State of California

AIR RESOURCES BOARD

PROPOSED AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

Staff Report: Initial Statement of Reasons

Release Date: September 4, 2013

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CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CALIFORNIA CAP-AND-TRADE PROGRAM

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EXECUTIVE SUMMARY

The California Global Warming Solutions Act of 2006, (AB 32, Nuñez, Chapter 488, Statutes of 2006) as codified at California Health and Safety Code sections 38500 *et seq.*, (AB 32) requires California to reduce greenhouse gas emissions (GHG) to 1990 levels by 2020 and to develop a comprehensive strategy to reduce dependence on fossil fuels, stimulate investment in clean and efficient technologies, and improve air quality and public health. AB 32 also requires the Air Resources Board (ARB or Board) to work with other states and nations to identify and facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

The Cap-and-Trade Program (Program) is a key element of California's GHG reduction strategy. It establishes a declining limit on 85 percent of statewide GHG emissions, and creates a powerful economic incentive for major investment in cleaner, more advanced technologies. The Cap-and-Trade Program also gives businesses the flexibility to choose the lowest-cost approach to reducing emissions.

This report presents the staff proposal to amend the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation or Regulation) to provide additional transition assistance to covered entities, the adoption of a new offset protocol, additional cost containment mechanisms, new provisions regarding implementation, and oversight of the Regulation.

A. Background

California's Cap-and-Trade Regulations were adopted by ARB in October 2011. The Regulations took effect on January 1, 2012. The first auction of emission allowances occurred in November 2012, and the first compliance period began on January 1, 2013.

As previously noted, the Program establishes a hard declining cap on approximately 85 percent of total statewide GHG emissions. ARB will issue allowances equal to the total amount of permissible emissions over a given compliance period. One allowance equals one metric ton of GHGs. As the cap declines over time, fewer allowances will be issued, ensuring that emission reductions occur.

Under the Program, companies do not have individual or facility-specific reduction requirements. Rather, all companies covered by the Regulation are required to surrender allowances in an amount equal to their total GHG emissions during each compliance period. Companies can also meet a portion of their compliance

requirements by surrendering offset credits, which are rigorously verified emission reductions that occur from projects outside the scope of the Cap-and-Trade program.

The Program gives companies the flexibility to trade allowances with others or take steps to cost-effectively reduce emissions at their own facilities. Companies that emit more will need to turn in more allowances or offset credits. Companies that can cut their emissions will need to surrender fewer allowances. As the cap declines, aggregate emissions must be reduced.

California‘s cap-and-trade program is purposely designed to leverage the power of the market in pursuit of an environmental goal. It opens the door for major investment in emissions-reducing technologies, and sends a clear economic signal that these investments will be rewarded.

The Program is designed with an eye toward inclusion within a larger regional trading program. Since 2007, California has been a partner in the Western Climate Initiative, an effort of US states and Canadian Provinces (including Québec) working together to implement policies to combat climate change, including through the development of a regional cap-and-trade system. The Program works with WCI on implementation issues to ensure rigorous and compatible systems are in place.

B. Previous Amendments to the Cap-and-Trade Regulation (2012)

In 2012, ARB proposed two sets of amendments to the Cap-and-Trade Regulation. The first set of amendments, related to program implementation, was approved by the Board in June 2012. These amendments took effect in September 2012. The second set of amendments, related to jurisdictional linkage with Québec, was approved by the Board in April 2013. These amendments will take effect in October 2013 and specify a January 1, 2014 start date for the linked California and Québec Cap-and-Trade Programs.

C. Proposed Amendments to the Cap-and-Trade Regulation

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. The section below provides a brief list of the regulatory amendments staff is proposing.

Staff Proposal

The staff proposal is to amend the California Cap-and-Trade Regulation to provide additional details to clarify implementation, address stakeholder concerns on cost containment, extend the transition assistance for covered entities in the program and

enhance ARB's ability to oversee and implement the Regulation. Specifically, the proposed amendments would:

- Provide allowance allocation for additional sectors and modify allocation for existing sectors based on new information;
- Implement additional cost containment mechanisms;
- Define new covered entities and exempt sectors where direct regulation best meets the goals of AB 32;
- Exempt certain covered entities' emissions from incurring a compliance obligation under the program for the first compliance period;
- Provide additional clarity on the prohibition against resource shuffling in the electricity sector
- Provide for better coordination of the Regulation with other State renewable electricity requirements;
- Include a new offset protocol and clarify and add processes for implementation of the compliance offset program;
- Provide modifications to market rules for auctions and transfers in the tracking system; and
- Include additional provisions to enhance market security such as requiring submission of information on voluntarily associated entities that may have a relationship with covered or opt-in entities.

Staff Recommendation

Staff recommends that the Board adopt the proposed Regulation amendments. Climate change is a global problem that requires action by states, provinces, and nations. The proposed regulatory amendments allow for additional transition assistance to covered entities, add a new offset protocol, cost containment mechanisms, and enhance ARB's ability to implement and oversee the Regulation. In doing so, the amendments to the Program will enable the program to run smoothly and reduce GHG emissions while minimizing leakage and providing transitional assistance that can enable our economy to benefit from investment in clean energy technologies.

I. BACKGROUND AND INTRODUCTION

This Staff Report presents ARB staff's rationale to amend the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation) to include implementation changes, board direction, and additional cost containment mechanisms.

This introduction describes the structure of the Staff Report and provides a discussion of the public problem that the proposed amendments address, background information on California's Climate Change Scoping Plan, similar background information regarding the Regulation, the objectives of the proposed amendments, and the public process used to develop the Cap-and-Trade Program.

This Staff Report, including the attached appendices, represents the Initial Statement of Reasons (ISOR) for Proposed Rulemaking required by the California Administrative Procedure Act (Government Code section 11340 et seq).

The Staff Report is divided into the following chapters:

- Chapter I. Background and Introduction – Describes the public problem this Regulation seeks to address, provides background on California's Climate Change Scoping Plan, the Western Climate Initiative, and the public process used to develop the amendments.

- Chapter II. General Summary of the Proposed Amendments – Discussion of the main amendments proposed in the Regulation.

- Chapter III. Environmental Impacts of the Proposed Amendments – Describes potential impacts that the proposed Regulation may have on the environment, including potential impacts from project-specific activities.

- Chapter IV. Economic Impacts of the Proposed Amendments – Describes the economic impacts of the amendments

- Chapter V. Analysis of Alternatives to the Proposed Amendments – Describes alternative amendments that were considered and why the alternatives are less effective.

- Chapter VI. Summary and Rationale for the Proposed Amendments – Summarizes the proposed changes to the regulation and describes the rationale for each specific proposed amendment.

- Chapter VII. References – Provides a list of references used for development of the Staff Report.

- Appendices include the proposed Regulation amendments, the separate Staff Reports prepared for the Mine Methane Capture Offset Protocol, and information on product-based benchmark development, leakage risk classification for additional sectors, market coordination with WCI Partners, and information related to cost containment.

A. Description of the Public Problem

Climate change is one of the most serious environmental threats facing the world today. Global warming is already impacting the Western United States, particularly California, in more severe ways than the rest of the country. The 2010 Climate Action Team (CAT) report (CAT 2010) concluded that climate change will affect virtually every sector of the state's economy and most of our ecosystems. Significant impacts will likely occur even under moderate scenarios of increasing global GHG emissions and associated climate change. Compared to the rest of the country, California is particularly vulnerable to significant resource and economic impacts from at least three effects of climate change. First, as sea level rise and coastal erosion and flooding increase, California (with its long coastline) will experience loss of, and damage to, coastal property, infrastructure, recreational beaches, wildlife habitat, and coastal water supplies. Second, California relies on its snowpack for water supply and storage, and this resource is predicted to decrease substantially this century. Third, California's urban, suburban, and rural areas are highly impacted by wildfires in ways most of the country simply does not face, and climate change will increase the incidence and severity of wildfires and resulting air quality and economic impacts. California's Office of Environmental Health Hazard Assessment recently published a report on indicators of climate change. Many indicators reveal current potential impacts of climate change (OEHHA, 2013)

North America is also experiencing the effects of climate change. Annual mean air temperature in North America has increased over the past forty years (Füssel 2009; Pederson et al. 2010). More frequent and intense extreme weather events have impacted ecosystems, increased coastal damage, and affected a considerable proportion of people (Christensen et al. 2007; Emanuel et al. 2008).

Extreme weather events have also had severe impacts on transportation systems, energy supplies, and other industries in North America. For example, major hurricanes in 2004 and 2005 in the United States affected oil and natural gas platforms and

pipelines, creating billions of dollars in restoration costs for public utilities and transportation networks on the regional and national level (EEI 2005).

More cities are forecast to experience extreme heat waves, increasing sea levels, increased numbers of dangerous storm surges, water shortages, droughts, and increased flooding. In addition, severe heat waves, extreme weather events, and air pollution generated by climate change may cause social disruption and increase human losses and injuries, as well as vector-borne diseases.

It is important that California works to reduce GHG emissions in order to decrease the probability of these impacts.

B. Background

Seven years ago the California Global Warming Solutions Act of 2006 (AB 32, Nuñez, Chapter 488, Statutes of 2006) was enacted to begin addressing this public problem by reducing GHG emissions in a cost-effective manner. AB 32 encouraged ARB to continue to be a global leader in climate change mitigation and to develop integrated and cost-effective regional, national, and international greenhouse gas reduction programs (AB 32, Nuñez, Chapter 488, Statutes of 2006). The amendments proposed in this Regulation further our progress towards this goal by allowing additional transition assistance to covered entities, the addition of a new offset protocol, cost containment, and implementation and oversight the Regulation.

The California Climate Change Scoping Plan laid out a comprehensive program to reduce California‘s greenhouse gas emissions to 1990 levels by 2020, reduce California’s dependence on fossil fuels, stimulate investment in clean and efficient technologies, and improve air quality and public health. The coordinated set of policies in the Scoping Plan employ strategies tailored to specific needs, including market-based compliance mechanisms, performance standards, technology requirements, and voluntary reductions. The Scoping Plan described a conceptual design for a cap-and-trade program that included eventual linkage to other cap-and-trade programs to form a larger regional trading program. ARB is working with other agencies to update the Scoping Plan this year. This update will provide a status report on progress in meeting the 2020 goals and lay the groundwork for meeting California’s long-term climate goals.

C. Cap-and-Trade Regulation

In October 2011, the Board adopted the California Cap-and-Trade Regulation. The cap-and-trade program is a key element of California‘s climate strategy. It creates an aggregate GHG emission limit on the sources responsible for 85 percent of California‘s GHG emissions, establishes a price signal needed to drive long-term investment in

cleaner fuels and more efficient use of energy, and affords those regulated by the program flexibility to seek out and implement the lowest-cost options to reduce emissions. The Cap-and-Trade program was designed to work in concert with other measures, such as standards for cleaner vehicles, low-carbon fuels, renewable electricity, and energy efficiency. The program also complements and supports California's existing efforts to reduce criteria and toxic air pollutants. California's Cap-and-Trade Regulation was developed concurrently with WCI design documents that describe a template for a regional cap-and-trade program.

In 2012, ARB proposed two sets of amendments to the Cap-and-Trade Regulation. The first set of amendments, related to program implementation, was approved by the Board in June 2012. The second set of amendments, related to jurisdictional linkage with Québec, 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 Staff Report presents these amendments to the Regulation, provides staff's rationale for making these changes, and provides additional information on these changes if available.

D. Western Climate Initiative and Linkage with Québec

The WCI was initiated in February 2007 as a collaboration of independent jurisdictions working together to identify, evaluate, and implement policies to tackle climate change at a regional level, including the design and implementation of a market-based mechanism, such as a regional cap-and-trade program. As previously discussed, the Board approved linkage of California's Cap-and-Trade Program with Québec's in April 2013. Prior to voting on linking California and Québec's programs, ARB made a request to the Governor to make the required findings under Senate Bill 1018. The findings under Senate Bill 1018 are required in order to link California's program with any other jurisdictional program. The Governor must find that the other jurisdiction's program is equivalent or stricter than California's program, linking will allow California to enforce AB 32 to the maximum extent feasible under the United States and California Constitutions against an entity located in a linked jurisdiction, the enforceability of the jurisdiction's program is equivalent or stricter than that required under California's program, and linkage would not impose liability on California. The Québec linkage amendments become effective October 1, 2013 with a linked California and Québec Cap-and-Trade program effective on January 1, 2014. To ensure continued harmonization between the programs, ARB has consulted with Québec on the proposed amendments and will continue to coordinate with Québec to ensure a smooth functioning of the linked program consistent with the requirements in SB 1018.

E. Public Process for Development of Amendments

ARB staff developed the proposed amendments through an extensive public process. Many of the proposed amendments were developed in response to Board direction through Resolutions, further discussions with stakeholders, and staff analysis.

Since approval of the 2012 amendments to the Cap-and-Trade Regulation relating to implementation and linkage, three subsequent public Board hearings have addressed ongoing program development. At the September 2012 and October 2012 Board hearings, the Board provided direction to ARB staff in the form of two Board Resolutions. Board Resolution 12-51 and Board Resolution 12-33 directed staff to analyze and, if necessary, propose amendments relating to resource shuffling, legacy contracts, combined heat and power, emissions leakage, allowance allocation to universities, cost containment, product-based benchmarks, and waste-to-energy facilities. In addition, Board Resolutions 11-32 and 12-33 also directed ARB staff to reconsider leakage risk determinations, the allowance allocation approach, and product benchmarks, as necessary. In response to these Board directives, staff began to identify and assess areas of the Regulation that might require amendments. A full list of topics for the proposed regulatory amendments, including those proposed as a result of Board direction through Resolutions, was initially described in the public document *Topics Subject to Potential Regulatory Amendments California Cap-and- Trade Regulation.* This document was posted on the Cap-and-Trade webpage for public review in May 2013 to allow for stakeholder comments and feedback early in the regulatory process.[1]

Starting in late 2012, staff held public workshops focused on specific topics that are the subject of the proposed amendments. Ten public workshops were held in 2012 and 2013 to present the proposed amendments and solicit public and stakeholder feedback. These are identified below:

- July 30, 2012: Cap-and-Trade Technical Workshop to Discuss Emissions Leakage
- August 28, 2012: Cap-and-Trade Technical Workshop to Discuss Refinery Benchmark in the Second Compliance Period
- January 25, 2013: Public Information Sharing in California's Cap-and-Trade Program
- March 28, 2013: Public Workshop on Addition of New Offset Protocols to the California Greenhouse Gas Cap-and-Trade Program

[1] http://www.arb.ca.gov/cc/capandtrade/2013summary.pdf

- May 1, 2013: Public Meeting to Discuss Universities, Legacy Contracts, and 'But for CHP' under the Cap-and-Trade Program
- June 3, 2013: Natural Gas Supplier Workshop
- June 25, 2013: Public Workshop on Compliance Retirement, Market-Related Reporting, and Cost Containment
- July 18, 2013: Public Workshop on Proposed Amendments to the California Cap-and-Trade Program
- August 13, 2013: Public Workshop on Refineries and Related Industries
- August 19, 2013: Public Workshop on Potential New Compliance Offset Protocols

ARB made available documents and presentations to help stakeholders prepare for the discussions. For each workshop, ARB also invited stakeholders to participate and provide comments on the development of proposed amendments. Staff announced all workshops and public meetings using the Cap-and-Trade (capandtrade) list serve. Workshop information and materials are posted on ARB's Cap-and-Trade Workshops and Meetings webpage: http://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm

ARB accepted public comments on the draft proposed regulatory amendments presented at the July 18, 2013 workshop that are the basis for the proposed amendments discussed in this Staff Report until August 9, 2013. ARB received more than 75 written comments on the discussion draft amendments and met regularly with stakeholders to discuss concerns and recommendations. ARB also considered other comments provided to ARB outside of workshops.

As discussed in detail in Chapter II of this Staff Report, Summary of Proposed Action, the proposed amendments provide additional process for clarity in implementation, address stakeholder concerns on cost containment, extend the transition assistance for covered entities in the program and allow ARB to better oversee and implement the Regulation. In a separate rulemaking action, ARB's Mandatory Reporting Regulation is being amended to support some of the proposed changes to the Cap-and-Trade Program.

II. SUMMARY OF PROPOSED ACTION

This chapter summarizes the proposed amendments to the Cap-and-Trade Regulation to include changes resulting from board direction and stakeholder feedback to implement and oversee the Regulation. In general, staff proposed amendments to the Regulation including those related to allocation, covered and exempt emissions, electricity, offset program implementation, market program implementation, and cost containment.

For purposes of allocation, staff proposed allocation for new sectors (i.e., legacy contract generators, universities and district heating facilities, combined heat and power and public service facilities, and natural gas suppliers) and amendments that 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 to make necessary investments in efficiency and emission reducing technologies.

Staff proposed several modifications to covered and exempt emissions to maintain consistency with the Mandatory Reporting Regulation, recognize existing broad-based GHG reduction programs by the military, ensure correct incentives for combined heat and power, and allow time for more information on GHG abatement potential between the various waste treatment streams

Proposed amendments to the electricity sector include modification to resource shuffling provisions, renewable energy credits and imported electricity. The resource shuffling modifications define several activities, colloquially known as “safe harbors”, that will not be considered resource shuffling and remove an attestation requirement that was could potentially negatively impact the western electricity markets.

Staff proposed clarifications and new provisions to help implement the offset program. Staff evaluated and clarified processes related to offset program implementation, including project listing requirements, monitoring and reporting requirements, verification body requirements, conflict of interest requirements, compliance offset credit issuance, timing and deadlines, and roles of air quality districts. Staff also proposed changes to clarify the invalidation requirements to be consistent for all project types.

Proposed amendments for market provisions relate to implementation, auctions and reserve sales, additional information reporting, cost containment, and enhancements to support market oversight. Staff proposed modifications related to the implementation of the auction and trading provisions within the Auction Platform and Compliance Information Tracking Services System (CITSS), and modifications to the current schedule for auctions and reserve sales. Staff proposed modifications to the existing information disclosure requirements and new requirements to ensure rigorous oversight

of the market program and of actions taken in the tracking system. Staff proposed additional information disclosure requirements to help ARB monitor relationships between consultants and market participants. Collectively, amendments relating to market provisions will help ARB to monitor the market and provide public reports for program transparency.

The sections below provide additional summary information for all proposed amendments to the Regulation as well as an expanded discussion of staff's rationale for these changes. These changes are discussed by major topic area: allowance allocation, covered and exempt emissions, electricity, offsets and offset program implementation, market implementation, and cost containment.

A. Allowance Allocation

Allocation is the process ARB uses to distribute the allowances it issues. Allowances can be sold, freely allocated based on specific criteria contained in the R, or some combination of the two. Freely allocated allowances are distributed to covered entities to prevent both production and emissions leakage, provide transitional assistance to a lower-carbon economy, reward early action to reduce emissions, and, in the case of electricity distribution utilities and natural gas suppliers, on behalf of ratepayers. This section describes the changes made to allowance allocation.

1. Allocation to New Entrant Industrial Facilities

Staff proposed amendments to the allocation methodology for new industrial facilities. New entrant facilities are defined either as facilities, whose emissions first exceeded the cap-and-trade threshold in 2012, or facilities that opted into the program for calendar year 2012 or subsequent years. Staff proposed allowing facilities with a NAICS code associated with a leakage risk classification to be eligible for direct allocation.

Staff proposed amending the Regulation to allow new facilities to be eligible for direct allocation if the first three digits of the facility's NAICS code matches the NAICS code of a sector already included in the current leakage analysis. The leakage analysis was initially only performed for industrial sectors with facilities above the cap-and-trade threshold at the time of analysis. Thus, the absence of a leakage risk for new sectors does not reflect their leakage risk classification but a lack of information on the sector at the time the original Regulation was developed. The proposal to match the first three digits of the NAICS code was chosen based on a review of the NAICS codes and the similarity of activities with matching three digits.

New entrants that match the first three digits of included NAICS codes will be allocated under a low leakage risk classification. Staff chose to apply the low leakage risk as a

conservative estimate in initial allocation. Since the true-up allocation corrects the allowance distribution provided to the entity two years prior to true-up, staff will have two years to perform the leakage analysis and update leakage risk classification. The true-up will then correct the historical allocation using the updated leakage risk classification.

New entrant industrial facilities that are eligible to receive direct allocation are allocated under the product-based allocation methodology if the facility performs an activity that has been assigned a product benchmark. New entrant industrial facilities that are eligible to receive direct allocation but do not have a product benchmark are allocated allowances using the energy-based allocation methodology.

Staff proposed modifications to the Regulation to define how to apply the energy-based allocation methodology for new entrants. The proposed methodology uses a three-part approach to allocation that is based on data reported through the Mandatory Reporting Regulation.

For an opt-in covered entity with no historical energy data to report, staff proposed using a *preliminary allocation* based on engineering estimates. The true-up mechanism described in the next section will account for any differences between engineering estimates and actual emissions.

For facilities with historical emissions reported through MRR, Staff proposed using a *transitional allocation* or *stable allocation*, based on the change in that facility's emissions from the previous year. The stability factor compares the previous year's emissions to the average historical emissions of the last two years reported through MRR. If the percent change is greater than 10 percent, the facility will receive a *transitional allocation*. If the percent change is less than 10 percent, the facility will receive a *stable allocation*. If the stability equation calls for emissions data in years that were not reported through MRR, the value of those emissions is zero. Facilities transitioning from the *preliminary allocation* will have a stability factor greater than 10 percent, and therefore will receive *transitional allocation* since historical emissions prior to MRR are considered zero.

For facilities with historical annual energy usage data, Staff proposed a *transitional allocation* that would be based on this data. This allocation methodology will change with changing fuel usage, and thus allocation can be updated to account for changing energy use at the facility level. Staff proposed this methodology because new entrant industrial facilities may take several years to reach full capacity. This allocation includes a true-up to correct the historical allocation based on actual energy usage in the allocation vintage year. This ensures that any discrepancies in the allocation for facilities that were previously under the preliminary allocation methodology are corrected.

For new entrant industrial facilities that have a three-year historical average annual energy usage, staff proposed the *stable allocation* under the energy-based methodology. Unlike the transitional allocation, this methodology is non-updating and will not change with changing energy usage. Staff is willing to work with facilities that do expand after reaching stable allocation in order to develop product benchmarks. This methodology will enable facilities to move to the product-based allocation methodology, which will increase or decrease based on the total amount of annual production.

2. Opt-in Covered Entities

The existing Regulation includes provisions for entities that do not meet the cap-and-trade threshold requirements but choose to voluntarily participate in the Cap-and-Trade Program. These entities are referred to as "opt-in covered entities." Staff included provisions for these entities to be eligible to receive free allowances similar to covered entities.

Staff proposed modifications to change the opt-in date from November 1 to March 1 of the year prior to the opt-in year to allow these facilities to report through MRR to be eligible for allowances in the opt-in year. Staff also proposed allowing opt-in entities to rescind their opt-in application prior to receiving their first allocation. This allows a facility opting in to go through the full reporting and verification to understand its compliance costs and use this information to update its decision to opt into the program.

3. Facility Closure

The possibility exists that the operator of an eligible facility could receive a direct allocation of allowances, but shut down operations prior to a surrender obligation for that compliance period. For example, a facility that was in the program as of 2012 is eligible to receive allocation of vintage 2013 allowances in November 2012. If that facility closes permanently in early in 2013, the facility will have a compliance obligation much lower than the allocation it received.

Thus, staff proposed an additional provision in the Regulation to address entities that have received a direct allocation of allowances but either shut down or cease operations prior to incurring a surrender obligation in that compliance period. Staff proposed that within 30 days of facility closure, the facility operator must inform ARB in writing to either close its CITSS account, or remain in the program as a VAE. Staff proposed two options for these entities: to either fulfill the prorated compliance obligation for that compliance period, or surrender all allowances equivalent to the direct allocation less any allowances that were used to satisfy a surrender obligation. Lastly, staff proposed that any allowances left in the entity's CITSS account after account closure will be consigned to auction on behalf of the entity.

Staff's rationale is that direct allocation is provided for transition assistance and to minimize leakage and assists in meeting a surrender obligation in the compliance period for which the allocation was received. Thus, if a facility receives allocation but has a greatly reduced compliance obligation, staff believes that the direct allocation, minus any allowances used for a surrender obligation, should be returned to the State of California. Any additional allowances beyond the direct allocation that were purchased by the entity and left in a CITSS account upon account closure would be consigned to auction on behalf of the entity.

4. True-Up Allocations

The existing Regulation defines a true-up for product-based allocation and first compliance period refinery allocation. Since free allocation occurs in the calendar year prior to the allowance vintage being distributed, and production reporting occurs in the calendar year after the emissions occur, a discrepancy of two years is created between production and allocation. The allocation distributed is based production data from two years prior, which serves as proxy data; the actual production will not be available to inform allocation calculations until two years subsequent to allocation. The purpose of the true-up is to correct this proxy of production with the actual production data. The true-up calculation does this by taking the difference of the actual production and the proxy production, and multiplying this value by the current benchmark, historical cap adjustment factor, and historical assistance factor. The difference in the two production values represents the true-up term.

Staff proposed modifications to the true-up equation to account for changes in product benchmark, allocation methodology, cap adjustment factor, or assistance factor. This was achieved in the proposal by taking the difference of historical allocation based on the proxy production, and what the actual allocation should have been based on actual production, benchmark, and other factors. Since historical allocation could have been under the energy-based allocation, this expansion of the true-up corrects changes in this methodology as well.

Staff proposed to expand the use of true-up allowances to other allocation methodologies including refinery allocation, new entrant energy-based allocation, university allocation, and legacy contract allocation. The function of the true-up remains the same as with product-based allocation: to correct the historical proxy allocation and base the revised allocation on actual data reported through mandatory reporting.

Staff also proposed to allow limited borrowing by allowing facilities to use up to the amount of true-up allowances provided for compliance obligation two years prior to the vintage of the allowances provided by the true-up. For example, facilities will be able to use up to the amount of 2015 vintage allowances calculated in the true-up for the 2013

compliance obligations. This proposal links the allocation corrected in the true-up to the compliance obligation. In the example above, the 2015 true-up corrects the 2013 allocation. By allowing the 2015 true-up to be used for 2013 compliance obligation, actual production and compliance obligation are linked and provide the most up-to-date incentives in both reducing leakage and meeting a facility's compliance obligation. This true-up allowance amount can only be used for earlier years by the trued-up entity.

5. Natural Gas Suppliers

Natural gas suppliers will be covered starting in the second compliance period throughout the duration of the program. The suppliers will have a compliance obligation for all delivered natural gas minus any delivered to covered entities since covered entities will already have a compliance obligation for the emissions associated with their natural gas combustion. This inclusion will require natural gas suppliers to account for emissions mainly from residential and commercial uses and small industrial facilities.

Staff proposed changes to give the natural gas suppliers free allocations based on the entities' 2011 covered greenhouse gas emissions and the cap decline factor. Of the natural gas consumed in California, nearly all is delivered by investor-owned natural gas utilities – defined in statute as public utility gas corporations. Under the proposed changes, these utilities will be required to consign a portion of their allocated allowances to auction, starting at 25% in 2015 and increasing by 5% per year to 50% in 2020 with an ultimate goal of 100% consignment by 2030.

ARB proposed a long term goal of 100% consignment to encourage efficiency and conservation to reduce emissions in this sector. This transitional approach allows for a price signal to end users while allowing them time to convert to lower carbon alternatives. Natural Gas is used for many basic household tasks such as heating and cooking. Myriad emissions reduction opportunities are available for end users in this sector and experts have estimated that a price signal would result in significant corresponding reductions (Fuller 2010, Alberini 2011, Costello 2006, Navigant 2012). For example, at $15/allowance and full cost pass through, based on elasticities used by the American Gas Association and the California Energy Commission, residential natural gas use, and associated GHG emissions, would decrease by about 1.5%-2% in a given year (Joutz and Trost 2007, Medlock 2013).

During the consignment phase-in, the CPUC may direct the utilities to use the funds from consignment for the benefit of these ratepayers.

Table 1: Percent of allowances distributed to public utility gas corporations to be consigned to auction

Year	2013	2014	2015	2016	2017	2018	2019	2020
Percent Consigned	0%	0%	25%	30%	35%	40%	45%	50%

6. Legacy Contracts

The proposed changes include a limited-term allowance allocation to the operators of generators that have a contract with a third party that was entered into before September 1, 2006 (legacy contract generators). Legacy contract generators are defined as operators of generators under a contract to provide useful thermal output and/or electricity to a counterparty, where the contract does not contain a provision for reasonably recovering costs associated with the generator's Cap-and-Trade compliance obligation. The design of the Program is to encourage emissions reduction through an economic incentive. The legacy contract set-up does not send the appropriate incentive because the cost of compliance cannot be reasonably passed through to the purchaser to encourage reductions. Per Resolution 12-33, the Board directed staff to proposed changes to the Regulation to include appropriate transition assistance for these legacy contracts. While ARB's preferred approach to resolving the situation is for the parties to renegotiate the contracts, ARB recognizes that renegotiation takes time.

This proposal provides for an allowance allocation to the operators of legacy contract generators for two purposes: 1) to correct incentives in the case of those generators with an industrial counterparty by adjusting the counterparty allocation and providing those allowances to the legacy contract generator or 2) to provide transitional assistance.

For industrial covered entities, the purpose of allocation was to minimize leakage associated with GHG costs. Since emissions associated with a legacy contract do not have a GHG costs from the perspective of the steam or electricity purchaser, no allowances should be allocated to the industrial facility for those related emissions. By adjusting the industrial counterparty's allocation and providing that to the generator, this proposal corrects the otherwise missing incentive and also encourages parties to renegotiate. Since the adjustment is equitable across the length of the legacy contract, this proposed approach would allocate to the legacy contract generator for the entire contract length for those with industrial counterparties.

The second purpose for allocation is for transitional assistance and is limited to the first compliance period. This allocation approach maintains the incentive for legacy contract generators to renegotiate while providing appropriate transition assistance for these generators in accordance with Board Resolution 12-33. This approach also appropriately recognizes that many legacy contract generators have already renegotiated with counterparties in such a way that the generator may have received less than full compensation for GHG costs. For ARB to provide a full allocation for the entire contract period for all legacy contract generators for the full length of these private contracts would have the perverse result that those who renegotiated could have received less favorable treatment than those who did not renegotiate.

Furthermore, ARB is not in a position to have full knowledge of the original negotiation and how GHG costs were discussed during these contract negotiations. In comments that ARB received, there was apparent disagreement during the various discussions among parties as to how to consider the inclusion of such costs. It is not appropriate for ARB to interject itself into the interactions between parties in private contract discussions where ARB cannot possibly know what both sides intended when they executed the contract.

Furthermore, allowance allocation for the entire length of a legacy contract for generators whose counterparties are not industrial entities does not accomplish the intended goal of the Program to encouraging efficiency in the use of energy by the entity that makes decisions about how to use that energy. ARB believes that allowance allocation limited to the first compliance period is sufficient to provide transition assistance while simultaneously providing the parties additional time to renegotiate the contracts, consistent with the Program goals.

7. Universities and Public Service Facilities

Board Resolution 12-33 directed staff to develop a methodology to provide transitional assistance to universities that are covered entities. The Board recognized that universities have taken early action to reduce their GHG emissions by investing in energy efficiency, combined heat and power, lower carbon energy sources and renewable energy on their campuses. In addition, universities have provided leadership in the research and development of technologies to reduce emissions and increase efficiency throughout the economy. To recognize these actions and ensure a smooth transition into the Cap-and-Trade Program, staff proposed to provide transition assistance to universities in a manner similar to the approach taken in the industrial sector.

The university allocation methodology would be consistent with ARB's allocation approach for industrial sectors. The approach would use a modified version of the

energy-based calculation methodology used for industrial sectors in which a product-based allocation methodology was not initially feasible. Allocations would decline in proportion to the cap, similar to all other allocation processes in the Regulation.

Based on stakeholder input, staff recognized that there are a few covered entities owned by municipalities that provide thermal energy to municipally-owned buildings that, like universities, have made investments to reduce emissions. Staff propose to extend transition assistance to these public service facilities on the same basis as to universities.

University campuses and public service facilities that receive allowances would be encouraged to use their allocated allowance value in ways that will further reduce GHG emissions. This could include investments in improving campus GHG efficiency, or further research and development in GHG-reducing technologies and strategies. These entities would be required to report to ARB on the use of the allowance value associated with their allocations.

8. Electrical Distribution Utilities

Staff proposed several small changes to Table 9-3, which enumerates allocations to account for new information regarding specific Electrical Distribution Utilities (EDUs). There are minor changes to names and classification of three EDUs in Table 9-3. Two of these changes reflect change in ownership of an EDU, while the third corrects the classification from POU to IOU for one EDU.

Additionally, staff proposed to change the allocation to two EDUs based on new information regarding the cost burden for Cap-and-Trade compliance faced by each EDU's ratepayers. The allocation to Anza Electric Cooperative was increased because imported electricity serving Anza's ratepayers has greater emissions than staff used to calculate their allocation in the original regulation. The allocation to Surprise Valley Electrical Corporation was reduced because emissions from their electricity imports are significantly lower than what was assumed based on previous information. No change was made to the overall allocation to the electricity sector.

9. Refinery Allocation

In the adopted Regulation, the refinery allocation methodology is set to change to the carbon weighted tonne (CWT) approach in the second compliance period. The current benchmarks for this approach are based on the EU ETS technologies and methodologies. Staff is considering several changes to this approach and is analyzing a possible change to a complexity weighted barrel (CWB). The CWB factors would be tailored to California specific needs and would be based on measurements common to

U.S. facilities, eliminating the need for additional measurements that could introduce both measurement errors and safety concerns. Both the CWB and CWT approaches define a factor for each process unit, relying on a proprietary methodology by Solomon Associates. The factors are multiplied by throughput and added to determine a carbon weighted barrel value for each refinery. This approach is designed to gauge the GHG efficiency of each process unit. The configuration differences and differences in inputs would be minimized with these approaches. Industries which are closely related to the refining sector such as coke calcining and hydrogen production, have allocation methodologies and benchmarks that are also being reconsidered. Similarly, allocation for liquified hydrogen production may also be adjusted. Any change to these methodologies will occur in coordination with the refinery allocation to maintain consistent incentives across related industries and to avoid double-counting.

Finally, staff proposes revisions to the refinery allocation true-up for consistency. We added a true up to refineries without EII values to account for changes in production or significant changes in emissions. This change corrects an inadvertent error in not providing a true-up to this group as occurs for every other sector receiving industrial allocations.

10. Other Product Based Benchmarks

The proposed Regulation amendment includes the addition of new sectors subject to a product-based benchmark. Resolution 11-32 directs staff to identify and propose new benchmarks for manufacturing of new products in California. The proposed amendments also include the modification of benchmark units and/or values for existing product-based benchmarks.

Staff proposed to add lead acid battery recyclers as a new sector under product-based benchmark to ensure that industry assistance is provided to these new entrants to the Cap-and-Trade Program. Staff also proposed to develop the new benchmarks for several sectors previously receiving allocation under the energy-based allocation methodology. With the development of these benchmarks, sectors will receive allocation based on the recent production level rather than the existing energy-based allocation that uses a historical average of energy consumption. This allows allocation to change with production to minimize emissions leakage that could result if production were to shift out of California.

Staff proposed a number of new product benchmarks in the food processing and beverage manufacturing sectors. These sectors include dairy processors, poultry, dehydrated flavors, snack chips, sugar, tomato, pistachios and almonds, beers, wine and spirits. Since a food or beverage facility commonly produces several different products that rely on complex process configurations, staff worked with industry and

contract experts since early 2012 to obtain the engineering expertise needed to establish technically sound product-based benchmarks. The key focus of the research has been to establish a methodology that apportions the energy consumed at a facility among various individual processes and evaluating the associated outputs by combining direct energy consumption measurements with engineering estimates.

Other sectors where staff proposed newly developed benchmarks include iron foundry, aluminum billets manufacturing, lead acid battery recycling, metal forging, onshore natural gas processing, and diatomaceous earth processing. These sectors produce fewer individual products at a facility or produce more homogeneous products compared with food processors. Staff believes that the data collected from participating facilities are sufficient to establish technically sound product-based benchmarks.

Staff also proposed to modify existing product-based benchmarks for thermal enhanced oil recovery and non-thermal crude petroleum and natural gas extraction, natural gas liquid extraction, tissue manufacturing, recycled boxboard manufacturing, flat glass manufacturing, container glass manufacturing, cement manufacturing, gypsum product manufacturing and steel cold rolling.

The reasons for these changes included new information on differences in products, inclusion or exclusion of base-years to obtain a reasonable set of representative years of operation, or the collection of more detailed data for sectors where limited initial data were available when the Regulation was adopted. The tissue sector benchmark considered the difference in water absorption capability by adding an equivalency factor. For the details, please see Appendix C.

11. Allocation to Public Wholesale Water Entities

In Resolution 11-32, the Board found that water rates should create the appropriate incentives for water conservation, greenhouse gas efficient technologies, and the efficient supply and use of water. The Board also found that if allowance value is used for the benefit of water ratepayers it should be used in a manner consistent with State efforts to promote efficient use and supply of water and water conservation. The Board directed the Executive Officer to continue discussions with stakeholders to identify and propose, as necessary, potential amendments to the regulation that could include distribution of allowance value associated with Cap-and-Trade compliance costs from using electricity to supply water, and the expected ability of allowance allocation and other measures to adequately address the incidence of these costs equitably across regions of the State. Following extensive discussions with affected stakeholders, staff believes that it is appropriate to allocate allowances to the Metropolitan Water District (MWD), a public wholesale water agency that obtains and conveys water resources to retail governmental water agencies and has a direct compliance obligation. Staff

believes that MWD is the only public water agency that will have a continuing compliance obligation during the period covered by the regulation.

Obtaining scarce water resources and conveying them to retail water purveyors is critical to the health and welfare of all citizens of the State. MWD imports electricity for the sole purpose of conveying water through its conveyance systems. Since the compliance costs associated with water conveyance are not borne by retail electric customers, the allocation of free allowances to electric distribution utilities (EDU) does not mitigate AB 32-related rate impacts on retail water customers.

Staff proposes to allocate allowances to MWD in a manner similar to the allocation to EDUs, in which the allocation amount is based primarily on the compliance cost burden on ratepayers. Staff proposes that the cost burden would be calculated based on resource types use to meet MWD's load, assuming that MWD would increase its procurement of renewable electricity to meet a significant portion of its load requirements by 2020. This is consistent with the approach used to allocate allowances to electrical distribution utilities (EDUs) represented in Table 9-3 of the Regulation.

To calculate the allowance allocation, staff used historical data provided by MWD on electricity procured from different resource types. For consistency, staff used emission factors based on the assumptions used in allocation to EDUs, and included the same proportional credit for energy efficiency. Staff assumed that MWD would procure renewable electricity to meet a portion of their total load consistent with Renewable Portfolio Standard (RPS) requirements on EDUs, and that MWD would import unspecified electricity to meet any remaining load not met by specific resources. As an importer, MWD has a compliance obligation for this unspecified electricity. Finally, the allocation is reduced by the amount of the cap decline, as are all other allocations. Table 2 shows the assumptions used in calculating the allocation.

Because the public wholesale water entity did not receive allocations for 2013 and 2014, staff proposed to provide allowances from the 2015 budget year for emissions from 2013 -2014 as well as 2015. Allowances would be placed into the compliance accounts of the eligible agency. Using these allowances for compliance would allow the benefit to be passed through to customers. Because MWD is assumed to add significant renewable resources to their portfolio, consistent with RPS requirements on EDUs, the allocation will cover only part of the agency's forecast compliance obligation. This means that an increasing portion of compliance costs would be passed through to customers over time. Staff believes this is appropriate for transition assistance, and is consistent with maintaining a price signal in water rates to encourage efficiency and conservation.

Table 2: Calculation of Allocations to Public Wholesale Water Entities

Metropolitan Water District - Data Supplied to ARB

Year	2013	2014	2015	2016	2017	2018	2019	2020
MWD Imported Energy Average 2008-2012 (MWh)	325,012	325,012	325,012	325,012	325,012	325,012	325,012	325,012
5% loss of Hoover Energy - Starting 2018 (MWh)	0	0	0	0	0	54,223	54,223	54,223
Total Projected average Imported Energy (MWh)	325,012	325,012	325,012	325,012	325,012	379,235	379,235	379,235
Aggregated from data supplied by MWD for federal hydropower and contracts with Southern California Edison.								
MWD Hydroelectric	1,301,308	1,301,308	1,301,308	1,301,308	1,301,308	1,247,085	1,247,085	1,247,085
MWD Unspecified	168,937	168,937	168,937	168,937	168,937	223,160	223,160	223,160

ARB Calculation of Cost Burden

MWD Total	1,795,257	1,795,257	1,795,257	1,795,257	1,795,257	1,795,257	1,795,257	1,795,257
RPS requirement applied to all EDUs	21.0%	22.0%	23.0%	25.0%	26.0%	29.0%	31.0%	33.0%
RPS Requirement (MWh)	377,004	394,957	412,909	448,814	466,767	520,625	556,530	592,435
Residual Natural Gas after RPS (MWh)	116,945	98,992	81,040	45,135	27,182	27,548	0	0
Natural Gas and Market Energy Emission Factor	0.4354	0.4354	0.4354	0.4354	0.4354	0.4354	0.4354	0.4354
Cap Decline Factor	0.981	0.963	0.944	0.925	0.907	0.888	0.869	0.851
Energy Efficiency credit	3,908	3,908	3,908	3,908	3,908	3,908	3,908	3,908
Emissions for Cost Burden	49,950	41,507	33,309	18,178	10,734	10,651	0	0
Allocation to MWD			**136,491**	**22,086**	**14,643**	**14,559**	**3,908**	**3,908**

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B. Leakage

1. Changes to the Industrial Assistance Factor

Staff proposed delaying the reduction in the assistance factor by one compliance period. The assistance factor will be maintained at 100% for all leakage risk classifications for the second compliance period if the proposed amendments are adopted. 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. Shifting the assistance factor decline by one compliance period does not change the program cap or its annual decline.

