**Cap-and-Trade Regulation Amendment Request**

NOTE: Please use this form to highlight a request to amend a specific section (or related sections) of the Cap-and-Trade Regulation. Submission of this form aids staff in tracking requests and **does not mean** staff will ultimately propose an amendment in the version of the amendments noticed pursuant to the Administrative Procedure Act. This form is intended only as an additional tool ARB will use to evaluate requested changes to the regulation. Amendment requests may be for reasons of policy, clarity, or errors, etc. Staff may contact you if we need more information. Additionally, submission of this form will be a public record, and will be included in the ultimate rulemaking file related to these amendments, but may not be specifically answered in the Final Statement of Reasons. (Government Code section 11346.9(a)(3).) Please complete this form (with as much detail as possible, though it need not be formal regulatory language) and mail or email (preferred) to:

David Allgood ([dallgood@arb.ca.gov](mailto:dallgood@arb.ca.gov))

Stationary Source Division

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**General Information**

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| August 2, 2013 |

Date:

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| Charles A. White |

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| Waste Management |

Submitted by: Affiliation:

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**Section**

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| 95802, 95894 |

Primary section(s):

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| 95892 |

Related section(s):

**Amendment Request**

Type of amendment: ☒Policy ☒Error ☐Clarity

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| As explained in Waste Management’s August 2, 2013 letter to Dr. Steve Cliff, Waste Management requests that the ARB make the following changes to the July 18, 2013 Discussion Draft Amendments to the Cap-and-trade Regulation:   1. The ARB Should Clarify Section 95894 And The Associated Definitions To Provide Transitional Assistance To Non-Standard Qualifying Facility Contracts. 2. The Regulatory Amendments Should Provide Legacy Contracts With Greater Ability To Renegotiate Their Contracts By Removing Freely Allocated Allowances From A Counterparty That Receives Free Allowances For The Electricity From The Facility 3. The ARB Should Revise Section 95894 To Allocate Allowances To Legacy Contracts Based On Verified Emissions 4. The ARB Should Revise Section 95894 To Allocate Allowances Through The Full Duration Of A Legacy Contract. |

Reason for amendment:

Additional information:

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| *Section 95802(a) should be revised as follows:*  **(YYY) “Non-Standard QF Contract” means a contract that does not include standard pricing based on short-run avoided costs, as set and adjusted from time to time by the California Public Utilities Commission (CPUC).**  **(YYY) “Legacy PPA Amendment” means the pro forma standard amendment that was offered, under the Combined Heat and Power Program Settlement adopted by the California Public Utilities Commission (CPUC) by Decision number D-10-12-035, to combined heat and power qualifying facility (QF) generators that had existing QF contracts.**  (YYY) “Legacy Contract” means a written contract or tolling agreement governing the sale of electricity and/or qualified thermal energy from an electric generating facility or cogeneration facility at a price, determined by either a fixed price or price formula, that does not allow for recovery of the costs associated with compliance with this regulation. For purposes of this regulation, legacy contracts exclude contracts with a privately owned utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU) for contracts already addressed under the Combined Heat and Power Program Settlement pursuant to CPUC Decision number D-10-12-035, **but does not exclude generators with Non-Standard QF Contracts that did not execute a Legacy PPA Amendment. Legacy Contract** only include**s** contracts originally executed prior to September 1, 2006, that have remained in effect and have not been amended since September 1, 2006 to change the terms governing the California greenhouse gas emissions responsibility, price or amount of electricity or Qualified Thermal Output sold, or the expiration date. A legacy contract does not apply to opt-in covered entities.  (YYY) “Legacy Contract Emissions” means the emissions calculated, based on a positive or qualified positive emissions data verification statement issued pursuant to MRR, by the Legacy Contract Generator, that are a result of either electricity and/or Qualified Thermal Output sold to a Legacy Contract Counterparty, and calculated pursuant to section 95894(c) of this regulation. **~~Legacy contract emissions do not include emissions that are included in the calculation of cost under the CPUC’s Qualifying Facilities and Combined Heat and Power Program Settlement pursuant to CPUC Decision number D-10-12-035~~**.  *Section 95894(c) Should be revised as follows:*  The Executive Officer shall calculate the number of California GHG Allowances directly allocated due to the emissions under a legacy contract from stand-alone electricity generating unit using the following formula **in subsection (1) for years 2013 and 2014 and the formula in subsection (2) for any remaining years in which the Legacy Contract remains in effect:**   1. Using **~~2012~~** **2013** reported and verified legacy contract emissions for 2013 and 2014 from a stand-alone generation facility:     Where  “𝐴2015” is the number of vintage 2015 allowances directly allocated to the Legacy Contract Generator based on calendar year**s ~~2012~~ 2013 and 2014** Legacy Contract Emissions reported and verified pursuant to MRR;  “EEm lc,” is the emissions reported, in MTCO2e, associated with electricity sold under the legacy contract in **~~2012~~ 2013 and 2014**; and  “ca,t” is the adjustment factor for budget year “t”, where as specified in Table 9-2.  “a” to account for cap decline as specified in Table 9-2.   1. **Using year “t” reported and verified legacy contract emissions for “t” equaling emissions from a Legacy Contract during any year after 2014 that the Legacy Contract remains in effect:**   **A(t) = (EEm(t) \* Ca (t))**  **Where**  **“𝐴(t)” is the number of year (t) allowances directly allocated to the Legacy Contract Generator based on calendar year (t) Legacy Contract Emissions reported and verified pursuant to the MRR;**  **“EEm (t)” are the emissions reported, in MTCO2e, associated with electricity sold under the Legacy Contract in year (t); and**  **“ca,t” is the adjustment factor for budget year “t”, where “Ca” is the Cap Adjustment Factor for All Other Direct Allocation as specified in Table 9-2.**  *Section 95892 should be amended to add a new Subsection 95892(a)(1):*  Adjustment to Allowance Allocation of a Legacy Contract Counterparty. The Executive Officer shall subtract the allocation adjustment from the number of California GHG Allowances directly allocated to Legacy Contract Counterparty pursuant to 95892:  Where:  “Adj2015” is the allocation adjustment for budget year 2015. This number shall be subtracted from the number of California GHG allowances directly allocated to a legacy contract counterparty for budget year 2015.  “GHGLC” are the Legacy Contract Emissions calculated pursuant to data reported to MRR under the legacy contract for 2012 emissions; and |