

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:

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P.O. Box 2815
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General Information

Date: August 2, 2013

Submitted by: Claire Halbrook

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Section

Primary section(s): 95802

Related section(s):

Amendment Request

Type of amendment: ☒ Policy ☐ Error ☐ Clarity

Reason for amendment:

The definition of legacy contract should exclude contracts with respect to which the seller agreed to assume responsibility for GHG costs.

Additional information:

“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 **was originally executed prior to August 15, 2005**~~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, and only include contracts that have remained in effect and have not been amended since **execution** 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. **For purposes of this regulation, Legacy Contracts also exclude contracts as to which a court or arbitrator(s) in a dispute resolution proceeding between the parties to the agreement finds that, at the time the agreement was executed, the seller understood that if there was a future change in the law that imposed a cost on the facility because of its greenhouse gas emissions, the seller would be responsible for paying that cost.**