Staff proposed making this change in order to ensure consumers are not negatively impacted by the Program while providing time for industry to transition to lower-carbon production methods. In addition, staff is awaiting new research results that will improve the data, measurement, and metrics of the leakage risk of industries covered by the Regulation. This new research 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. Any changes to the leakage risk classification or assistance factors for the third compliance period would be proposed in subsequent rulemakings.

2. Leakage Risk Classifications

Staff proposed adding leakage risk classifications for new entrants in the industrial sector. These changes are necessary to allow these new entrants to receive appropriate allocations, pursuant to Board Resolutions 12-33 and 11-32. Details of the leakage analysis for these sectors can be found in Appendix B.

The new industrial sectors include:

- All Other Metal Ore Mining
- Asphalt Paving Mixture and Block Manufacturing
- Ethyl Alcohol Manufacturing
- Hardware manufacturing
- Guided Missile and Space Vehicle Manufacturing
- Nonferrous Forging

Staff also proposed changing the leakage risk classification for the mineral wool manufacturing sector from medium to high. This change is necessary to account for new data available which results in a greater risk of emissions leakage than staff

previously determined with a more limited dataset. Details of the updated leakage analysis for this sector can be found in Appendix B.

C. Covered Sectors and Exempt Emissions

1. New Sectors

Process emissions from lead facilities were not included in the previous GHG reporting regulations under MRR. As a result, certain lead producers did not exceed the Cap-and-Trade emissions threshold for coverage under the Program. MRR was updated to require California facilities producing lead to report their process CO_2 emissions in addition to combustion emissions. Reporting of both product and emissions data for the lead production sector is necessary to support the product-based methodology of allowance allocation.

The adopted GHG reporting regulation did not previously include emissions from liquefied natural gas suppliers. MRR was updated to require importers of liquefied natural gas and certain instate producers of liquefied natural gas to report the emissions that would result from the complete combustion of the liquefied natural gas sold in California. The update to the MRR provides equitable reporting of combustion emissions for all fuel suppliers. Staff proposed modifications to the Cap-and-Trade Regulation to include liquefied natural gas fuel suppliers as a covered entity to ensure equitable consideration of GHG emissions for all fuel types starting in the second compliance period.

2. Exempt Emissions

Staff proposed exempting a limited number of smaller combined heat and power (CHP) and district heating facilities and waste to energy emissions from a compliance obligation for the first compliance period only. Staff also proposed to remove the sunset date for the military exemption. The following sections outline the proposals in more detail.

Staff made the proposed changes to several sections of the Regulation to clarify the eligibility of biomass-derived fuels to avoid a compliance obligation. Change was made to correct this issue that prevented new biomass-derived fuel from being eligible and to close a loophole that could have allowed for emissions leakage.

Combined Heat and Power and District Heating

A few facilities would fall below the Cap-and-Trade Program compliance threshold of 25,000 metric tons of CO_2e "but for" their installation of efficient CHP systems. If these facilities are covered entities with a compliance obligation, they would face greenhouse gas costs during the first compliance period that are not faced by similar small industrial facilities without CHP. Small facilities without CHP can remain below the compliance threshold because they have no direct emissions due to electricity consumption, and their emissions from boilers that generate steam would be below the threshold for a covered entity. Under the current Cap-and-Trade Regulation, small facilities that made the efficient, lower emission, choice to install CHP would face higher GHG costs during the first compliance period than would similar facilities without CHP.

During subsequent compliance periods, natural gas prices will include compliance costs that are expected to be passed through by natural gas utilities. This means that after the first compliance period similar facilities with and without CHP will face compliance costs, either directly or indirectly through natural gas prices.

To reward "but for" facilities that reduced emissions by installing CHP, the Board directed staff in Resolution 12-33 to develop a methodology to exempt their thermal energy emissions during the first compliance period. Staff proposed a limited exemption for these emissions during the first compliance period, and as a result, these facilities will fall below the threshold and will not have a compliance obligation. The compliance obligation would be phased in for these facilities beginning with the second compliance period when the steam emissions are no longer exempt.

Staff proposed a similar exemption for steam emissions from district heating facilities that produce hot water, steam, or chilled water distributed to buildings that are not part of the same facility. District heating is a more efficient means of providing these services than the more common practice of installing water heaters, boilers and chillers in each building to provide these services. Because it serves multiple buildings, a district heating facility may have emissions above the threshold and face a compliance obligation not incurred by buildings with their own boilers and chillers that are less efficient. Like "but for" facilities, district heating facilities will not have this disadvantage once natural gas prices include GHG costs beginning with the second compliance period.

Facilities would be required to apply for the exemption of emissions and would need to provide data on emissions associated with qualified thermal output from "but for" cogeneration facilities and emissions associated with district heating services to each building. To preserve the environmental integrity of the cap, ARB would retire

allowances equivalent to the emissions that no longer had a compliance obligation after the limited exemption for thermal energy emissions.

Waste-Energy Emissions

The implementation of the Board direction in Resolution 12-33 to exempt Waste-to-Energy facilities in the first compliance period will be achieved by requiring the eligible operator to participate in the program by reporting and verifying their emissions. The Executive Officer will then place allowances into their compliance account and will retire allowances on behalf of the entity to meet the compliance requirements. This exemption will apply only during the first compliance period to allow for the completion of the interagency study that will determine the best approach to treat Municipal Solid Waste under the Cap-and-Trade program.

In order to obtain the exemption, facilities must report and verify their emissions. In addition, the electricity must be placed on the California grid and not used to meet the facilities internal load. The eligibility requirements require the facilities to operate under an existing air permit, and the fuel must be derived from Municipal Solid Waste. The requirement to operate under an existing permit and the requirement to limit the fuel combusted to Municipal Solid Waste will limit the ability for new facilities to seek an exemption from the Cap-and-Trade program until the study which will determine the best approach to treat solid waste under Cap-and-Trade is complete.

Military Exemption

Section 95852.2 was modified to remove the exemption sunset date for military facilities. Staff believes it is appropriate to exempt military facilities as this sector cannot respond to the price signal. In addition, 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 the Mandatory Reporting Regulation and the Cap-and-Trade Program. The military sector is also subject to Presidential Executive Order 13514 Strategic Sustainability Performance Plan (Sustainability Plan) that includes a 34 percent reduction in Scope 1 and Scope 2 GHG emissions, 13.5 percent reduction in Scope 3 GHG emissions, a 37.5 percent reduction in building energy intensity, a 20 percent renewable energy standard, and a 30 percent reduction in fossil fuel consumption for vehicle fleets.

D. Electricity

1. Resource Shuffling

In adopting Regulations to reduce greenhouse gas (GHG) emissions, Assembly Bill 32 requires the Air Resources Board (ARB) to minimize leakage to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit. This requirement is mandated in section 38562 of Division 25.5 of the Health and Safety Code. As defined by section 38505, leakage means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

Resource shuffling is a form of leakage that could occur in the electricity sector. To minimize leakage related to the delivery of electricity in California, the Cap-and-Trade Regulation currently defines and prohibits resource shuffling.

In Resolution 12-51, the Board directed staff, in consultation with the California Independent System Operator (CAISO), the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), and stakeholders, to refine the definition of resource shuffling and to identify situations that ARB would not consider resource shuffling based on Attachment A of Resolution 12-51. Staff was further directed to return to the Board with proposed regulatory amendments by mid-2013, and to publish regulatory guidance consistent with Attachment A prior to the November 14, 2012 allowance auction.

Staff proposed modifications to the definition of resource shuffling and changes to clarify certain activities that constitute resource shuffling, and certain activities that are not resource shuffling. These clarifications are consistent with the intent of Attachment A, and with the previously published guidance.

First, staff proposed to change the definition to clarify that resource shuffling is a plan, scheme, or artifice undertaken by a First Deliverer of electricity to substitute electricity from relatively lower emissions resources with electricity from higher emissions resources in order to reduce its emissions compliance obligation. Resource shuffling always involves such a substitution that would result in an apparent emissions reduction in California that is offset by an increase in emission outside of California where the electricity from the higher emission resource is deemed to be consumed.

However, based on discussions with stakeholders, staff recognized that there are several situations in which substitutions of low emission electricity for higher emission electricity may occur that are not undertaken to reduce compliance obligations. Therefore, staff modified section 95852(b)(4) to list thirteen activities that are considered

“safe harbors” and are not resource shuffling. Safe harbors include activities in the following categories:

- Situations in which First Deliverers are required to make or accept certain electricity deliveries.
- Situations in which First Deliverers deliver lower emission electricity replacing higher emission electricity due to circumstances beyond their control.
- Situations in which a First Deliverer has a more than enough electricity to meet demand and therefore cuts back on electricity from high emission resources.
- Short term transactions in electricity markets that are not linked to other resource shuffling activities, or entered into in order to reduce compliance obligations.

Staff has also proposed to clearly define as resource shuffling the substitution of relatively lower emission electricity to replace electricity generated at a high emission power plant procured by a First Deliverer under a long-term contract or ownership arrangement, when the power plant does not meet California’s EPS, and the substitution is made to reduce a First Deliverer’s compliance obligation.

Finally, staff considered stakeholder comments and input from the Commissioner Moeller of the Federal Energy Regulatory Commission regarding the potential of the required attestations concerning resource shuffling to negatively affect western electricity markets (Moeller 2012). As a result, staff proposed to remove the regulatory language that requires such attestations.

2. Voluntary Renewable Energy (VRE)

Staff proposed modifications to clarify that RECs created for voluntary renewable energy (VRE) must represent the same generation included in the information submitted to ARB in the allowance retirement request, and those same RECs must be retired before the allowance retirement request is submitted to ARB.

The modifications also clarify the electricity must be directly delivered to California. This was already stated in the Regulation under the first paragraph but the requirement is now added to the list of eligibility requirements.

The additional language also clarifies that RECs created on the last day and hour of the budget year for which allowance retirement is requested are eligible for the voluntary renewable energy program. It is recognized WREGIS may not generate the RECs until 90 days after generation. If a REC is created at 11:59 pm on December 31, 2013, it is eligible to be used for the program and the applicant needs to retired the REC before

the final application date of July 1 the following year. This time frame allows WREGIS to issue serial numbers and place the REC into the applicant's account, and for the applicant to move the REC to the compliance account for the purpose of retirement for California's Voluntary Renewable Electricity Program.

3. Imported Electricity

The proposal clarifies that Asset Controlling Suppliers are a specified source for purposes of the Regulation. Asset Controlling Suppliers are entities that apply annually, pursuant to MRR, and have a specific emission factor assigned to their electricity based on declared resources that serve California load. Importers that have a contract for electricity from an Asset Controlling Supplier are able to apply that specific emission factor to electricity delivered to California. The section on specified sources is also modified to clarify that there are specified resources that generate electricity, which is imported into California, and these resources could have emission factors which exceed the default emissions factor. Modifications were made so that requirements to the point of Regulation for imported electricity and electricity generated in-state are consistent. The serial numbers of the RECs will be reported and published on the MRR website, rather than requiring the importer to retire the REC. Programs in other states that want to ensure that RECs used in their program have not been used in California's program will be able to check the MRR website for REC retirement pursuant to California's program. The purpose of this process is to recognize that the electricity associated with the REC was already reported to California by the importer as zero emissions electricity, pursuant to MRR.

Staff proposed to clarify the adjustment to the compliance obligation for electricity procured to meet an RPS requirement. Clarifications were made to clearly identify the section applies to electricity that is procured, but not able to be imported into California. The adjustment was made to the compliance obligation for replacement electricity is imported, but based on the procurement of the RPS eligible electricity that is not able to be delivered to California due to transmission limitations.

The proposal clarifies RECs must be from the same eligible renewable electricity generating facility as the electricity that is procured. The REC is the compliance instrument that is required by the Energy Commission used to meet the RPS requirement and the adjustment to the compliance obligation will be based on the MWh represented by the RECs and reported pursuant to MRR.

E. Offsets and Offset Program Implementation

1. New Offset Protocol

Under the Cap-and-Trade Program, covered entities may use compliance offset credits to satisfy up to eight percent of their compliance obligation. This limit applies to each individual covered or opt-in covered entity for each compliance period. Compliance offsets are tradable credits that represent verified greenhouse gas (GHG) emissions reductions or removal enhancements from sources not subject to a compliance obligation in the Cap-and-Trade Program. As an important market feature, offset credits can provide covered entities a source of low-cost emissions reductions for compliance flexibility. The inclusion of offset credits will also support the development of innovative projects and technologies from sources outside capped sectors that can play a key role in reducing emissions both inside and outside California. Ensuring sufficient offset supply is consistent with the requirement in AB 32 to design a market program that is cost effective in reducing GHG emissions.

To date, ARB has approved four compliance offset protocols. Staff believes these four protocols, including early action offsets, will be sufficient to meet the eight percent maximum demand for compliance offsets for the first compliance period. In 2015, the scope of the program doubles when transportation fuels and upstream natural gas emissions are covered. The existing four protocols will not supply all of the offsets needed to ensure sufficient supply if every covered entity used up to the maximum offset usage limit of eight percent in offsets for compliance in the second and third compliance periods.

To address stakeholder concerns related to cost containment, staff developed an additional compliance offset protocol which can be found in Appendix A of the Staff Report, for use under the compliance offset program. Staff included the Mine Methane Capture Protocol. This protocol is incorporated by reference in the proposed regulation and is being considered for adoption by the Board as part of this rulemaking package.

2. Offset Program Implementation

Staff proposed clarifications to address APD requirements, including when an Offset Project Operator (OPO) may designate the APD and any other third party to receive ARB offset credits. In addition, staff proposed requirements that APDs must meet for CITSS registration, prior to listing an offset project.

Staff proposed clarifications to offset project listing requirements, including clarifying the timing requirements for submitting listing information and related attestations to an Offset Project Registry (OPR). In addition, staff clarified the administrative process for an OPR's review of listing information, and the timing for conducting their review. In addition, staff proposed to include procedures and requirements for transferring an offset project between OPRs.

Staff proposed to clarify the timing requirements for submitting the attestations associated with reporting to an OPR.

Staff proposed clarifications to the offset verification requirements, including: the verification timing requirements for offset projects, the rotation of verification body requirements, the timing requirements for submitting a Notice of Offset Verification Services, the requirements for modifying Offset Project Data Reports, the requirements for conducting data checks, and the offset material misstatement calculation.

Staff proposed clarifications to the conflict of interest requirements, including applying the conflict of interest requirements to both an OPO, and an APD, if applicable, and any subcontractors working as part of the offset verification team. Staff proposed to clarify the timing requirements for submitting conflict of interest self-evaluations and included a process and requirements for OPR approval of conflict of interest self-evaluations.

Staff proposed clarifications to the issuance, timing and deadlines associated with registry and ARB offset credits. Staff proposed clarifications to the process for OPRs to request additional information for the issuance of registry offset credits, and included a dispute resolution process with ARB if an OPR denies issuance of registry offset credits. Staff clarified the process for requesting issuance of ARB offset credits and the types of information that must be submitted to ARB with the issuance request. Staff also proposed clarifications including the timing for ARB notification to parties that are receiving ARB offset credits and the requirements that OPRs must meet when ARB issues ARB offset credits.

Staff proposed new language to modify the requirements for air districts for assessing conflict of interest.

Staff also proposed to clarify processes related to the early action program. These amendments address early action offset project listing requirements, early action verification requirements, Forest Buffer Account requirements, and issuance of ARB offset credits for purposes of early action.

Staff also proposed changes to make the liability in the event of invalidation consistent for all project types. These changes were made to the invalidation rules that govern ARB offset credits issued for both compliance offset projects and early action offset projects. Staff also proposed clarifications and additions to definitions, as required.

Staff also proposed to change forest offset invalidation to buyer liability to align with existing requirements for other offsets project types. The main circumstances that could lead to invalidation include identification of errors in reporting or verification, projects being out of regulatory conformance, or double crediting. The intent was always to have all invalidation requirements to be consistent across all project types to ensure that covered entities did their due diligence when purchasing compliance offsets to use for compliance. Under the current requirements, if a covered entity retires a forestry ARB offset credit and then it gets invalidated, the forest landowner is responsible and the covered entity is still considered to be in compliance even if it does not have enough valid compliance instruments. By aligning the invalidation requirements for forestry with the existing invalidation requirements for other project types, entities are required to have enough valid compliance instruments to be considered in compliance with the Regulation. The forest owner still maintains liability for intentional reversals (cutting trees or ending the project) and the forest buffer account will still compensate for unintentional reversals (fires, infestations).

F. Compliance Obligation Surrender

1. Compliance Instrument Retirement Order

The existing Regulation is silent on which order compliance instruments are retired from the covered or opt-in entity's compliance account by the Executive Officer at the time of the annual and triennial surrender events. The proposed amendments include a retirement order to implement this process in the Compliance Instrument Tracking System Service. Overall policy objectives of the retirement order include maximizing the use of offsets up to the limit to ensure maximum compliance flexibility at least cost, and removing compliance instruments in the order of least to most challenging to liquidate at auction if the tracking system account were to be closed for a particular entity. The first compliance instruments to be retired are the compliance offset credits up to the 8% entity limit. These compliance instruments are the lowest cost compliance instruments and, because there is no holding limit on offsets, an entity has no requirement or incentive to place more offsets in their compliance account than they want retired. Second, the Executive Officer would retire allowances purchased from the Allowance Price Containment Reserve (Reserve) or Quebec issued early reduction allowances. These allowance types do not have a vintage and would be challenging to liquidate at auction, if the account were to be closed. Since entities would only buy from

the Allowance Price Containment Reserve as a last resort, it is unlikely the Reserve allowances would be purchased and used for compliance. Third, the Executive Officer would retire allowances in the order of earliest to latest vintage. Since allowances can be banked but not borrowed this assures that eligible vintage allowances are retired for compliance first. Lastly, the Executive Officer would retire a limited amount of future vintage allowances. The only time future vintage allowances would be eligible for compliance is when they are provided by ARB for allocation true-up.

2. Annual Obligation Surrender

Staff proposed compliance instruments not be retired at the time of the annual obligation surrender event and that compliance instruments only be retired during at the time of the triennial obligation surrender event. During workshops, stakeholders had expressed concerns that any offsets placed into their compliance account would all be retired first by the Executive Officer pursuant to the proposed compliance instrument retirement order. Stakeholders expressed concern that they may place offsets into their compliance account to comply with the annual surrender, but because there is no eight percent offset limit applied to the annual obligation surrender, the total amount of offsets in an account could exceed the eight percent limit at the time of the triennial obligation surrender. This may result in “lost” offsets since offsets retired during the annual obligation surrender that were in excess of the eight percent limit at the time of the triennial obligation surrender could not be transferred back to the entity’s compliance account from ARB’s retirement account. By not retiring any compliance instruments at the time of the annual obligation surrender event and only retiring compliance instruments at the triennial obligation surrender event, stakeholders’ concerns regarding “lost” compliance offsets is no longer an issue. The instruments in the entity’s compliance account would continue to count against their limited exemption to the holding limit until such time that compliance instruments are retired during the triennial compliance event.

G. Implementation of Auction and Trading Requirements

1. Corporate Association Disclosure

The existing Regulation already requires that a registered entity disclose its corporate associations. Many entities were under the impression that only other entities in the Cap-and-Trade Program are considered corporate associates. Staff proposed modifications to specify that corporate associations are not limited to relationships between entities registered in the program.

The existing Regulation does not address limited liability corporations, which may not have the criteria to measure ownership listed in the Regulation, such as listed shares. To close this loophole, staff proposed modifications to specify that ownership of limited liability corporations apply for purposes of determining whether a corporate association exists, regardless of how the interest is held.

A deadline date for opting-out of consolidated accounts is in the current Regulation. Staff proposed to eliminate that deadline. Instead, staff proposed a new clause allowing direct corporate associates to switch between consolidation and opting-out only once per year.

2. Registration

Staff proposed to modify the Regulation to clarify the requirements for registration in the cap-and-trade program. The changes are necessary for operations of the cap-and-trade program and to assist in market monitoring.

3. Bid Guarantees

Staff proposed changes to clarify the submission of bid guarantees by auction participants. Language was added to clearly state that if a single big guarantee is submitted to cover both Current and Advance Auctions then it must be greater than or equal to the combined maximum value of bids to be submitted. Staff proposed additional language to clearly identify that any bid guarantee submitted by an auction participant that does not cover the maximum value of the bids to be submitted is a violation of the Regulation.

4. Additional Information on Advisors, Contractors, and Individual Voluntarily Associated Entities

During the first 18 months of implementation of the Cap-and-Trade Program, staff has encountered several situations related to individuals who applied to register as a voluntarily associated entity, but have access to compliance accounts or compliance instruments in entity accounts. Some of these individuals work for a covered, opt-in, or other voluntarily associated entity, or a contractor that provides GHG related services to a covered, opt-in, or other voluntarily associated entity.

In the case of individuals that work for already registered market participants or contractors providing GHG related services to registered market participants, the proposed amendments would require the individual to provide a notarized letter from the employer indicating they are aware of the individual's request to register as a voluntarily

associated entity. This ensures that the existing registered market participant is aware of the potential of the individual using information garnered in their employment for personal gain and the employer has policies or procedures in place to mitigate that risk. By collecting this information, staff and the market monitor have a better understanding of the relationships between market participants that could lead to insider trading or collusive behavior.

Their already exists a requirement for market participants who employ a bid advisor to inform ARB of the bid advisor. However, due to contractual confidentiality requirements, the covered entity is not able to disclose other clients, who are market participants, using their same bid advisor. The proposed amendments require the bid advisor to disclose all market participants for whom they are providing auction bidding services. Having information on shared bid advisor resources between market participants will aid staff and the market monitor in monitoring for collusive behavior.

5. Transfer Reporting Requirements

Staff proposed modifications to the existing list of information that must be included in transfer requests submitted in the tracking system. In developing the changes, staff reviewed stakeholder comments on the regulation, transaction agreements that staff have obtained from account representatives, and transfer request information contained in CITSS. Staff concluded that while the existing system requires the appropriate information categories (agreement dates, settlement dates, termination dates, price, and quantity), the great variety of transaction agreements can make it difficult for account representatives to interpret the requirements for their type of transaction agreement. In ARB's proposal, the existing information categories have been expanded so that the account representative (1) identifies the type of transaction agreement being executed, and (2) provides the information specific to that type of transaction agreement. The additional detail will aid staff in understanding the market contracts to allow for better oversight of the program.

Staff has found it difficult to analyze price data for market monitoring purposes when staff does not know the type of transaction agreement involved. For example, the transaction agreement may provide for the transfer of other products in addition to compliance instruments. The cost terms of the agreement may not itemize a separate price for compliance instruments, may involve multiple transfers, or the price will reflect a negotiated package deal. Staff is proposing that the entity identify the other products specified in the agreement and if the agreement provides for multiple transfers.

Transactions also may contain varying methods of setting the price for the compliance instruments. If the price is a fixed value in the contract, the staff proposal keeps the current requirement that the entity simply enter that value. If the price is not a single fixed value, staff is proposing that the transfer request obtain more information on the pricing method. If the price is specified as a base plus a margin, staff proposed the entity enter the base and the margin. If the agreement uses some other method, staff proposed the entity enter a brief description of the method.

The staff proposal clarifies 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 proposed changes would make filing a transfer request in the absence of an underlying transaction agreement a violation.

H. Cost Containment

1. Proposed Additional Cost Containment Mechanism

In October 2012, the Board adopted Resolution 12-51 directing staff to develop a proposal for one or more additional cost containment mechanisms to "achieve the policy objective of ensuring that the allowance prices will not exceed the highest price tier of the Allowance Price Containment Reserve while minimizing the impact on existing allowances and maintaining the environmental objectives of the program." Staff was also directed to "demonstrate that the proposed mechanisms are effective in a reasonable range of plausible combinations of conditions as needed to assure their effectiveness during the period of 2013 to 2020."[2]

In response to the Board Resolution, staff developed a proposal for an additional cost containment mechanism that increases the availability of allowances at the highest price tier of the Allowance Price Containment Reserve (Reserve). Knowing that allowances will be available from the Reserve, compliance entities will have no incentive to purchase allowances at any price higher than the highest price tier. In this manner, maintaining the availability of a sufficient supply of allowances to satisfy demand at the

[2] Resolution 12-51. California Air Resources Board, October 2010. Available at: http://www.arb.ca.gov/cc/capandtrade/final-resolution-october-2012.pdf

Reserve sale will be effective in ensuring that allowances prices do not exceed the highest price tier.

Table 3 lists the allowances that the staff proposal makes eligible for sale at the Reserve top tier price. The allowances in the table are 10% of the allowances that remain in each budget year listed in Table 6-1 of the Cap-and-Trade Regulation after allowances have been removed to fill the three Reserve tiers. These 206.7 million allowances will be eligible for sale at the Reserve sales immediately preceding the compliance deadline on November 1 each year, and are first eligible for sale prior to the November 1, 2015 compliance deadline. The timing of these Reserve sales ensures that covered entities will know their compliance obligation and be able to purchase allowances for compliance prior to each November 1 compliance deadline.

Table 3: Allowances made eligible for reserve sale by the Staff Proposal

Budget Year	*Allowances (Millions of CA GHG Allowances)*
2015	37.9
2016	36.7
2017	35.6
2018	33.3
2019	32.2
2020	31.0
Total	**206.7**

For a given budget year, if fewer allowances remain in the Auction Holding Account than the quantity eligible for sale in Table 3, the amount available for sale will be reduced to the quantity that remains available. If, for instance, at the Reserve sale immediately preceding the compliance obligation on November 1, 2015, only 25 million budget year 2015 allowances remain in the Auction Holding Account, the number of 2015 allowances eligible for sale would be reduced to 25 million.

If needed to fill accepted bids at the highest price tier, the allowances listed in Table 3 will be sold beginning with the latest budget year (furthest in the future) and then the preceding budget years until either all accepted bids are filled or all eligible allowances are sold. Currently, 2020 is the budget year that is furthest in the future. If needed, allowances will first be sold from the 31 million eligible 2020 allowances, then the eligible 2019 allowances, continuing until all accepted highest price tier bids are filled or all eligible allowances are sold.

If allowances from a budget year are sold through this process, the number of allowances that are available for the advance auction for that budget year will be reduced by the number of allowances sold. If more allowances are sold through this process than remain available for advance auction, then the allowances for the current auction of the budget year will be reduced. If the quantity of accepted bids at the highest price tier exceeds the quantity of eligible allowances, purchases will be determined following the over-subscription procedure used in the Reserve sales.

Under the proposal, all allowances purchased from Reserve sales are eligible immediately for compliance on November 1. As is the case for all allowances purchased at a Reserve sale, these allowances must go directly into the purchasing entity's compliance account, and are subject to the program's allowance holding limits. In regards to instrument surrender, all allowances purchased from a Reserve sale are removed from an entity's compliance account after offset credits but prior to any allowances with a vintage year purchased outside of a Reserve sale.

2. Evaluation of Proposal

Board Resolution 12-51 directs staff to develop proposals that ensure that the allowance price does not exceed the highest price tier of the Reserve while maintaining the environmental integrity of the program over a reasonable range of plausible conditions.

The Cap-and-Trade Program is designed to reduce emissions cost effectively to achieve the AB 32 emissions goal. With the full range of program design features and compliance flexibility mechanisms, analyses supporting prior rulemakings indicated that allowance prices are expected to be in the range between the auction price floor and the Reserve prices for a broad range of future conditions.[3] However, unanticipated conditions could increase the demand for allowances, resulting in higher than expected allowance prices, including prices that could exceed the established Reserve prices. Higher than expected demand could be transitory, resulting from temporary imbalances in the supply and demand for allowances. Alternatively, unexpectedly high demand for

[3]Update Economic Analysis of California's Climate Change Scoping Plan. California Air Resources Board. March, 2010. Available at: http://www.arb.ca.gov/cc/scopingplan/economics-sp/updated-analysis/updated_sp_analysis.pdf and Discussion Draft Economic Analysis Supporting the Cap-and-Trade Program. WCI Economic Modeling Team. May, 2012. Available at http://www.westernclimateinitiative.org/document-archives/Economic-Modeling-Team-Documents/Discussion-Draft-Economic-Analysis-Supporting-CA-and-QC-Linking/

allowances could be persistent, pushing allowance prices above expected levels for longer periods.

The quantity of allowances made eligible for the Reserve sale by the staff proposal is substantial. For example, without the staff proposal, the total number of allowances eligible for use at the November 1, 2015 compliance deadline would be about 319 million from the 2013 and 2014 budget years, and 121 million from the existing Reserve, for a total of about 440 million. The staff proposal makes eligible an additional 207 million, an increase of nearly 50%, bringing the total to about 647 million allowances. This figure does not include the offset credits that could also be used for compliance and covers cumulative emissions and compliance instruments available for use by the November 1, 2015 compliance deadline. Given that total annual emissions reported for 2011 that would have been covered by the program were about 150 million metric tons, the expected compliance obligation in 2015 is anticipated to be on the order of 300 million metric tons.[4] With 647 million allowances available in 2015, plus offset credits, there is no plausible set of conditions that would make the staff proposal unable to contain allowance prices in 2015, consistent with the Board directive in Resolution 12-51.

The effectiveness of the staff proposal is reduced as the program approaches 2020. For example, at the November 1, 2018 compliance deadline, cumulative emissions from 2013 to 2017 are uncertain, but could be on the order of 1,450 million metric tons if current emission rates and trends continue.[5] The total number of allowances eligible for use at the November 1, 2018 compliance deadline would be about 1,420 million from the 2013 to 2017 budget years, and 121 million from the existing Reserve, for a total of about 1,540 million allowances. Again, this figure does not include the offset credits that could also be used for compliance. The staff proposal makes an additional 96.5 million allowances eligible from the 2018 to 2020 budget years, bringing the total to about 1,637 million allowances plus offset credits. If the full 8% offset limit were used

[4] Calculated from 2011 reported greenhouse gas emissions data from electric power entities and facility level non-biogenic CO_2e available at http://www.arb.ca.gov/cc/reporting/ghg-rep/reported_data/2011_ghg_emissions_summary_revised.pdf and http://www.arb.ca.gov/cc/reporting/ghg-rep/reported_data/2011_ghg_emissions_spreadsheet.xlsx.

[5] Emissions calculated from 2011 reported greenhouse gas emissions data from electric power entities, transportation fuel suppliers, natural gas suppliers, and facility level non-biogenic CO_2e available at http://www.arb.ca.gov/cc/reporting/ghg-rep/reported_data/2011_ghg_emissions_summary_revised.pdf and http://www.arb.ca.gov/cc/reporting/ghg-rep/reported_data/2011_ghg_emissions_spreadsheet.xlsx. Emission trends based on performance of complementary policies in the Discussion Draft Economic Analysis Supporting the Cap-and-Trade Program. WCI Economic Modeling Team. May, 2012. Available at http://www.westernclimateinitiative.org/document-archives/Economic-Modeling-Team-Documents/Discussion-Draft-Economic-Analysis-Supporting-CA-and-QC-Linking/

(which may be anticipated if emissions are higher than expected and allowance prices are near the Reserve prices), the available compliance instruments would be nearly 25% higher than anticipated emissions. This result suggests that the staff proposal would likely be effective under most plausible circumstances.

The staff proposal does not increase the total number of allowances available for the full period of 2013 to 2020. Consequently, the proposal is effective in maintaining the program's environmental objectives. However, if unanticipated conditions create a long-term and persistent increase in the demand for allowances through 2020, the proposal may not be sufficient to fill all accepted bids at the highest price tier. Under these circumstances, the proposal would not ensure that allowance prices do not exceed the Reserve top tier price.

III. ENVIRONMENTAL, AIR QUALITY, AND ENVIRONMENTAL JUSTICE IMPACTS

A. Environmental Analysis

1. Introduction

This chapter provides an environmental analysis (EA) for the proposed amendments to the California Cap on GHG Emissions and Market-Based Compliance Mechanisms (Cap-and-Trade Regulation). In general, the proposed amendments include changes in market program implementation, offset program implementation, and allowance allocation, as well as clarifications to the definition of resource shuffling, provisions to exempt certain emissions from incurring a compliance obligation under the program, and the addition of one new offset protocol. Based on ARB's review, staff has determined that the proposed regulatory amendments to the Cap-and-Trade Regulation would not result in any new significant adverse impacts or an increase in the severity of any significant impacts on the environment as previously identified in the *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms* (2010 FED) and may provide air emissions benefits as compared to current practices. An EA for the proposed addition of a new Compliance Offset Protocol for Mine Methane Capture (MMC Protocol) is included in the separate Staff Report prepared for the proposed protocol, included as Appendix A to this ISOR.

2. Environmental Review Process

ARB is the lead agency for the proposed Regulation and has prepared this EA pursuant to its regulatory program certified by the Secretary of the Natural Resources Agency (14 CCR 15251(d); 17 CCR 60005-60007). In accordance with Public Resources Code (PRC) section 21080.5 of the California Environmental Quality Act (CEQA), public agencies with certified regulatory programs are exempt from certain CEQA requirements, including but not limited to preparing environmental impact reports, negative declarations, and initial studies (14 CCR 15250).

As required by ARB's certified regulatory program (CRP), ARB has prepared this EA to assess the potential for significant adverse and beneficial environmental impacts associated with the proposed amendments to the Cap-and-Trade Regulation and to provide a succinct analysis of those impacts (Title 17,CCR,Section 60005). The resource areas from the *CEQA Guidelines Environmental Checklist* were used as a framework for assessing the potential for significant adverse impacts (17 CCR 60005(b)). This EA was conducted to evaluate any reasonably foreseeable direct or indirect physical change in the environment resulting from the methods of compliance

available to covered entities associated with the proposed regulatory amendments. The EA for the proposed MMC Protocol, contained in Appendix A to this ISOR, evaluates the reasonably foreseeable direct or indirect physical change in the environment that could result from development of projects under the proposed protocol.

If comments received during the public review period raise significant environmental issues, staff will summarize and respond to the comments in the Final Statement of Reasons (FSOR) prepared for the proposed regulatory amendments. The written responses to environmental comments will be approved prior to final action on the proposed regulatory amendments (17 CCR 60007(a)). If the proposed regulatory amendments are adopted, a Notice of Decision will be posted on ARB's website and filed with the Secretary of the Natural Resources Agency for public inspection (17 CCR 60007(b)).

3. Prior Environmental Analysis

The analysis of the proposed regulatory amendments and the analysis of the proposed MMC Protocol rely on the prior environmental analyses prepared for the Cap-and-Trade Regulation as summarized below.

ARB hereby incorporates the documents described below containing the environmental analyses for the 2010 Cap-and-Trade Regulation as well as the 2012 Cap-and-Trade Regulation amendments. These documents are either available on ARB's website at http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm and http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm respectively, or at ARB's Climate Change Program Monitoring Section located at 1001 I Street in Sacramento, California.

a) Cap-and- Trade Regulation (2010)

The Board adopted the Cap-and-Trade Regulation in October 2011. ARB prepared a programmatic EA for the Cap-and-Trade Regulation in the 2010 FED, included as Attachment O to the Staff Report: Initial Statement of Reasons (ISOR) released for public review and comment in November 2010 (CARB 2010d). The 2010 FED analysis was based on the expected compliance responses of the covered entities, identified as: (1) upgrade equipment; (2) decarbonization (fuel switching); (3) implement process changes; and (4) surrender compliance instruments. The 2010 FED also analyzed the potential indirect impacts associated with development of offset projects based on the four Compliance Offset Protocols: (1) Ozone Depleting Substances Projects (ODS); (2) Livestock Projects; (3) Urban Forest Projects; and (4) U.S. Forest Projects. The 2010

FED includes the environmental and regulatory setting information for all of the resource areas.

The 2010 FED concluded that covered entities' compliance with the Cap-and-Trade Regulation would result in beneficial impacts to air quality through reductions in emissions, including GHGs, criteria pollutants, and toxics, and beneficial impacts to energy demand. It concluded there would be less-than-significant or no impact to aesthetics, agricultural and forest resources, hazards, land use, noise, employment, population and housing, public services, recreation, transportation and traffic, and utilities/service systems. The 2010 FED concluded there could be short-term construction-related potentially significant adverse impacts to air quality, biological resources, cultural resources, geology/soils and minerals, and hydrology/water quality, due to construction activities for facility-specific projects. Although the potential for adverse localized air quality impacts were found to be highly unlikely, the 2010 FED conservatively considered them potentially significant. The 2010 FED concluded that implementation of offset projects under the four approved Compliance Offset Protocols would also result in beneficial impacts to GHG emissions and no adverse impacts or less-than-significant impacts in all resource areas except for the following: implementation of projects under the Livestock Protocol has the potential for significant adverse impacts to odors, and construction impacts to cultural resources, noise, and transportation/traffic; implementation of projects under the Urban Forestry Protocol has the potential for significant adverse impacts to cultural resources; and implementation of projects under the Forestry Protocol has the potential for significant adverse impacts to biological resources and land use.

The 2010 FED identified mitigation that could reduce most of the identified impacts to a less-than-significant level. The 2010 FED relied on the agencies with local permitting authority to analyze site-or project-specific impacts because the programmatic 2010 FED could not determine with any specificity the project-level impacts, and ARB does not have the authority to require project-level mitigation for specific projects carried out to comply with the Cap-and-Trade Regulation. Because the programmatic analysis of the 2010 FED could not determine project-specific details of impacts and mitigation, and there is an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts, the 2010 FED took a conservative approach in its post-mitigation significance conclusion finding potentially significant impacts to these resource areas as significant and unavoidable.

The Board approved written responses to comments on the 2010 FED and adopted findings for the significant adverse impacts in Resolution 11-32 adopting the Cap-and-Trade Regulation. The written responses to environmental comments were included in the Final Statement of Reasons (FSOR) prepared for the Regulation (CARB 2011a,

CARB 2012d). The Board also adopted the *Adaptive Management Plan* (CARB 2011b) to address any unanticipated localized air quality impacts resulting from the Cap-and-Trade Regulation and any unanticipated biological resource impacts resulting from implementation of projects under the Forestry Protocol. These documents can be found on the Cap-and-Trade Program website, http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm.

b) Amendments to the Cap-and Trade Regulation (2012)

In 2012, ARB proposed two sets of amendments to the Cap-and-Trade Regulation. The first set of amendments, related to program implementation, was approved by the Board in June 2012. The second set of amendments, related to jurisdictional linkage with Québec, was approved by the Board in April 2013. An EA prepared for these amendments was included in Chapter IV of the Staff Report: Initial Statement of Reasons entitled *Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions* (CARB 2012c).

The 2012 EA concluded the amendments to clarify the Cap-and-Trade Regulation to help ARB implement, oversee, and enforce the Regulation would not change what was already required or the methods of compliance by covered entities evaluated in the 2010 FED (i.e., upgrade equipment, decarbonize, implement process changes, and surrender compliance instruments), and therefore the potential for environmental impacts fell within the scope and scale of those already analyzed. The analysis also considered the potential for indirect environmental impacts resulting from California-covered entities acquiring offset credits from projects in Québec because implementation of the linkage amendments could result in California entities acquiring credits from offset projects under Québec's Digesters (i.e., livestock), ODS, and Landfill Gas Offset Protocols. The EA relied on the prior EA conducted for California's ODS and Livestock Offset Protocols and ARB's Landfills Regulation because Québec's protocols are substantially similar. Those prior EAs concluded that implementation of these types of offset projects would result in beneficial impacts to GHG emissions and no adverse impacts, or less-than-significant impacts, in all resource areas, except implementation of the Livestock Protocol has the potential for significant adverse impacts to odors, cultural resources, noise, and transportation/traffic. The analysis referenced recognized mitigation measures for these impacts and determined that these impacts can be avoided or reduced to a less-than-significant level. However, because the authority to determine project-level impacts and require project-level mitigation lies with the permitting agency for individual projects, in this case Québec agencies, and there is inherent uncertainty in the degree of mitigation ultimately implemented, the analysis took a conservative approach in its post-mitigation significance conclusions

finding that impacts to odors, cultural resources, and transportation/traffic in Québec may remain significant after mitigation.

The Board approved written responses to comments on the EA and adopted findings for the significant adverse impacts in Resolution 13-7 adopting the linkage amendments. The written response to comments for the first set of amendments are included in the FSOR released in July 2012 (CARB 2012d) and for the linkage amendments in the FSOR released May 2013 (CARB 2013a). These documents can be found on the Cap-and-Trade Program website, http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm.

4. Scope of Analysis

The EA provided in this Chapter for the proposed regulatory amendments is intended to amend the previously certified 2010 FED as supplemented by the 2012 EA described above. The EA for the proposed MMC Protocol, provided in Appendix A to this ISOR, is also intended to supplement the 2010 FED analysis. These analyses include only that information necessary to make the prior 2010 FED adequate for the program as revised by the proposed regulatory amendments and addition of the proposed protocol.[6] The focus is on the potential for adverse impacts associated with incremental changes to the previously adopted program as analyzed in the certified environmental document. For the proposed amendments to change market program implementation, offset program implementation, and allowance allocation, to clarify the definition of resource shuffling, and provide an exemption of certain emissions from incurring a compliance obligation, the discussion in this Chapter addresses only those resource areas that are potentially affected by the changes. If there is no discussion of a resource area, it is because staff has determined that the proposed amendments would not result in any new significant adverse impacts or an increase in the severity of any significant impacts on the environment as previously analyzed in the 2010 FED. For the proposed MMC Protocol, every resource area is covered in the EA provided in the Staff Report in Appendix A of this ISOR so as to remain consistent with the chapters prepared for the four protocols in the 2010 FED. The analysis in these documents is necessarily programmatic in nature because site-specific or project-specific aspects of environmental impacts cannot be precisely described at this time.

[6] See eg. CEQA Guidelines sections 15164 , 15163(b).

5. Proposed Amendments

a) Description

Chapter II of this ISOR provides detailed information on the proposed amendments to the Cap-and-Trade Regulation. The description of proposed MMC Protocol is included in the separate Staff Report prepared for that protocol. As briefly summarized below, the proposed regulatory amendments would include the following: (1) changes in market program implementation and offset program implementation, (2) changes in allowance allocation, (3) clarifying language on the definition of resource shuffling, (4) provisions to include new sectors and exempt certain emissions from incurring a compliance obligation under the program, and (5) the addition of one new offset protocol.

