agency
James Goldstene, Executive Officer, California Air Resources Board
Ellen Peter, Chief Counsel, California Air Resources Board
Bob Fletcher, Deputy Executive Officer, California Air Resources Board
Richard Corey, Chief, California Air Resources Board
Edie Chang, Assistant Division Chief, California Air Resources Board
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