

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-0501-07	REGULATORY ACTION NUMBER 2013-0510-035	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED APPROVED
IN THE OFFICE OF
2013 JUN 24 PM 2:17
John Boyan
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
Air Resources Board

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Cap and Trade Linkage 2012	TITLE(S) 17	FIRST SECTION AFFECTED 95802	2. REQUESTED PUBLICATION DATE May 11, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Amy J. Whiting	TELEPHONE NUMBER 916-322-6533	FAX NUMBER (Optional) 916-322-3928
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2012 192	PUBLICATION DATE 05-11-2012	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Cap-and-Trade Reg. to Link the CA and Quebec Cap-and-Trade Programs	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 95943 per agency request
AMEND 95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022
REPEAL
TITLE(S) 17

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
June 11, 2012 - June 27, 2012; January 8, 2013 - January 23, 2013; March 22, 2013 - April 6, 2013

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> 5100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Amy Whiting	TELEPHONE NUMBER 916-322-6533	FAX NUMBER (Optional) 916-322-3928	E-MAIL ADDRESS (Optional) awhiting@arb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Ellen M. Peter</i>	DATE 05/10/2013
TYPED NAME AND TITLE OF SIGNATORY Ellen M. Peter, Chief Counsel - For Richard W. Corey, Executive Officer	per agency request

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ENDORSED APPROVED

JUN 24 2013

Office of Administrative Law

FINAL REGULATION ORDER

Amend sections 95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022, title 17, California Code of Regulations to read as follows:

Note: The original regulatory text is shown in plain type. The amendments are shown in underline and ~~strikethrough~~ to indicate additions and deletions, respectively. All other portions of the Cap and Trade regulation remain unchanged and are indicated by "****" for reference.

Article 5. California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

§ 95802. Definitions.

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

- (17) "Auction" means the process of selling California Greenhouse Gas Allowances, along with allowances from External Greenhouse Gas Emissions Trading Systems with which California has linked its Cap-and-Trade Program pursuant to subarticle 12, by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

- (53) "Compliance Instrument" means an allowance or offset, issued by ARB or by an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to

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subarticle 12, ARB offset credit or sector-based offset credit. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO₂e.

- (62) "Covered Entity" means an entity within California that has one or more of the processes or operations and has a compliance obligation as specified in subarticle 7 of this regulation; and that has emitted, produced, imported, manufactured, or delivered in 2009~~8~~ or any subsequent year more than the applicable threshold level specified in section 95812(a) of this rule.

- (131) "Hold" in the context of a compliance instrument, is to have the serial number assigned to that instrument registered into an account assigned to an entity that is registered into the California Cap-and-Trade Program or an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, or an account under the control of the Executive Officer.

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

Subarticle 5. Registration and Accounts

§ 95830. Registration with ARB.

- (h) Linking. When California links to an External GHG ETS, each entity must register into a jurisdiction based on the physical location information the entity must provide pursuant to section 95830(c)(1)(A).
- (1) An entity located in California or in a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 must register with the jurisdiction in which they are located.
 - (2) An entity located in the United States may only register with California to participate in its Cap-and-Trade Program.
 - (3) California will recognize the registration of an entity that registers into an External GHG ETS to which California has linked pursuant to subarticle 12 and allow that entity to participate in the California Cap-and-Trade Program.

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

§ 95833. Disclosure of Corporate Associations.

- (f) Consolidation of Accounts for Corporate Associations.

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

- (4) If an entity registered in the California Cap-and-Trade Program has a direct corporate association with an entity(ies) registered in an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, the entity registered in the California Cap-and-Trade Program must opt out of consolidation with the entity(ies) registered in an External Greenhouse Gas Emissions Trading System and meet all the requirements of section 95833(f)(3) except for the October 1, 2012 deadline.
- (45) To consolidate the accounts for a corporate association the Executive Officer shall instruct the accounts administrator to:

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

Subarticle 10. Auction and Sale of California Greenhouse Gas Allowances

§ 95910. Auction of California GHG Allowances.

- (a) Timing of the Allowance Auctions.
- (1) In 2012, an auction will be held on November 14.
 - (2) Beginning in 2013, auctions shall be conducted on the twelfth business day in California or a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 of the second month of each calendar quarter.

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

§ 95911. Format for Auction of California GHG Allowances.

(a) Auction Bidding Format.

- (5) The allowances for auction in section 95911(a)(3) will also include allowances from a jurisdiction operating an External GHG ETS system to which California has linked pursuant to subarticle 12.

(c) Method for Setting the Auction Reserve Price.