(1) Market Program and Offset Program Implementation

Staff is proposing modifications related to the implementation of the auction and trading provisions within the Auction Platform and Compliance Information Tracking Services System (CITSS), in addition to modifications to the current schedule for auctions and reserve sales. Staff is proposing modifications to the existing information disclosure requirements to ensure rigorous oversight of the market program, and to help ARB monitor relationships between consultants and market participants. Staff is also proposing additional information requirements related to CITSS instrument transfers.

Regarding offset program implementation, staff is proposing amendments relating to project listing requirements, monitoring and reporting requirements, verification body requirements, conflict of interest requirements, compliance offset credit issuance, timing and deadlines, and roles of air quality districts. Staff is also proposing changes to clarify that invalidation requirements are consistent for all project types, and to allow air districts to have multiple roles in the offset program. All of the above changes are primarily administrative in nature and are discussed collectively in the environmental impact section of this Chapter.

(2) Allowance Allocation

For the purposes of allowance allocation, staff is considering allocation for new sectors and changes to transition assistance for existing sectors. The amendments include a mechanism for allocation of allowances to several sectors that are currently covered by the program who previously did not receive an allocation, including State universities and eligible public service facilities, natural gas distribution facilities, public wholesale water agencies, and electricity generators who

have contracts that cannot be renegotiated to include a CO_2 cost (legacy contract generators). In addition, the proposed regulatory amendments will shift the scheduled reduction in allocation assistance factors by one compliance period. Each of these four proposed amendments is discussed separately in the environmental impact section of this Chapter.

(3) Resource Shuffling

Pursuant to the direction in Board Resolution 12-33, staff is proposing additional clarity relating to the definition of resource shuffling, and will identify “safe harbors” that ARB does not consider resource shuffling.

(4) Covered Sectors and Exempt Emissions

Staff is proposing regulatory amendments to exempt certain emissions from incurring a compliance obligation under the program. This category of changes includes an extension of exemption for military facilities. In addition, this category also includes short-term exemptions for certain emissions from combined heat and power facilities (CHP) and district heating facilities, and waste-to-energy facilities, until the second compliance period in 2015. Each of these three proposed amendments is discussed separately in the environmental impact section of this Chapter.

(5) New Offset Protocol

The amendments propose one new offset protocol to help ensure that an adequate supply of low-cost compliance instruments will be available for compliance. A detailed description for the MMC Protocol is included in the separate Staff Report prepared for the protocol, included as Appendix A to this ISOR.

b) Methods of Compliance

(1) Market Program and Offset Program Implementation

The proposed regulatory amendments to market program implementation and offset program implementation do not change the stringency or effectiveness of the current program provisions and would not change what is already required or the methods of compliance by covered entities as evaluated in the 2010 FED (i.e., upgrade equipment, decarbonization, process changes, and surrender of compliance instruments).

(2) Allocation

The proposed amendments relating to allocation would not change the compliance responses available to these entities from what was analyzed in the 2010 FED.

(3) Resource Shuffling

The proposed clarifying language is intended to provide guidance to in-state electricity generators and out-of-state electricity importers on actions prohibited under the program and would not affect the compliance responses available to these entities from what was analyzed in the 2010 FED.

(4) Covered Sectors and Exempt Emissions

The extension of the exemption for military facilities would not change the actions or compliance responses of these facilities from what was previously evaluated in the 2010 FED.

The proposed amendments to exempt certain emissions from CHP, district heating facilities, and waste-to-energy facilities in the first compliance period would not change the methods of compliance available to these entities from what was previously analyzed in the 2010 FED.

(5) New Offset Protocol

The methods of compliance for the proposed MMC Protocol is discussed in the EA chapter within the Staff Report, prepared separately for the protocol. Please refer to Appendix A to this ISOR for this Staff Report.

6. Environmental Impacts

(1) Market Program and Offset Program Implementation

The compliance obligations available to covered entities would not change as a result of these amendments from what was previously analyzed in the 2010 FED. The proposed amendments relating to market program implementation and offset program implementation do not change the stringency or effectiveness of the current program provisions, and do not change what is already required or the methods of compliance by covered entities as evaluated in the 2010 FED. Market program and offset program implementation would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED.

(2) Allowance Allocation

Universities and Public Service Facilities.

The proposed allocation of allowances to universities and eligible public service facilities is intended to provide transition assistance to these entities in recognition of their leadership in reducing GHG emissions. The first surrender obligation is not until November 2014 at which time only 30% of allowances for 2013 emissions are due. ARB does not have information at this time on how university and public service facilities may choose to comply with the program, because the method of compliance is chosen by each separate entity. Regardless, the proposed regulatory amendments do not change the methods of compliance available to these entities as evaluated in the 2010 FED and would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from these facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse impacts to air quality.

Staff also considered the possibility that these entities could forego future efficiency improvements in anticipation of receiving a direct allocation of allowances, thereby resulting in fewer co-pollutant benefits. It is not possible at this time to determine whether these facilities would choose to forego additional improvements because an entity's decision to implement such changes is not mandated by the program. Business decisions, including the cost of allowances compared to cost of changes, also factor into the decision to implement process changes. Therefore, it is too speculative to determine whether a facility that may have planned to implement efficiency improvements would now forego these plans as a result of the amendments.

Legacy Contract Generators

The proposed allocation of transition assistance to eligible legacy contract generators would be short-term for most generators (i.e., for the first compliance period only), and would only apply to generators that entered into long-term fixed price contracts that were signed prior to AB 32 and contain no reasonable way to pass compliance costs down to the purchaser. For a small subset with industrial counterparties the allocation would be for the entire term of the contract but the counterparty allocation would be adjusted so overall there would be limited if any additional allocation. In general, legacy contract generators are limited in the methods of compliance available to them. While legacy contract generators have the ability to upgrade

equipment and surrender compliance instruments, bio-derived fuels are often inaccessible to facilities (thereby limiting the ability to decarbonize through fuel switching), and implementing a major process change often requires a complete overhaul of the facility which is both costly and time consuming. Staff believes that allocating allowances to these entities provides additional time for them to finance, plan for and make changes to their operations in order to reduce their emissions, in light of their limited options for compliance.

Because the first compliance surrender date is not until 2014, ARB is not able to determine at this time how legacy contract generators may choose to comply with the program. Regardless, the proposed regulatory amendments do not change the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. Therefore, this amendment would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from these facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse environmental impacts.

Staff also considered the possibility that these entities may have begun to plan or implement efficiency improvements at their facilities, potentially resulting in co-pollutant benefits since the start of the program in January 2013. The proposed transition assistance could cause some entities to delay making additional improvements, thereby reducing potential co-pollutant benefits in the near-term. Nonetheless, it is unlikely that a legacy contract generator would completely forego implementing future planned improvements, because the transition assistance would not extend through the second or third compliance periods.

Natural Gas Suppliers

Staff is proposing an allocation for natural gas suppliers in order to ensure proper transitional assistance to protect rate payers from natural gas utility rate increases. While natural gas suppliers have the ability to upgrade equipment (e.g., install more efficient infrastructure, etc.) and surrender compliance instruments, other options including decarbonizing through fuel switching and implementing major process changes may be less feasible. . The costs must be weighed against alternative means of bringing less carbon intensive energy to consumers. Moreover, fuel switching (e.g., the choice to buy an electric versus gas stove), conservation, and implementation of major process changes (e.g., installing a more efficient water heater) relating to natural gas use are generally considered to be the prerogative of

the end user. Similarly to electrical distribution utilities, the natural gas suppliers can provide programs to end-users to promote these shifts. Thus, staff is proposing transition assistance for natural gas suppliers in the first compliance period, as these entities are best situated to utilize the value of allowances for ratepayer benefit.

As previously discussed, because the first compliance surrender date is not until 2014, ARB cannot determine at this time how natural gas suppliers may choose to comply with the program. Regardless, the proposed amendments do not change the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. Therefore, this amendment would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from these facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse environmental impacts.

Staff also considered the possibility that natural gas suppliers may have started to plan or implement certain efficiency improvements or programs within their service territories, potentially resulting in co-pollutant benefits since the start of the program in January 2013. If an entity decides to undo such efficiency improvements, or foregoes making additional improvements as a result of the proposed allocation, a loss of co-pollutant benefits could result. Any forgone potential co-pollutant benefits do not represent a significant adverse impact to air quality.

Public Wholesale Water Agencies

Staff is proposing an allowance allocation for two public wholesale water agencies, the Department of Water Resources and the Metropolitan Water District, in order to ensure proper assistance to protect water rate payers from rate increases. While public wholesale water agencies have the ability to upgrade equipment (e.g., install more efficient infrastructure, etc.) and surrender compliance instruments, other options including decarbonizing through fuel switching and implementing major process changes may be less feasible. Thus, staff is proposing assistance for public wholesale water agencies for all compliance periods, as these entities are best situated to utilize the value of allowances for ratepayer benefit.

As previously discussed, because the first compliance surrender date is not until 2014, ARB cannot determine at this time how public wholesale water agencies may choose to comply with the program. Regardless, the proposed amendments do not

change the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. Therefore, this amendment would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from public wholesale water agency facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse environmental impacts.

Staff also considered the possibility that public wholesale water agencies may have started to plan or implement certain efficiency improvements or programs within their service territories, potentially resulting in co-pollutant benefits since the start of the program in January 2013. If an entity decides to undo such efficiency improvements, or foregoes making additional improvements as a result of the proposed allocation, a loss of co-pollutant benefits could result. However, any forgone potential co-pollutant benefits do not represent a significant adverse impact to air quality.

Shift in Assistance Factors

Staff is proposing a shift in assistance factors by one compliance period in order to provide additional certainty and time to industry to successfully transition to lower-carbon production methods. This amendment also allows additional time for staff to obtain the results of new research that will improve the data, measurement, and metrics of economic leakage risk and will provide additional insights into the potential leakage risks posed in the long-term for industrial sectors.

The proposed shift would only affect those industry sectors that are in the medium or low leakage risk classifications, and do not change the stringency or effectiveness of the current program provisions as the cap on emissions would still be maintained. Staff believes that the shift is necessary in order to maintain a conservative approach to leakage risk, and will reassess leakage risk classifications based on the results of the new research. While the proposed shift in assistance could cause some entities to delay making additional improvements in the near-term, it is unlikely that an industry would completely forego implementing future planned improvements since assistance factors for the medium and low leakage risk categories would be reduced again in the third compliance period.

As previously discussed, because the first compliance surrender date is not until 2014, ARB cannot determine at this time how all sectors of industry may choose to comply with the program. Regardless, the proposed amendments do not change

the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. Therefore, this amendment would not result in any new significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from these industrial facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse environmental impacts.

(3) Resource Shuffling

The intent of the proposed language relating to resource shuffling is to provide further clarification to electricity generators and importers regarding both prohibited and non-prohibited activities under the Regulation. Resource shuffling was disclosed as a prohibited activity in the 2010 Regulation as analyzed in the 2010 FED. Therefore, the potential for adverse impacts associated with the proposed clarifications to this definition fall within the scope and scale of those previously analyzed.

(4) Covered Sectors and Exempt Emissions

Military Facilities

The exemption for military facilities from a compliance obligation under the program was included in the original 2010 Regulation as analyzed in the 2010 FED. Therefore, the potential for adverse impacts associated with the current proposal to extend this exemption falls within the scope and scale of those previously analyzed.

Combined Heat and Power and District Heating Facilities

Staff is proposing amendments to exempt qualified thermal output emissions from CHP and district heating facilities by placing allowances into these facilities' compliance accounts to cover the exempted emissions for the first compliance period only. These facilities will still reporting emissions and will be considered covered entities under the Program, though they will not have a compliance obligation in the first compliance period. Under the amendments, the Executive Officer will transfer the allocation directly into the entity's compliance account to satisfy the first surrender obligation occurring on November 2014. Therefore, the proposed amendments do not change the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. As a result, this amendment would not result in any new significant impacts or an increase in severity

of any significant impacts previously identified in the 2010 FED. While unlikely, any increase in emissions above business as usual from these facilities would still be subject to applicable local air quality permits. Adherence to all required local permitting regulations would ensure that any changes in emissions would not result in any significant adverse environmental impacts.

Staff also considered the possibility that these entities may have started to implement additional efficiency improvements in anticipation of a compliance obligation in 2014, thereby potentially resulting in certain co-pollutant benefits since the start of the program in January 2013. It is not possible to determine whether these facilities did implement such changes because an entity's decision to implement such changes is not mandated by (or reported to) the program. Business decisions, including cost of allowances compared to cost of changes, factor into the decision to make these process changes. In addition, some facilities have indicated that this type of information is confidential because it can relate to both the cost of production and steam and electricity sales, which often have strategic business importance in negotiating future contracts. It is also too speculative to determine whether any facilities that may have implemented such changes would undo such efficiency improvements as a result of the amendments, which could also potentially lead to a loss of co-benefits realized. Even so, it is unlikely that a facility would completely forego future planned improvements or undo existing improvements as a result of the proposed short-term exemption, since all emissions would be covered in the second and third compliance periods. Further, once natural gas suppliers join the program in 2015, eligible CHP and district heating face similar compliance costs whether a covered entity or not. Even if future co-benefits are not realized in the near-term, any forgone future potential co-benefits do not represent a significant adverse impact to air quality.

Waste-to-energy Facilities

Staff is proposing regulatory amendments to exempt certain emissions from waste-to-energy facilities by placing allowances into these facilities' compliance accounts in order to cover the exempted emissions for the first compliance period only. These facilities will still report emissions and will be considered covered entities under the program, though they will not have a compliance obligation in the first compliance period. Under the amendments, the Executive Officer will transfer the allocation directly into the entity's compliance account to satisfy the first surrender obligation occurring on November 2014. The proposed amendments do not change the methods of compliance available to these entities as evaluated in the 2010 FED, and the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED. Therefore, this amendment would not result in any new

significant impacts or an increase in severity of any significant impacts previously identified in the 2010 FED.

Staff considered the possibility that some of these entities may have begun to plan or implement energy efficiency improvements in anticipation of a compliance obligation in 2014, thereby potentially resulting in co-pollutants benefits since the start of the program in January 2013. As discussed in the *Municipal Solid Waste Thermal Technologies* draft white paper, released jointly by ARB and the Department of Resources Recycling and Recovery (CalRecycle), waste-to-energy facilities have multiple air pollution control devices to limit emissions of sulfur oxides, nitrogen oxides, particulate matter, and other pollutants (CalRecycle 2013). The study notes that additional strategies to reduce GHGs and co-pollutants from waste-to-energy facilities may only achieve modest emissions reductions (CalRecycle 2013).[7] CalRecycle concluded that waste-to-energy facilities in California have limited options for the reduction of GHG emissions (CalRecycle 2013). This suggests that it is unlikely that these entities had to date taken actions to implement energy efficiency improvements at their facilities that would have led to co-pollutant benefits since the start of the program in January 2013. Further, given that the proposed exemption is only for the first compliance period, it is unlikely that any efficiency improvements implemented would be reversed in response to this short term exemption. It is also unlikely that these entities would completely forego future planned improvements as a result of the proposed short-term exemption. While it may be possible that certain co-benefits may not be realized for the first compliance period, a reduction in co-benefits does not represent a significant adverse impact air quality. All facilities would still be required to limit their emissions under all applicable local air quality permits. Adherence to all required local permitting regulations would ensure that these amendments would not result in any significant adverse air quality impacts.

(5) New Offset Protocol

Staff found that implementation of projects based on the proposed MMC Protocol could result in potentially significant impacts on the physical environment. A detailed EA for the MMC Protocol is included in the separate Staff Report prepared for the MMC Protocol included as Appendix A to this ISOR.

[7] Other options to reduce GHGs and co-pollutants, when a full "life-cycle" approach is used include: (1) improvements in front end pre-processing to recover more recyclables (e.g., glass, plastics, cardboard) prior to combustion (2) upgrades to the incinerator, boiler, turbine, or generator that could provide some modest improvements in the efficiency of the plant, and associated electricity generated per ton of waste, (3) improvements in metals recovery equipment to increase the recovery of metals from the waste ash, or (4) increases in the use of ash in products such as construction materials where it could replace virgin materials that would be mined or otherwise produced through processes that result in more GHG emissions (CalRecycle 2013).

7. Cumulative Impacts

Cumulative impacts are impacts on the environment that result from the incremental impacts of a proposed project when added to other past, present, and reasonably foreseeable future actions.

The 2010 FED for the Cap-and-Trade Regulation included a cumulative analysis section that examined impacts associated with the entire Cap-and-Trade program, including the offset protocols, based on the Regulation‘s contribution to environmental impacts in combination with the environmental effects of the ongoing, adopted, and reasonably foreseeable Scoping Plan measures and the State Implementation Plan (SIP), which includes goods movement measures (heavy-duty vehicle efficiency, ship electrification, port drayage truck measures, and vessel speed reduction).

As described above, the proposed amendments to the Cap-and-Trade Regulation will not change how covered entities comply with the Regulation (i.e., upgrade equipment, decarbonization, implement process changes and surrender compliance instruments) as evaluated in the 2010 FED. Therefore, the amendments would not contribute to any additional or more severe cumulative impacts than those already evaluated and disclosed in the 2010 FED. The EA for the MMC Protocol, as provided in Appendix A to this ISOR, includes a protocol specific cumulative impacts discussion.

8. Alternatives

The 2010 FED considered a reasonable range of action alternatives potentially capable of reducing the proposed Regulation’s environmental effects while accomplishing most of the project objectives. The alternatives included a No Project Alternative, a Cap-and-Trade Program with Alternative Design Features Alternatives, (including a border adjustment, 100% auction allowance, a different offset limit, facility-specific caps, restricting trading in impacted locations, disallowing banking of allowances, and not linking with other cap-and-trade programs), and Additional Source-Specific Command-and-Control Regulations Alternative, and a Carbon Fee Alternative. In 2011, when the Board adopted the Cap-and-Trade Regulation, it found that adoption and implementation of the Cap-and-Trade Regulation was the most desirable, feasible, and appropriate action for achieving the objectives of the project, and it rejected the other alternatives as either less desirable or infeasible based on consideration of the relevant factors identified in the 2010 FED as described in the Findings adopted with Resolution 11-32.

As described above, the current proposed regulatory amendments to change market program implementation, offset program implementation, and allocation, to clarify the

definition of resource shuffling, and to exempt certain emissions from incurring a compliance obligation under the program, do not change the methods of compliance available to these entities as analyzed in the 2010 FED. Because the impacts of these actions fall within the scope and scale of those already analyzed in the 2010 FED, and the amendments do not result in any additional or more severe impacts than previously analyzed in the prior certified environmental documents, no additional alternatives analysis for these amendments is required. The EA for the MMC Protocol includes a protocol specific alternatives analysis.

B. Environmental Justice

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. ARB is committed to making environmental justice an integral part of its activities. The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into ARB's programs consistent with the directives of State law (CARB 2001). These policies apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low-income and minority communities.

As part of the economic, emissions, and environmental assessment of the Cap-and-Trade Regulation, staff assessed the emission reduction opportunities available to California sources covered by the proposed amendments to this Regulation. This evaluation considered the potential for the incentives and flexibility inherent in the cap-and-trade program to result in direct, indirect, and cumulative emission impacts, including localized impacts in communities that are already adversely affected by air pollution. Based on the available data and current law and policies that control localized air pollution, and expected compliance responses to the Cap-and-Trade Regulation, ARB concluded that increases in localized air pollution (including toxic air contaminants and criteria air pollutants) attributable to the Cap-and-Trade Program are extremely unlikely. For more information see Chapter VII. Co-Pollutant Emissions Assessment of the 2010 ISOR and Appendix P: Co-Pollutant Emissions Assessment (CARB 2010b; CARB 2010d).

As previously mentioned, since the compliance response resulting from the proposed amendments is expected to be within those already evaluated in the 2010 FED, staff anticipates that the impacts and benefits will also be equivalent. For additional information on the environmental justice impacts associated with the two proposed offset protocols, please refer to Appendix A to this ISOR.

Nevertheless, as part of ARBs Adaptive Management Plan, at least once each compliance period, ARB will use information collected through the mandatory reporting regulation, the Cap-and-Trade Regulation, the industrial efficiency audit, and other sources to evaluate how facilities are complying with the Cap-and-Trade Regulation (CARB 2011b). ARB will also solicit information from local air districts regarding permit modifications and new permit applications for covered sources. This information will be used to identify compliance activities that could lead to increased emissions and to determine whether further investigation of potential criteria pollutant and toxic emissions is warranted.

If unanticipated adverse localized emissions impacts in California can be attributed to the Cap-and-Trade Regulation (including the proposed amendments) during this periodic review, ARB will consider whether these impacts affect the achievement of the program objectives. If so, ARB will promptly develop and implement appropriate responses. Potential responses ARB would consider include, but are not limited to, using allowance value from the Cap-and-Trade Program to mitigate localized emissions increases, providing incentives for energy efficiency and other emissions-reduction activities within the community, or restricting trading or prohibiting certain compliance responses in specifically identified communities. These potential future responses are not, however, warranted based on currently available information, and their imposition today would unnecessarily conflict with AB 32‘s other objectives.

IV. ECONOMIC IMPACTS OF THE PROPOSED REGULATION

A. ECONOMIC AND ALTERNATIVES ASSESSMENT

1. Summary of Economic Impacts

The amendments proposed in this regulation clarify the existing Cap-and-Trade Regulation (Regulation) allowing ARB to implement, oversee, and enforce the Regulation.

The amendments proposed in this Regulation provide more specificity and clarification regarding the information required for registration with ARB in the compliance instrument tracking system and for the reporting of transactions in the compliance instrument tracking system. The collection of this information does not add cost to covered entities over what has been previously estimated for the existing Regulation. Additionally the amendments provide clarity with respect to resource shuffling and cooperation with renewable electricity.

The amendments proposed in the Regulation specify the mechanism for allocation of allowances to several sectors that are currently covered by the cap-and-trade program who previously did not receive an allocation and those sectors that will be covered in 2015. These sectors include Natural gas distribution facilities, California Public Universities, the Department of Water Resources, the Metropolitan Water District and electricity generators who have contracts that cannot be renegotiated to include a CO_2 cost. Further, these amendments extend the 100 percent assistance factor for all covered entities receiving allowances through the second compliance period. Allocation of allowances will reduce the near-term compliance cost for covered facilities that receive allowances.

The Regulation temporarily exempts waste-to-energy emissions, offshore oil and gas production facilities and extends the exemption for military facilities removing their compliance obligation.

The Regulation includes two lead acid battery recycling facilities as covered. These facilities are covered by the original Cap-and-Trade Regulation because of their emissions. However, because process emissions were not being reported at the time of the original Regulation it was unknown that these facilities exceeded the emissions threshold. These sectors will be receiving a product based benchmark similar to other industrial facilities. The inclusion of these sectors in the program does not represent new impacts to the State as the analysis for the original Regulation included all energy using sectors as covered entities.

The amendments proposed in this Regulation specify further mechanisms for cost containment to help ensure that allowances prices do not rise above the price of the highest priced tier in the Allowance Price Containment Reserve.

The amendments proposed include implementation related provisions to clarify existing requirements for offset project operators and assigned project designees. The amendments also propose to allow air districts to have multiple roles in the offset program. As participation in the offset program is voluntary and these amendments are related to implementation, the proposed changes do not add cost to the covered entities over what has been previously estimated for the existing Regulation. Finally, the amendments propose a new offset protocol. Additional protocols will help ensure that an ample supply of low-cost compliance instruments will be available for compliance. The additional protocols will not require additional ARB resources to administer or enforce.

The collection of changes does not add any additional costs over what was anticipated in the original Cap-and-Trade Regulation to regulated entities and some changes will have the effect of reducing costs to some regulated entities in the early years of the program.

2. Legal Requirements

Section 11346.3 of the Government Code requires State agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative regulation. The assessment must include consideration of the impact of the proposed Regulation on California jobs; the expansion, elimination, or creation of businesses; and the ability of California businesses to compete with businesses in other states.

Also, State agencies are required to estimate the cost or savings to any State or local agency and school district in accordance with instructions adopted by the Department of Finance (DOF). The estimate shall include any non-discretionary cost or savings to local agencies and the cost or savings in federal funding to the State.

Finally, Health and Safety Code section 57005 requires ARB to perform an economic impact analysis of submitted alternatives to a proposed regulation before adopting any major regulation. A major regulation is defined as a regulation that will have a potential cost to California business enterprises in an amount exceeding $10 million in any single year.

3. Costs to State Government and Local Agencies

ARB anticipated that government entities covered by the Regulation would need to register for accounts, report transactions and disclose corporate affiliates when it adopted the Regulation in 2011, but the exact details of these requirements were unknown at the time. The proposed Regulation specifies exactly what information will be required. Complying with these requirements does not add any additional costs over what was originally assumed in the Regulation. The proposed Regulation provides for the allocation of allowances to State universities thus reducing their near-term cost of compliance from what was estimated in the original Regulation.

The proposed regulatory action would not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to State agencies or in federal funding to the State.

The proposed regulatory action would not create costs and would not impose a mandate on State and local agencies, or school districts. Because the regulatory requirements apply equally to all covered entities and unique requirements are not imposed on local agencies, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

4. Costs to Businesses and Private Individuals

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. Staff anticipated that regulated business would need to register for accounts, report transactions and disclose corporate affiliates but the exact details of these requirements were unknown at the time. The proposed Regulation specifies exactly what information will be required. Complying with these requirements does not add any additional costs over what was assumed in the Cap-and-Trade Regulation. There are no requirements placed on non-covered businesses or private individuals. Allocation of allowances will reduce the near-term compliance cost for covered facilities receiving allowances.

The Executive Officer has determined that representative private persons and businesses would not be affected by the proposed regulatory action. Pursuant to Government Code section 11346.5(a)(7)(C), the Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide

adverse economic impact directly affecting businesses, and little or no impact on the ability of California businesses to compete with businesses in other states.

The proposed Regulation would not impose sufficient direct or indirect costs to eliminate businesses in California.

5. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SEC. 11346.3(b)

In accordance with Government Code section 11346.3, the staff has determined that the proposed regulatory action would not eliminate existing businesses within the State of California, and would not affect the creation of new businesses or the expansion of existing businesses currently doing business in California. The proposed regulatory action would not eliminate jobs within the State of California, and would not affect the creation of jobs within California.

In general, small businesses in regulated sectors would not be subject to the proposed Regulation because their total GHG emissions are below the GHG reporting threshold, thereby exempting them from compliance obligations under the proposed Regulation.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), staff found that the reporting requirements of the proposed Regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

B. ALTERNATIVES ANALYSIS

Staff is required to consider alternatives to the proposed amendments for the Cap-and-Trade Regulation. For discussion of the alternatives considered, please refer to Chapter V of this ISOR, Alternatives Analysis.

V. ALTERNATIVES ANALYSIS

This Chapter provides an analysis of the alternatives to the proposed amendments for the Cap-and-Trade Regulation that staff considered. The discussion below describes the alternatives to the proposed changes. For each of the alternatives, staff outlines the costs and benefits of the approach and explains why it chose to propose the Cap-and-Trade Regulation and incorporated design features.

A. Alternatives to the Proposed Amendments to the Cap-and-Trade program

Staff analyzed five alternatives to the proposed amendments to the Cap-and-Trade Regulation:

- Do not amend the Cap-and-Trade Regulation (No Project Alternative);
- Consider alternative allocation scenarios (Allocation Alternative);
- Consider alternative cost containment mechanisms (Cost Containment Alternative).

In evaluating these alternative approaches to the proposed Regulation, ARB staff found that none were as effective, or more effective, than the proposal in carrying out the goals of AB 32. Further, none of the options that would have enabled California to meet AB 32 goals were as cost-effective as the proposed Regulation and substantially address the public problem stated in the notice. Staff provides a discussion of each alternative in the following sections.

1. No Amendments (No Project Alternative)

The No Project Alternative defines a scenario in which ARB would not amend the Regulation with the proposed changes. Staff has assessed this alternative for each category of changes, as provided below.

a) Allocation

Under the No Project Alternative, proposed changes relating to the provision of allocation to universities and public service facilities, wholesale public water agencies, natural gas suppliers, and legacy contract generators, and the proposed shift in assistance factors for all industrial sectors by one compliance period, would not be implemented.

Staff propose to allocate allowances to university covered entities and public service facilities for transition assistance and to recognize their leadership in reducing GHG emissions and achieving additional environmental and economic benefits for California. Not providing additional allocation to these entities would remove the incentive to implement future energy efficiency improvements and continue other GHG reduction measures. The provision of direct allocation to natural gas suppliers is intended to benefit ratepayers in order to provide opportunities to reduce emissions without undue economic impacts. Providing allocation to natural gas suppliers protects ratepayers. The consignment produces funds that can be directed by CPUC for the benefit of ratepayers. The provision of allocation for legacy contract generators is intended to provide transitional assistance, pursuant to Board direction. Providing allocation to legacy contract generators gives them time to renegotiate their contracts. The provision for allocation to public wholesale water agencies is for the benefit of water ratepayers. Providing allocation is to mitigate the cost impact to ratepayers associated with the compliance obligations for electricity used to convey water. Finally, the increase in assistance factor levels in the second and third compliance periods is needed to provide additional certainty and time for industry to successfully transition to lower-carbon production methods while also allowing additional time for staff to obtain the results of new research that will improve the data, measurement, and metrics of economic leakage. Without this change, emissions leakage could increase for all industrial sectors under the program.

b) Covered Sectors/Emission Exemptions

Under the No Project Alternative, proposed changes relating to the addition of a newly covered sector (i.e., lead producers), and emission exemptions (i.e., CHP facilities, district heating facilities, military facilities and waste-to-energy facilities) would not be implemented.

Process emissions from lead production facilities were not included in the previous GHG reporting regulations under MRR. As a result, certain lead producers did not exceed the Cap-and-Trade emissions threshold and therefore were not considered covered entities under the Program. Without the proposed amendments, this oversight would not be corrected and reporting of process emissions would not be equitable across all industry sectors.

Staff believes it is appropriate to exempt military facilities in order to recognize the 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. Without the continued exemption of these facilities, the GHG reductions resulting from these mechanisms would not be recognized. Regarding CHP and district

heating facilities, small facilities that made the efficient, lower emission, choice to install CHP could be disadvantaged during the first compliance period than would similar, less efficiency facilities without CHP. Staff believes this outcome runs counter to the overall intent and goals of the program to encourage efficiency and GHG reduction measures, and thus proposes a limited exemption of these emissions. Lastly, in an attempt to be conservative, staff believes is appropriate to exempt waste-to-energy emissions during the first compliance period to allow for the completion of the inter-agency study that will determine the best approach to treat Municipal Solid Waste under the program.

c) Electricity

Under the No Project Alternative, proposed changes relating the definition of resource shuffling and requirements for RECs in the RPS adjustment provisions would not be implemented.

The clarifying language relating to resource shuffling is proposed in response to stakeholder concerns that activities that may be considered resource shuffling are not well defined in the Regulation but are nonetheless prohibited. Stakeholders argued that lack of clarity regarding resource shuffling could negatively affect California and western states electricity markets. Not providing additional clarity could make compliance with the Regulation more burdensome and could result in inhibiting legitimate activity in electricity markets.

The proposal to clarify REC requirements under specified sources is intended to ensure that RECs are not accounted for in multiple programs. Without these provisions, ARB would have no mechanism for tracking and informing others that renewable electricity generation was accounted for under this program. The proposal includes an adjustment to a compliance obligation for electricity procured to meet a California RPS requirement. Without these changes the original intent of the provision would not be met, and requirements to meet the intent of the program would not be clarified.

d) Cost Containment

Under the No Project Alternative, proposed changes relating to cost containment (i.e., increasing the availability of additional allowances, etc.) would not be implemented.

Pursuant to Board direction, the amendments relating to cost containment are intended to ensure that allowance prices do not exceed the highest price tier of the Reserve, while also minimizing the impact on existing allowances and maintaining the environmental integrity of the program. Not including additional cost containment mechanisms could increase the likelihood that allowances prices will exceed the highest

price ties of the Reserve, and could make the price of allowances more vulnerable to unlikely exogenous shocks to the market.

e) Market Implementation

Under the No Project Alternative, proposed changes relating to market implementation (i.e., corporate association disclosure, registration requirements, auction administration, etc.) would not be implemented. The proposed amendments relating to market implementation are intended to allow ARB to continue to properly implement and oversee the Regulation. Without these changes, program implementation and oversight would be less efficient and effective.

f) Offset Protocols and Offset Program Implementation

Under the No Project Alternative, proposed changes relating to both offset program implementation and the addition of new offset protocols would not be implemented. The changes made for offset program implementation are intended to aid ARB in continuing to successfully implement and oversee the offset program. Without these changes, ARB oversight and implementation of offset program would be less efficient and effective. The addition of new offset protocols is intended to increase the supply of offsets to the market thereby assisting in cost containment. Without the additional offset protocol, the likelihood that allowances prices will exceed the highest price tier of the Reserve is increased.

Under the No Project Alternative, staff would not make changes to the program that are necessary to achieve the goals of the Regulation. Staff has considered alternative means of achieving these goals and none were found to be as effective, or more effective, than the proposal in carrying out the goals of AB 32. No alternative considered by the agency would be more effective in carrying out the purpose for which the Regulation is proposed, or would be as effective as and less burdensome to affected individuals and businesses than the proposed Regulation. Therefore staff believes the amendments proposed in this Regulation are necessary.

2. Allocation Alternative

The New Sector Allocation Alternative defines a scenario in which ARB considers alternative allocation scenarios for sectors including legacy contract generators, universities and public service facilities, wholesale public water agencies, and natural gas suppliers. Staff discussed several alternatives with stakeholders during workshops and many individual meetings, and the proposed alternatives varied widely for each proposed allocation to new sectors. For example, stakeholders proposed allowance allocation to legacy contract generators for the full term of the contract. Staff rejected

this proposal because this does not allow for a price signal and cost pass through to the purchaser of the steam and/or electricity. It also does not recognize or encourage renegotiation. Staff did decide to offer allocation for those parties with an industrial counterparty because the purpose is different and it adjusts the counterparty allocation, correcting incentives and providing limited if any additional overall allocation. Staff also discussed with stakeholders the potential for moving the point of Regulation to that of the natural gas supplier. Because there are so many variations to the types of contracts this alternative would not resolve the issue.

For public wholesale water agencies, staff considered additional allocation levels. Staff rejected this scenario because the allocation is related to the electricity to convey water and should consistent with the allocation methodology for electrical distribution utilities.

Staff also considered reducing or removing assistance to universities and public service facilities. However, staff rejects these scenarios as they would neither recognize nor reward universities for their leadership in reducing GHG emissions as directed by Board Resolution 11-32.

Staff additionally considered reducing initial consignment requirements but this would not provide reductions in the residential and commercial uses of natural gas through end user changes or utility programs. .

Staff also considered removing the proposed shift in assistance factor levels for industry. As previously discussed, the changes are needed to provide additional certainty and time for industry to successfully transition to lower-carbon production methods while also allowing additional time for staff to obtain the results of new research that will improve the data, measurement, and metrics of economic leakage risk. Without this change, it is possible that the requirements for some EITE industries to reduce emissions may create a disadvantage for California facilities relative to out-of-state competitors who do not face similar requirements. Thus staff rejects the alternative to remove the shift in assistance factors until the leakage research is finalized.

Under the Allocation Alternative, staff would not make changes to the program that are necessary to provide assistance to new sectors including legacy contract generators, wholesale public water agencies, universities and public service facilities, and natural gas suppliers. No alternatives to allocation considered by ARB would be more effective in carrying out the purpose for which the Regulation is proposed, or would be as effective as and less burdensome to affected individuals and businesses in the state while achieving the purposes of the proposed Regulation. Therefore staff believes the amendments proposed in this Regulation are necessary.

Cost Containment Alternative

The Cost Containment Alternative defines a scenario in which ARB considers alternative mechanisms for cost containment in response to Board Resolution 12-51.

In a public workshop, staff considered alternative approaches to the design of one or more containment mechanisms in order to ensure the allowance price does not exceed the highest price tier of the Reserve. The alternatives were presented in two categories, alternative approaches to containing costs and alternative approaches to obtaining compensating emission reductions to maintain the environmental integrity of the program. The cost containment alternatives included injecting additional allowances at the highest price tier of the Reserve, allowing fulfillment of compliance obligation through a fixed price-per-ton payment at the highest price tier of the Reserve, delaying compliance obligation, and the cancellation of compliance obligation. Alternative approaches to maintaining the environmental objective of the program included redistributing existing allowances, committing to additional emissions reductions from the post 2020 period, mandating additional emission reductions from California sources, and obtaining emission reductions outside of California.

With input from stakeholders and the public, staff designed a cost containment mechanism that injects additional allowances at the highest price tier of the Reserve through the redistribution of existing allowances. This approach was supported by many stakeholders and was staff's preferred mechanism as it further ensures the allowance price will not exceed the highest price tier of the Reserve over a plausible range of future conditions and maintains the environmental integrity of the program. The other considered alternatives either did not meet all objectives of Resolution 12-51 or were not feasible under AB 32.

Some stakeholders also recommended that ARB use additional approaches in designing one or more cost containment mechanisms in satisfaction of the Board Resolution. Stakeholders expressed concern that the proposed cost containment mechanism does not guarantee that the allowance price will not exceed the highest price tier of the Reserve if there is a long-term imbalance in the supply and demand for allowances. Stakeholders recommended the creation of additional mechanisms designed to reduce the likelihood the allowance price will enter the Reserve by reducing the overall demand for compliance instruments and increasing the overall supply of compliance instruments early in the program. Stakeholders also recommended alternative cost containment mechanisms that would be triggered when the allowance price reaches the highest price tier of the Reserve. Some of these alternatives could impact the effectiveness of the program in reducing the statewide GHG emissions level to the 2020 target.

Staff reviewed all stakeholder recommendations, as well as written comments and public testimony received at two public workshops. Staff believes the proposed cost containment mechanism to best satisfy the objectives of Board Resolution 12-51 within the framework of AB 32.

VI. SUMMARY AND RATIONALE FOR PROPOSED REGULATION

The proposed amendments to the Cap-and-Trade Regulation are designed to help staff implement the cap-and-trade program and increase market security. This section discusses the requirements and rationale for each provision of the proposed amendments to the Cap-and-Trade Regulation.

Subarticle 2. Purpose and Definitions.

Section 95802. Definitions.

Summary of Section 95802 (a)(4)

New section 95802(a)(4) is added to provide a definition for activin.

Rationale for Section 95802 (a)(4)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(9)

New section 95802(a)(9) is added to provide a definition for Air Pollution Control District to support the identification of the eligibility for the exemption from a compliance obligation for Waste-to-Energy facilities.

Rationale for Section 95802 (a)(9)

This new definition is necessary to define the type of permit the facility must have to operate.

Summary of Section 95802 (a)(11)

New section 95802(a)(11) is added to provide a definition for almond.

Rationale for Section 95802 (a)(11)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(11)

Section 95802(a)(11) is deleted.

Rationale for Section 95802 (a)(11)

This deletion of this definition is necessary as it is no longer used in the crude petroleum extraction benchmarking. Instead, crude petroleum extraction is separated by thermal and non-thermal production.

Summary of Section 95802 (a)(13)

New section 95802(a)(13) is added to provide a definition for aluminum and aluminum billet.

Rationale for Section 95802 (a)(13)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(14)

Section 95802(a)(14) is modified to provide a definition for Asset Controlling Supplier to clarify these entities are considered suppliers of specified sources and renumbered to 19.

Rationale for Section 95802(a)(14)

This modification is necessary because these entities are assigned specific emission rates to be applied to electricity delivered to California from their declared resources.

Summary of Section 95802 (a)(16)

New section 95802(a)(16) is added to provide a definition for aseptic tomato paste.

Rationale for Section 95802 (a)(16)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(17)

New section 95802(a)(17) is added to provide a definition for aseptic whole / diced tomato.

Rationale for Section 95802 (a)(17)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(23)

Section 95802(a)(23) is modified to correct a typographical error and renumber to 29.

Rationale for Section 95802(a)(23)

This modification is necessary to delete the extra space between “integrates” and “resource”.

Summary of Section 95802(a)(26)

Section 95802(a)(26) is modified to include dry gas production data into the calculation of barrel of oil equivalent and renumber to 32.

Rationale for Section 95802(a)(26)

This modification is necessary to include dry gas production data in the product benchmarks for the purposes of allowance allocation to the oil and gas extraction sector, pursuant to section 95891.

Summary of Section 95802 (a)(28)

New section 95802(a)(28) is added to provide a definition for baked potato chips.

Rationale for Section 95802 (a)(28)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(39)

Section 95802(a)(39) is added to provide a definition for boiler to identify that boiler emissions are included if they provided thermal energy and it was not an integral part of the cogeneration system.

Rationale for Section 95802(a)(39)

This term and definition is necessary allow for the inclusion of the emissions from a boiler if the boiler provided thermal output for sale under a legacy contract to a legacy contract counterparty.

Summary of Section 95802 (a)(42)

New section 95802(a)(42) is added to provide a definition for butter.

Rationale for Section 95802 (a)(42)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(43)

New section 95802(a)(43) is added to provide a definition for buttermilk.

Rationale for Section 95802 (a)(43)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(49)

New section 95802(a)(49) is added to provide a definition for canned non-tomato additive.

Rationale for Section 95802 (a)(49)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(57)

New section 95802(a)(57) is added to provide a definition for carbonation.

Rationale for Section 95802 (a)(57)

This new definition is necessary to.

Summary of Section 95802 (a)(59)

New section 95802(a)(59) is added to provide a definition for cheese.

Rationale for Section 95802 (a)(59)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(64)

New section 95802(a)(64) is added to provide a definition for complexity weighted barrel.

Rationale for Section 95802 (a)(64)

This new definition is necessary for the purposes of benchmarking and allowance allocation for petroleum refineries.

Summary of Section 95802 (a)(70)

New section 95802(a)(70) is added to provide a definition for compressed natural gas.

Rationale for Section 95802 (a)(70)

This new definition is necessary to clarify which entities are natural gas suppliers covered under the Cap-and-Trade Regulation. The definition here is slightly different from the definition of natural gas suppliers as covered under the Mandatory Reporting Regulation.

Summary of Section 95802 (a)(71)

New section 95802(a)(71) is added to provide a definition for concentrated milk.

Rationale for Section 95802 (a)(71)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(76)

New section 95802(a)(76) is added to provide a definition for corn chip.

Rationale for Section 95802 (a)(76)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(77)

New section 95802(a)(77) is added to provide a definition for corn curl.

Rationale for Section 95802 (a)(77)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(80)

New section 95802(a)(80) is added to provide a definition for cream.

Rationale for Section 95802 (a)(80)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(83)

New section 95802(a)(80) is added to provide a definition for crystal color concentrate.

Rationale for Section 95802 (a)(83)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(85)

Section 95802(a)(85) is modified to include importers importing electricity to meet CAISO's EIM and renumber to 114.

Rationale for Section 95802(a)(85)

This modification is necessary to capture and include EIM Participating Resource Scheduling Coordinators as importers of electricity into California.

Summary of Section 95802 (a)(86-90)

New sections 95802(a)(86-90) is added to provide definitions for the five products in the dehydrated flavors sector: dehydrated chili peppers, garlic, onion, parsley, and spinach.

Rationale for Section 95802 (a)(86-90)

These new definition is necessary to define the new products for benchmarking and allocation.

Summary of Section 95802 (a)(88)

Sections 95802(a)(88) are changed to modify the definition of emissions data report and renumber to 117.

Rationale for Section 95802 (a)(88)

This modification is necessary to be consistent with the Mandatory Reporting Regulation.

Summary of Section 95802 (a)(92)

New sections 95802(a)(92) is added to provide a definition for deproteinized whey.

Rationale for Section 95802 (a)(92)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(93)

New sections 95802(a)(93) is added to provide a definition for diced tomatoes.

Rationale for Section 95802 (a)(93)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(99)(c)

Section 95802(a)(99)(c) is change to modify the definition of facility with respect to onshore petroleum and natural gas production and renumber to 134.

Rationale for Section 95802 (a)(99)(c)

This modified definition is necessary to clarify that permanent pipeline equipment used to transfer emulsion to an onshore petroleum and natural gas facility is also considered part of that facility. In addition, this definition is also modified to clarify that a cogeneration plant is only considered part of the facility if the facility operator or owner has a greater than fifty percent ownership share in the cogeneration plant.

Summary of Section 95802(a)(102).

Section 95802(a)(102) is added to provide a definition of a district heating facility.

Rationale for Section 95802(a)(102).

This definition is needed to define a type of entity that will be eligible to apply for a limited exemption of emissions during the first compliance period pursuant to section 95852(j).

Summary of Section 95802 (a)(103)

Sections 95802(a)(103) are modified to update the definition of First Point of Receipt to meet industry standards and renumber to 138.

Rationale for Section 95802 (a)(103)

This modification is necessary more accurately measure the amount of electricity that could be imported into California.

Summary of Section 95802 (a)(105)

New section 95802(a)(105) is added to provide a definition for ductile iron pipe.

Rationale for Section 95802 (a)(105)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(109)

New section 95802(a)(109) is added to provide a definition for early action reporting period.

Rationale for Section 95802 (a)(109)

This new definition is necessary to clarify what timeframe was being reference. The original Regulation contained a reference to Offset Project Data Report year which was somewhat ambiguous since the Offset Project data report is unique to compliance offset projects.

Summary of Section 95802(a)(114)

Section 95802(a)(114) is changed to modify the definition of fuel supplier and renumber to 150.

Rationale for Section 95802(a)(114)

This modification is necessary to include intrastate pipelines in the definition of fuel suppliers.

Summary of Section 95802(a)(119).

New section 95802(a)(119) is added to provide a definition for emulsion.

Rationale of Section 95802(a)(119).

This new definition is added to clarify the meaning of emulsion, which has been introduced in the definition of onshore petroleum and natural gas production facility, and to be consistent with MRR.

Summary of Section 95802(a)(121)

New section 95802(a)(121) is added to include reference to and identify CAISO's EIM market.

Rationale for Section 95802(a)(121)

This addition is necessary to capture electricity that is imported into California to fulfill CAISO's EIM requirements.

Summary of Section 95802(a)(122)

New section 95802(a)(122) is added to define EIM Participating Resource Scheduling Coordinators.

Rationale for 95802(a)(122)

This addition is necessary to identify the entity that is responsible for the compliance obligation when importing power into California to fulfill CAISO's EIM requirements.

Summary of Section 95802 (a)(128)

New section 95802(a)(128) is added to provide a definition for evaporated milk.

Rationale for Section 95802 (a)(128)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(129)

New section 95802(a)(129) is added to provide a definition for exchange.

Rationale for Section 95802 (a)(129)

This new definition is necessary to enable account representatives to classify the type of transaction agreement for which they are submitting a transfer request. Under the proposed amendments, the type of contract identifies the information the account representative must submit to complete the transfer request.

Summary of Section 95802 (a)(130)

New section 95802(a)(130) is added to provide a definition for "execution date."

Rationale for Section 95802 (a)(130)

This definition is needed to make proposed section 9592(a)(3)(B) clear to entities submitting a transfer request that they must submit the request within three days of an execution date, which is the date on or by which a transfer agreement requires compliance instruments to be transferred.

Summary of Section 95802(a)(137)

Section 95802(a)(137) is changed to modify the definition of imported electricity and renumber to 178.

Rationale for Section 95802(a)(137)

This modification is necessary to exclude electricity imported into California to meet emergency assistance requirements and to include electricity imported into California to meet CAISO's EIM requirements and to serve California's electricity load.

Summary of Section 95802 (a)(147)

New section 95802(a)(147) is added to provide a definition for freshwater diatomite filter aids.

Rationale for Section 95802 (a)(147)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(148)

New section 95802(a)(148) is added to provide a definition for fried potato chip.

Rationale for Section 95802 (a)(148)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(153)

New section 95802(a)(153) is added to provide a definition for futures.

Rationale for Section 95802 (a)(153)

This new definition is necessary to allow account representatives to submit all of the information needed to complete a transfer request. Entities that submit a transfer request as the result of a transaction on an exchange must identify the type of exchange-traded contract. The definition allows the account representative to enter the correct type.

Summary of Section 95802 (a)(159)

New section 95802(a)(159) is added to provide a definition for granulated refined sugar.

Rationale for Section 95802 (a)(159)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(160)

New section 95802(a)(160) is added to provide a definition for grape juice concentrate.

Rationale for Section 95802 (a)(160)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(168)

New section 95802(a)(168) is added to provide a definition for gypsum.

Rationale for Section 95802 (a)(168)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(173)

New section 95802(a)(173) is added to provide a definition for holding account.

Rationale for Section 95802 (a)(173)

This new definition is necessary to establish the equivalence between the term “holding account,” which is used in the Regulation, and the term “general account,” which is used in the tracking system (CITSS) in place of the term “holding account.”

Summary of Section 95802 (a)(180)

New section 95802(a)(180) is added to provide a definition for Industrial Sector Legacy Contract Counterparty to identify the counter party of an operator of a legacy contract generator.

Rationale for Section 95802 (a)(180)

This new term and definition are necessary to identify the party for which allowances will be deducted, if allowances were allocated.

Summary of Section 95802 (a)(190)

New section 95802(a)(190) is added to provide a definition for lactose.

Rationale for Section 95802 (a)(190)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(191)

New section 95802(a)(191) is added to provide a definition for lager beer.

Rationale for Section 95802 (a)(191)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(192)

New section 95802(a)(192) is added to provide a definition for lead and lead alloys.

Rationale for Section 95802 (a)(192)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(195)

Section 95802(a)(195) is added to provide a definition for Legacy Contract to describe the type of contract that could be eligible for transition assistance.

Rationale for Section 95802(a)(195)

The new term and definition are necessary to limit the type of contracts for which allowances could be allocated.

Summary of Section 95802(a)(196)

Section 95802(a)(196) is added to provide a definition for Legacy Contract Emissions to define the emissions which are eligible for use in the calculation of allowances.

Rationale for Section 95802(a)(196)

This new term is necessary to limit the emissions included in the allowance calculation to just those that are a part of the legacy contract.

Summary of Section 95802(a)(197)

Section 95802(a)(197) is added to provide a definition for Legacy Contract Generator to identify the generator which produces the emissions.

Rationale for Section 95802(a)(197)

The new term and definition for “Legacy Contract Generator” is necessary to identify the emissions to be included in the calculation of allowances to the operator of the legacy contract.

Summary of Section 95802(a)(198)

Section 95802(a)(198) is added to provide a definition for Legacy Contract Qualified Thermal Output to describe the emissions due to the production of thermal energy.

Rationale for Section 95802(a)(198)

This new term and definition are necessary to include all of the sources of emissions that contribute to the thermal energy sold or provided to the Legacy Contract Counterparty.

Summary of Section 95802 (a)(204)

New section 95802(a)(204) is added to provide a definition for liquefied natural gas.

Rationale for Section 95802 (a)(204)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(206)

New section 95802(a)(206) is added to provide a definition for liquid color concentrate.

Rationale for Section 95802 (a)(206)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(215)

New section 95802(a)(215) is added to provide a definition for milk.

Rationale for Section 95802 (a)(215)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(223)

New section 95802(a)(223) is added to provide a definition for natural gas supplier.

Rationale for Section 95802 (a)(223)

This new definition is necessary to properly allocate allowances to the natural gas suppliers.

Summary of Section 95802(a)(226)

Section 95802(a)(226) is modified to fix a typographical error and renumber to 290.

Rationale for Section 95802(a)(226)

This modification is necessary to correct the spelling of electricity.

Summary of Section 95802 (a)(227)

New section 95802(a)(227) is added to provide a definition for non-thermal enhanced oil recovery.

Rationale for Section 95802 (a)(227)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(227)

Section 95802(a)(227) is changed to place bounds on the use of qualified positive offset verification statement and renumbered to 292.

Rationale for Section 95802(a)(227)

This modification is necessary to clarify that the qualified positive offset verification statement is not allowed when the offset project operator or authorized project designee substitutes an explicit requirements of the Regulation with a method not approved by the Board

Summary of Section 95802 (a)(244)

New section 95802(a)(244) is added to provide a definition for over the counter.

Rationale for Section 95802 (a)(244)

This new definition is necessary to enable account representatives to classify the type of transaction agreement for which they are submitting a transfer request. Under the proposed amendments, the type of contract identifies the information the account representative must submit to complete the transfer request.

Summary of Section 95802(a)(246)

Section 95802(a)(X) is modified to update to the most current definition, as defined in the California Energy Commission's "Renewable Portfolio Standard Eligibility, 7th edition, Commission Guidebook, April, 2013; CEC-300-2013-005-ED7-CMF..

Rationale for Section 95802(a)(246)

The modification is necessary to maintain a consistent definition used by other agencies and industry.

Summary of Section 95802(a)(248)

Section 95802(a)(248) is changed to modify the definition of reporting period to clarify the length of an ODS project and renumber to 313.

Rationale for Section 95802(a)(248)

This modification is necessary to clarify that an ODS project can only have one reporting period. This is already in the Regulation text but is added to the definition for clarity.

Summary of Section 95802(a)(252).

Section 95802(a)(252) is modified to redefine resource shuffling to as a plan, scheme or artifice to reduce a First Deliverer's compliance obligation by substituting relatively lower emission electricity for higher emission electricity, and to exclude from the definition substitutions of electricity that occur pursuant to conditions listed in section 95852(b)(2)(A). This section was renumbered to 317

Rationale for Section 95802(a)(252).

This change is needed to clarify what kind of activity is considered resource shuffling, and to identify activities listed in section 95852(b)(2)(A) as being excluded from the definition of resource shuffling.

Summary of Section 95802 (a)(254)

New section 95802(a)(254) is added to provide a definition for pistachio.

Rationale for Section 95802 (a)(254)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(264)

New section 95802(a)(264) is added to provide a definition for poultry deli product.

Rationale for Section 95802 (a)(264)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(266)

New section 95802(a)(267) is added to provide a definition for powdered milk.

Rationale for Section 95802 (a)(266)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(267)

New section 95802(a)(266) is added to provide a definition for power contract.

Rationale for Section 95802 (a)(267)

This new definition is necessary to identify eligibility requirements so that importers of electricity are able to use the RPS adjustment.

Summary of Section 95802 (a)(268)

New section 95802(a)(268) is added to provide a definition for pretzel.

Rationale for Section 95802 (a)(268)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(271)

Section 95802(a)(271) is changed to modify the definition of supplier and renumber to 341.

Rationale for Section 95802(a)(271)

This modification is necessary to include operators of interstate pipelines.

Summary of Section 95802(a)(277)

Section 95802(a)(277) is changed to modify the definition of transfer and renumber to 352.

Rationale for Section 95802(a)(277)

This modification is necessary to remove serial number from the definition.

Summary of Section 95802 (a)(283)

New section 95802(a)(283) is added to provide a definition for protein meal.

Rationale for Section 95802 (a)(283)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(a)(284).

Section 95802(a)(284) is added to provide a definition of a public service facility.

Rationale for Section 95802(a)(284).

This definition is needed to define a type of entity that will be eligible for an allowance allocation pursuant to section 95870(d)(2) .

Summary of Section 95802(a)(285)

Section 95802(a)(285) is changed to modify the definition of verifier and renumber to 363.

Rationale for Section 95802 (a)(285)

This modification is necessary to define offset verifier to be interchangeable with verifier.

Summary of Section 95802(a)(287)

Section 95802(a)(287) is changed to modify the definition of voluntarily associated entity and renumber to 365.

Summary of Section 95802(a)(287).

Section 95802(a)(287) is added to provide a definition of a public wholesale water agency.

Rationale for Section 95802(a)(287).

This definition is needed to define a type of entity that will be eligible for an allowance allocation pursuant to section 95870(i).

Rationale for Section 95802 (287)

This modification is necessary to define general market participant to be interchangeable with voluntarily associated entity.

Summary of Section 95802(a)(287).

Section 95802(a)(287) is added to provide a definition of a public wholesale water agency.

Rationale for Section 95802(a)(287).

This definition is needed to define a type of entity that will be eligible to apply for allowance allocation pursuant to section 95870(i).

Summary of Section 95802(a)(294).

Section 95802(a)(294) is added to provide a definition of qualified thermal output.

Rationale for Section 95802(a)(294).

This definition is needed to clarify the kind of thermal output that will be used to determine the eligibility of a facility for a facility with a cogeneration unit or a district heating facility for a limited exemption for emissions associated with thermal energy production pursuant to section 95852(j).

Summary of Section 95802 (a)(321)

New section 95802(a)(321) is added to provide a definition for salt.

Rationale for Section 95802 (a)(321)

This new definition is necessary to assist in the definition of tomato soluble solids.

Summary of Section 95802 (a)(322)

New section 95802(a)(322) is added to provide a definition for seamless rolled ring.

Rationale for Section 95802 (a)(322)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(330)

New section 95802(a)(330) is added to provide a definition for skim milk.

Rationale for Section 95802 (a)(330)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(336)

New section 95802(a)(336) is added to provide a definition for spot.

Rationale for Section 95802 (a)(336)

This new definition is necessary to allow account representatives to submit all of the information needed to complete a transfer request. Entities that submit a transfer request as the result of a transaction on an exchange must identify the type of exchange-traded contract. The definition allows the account representative to enter the correct type.

Summary of Section 95802 (a)(337)

New section 95802(a)(337) is added to provide a definition for stand-alone-electricity generating facility.

Rationale for Section 95802 (a)(337)

This new definition is necessary to identify electricity generators that produce electricity only and do not provide steam.

Summary of Section 95802 (a)(342)

New section 95802(a)(342) is added to provide a definition for sweetened condensed milk.

Rationale for Section 95802 (a)(342)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(345)

New section 95802(a)(345) is added to provide a definition for thermal enhanced oil recovery.

Rationale for Section 95802 (a)(345)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(348)

New section 95802(a)(348) is added to provide a definition for tissue produced adjusted by water absorbency capacity.

Rationale for Section 95802 (a)(348)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(349)

New section 95802(a)(349) is added to provide a definition for tomato soluble solids.

Rationale for Section 95802 (a)(349)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(350)

New section 95802(a)(350) is added to provide a definition for tracking system.

Rationale for Section 95802 (a)(350)

This new definition is necessary to specifically include the tracking system that has been developed and deployed to help implement the program.

Summary of Section 95802 (a)(354)

New section 95802(a)(354) is added to provide a definition for transferred ARB Project.

Rationale for Section 95802 (a)(354)

This new definition is necessary because a new section was added to put in place requirements for offset projects transferring from one Offset Project Registry to another.

Summary of Section 95802(a)(356).

New section 95802(a)(356) is added to provide a definition for True-up allowance amount.

Rationale of Section 95802(a)(356).

This addition is needed to define the true-up allowance amount referenced in 95856(h)(1)(C), 95856(h)(2)(C) , and 95891.

Summary of Section 95802(a)(358).

Section 95802(a)(358) is added to provide a definition of a university covered entity.

Rationale for Section 95802(a)(358).

This definition is needed to identify a covered entity or opt-in covered entity that is a university eligible for an allowance allocation for transitional assistance pursuant to section 95870(f) with an allocation calculated pursuant to section 95891(e).

Summary of Section 95802 (a)(370)

Section 95802(a)(370) is added to provide a definition for Waste-to-Energy Facility in order to support the exemption from a compliance obligation during the first compliance period for Waste-to-Energy facilities.

Rationale for Section 95802 (a)(370)

This new definition is necessary to define the type of facility that will be exempted from a compliance obligation for the combustion of Municipal Solid Waste, in the first compliance period.

Summary of Section 95802 (a)(371)

New section 95802(a)(371) is added to provide a definition for water absorption capacity.

Rationale for Section 95802 (a)(371)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(372)

New section 95802(a)(372) is added to provide a definition for whey protein concentrate.

Rationale for Section 95802 (a)(372)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(373)

New section 95802(a)(373) is added to provide a definition for whole chicken and chicken parts.

Rationale for Section 95802 (a)(373)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802 (a)(374)

New section 95802(a)(374) is added to provide a definition for whole peeled tomatoes.

Rationale for Section 95802 (a)(374)

This new definition is necessary to define the new product for benchmarking and allocation.

Summary of Section 95802(b)

Section 95802(b) now includes two new acronyms and acronyms that were not needed were deleted.

Rationale for Section 95802(b)

Section 95802(b) was modified to provide clarity on acronyms used in the Regulation.

Subarticle 3: Applicability

Section 95811. Covered Entities.

Summary of Section 95811(a)(6).

Section 95811(a)(6) is modified to include lead producers.

Rationale for Section 95811(a)(6).

It is necessary to include lead production because the manufacturing process creates GHG emissions.

Summary of Section 95811(g)

New section 95811(g) is added to cover emissions associated with the use of liquefied natural gas.

Rationale for Section 95811(g).

This addition is necessary to include emissions from suppliers of liquefied natural gas because these fuels result in a significant share of the State's GHG emissions, when completely combusted.

Summary of Section 95811(g)(1).

New subsection (g)(1) is added to cover emissions associated with the use of liquefied natural gas produced at in-state facilities.

Rationale for Section 95811(g)(1).

This addition is necessary to include emissions from suppliers of liquefied natural gas because the GHG emissions from the combustion of this fuel are significant in the state.

Summary of Section 95811(g)(2).

New subsection (g)(2) is added to cover emissions associated with the use of imported liquefied natural gas.

Rationale for Section 95811(g)(2).

This addition is necessary to include emissions from suppliers of liquefied natural gas because the GHG emissions from the combustion of this fuel are significant in the state of California...

Summary of Section 95811(h).

Existing section 95811(g) was moved to new section 95811(h).

Rationale for Section 95811(h).

This change was necessary to accommodate new section 95811(g)

Section 95812. Inclusion Thresholds for Covered Entities.

Summary of Section 95812(b)

Section 95812(d) is modified to change the inclusion threshold years for a covered entity from 2009 through 2012 instead of 2009 through 2011.

Rationale of Section 95812(b)

This change is necessary to be consistent with the compliance obligation calculation in section 95853(a) and the definition of a covered entity.

Summary of Section 95812(d).

Section 95812(d) is modified to add entities specified in sections 95851(c) and (d) as entities that are classified as a covered entity as of January 1, 2015.

Rationale for Section 95812(d).

This change is needed to account for the phase in of the compliance obligation beginning in the second compliance period for operators of cogeneration facilities, district heating facilities, and eligible Waste-to-Energy facilities. This reflects the addition of a limited exemption of emissions from qualified thermal output pursuant to section 95852(j), and a change in the treatment of Waste-to Energy facilities pursuant to section 95852.2(c).

Summary of Section 95812(d)(1).

Subsection (d)(1) is changed to establish under what circumstances liquefied natural gas suppliers may trigger the inclusion threshold before coverage in 2015.

Rationale for Section 95812(d)(1).

This change is necessary to add liquefied natural gas to the inclusion threshold which captures emissions associated with liquefied natural gas suppliers with the largest amount of emissions without including small suppliers.

Summary of Section 95812(f)

New section 95812(f) is added to clarify the requirements for entities that have received a direct allocation of allowances but either shut down or cease operations prior to incurring a surrender obligation in that compliance period.

Rationale for Section 95812(f)

This addition is necessary to clarify the requirements applicable to an operator of an eligible facility that receives a direct allocation of allowances, but shuts down operations prior to incurring a surrender obligation. Direct allocation is provided for leakage minimization or transition assistance and assists an entity in meeting a surrender obligation in the compliance period for which the allocation was received. Any direct

allocation received for a compliance period that is not used to satisfy a surrender obligation is be returned to the State of California and auctioned.

Summary of Section 95812(f)(1)

New section 95812(f)(1) is added to state that within 30 days of facility closure, the facility operator must inform ARB in writing to either close its CITSS account, or remain in the program as a VAE.

Rationale for Section 95812(f)(1)

This addition is necessary to clarify the procedural requirements for covered entities in the event of a facility closure.

Summary of Section 95812(f)(2)

New section 95812(f)(2) is added to provide two options for entities that experience facility closure: to either fulfill the prorated compliance obligation for that compliance period, or surrender all allowances equivalent to the direct allocation less any allowances that were used to satisfy a surrender obligation.

Rationale for Section 95812(f)(2)

This addition is necessary to clarify that if a facility receives allocation, but has a greatly reduced compliance obligation, the direct allocation (minus any allowances used for a surrender obligation) would be returned to the State of California for auction.

Summary of Section 95812(f)(3)

New section 95812(f)(3) is added to clarify the requirements for purchased allowances left in a CITSS account after account closure.

Rationale for Section 95812(f)(3)

This addition is necessary to clarify that allowances purchased by the entity and left in a CITSS account upon account closure would be consigned to auction on behalf of the entity, pursuant to 95831(c)(3).

Summary of Section 95812(g)

New section 95812(g) was added to clarify that entities that have received a direct allocation of allowances but cease production must surrender allowances equivalent to

the amount directly allocated. This provision only holds for those entities without a true-up as the true-up would account for cease in production without a shutdown.

Rationale of Section 95812(g)

This section is necessary to ensure that companies that are not producing do not get allowances corresponding to years in which they did have any production. Direct industrial allowance allocation is for the purposes of minimizing leakage, therefore a company that is not producing though not shut down should not receive allocation for the corresponding years. In most cases, a true-up would account for changes in production but this section is necessary any sectors which may not have a true-up.

Section 95813. Opt-In Covered Entities.

Summary of Section 95813(b).

Section 95813(b) is modified to include the date that an opt-in participant must register with the Executive Officer.

Rationale for Section 95813(b).

The change in this provision is necessary to allow the opt-in covered entity to meet the April 4 Mandatory Reporting Regulation reporting deadline to be eligible for free allocation.

Summary of Section 95813(c).

New section 95813(c) is added to allow opt-in covered entities to rescind their opt-in request and provide an effective date.

Rationale for Section 95813(c).

The change permits a facility opting in to the Cap-and-Trade Program to go through the full reporting and verification process to understand its compliance costs and use this information to update its decision to opt into the program.

Summary of Section 95813(d).

Section 95813(d) is modified to include the first reporting deadline an opt-in covered entity must meet.

Rationale for Section 95813(d).

This change is necessary to explicitly state the first reporting deadline an opt-in covered entity is required to meet. By requiring an opt-in covered entity to comply with MRR, opt-in covered entities may be eligible to receive free allocation pursuant to 95870 for the opt-in year.

Section 95814. Voluntarily Associated Entities and Other Registered Participants.

Summary of Section 95814(a)(3).

New section 95814(a)(3) is added to require that individual VAEs with a job related to the Cap-and-Trade program provide a letter from their employer guaranteeing that there is no conflict of interest.

Rationale for Section 95814(a)(3).

This new section is needed to ensure employers are aware if their employees choose to participate in the Cap-and-Trade Program, especially if the employee has access to carbon- market information through his or her daily job.

Summary of Section 95814(a)(4).

New section 95814(a)(4) is added to address individuals already in the tracking system who meet the criteria of 95814(a)(3).

Rationale for Section 95814(a)(4).

This addition is necessary to prevent conflicts of interest among individuals already registered in the tracking system.

Summary of Section 95814(a)(6)

New section 95814(a)(6) is added to prohibit individuals disclosed by registered entities pursuant to section 95830(c) from registering as Voluntarily Associated Entities (VAE). These individuals identified through the registration process are those that would have knowledge of the registered entity's compliance instrument transactions and holdings.

Rationale for Section 95814(a)(6)

The change is needed because individuals eligible to register as VAE 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. This addition is necessary to prevent insider trading and conflicts of interest.

Summary of Section 95814(b)(1-5).

New sections 95814(b)(1-5) are added to specify more entities that may not hold compliance instruments. This section originally stated these entities could be Registered Participants, however in other parts of the Regulation, they were actually prohibited from holding compliance instruments.

Rationale for Section 95814(b)(1-5).

Each of these types of entities has a particular risk for insider trading based on their work for covered entities or offset project implementation that ARB needs to prevent. This addition is also necessary to prevent conflicts of interest.

Section 95821. Compliance Instruments Issued by Approved Programs.

Summary of Section 95821(f)

New section 95821(f)(1) is added to allow the use of Early Reduction Credits issued by Québec as compliance instruments that may be used to meet compliance obligations. Adding this section required minor formatting changes to existing sections 95821(d) and (e).

Rationale for Section 95821(f)

This provision is necessary because the other provisions in the section do not specify that Early Reduction Credits issued by Québec can be used to meet compliance obligations.

Summary of Section 95821(f)(1)

New section 95821(f)(1) is added to allow the use of Early Reduction Credits issued by Québec as compliance instruments that may be used to meet compliance obligations.

Rationale for Section 95821(f)(1)

This provision is necessary because the other provisions in the section do not specify that Early Reduction Credits issued by Québec can be used to meet compliance obligations.

Section 95830. Registration with ARB.

Summary of Section 95830(b)(1)

Section 98830(b)(1) was modified to explicitly tie the reporting entity in MRR to the requirement for registration in the tracking system.

Rationale for Section 95830(b)(1)

This addition is necessary to ensure enforceability on the entity subject to the MRR that meets the Cap-and-Trade inclusion threshold and clarify it must be the same entity to register for an account in the tracking system.

Summary of Section 95830(b)(2) and (3)

Section 98830(b)(2) and (3) were modified to explicitly add that registration refers to the tracking system.

Rationale for Section 95830(b)(2) and (3)

This clarification is needed as all registration requirements are being implemented through the tracking system.

Summary of Section 95830(b)(4)

New section 98830(b)(4) was added to require all offset project operators for projects located on tribal lands to have a waiver of sovereign immunity in place prior to registration for an account in the tracking system.

Summary of Section 95830(c)(1)(H)

Section 95830(c)(1)(H) was modified to explicitly state all information required under section 95833 is due at the time of registration.

Rationale for Section 95830(c)(1)(H)

This modification was needed to ensure staff had all information available at the time of registration prior to approval of any accounts in the tracking system.

Summary of Section 95830(c)(1)(I)

New section 95830(c)(1)(I) is added to require entities registering or registered with ARB to disclose names and contact information for all persons employed by the entity in

a capacity which would give them knowledge of the entity's decisions on compliance instrument transactions or holdings.

Rationale for Section 95830(c)(1)(I)

Existing disclosures of individuals by the registering entity are designed to allow ARB to determine whether two different registered entities are coordinating their actions through by 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 transaction strategy through their work as employees of the entities.

Summary of Section 95830(c)(1)(J)

New section 95830(c)(1)(J) is added to require that entities that employ auction bidding advisors or 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.

Rationale for Section 95830(c)(1)(J)

The new text would add disclosure requirements for individuals who gain knowledge of a registered entity's transaction strategy through their work as consultants. ARB needs to be aware of these consultant-client relationships to monitor for collusive activity.

Summary of Section 95830(c)(7)(A)-(D)

New section 85830(c)(7) was added to require individuals to first register for an account in the tracking system prior to having any access to entity accounts in the tracking system. This section places similar requirements on individual user accounts as entity accounts, such as only having one user account in the tracking system.

Rationale for Section 95830(c)(7)(A)-(D)

This section is needed to support implementation of the tracking system registration requirements.

Summary of Section 95830(c)(8)(A)-(E)

New section 95830(c)(8) was added to clarify the circumstances under which the Executive Officer may deny an individual's registration in the tracking system.

Rationale for Section 95830(c)(8)(A)-(E)

This section is needed to ensure program participants understand which requirements, if not met, would result in an application denial. The Executive Officer can only approve individual user accounts that meet the full requirements of the Regulation.

Summary of Section 95830(d)(1)

Section 95830(d)(1) is modified to add opt-in covered entities to the registration deadlines found in this section.

Rationale for Section 95830(d)(1).

This addition is necessary to harmonize the registration deadlines of opt-in covered entities and other covered entities.

Summary of Section 95830(d)(1)(B)

Section 95830(d)(1)(B) was modified for consistency with section 95812 on which year's emissions count towards applicability of the Regulation.

Rationale for Section 95830(d)(1)(B)

This modification was needed to provide consistency with the definition of a covered entity and clarity throughout the Regulation.

Summary of Section 95830(d)(2).

Section 95830(d)(2) is deleted and this registration deadline was merged with the deadline for covered entities found in 95830(d)(1).

Rationale for Section 95830(d)(2).

A specific registration deadline for opt-in covered entities is no longer needed. Instead, opt-in covered entities are required to comply with registration deadlines for covered entities pursuant to section 95830(d)(1).

Summary of Section 95830(f)(1)

Section 95830(f)(1) is modified to contain a new requirement that entities that are already registered and have submitted information to satisfy section 95830(c) must update the information within 30 days of a change to the requirements becoming effective. The existing requirement to update the information submitted within 10 days of a change to information already submitted is rewritten for clarity.

Rationale for Section 95830(f)(1)

The change is needed to set a deadline for registered entities to submit new information within 30 days of a regulatory change to the requirements becoming effective. The change to the current requirement for updating of information is needed for clarity.

Summary of Section 95830(g)(1)

Section 95830(g)(1) was modified to include additional information to be submitted as part of registration to be treated as confidential by ARB.

Rationale for Section 95830(g)(1)

This modification was needed to protect information about internal staff within an entity that must be disclosed as part of registration by the entity. The treatment of this data as confidential is consistent with existing provisions to treat similar data as confidential.

Summary of Section 95830(i)(1-8)

New section 95830(i) was added to include the process for how changes in ownership of covered facilities or entities are addressed.

Rationale for Section 95830(i)(1-8)

This section is needed to implement and support a clear process for how ARB and the account holders will take steps for ownership changes. These requirements were developed in response to stakeholder concerns about clear roles for the two parties involved in the ownership change.

Section 95831. Account Types.

Summary of Section 95831(a)(5)

Section 95831(a)(5) is modified to correct a reference to section 95814(a)(1)(C).

Rationale for Section 95831(a)(5)

The change is needed to clarify that an exchange clearing holding account will only be created for entities that qualify as a voluntarily associated entity by operating an exchange clearing service for an exchange regulated by the CFTC pursuant to section 95814(a)(1)(C).

Summary for Section 95831(a)(6)

The section authorizes the Executive Officer to create a Limited Exemption Holding Account when an entity qualifies for direct allocation pursuant to section 95870.

Rationale for Section 95831(a)(6)

The change is needed because the allocation pursuant to section 95870 will provide eligible entities with allowances that have a vintage date making them a future vintage. In some instances the allocation could place an entity in violation of a future vintage holding limit. The Limited Exemption Holding Account will be a temporary holding area for the allowances until January 1 of their vintage year.

Summary for Section 95831(a)(6)(A)

The section authorizes the Executive Officer to place allowances which are allocated pursuant to section 95870 in a year prior to the vintage year of the allowances into the Limited Exemption Holding Account.

Rationale for Section 95831(a)(6)(A)

The provision is needed to specify when the Executive Officer will transfer allowances to the Limited Exemption Holding Account and what is the source of the allowances.

Summary for Section 95831(a)(6)(B)

The section prohibits entities from transferring allowances from their Limited Exemption Holding Account.

Rationale for Section 95831(a)(6)(B)

The provision is needed because transferring the allowances to a holding or compliance account could lead to an accidental violation of the holding limit.

Summary for Section 95831(a)(6)(C)

The section authorizes the Executive Officer to remove allowances from the Limited Exemption Holding Account if the entity does not have sufficient compliance instruments in its compliance account, up to the amount of allowances received as part of the true-up.

Rationale for Section 95831(a)(6)(C)

The provision is needed so that the “true-up” allowances are available for triennial compliance surrender if needed.

Summary for Section 95831(a)(6)(D)

This provision requires the allowances received by a publicly-owned utility in its limited exemption holding account will be transferred on January 1 of the vintage year of the allowances to the compliance accounts designated in the determination made by the entity.

Rationale for Section 95831(a)(6)(D)

The provision is needed is needed to ensure that allowances are not transferred to an entity’s compliance account before they will count as “current” vintage allowances. This will minimize the chances of a violation of the holding limit.

Summary for Section 95831(a)(6)(E)

This provision requires the allowances received by a natural gas supplier in its limited exemption holding account will be transferred on January 1 of the vintage year of the allowances to the compliance accounts designated in the determination made by the entity.

Rationale for Section 95831(a)(6)(E)

The provision is needed is needed to ensure that allowances are not transferred to an entity’s compliance account before they will count as “current” vintage allowances. This will minimize the chances of a violation of the holding limit.

Summary for Section 95831(a)(6)(F)

This provision requires the allowances received by an entity pursuant to section 95870(e), (f), and (g) will be transferred to the entity's holding account on January 1 of the vintage year of the allowances.

Rationale for Section 95831(a)(6)(F)

The provision is needed is needed to ensure that allowances are not transferred to an entity's holding account before they will count as "current" vintage allowances. This will minimize the chances of a violation of the holding limit.

Summary of Section 95831(b)(3)

Existing section 95831(b)(3) is modified to eliminate the reference to serial numbers of compliance instruments retired.

Rationale for Section 95831(b)(3)

This change is needed because serial numbers will not be referenced in the retirement process.

Summary of Section 95831(c)(3).

Section 95831(c)(3) is added to specify that allowances needed to satisfy a compliance obligation from a closed account would be drawn first from the entity's Compliance Account and, if needed, from the entity's Holding Account. Section 95831(c)(4) is renumbered following the addition of Section 95831(c)(3).

Rationale for Section 95831(c)(3).

This change is needed to specify the order in which accounts will be accessed to satisfy an entity's compliance obligation if the entity's account is closed.

Section 95832. Designation of Representatives and Agents.

Summary of Section 95832(a)(6)

Section 95832(a)(6) was modified to include language to ensure consistency with other attestations in this subarticle.

Rationale for Section 95832(a)(6)

This modification was needed to ensure consistency and enforceability of the attestations made by account representatives.

Section 95833. Disclosure of Corporate Associations.

Summary of Section 95833(a)(1).

Section 95833(a)(1) is modified to specify that corporate associations in the Regulation are not limited to entities registered in the Cap-and-Trade program.

Rationale for Section 95833(a)(1).

This change is necessary to provide clarity to market participants regarding which corporate associations should be disclosed to ARB. This is a clarification on an existing requirement and not a new requirement or change in policy.

Summary of Section 95833(a)(1)(F).

Section 95833(a)(1)(F) is modified to include limited liability corporations in the criteria for determining corporate associations.

Rationale for Section 95833(a)(1)(F).

This change is necessary to close a loophole which allowed limited liability corporations to avoid being declared corporate associates of other entities.

Summary of Section 95833(a)(2).

Section 95833(a)(2) is modified to specify that corporate associations in the Regulation are not limited to entities registered in the Cap-and-Trade program.

Rationale for Section 95833(a)(2).

This change is necessary to provide clarity to market participants regarding which corporate associations should be disclosed to ARB. This is a clarification on an existing requirement and not a new requirement or change in policy.

Summary of Section 95833(a)(2)(F).

Section 95833(a)(2)(F) is modified to include limited liability corporations in the criteria for determining corporate associations.

Rationale for Section 95833(a)(2)(F).

This change is necessary to close a loophole which allowed limited liability corporations to avoid being declared corporate associates of other entities..

Summary of Section 95833(a)(3).

Section 95833(a)(3) is modified to specify that corporate associations in the Regulation are not limited to entities registered in the Cap-and-Trade program.

Rationale for Section 95833(a)(3).

This change is necessary to provide clarity to market participants regarding which corporate associations should be disclosed to ARB. This is a clarification on an existing requirement and not a new requirement or change in policy.

Summary of Section 95833(a)(4)(c).

Section 95833(a)(4)(c) is modified to include limited liability corporations as a type of relationship that must be considered when reviewing for a corporate association..

Rationale for Section 95833(a)(4)(c).

This change is needed to close a loophole that did not address limited liability corporations.

Summary of Section 95833(e)(3)(C)

Section 95833(e)(3)(C) was modified to clarify when the purchase and holding limits must be specified if directly associated entities opt-out of account consolidation.

Rationale for Section 95833(e)(3)(C)

This modification was needed to provide additional clarity to entities on when the purchase and holding limit decision needed to be provided to ARB.

Summary of Section 95833(f)(3).

Section 95833(f)(3) is modified to delete the deadline date by which directly associated entities must opt-out of consolidation.

Rationale for Section 95833(f)(3).

This change is necessary to allow entities to opt-out of consolidation post-2012. The Regulation as currently written would not allow for entities to change their current opt out decisions.

Summary of Section 95833(f)(3)(C)(1)

New section 95833(f)(3)(C)(1) is added to specify that the opt-out confirmation must include the holding limit split between entities opting out.

Rationale for Section 95833(f)(3)(C)(1)

New section 95833(f)(3)(C)(1) is necessary to clarify that the opt-out process includes specifying how holding limits will be shared between entities.

Summary of Section 95833(f)(3)(C)(2)

New section 95833(f)(3)(C)(2) is added to specify that the opt-out confirmation must include the purchase limit split between entities opting out.

Rationale for Section 95833(f)(3)(C)(2)

New section 95833(f)(3)(C)(2) is necessary to clarify that the opt-out process includes specifying how purchase limits will be shared between entities.

Summary of Section 95833(f)(6).

New section 95833(f)(6) is added to establish that directly associated entities may only change their opt-out decision once a year.

Rationale for Section 95833(f)(6).

This change is needed to ensure stability in account structures in CITSS to enable oversight and ease for auction participation by limiting the number of times significant information related to auction participation can change due to changes in account consolidation.

Summary of Section 95833(f)(7)

New section 95833(f)(7) was added to required covered entities who share staff for management of their tracking system accounts to be treated like direct corporate associations with a sharing of the purchase or holding limits.

Rationale for Section 95833(f)(7)

This section was added because two covered entities with the same account representatives have the potential to coordinate on market related decisions even if they do not have a direct corporate association. This provision treats the two entities as one for the purposes of the purchase and holding limits just as any directly associated group of entities would be treated where you would expect some coordination on market related decisions.

Section 95834. Know-Your Customer Requirements.

Summary of Section 95834(c)(2)

New section 95834(c)(2) was added to allow for ARB to verify the identity of an account registrant on a two-year schedule.

Rationale for Section 95834(c)(2)

This section was needed to allow ARB additional audit and oversight of tracking system users to ensure integrity in the program.

Section 95841.1 Voluntary Renewable Electricity.

Summary of Section 95841.1(a)

Section 95841.1(a) is modified to clarify that if RECs are created, they must represent the same generation included in the information provided in the allowance retirement request, and those same RECs must be retired before the allowance retirement request is submitted to ARB.

Rationale for Section 95841.1(a)

The additional language is necessary to ensure the underlying electricity was delivered to California during the same allowance budget year from which allowances are retired. The additional language also allows WREGIS time to create the REC.

Summary of Section 95841.1(b)(1)(A)

Section 95841.1(b)(1)(A) is modified to clarify the electricity delivery requirements.

Rationale for Section 95841.1(b)(1)(A)

The additional language is necessary to clarify the electricity must be directly delivered to California.

Summary of Sections 95841.1(b)(1)(B)

Section 95841.1(b)(1)(B) is modified to update the reference to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs.

Rationale for Sections 95841.1(b)(1)(B)

This modification is necessary to reference the most current edition of the guidelines, which is incorporated by reference in the Regulation.

Summary of 95841.1(b)(1)(C)

Section 95841.1(b)(1)(C) is modified to update the reference to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs, which is incorporated by reference in the Regulation.

Rationale for 95841.1(b)(1)(C)

This modification is necessary to reference the most current edition of the guidelines.

Summary of Section 95841.1 (b)(2)(A)

Section 95841.1(b)(2)(A) is modified to update the reference to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs.

Rationale for 95841.1 (b)(2)(A)

This modification is necessary to reference the most current edition of the guidelines, which is incorporated by reference in the Regulation.

Summary of Section 95841.1(b)(2)(D)

Section 95841.1(b)(2)(D) is modified to specify that a WREGIS Renewable Energy Credit (REC) Retirement report meets the requirement for evidence RECs were retired.

Rationale for Section 95841.1(b)(2)(D)

The modification clarifies the reference to the title of the WREGIS compliance report, which will satisfy the requirement to provide evidence the REC was retired, if a REC was created as part of the transaction.

Summary of Section 95841.1(b)(3)(A)

Section 95841.1(b)(3)(A) is modified to update the reference to the California Energy Commission's Guidelines for California's Solar Electric Incentive Programs.

Rationale for Section (b)(3)(A)

This modification is necessary to reference the most current edition of the guidelines, which is incorporated by reference.