- (3) The auction administrator will calculate the Auction Reserve Price using the following procedure:

- (C) The auction administrator shall set the exchange rate as the most recently available noon daily buying rate for U.S. and Canadian dollars as published by the Bank of Canada, and shall announce the exchange rate prior to the opening of the auction window.
- (D) The Auction Reserve Price in Canadian dollars shall be the Canadian dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus adjusted in the manner provided for in section 83.3 of the Financial Administration Act (R.S.Q., c. A-6.001) of Quebec.
- (E) The auction administrator will use the announced exchange rate to convert to a common currency the Auction Reserve Prices previously calculated separately in U.S. and Canadian dollars. The auction administrator will set the Auction Reserve Price equal to the higher of the two values.

- (5) The Auction Reserve Price in section 95911(c)(2) will be announced on the first day in December that is a business day in California and in any jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 and the Reserve Price shall also be stated in the currency (or currencies) used in an External GHG ETS to which California has linked pursuant to subarticle 12.

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

§ 95912. Auction Administration and Participant Application.

- (c) Auction Notification. At least 60 days prior to each auction, the auction administrator shall publish the following information:

- (8) If California has linked to a jurisdiction operating an External GHG ETS pursuant to subarticle 12, the number of allowances in section 95912(c)(6) will also include the allowances made available by the linked jurisdiction.

- (i) Auction participants must provide a bid guarantee to the financial services administrator at least 12 days prior to the auction.
- (1) The bid guarantee must be in one or a combination of the following forms:
- (A) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check;
 - (B) An irrevocable letter of credit issued by a financial institution with a United States banking license; or
 - (C) A bond issued by a financial institution with a United States banking license.

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- (D) The bid guarantee submitted by any entity registered with California will be in U.S. dollars.
- (E) The bid guarantee will be in the currency used by the jurisdiction with which the entity has registered.

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

§ 95913. Sale of Allowances from the Allowance Price Containment Reserve.

- (d) Timing of Reserve Sales.

- (4) The subsequent Reserve sales in section 95913((d)(2), shall be conducted on the first day six weeks after each quarterly allowances auction scheduled pursuant to section 95910 that is also a business day in California and any linked jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12.

- (i) Entities registered in an External GHG ETS to which California has linked pursuant to subarticle 12 are not eligible to purchase from the Reserve.

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

Subarticle 11. Trading and Banking

§ 95920. Trading.

- (g) The holding limit in section 95920(a) shall include holdings of any allowances issued by a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12.
- (h) The "Annual Allowance Budget" in section 95920(d) is calculated as the sum for the current budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12. The "Annual Allowance Budget" in section 95920(e) is calculated as the sum for a budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12.

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

§ 95921. Conduct of Trade.

- (b) Information Requirements for Transfer Requests. Parties to the transfer request agree to provide documentation about the transaction for which the transfer request was submitted upon the request of the Executive Officer. The following information must be reported to the accounts administrator as part of a transfer request before any transfer of allowances can be recorded on the tracking system:

- (7) If California links to Canadian jurisdictions pursuant to subarticle 12, the price of the compliance instrument may be reported in Canadian dollars in section 95921(b)(6).

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

Subarticle 12. Linkage to External Greenhouse Gas Emissions Trading Systems

§ 95942. Approval-Interchange of Compliance Instruments from with Linked External Greenhouse Gas Emissions Trading SystemsGHG ETS.

- (d) Once a linkage is approved, a compliance instrument issued by California may be used to meet a compliance obligation within the approved External GHG ETS.
- (e) Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in California.
- (f) The administrator of the approved External GHG ETS must agree to inform the Executive Officer of any California compliance instruments that the External GHG ETS accepts for compliance.
- (g) The Executive Officer will agree to inform the appropriate official in the approved External GHG ETS of any compliance instrument accepted by California for compliance.

- (h) The Executive Officer will register into the Retirement Account compliance instruments issued by California that are used for compliance within the approved External GHG ETS, along with information identifying the External GHG ETS actually retiring the compliance instruments.

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

§ 95943. Reserved for Linkage Linked External GHG ETS. [Repealed]

Covered or opt-in entities may use compliance instruments issued by the following programs to meet their compliance obligation under this article:

- (a) Government of Quebec (effective January 1, 2014).

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

Subarticle 15. Enforcement and Penalties

§ 96010. Jurisdiction.

- (b) The purchase or holding of a compliance instrument issued by ARB;
unless the entity holding the compliance instrument is registered in an
approved External GHG ETS pursuant to subarticle 12;

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

Subarticle 16. Other Provisions

§ 96022. Jurisdiction of California.

Any party that participates in the Cap-and-Trade Program is subject to the jurisdiction of the State of California unless the party is subject to the jurisdiction of an External GHG ETS to which California has linked its Cap-and-Trade Program pursuant to section 95830(h) and subarticle 12.

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