Summary of Section 95841.1(b)(3)(D)

Section 95841.1(b)(3)(D) is modified to specify that a WREGIS Renewable Energy Credit (REC) Retirement report meets the requirement for evidence RECs were retired.

Rationale for Section 95841.1(b)(3)(D)

The modification clarifies the reference to the title of the WREGIS compliance report, which will satisfy the requirement to provide evidence the REC was retired, if a REC was created as part of the transaction.

Section 95851. Phase-in of Compliance Obligation for Covered Entities.

Summary of Section 95851(a)

Section 95851(a) was modified to fix an incorrect reference.

Rationale for Section 95851(a)

This modification was needed for accuracy and clarity in the Regulation.

Summary of Section 95851(b).

Subsection (b) is modified to identify that liquefied natural gas suppliers have a compliance obligation in the second compliance period beginning in 2015.

Rationale for Section 95851(b).

This modification is necessary to include liquefied natural gas beginning in 2015 because reporting requirements were added effective 2013. This additional time will give these liquefied natural gas suppliers enough time to collect and verify their emissions data and provide it to ARB.

Summary of Section 95851(c).

Section 95851(c) is modified to include cogeneration facilities and district heating facilities that have been approved for a limited exemption of emissions pursuant to section 95852(j) among the entities that have a compliance obligation beginning with the second compliance period.

Rationale for Section 95851(c).

Facilities that have installed cogeneration units to increase efficiency and would be below the threshold for a compliance obligation if they did not produce both electricity and qualified thermal output would be disadvantaged compared to similar facilities without cogeneration during the first compliance period when compliance costs are not passed through by natural gas suppliers. Similarly, district heating facilities, that can provide multiple buildings with thermal energy, would be disadvantaged compared to buildings that have their own, less efficient, boilers and chillers. By exempting emissions from production of qualified thermal output, these facilities will fall below the threshold. Once natural gas suppliers are covered entities beginning in the second compliance period, all entities will face compliance costs directly or indirectly in natural gas prices. To avoid a disadvantage for more efficient systems during the first compliance period, these facilities will not have a compliance obligation until the second compliance period.

Summary of Section 95851(d).

Section 95851(c) is modified to include waste to energy facilities that have been approved for a limited exemption of emissions pursuant to section 95852(k) among the entities that have a compliance obligation beginning with the second compliance period.

Rationale for Section 95851(d).

This new section was needed to provide waste to energy facilities entities with an exemption from a compliance obligation in the first compliance period to have a compliance obligation in the second compliance period.

Section 95852. Emission Categories Used to Calculate Compliance Obligations.

Summary of Section 95852(b)(2).

Section 95852(b)(2) is modified to delete the requirement that First Deliverers attest in writing that they have not engaged in resource shuffling (attestation in section 95852(b)(2)(A)), and that they are subject to all regulatory requirements and enforcement mechanisms of the Cap and Trade program (attestation in section 95852(b)(2)(B)).

Rationale for Section 95852(b)(2).

Staff was concerned that requiring the attestations in this section had the potential to negatively affect western electricity markets. To address this concern, the attestation requirement was deleted, while the prohibition against resource shuffling continues in force.

Summary of Section 95852(b)(2)(A).

New section 95852(b)(2)(A) is added to replace the pre-existing attestation requirement with a list of substitutions of lower emission electricity deliveries for higher emission electricity deliveries that do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A).

Many stakeholders asked that ARB provide additional clarity as to what kind of substitutions of electricity could be considered “safe harbors” that would not be deemed resource shuffling. The list of “safe harbors” in this section provides additional clarity.

Summary of Section 95852(b)(2)(A)(1).

New section 95852(b)(2)(A)(1) is added to state that electricity deliveries caused by the procurement of Renewable Portfolio Standard (RPS) electricity is not resource shuffling.

Rationale for Section 95852(b)(2)(A)(1).

EDUs are required to increase the percentage of RPS electricity procured to serve load to 33 percent of retail sales by 2020. This requirement may result in the need to substitute zero emission electricity for higher emission electricity. Because the RPS is a complementary measure that reduces GHG emissions, and because it is a requirement for EDUs, a substitution under this section is not resource shuffling.

Summary of Section 95852(b)(2)(A)(2).

New section 95852(b)(2)(A)(2) is added to state that electricity deliveries made to comply with state of federal laws or regulations is not resource shuffling.

Rationale for Section 95852(b)(2)(A)(2).

When a first deliverer substitutes lower emission electricity for higher emission electricity to comply with state of federal laws or regulations, the purpose is not to reduce compliance obligations and such substitution is not resource shuffling.

Summary of Section 95852(b)(2)(A)(3).

New section 95852(b)(2)(A)(3) is added to state that electricity deliveries made to comply with requirements related to maintaining electricity grid reliability, such as North American Electric Reliability Corporation (NERC) Reliability Standards, and Reliability Coordinator directives, including provision of electricity between entities to alleviate grid emergencies, do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(3).

When a first deliverer substitutes lower emission electricity for higher emission electricity when required for grid reliability or emergency situations, these substitutions cannot constitute resource shuffling because they are binding requirements and such substitutions are not done to reduce compliance obligations.

Summary of Section 95852(b)(2)(A)(4).

New section 95852(b)(2)(A)(4) is added to clarify that electricity deliveries made to comply with a judicially approved settlement or the settlement of a transaction dispute pursuant to contract terms for reasons other than reducing compliance obligations is not resource shuffling.

Rationale for Section 95852(b)(2)(A)(4).

Settlements considered in this section are binding upon the parties. Therefore, substitutions involving electricity deliveries pursuant to such settlements do not constitute resource shuffling if the first deliverer's reason for the settlement is not to reduce compliance obligations.

Summary of Section 95852(b)(2)(A)(5).

New section 95852(b)(2)(A)(5) is added to clarify that electricity deliveries that substitute for power previously supplied by a specified source that has been retired do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(5).

If a relatively higher emitting resource is retired, substitution of lower emission electricity is consistent with the goal of reducing emissions, and such substitution is not considered resource shuffling.

Summary of Section 95852(b)(2)(A)(6).

New section 95852(b)(2)(A)(6) is added to clarify that electricity deliveries that substitute for deliveries that have been discontinued due to contract termination or divestiture of resources for reasons other than reducing compliance obligations do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(6).

Contract termination may occur for reasons outside the control of a first deliverer party to the contract. In addition, first deliverers may divest themselves of emitting resources for reasons other than reducing compliance obligations, such as regulatory requirements or to alleviate conditions in which they have surplus electricity. Therefore substitutions covered in this section do not constitute resource shuffling.

Summary of Section 95852(b)(2)(A)(7).

New section 95852(b)(2)(A)(7) is added to clarify that electricity deliveries that are necessary due to early termination of a contract for, or full or partial divestiture of, resources subject to Emission Performance Standard (EPS) rules established by CEC and the CPUC do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(7).

State energy policy, as reflected in the EPS rules established pursuant to California Public Utilities Code section 8340, encourage California utilities to pursue early divestment of resources that do not meet the EPS, in part to protect the State's ratepayers from potential future costs associated with high emission power plants. This section was necessary to be consistent with State policy reflected in the EPS rules.

Summary of Section 95852(b)(2)(A)(8).

New section 95852(b)(2)(A)(8) is added to clarify that electricity deliveries that are necessary due to expiration of a contract do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(8).

When a contract expires, a First Deliver will likely have to use other resources, which may be lower in emissions, to replace the electricity lost due to contract expiration. Furthermore, it is not the intent of this Regulation to require entities to attempt to renegotiate new contracts for electricity from the same resource with which a contract has expired. Therefore, substitutions covered in this section do not constitute resource shuffling.

Summary of Section 95852(b)(2)(A)(9).

New section 95852(b)(2)(A)(9) is added to include a safe harbor for electricity deliveries pursuant to short term contracts with terms of no more than 12 months that are linked to selling off or assigning a contract for power from a power plant that does not meet the EPS with which a California EDU has a contract or ownership, when the transactions are based on economic decisions including congestion costs but excluding implicit and explicit GHG costs. This section also states that in evaluating these short term deliveries, ARB will consider levels of past sales and purchases from similar resources, among other factors, to judge whether the activity is resource shuffling.

Rationale for Section 95852(b)(2)(A)(9).

Several stakeholders were concerned that ordinary business practices for trading electricity could be inhibited by uncertainty over whether they would be considered resource shuffling. This modification was needed to provide a safe harbor for ordinary transactions when they are not linked to selling or assigning electricity from power plants that do not meet the EPS. When such short term transactions are made based on economic decisions including congestion costs or other factors not related to emissions, they will not constitute resource shuffling. However, if the economic decisions include consideration of GHG costs, then these transactions may be part of a resources shuffling plan, scheme or artifice to reduce compliance obligations.

Summary of Section 95852(b)(2)(A)(10).

New section 95852(b)(2)(A)(10) is added to include a safe harbor for short term transactions and contracts for electricity delivery with terms of no more than 12 months that result from an economic bid or self-schedule that clears the CAISO day-ahead or

real time market, for specified or unspecified power, based on economic decisions that include implicit and explicit GHG costs and congestion costs. Such transactions are excluded from this safe harbor if they are linked to the selling off or assigning of a contract for electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract or an ownership share, unless the transaction is included under paragraphs 11, 12 or 13 below.

Rationale for Section 95852(b)(2)(A)(10).

For short term transactions resulting from an economic bid or self-schedule, GHG costs must be included in the bid and in the market award process. These bids or schedules are likely to result in dispatch of lower emission electricity and therefore may reduce overall GHG emissions. It is not the intent of this Regulation to inhibit these kinds of transactions in the CAISO markets. However, if these transactions are linked to selling off or assigning a contract for power from a power plant that does not meet the EPS and with which a California EDU has a contract or ownership share, such transactions are likely to involve resource shuffling unless they fall under the safe harbors provided in sections 95852(b)(2)(A)(11, 12, and 13).

Summary of Section 95852(b)(2)(A)(11).

New section 95852(b)(2)(A)(11) is added to clarify that electricity deliveries that are necessary due to operational emergencies or transmission constraints, including constraints caused by the inability to secure transmission rights, or transmission curtailments do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(11).

When a First Deliverer makes deliveries, or changes in deliveries, due to emergencies or transmission constraints, the First Deliverer is acting based on circumstances not under its control. Substitutions involving these deliveries are not done to reduce compliance obligations and do not constitute resource shuffling.

Summary of Section 95852(b)(2)(A)(12).

New section 95852(b)(2)(A)(12) is added to clarify that electricity deliveries that are necessary due because a First Deliverer has more than enough electricity to meet demand due to requirements that the First Deliverer take generation from specific resources , including “must-take” or “must-run” contract provisions do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(12).

Under the terms of some contracts, a First Deliverer may be required to take generation from a specific generating unit. Because these are binding requirements on the First Deliverer, such electricity deliveries are not resource shuffling.

Summary of Section 95852(b)(2)(A)(13).

New section 95852(b)(2)(A)(13) is added to include clarify that electricity deliveries that are required to make up for transmission losses do not constitute resource shuffling.

Rationale for Section 95852(b)(2)(A)(13).

Under some contracts, the counterparty to a First Deliverer may provide electricity to make up for transmission laws from resources chosen by the counterparty that are not identified in advance. Because the first deliverer has no control over what is delivered for this purpose, these deliveries are not resource shuffling.

Rationale for Section 95852(b)(2)(B).

The proposed amendment provides additional clarity as to particular kinds of substitutions of electricity that would constitute resource shuffling and are not considered part of the “safe harbors” of section 95852(b)(2)(A).

Summary of Section 95852(b)(2)(B)(1).

New section 95852(b)(2)(B)(1) is added to identify as resource shuffling the substitution of lower emission electricity to replace electricity generated at a high emission power plant that does not meet California’s EPS, and procured by the First Deliverer under a long-term contract or ownership arrangement, when the substitution is made to reduce compliance obligation.

Rationale for Section 95852(b)(2)(B(1).

Certain first deliverers have long-term contracts for, or ownership of, a share of a high emission power plant that does not meet the EPS. If the first deliverer substitutes lower emission electricity for electricity from such a power plant, the electricity from the high emission plant would be sold elsewhere. In this case, there would be an apparent reduction in California emissions, paired with an increase in emission for electricity consumed outside of California. This kind of substitution is one form of resource shuffling and is prohibited.

Summary of Section 95852(b)(2)(B)(2).

New section 95852(b)(2)(B)(2) is added to identify as resource shuffling the assignment of a contract for high emission electricity specified in section 95852(b)(2)(B)(1) to a third party to reduce the compliance obligation of the assigning party.

Rationale for Section 95852(b)(2)(B)(2).

The substitution of lower emission electricity for electricity procured from a high emission power plant that has been contractually assigned to another party would have the same result as a substitution identified in section 95852(b)(2)(B)(1). There would be no real reduction in emissions, and such a substitution would be prohibited as resource shuffling.

Summary of Section 95852(b)(3)

Section 95852(b)(3) is modified to include the use of an asset controlling supplier emission factor. This section is also modified to remove the reference to delivered electricity less than the default factor.

Rationale for Section 95852(b)(3)

This modification is necessary because these entities are considered specified sources of electricity. The deletion is necessary because imported electricity imported by an electricity importer from a specified source could be greater than the default emissions factor, if it is procured from a resource that emits GHG greater than the default emissions factor.

Summary of Section 95852(b)(3)(D)

Section 95852(b)(3)(D) is modified to delete the requirement to retire RECs but instead to require the reporting of the serial numbers of retired RECs to MRR.

Rationale for Section 95852(b)(3)(D)

This change is necessary to apply consistent requirements to importers and in-state generators. The reporting of REC serial numbers is necessary to maintain environmental integrity by publicly providing information on the RECs associated with specified imports.

Summary of Section 95852(b)(4)

Section 95852(b)(4) is modified to delete the reference to electricity that is imported.

Rationale for Section 95852(b)(4)

This modification is necessary because for the RPS adjustment the renewable electricity procured is never imported into California. The adjustment is given for the , replacement electricity which is imported.

Summary of Section 95852(b)(4)(A)

Section 95852(b)(A) is modified to delete the term “either.”

Rationale for Section 95852(b)(4)(A)

This deletion is necessary because this term is redundant. The term “or” is already included in the choices provided in 92852(b)(A)(1).

Summary of Section 95852(b)(4)(A)(1)

Section 95852(b)(4)(A)(1) is modified to specify that RECs procured must be created as a result of the electricity generated from the same eligible renewable electricity generating facility as identified in the contract.

Rationale for Section 95852(b)(4)(A)(1)

This modification is necessary to clarify the RECs for the RPS adjustment must be from the same eligible renewable electricity generating facility as the electricity that is procured.

Summary of Section 95852(b)(4)(A)(2)

Section 95852(b)(4)(A)(2) is modified to specify that the contract must be to procure both the electricity and the RECs.

Rationale for Section 95852(b)(4)(A)(2)

This modification is necessary to ensure the procurement of both the electricity and the RECs from the same eligible generator, and that the contract to procure that electricity and associated RECs is on behalf of an entity that is required to meet California’s RPS requirement.

Summary of Section 95852(b)(4)(B)

Section 95852(b)(4)(B) is modified to more explicitly state what must happen to the RECs associated with an RPS adjustment.

Rationale for Section 95852(b)(4)(B)

This modification is necessary to provide specific direction on what actually has to happen to the REC to be able to take the RPS adjustment.

Summary of Section 95852(b)(4)(F)

Section 95852(b)(4)(F) is modified to clarify the vintage of RECs that are eligible to be used for the adjustment.

Rationale for Section 95852(b)(4)(F)

This modification is necessary to clarify only RECs generated on or after the commencement of the compliance requirement of the Regulation will be acceptable to be used for an RPS adjustment.

Summary of Section 95852(c)(2)

Section 95852(c)(2) was modified to provide multiple sources of data for calculating the emissions from natural gas delivered to covered entities and to clarify how missing data and adverse verification statements will be dealt with.

Rationale for Section 95852(c)(2)

Changes were necessary to ensure adequate data is available for calculating emissions from natural gas delivered to covered entities and to explain what to do in cases of missing data and adverse verification statements.

Summary of Section 95852(e)

Subsection (e) is modified to change Natural Gas Liquids to Liquefied Petroleum Gas.

Rationale for Section 95852(e)

This modification is necessary apply the more precise and consistent terminology of liquefied petroleum gas throughout the Regulation.

Summary of Section 95852(g)

Existing section 95852(g) is modified to refer to the definition of Carbon Dioxide Supplier instead of referring to the section numbers for the definition.

Rationale for Section 95852(g)

This change is necessary to explicitly refer to the correct definition and not the section number for the definition as each regulation amendment requires the renumbering of the section numbers in the definitions subarticle.

Summary of Section 95852(i)

Subsection (i) is modified to add a reference to a new fuel supplier, liquefied natural gas suppliers.

Rationale for Section 95852(i)

This change is necessary to accommodate the addition of liquefied natural gas fuel suppliers as covered entities.

Summary of Section 95852(j).

New section 95852(j) is added to provide for a limited exemption of emissions from the production of qualified thermal output during the first compliance period for a district heating facility or a cogeneration facility that meets the requirements of this section. Additionally, such emissions shall not have a compliance obligation and shall not count toward the inclusion threshold of section 95812(c)(1) during the first compliance period.

Rationale for Section 95852(j).

Facilities that have annual emissions above the inclusion threshold of 25,000 $MTCO_2e$ only because they have installed cogeneration to produce both electricity and thermal energy to increase overall efficiency would be disadvantaged compared to similar facilities have boilers for thermal energy production and remain below the threshold because they do not produce electricity. Similarly, during the first compliance period, a district heating facility above the threshold that provides steam, thermal energy, or chilled water to many buildings more efficiently than a single building with its own boilers and chillers can produce these outputs would have a compliance obligation not faced by individual buildings below the threshold. However, beginning with the second compliance period when natural gas providers are covered entities, compliance costs will begin to be passed through to natural gas users through increased prices. Adding section 95852(j) to exempt emissions associated with qualified thermal output for these facilities during the first compliance period removes undesired disadvantages for these facilities.

Summary of Section 95852(j)(1).

New section 95852(j)(1) is added to list the two conditions that must be met by a cogeneration facility to apply for the limited exemption of emissions from the production of qualified thermal output. The facility must have greenhouse gas emissions related to qualified thermal output below 25,000 metric tons of CO_2e and the remaining emissions must also be below 25,000 metric tons of CO_2e

Rationale for Section 95852(j)(1).

This section is needed to explain the conditions that must be met for a cogeneration facility to qualify for the limited exemption.

Summary of Section 95852(j)(1)(A).

New section 95852(j)(1)(A) is added to provide the equation calculating a cogeneration facility's annual emissions associated with the production of qualified thermal output, which must be below the 25,000 MTCO2e compliance threshold for the facility to be eligible for the limited exemption. This section also defines the terms of the equation.

Rationale for Section 95852(j)(1)(A).

To qualify for the limited exemption, a cogeneration facility must have annual emissions associated with qualified thermal output below the threshold. This section provides the methodology to determine if this condition is met.

Summary of Section 95852(j)(1)(B).

New section 95852(j)(1)(B) is added to provide the equation calculating a cogeneration facility's remaining annual after subtracting emissions associated with qualified thermal output, which must be below 25,000 MTCO2e for the facility to be eligible for the limited exemption. This section also defines the terms of the equation.

Rationale for Section 95852(j)(1)(B).

To qualify for the limited exemption, a cogeneration facility's remaining emissions, after subtracting emissions associated with qualified thermal output, must be below the threshold. This section provides the methodology to determine if this condition is met.

Summary of Section 95852(j)(2).

New section 95852(j)(2) is added to state the requirement for a district heating facility to apply for the limited exemption of emissions from the production of qualified thermal

output: the emissions associated with energy distributed to each single facility must not exceed the compliance threshold.

This section provides the equation for calculating emissions associated with qualified thermal output provided to each single facility served by a district heating facility and to define the terms in the equation.

Rationale for Section 95852(j)(2).

A district heating facility that has emissions above the compliance threshold of 25,000 $MTCO_2e$ because it serves multiple buildings would face a disadvantage during the first compliance period compared to buildings below the threshold that have their own boilers and chillers. However, if a single building's emissions ere above the compliance obligation, it would face a compliance obligation. Therefore, if a district energy provides services associated with more than 25,000 $MTCO_2e$ to a single building, it is reasonable for it to have a compliance obligation.

This section is needed to explain the conditions that must be met for a district heating facility to qualify for the limited exemption.

Summary of Section 95852(j)(3).

New section 95852(j)(3) is added to state that the Executive Officer may use date reported to ARB under MRR for data years 2008-2013 to determine a facility's eligibility for the limited exemption.

Rationale for Section 95852(j)(3).

This section is needed to provide for ARB's use of data reported to MRR in determining a facility's eligibility for the limited exemption.

Summary of Section 95852(j)(4).

New section 95852(j)(4) is added to provide that a facility with a cogeneration unit or a district heating facility must apply to the Executive Officer by September 15, 2014 for the limited exemption of emissions from the production of qualified thermal output, and must provide data and an attestation. Section 95852(j)(4)(A) requires the applicant to provide annual qualified thermal output from 2008 to 2013; section 95852(j)(4)(B) requires a district heating facility to provide data on the qualified thermal output provided to each single facility; and section 95852(j)(4)(C) requires the applicant to attest under penalty of perjury that the information submitted is true, accurate, and complete. Section

95852(j)(4)(D) is added to require the applicant to register with ARB. Section 95852(j)(4)(E) is added to require the applicant to report and verify their emissions.

Rationale for Section 95852(j)(4).

This section is needed to explain the requirements and set the date for a cogeneration facility's or district energy facility's application for a limited exemption. Section 95852(j)(4)(A) requires the provision of annual qualified thermal output from 2008 to 2013 which is needed because thermal output reported pursuant to MRR for data years through 2012 did not include sufficient information to determine if such thermal output met the new definition in this Regulation for qualified thermal output. Section 95852(j)(4)(B) is needed to obtain data to determine if a district heating facility qualifies for the limited exemption. Section 95852(j)(4)(C) is needed to ensure that the determination of eligibility for the limited exemption is based on data that is true, accurate, and complete. Section 95852(j)(4)(D) is necessary to have the operators obtain a Compliance Instrument Tracking System Service (CITSS) account into which allowances can be deposited. Section 95852(j)(4)(E) is needed to be able to determine the number of allowances to place into the entity's compliance account

Summary of Section 95852(k)

New section 95852 (k) is modified to provide a limited exemption for the first compliance period for waste-to-energy facilities that meet the prescribed requirements.

Rationale of Section 95852(k)

This change is necessary to exempt the waste-to-energy facilities while ARB coordinates with Cal/Recycle and other stakeholders to characterize lifecycle emissions reduction opportunities for different options for handling solid waste, including recycling, remanufacturing of recovered materials in state, composting and anaerobic digestion, waste-to-energy facilities, landfilling, and the treatment of biomass as directed by Resolution 11-32. The study will help staff identify and propose regulatory amendments, as appropriate, so that AB 32 implementation, including the Cap-and-Trade Regulation, aligns with statewide waste management goals, provides equitable treatment to all sectors involved in waste handling, and considers the best available information.

Summary of Section 95852(k)(1)

New section 95852.2(k)(1) is added to require the operator of a Waste-to-Energy facility to register with ARB.

Rationale for Section 95852(k)(1)

This new provision is necessary to have the operators obtain a Compliance Instrument Tracking System Service (CITSS) account into which allowances can be deposited.

Summary of Section 95852(k)(2)

New section 95852(k)(2) is added to require the waste-to-energy facilities to report and verify their emissions.

Rationale for Section 95852(k)(2)

This new section is needed to be able to determine the number of allowances to place into the entity's compliance account.

Summary of Section 95852(k)(3)

New Section 95852(k)(3) is added to require the electricity generated by the combustion of the municipal solid waste be used for retail sale.

Rationale for Section 95852(k)(3)

This new provision is necessary to insure the electricity generated by the combustion of the municipal solid waste is not to meet the facilities internal load.

Summary of Section 95852(k)(4)

New section 95852(k)(3) is added to require the facility to have an existing approved air pollution control district permit for their waste-to-energy operations.

Rationale for Section 95852(k)(4)

This new provision is needed to prevent new plants from taking advantage of the exemption until the study to determine a comprehensive approach for the appropriate treatment of municipal solid waste under the Cap-and-Trade program is complete.

Summary of Section 95852(k)(5)

New section 95852(k)(5) is added to describe the eligible fuel that can be combusted in order for the operator to take the exemption.

Rationale for Section 95852(k)(5)

This provision is necessary to limit the type fuel that is able to be combusted at the facility to Municipal Solid Waste.

Summary of Section 95852(k)(6).

New section 95852(k)(6) is added to provide for the retirement of allowances equal to the quantity of emissions without a compliance obligation due to the limited exemption of emissions pursuant to new section 95852(j).

Rationale for Section 95852(k)(6).

The emissions from facilities eligible for the limited exemption of emissions pursuant to new section 95852(j) were included in ARB's forecast used for setting the annual caps on emissions. Because the limited exemption removes these emissions from the cap during the first compliance period, it is necessary to retire an equivalent quantity of emissions to preserve the environmental integrity of the cap.

Summary of Section 95852(l)

Subsection (l) is added to identify that a supplier of liquefied natural gas has a compliance obligation for every metric ton of CO_2e of GHG emissions that would result from full combustion or oxidation of all fuel sold, distributed, or otherwise transferred for consumption in California.

Rationale for Section 95852(l).

This addition is necessary to identify the emissions categories used to calculate compliance obligations for suppliers of liquefied natural gas.

Section 95852.1.1. Eligibility Requirements for Biomass-Derived Fuels.

Summary of Section 95852.1.1(a)(2).

Subsection (a)(2) is changed to require that purchasers of biomass-derived fuel not under contract prior to January 1, 2012 be the first purchasers of the contracted fuel.

Rational for Section 95852.1.1(a)(2).

This modifications is necessary to remove an unintentional paradox that prevented new sources of biomass-derived fuel under contract prior to January 1, 2012 from being eligible for an avoided compliance obligation.

Summary of Section 95852.1.1(a)(2)(B).

Subsection (a)(2)(B) is modified to require that in order for biomass-derived fuel from an existing source be eligible for an avoided compliance obligation, the biomass derived fuel must be vented or destroyed without producing electricity or heat for three years or since commencement of fuel recovery, whichever is shorter.

Rational for Section 95852.1.1(a)(2)(B)

This modification is necessary to prevent leakage of emissions outside California due to switching a contract for biomass-derived fuel from out-of-state to a California entity.

Summary of Section 95852.1.1(a)(3)(B).

Subsection (a)(3)(B) is changed to require that in order for biomass-derived fuel from an existing instate source be eligible for an avoided compliance obligation, the biomass derived fuel must be destroyed without producing electricity or heat for three years or since commencement of fuel recovery, whichever is shorter.

Rational for Section 95852.1.1(a)(3)(B).

This change is necessary to prevent leakage of emissions outside California due to switching a contract for biomass-derived fuel from out-of-state to a California entity.

Summary of Section 95852.1.1(a)(4).

Section 95852.1.1(a)(3) is changed to include instate production of biomass derived fuel as eligible to avoid a compliance obligation when sold offsite and is moved to new section 95852.1.1(a)(4).

Rationale for Section 95852.1.1(a)(4).

This change is necessary to include offsite sale of instate biomass-derived fuel production as eligible to avoid a compliance obligation.

Summary of Section 95852.1.1(b).

Subsection (b) is changed to tie the global warming potential of methane to the global warming potential listed in the MRR and clarify that any emission reductions credited in the Low Carbon Fuel Standard Carbon Intensity must be accounted for when determining if the project is eligible to receive offsets.

Rationale for Section 95852.1.1(b)

This modification is necessary to tie the global warming potential of methane to the MRR to be consistent across both regulations. Modifications are also necessary to

clarify that any emission reductions credited in the Low Carbon Fuel Standard Carbon Intensity must be accounted for when calculating the total credits from methane emission reductions.

Section 95852.2. Emissions without a Compliance Obligation.

Summary of Section 95852.2(b)(10).

Subsection (b)(10) is modified to identify fugitive emissions from equipment leaks that do not hold a compliance obligation.

Rationale for Section 95852.2(b)(10).

This change is necessary to correct the reference for fugitive emissions from equipment leaks estimated using leak detection and leaker emission factors, and add the exemption from a compliance obligation for emissions estimated using population counts and emission factors.

Summary of Section 95852.2(b)(11)

New section 95852.2(b)(11) is 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.

Rationale for Section 95852.2(b)(11)

This change is necessary to ensure consistency between the Cap-and-Trade and MRR regulations.

Summary for Section 95852.2(b)(12)

This section was changed to add in enhanced oil recovery to ensure that exports or imports for enhanced oil recovery are still subject to a compliance obligation.

Rationale for Section 95852.2(b)(12)

This change is necessary to include carbon dioxide exported or imported for enhanced oil recovery along with geologic sequestration as still subject to a compliance obligation unless there is a Board approved quantification methodology to account for those emissions pursuant to section 95852(g)

Summary for Section 95852.2(b)(13)

New section 95852.2(b)(12) is added to exempt CO_2 used in the carbonation process during sugar production from a compliance obligation.

Rational for Section 95852.2(b)(13)

This addition is necessary to exempt the CO_2 from lime, which is bubbled through the limed juice producing calcium carbonate crystals during the sugar production process. Based on available technical information, staff believes no CO_2 is released to the atmosphere as a result of this process.

Summary of Section 95852.2 (c)(1)

Section 95852.2(c)(1) is modified to broaden the types of facilities not subject to a compliance obligation under the Cap-and-Trade Program. Section 95852.2(c)(1) specifically removes the expiration date for the exemption for military facilities.

Rational for Section 95852.2 (c)(1)

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 the Mandatory Reporting Regulation and the Cap-and-Trade Program. The military sector is subject to Presidential Executive Order 13514 Strategic Sustainability Performance Plan (Sustainability Plan) that includes a 34 percent reduction in Scope 1 and Scope 2 GHG emissions, 13.5 percent reduction in Scope 3 GHG emissions, a 37.5 percent reduction in building energy intensity, a 20 percent renewable energy standard, and a 30 percent reduction in fossil fuel consumption for vehicle fleets.

Section 95853. Calculation of Covered Entity's Triennial Compliance Obligation.

Summary of Section 95853(e).

Section 95853(e) is deleted to remove the allowance allocation multiplier for new entrants.

Rationale for Section 95853(e).

The allowance allocation multiplier for new entrants is no longer needed with the addition of true-up allowances pursuant to 95891. True-up allowances and the associated borrowing pursuant to sections 95856(h)(1)(C) and 95856(h)(2)(C) allow

new entrants to receive appropriate levels of allowances for all compliance dates. New entrants may receive additional allowances through the calculation of true-up allowances depending on eligibility, historical production, and allocation.

Section 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

Summary of Section 95856(b)(2)(A)

Section 95856(b)(2)(A) is modified to specify that all allowances purchased through an Allowance Price Containment Reserve sale are eligible for immediate compliance.

Rationale for Section 95856(b)(2)(A)

This change is necessary to allow all allowances purchased from an Allowance Price Containment Reserve sale to be surrendered for immediate compliance.

Summary of Section 95856(b)(2)(C)

New section 95856(b)(2)(C) is added to state that true-up allowances are valid compliance instruments for surrender if they are issued from an allowance budget year within or before the year for which an annual compliance obligation is calculated or the last year of a compliance period for which a triennial compliance obligation is calculated.

Rationale for Section 95856(b)(2)(C)

This provision is necessary because it specifies when true-up allowances can be used to fulfill compliance obligations.

Summary of Section 95856(c)

Section 95856(c) was modified to provide clarity on which instruments can be used for annual and triennial surrender obligations.

Rationale for Section 95856(c)

This modification was needed for clarity on which allowance types were eligible.

Summary of Section 95856(d)(1)

Section 95856(d)(1) is modified to specify the exact deadline time for surrender of annual compliance obligations.

Rationale for Section 95856(d)(1)

This provision is necessary because it provides participants with a specific deadline that will support implementation of this requirement in the tracking system.

Summary of Section 95856(d)(2)

Section 95856(d)(2) is modified to specify the exact deadline time for surrender of annual compliance obligations.

Rationale for Section 95856(d)(2)

This provision is necessary because it provides participants with a specific deadline that will support implementation of this requirement in the tracking system.

Summary of Section 95856(f)(1)

Section 95856(f)(1) is modified to specify the exact deadline time for surrender of triennial compliance obligations.

Rationale for Section 95856(f)(1)

This provision is necessary because it provides participants with a specific deadline that will support implementation of this requirement in the tracking system.

Summary of Section 95856(g)(1)

Section 95856(g)(1)(A) is modified to specify that fulfillment of the annual compliance obligation will be determined by evaluating the quantity and type of compliance instruments in entities' compliance accounts. The section also allows the "true-up" allowances contained in an entity's Limited Exemption Holding Account to be used for compliance with the annual compliance obligation.

Rationale for Section 95856(g)(1)

This provision is necessary because it clarifies that the Executive Officer will evaluate the quantity and type of compliance instruments at the annual surrender event, rather than retire the compliance instruments from the Compliance Account. Therefore, stakeholder concern about not estimating the quantify of offsets correctly to be placed into the compliance account and potentially over supplying offsets relative to the 8 per cent usage limit during the annual surrender event when instruments are retired is mitigated. The provision is also needed to reflect the creation of the Limited Exemption

Holding Account, which ensures that “true-up” allowances will count towards compliance.

Summary of Section 95856(g)(2)(A)

Section 95856(g)(2)(A) is modified to specify that fulfillment of the triennial compliance obligation will be determined by retiring the quantity and type of compliance instruments in entities’ compliance accounts.

Rationale for Section 95856(g)(2)(A)

This provision is necessary because it clarifies that the Executive Officer will retire the quantity and type of compliance instruments from the Compliance Account at the triennial surrender event.

Summary of Section 95856(g)(2)(B)

Section 95856(g)(2)(B) is modified to specify that programs linked to California will be informed of the compliance instrument retirement.

Rationale for Section 95856(g)(2)(B)

This provision is necessary because it clarifies that information regarding compliance instrument retirement in California is shared among linked programs.

Summary of Section 95856(h)(1)(A)

New section 95856(h)(1)(A) is added to specify that offset credits will be the first type of compliance instrument to be considered in the Compliance Account by the Executive Officer for fulfillment of the annual compliance obligation, with older vintage offsets being considered first.

Rationale for Section 95856(h)(1)(A)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be considered by the Executive Officer for compliance with the annual surrender event. Offsets are retired first as they are considered to be the lowest cost compliance instrument that can be used for compliance.

Summary of Section 95856(h)(1)(B)

New section 95856(h)(1)(B) is added to specify that allowances purchased from the Allowance Price Containment Reserve and Québec's Emission Reduction Credits will be the second types of compliance instruments to be considered in the Compliance Account by the Executive Officer for fulfillment of the annual compliance obligation.

Rationale for Section 95856(h)(1)(B)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be considered by the Executive Officer for compliance with the annual surrender event. These compliance instruments are placed second as they have no associated vintage. And, if the account were closed for some reason, it would be difficult to consign allowances without vintages to an auction. The APCR allowances are "last resort" instrument and presumably, there would be no other allowances with vintages that would be eligible for use for that compliance surrender event.

Summary of Section 95856(h)(1)(C)

New section 95856(h)(1)(C) is added to specify that allowances from California and linked jurisdictions will be the third type of compliance instrument to be considered in the Compliance Account by the Executive Officer for fulfillment of the annual compliance obligation based on earliest vintage first.

Rationale for Section 95856(h)(1)(C)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be considered by the Executive Officer for compliance with the annual surrender event. These compliance instruments are placed third as they could potentially be consigned to auction, if needed. And, the order from earlier to newest aligns with the policy of banking allowances for compliance use, but no borrowing of allowances from future vintages for meeting a compliance obligation.

Summary of Section 95856(h)(1)(D)

New section 95856(h)(1)(D) is added to specify that true-up allowances will be the fourth type of compliance instrument to be considered in the Compliance Account by the Executive Officer for fulfillment of the annual compliance obligation.

Rationale for Section 95856(h)(1)(D)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be considered by the Executive Officer for compliance with the annual surrender event. These compliance instruments are placed last in the order or eligibility for use for a compliance obligation because this process allows for a very limited borrowing of future vintage allowances in situations where an entity did not have any of the other eligible compliance instruments for that compliance surrender event.

Summary for Section 95856(h)(2)

The provision authorizes the Executive Officer to retire allowances directly from an entity's compliance account and Limited Exemption Holding Account to satisfy an entity's triennial compliance obligation.

Rationale for Section 95856(h)(2)

The provision is needed to ensure that "true-up" allowances as well as allowances in the compliance account will count towards compliance.

Summary of Section 95856(h)(2)(A)

New section 95856(h)(2)(A) is added to specify that offset credits will be the first type of compliance instrument to be retired from the Compliance Account by the Executive Officer for fulfillment of the triennial compliance obligation, with older vintage offsets being retired first.

Rationale for Section 95856(h)(2)(A)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be retired by the Executive Officer for compliance with the triennial surrender event. Offsets are retired first as they are considered to be the lowest cost compliance instrument that can be used for compliance.

Summary of Section 95856(h)(2)(B)

New section 95856(h)(2)(B) is added to specify that allowances purchased from the Allowance Price Containment Reserve will be the second type of compliance instrument to be retired from the Compliance Account by the Executive Officer for fulfillment of the triennial compliance obligation.

Rationale for Section 95856(h)(2)(B)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be retired by the Executive Officer for compliance with the triennial surrender event. These compliance instruments are placed second as they have no associated vintage. And, if the account were closed for some reason, it would be difficult to consign allowances without vintages to an auction. The APCR allowances are “last resort” instrument and presumably, there would be no other allowances with vintages that would be eligible for use for that compliance surrender event.

Summary of Section 95856(h)(2)(C)

New section 95856(h)(2)(C) is added to specify that allowances from California and linked jurisdictions will be the third type of compliance instrument to be retired from the Compliance Account by the Executive Officer for fulfillment of the triennial compliance obligation.

Rationale for Section 95856(h)(2)(C)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be retired by the Executive Officer for compliance with the triennial surrender event. These compliance instruments are placed third as they could potentially be consigned to auction, if needed. And, the order from earlier to newest aligns with the policy of banking allowances for compliance use, but no borrowing of allowances from future vintages for meeting a compliance obligation.

Summary of Section 95856(h)(2)(D)

New section 95856(h)(2)(D) is added to specify that true-up allowances will be the fourth type of compliance instrument to be retired from the Compliance Account by the Executive Officer for fulfillment of the triennial compliance obligation.

Rationale for Section 95856(h)(2)(D)

This provision is necessary because it provides participants with details regarding the order in which compliance instruments will be retired by the Executive Officer for compliance with the triennial surrender event. These compliance instruments are placed last in the order or eligibility for use for a compliance obligation because this process allows for a very limited borrowing of future vintage allowances in situations where an entity did not have any of the other eligible compliance instruments for that compliance surrender event.

Summary of Section 95856(h)(3)

New section 95856(h)(3) is added to specify that true-up allowances cannot be used to fulfill current compliance obligations by entities that are not eligible to receive true-up allowances.

Rationale for Section 95856(h)(3)

This provision is necessary because it clarifies that only entities eligible to receive true up allowances can fulfill their compliance obligations through the use of current year vintage allowances or allowances allocated immediately before the current surrender deadline.

Section 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

Summary of Section 95857(d)(1)(B)

Section 95857(d)(1)(B) was modified to keep the one fourth of untimely surrender compliance instruments in an entity's compliance account until the triennial surrender date at which time, they would be retired.

Rational for Section 95857(d)(1)(B)

This modification was needed to align the process for untimely surrender with the new proposed process to not retire any instruments from the compliance account until the time of triennial surrender.

Section 95870. Disposition of Allowances.

Summary of Section 95870(b)(1)

Section 95870(b)(1) is modified to specify that allowances designed for Advance Auction are eligible for sale through the Allowance Price Containment Reserve sale immediately preceding the compliance obligation on November 1.

Rationale for Section 95870(b)(1)

This change is necessary in fulfillment of Board Resolution 12-51 to ensure that the allowance price does not exceed the highest price tier of the Reserve.

Summary of Section 95870(b)(2)

Section 95870(b)(2) is modified to specify that Advance Auction allowances not sold through the Reserve sale are sold at auction pursuant to Section 95910.

Rationale for Section 95870(b)(2)

This subsection is necessary to clarify the disposition of allowances designated for Advance Auction.

Summary of Section 95870(b)(3)

New section 95870(b)(3) is amended to update the treatment of auction proceeds.

Rationale for Section 95870(b)(3)

This change is required in accordance with Government Code Section 16428.8.

Summary of Section 95870(d)

Section 95870(d) was added to provide a title for the section that now incorporates two subsections.

Rationale for Section 95870(d)

This change was necessary to provide a title for a section that now includes two subsections. This allows electricity related allocation to be contained in the same section.

Summary of Section 95870(d)(1)

Section 95870(d)(1) was modified to change the allocation date for electrical distribution utilities

Rationale of section 95870(d)(1)

This change was necessary to be consistent with the allocation date for all allocation.

Summary of Section 95870(d)(2).

Section 95870(d)(2) is added to provide for the allocation of allowances to a public wholesale water agency. Allocations for calendar years 2013 to 2015 are made on or before October 15, 2014 from the budget year 2015. Allowances will be placed in each

eligible agency's compliance account on or before October 15 of each calendar year from 2014 to 2019 from the 2015 to 2020 annual allowance budgets.

Rationale for Section 95870(d)(2).

This section is needed to provide the schedule for allocation and to state the budget years used for allocations for public wholesale water agencies pursuant to new section 95895. These allocations are necessary to mitigate the cost impact to ratepayers associated with the compliance obligations for electricity used to convey water.

Summary of Section 95870(e)

Section 95870(e) was modified to specify the new holding account into which allowances will be placed for allocation and then transferred to the holding account on the first business day when the allocated allowance vintage is the current calendar year.

Rationale for Section 95870(e)

This modification is needed to prevent allocated allowances from counting against the holding limit until they are of current vintage.

Summary of Section 95870(e)(1)

Section 95870(e)(1) was modified to specify the new date when allowance allocation would occur.

Rationale for Section 95870(e)(1)

This modification is needed to allow for covered entities to have their true-up allowances in their accounts at least two weeks prior to the surrender obligation being due.

Summary of Section 95870(e)(4)

New section 95870(e)(4) is added to provide an adjustment to the compliance obligation for an industrial entity.

Rationale for Section 95870(e)(4)

This new section is necessary to be able to adjust the allowance allocation to the industrial entity if they are also a Legacy Contract Counterparty.

Summary of Section 95870(e)(5).

Section 95870(e)(5) is added to provide for the allocation of allowances into the compliance accounts and holding accounts of facilities that did not receive an industrial allocation in calendar years 2013 or 2014, and are approved by the Executive Officer for a limited exemption of emissions from the production of qualified thermal output. On October 15, 2014, the Executive Officer will place allowances equal to the facility's reported, verified, and covered emissions for the 2013 and 2014 data years, less the amount of allowances in the facility's compliance account on October 14, 2014, in the facility's compliance account, and will place allowances equal to the amount in its compliance account into the facility's holding account. An amount of allowances equivalent to the facility's reported, verified, and covered emissions for the 2013 and 2014 data years will be retired by ARB according to the surrender date in section 95856.

Rationale for Section 95870(e)(5).

This section is needed to allow ARB to place allowances into the compliance and holding accounts of a facility that did not receive any industrial allocation and has been approved for a limited exemption of emissions to account for the facility's emissions that do not have a compliance obligation in the first compliance period, so that they can be retired in order to maintain the environmental integrity of the cap. It provides for allocation of allowances into the facility's holding account to replace allowances the facility placed in its compliance account and no longer needs to comply due to the approval of its limited exemption.

Summary of Section 95870(e)(6).

Section 95870(e)(6) is added to require a facility that received an industrial allocation in calendar years 2013 or 2014 and is approved for the limited exemption of emissions pursuant to new section 95852(j) to place allowances equal to the amount received into its compliance account so they can be retired to account for the facility's emissions during 2013 and 2014 that do not have a compliance obligation. This section states that if the amount of allowances equal to the facility's reported, verified, and covered emissions for the 2013 and 2014 data years exceeds the amount received in calendar years 2013 and 2014, the Executive Officer will place the difference in the facility's compliance account, and if the allowances received in calendar years 2013 and 2014 exceeds the amount the facility's reported, verified, and covered emissions for 2013 and 2014, the facility will have its future allocations reduced by the excess allowances received. ARB will reduce future allocations by subtracting from the facility's budget year 2015 allocation, and from subsequent budget year allocations if necessary, until

the total subtracted equals the amount by which the 2013 and 2014 allocations exceeds the reported, verified, and covered emissions for those years. This section also states that the Executive Officer shall retire allowances equivalent to the 2013 and 2014 covered emissions according to section 95856.

Rationale for Section 95870(e)(6).

If a facility received an industrial allocation in 2013 or 2014 and has subsequently been approved for a limited exemption of emissions pursuant to new section 95852(j), the amount of the 2013 and 2014 industrial allocation must be retired to preserve the environmental integrity of the cap, and to ensure that the facility is not provided allowances for emissions that do not have a compliance obligation. This section is needed to implement this change, tot require the facility to make allowances available in its compliance account for retirement, to account for any differences between the amounts allocated in 2013 and 2014 compared to the reported, verified and covered emissions during those year. Finally, this section is needed to provide for the retirement by ARB of the allowances equivalent to the facility's reported, verified, and covered emissions for the 2013 and 2014 data years according to the surrender date in section 95856.

Summary of Section 95870(f).

New section 95870(f) is added to provide for the allocation of allowances to university covered entities and public service facilities. Allocations for calendar years 2013 to 2015 are made on or before October 15, 2014 from the budget year 2015. Allocations for calendar years 2015 to 2019 are made from the 2016 to 2020 annual allowance budgets on or before October 15 of each calendar year.

Rationale for Section 95870(f).

This section is needed to provide the schedule for allocation and to state the budget years used for allocations for university covered entities and public service facilities that are eligible for allocations pursuant to new section 95890(d).

Summary of Section 95870(g)

New section 95870(g) is added to allow the Executive Officer to transfer allowances to the eligible operator of the Legacy Contract Generator.

Rationale for Section 95870(g)

This new section is necessary to provide the operator of the legacy contract generator with allowances for the purpose of transition assistance, if they meet the eligibility requirements in new section 95894.

Summary of Section 95870(h)

New section 95870(f) is added to provide for the allocation of allowances to natural gas suppliers on or before October 15th of each calendar year.

Rationale of Section 95870(h)

This section is needed to provide the schedule for allocation for natural gas suppliers that are eligible for allocations pursuant to new section 95890(f).

Summary of Section 95870(j)(1)

Section 95870(i)(1) is modified to make up to 10% of the allowances from each vintage that are not allocated to the Allowance Price Containment Reserve, eligible for sale in the Reserve.

Rationale for Section 95870(j)(1)

This change is needed to increase the quantity of allowances sold through the Reserve pursuant to Board Resolution 12-51.

Summary of Section 95870(j)(2)

Section 95870(i)(2) is modified to update the treatment of auction proceeds and fix an incorrect reference.

Rational for Section 95870(j)(2)

This change is required to reflect the treatment of auction proceeds pursuant to Government Code Section 16428.8.

Summary of Section 95870 Table 8-1: Industry Assistance.

Existing Table 8-1 is modified to change the columns under the assistance factor such that for the period 2015 - 2017 all entries will read “100%” and for the period of 2018 - 2019, the portion of the column corresponding to the medium leakage risk classification

will read “75%” and the portion of the column corresponding to low leakage risk will read “50%”.

Existing Table 8-1 is modified to include leakage risk classification for the industrial sectors of: All Other Metal Ore Mining, Asphalt Paving Mixture and Block Manufacturing, Ethyl Alcohol Manufacturing, Hardware manufacturing, Guided Missile and Space Vehicle Manufacturing, and Nonferrous Forging.

Existing Table 8-1 is also modified to insert the industrial sector of mineral wool manufacturing into the high leakage classification portion of the table and remove it from the medium leakage classification section of the table.

Existing Table 8-1 was modified to remove a blank row.

Rationale for Section 95870 Table 8-1: Industry Assistance.

This shift in assistance factor levels in the second and third compliance periods is needed to provide additional certainty and time for industry to successfully transition to lower-carbon production methods while also allowing additional time for staff to obtain the results of new research that will improve the data, measurement, and metrics of economic leakage risk and will provide additional insights into the potential leakage risk posed by long-term program implementation on industrial sectors.

The change to include new sectors is needed to allow these new entrants to receive appropriate allocations, pursuant to Board Resolutions 12-33 and 11-32.

This change for the mineral wool sector is needed to account for new data for the mineral wool manufacturing sector, and to change this sector’s industry assistance allocations accordingly, pursuant to Board Resolutions 12-33 and 11-32.

The removal of the empty row is needed to remove a typographical error in the table.

Section 95890. General Provisions for Direct Allocations.

Summary of Section 95890(b).

Section 95890(b) is modified to indicate that the eligibility requirement for direct allocation to an EDU in this section applies to EDUs that are covered entities.

Rationale for Section 95890(b).

This modification was needed to clarify that only EDUs that are covered entities are required to comply with the MRR and obtain a positive or qualified positive emissions data verification statement for the prior year.

Summary of Section 95890(c).

Section 95890(c) is added to require EDUs that are not covered entities but are listed in Table 9-3 to register pursuant to section 95830 to receive allowances.

Rationale for Section 95890(c).

An entity must be registered in the allowance tracking system in order to receive an allowance allocation. This addition ensures that EDUs that are not required to register as covered entities will register in order to receive allowances.

Summary of Section 95890(d).

New section 95890(d) is added to establish criteria for universities and public service facilities to receive allocations.

Rationale for Section 95890(d).

This addition is needed so that universities and public service facilities can receive direct allocations.

Summary of Section 95890(e)

New section 95890(e) is added to provide an allowance allocation to the operators of legacy contract generators.

Rationale for Section 95890(e)

This new section is necessary to allow for the Executive Officer to transfer the allowances to the operator of the legacy contract generator if the operator meets the requirements in the new section 95894, and if they have report pursuant to MRR and obtain a positive or a qualified positive verification statement pursuant to MRR.

Summary of Section 95890(f)

New section 95890(e) is added to provide an allowance allocation to natural gas suppliers.

Rationale for Section 95890(f)

This addition is needed so that natural gas suppliers can receive direct allocations.

Summary of Section 95890(g).

Section 95890(g) is added to state the eligibility requirement for direct allocation to a public wholesale water agency. The agency must comply with MRR and must have obtained a positive or qualified positive verification statement for the prior year.

Rationale for Section 95890(g).

This section is needed to provide the eligibility requirement for allocations pursuant to section 95895, and to ensure that an agency receiving the allocation complies with MRR. ARB needs to set some baseline eligibility requirements to ensure that allocation is based on verified emission data.

Summary for Section 95890(h)

Section 95890(h) is added to not allow for allocation to one entity under both 95870(f) and 95870(g)

Rationale for Section 95890(h)

This section is necessary to ensure that no entity can receive allocations for the same emissions under two different allowance allocation sections

Section 95891. Allocation for Industry Assistance.

Summary of Section 95891(a)(2).

Section 95891(a)(2) is modified to correct the spelling of “budget” and to add a reference to the carbon weighted tonne and complexity weighted barrel metrics that in the MRR.

Rationale for Section 95891(a)(2).

The first change is needed to correct a spelling error. The MRR reference is added to clarify the metrics for the second compliance period.

Summary of Section 95891(a)(3).

New Section 95891(a)(3) is added to provide free allocation for new entrant covered facilities with a NAICS code that matches the first three digits of a NAICS code in Table 8-1. The leakage risk category for the new entrant covered facility is low.

Rationale for Section 95891(a)(3).

This section provides allocation for new entrant covered facilities that have a similar activity to Table 8-1 but do not have an exact match of NAICS code. Because the leakage analysis was performed only on covered facilities that time, this section provides a framework to allocate to new entrants prior to concluding a new leakage analysis.

Summary of Section 95891(b).

Section 95891(b) is modified to define calculations for the amount of true-up allowances under the product-based allocation calculation methodology. Existing true-up portion of the equation and related variables are deleted.

Rationale of Section 95891(b).

This change is needed to expand and clarify the allowance amount allocated as part of a true-up. The change allows the true-up to account for changes in allocation methodology, production output, benchmarks, leakage risk classification, and cap adjustment factor.

Summary of Section 95891, Table 9-1.

Table 9-1 is modified to add new NAICS sector definitions, associated manufacturing activities, benchmark units and benchmark values. It is also modified to change the benchmark units and/or values for existing manufacturing activities.

Rationale for Section 95891, Table 9-1.

The addition is necessary to ensure that 1) industry assistance is provided to the new entrants to the California Cap-and-trade program, 2) industrial sectors receive industry assistance based on product-based benchmark rather than energy-based benchmark provided that ARB has sufficient technical information/data to develop product-based benchmarks, and 3) newly available information/data is accurately reflected in the existing benchmarks.

Summary of newly added NAICS sector definitions (Table 9-1)

Table 9-1 is modified to add food manufacturing, breweries, wineries, secondary smelting and alloying of aluminum, secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum), iron and steel foundries and metal forging.

Rationale for newly added NAICS sector definitions (Table 9-1)

The addition is necessary to ensure that industry assistance is provided to the new entrants to the California Cap-and-trade program and also to ensure that industrial sectors receive industry assistance based on product-based benchmark rather than energy-based benchmark provided that ARB has sufficient technical information/data to develop product-based benchmarks.

Summary of tissue benchmark modification (Table 9-1)

The tissue product unit is modified from air dried short ton of tissue to air dried short ton of tissue produced adjusted by water absorption capacity. Subsequently, the benchmark value is modified from 1.14 to 0.101 and the unit of measurement was changed. .

Rationale for tissue benchmark modification (Table 9-1)

The modification for the benchmark unit is necessary to adjust the product unit to allow fair and equal comparison of the emissions from benchmarked facilities that produce tissue product to account for the absorbency of the tissue. The modification for the benchmark value was necessary to reflect the change in the calculation methodology using the new product unit. The change also reflects newly available data years.

Summary of recycled boxboard benchmark modification (Table 9-1)

The recycled boxboard benchmark is modified from 0.499 to 0.516.

Rationale for recycled boxboard benchmark modification (Table 9-1)

The modification is necessary to make the benchmark representative of normal operation years by reflecting newly available data.

Summary of flat glass benchmark modification (Table 9-1)

The flat glass benchmark value is modified from 0.471 to 0.495.

Rationale for flat glass benchmark modification (Table 9-1)

The modification is necessary to reflect newly available data and also to base the benchmark on the years that are representative of normal operation years.

Summary of container glass benchmark modification (Table 9-1)

The container glass benchmark value is modified from 0.264 to 0.270.

Rationale for container glass benchmark modification (Table 9-1)

The modification is necessary to reflect newly available data and also to base the benchmark on the years that are representative of normal operation years.

Summary of cement benchmark modification (Table 9-1)

The cement benchmark is modified from 0.718 to 0.742.

Rationale for cement benchmark modification (Table 9-1)

The modification is necessary to take into account the emissions associated with biomass combustion to reduce GHG emissions.

Summary of cold steel rolling benchmark modification (Table 9-1)

The pickled steel sheet benchmark is modified from 0.0126 to 0.0123, the cold rolled and annealed steel sheet benchmark is modified from 0.0313 to 0.052, and the tin steel plate benchmark is modified from 0.0610 to 0.1108.

Rationale for cold steel rolling benchmark modification (Table 9-1)

The pickled steel sheet benchmark, the cold rolled and annealed steel sheet benchmark and the tin steel plate benchmark are modified to reflect newly available data.

Summary of oil and natural gas extraction and processing benchmark modification (Table 9-1)

The thermal EOR crude oil extraction benchmark is modified from 0.0816 to 0.0811, the non-thermal crude oil extraction benchmark is modified from 0.0082 to 0.0076, and the natural gas liquid extraction benchmark is modified from 0.0146 to 0.0118. A new benchmark for onshore natural gas processing plants (>25 MMscf/day) is proposed as 0.0220 Allowances / Barrel of Gas Processed Equivalent.

Rationale for oil and natural gas extraction and processing benchmark modification (Table 9-1)

The thermal EOR crude oil extraction benchmark, the non-thermal crude oil extraction benchmark and the natural gas liquid extraction benchmark are modified to reflect newly available data. The emissions data for large onshore natural gas processing plants was previously included in the existing non-thermal crude oil extraction benchmark. Pursuant to stakeholder feedback, the emissions from the large gas plants are now

included in the new benchmark for onshore natural gas processing plants, as they are considered separate facilities under MRR.

Summary of Section 95891(c).

Section 95891(c) is modified to make minor corrections to the energy-based allocation methodology equation and term definitions. The subscript “a” denoting different activities is removed.

Rationale for Section 95891(c).

The energy-based allocation methodology does not support more than one activity per facility. Only one annual assistance factor and cap adjustment factor can be used in the formula.

Summary of Section 95891(c)(3).

Section 95891(c)(3) is modified to explicitly calculate the energy-based allocation methodology for new entrants. The definition of new entrants is expanded to covered facilities whose emissions exceeded the threshold in 2012 or opted into the program in 2012 or subsequent years.

Rationale for Section 95891(c)(3).

This change is made to provide an equitable allocation methodology for new entrants under the energy-based methodology. The definition of new entrant is necessary to include facilities that operated in California but were under the cap-and-trade threshold.

Summary of Section 95891(c)(3)(A).

New Section 95891(c)(3)(A) is added to provide for the calculation of allowance allocation using the energy-based allocation methodology for new entrants with no historical emissions to report. This methodology is based on engineering estimates of a facility’s energy use.

Rationale for Section 95891(c)(3)(A).

This section is needed to calculate allocation to facilities without historical reported emissions. Since other methodologies rely on historical energy usage reported through MRR, a new methodology is needed. The only available data for the calculation of allocation is engineering estimates. To correct any error in these estimates, 95891(c)(3)(B) includes a calculation for true-up allowances.

Summary of Section 95891(c)(3)(B).

New section 95891(c)(3)(B) is added to provide for the calculation of allowance allocation using the energy-based allocation methodology for new entrants with changing facility emissions. This methodology is based on historical energy use reported through MRR and updates annually until the facility emissions are stable pursuant to 95891(c)(3)(D).

Rationale for Section 95891(c)(3)(B).

This section is needed to calculate allocation to facilities with changing energy usage. Since new entrants may be experiencing substantial growth in energy usage, it is necessary to provide an allocation methodology that scales with energy usage. This provides equitable treatment to new entrant facilities that are ramping up production to full capacity and existing facilities whose allocation was based on running at full capacity.

Summary of Section 95891(c)(3)(C).

New section 95891(c)(3)(C) is added to provide for the calculation of allowance allocation using the energy-based allocation methodology for new entrants that have reached stable emissions pursuant to 95891(c)(3)(D).

Rationale for Section 95891(c)(3)(C).

This section is needed to calculate allowance allocation for facilities with stable emissions using a similar method for covered facilities defined in 95891(c).

Summary of Section 95891(c)(3)(C)(1).

New section 95891(c)(3)(C)(1) is added to clarify the data years for the stable allowance allocation to be based on the previous three years of reported energy-usage through MRR.

Rationale for Section 95891(c)(3)(C)(1).

This section is needed to define the data years used in 95891(c)(3)(C). This section provides data years to the energy-based allocation methodology in 95891(c). The only difference is the data period: 95891(c) uses 2008-2010 and 95891(c)(3)(C) uses a historical three year average based on the year the facility reached stability.

Summary of Section 95891(c)(3)(D).

New section 95891(c)(3)(D) is added to provide the equation to calculate allowance allocation if the historical emissions of a facility are stable. This equation calculates percent change in emissions of year “t-2” to the average of years “t-3” and “t-4”. If the percent change was less than 10 percent, the emissions of years “t-2” to “t-4” are considered stable.

Rationale for Section 95891(c)(3)(D).

This equation is needed to define stability for sections 95891(c)(3)(B-C). 10 percent is chosen to allow normal variation in annual operation to not affect allocation.

Summary of Section 95891(d)(1)(A)

Section 95891(d)(1)(A) was modified to clarify that the allocations would be for the initial allocation for 2013 and 2014 vintage allowances

Rationale for Section 95891(d)(1)(A)

This change was necessary to clarify that these are the initial allocation because we have added a true-up allocation process that will be for 2015 vintage allowances.

Summary of Section 95891(d)(1)(B)

Section 95891(d)(1)(B) is modified to add a true-up allowance amount term for refineries without an EII.

Rationale for Section 95891(d)(1)(B)

Initial allowance allocation relies on historical data and the true up term allows actual output data to be used for the calculation instead of estimated data. The true up is limited to those under the output based methodology unless actual emissions are eighty percent or smaller of baseline emissions. This is consistent with the approach for EII refineries.

Summary of Section 95891(d)(2)(B)

Section 95891(d)(2)(B) is modified to change A to TrueUp so that refineries can use these allowances as TrueUp allowances. Additionally purchases was corrected to sales

Rationale for Sections 95891(d)(2)(B)

This change is necessary to allow refineries to use the TrueUp amount for earlier budget years pursuant to sections 95856(h)(1)(C) and 95856(h)(2)(C). The correction of purchases to sales is to correct for an inadvertent typo in the original Regulation.

Summary of Section 95891(e).

New section 95891(e) is added to provide the methodology for calculating the amount of allowances directly allocated to a university or public service facility.

Rationale for Section 95890(e).

Because university covered entities and public service facilities will be allocated allowances for transition assistance pursuant to section 95870(f), this section was needed to explain the calculation of the amount of allowances allocated to these entities.

Summary of Section 95891(e)(1).

New section 95891(e)(1) is added to provide the formula used for allocating allowances from budget year 2015 to university covered entities and public service facilities and to define the terms in the equation. The 2015 allocation is calculated as the baseline fuel consumed multiplied by the fuel efficiency benchmark less the emissions attributed to electricity sold plus true-up term for 2013 and 2014 calendar years. This section also provides the equation for calculating the amount of true-up allowances to account for changes in allocation not properly accounted for in prior allocations.

Rationale for Section 95891(e)(1).

University covered entities and public service facilities will receive allowances for transition assistance pursuant to section 95870(f) and it is necessary to provide the calculation methodology. Because these entities did not receive allowances in 2013 and 2014, and there will be no remaining allowances of these vintages that could be allocated, it is necessary to allocate their allowances for 2013 and 2014 as well as for 2015 from the budget year 2015. The true-up portion of the allocation allows these entities to use the true-up allowance amount from budget year 2015 for earlier budget years obligations pursuant to sections 95856(h)(1)(C) and 95856(h)(2)(C).

Summary of Section 95891(e)(2).

New section 95891(e)(1) is added to provide the formula used for allocating allowances to university covered entities and public service facilities for budget years 2016 to 2020 and to define the terms in the equation.

Rationale for Section 95890(e)(2).

Because university covered entities and public service facilities will be allocated allowances for transition assistance pursuant to section 95870(f), this section was needed to explain the calculation of the amount of allowances allocated to these entities for the budget years 2016 to 2020.

Summary of Section 95891(e)(3).

New section 95891(e)(3) is added to state the data sources the Executive Officer may use to determine appropriate baseline values for calculating allowances directly allocated to a university or public service facility.

Rationale for Section 95890(e)(3).

This section is needed to indicate what data will be used to establish baseline values for allowance allocation calculations pursuant to section 95890(e).

Summary of Section 95891(e)(4).

New section 95891(e) is added to require universities or public service facilities that are allocated allowances to report, no later than June 30, 2016 and each calendar year thereafter, the disposition of allowance valued received in the prior calendar year, and how the allowance value was used to reduce greenhouse gas emissions and achieve additional environmental and economic benefits for California.

Rationale for Section 95890(e)(4).

University covered entities and public service facilities are allocated allowances for transition assistance and to recognize their leadership in reducing greenhouse gas emissions and achieving additional environmental and economic benefits for California. Many of these entities have committed to ARB that they will use the allowance value to continue to pursue these benefits and emission reductions. Because California Health and Safety Code sections 38570 et seq. require that ARB maximize additional environmental and economic benefits for California in conjunction with implementing a market based compliance program such as this Cap-and-Trade Regulation, it is

necessary that entities that receive allowance value in recognition of their emission reduction activities report on their use of allowance value received. This requirement is consistent with the reporting required of EDUs that receive allowance allocations for the benefit of ratepayers.

Summary of Section 95891(e)(4)(A).

New section 95891(e)(4)(A) is added to require entities subject to this section to report the monetary value of allowances received, and explains that this value shall be calculated based on the average market clearing price of the quarterly auctions held during the calendar year the allowances are allocated.

Rationale for Section 95891(e)(4)(A).

Because university covered entities and public service must report on their use of allowance value pursuant to this section, it is necessary to describe how the allowance value will be calculated and to require that they report the calculated allowance value received in each calendar year.

Summary of Section 95891(e)(4)(B).

New section 95891(e)(4)(B) is added to require each university or public service facility to annually report to the Executive Officer describing the disposition of any allowance value receive in the prior year, and how the allowance value was used to reduce greenhouse gas emissions and achieve additional environmental and economic benefits.

Rationale for Section 95891(e)(4)(B).

Like EDUs, university covered entities and public service entities are allocated allowances for transition assistance. For EDUs the value of allowances must be used to benefit ratepayers, and similarly, the value of allowances will benefit taxpayers that pay the costs of operating university and municipal facilities. Because California Health and Safety Code sections 38570 et seq. require that ARB maximize additional environmental and economic benefits for California in conjunction with implementing a market based compliance program, it is necessary that entities receiving allowance value report on their use of allowance value received.

Summary of Section 95891(f)

New section 95891(f) is added to describe the calculation to adjust the California GHG Allowances directly allocated to a Legacy Contract Counterparty that is receiving industrial allocation pursuant to 95891 (b) through (d).

Rationale for Section 95891(f)

This new section is necessary to reduce the allowance allocation to the legacy contract counterparty. This purpose of allocation under 95891 (b-d) is to minimize leakage associated with GHG costs. In the case of a legacy contract, there is no cost to the counterparty and thus no need for allowance allocation so this section adjusts for the allowances associated with the legacy contract.

Summary of Section 95891(f)(1)

This section provides an adjustment to occur in vintage 2015 allowances.

Rationale of Section 95891(f)(1)

This section is needed to account for the adjustment related to legacy contract emissions for 2013 through 2015.

Summary of Section 95891(f)(2)

This section provides a formula for adjustment to industrial allocations for years after 2015.

Rationale for Section 95891(f)(2)

This section is necessary to account for the adjustment related to legacy contract emissions for years after 2015.

Summary of Section 95891(f)(3)

New Section 95891(f)(3) is added to address situations where the adjustment of the allowance allocation to the Legacy Contract Counterparty is greater than the counterparty's allocation for that year. This section also adds the ability to adjust the allowance allocation of an entity with a direct corporate association with the Legacy Contract Counterparty.

Rationale for Section 95891(f)(3)

The addition of this new section is necessary ensure the Legacy Contract Counterparty, that is an industrial entity, will not have its allowance allocation adjusted any lower than zero and the balance of the calculation pursuant to section 95891(f) will be deducted from the counterparty's direct corporate association. This situation is possible since the 2015 adjustment will include the adjustment from 2013-2015.

Summary of Section 95891(f)(4)

Section 95891(f)(4) is added to cease the adjustment if the legacy contract counterparty renegotiates considering greenhouse gas costs.

Rationale of Section 95891(f)(4)

This change is necessary to allow for the counterparty to renegotiate the contract and not have the adjustment applied to their allocation, which would result in an over-allocation to the counterparty.

Section 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.

Summary of Section 95892(a). Table 9-3

Section 95892(a), Table 9-3, is modified to change the names of and type designations (Publically Owned Utility (POU), Investor Owned Utility (IOU), or electrical cooperative (Coop) for three EDUs. Modifications to the allowance allocation for budget years 2015 to 2020 are made for two EDUs.

Rationale for Section 95892(a). Table 9-3

It is necessary to change the names in Table 9-3 for two EDUs due to change in ownership, and to account for a name change for one EDU. For two of these EDUs It is necessary to change the EDU type designation to account a change in ownership and correct an error. Allowance allocation amounts were made for two EDUs based on new information about the cost burden faced by each EDU's ratepayers. In both cases, new information about the emissions associated with imported electricity requires adjustments in allocation amounts. Adjustments made to allocations for 2015 to 2020 will also account for under- or over-allocation in 2013 and 2014.

In addition, staff proposed to change the allocation to two EDUs based on new information regarding the cost burden for Cap-and-Trade compliance faced by each EDU's ratepayers. The allocation to Anza Electric Cooperative was increased because

imported electricity serving Anza's ratepayers has higher emissions than previously assumed. The allocation to Surprise Valley Electrical Corporation was reduced because emissions from their electricity imports are significantly lower than what was assumed based on previous information. No change was made to the overall allocation to the electricity sector.

Section 95893. Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers.

Summary of Section 95893(a)

New section 95893(a) is added to provide the formula by which natural gas suppliers will receive allowances on behalf of their ratepayers.

Rationale for Section 95893(a).

The allocation formula for distribution of allowances to natural gas suppliers is for the benefit of rate payers and must further the cap-and-trade emissions reduction objectives, including providing incentives to reduce emissions cost-effectively. This section allocates for every year based on the supplier's 2011 compliance obligation, taking into account the cap decline factor for the year of allocation. This ensures an increasing incentive as the cap declines.

Summary of Section 95893(b).

New section 95893(b) is added to explain that investor-owned utilities (public utility gas corporations) will receive free allocation into a special type of account called a Limited Use Holding Account. Publicly owned natural gas utilities will have the option to have allocations distributed to their limited use Holding Accounts or to their Compliance Accounts.

Rationale for Section 95893(b).

Natural gas suppliers that plan to monetize allowances on behalf of their ratepayers will receive a free allocation into limited use Holding Accounts. An increasing percentage of allowances given to public utility gas corporations are required to be monetized. The publicly owned natural gas utilities have more flexibility.

Summary of Section 95893(c), Monetization Requirement.

New section 95893(c) is added to require that natural gas utilities have an increasing percentage of their freely allocated allowances placed into a Limited Use Holding

Account and consigned to auction in the calendar year corresponding to the budget year from which those allowances was issued.

Rationale for Section 95893(c).

Monetization of allowances through auction is intended to ensure that the amount of value given to distribution utilities is transparent to the public, and that this value is used on behalf of ratepayers.

Summary of Section 95893(d),

New section 95893(d) is added to establish limitations on how a natural gas utility can use proceeds raised from the sale of allowances at auction.

Rationale for Section 95893(d).

These limitations ensure that allowance value given to a natural gas utility will be used on behalf of ratepayers and in ways that are consistent with AB 32 statutory objectives.

Summary of Section 95893(d)(1) and 95892(d)(2).

New sections 95893(d)(1) and 95892(d)(2) are added to clarify that the natural gas utility proceeds from the sale of allowances at auction will be subject to limitations imposed by either the California Public Utilities Commission or by the governing bodies of publicly owned utilities.

Rationale for Section 95893(d)(1) and 95892(d)(2).

Proceeds from sale at allowances at auction will generate a new revenue stream for a natural gas utility. This revenue stream will need to be accounted for along with all other revenues and costs in the ratemaking actions of the CPUC and the governing bodies of the POUs.

Summary of Section 95893(d)(3).

New section 95893(d)(3) is added to clarify that the statutory goals of AB 32 apply to all utility proceeds raised through auctioned allowances and that all proceeds must be used to the benefit of ratepayers rather than for the benefit of shareholders (or any other entities). Further limitations are placed on how rebates directly to customers must function.

Rationale for Section 95893(d)(3).

Limiting the use of proceeds on behalf of ratepayers and for the purposes of AB 32 ensures that natural gas utility adopt programs that support GHG reductions and minimize cost of these programs to their customers.

Limiting customer rebates such that they appear on the fixed portion of customer bills and cannot be based solely on the amount of natural gas consumed in any period after 2014 is intended to create an incentive to use less natural gas and ensure a GHG price signal in retail rates.

Summary of Section 95893 (d)(4)

Section 95893 (d)(4) is added to state that public utility gas corporations must provide equal treatment to procurement and delivery customers and delivery only customers.

Rationale for Section 95892 (d)(4)

This section is necessary to ensure that all customers are treated equitably.

Summary of Section 95893 (d)(5)

New section 95893 (d)(5) is added to clarify what are prohibited uses of allocated allowance value.

Rationale for Section 95893 (d)(5)

This section is necessary to ensure that allowance value is used solely for the benefit of ratepayers in line with the goals of AB 32.

Summary of Section 95893(e), Reporting on the Use of Auction Proceeds.

New section 95893(e) is added to require that natural gas utilities report to ARB on how they use proceeds generated from the sale of allowances at auction.

Rationale for Section 95893(e).

This provision will ensure transparency on how natural gas utilities use allowance value and demonstrate that this value is used for the purposes of AB 32 implementation.

Summary of Section 95893(e) Table 9-4

Section 95893(e) was added to provide the consignment requirements for natural gas suppliers.

Rationale for Section 95893(e) Table 9-4

This change is necessary to direct natural gas suppliers to consign a given percentage of allowances for the corresponding year in the table.

Section 95894. Allocation to Legacy Contract Generators for Transition Assistance.

Summary of Section 95894

New Section 95894 is added to provide allowances to legacy contract generators.

Rationale for section 95894

New Section 95894 is necessary to provide allowances to legacy contract generators for two purposes: (1) to provide transitional assistance or (2) in the case of those with an industrial facility counterparty, to adjust the counter party allocation and provide those allowances to the legacy contract generator.

Summary of Section 95894(a)

New section 95894(a) is added to describe the entity in a legacy contract situation eligible to receive the allocation and how they will transmit the required information.

Rationale for Section 95894(a)

This new section is necessary to direct the primary or alternate account representative representing the operator of the legacy contract generator to demonstrate they have met the criteria, and the date by which they need to submit the information.

Summary of Section 95894(a)(1)

New section 95894(a)(1) is added to describe how to request allowance allocation.

Rationale for 95894(a)(1)

This new section is necessary to start the process of evaluating and determining whether the entity is eligible to receive the allowance allocation.

Summary of Section 95894(a)(2)

New section 95894(a)(2) is added to describe the information the entity must submit regarding the contract with the legacy contract counterparty.

Rationale for Section 95894(a)(2)

This new section is necessary to prove to ARB there is a legacy contract with the counterparty and the effective dates for which there are legacy contract emissions.

Summary of Section95894 (a)(3)

New section 95894(a)(3) is added to require an attestation be submitted to ARB to prove to ARB there is a legacy contract.

Rationale for Section95894 (a)(3)

This new section is necessary to prove the information declared is true and to facilitate ARB legal action against the entity requesting allowance allocation if the information submitted is false information

Summary of Section 95894(a)(3)(A)

New section 95894(a)(3)(A) is added to require the entity to state under penalty of perjury a legacy contract exists with the counterparty.

Rationale for Section 95894(a)(3)(A)

This new section is necessary to have the entity state under penalty of perjury that a contract exists with the counterparty and it doesn't cover the cost of compliance with the Cap-and-Trade Regulation for the purchase of the electricity and or the qualified thermal output. ARB needs to ensure that a contract actually exists, but may not be able to see the contract itself due to confidentiality provisions.

Summary of Section 95894(a)(3)(B)

New section 95894(a)(3)(B) is added to require the entity state under penalty of perjury that the legacy contract was entered into before September 1, 2006, the month Assembly Bill 32 was enacted.

Rationale for Section 95894(a)(3)(B)

This new section is necessary limit the contracts that are eligible to be considered legacy contracts. If the contract was signed after this date, it should have considered the potential costs of GHG emissions in the terms of the agreement.

Summary of Section 95894(a)(3)(C)

New section 95894(a)(3)(D) is added to require the operator to discuss renegotiation of the costs of compliance with this Regulation with the counterparty.

Rationale for Section 95894(a)(3)(C)

This new section is necessary to insure the operator discussed the possibility of allocating these costs with the counterparty and has exhausted all other options to cover the cost of compliance.

Summary of Section 95894(a)(4)

New section 95894(a)(4) is added to require the entity to include in the letter to ARB the data requested in section 95894(d), if it is requested by ARB.

Rationale for Section 95894(a)(4)

This new section is necessary so that, if additional data and information is available to determine the appropriate allowance allocation, the entity must provide the data. This will ensure ARB's allocation is as accurate as possible.

Summary of Section 95894(a)(5)

New section 95894(a)(6) is added to allow the covered entity to update the data and information submitted.

Rationale for Section 95894(a)(5)

New section 95894(a)(6) is necessary to allow for the consideration of the most current, accurate and up-to-date information related to the legacy contract.

Summary of Section 95894(b)

New section 95894(b) is added to allow ARB to review the data and information required to be submitted in section 95894(a).

Rationale for Section 95894(b)

This section is necessary so ARB can determine whether the content submitted meets the requirements for the entity to receive an allowance allocation.

Summary of Section 95894(c)

New section 95894(c) is added to describe the calculation legacy contract generators with a counterparty that receives allowance allocation pursuant to 95891(b-d).

Rationale for Section 95894(c)

New section 95894(c) is necessary to determine the number of allowances to be provided to the legacy contract generator. This amount will also be subtracted from the counterparty or a direct corporate association of the counterparty.

Summary of Section 95894(c)(1)

This new section is added to describe the calculation of allowances to the stand-alone electricity generators.

Rationale for Section 95894(c)(1)

This new section is needed to be able to determine the appropriate number of allowances to allocate to the stand-alone electricity generators.

Summary of Section 95894(c)(2)

This new section is added to describe the calculation of allowances to all other legacy contract generators

Rationale for Section 95894(c)(2)

This new section is needed to be able to determine the appropriate number of allowances to allocate to allocate to all other legacy contract generators, that are not stand-alone electricity generators,

Summary of Section 95894(d)

New section 95894(d) is added to describe the calculation for determining the number of allowances for legacy contract generators for all remaining generators for transitional assistance.

Rationale for Section 95894(d)

New section 95894(d) is necessary to determine the number of allowances to be allocated to the generators for two years of transitional assistance as directed in Board Resolution 12-33, for generators that do not have a contract with an industrial counterparty.

Summary of Section 95894(d)(1)

This new section is needed to describe the calculation of allowances to be provided to the legacy contract generator.

Rationale for Section 95894(d) (1)

This new section is necessary to determine the number of allowances to be allocated to the legacy contract generator that is a stand-alone generator.

Summary of Section 95894(d)(2)

This new section is needed to describe the calculation of allowances to be provided to all remaining generators in this category.

Rationale for Section 95894(d) (2)

This new section is necessary to determine the number of allowances to be allocated to all remaining generators in this category

Summary of Section 95894(e)

New section 95894(e) is added so that ARB can consider the data submitted by the entity pursuant to MRR for the emissions year 2012.

Rationale for Section 95894(e)

New section 95894(e) is necessary for ARB to use the data submitted under MRR in the calculation to determine the number of allowances to allocate to the operator of a legacy contract generator.

Summary of Section 95894(f)

New section 95894(f) is added to cease the allowance allocation.

Rationale for Section 95894(f)

New section 95894(f) is necessary to end the allowance allocation, or pro-rate the allowance allocation if the contract expires or the operator of the legacy contract generator permanently ceases operations of the legacy contract generator.

Section 95895. Allocation to Public Wholesale Water Agencies for Protection of Water Ratepayers.

Summary of Section 95895

Section 95890(b) is added to provide, in Table 9-5, the quantity of allowances to be allocated to a public wholesale water agency from budget years 2015-2020.

Rationale for Section 95895

This section is needed to state the number of allowances to be allocated to a public wholesale water agency from budget years 2015-2020. The number of allowances is the expected compliance obligation for electricity used to convey water for each agency, assuming that it would meet the renewable energy percentages required under California's RPS.

Section 95910. Auction of California GHG Allowances.

Summary of Section 95910(a)(2).

Section 95910(a)(2) is modified to specify that the existing auction scheduling convention only extends through 2014.

Rationale for Section 95910(a)(2).

This change is necessary to provide clarity to market participants about when auctions will be held and when the new proposed schedule would be in effect.

Summary of Section 95910(a)(3).

New section 95910(a)(3) is added to refer readers to the auction schedule in Appendix C.

Rationale for Section 95910(a)(3).

This addition is necessary to provide clarity to market participants about when auctions will be held post-2014.

Summary of Section 95910(b)(1).

Section 95910(b)(1) is modified to specify to which subsections of 95870 the section makes reference.

Rationale for Section 95910(b)(1).

This modification is needed to eliminate imprecision about which subsection of 95870 is being referenced.

Summary of Section 95910(c)(1)(B).

Section 95910(c)(1)(B) is modified to specify that future vintage allowances for sale at an Advance Auction which remain unsold will be sold at a Current Auction when their vintage equals the current year.

Rationale for Section 95910(c)(1)(B).

This change is needed to clarify how unsold future vintage allowances would be treated if they were not sold by the year of their vintage.

Summary of Section 95910(d)(4)(B).

Section 95910(d)(4)(B) is modified to specify that the deadline for consignment is 5 p.m. Pacific time, 75 days before the auction.

Rationale for Section 95910(d)(4)(B).

This amendment is required to ensure that consigning entities complete consignment during working hours when staff is available to assist them, if needed.

Summary of Section 95910(d)(4)(C).

New section 95910(d)(4)(C) is added to specify that consignment must be completed by 5 p.m., 75 days before the auctions, as listed in Appendix C.

Rationale for Section 95910(d)(4)(C).

This amendment is required to ensure that consigning entities complete consignment during working hours when staff is available to assist them, if needed.

Section 95911. Format for Auction of California GHG Allowances.

Summary of Section 95911(c)(4)

Section 95911(c)(4) was modified to clarify that the Executive Officer may delay the opening of the auction bidding window for up to one hour in cases of technical difficulties.

Rationale for Section 95911(c)(4)

This modification is needed to allow for delays for technical reasons, which can be resolved in a timely manner so as not to cause the entire auction to be rescheduled.

Summary of Section 95911(d)(2)

Existing section 95911(d)(2) is modified to refer to the section in which the auction purchase limit is defined.

Rationale for Section 95911(d)(2)

This modification is needed to ensure clarity in the subsection's reference to the auction purchase limit.

Summary of Section 95911(d)(4)(A)

Section 95911(d)(4)(A) is modified to raise the purchase limit for covered entities to 20 per cent during the first compliance period.

Rationale for Section 95911(d)(4)(A)

The change is made to accommodate an entity that has experienced a growth in emissions due to opening a new facility. ARB has set the holding and purchase limits so that covered entities could meet their compliance obligations for the first compliance period through a combination of direct allocation and participation in eight quarterly auctions. ARB is aware that an entity opening a new facility could have been constrained by the purchase limit. The increase in the purchase limit, for the auction to

which it will apply when the Regulation becomes effective, is increased by more than the amount necessary for the entity to purchase allowances at auction to meet its increased compliance needs.

Summary of Section 95911(d)(5)

New Section 95911(d)(5) was added to specify auction purchase limits for the second and third compliance periods. Similar to the existing requirements for the first compliance period, the new requirements still provide larger purchase limits for covered and opt-in entities that voluntarily associated entities.

Rationale for Section 95911(d)(5)

This section is needed to ensure equitable access to allowances at auction for all market participants in the second and third compliance periods.

Summary of Section 95911(d)(6)

This new section is needed to clarify that, from 2015-2020, the auction purchase limit for voluntarily associated entities will be 4 percent of the allowances at auction.

Rationale for Section 95911(d)(6)

This addition is necessary to codify the auction purchase limit for voluntarily associated entities.

Summary of Section 95911(e)(3)(B)

Existing section 95911(e)(3)(B) is modified to eliminate the reference to section 95914.

Rationale for Section 95911(e)(3)(B)

This modification is necessary because section 95914 does not define the holding limit.

Section 95912. Auction Administration and Participant Application.

Summary of Section 95912(b)
Section 95912(b) was modified to fix a grammatical error.

Rational for Section 95912(b)
This modification was needed to clarify the existing text.

Summary of Section 95912(d)(4).

Section 95912(d)(4) is modified to specify that the deadline for auction application is 5 p.m. Pacific time, 30 days before the auction.

Rationale for Section 95912(d)(4).

This amendment is required to ensure that registration is completed during working hours when staff is available to assist them, if needed.

Summary of Sections 95912(d)(4)(C) and (D).

New sections 95912(d)(4)(C) and (D) are added to require a change in the distribution of the purchase limit and holding limit among corporate associates with separate CITSS accounts to be provided with other auction application information. Sections 95912(d)(4)(C) and (D) are renumbered to sections 95912(d)(4)(E) and (F).

Rationale for Section 95912(d)(4)(C) and (D).

The new sections make clear that any change in the distribution of the purchase limit and/or the holding limit among corporate associates must be reported along with other auction application information. The requirement for reporting the allocation of the purchase limit is not new as it was formerly in Section 95914(d)(4).

Summary of Section 95912(d)(4)(E).

Section 95912(d)(4)(E) is modified to require entities to identify an ongoing investigation, including a change in the status of an investigation, of an alleged violation of rules and regulations governing the financial markets, including possible securities, commodities or financial market violations

Rationale for Section 95912(d)(4)(E).

The change to Section 95912(d)(4)(E) is needed to improve ARB's ability to monitor investigations of alleged violations in other financial markets and makes clear that a change in the status of an investigation, if applicable, is information that should be reported along with other auction application information.

Summary of Section 95912(d)(5).

New section 95912(d)(5) is added to explain that changes to the auction application close to the auction will result in denial of the auction application.

Rationale for Section 95912(d)(5).

This change is necessary to ensure correct processing of the auction applications.

Summary of Section 95912(d)(6)

Section 95912(d)(6) was modified to fix a reference to just the Reserve Sale to all auctions.

Rational for Section 95912(d)(6)

This modification was needed to ensure the requirements of the section apply to all ARB auctions and not just the subset of Reserve sale auctions.

Summary of Section 95912(e)(2).

Section 95912(e)(2) is modified to set the deadline for changes to auction application information at 5 p.m., 30 days before the auction.

Rationale for Section 95912(e)(2).

This amendment is required to ensure application changes are completed during working hours when staff is available to assist, if needed.

Summary of Section 95912(f).

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

Rationale for Section 95912(f).

This addition is necessary to streamline the auction preparation process.

Summary of Section 95912(j).

Section 95912(j) is modified to establish that the deadline for reception of the bid guarantee is 5 p.m. Pacific time, 12 days before the auction.

Rationale for Section 95912(j).

This change is needed to ensure that participants complete the bid guarantee process during working hours when staff is available to assist, if needed.

Summary of Section 95912(j)(1)(A).

Section 95912(j)(1)(A) is modified to continue to allow a cash bid guarantee via a wire transfer but cash in the form of a bank check or cashier's check will not be accepted as a form of a bid guarantee for a quarterly auction.

Rationale for Section 95912(j)(1)(A).

The deletion of bank checks or a cashier's check in Section 95912(j)(1)(A) is needed to ensure timely settlement following an auction.

Summary of Section 95912(j)(1)(D).

New section 95912(j)(1)(D) is added to allow certain surety bonds to be used as a bid guarantee.

Rationale for Section 95912(j)(1)(D).

This addition is needed to expand the bid guarantee options for auction participants.

Summary for Section 95912(j)(3).

New section 95912(j)(3) is added to stipulate that non-cash bid guarantees must be payable within one business day of payment request.

Rationale for Section 95912(j)(3).

This addition is necessary to facilitate timely completion of auction clearance. Various minor and non-substantive clarifications were also made to section 95912 to ensure clarity and consistency in terminology throughout the Regulation.

Summary of Section 95912(j)(5)(C)

This section is added to clarify that if an auction participant submits a single bid guarantee to cover bids in both Current and Advance Auctions then it must cover the combined maximum value of bids to be submitted in both auctions.

Rationale for Section 95912(j)(5)(C)

This section is added for clarification in the submission of bid guarantees.

Summary of Section 95912(j)(5)(D)

This section is added to clarify that submitting a bid guarantee that is less than the maximum value of bids to be submitted is a violation of the regulation.

Rationale for Section 95912(j)(5)(D)
This section is added to clarify the existing regulation and enforcement procedures surrounding the submission of bid guarantees.

Summary of Section 95912(j)(9)

New section 95912(j)(9) is modified to refer to section 95911(j)(1).

Rationale for Section 95912(j)(9)

This change is necessary to ensure that the section reference is correct.

Summary of Section 95912(k)(2)(C-D).

New section 95912(k)(C-D) is added to specify where the proceeds from auctions will be placed.

Rationale for Section 95912(k)(2)(C-D).

This addition is necessary to provide an update on where auction monies are deposited.

Summary of Section 95912(k)(3).

Section 95912(k)(3) is modified to delete the reference to serial numbers of allowances.

Rationale for Section 95912(k)(3).

This modification is necessary to clarify that allowances will be transferred into winning bidder's Holding accounts, rather than transferring serial numbers.

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

Summary of Section 95913(b).

New section 95913(b) is an existing section now moved to replace the previous section and states that entities registered in a linked jurisdiction may not purchase allowances from California's Reserve sales.

Rationale for Section 95913(b).

This modification was made to improve readability in this section.

Summary of Section 95913(d).

Section 95913(d) is modified to specify the timing of Reserve sales.

Rationale for Section 95913(d).

These modifications are necessary to provide clarity to potential Reserve sale participants.

Summary of Section 95913(d)(2)

Section 95913(d)(2) was modified to limit the Reserve sales in the first compliance period to the existing schedule in the Regulation.

Rationale for Section 95913(d)(2)

This modification was needed to end the current schedule once the newly proposed schedule was in place.

Summary of Sections 95913(d)(3) and (6)

New sections 95913(d)(3) and (6) were added to include the new schedule in Appendix C for the Reserve sales starting in 2015.

Rationale for Sections 95913(d)(3) and (6)

These sections are needed to provide the exact dates for Reserve sales, the existing schedule did not specify exact dates and made implementation a challenge when the schedule required an auction the day after a holiday.

Summary of Section 95913(e)(1).

New section 95913(e)(1) is added to specify that the deadline to notify the Reserve sale administrator of intent to bid is 20 days.

Rationale for Section 95913(e)(1).

This addition is necessary to establish limits to when an entity can express desire for Reserve sale participation.

Summary of Section 95913(e)(2).

New section 95913(e)(2) is added to require that entities whose auction application information changes 30 days prior to, or 15 days after, a Reserve sale may not participate in that sale.

Rationale for Section 95913(e)(2).

This addition is necessary to streamline the Reserve sale process and ensure there are no issues for settlement because one entity may not meet the auction application requirements due to changes in their registration information.

Summary of Section 95913(f)(1)

Section 95913(f)(1) is modified to clarify the source of allowances that fill the three tiers of the Allowance Price Containment Reserve.

Rationale for Section 95913(f)(1)

This change is necessary given the eligibility of additional allowances for the Reserve sale immediately preceding the compliance obligation on November 1 pursuant to section 95913(f)(5).

Summary of Section 95913(f)(5)

New section 95913(f)(5) is added to outline the sale of additional allowances through the Reserve sale immediately preceding the compliance obligation on November 1 in addition to those in the Allowance Price Containment Reserve.

Rationale for Section 95913(f)(5)

This subsection is necessary to outline changes made to the Reserve sale immediately preceding the compliance obligation on November 1 in order to satisfy Board Resolution 12-51.

Summary of Section 95913(f)(5)(A)

New section 95913(f)(5)(A) is added to specify that additional allowances will be eligible for sale beginning at the Reserve sale immediately preceding the compliance obligation on November 1, 2015.

Rationale for Section 95913(f)(5)(A)

The new subsection is necessary to outline the mechanics of an additional cost containment feature pursuant to Board Resolution 12-51.

Summary of Section 95913(f)(5)(B)

New section 95913(f)(5)(B) is added to outline the filling of accepted bids at the highest price tier of the Reserve sale immediately preceding compliance obligation on November 1 if the number of accepted bids is less than or equal to the quantity of eligible allowances.

Rationale for Section 95913(f)(5)(B)

This subsection is required to outline the purchase process of additional allowances made available through the Reserve sale immediately preceding the compliance obligation on November 1.

Summary of Section 959133(f)(5)(C)

New section 95913(f)(5)(C) is added to outline that the filling of accepted bids at the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 will occur through the procedure outlined in section 95913(h)(5) if the number of accepted bids exceeds the quantity of eligible allowances.

Rationale for Section 95913(f)(5)(C)

This subsection is made to outline the purchase process of additional allowances made available through the Reserve sale immediately preceding the compliance obligation on November 1.

Summary of Section 95913(f)(5)(D)

New section 95913(f)(5) is added to specify that accepted bids for allowances in the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 will first be filled with Allowance Price Containment Reserve allowances as specified in section 95870(a).

Rationale for Section 95913(f)(5)(D)

This subsection is necessary to specify the order in which allowances will fill accepted bids at the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 pursuant to Board Resolution 12-51.

Summary of Section 95913(f)(5)(E)

New section 95913(f)(5)(E) is added to specify that once all allowances outlined in section 95870(a) have been sold at the Reserve sale immediately preceding the compliance obligation on November 1, accepted bids for the highest price tier will be filled beginning with the latest vintage in the Auction Holding Account, moving to more recent vintages until all allowances outlined in section 95870(J)(1) have been sold or all accepted bids are filled.

Rationale for Section 95913(f)(5)(E)

This subsection is necessary to specify the order in which allowances will fill accepted bids at the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 pursuant to Board Resolution 12-51.

Summary of Section 95913(f)(5)(F)

New section 95913(f)(5)(F) is added to specify that all allowances sold in the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 will be retired as Allowance Price Containment Reserve allowances for compliance.

Rationale for Section 95913(f)(5)(F)

This change is necessary to clarify the order in which allowances purchased in the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 will be removed from the compliance accounts of entities.

Summary of Section 95913(g)(2)(A).

Section 95913(g)(2)(A) is modified to continue to allow a cash bid guarantee via a wire transfer but cash in the form of a bank check or cashier's check will not be accepted as a form of a bid guarantee for a Reserve sale.

Rationale for Section 95913(g)(2)(A).

The deletion of bank checks or a cashier's check in Section 95913(g)(2)(A) was needed to ensure timely settlement following a Reserve sale.

Summary of Section 95913(g)(2)(D).

New section 95913(g)(2)(D) is added to allow certain surety bonds to be used as a bid guarantee for Reserve sales.

Rationale for Section 95913(g)(2)(D).

This addition is needed to expand the bid guarantee options for Reserve sale participants.

Summary of Section 95913(g)(3).

New section 95913(g)(3) is added to specify that non-cash bid guarantees for Reserve sales must be payable within one business day.

Rationale for Section 95913(g)(3).

This addition is necessary to facilitate timely completion of Reserve sale clearance.

Summary of Section 95913(g)(7).

New section 95913(g)(7) is added to state that the intent to bid notification requirements and bid guarantee submittal requirements shall be at least four days before bid guarantee submittal dates.

Rationale for Section 95913(g)(7).

This addition is necessary to ensure that staff has enough time to process the requirements.

Summary of Section 95913(h)(1)

Section 95913(h)(1) is modified to differentiate the purchase determinations for all Reserve sales and the Reserve sale immediately preceding the compliance obligation on November 1.

Rationale for Section 95913(h)(1)

This change is necessary to make additional allowances eligible for the highest price tier of the Reserve sale immediately preceding the compliance obligation on November 1 in fulfillment of Board Resolution 12-51.

Summary of Section (h)(1)(A)

New section 95913(h)(1)(A) is added to specify that Reserve sales will continue until all accepted bids are filled or until the Allowances Price Containment Reserve allowances made available through in section 95870(a) have been sold.

Rationale for Section (h)(1)(A)

This change is made to clarify the purchase determination of Reserve sales that are not immediately preceding the compliance obligation on November 1.

Summary of Section 95913(h)(1)(B)

New section 95913(h)(1)(B) is added to outline that the Reserve sale immediately preceding the compliance obligation on November 1 will continue until all accepted bids are filled or all allowances made eligible through section 95870(a) and section 95870(j)(1) have been sold.

Rationale for Section 95913(h)(1)(B)

This change is required to clarify the purchase determination of allowances sold at the Reserve sale immediately preceding the compliance obligation on November 1 pursuant to Board Resolution 12-51.

Summary of Section 95913(h)(3)(B)

Existing section 95913(h)(3)(B) is modified to clarify that the section referred to is 95913(g).

Rationale for Section 95913(h)(3)(B)

This change is necessary so that the Regulation refers to the correct section.

Summary of Section 95913(h)(4)(B)

Existing section 95913(h)(4)(B) is modified to clarify that the section referred to is 95913(h)(4)(A) and that only accepted bids will be fulfilled, not just any bid.

Rationale for Section 95913(h)(4)(B)

This change is necessary to clarify the referenced section and which bids will be fulfilled.

Summary of Section 95913(h)(5)(B)

Existing section 95913(h)(5)(B) is modified to clarify that the section referred to is 95913(h)(5)(A).

Rationale for Section 95913(h)(5)(B)

This change is necessary so that the Regulation refers to the correct section.

Summary of Section 95913(i)(3)

Section 95913(h)(3) was modified change the reference to the Air Pollution Control Fund to the Greenhouse Gas Reduction Fund.

Rationale for Section 95913(i)(3)

This modification is necessary to update to the new fund into which auction monies are placed due to recent statutes enacted by the legislature.

Section 95914. Auction Participation and Limitations.

Summary of Section 95914(a)(2)

Section 95914(a)(2) was modified to clarify which information must be accurate and complete.

Rationale for Section 95914(a)(2)

This modification is necessary to ensure clarity on which items could impact auction participation.

Summary of Section 95914(c)

The titles for section 95914(c) are modified, dropping a reference to auction participants.

Rationale for Section 95914(c)

The change is needed to clarify that the information release restrictions apply to entities beyond those that are directly participating in the auction.

Summary of Section 95914(c)(1)

Section 95914(c)(1) is modified to remove the existing text that creates exceptions from the auction information disclosure prohibitions.

Rationale for Section 95914(c)(1)

The change is needed because the existing exceptions will be placed in a longer list of exceptions contained in new sections 95914(c)(1)(A) through (D).

Summary of Section 95914(c)(1)(A)

Section 95914(c) is modified to clarify the information that must not be disclosed by auction participants. Section 95914(c)(1)(A) expands the information on qualification status to include the intent to participate at auction, auction approval status, and maintenance of continued auction approval.

Rationale for Section 95914(c)(1)(A)

The change expands the current provision, which prohibits disclosure of auction qualification status to include disclosures of whether an entity would participate in an auction, not just qualify. The change is needed to prohibit disclosures of intent to bid in an auction by entities qualified for auction participation. Prohibiting this disclosure would help prevent entities from coordinating their activities at an auction or trying to evade the purchase limits.

Summary of Sections 95914(c)(1)(C) and (D)

Sections 95914(c)(1)(C) and (D) are modified to reflect a change in the number of subsections within 95914(c)(1).

Rationale for Sections 95914(c)(1)(C) and (D)

The change is needed to reflect the renumbering of the section.

Summary of Section 95914(c)(1)(E)

Section 95914(c)(1)(E) is removed because ARB will not rely on the auction administrator to inform auction participants on which information is confidential. That is ARB's role.

Rationale for Section 95914(c)(1)(E)

The change is needed to remove a function that ARB has not assigned to the auction administrator and will instead be included in regulation.

Summary of Section 95914(c)(2)

Section 95914(c)(2) is renumbered to 95914(c)(3). New section 95914(c)(2) is added to specify specific circumstances in which the information in section 95914(c)(1) may be released.

Rationale for Section 95914(c)(2)

Disclosures 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. The change is needed to add two new exceptions and place the existing exceptions into a combined list.

Summary of Section 95914(c)(2)(A)

New section 95914(c)(2)(A) is added to include a reference to the existing Regulation section 95914(c)(1).

Rationale for Section 95914(c)(2)(A)

The change is needed to clarify disclosure exemptions by placing the existing text in a new list of exceptions.

Summary of Section 95914(c)(2)(B)

New section 95914(c)(2)(B) is added to include a reference to the existing Rrgulation section 95914(c)(1).

Rationale for Section 95914(c)(2)(B)

The change is needed to clarify disclosure exemptions by placing the existing text in a new list of exceptions.

Summary of Section 95914(c)(2)(C)

New section 95914(c)(2)(C) is added to allow publicly-owned utilities to release some information on auction participation related to their participation in generation projects operated by a Joint Powers Authority or with other publicly-owned utilities, when the release is required by public accountability rules or rules governing projects operated by a Joint Powers Authority or with other publicly-owned utilities.

Rationale for Section 95914(c)(2)(C)

The changes are needed to remove a potential conflict between the Regulation and the other legal and regulatory requirements that publicly-owned utilities may face. Section 95833(c) was originally included to deal with this issue and related issues. However, extensive discussions with stakeholders indicated that a more specific exception is needed.

Summary of Section 95914(c)(2)(D)

New section 95914(c)(2)(D) is added to allow electric distribution utilities to release some information when the release is required by the California Public Utilities Commission.

Rationale for Section 95914(c)(2)(D)

The changes are needed to remove a potential conflict between the Regulation and the other legal and regulatory requirements that electric distribution utilities may face. Section 95833(c) was originally included to deal with this issue and related issues. However, extensive discussions with stakeholders indicated that a more specific exception is needed. There is still a requirement to limit any release of auction related information to the minimum amount needed to comply with CPUC requirements.

Summary of Section 95914(c)(3)(C)

Section 95914(c)(3)(C) is modified and expanded to include the specific disclosures and an attestation that bid advisors and their clients must make to ARB.

Rationale for Section 95914(c)(3)(C)

The change is needed to allow ARB to collect specific information about the identity and contact information of the bid advisors and the entities they serve. The existing text does not specify the information needed for the disclosure or include the attestation by the officer of the registered entity that the entity understands the regulatory requirements to protect confidential information.

The information on bid advisors will enable staff to understand which auction participants are using the same bid advisors. ARB would use this information to evaluate whether registered entities are coordinating their compliance instrument acquisition and trading strategies.

Summary of Section 95914(c)(3)(D)

New section 95914(c)(3)(D) is added to specify information that auction advisors must disclose with regards to services performed for auction participants.

Rationale for Section 95914(c)(3)(D)

This provision is necessary to provide ARB with greater oversight of advisors and specifies the information to be disclosed by auction advisors.

Summary for Section 95914(d)(2)

Section 95914(d)(2) was modified to reiterate there must be a sharing of purchase limits as part of registration.

Rationale for Section 95914(d)(2)

This modification is necessary to ensure all auction participants have provided essential information to be eligible for auction participation during registration for the tracking system.

Summary of Section 95914(d)(4), (5) and (6).

Sections 95914(d)(4), (5) and (6) were deleted.

Rationale for Section 95914(d)(4), (5) and (6).

Section 95914(d)(4) requiring entities to report a purchase limit allocation among corporate associates is now covered in Section 95912(d)(4)(c). Since members of a corporate association must report a purchase limit allocation, when applicable, the procedure for determining acceptable bids in the absence of a purchase limit allocation described in Section 95914(d)(5) and (6) is not needed.

Section 95920. Trading.

Summary of Section 95920(b)(5)(C).

New section 95920(b)(5)(C) is added to specify, when an entity has a violation of the holding limit and fails to cure the problem within 5 business days, that the Executive Officer's transfer of allowances to the Auction Holding Account for sale on behalf of the entity will be from the entity's Holding Account and if needed, from the entity's Compliance Account.

Rationale for Section 95920(b)(5)(C).

This change is needed to specify the order in which an entity's accounts will be accessed if the entity fails to cure a holding limit violation in a timely manner.

Summary of Section 95920(d)(2)

Section 95920(d)(2) is modified to remove all operative language from the section, which is changed to a title. The limited exemption definition is now contained in section 95920(d)(2)(A).

Rationale for Section 95920(d)(2)

The change is needed to clarify the definition and calculation of the limited exemption.

Summary of Section 95920(d)(2)(A)

Section 95920(d)(2)(A) is modified to give a clearer definition of the limited exemption and that allowances must be placed in the compliance account to qualify for inclusion within the limited exemption.

Rationale for Section 95920(d)(2)(A)

The change is needed for clarity.

Summary of Section 95920(d)(2)(B)

Section 95920(d)(2)(B) is deleted and replaced with a definition of the calculation of the limited exemption that takes effect on January 1, 2015. On that date, the limited exemption will equal the sum of the annual emissions reports received in 2012, 2013, and 2014 that have received positive or qualified positive emissions data verification statements for emissions counted towards the compliance obligation defined for the first compliance period in section 95851(a). In addition, the limited exemption will include 2014 emissions that are included in section 95851(b).

Rationale for Section 95920(d)(2)(B)

The text is updated to remove the expired date on which the limited exemption is created. The text also replaces text from section 95920(d)(2)(C), (F) and (G) which contained the original schedule for increasing the limited exemption.

Summary of Section 95920(d)(2)(C)

Section 95920(d)(2)(C) is modified to remove existing text increasing the limited exemption on October 1 of each year. Text is added that increases the limited exemption beginning in 2015 on November 1 of each year. The increase is the amount of emissions included in the most recent emissions data report that has received a positive or qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to sections 95851(a) and (b).

Rationale for Section 95920(d)(2)(C)

The change is needed to clarify that the increases in the limited exemption beginning in 2015 will include the “full scope” emissions.

Summary of Section 95920(d)(2)(D)

Section 95920(d)(2)(D) is modified to include minor changes to clarify the existing process for calculating the limited exemption and no substantive changes are made.

Rationale for Section 95920(d)(2)(D)

The change is needed to clarify the calculation of the limited exemption.

Summary of Section 95920(d)(2)(E)

Section 95920(d)(2)(E) is eliminated and replaced with renumbered existing section 95920(d)(2)(I).

Rationale for Section 95920(d)(2)(E)

The section is no longer needed because modified section 95920(d)(2)(B) now includes the provisions governing calculation of the limited exemption using emissions reports from the first compliance period.

Summary of Section 95920(d)(2)(F)

Section 95920(d)(2)(F) is eliminated and replaced with the requirement that the limited exemption will be zero throughout the first compliance period for opt-in covered entities that have only emissions specified in section 95851(b) in the first compliance period.

Rationale for Section 95920(d)(2)(F)

The existing text is no longer needed because modified section 95920(d)(2)(C) now includes the provisions governing the annual updating of the limited exemption.

Summary of Section 95920(d)(2)(G)

Section 95920(d)(2)(G) is eliminated and replaced with the requirement that allowances allocated to entities pursuant to section 95870(d) and (e) do not count against the holding limit until January 1 of their vintage year.

Rationale for Section 95920(d)(2)(G)

The existing text is no longer needed because modified section 95920(d)(2)(B) now includes the provisions governing calculation of the limited exemption through January 1, 2015.

Section 95921. Conduct of Trade.

Summary of Section 95921(a)(3)(B)

The existing text is modified to require that the transfer request process be completed within three days after the execution date or termination date set in the transaction agreement.

Rationale for Section 95921(a)(3)(B)

The change was needed to clarify the deadline for completing the transfer request. The existing text sets the deadline three days after the “settlement date” of the transaction agreement. However, some transaction agreements involve multiple transfers, terms requiring actions other than the transfer of allowances, or have completion of the

transfer request process as the last step for settling the agreement. For these agreements the term settlement date was unclear.

The new terms should clarify the deadline. The term “execution date” refers to the date the transaction agreement requires the parties to take some action, such as the transfer of allowances. If there are multiple transfers scheduled in the agreement then there will be an execution date associated with each. This provision is needed to ensure the transfer request is completed soon after an agreement requires a transfer. The term “termination date” refers to the date the agreement ends. This would apply to agreements that have the completion of the transfer process as the final step.

Summary of Section 95921(a)(3)(C)

New section 95921(a)(3)(C) adds a requirement that the transfer request process must be completed within three days of the transfer of “consideration” from the purchaser to the seller. That is, the transfer process must be completed once payment by the purchaser gives it a financial interest in the allowances held by the seller.

Rationale for Section 95921(a)(3)(C)

The change is needed to ensure that payments by the purchaser are immediately followed by the transfer of the compliance instruments. Otherwise, the payments would create the type of “holding on behalf” that is prohibited under section 95921(f)(1).

Summary of Section 95921(a)(3)(D)

New section 95921(a)(3)(D) adds a requirement that the transfer request process must be completed within three days of the execution of the underlying trade on an exchange or other trading platform. That is, the transfer process must be completed once payment through the exchange settlement process gives the purchaser a financial interest in the allowances held by the seller.

Rationale for Section 95921(a)(3)(D)

The change is needed to ensure that payments by the purchaser are immediately followed by the transfer of the compliance instruments. Otherwise, the payments would create the type of “holding on behalf” that is prohibited under section 95921(f)(1).

Summary of Section 95921(a)(4)

New section 95921(a)(4) prohibits 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.

Rationale for Section 95921(a)(4)

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.

Summary of Section 95921(b)

An existing requirement in section 95921(b) is modified to clarify that the Executive Officer may request documentation on the transaction agreement for which a transfer request is submitted.

Rationale for Section 95921(b)

The change is needed to clarify an existing requirement.

Summary of Section 95921(b)(1)

New section 95921(b)(1) introduces a list of 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.

The existing text is deleted.

Rationale for Section 95921(b)(1)

The change is needed because the original list of information required to complete a transfer request, contained in section 95921(b)(1) through (7) is being replaced in its entirety.

Summary of Section 95921(b)(1)(A)

This section contains the text originally contained in section 95921(b)(1), which is deleted.

Rationale for Section 95921(b)(1)(A)

The change is needed to reflect the reorganization of the section and is not a substantive change.

Summary of Section 95921(b)(1)(B)

This section contains a modification of text contained in existing section 95921(b)(2), which is deleted. The section is modified to require identification of account representatives for the destination account only if the type of transfer requires confirmation. It is also changed to reflect the fact that transfers may be to accounts other than holding accounts.

Rationale for Section 95921(b)(1)(B)

The movement of this text is required in part to reflect the reorganization of section 95921(b). The modifications to the text are made to clarify when the requirement applies, based on section 95921(a).

Summary of Section 95921(b)(1)(C)

This section contains a new requirement that the transfer request specify the type, vintage and number of compliance instruments. This requirement replaces the requirements of section 95921(b)(3), which is deleted.

Rationale for Section 95921(b)(1)(C)

The change is needed to reflect the decision to structure the tracking system so that account holders do not see serial numbers. The existing text used the serial numbers to allow account holders to designate which compliance instruments should be part of a transfer request. Without serial numbers, account holders will designate instruments to be transferred by designating the type and vintage along with the number to be transferred.

Summary of Section 95921(b)(2)

New section 95921(b)(2) requires the identification of the type of transaction agreement for which the transfer request is submitted. Entities submitting a transfer request will have to select one of three agreement types to match the underlying agreement for which they are submitting the transfer request.

Existing section 95912(b)(2) is deleted, with the requirement it contained modified and renumbered as section 95912(b)(1)(A).

Rationale for Section 95921(b)(2)

The existing Regulation included a single list of information requirements that applied to all transfer requests regardless of the type of transaction agreement for which the transfer requests are submitted. Stakeholders and account holders commented to ARB that the requirements didn't capture the variety of provisions contained in the transaction agreements that they use or were developing. Based on these comments, ARB decided to replace the "one-size-fits-all" approach with one that captures the types of agreements in use or may soo0n be developed.

The new text of this section constitutes the first step of the new process, in which the account representative identifies the type of transaction agreement involved. In the next step, the account representative would be presented with a list of information requirements that matches that agreement type.

ARB chose this process based on its evaluation of the transfer requests processed in CITSS to date. As part of this evaluation, ARB has reviewed a number of transactions agreements requested from CITSS account holders to ensure that the new process captures the types of agreements currently in use. ARB has also had discussions with account representatives who are developing new contract products. Finally, ARB has had discussions with the staff of the Intercontinental Exchange (ICE) to determine what information is available to the representatives from the exchange.

Summary of Section 95921(b)(2)(A)

This new section contains text that defines the first of three transaction agreement types. The first type covers over the counter agreements for which delivery will take place no more than three days from the date the parties enter into the transaction agreement.

Rationale for Section 95921(b)(2)(A)

The change is needed to define the first type of transaction agreement that account representatives may select when submitting a transfer request. This type will include the simplest bilateral transfers.

Summary of Section 95921(b)(2)(B)

This new section contains text that defines the second of the three transaction agreement types. The second type covers over the counter agreements for which delivery will take place more than three days from the date the parties enter into the transaction agreement or that involves multiple transfers of instruments over time or the bundled sale of instruments with other products.

Rationale for Section 95921(b)(2)(B)

The change is needed to define the second type of transaction agreement that account representatives may select when submitting a transfer request. This type will include the most complex bilateral transfers. Consequently, it will have the most involved information requirements.

Summary of Section 95921(b)(2)(C)

This new section contains text that defines the third of the three transaction agreement types. The third type includes exchange-based agreements for the sale of compliance instruments through an Exchange or Board of Trade.

Rationale for Section 95921(b)(2)(C)

The change is needed to define the third type of transaction agreement that account representatives may select when submitting a transfer request. This type will include any exchange-based trade.

Summary of Section 95921(b)(3)

New section 95921(b)(3) introduces the list of 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.

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.
Existing section 95912(b)(3) is deleted.

Rationale for Section 95921(b)(3)

The change is needed to define the types of agreements covered and to introduce the list of information that must be submitted for this type of transaction agreement.

The existing text is deleted. Since CITSS no longer displays serial numbers of the compliance instruments in an account the requirement to specify serial numbers is not needed. Instead, the new text of section 95921(b)(1)(C) has the account number enter the number of compliance instruments to be transferred, along with type and vintage.

Summary of Section 95921(b)(3)(A)

This section requires the account representative to enter the date the entity entered into the transaction agreement. This requirement is a modification of the existing text in section 95921(b)(4), which is deleted.

Rationale for Section 95921(b)(3)(A)

The text is modified for clarity and to reflect the reorganization of the section.

Summary of Section 95921(b)(3)(B)

This section requires the account representative to enter the date of settlement of the transaction agreement. If completion of the transfer request process is the last step of the agreement, the date the transfer request is submitted is entered as the settlement date. If there are other terms to be settled after the transfer request is approved, the date those terms are to be settled is entered as the settlement date. This requirement is a modification of the existing text in section 95921(b)(5), which is deleted.

Rationale for Section 95921(b)(3)(B)

The text is modified for clarity and to reflect the reorganization of the section.

Summary of Section 95921(b)(3)(C)

This section requires the account representative to enter the price of the instrument in U.S. or Canadian dollars. This requirement is a modification of the existing text in section 95921(b)(4), which is deleted.

Rationale for Section 95921(b)(3)(C)

The text is modified for clarity and to reflect the reorganization of the section.

Summary of Section 95921(b)(4)

New section 95921(b)(4) introduces the list of the information that must be submitted for transfer requests resulting from over-the-counter transaction agreements for sales that have delivery a date of no less than four days after the parties enter into the agreement, or involve multiple transfers or products under the same agreement.

Existing text for the section is deleted.

Rationale for Section 95921(b)(4)

The change is needed to define the types of agreements covered and to introduce the list of information that must be submitted for this type of transaction agreement.

Summary of Section 95921(b)(4)(A)

This section requires the account representative to enter the date the entity entered into the transaction agreement. This requirement is a modification of the existing text in section 95921(b)(4), which is deleted.

Rationale for Section 95921(b)(4)(A)

The date of the agreement is needed to enable ARB to interpret the price entered for the transfer agreement and to understand how far in advance of a transfer the parties entered into the commitment. For example, if the agreement is a forward contract with a fixed price, than ARB would understand that the price would reflect the market conditions at the time of the agreement, which may be different than market conditions when the transfer actually occurs. Absent information on when the agreement was created, the price may seem anomalous to market monitoring staff.

The text is modified for clarity and to reflect the reorganization of the section.

Summary of Section 95921(b)(4)(B)

This section requires the account representative to enter the date the transaction agreement expires. This requirement is a modification of the existing text in section 95921(b)(5), which is deleted.

Rationale for Section 95921(b)(4)(B)

The expiration date is needed because the submission of a transfer request may not be the last term to be settled under the agreement. If there are to be multiple transfers or payments, or if there are to be transfers of other products, entering an expiration date that is after the transfer submission date will indicate to ARB that the price may reflect other contract terms or that ARB analyses should consider that some transfers will be repeated in the future.

Summary of Section 95921(b)(4)(C)

This section requires the account representative to enter whether the agreement provides for further transfers of compliance instruments and if it does, to specify the frequency of the future transfers.

Rationale for Section 95921(b)(4)(C)

The provision is needed to allow ARB to interpret the price entered for the transfer request as part of market monitoring.

Summary of Section 95921(b)(4)(D)

This section requires the account representative to identify other products that are to be traded along with compliance instruments in a bundled agreement.

Rationale for Section 95921(b)(4)(D)

This information is needed to determine whether the transfer request qualifies for one of the exemptions from entering the price that are contained in section 95921(b)(6).

Summary of Section 95921(b)(4)(E)

This section requires the account representative to enter the price in U.S. or Canadian dollars if the price is fixed in the transaction agreement.

Rationale for Section 95921(b)(4)(E)

This section contains the existing requirement to provide a price originally contained in section 95921(b)(6).

Summary of Section 95921(b)(4)(F)

If the transaction agreement sets the price as a cost base plus a margin, this section requires the account representative to enter the cost base and the margin.

Rationale for Section 95921(b)(4)(F)

This section contains a modification of the existing requirement to provide a price originally contained in section 95921(b)(6). The provision is needed to enable ARB market monitoring staff to understand the basis for pricing carbon instruments.

Summary of Section 95921(b)(4)(G)

If the transaction agreement does not specify a price using either of the two other formats, the account representative should provide a brief description of the pricing method for the carbon component.

Rationale for Section 95921(b)(4)(G)

This information is needed to determine whether the transfer request qualifies for one of the exemptions from entering the price that are contained in section 95921(b)(6).

Summary of Section 95921(b)(5)

New section 95921(b)(5) defines the third type of transaction agreement and introduces the list of information that must be submitted for transfer requests resulting from exchange-based contracts.

Rationale for Section 95921(b)(5)

The change is needed to define the types of agreements covered and to introduce the list of information that must be submitted for this type of transaction agreement.

Summary of Section 95921(b)(5)(A)

New section 95921(b)(5)(A) requires the account representative to identify the exchange where the transaction is conducted.

Rationale for Section 95921(b)(5)(A)

The provision is needed to ensure correct information, to ensure that the transfer request is submitted for an exchange-based transaction. Knowledge of the exchange will enable ARB staff to assess the transfer based on analysis of data from the exchange.

Summary of Section 95921(b)(5)(B)

New section 95921(b)(5)(A) requires the account representative to identify the exchange where the transaction is conducted.

Rationale for Section 95921(b)(5)(B)

The provision is needed to allow ARB to automate analysis of transfer request data, especially as newer exchange-based products are developed.

Summary of Section 95921(b)(5)(C)

New section 95921(b)(5)(A) requires the account representative to identify the transaction agreement as spot or futures.

Rationale for Section 95921(b)(5)(C)

The provision is needed to allow ARB to automate analysis of transfer request data, especially as newer exchange-based products are developed.

Summary of Section 95921(b)(5)(D)

New section 95921(b)(5)(A) requires the account representative to provide the date of close of trading for the contract.

Rationale for Section 95921(b)(5)(D)

The provision is needed to allow ARB to automate analysis of transfer request data, as exchanges differentiate their contracts by closing date, and provide their data on the basis of closing date.

Summary of Section 95921(b)(5)(E)

New section 95921(b)(5)(A) requires the account representative to provide the price at close of trading for the contract.

Rationale for Section 95921(b)(5)(E)

This section contains a modification of the existing requirement to provide a price originally contained in section 95921(b)(6).

Summary of Section 95921(b)(6)

New section 95921(b)(6) introduces 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 have to indicate why they qualify for the exemption by selecting one of the instances listed.

Rationale for Section 95921(b)(6)

The section is needed to create an expansion of the list of exemptions contained in existing section 95921(b)(6), which is deleted.

Summary of Section 95921(b)(6)(A)

New section 95921(b)(6)(A) contains an exemption from entering a price for transfers between entities with a direct corporate association. The provision is a modification of the existing requirement contained in section 95921(b)(6), which is deleted.

Rationale for Section 95921(b)(6)(A)

The provision is needed for clarity by placing an existing exemption in a list with the newly-added exemptions from entering a price in transfer requests.

Summary of Section 95921(b)(6)(B)

New section 95921(b)(6)(B) contains an exemption from entering a price for transfers between entities with a direct corporate association. The provision is a modification of the existing requirement contained in section 95921(b)(6), which is deleted.

Rationale for Section 95921(b)(6)(B)

The provision is needed for clarity by placing an existing exemption in a list with the newly-added exemptions from entering a price in transfer requests.

Summary of Section 95921(b)(6)(C)

New section 95921(b)(6)(C) contains an exemption from entering a price for transfers from a publicly-owned utility (POU) to an entity or Joint Powers Authority operating a generation facility as a joint venture with the utility.

Rationale for Section 95921(b)(6)(C)

The change is needed to avoid interfering with the ability of publicly-owned utilities to comply with the rules to which they are subject when they participate in joint ventures with other public entities. These arrangements set the responsibility of publicly-owned utilities to supply compliance instruments to cover the emissions resulting from their share of a project's generation, and generally do not include a price.

Summary of Section 95921(b)(6)(D)

New section 95921(b)(6) contains an exemption from entering a price for transfers from a publicly-owned utility to a federal power authority to cover emissions associated with imported power.

Rationale for Section 95921(b)(6)(D)

The change is needed to avoid interfering with the ability of publicly-owned utilities to comply with the rules to which they are subject when they purchase electricity from federal power authorities. These arrangements set the responsibility of publicly-owned utilities to supply compliance instruments to cover the emissions resulting from their share of a project's generation, and generally do not include a price.

Summary of Section 95921(b)(6)(E)

New section 95921(b)(6) contains an exemption from entering a price for transfers from an electric distribution utility to an entity operating a generation facility under a tolling agreement or other long-term power purchase agreement that does not specify a price or cost basis for the sale of the compliance instruments alone.

Rationale for Section 95921(b)(6)(E)

The change is needed to avoid interfering with the ability of electric distribution utilities to purchase power from generators under contracts which may allow the utilities to supply the compliance instruments needed to cover the generation they purchase. The utilities would have to supply a price if the agreements specify one.

Summary of Section 95921(b)(6)(F)

New section 95921(b)(6) contains an exemption from entering a price for transfers resulting from a transaction agreement that bundles compliance instruments with other products and does not specify a price or cost basis for the sale of the compliance instruments alone.

Rationale for Section 95921(b)(6)(F)

The change is needed to deal with transaction agreements that involve the transfer of other products along with compliance instruments

Summary of Section 95921(b)(7)

This existing section is deleted.

Rationale for Section 95921(b)(7)

The provision is no longer needed since a regulation linking the California and Québec Cap-and-Trade programs has come into effect.

Summary of Section 95921(c)(1)(A)

Existing text is modified so that the entities submitting a deficient transfer request are only notified that the transfer request is deficient.

Rationale for Section 95921(c)(1)(A)

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) will make filing a transfer request in the absence of an underlying transaction agreement a violation.

Summary of Section 95921(c)(1)(B)

New section 95921(c)(1)(B) requires the Executive Officer to inform only the party responsible for the deficient transfer request of the exact nature of the deficiency.

Rationale for Section 95921(c)(1)(B)

Staff is proposing a process that would prevent the account representative submitting a transfer request from gaining information about the receiving entity's account.

Summary of Section 95921(c)(1)(C)

The existing text is renumbered from 95921(c)(1)(B) to 95921(c)(1)(C).

Rationale for Section 95921(c)(1)(C)

The change is needed to reflect reorganization of the section.

Summary of Section 95921(c)(1)(D)

The existing text is renumbered from 95921(c)(1)(C) to 95921(c)(1)(D).

Rationale for Section 95921(c)(1)(D)

The change is needed to reflect reorganization of the section.

Summary of Section 95921(c)(2)(A)

Existing text is modified to require the accounts administrator to inform the parties and the Executive Officer that the transfer is deficient.

Rationale for Section 95921(c)(2)(A)

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) will make filing a transfer request in the absence of an underlying transaction agreement a violation.

The change is also needed to give clear instruction to the accounts administrator.

Summary of Section 95921(c)(2)(B)

This new section requires the Executive Officer to inform the party submitting the transfer request that the transfer is deficient, if the deficiency arises from the information in the transfer request.

Rationale for Section 95921(c)(2)(B)

The change is needed so that the party responsible for the deficiency is notified of the problem to be corrected.

Summary of Section 95921(c)(2)(C)

If completion of a transfer request would lead to a violation of the holding limit, this new section requires the Executive Officer to inform the primary account representative for the account listed as the destination on a transfer request of the deficiency.

Rationale for Section 95921(c)(2)(C)

The change is needed so that the party responsible for the holding limit violation is notified of the problem to be corrected, without informing the other party to the transfer.

Summary of Section 95921(c)(2)(D)

The text in existing section 95921(c)(2)(B) is renumbered to 95921(c)(2)(D).

Rationale for Section 95921(c)(2)(D)

The change is needed to reflect the reorganization of the section.

Summary of Section 95921(e)(4)

This section was modified to remove reference to serial numbers.

Rationale for Section 95921(e)(4)

This modification was needed because serial numbers of instruments will not be made public.

Summary of Section 95921(f)(1)(A)

New section 95921(f)(1)(A) prohibits an entity from having an ownership or financial interest in the compliance instruments held by a second entity.

Rationale for Section 95921(f)(1)(A)

The change is needed to clarify the prohibition on “holding on behalf”. The new text explains two conditions that could create this situation. An ownership or financial interest by one entity in the compliance instruments held by a second entity could give the first entity some control over the disposition of the compliance instruments. ARB would be unable to detect market manipulations if ARB could not observe who actually had control over the disposition of compliance instruments.

Summary of Section 95921(f)(1)(B)

New section 95921(f)(1)(B) prohibits an entity from establishing an agreement with a second entity that gives the second entity control over the holding or disposition of compliance instruments in the first entity’s account. This section adds a clarification that the prohibition does not apply to forward contracts that do not contain terms applying to the compliance instruments in the first entity’s account.

Rationale for Section 95921(f)(1)(B)

The change is needed to prohibit transaction agreements from containing provisions that have the effect of creating a “beholding on behalf” of situation. Again, ARB would be unable to detect market manipulations if ARB could not observe who actually had control over the disposition of compliance instruments. The change is also needed to explain that forward contracts that do not have such terms would not violate the prohibition. Stakeholders have asked for clarification on this point.

Summary of Section 95921(f)(1)(C)

New section 95921(f)(1)(C) permits an entity to purchase and hold compliance instruments for later transfer to entities with which it has a direct corporate association.

Rationale for Section 95921(f)(1)(C)

The change is needed to clarify that the prohibition on “holding on behalf of” does not apply to holdings for later transfer within a direct corporate association. ARB assumes that members of a direct corporate association must coordinate their activities to some degree. That is the reason that holding and purchase limits apply jointly to direct corporate associates. ARB believes its rule on direct corporate associates allow it to monitor the association’s activities and that applying the “holding on behalf of” provisions to holdings for transfer within a corporate association would be unnecessarily burdensome.

Section 95922. Banking, Expiration, and Voluntary Retirement.

Summary of Section 95922(d)(2)

This section was modified to remove reference to serial numbers.

Rationale for Section 95922(d)(2)

This modification was needed because serial numbers of instruments will not be made public in the tracking system.

Section 95923. Disclosure of Cap-and-Trade Consultant or Advisor.

Summary of Section 95923(a)

New section 95923(a) is added to define a Cap-and-Trade Consultant or Advisor as a person or entity that is not an employee of an entity registered in the cap-and-trade program, but that is paid by that entity for specific advice to that entity.

Rationale for Section 95923(a)

This provision is necessary to differentiate between employees of firms and consultants or advisors, and also to clarify that consulting or advisory services are not publication services available to subscribers but specific services for the entity registered in the cap-and-trade program.

Summary of Section 95923(b).

New section 95923(b) is added to specify that entities receiving consulting or advisory services must disclose specific information for each consultant or advisor.

Rationale for Section 95923(b).

This addition is necessary to provide ARB with greater oversight over entities that have access to information from multiple entities participating in the Cap-and-Trade Program.

Summary of Section 95923(b)(1)

New section 95923(b)(1) is added to specify the information disclosure requirements for all entities employing Cap-and-Trade Consultants or Advisors.

Rationale for Section 95923(b)(1)

This provision is necessary to provide ARB with greater oversight over entities that have access to information from multiple entities participating in the cap-and-trade program.

Summary for Section 95923(b)(2)

New section 95923(b)(2) is added to specify the additional information disclosure requirements for entities employing Cap-and-Trade Consultants or Advisors, where additional information disclosure does not violate rules that must be observed by Consultants or Advisors.

Rationale for Section 95923(b)(2)

This provision is necessary to provide ARB with additional information about consultants and advisors, while also recognizing information disclosure limitations.

Summary for Section 95923(c)

New section 95923(c) is added to specify that information disclosure must occur at registration, when a contractual agreement is created, and within 30 days of a change to the information.

Rationale for Section 95923(c)

This provision is necessary to establish when program participants must disclose information about consultants or advisors.

Section 95942. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.

Summary of Sections 95942(f) and (g)

Sections 95942(f) and (g) were modified to include the disclosure of serial numbers for compliance instruments that are used for compliance across linked jurisdictions.

Rationale for Sections 95942(f) and (g)

These modifications were necessary to ensure that sharing of critical information such as the serial numbers of compliance instruments would prevent any opportunity for double counting of compliance instruments and help track their movement from accounts in one jurisdiction's entity accounts to another jurisdiction's entity accounts.

Subarticle 13. ARB Offset Credits and Registry Offset Credits.

Section 95970. General Requirements for ARB Offset Credits.

Summary of Section 95970.

The title of section 95970 is changed to General Requirements for ARB Offset Credits and Registry Offset Credits.

Rationale for Section 95970.

This change is necessary to reflect the content of the section. The section addresses general requirements for both ARB offset credits and registry offset credits.

Section 95971. Procedures for Approval of Compliance Offset Protocols.

Summary of Section 95971(b).

Section 95971(b) is changed to correct punctuation.

Rationale for Section 95971(b).

This change is necessary to improve the readability of the section.

Section 95972. Requirements for Compliance Offset Protocols.

Summary of Section 95972(c).

Existing section 95972(c) is changed to clarify that Compliance Offset Protocols (COP) may be applicable in the United States and its Territories, as well as Canada and Mexico.

Rationale for Section 95972(c).

This change is necessary to clarify that U.S. Territories are included in the geographical scope for offset projects.

Section 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

Summary of Section 95973(a)(2)(C)(3.).

Existing section 95973(a)(2)(C)(3.) is modified to support the addition of a potential Compliance Offset Protocol to this list.

Rationale for Section 95973(a)(2)(C)(3.).

This change is non-substantive and needed to support the inclusion of an additional potential Compliance Offset Protocol in this section.

Summary of Section 95973(a)(2)(C)(4.).

Existing section 95973(a)(2)(C)(4.) is modified to support the addition of a potential Compliance Offset Protocol to this list

Rationale for Section 95973(a)(2)(C)(4.).

This change is non-substantive and needed to support the inclusion of an additional potential Compliance Offset Protocol in this section.

Summary of Section 95973(a)(2)(C)(5.).

New section 95973(a)(2)(C)(5.) is added to include the Mine Methane Capture Projects Compliance Offset Protocol that staff is proposing to be adopted by the Board.

Rationale for Section 95973(a)(2)(C)(5.).

This change is necessary to support the potential adoption of a new Compliance Offset Protocol by the Board.

Summary of Section 95973(a)(3).

Existing section 95973(a)(3) is changed to clarify that offset projects may be located in the United States and its Territories, as well as Canada and Mexico.

Rationale for Section 95973(a)(3).

This change is necessary to clarify that U.S. Territories are included in the geographical scope for offset projects.

Summary of Section 95973(b).

Existing section 95973(b) is modified to include the requirement for regulatory compliance with all national, state, and local environmental and health and safety laws and regulations, and to define the scope of the regulatory requirements.

Rationale for Section 95973(b).

This change is necessary to clarify that the requirements for regulatory conformance do not only apply to environmental impact assessments, but also to all other environmental and health and safety laws and regulations. This is not a new requirement as each

Compliance Offset Protocol already includes this requirement. This change is needed to clarify the boundaries for evaluating regulatory compliance, including: the boundary is the project activity, the project activity must be subject to enforcement action by a regulatory body, and the timeframe for assessing regulatory compliance is the Reporting Period. This change is also needed to clarify that nonconformance with this subsection would result in ineligibly for crediting during the entire Reporting Period.

Section 95974. Authorized Project Designee.

Summary of Section 95974(a).

Existing section 95974(a) is modified to clarify that the Offset Project Operator (OPO) may not specify which rights and responsibilities they are assigning to the Authorized Project Designee (APD).

Rationale for Section 95974(a).

This change is necessary because if an OPO designates an APD, the APD will be responsible for implementing all of the administrative responsibilities for the offset project. This will ease the implementation of the program for ARB and the Offset Project Registries.

Summary of Section 95974(a)(1).

Existing section 95974(a)(1) is modified to clarify the timing at which an OPO may assign offset credits ownership rights to other parties.

Rationale for Section 95974(a)(1).

This change is necessary to streamline the implementation process. At the time of offset credit issuance, the OPO or APD submits a request for issuance, which includes information that is needed to assign ownership rights of the offset credits. This must be done each time offset credits are issued.

Summary of Section 95974(a)(2).

Existing section 95974(a)(2) is modified to include section references that were inadvertently left out of this section. In addition, this section is modified to require that the APD perform all administrative functions for the OPO. This section is also modified to clarify which requirements of sections 95983, 95985, and 95990 must be performed by the APD.

Rationale for Section 95974(a)(2).

These changes are necessary to ensure all references are correct and consistent throughout the Regulation. These changes will ease the implementation of the compliance offset program by providing ARB and the Offset Project Registry with a single point of contact for all administrative functions associated with the offset project. For sections 95983, 95985, and 95990, the intent of the clarification is to make it clear that the APD is only responsible for meeting those specific requirements that include reference to the APD.

Summary of Section 95974(a)(2)(A).

New section 95974(a)(2)(A) is added to require that a representative of the APD perform all administrative functions for the OPO and to make explicit that the APD is the main point of contact regarding the offset project. In addition, this section makes explicit that even though there is an APD, the OPO is still responsible for ensuring compliance of the project with the Regulation and COP.

Rationale for Section 95974(a)(2)(A).

This change is necessary because if an OPO designates an APD, the APD will be responsible for implementing all of the administrative responsibilities for the offset project and be the main point of contact. This will ease the implementation of the program for ARB and the Offset Project Registries.

Summary of Section 95974(a)(2)(B).

New section 95974(a)(2)(B) is added to require that any APD be designated as a Primary Account Representative (PAR) or Alternate Account Representative (AAR) on the OPO's CITSS account.

Rationale for Section 95974(a)(2)(B).

This change is necessary for oversight and enforcement of the Cap-and-Trade Program. In addition, ARB is requiring that any party associated with compliance instrument issuance or transfers be associated with the relevant CITSS account for the offset project.

Section 95975. Listing of Offset Projects Using ARB Compliance Offset Protocols.

Summary of Section 95975(a).

Existing section 95975(a) is modified to remove the ability of another third party to meet the requirements of this section.

Rationale for Section 95975(a).

This change is necessary to align the timing requirements with other provisions in the Regulation. At the time of offset credit issuance, the OPO or APD submits a request for issuance, which includes information that is needed to assign ownership rights of the offset credits to any other third party. This must be done each time offset credits are issued, and not before listing the offset project.

Summary of Section 95975(c)(1).

Existing section 95975(c)(1) is modified to correct punctuation.

Rationale for Section 95975(c)(1).

This change is non-substantive and needed to ensure correct punctuation in the Regulation.

Summary of Section 95975(c)(3).

Existing section 95975(c)(3) is modified to clarify that the project must be in compliance with all laws as well as regulations.

Rationale for Section 95975(c)(3).

This change is necessary to ensure consistent language throughout the Regulation and Compliance Offset Protocols.

Summary of Section 95975(d).

Existing section 95975(d) is modified to clarify that the attestations associated with listing an offset project must be submitted to ARB and/or the OPR at the time of listing.

Rationale for Section 95975(d).

This change is necessary to streamline OPR and ARB procedures when processing information related to an offset project.

Summary of Section 95975(e)(3).

Existing section 95975(e)(3) is modified to support the addition of a Compliance Offset Protocol to section 95975(e).

Rationale for Section .95975(e)(3)

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95975(e)(4).

Existing section 95975(e)(4) is modified to support the addition of a Compliance Offset Protocol to section 95975(e).

Rationale for Section 95975(e)(4).

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95975(e)(5).

New section 95975(e)(5) is added to include the potential Mine Methane Capture Projects Compliance Offset Protocol which staff is proposing for Board adoption.

Rationale for Section 95975(e)(5).

This change is necessary to support the potential adoption of a new Compliance Offset protocol by the Board.

Summary of Section 95975(f).

Existing section 95975(f) was renumbered to section 95975(g).

New section 95975(f) is added to clarify that ARB or the OPR must review the listing information for completeness.

Rationale for Section 95975(f).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is necessary for implementation purposes and to provide consistent requirements for all OPRs for this review process.

Summary of Section 95975(g).

Existing section 95975(f) was renumbered to section 95975(g). Existing section 95975(f), now section 95975(g), is modified to clarify the process for how ARB and OPRs process listing applications.

Rationale for Section 95975(g).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is needed to clarify the process that ARB and the OPRs use to approve and deny listing applications, and how the OPO and APDs are notified of ARB and the OPRs determinations.

Summary of Section 95975(h).

Existing section 95975(g) was renumbered to section 95975(h). Existing section 95975(g), now section 95975(h), is modified to require that projects list within one year of the Offset Project Commencement date or within one year of meeting the requirements of section 95975(l).

Rationale for Section 95975(h).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is needed to limit the timeframe between project commencement and listing adds another feature to the program to ensure offset projects are developed for purposes of reducing GHG's in a conservative business-as-usual scenario.

Summary of Section 95975(i).

Existing section 95975(h) was renumbered to section 95975(i). Existing section 95975(h), now section 95975(i), is modified to clarify the scope of an OPR's review of the listing information in an initial crediting period.

Rationale for Section 95975(i).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is needed to clarify the scope of listing review. Offset Project Registries do not assess whether offset projects meet the additionality requirements of the Regulation and the applicable COP. The scope of Offset Project Registry review is

limited to assessing the listing for completeness. Verification bodies will assess whether the project meets the additionality criteria during the first offset verification of the offset project under a COP.

Summary of Section 95975(j).

Existing section 95975(i) was renumbered to section 95975(j).

Rationale for Section 95975(j).

This change is required to accommodate additional requirements in this section and support a new numbering structure.

Summary of Section 95975(k).

Existing section 95975(j) was renumbered to section 95975(k). Existing section 95975(j), now section 95975(k), is modified to clarify the scope of an OPR's review of the listing information in renewed crediting period.

Rationale for Section 95975(k).

This change is required to accommodate additional requirements in this section and support a new numbering structure.

The new text is needed to clarify the scope of listing review. Offset Project Registries do not assess whether offset projects meet the additionality requirements of the Regulation and the applicable COP. The scope of Offset Project Registry review is limited to assessing the listing for completeness. Verification bodies will assess whether the project meets the additionality criteria during the first offset verification of the offset project under a COP.

Summary of Section 95975(l)(1).

Existing section 95975(l)(1) is modified to specify 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).

Rationale for Section 95975(l)(1).

This change is needed to ensure 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)(1) clarifies that Tribal governments, as sovereign public entities, will be treated the same

as other public entities under California law. This amendment is made pursuant to Board direction and to clarify ARB's intent for purposes of relief under a limited waiver of sovereign immunity.

Summary of Section 95975(m).

New section 95975(m) is added to prohibit changes to the listing information once it is approved.

Rationale for Section 96975(m).

This section is added to ensure that the OPO or APD does not change the listing information after the listing is approved because the listing is an enforceable document that may only be changed under limited circumstances. If an OPO changes during the crediting period it is necessary that they update the listing information so the identity of the OPO is publicly available.

Summary of Section 95975(m)(1).

New section 95975(m)(1) is added to only allow a new OPO to make changes to the listing information if the OPO changes during a crediting period.

Rationale for Section 96975(m)(1).

This section is added to require new OPOs to submit updated information about themselves, if the OPO changes during the crediting period. Changes to the OPO are the only information that is allowed to be updated after the listing information is submitted. The project information must remain the same to ensure the project is still eligible for the compliance offset program.

Summary of Section 95975(m)(2).

New section 95975(m)(2) is added to require a new OPO to resubmit the listing attestations if the OPO changes during a crediting period.

Rationale for Section 96975(m)(2).

This section is added to require new OPOs to submit the attestations required for listing to ensure that ARB has enforcement authority over the new OPO.

Summary of Section 95975(n).

Existing section 95975(k) was renumbered to section 95975(n). Existing section 95975(k), now section 95975(n), is modified to fix a section reference and to add a reference to the applicable COP.

Rationale for Section 95975(n).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is needed to ensure that the references in the Regulation are correct. The applicable COP is referenced because each COP has requirements for crediting period renewal that must be met, in addition to those requirements in the Regulation.

Summary of Section 95975(o).

New section 95975(o) is added to include a process and requirements for transferring offset projects between OPRs.

Rationale for Section 95975(o).

This section is needed to provide a uniform process and associated requirements for transferring offset projects between OPRs. The existing Regulation lacked requirements for transferring offset projects between OPRs.

Summary of Section 95975(o)(1).

New section 95975(o)(1) is added to provide the project status that must be reflected on the OPRs public webpage when offset projects transfer between OPRs.

Rationale for Section 95975(o)(1).

This section is needed to indicate what the offset project's status is on the OPR's public webpage to provide transparency. This status allows the public to know that the offset project has been transferred to another OPR, but is still an active project.

Summary of Section 95975(o)(1)(A).

New section 95975(o)(1)(A) is added to specify that if only the listing documents are submitted before the offset project is transferred to another OPR, the original OPR must maintain the listing documents on its public website for a period of one year..

Rationale for Section 95975(o)(1)(A).

This section is needed to specify the timeframe that listing information must be made public after an offset project transitions to another OPR. This provides the public with transparency regarding the offset project transfer.

Summary of Section 95975(o)(1)(B).

New section 95975(o)(1)(B) is added to specify that if a Offset Verification Statement is submitted before the offset project is transferred to another OPR, the original OPR must maintain all project documents on its website for the duration of the project lifetime.

Rationale for Section 95975(o)(1)(B).

This section is needed to specify the timeframe all documents must be made public after a transfer. If offset verification services have occurred or any offset credits have been issued to the offset project that information must remain on the public webpage of the original OPR that approved the offset verification and issuance of offset credits. This provides the public with information related to verification and issuances for previous Reporting Periods before the offset project switched OPRs.

Summary of Section 95975(o)(1)(C).

New section 95975(o)(1)(C) is added to require that the new OPR retain the original listing information for the offset project when the offset project transfers between OPRs. Also, the new text stipulates that the offset project commencement date may change if the offset project has not yet undergone initial offset verification services.

Rationale for Section 95975(o)(1)(C).

This section is needed to ensure that the OPO or APD do not change the listing information when transferring an offset project. This prohibition will prevent OPOs and APDs from transferring the offset project to another OPR just to change the listing information for the project. In some cases during initial offset verification activities, the offset verification team will find that the Offset Project Commencement date was reported incorrectly by the OPO or APD. In this case, this provision would allow the Offset Project Commencement date to be updated in the Offset Project Data Report based on the offset verification team's findings.

Summary of Section 95975(o)(2).

New section 95975(o)(2) is added to specify the OPO or APD must provide the original listing information to the new OPR for listing. This provision only allows the OPO or APD to make changes to the listing documentation if the OPO has changed as specified in section 95975(m).

Rationale for Section 95975(o)(2).

This section is needed to specify that the OPO or APD must provide the original listing documentation to the new OPR when the offset project is transferred between OPRs.

This will ensure that the new OPR has the originally approved documentation because the listing is an enforceable document that may only be changed under limited circumstances. If an OPO changes during the crediting period it is necessary they update the listing information so the identity of the OPO is publicly available.

Summary of Section 95975(o)(3).

New section 95975(o)(3) is added to prohibit the OPO or APD from transferring an offset project to another OPR during offset verification services.

Rationale for Section 95975(o)(3).

This section is needed to ensure that ARB and the OPR are able to plan audits of offset verification services. If an OPO or APD transfers an offset project during a period where offset verification services are already being conducted, the new OPR will not be able to audit the offset project from the beginning of the offset verification process.

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

Summary of Section 95976(c)(3).

Existing section 95976(c)(3) is modified to support the addition of a Compliance Offset Protocol to section 95976(c).

Rationale for Section 95976(c)(3).

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95976(c)(4).

Existing section 95976(c)(3) is modified to support the addition of a Compliance Offset Protocol to section 95976(c)..

Rationale for Section 95976(c)(4).

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95976(c)(5).

New section 95976(c)(5) is added to include the potential Mine Methane Capture Projects Compliance Offset Protocol which staff is proposing for Board adoption.

Rationale for Section 95976(c)(5).

This change is necessary to support the potential adoption of a new Compliance Offset protocol by the Board.

Summary of Section 95976(d).

Existing section 95976(d) is modified to clarify the timing for submitting Offset Project Data Reports. In addition, this section is modified to clarify the requirements for submitting Offset Project Data Reports for ozone depleting substances (ODS) projects.

Rationale for Section 95976(d).

This change is needed to clarify that an Offset Project Data Report must be submitted once for each Reporting Period instead of annually. This clarification is necessary to provide consistent terminology throughout the Regulation. This section is also modified to clarify that only one Offset Project Data Report may be submitted for ODS projects and that the data report may only cover up to 12 months of data. The requirements for reporting for ODS projects in this section are aligned with the intent of the language in the Ozone Depleting Substances Compliance Offset Protocol.

Summary of Section 95976(d)(3).

Existing section 95976(d)(3) is modified to support the addition of a Compliance Offset Protocol to section 95976(d).

Rationale for Section 95976(d)(3).

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95976(d)(4).

Existing section 95976(d)(3) is modified to support the addition of a Compliance Offset Protocol to section 95976(d).

Rationale for Section 95976(d)(4).

This change is non-substantive and needed to support the inclusion of an additional Compliance Offset Protocol in this section.

Summary of Section 95976(d)(5).

New section 95976(d)(5) is added to include the potential Mine Methane Capture Projects Compliance Offset Protocol which staff is proposing for Board adoption.

Rationale for Section 95976(d)(5).

This change is necessary to support the potential adoption of a new Compliance Offset Protocol by the Board.

Summary of Section 95976(d)(6).

Existing section 95976(d)(5) was renumbered to section 95976(d)(6). Existing section 95976(d)(5), now section 95976(d)(6), is modified to use consistent terminology throughout the Regulation and to require the attestations associated with reporting be submitted to ARB and/or the OPR at the time the Offset Project Data Report is submitted.

Rationale for Section 95976(d)(6).

This change is required to accommodate additional requirements and support a new numbering structure.

The new text is necessary to ensure that consistent terminology is used throughout out the Regulation and to streamline OPR and ARB procedures when processing information related to an offset project.

Summary of Section 95976(d)(7).

Existing section 95976(d)(6) was renumbered to section 95976(d)(7).

Rationale for Section 95976(d)(7).

This change is required to accommodate additional requirements and support a new numbering structure.

Summary of Section 95976(d)(8).

Existing section 95976(d)(7) was renumbered to section 95976(d)(8).

Rationale for Section 95976(d)(8).

This change is required to accommodate additional requirements and support a new numbering structure.

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

Summary of Section 95977(b).

Existing section 95977(b) is modified to clarify the timing requirements for verification of non-sequestration offset projects. In addition, this section is also modified to allow for the deferment of verification for projects that produce an Offset Project Data Report with zero emission reductions, until a report is submitted with greater than zero emission reductions.

Rationale for Section 95977(b).

This change is necessary to clarify when small non-sequestration projects with less than 25,000 metric tons CO2e of reductions in a single Reporting Period would require verification.

This change is also necessary to allow an OPO or APD to defer verification of a non-sequestration offset project in years where no reductions are achieved. This will allow OPOs and APDs to not have to contract for verification services in years where there are no reductions to be verified and no offset credits to be issued.

Summary of Section 95977(c).

Existing section 95977(c) is modified to clarify that all sequestration offset projects must be verified after the first Reporting Period. In addition, this section is modified to allow urban forest offset projects to defer the second verification for twelve years, similar to a reforestation project.

Rationale for Section 95977(c).

This change is needed to clarify that for all sequestration projects an initial verification is required after the first Reporting Period. Thereafter, the OPO or APD may defer offset verification for up to six years. This change aligns with the requirements in section 95977.1(b)(3)(D).

An additional change in needed to allow urban forest offset projects that successfully complete the first verification, to defer the second verification for up to 12 years. Since urban forest offset projects will have minimal sequestration in the early years, similar to reforestations projects, this provision will allow OPOs and APDs to not contract for verification services in those years.

Summary of Section 95977(d).

Existing section 95977(d) is modified to clarify that for each Offset Project Data Report one Offset Verification Statement and one detailed verification report must be submitted by the verification body. This section is also modified to expand the verification timeframe for 9 to 11 months.

Rationale for Section 95977(d).

This change is needed to ensure that ARB and the OPR have a verification report detailing the verification body's findings for each Offset Project Data Report that the OPO or APD submits. This will allow ARB to have a third-party verification body's opinion and detailed findings for each period of reporting.

The additional modification is needed to change the length of time allowed for offset verification services from 9 to 11 months to allow more flexibility for complex offset projects, such as U.S. forestry projects, to meet the verification deadline.

Section 95977.1. Requirements for Offset Verification Services.

Summary of Section 95977.1(a).

Existing section 95977.1(a) is modified to clarify the requirements for the rotation of verification bodies and to include consistent terminology within the Regulation. In addition, this section is modified to apply the rotation requirements between both the OPO and APD, if there is a designated APD, and both the verification body and individual offset verifiers.

Rationale for Section 95977.1(a).

This change is needed to use the consistent terminology of Reporting Period throughout the Regulation. Reporting Period is referred to as many different terms throughout the Regulation. This change is also needed to add in additional references to sections 95977.1(a)(1) and (a)(2), which include specific requirements for rotation of verification bodies as they apply to ODS projects and reforestation and urban forest offset projects.

In addition, this change in necessary to clarify that the rotation is applied to the APD and to individual offset verifiers to minimize any biases and avoid familiarity or complacency between those working on offset projects and individual verifiers.

Summary of Section 95977.1(a)(1).

New section 95977.1(a)(1) is added to include requirements for rotation of verification bodies and offset verifiers that can be specifically applied to ODS projects.

Rationale for Section 95977.1(a)(1).

This section is needed to differentiate the rotation of verification body and offset verifier requirements between other project types and ODS projects. ODS projects are very short in duration and each Offset Project Data Report submitted is considered one project. The original rotation requirements in the Regulation did not apply to ODS projects because they are not continuous projects with multiple Reporting Periods.

Summary of Section 95977.1(a)(2).

New section 95977.1(a)(2) is added to allow verification bodies and offset verifiers for reforestation and urban forest offset projects to verifier up to13 Offset Project Data Reports if the second verification has been deferred for up to 12 years.

Rationale for Section 95977.1(a)(2).

This section is needed because reforestation and urban forest offset projects may defer the second offset verification services for up to 12 years and the original six year rotation requirements did not cover this scenario.

Summary of Section 95977.1(b)(1).

Existing section 95977.1(b)(1) is modified to specify which services are considered offset verification services and to require submittal of the Notice of Offset Verification Services (NOVS) to ARB and an Offset Project Registry within 30 days prior to beginning offset verification services.

Rationale for Section 95977.1(b)(1).

This change is needed to clarify which services may not be conducted prior to the submittal of a NOVS. This change is also needed so that ARB and the OPR have more time to plan their audit activities.

Summary of Section 95977.1(b)(2).

Existing section 95977.1(b)(2) is modified to clarify a typographical error. In addition, the timing for the requirements in this section are clarified and staff added new text that requires verification bodies to respond within 10 calendar days to requests from ARB and an OPR.

Rationale for Section 95977.1(b)(2).

This change is needed to fix a typographical error to clarify that this section refers to the NOVS and not the conflict of interest self-evaluation. In addition, this change is needed

to ensure that verification bodies respond to requests by ARB and the OPR in a timely manner when revisions are requested.

Summary of Section 95977.1(b)(3)(A).

Existing section 95977.1(b)(3)(A) is modified to specify that the OPO or APD must submit the information necessary to develop the Offset Verification Plan to the verification body.

Rationale for Section 95977.1(b)(3)(A).

This change is needed to clarify that the OPO or APD submits the information necessary to develop the Offset Verification Plan to the offset verification team and not ARB or the OPR.

Summary of Section 95977.1(b)(3)(B).

Existing section 95977.1(b)(3)(B) is modified to clarify that the requirements listed in this section are related to the Offset Verification Plan.

Rationale for Section 95977.1(b)(3)(B).

This change is needed to clarify that the requirements listed in this section must be included in the Offset Verification Plan by the verification body.

Summary of Section 95977.1(b)(3)(C).

Existing section 95977.1(b)(3)(C) is modified to clarify that activities associated with contracting and bidding are not considered part of offset verification services.

Rationale for Section 95977.1(b)(3)(C).

This change is also necessary to clarify that activities to secure a contract for offset verification are not part of offset verification services, and can therefore be conducted before submitting an NOVS.

Summary of Section 95977.1(b)(3)(D).

Existing section 95977.1(b)(3)(D) is modified to use consistent technology throughout the Regulation. The new text is added to clarify the timing requirements for conducting site visits and to require that a site visit is required after the first Reporting Period in each crediting period.

Rationale for Section 95977.1(b)(3)(D).

This change is needed to use the consistent terminology of Reporting Period throughout the Regulation. Reporting Period is referred to as many different terms throughout the Regulation. This change is also needed to clarify that a site visit must be conducted after the Offset Project Data Report is submitted. This is important because the purpose of offset verification services and the site visit is for the offset verification team to verify accuracy and conformance of the OPO or APD's Offset Project Data Report. Additionally, this change is needed to require a site visit after the first Reporting Period of each crediting period. This is necessary to validate that the offset project meets the eligibility criteria in the Regulation and the applicable COP.

Summary of Section 95977.1(b)(3)(D)(1.).

Existing section 95977.1(b)(3)(D)(1.) is modified to clarify that the initial site visit occurs after the first Reporting Period.

Rationale for Section 95977.1(b)(3)(D)(1.).

This change is needed to be consistent with the changes made to section 95977.1(b)(3)(D), which requires a site visit after the first Reporting Period of each crediting period. This site visit will help the offset verification team validate that the offset project meets the eligibility criteria in the Regulation and the applicable COP.

Summary of Section 95977.1(b)(3)(D)(1.)(a.).

Existing section 95977.1(b)(3)(D)(1.)(a.) is modified to clarify the offset project must meet the requirements of the Regulation and the relevant COP.

Rationale for Section 95977.1(b)(3)(D)(1.)(a.).

This change is needed to clarify that the offset verification team must assess that the offset project meets the requirements for additionality as required under the applicable COP. The intent of this provision is unchanged.

Summary of Section 95977.1(b)(3)(D)(1.)(f.).

Existing section 95977.1(b)(3)(D)(1.)(f.) is modified to include chain of custody to the list of criteria that must be assessed for validating an offset project during the initial verification.

Rationale for Section 95977.1(b)(3)(C)(1.)(f.).

This change is needed to ensure that the offset verification team reviews the chain of custody information as part of the validation step during the first full verification. Chain

of custody requirements were moved to section 95977.1(b)(3)(D)(1.)(f.) from 95977.1(b)(3)(G)(3.)(f.) because it is an eligibility requirement that must be met and may not be sampled.

Summary of Section 95977.1(b)(3)(D)(1.)(g.).

New section 95977.1(b)(3)(D)(1.)(g.) is added to require offset verification teams to issue an Adverse Offset Verification Statement if any of the eligibility criteria cannot be met.

Rationale for Section 95977.1(b)(3)(D)(1.)(g.).

This section is needed to make explicit that there is a validation step associated with the first full offset verification for an offset project. The offset verification team must ensure that the all of the requirements for eligibility are met before the project is eligible to be issued registry and ARB offset credits. Because all eligibility criteria must be met, they may not be sampled by the offset verification team.

Summary of Section 95977.1(b)(3)(D)(2.).

Existing section 95977.1(b)(3)(D)(2) is modified to clarify that the initial site visit must be conducted after the first Reporting Period.

Rationale for Section 95977.1(b)(3)(D)(2.).

This change is needed to clarify that the initial site visit follows the first Reporting Period of each crediting period.

Summary of Section 95977.1(b)(3)(F).

Existing section 95977.1(b)(3)(F) is modified to fix a typographical error.

Rationale for Section 95977.1(b)(3)(F).

This change is needed to fix a typographical error and to clarify that the OPO and APD must make the project GHG emissions documentation available, not the annual GHG emissions.

Summary of Section 95977.1(b)(3)(G)(3.)(e.).

Existing section 95977.1(b)(3)(G)(3.)(e.) is modified to support removing chain of custody from the uncertainty risk narrative.

Rationale for Section 95977.1(b)(3)(G)(3.)(e.).

This change is needed to remove chain of custody from the qualitative narrative of uncertainty risk assessment.

Summary of Section 95977.1(b)(3)(G)(3.)(f.).

Existing section 95977.1(b)(3)(G)(3.)(f.) is moved to section 95977.1(b)(3)(C)(1.)(f.).

Rationale for Section 95977.1(b)(3)(G)(3.)(f.).

This change is needed because the chain of custody requirements must be verified as part of evaluating the eligibility criteria and may not be sampled.

Summary of Section 95977.1(b)(3)(G)(3.)(g.).

Existing section 95977.1(b)(3)(G)(3.)(g.) is renumbered to section 95977.1(b)(3)(G)(3.)(f.).

Rationale for Section 95977.1(b)(3)(G)(3.)(g.).

This change is necessary because the numbering structure of this section changed due to the deletion of existing section 95977.1(b)(3)(G)(3.)(f.).

Summary of Section 95977.1(b)(3)(K).

Existing section 95977.1(b)(3)(K) is modified to clarify the timing for when the sampling plan must be made available to ARB or the OPR. In addition, this section is modified to clarify that documentation related to the verification must be retained by the verification body for 15 years.

Rationale for Section 95977.1(b)(3)(K).

This change is needed to clarify that verification bodies have 10 calendar days to submit the sampling plan. There was confusion as to whether the 10 days were calendar or working days. In addition, this change is needed to ensure that all verification-related information is retained to enable ARB audits, and that there is clear, documented evidence upon which a verification body made its findings when it issued a detailed verification report.

Summary of Section 95977.1(b)(3)(L)(4.).

Existing section 95977.1(b)(3)(L)(4.) is modified to clarify that the calculations submitted by the OPO or APD must be compared by the offset verification team, and the data check narrative must contain an explanation of how the data checks were calculated.

Rationale for Section 95977.1(b)(3)(L)(4.).

This change is needed to clarify that verification bodies must compare the calculations they get for the data checks to the calculations conducted by the OPO for those same data points. This is changed in response to stakeholder comments that the provision was not clear. In addition, this change is needed to require the verification body to submit a narrative in the detailed verification report of how the data checks were calculated. This will allow ARB and the OPR to better understand the verification process and how the data checks were conducted.

Summary of Section 95977.1(b)(3)(M).

Existing section 95977.1(b)(3)(M) is modified to require the OPO or APD to make all possible improvements or corrections identified by the verification body.

Rationale for Section 95977.1(b)(3)(M).

This change is needed to prevent the intentional overstatement of GHG emission reduction or removal enhancements. OPOs and APDs must make all possible corrections before offset verification services may be finalized to ensure that the best and most accurate offset project data is used for calculating the GHG reductions and GHG removal enhancements that may ultimately be issued offset credits. If the OPO or APD does not make all possible improvements or corrections the verification body must issue and Adverse Offset Verification Statement.

Summary of Section 95977.1(b)(3)(N).

Existing section 95977.1(b)(3)(N) is modified to clarify the requirements for data checks as they relate to determining offset material misstatement.

Rationale for Section 95977.1(b)(3)(N).

This change is needed to clarify that the offset verification must use its calculation comparisons derived as part of the data checks to assess offset material misstatement, and not the calculation of total GHG reductions or GHG removal enhancements. This has been a point of confusion for offset verifiers.

Summary of Section 95977.1(b)(3)(P).

Existing section 95977.1(b)(3)(P) is modified to clarify the timeframe for which offset material misstatement is applied.

Rationale for Section 95977.1(b)(3)(P).

This change is needed to clarify that offset material misstatement is applied to net GHG reductions and GHG removal enhancements achieved for each Reporting Period.

Summary of Section 95977.1(b)(3)(Q).

Existing section 95977.1(b)(3)(Q) is modified to update the offset material misstatement calculation as it relates to offset projects. The clarifications make the equation and terms clearer to ensure that verification bodies are calculating offset material misstatement correctly. When calculating the numerator of the equation the verification body must include the positive or negative impact that the discrepancy, omission, or misreporting will have on the total GHG reductions and GHG removal enhancements. Whether it is a positive or a negative impact will be determined based on the type of offset project (non-sequestration or sequestration) and whether the value is derived from the project emissions or project baseline emissions.

Rationale for Section 95977.1(b)(3)(Q).

This change is needed to clarify the inputs into the equation and to fix technical errors in the equation. The definition for “total reported emissions” was modified to clarify that the denominator of the equation includes the total GHG reductions and GHG removal enhancements reported by the OPO or APD.

Summary of Section 95977.1(b)(3)(R)(1.).

Existing section 95977.1(b)(3)(R)(1.) is modified to clarify the requirements for issuing Offset Verification Statements.

Rationale for Section 95977.1(b)(3)(R)(1.).

This change is needed to clarify that the verification body must issue an Offset Verification Statement for each Offset Project Data Report.

Summary of Section 95977.1(b)(3)(R)(4.)(a.).

Existing section 95977.1(b)(3)(R)(4.)(a.) is modified to clarify the requirements for issuing detailed verification reports. In addition, this section is modified to clarify the requirements for data checks and offset material misstatement as they relate to the detailed verification report.

Rationale for Section 95977.1(b)(3)(R)(4.)(a.).

This change is needed to clarify that the verification body must issue a detailed verification report for each Offset Project Data Report. This change is also needed to

require the verification body to submit a narrative in the detailed verification report of how the data checks were calculated and explain the level of detail required for the offset material misstatement calculation. This will allow ARB and the OPR to better understand the data checks and offset material misstatement calculation conducted.

Summary of Section 95977.1(b)(3)(R)(4.)(c.).

Existing section 95977.1(b)(3)(R)(4.)(c.) is modified to clarify the types of non-conformances that are eligible for issuing a Qualified Positive Offset Verification Statements.

Rationale for Section 95977.1(b)(3)(R)(4.)(c.).

This change is needed to clarify that only non-conformances as specified in the definition of Qualified Positive Offset Verification Statement are allowed for issuing a Qualified Positive Offset Verification Statement. This will ensure that verification bodies do not attempt to issue a Qualified Positive Offset Verification Statement for a non-conformance that is not related to quantification, monitoring, or metering requirements.

Summary of Section 95977.1(b)(3)(R)(4.)(d.).

Existing section 95977.1(b)(3)(R)(4.)(d.) is modified to clarify the timing for the final discussion between the offset verification team and the OPO or APD.

Rationale for Section 95977.1(b)(3)(R)(4.)(d.).

This change is needed to ensure that the offset verification team has a final discussion to resolve any outstanding issues with the OPO or APD before the verification body submits the Offset Verification Statement to ARB or the OPR. This will help resolve any issues that may arise once ARB or the OPR review the documentation.

Summary of Section 95977.1(b)(3)(R)(4.)(f.).

Existing section 95977.1(b)(3)(R)(4.)(f.) is modified to include a reference to the applicable COP.

Rationale for Section 95977.1(b)(3)(R)(4.)(f.).

This change is needed to include a reference to the applicable COP because there may be additional project specific requirements in the applicable COP related to offset verification. The requirements in the applicable COP must also be met.

Section 95978. Offset Verifier and Verification Body Accreditation.

Summary of Section 95978(a).

Existing section 95978 is renumbered to section 95978(a). Existing section 95978, now section 95978(a) is modified to clarify that the verification body and offset verifier accreditation process for the compliance offset program is separate from MRR accreditation.

Rationale for Section 95978(a).

This change is necessary to alleviate confusion that MRR accreditation satisfies the requirements of this Regulation, and to accommodate a new numbering structure. This change is also necessary to ensure verification bodies are accredited and trained in the compliance offset program.

Summary of Section 95978(b).

New section 95978(b) is added to clarify how subcontractor requirements in MRR apply to the offset program.

Rationale for Section 95978(b).

This section is needed to ensure that the requirements in MRR are applied correctly to the offset program because the reference to MRR identifies the reporting entity which does not exist in the offset program.

Summary of Section 95978(c).

New section 95978(c) is added to include requirements related to ARB audits of ARB-accredited verification bodies.

Rationale for Section 95978(c).

This section is needed to ensure that ARB has access to relevant materials during an audit.

Summary of Section 95978(d)
Section 95978(d) is added to clarify that technical experts may perform certain limited tasks as part of an offset verification

Rationale for Section 95978(d)
This section is necessary because ARB accredited offset verifiers require technical expertise beyond their own when performing a verification. These cases require the ARB accredited offset verifiers to engage technical experts, but the technical experts have not been accredited by ARB. This section allows those technical experts to

perform services required to aid the verification services, but requires that unaccredited technical experts be supervised at all times during a verification.

Summary of Section 95978(d)(1)
Section 95978(d)(1) is added to require that any technical experts must be identified on the Notice of Offset Verification Services and be considered when evaluating conflict of interest

Rationale for Section 95978(d)(1)
This section is necessary because conflict of interest must be evaluated against all personnel involved with the offset verification to maintain the integrity of the compliance offset program.

Summary of Section 95978(d)(2)
Section 95978(d)(2) is added to require that technical experts must be under the direct supervision of an ARB accredited offset verifier at all time.

Rationale for Section 95978(d)(2)
This section is necessary because the ARB accredited verifier and verification body are ultimately responsible for the actions of the technical expert. All decisions need to be made by an ARB accredited verifier in consultation with the technical expert. Direct supervision is required to ensure an ARB accredited verifier remains responsible for all verification services.

Summary of Section 95978(d)(3)
Section 95978(d)(3) is added to clarify that technical experts are very limited in the roles they may play on an offset verification.

Rationale for Section 95978(d)(3)
This section is necessary because the ARB accredited verifier and verification body are the ones ultimately responsible for the actions of the technical expert. All decisions need to be made by the ARB accredited verifier in consultation with the technical expert.

Summary of Section 95978(e)
Section 95978(e)) is added to define the term direct supervision.

Rationale for Section 95978(e)
This section is necessary to help define to role of the technical expert in offset verification.

Summary of Section 95978(f)
Section 95978(e)) is added to define the term technical expert.

Rationale for Section 95978(e)
This section is necessary to help define to role of the technical expert in offset verification.

Section 95979. Conflict of Interest Requirements for Verification Bodies for Verification of Offset Project Data Reports.

Summary of Section 95979.

The title of section 95979 is changed to Conflict of Interest Requirements for Verification Bodies and Offset Verifiers for Verification of Offset Project Data Reports.

Rationale for Section 95979.

The title is changed to more accurately reflect the content of the section. The section addresses conflict of interest requirements for both verification bodies and offset verifiers.

Summary of Section 95979(a).

Existing section 95979(a) is 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.

Rationale for Section 95979(a).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(1).

Existing section 95979(b)(1) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(1).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2).

Existing section 95979(b)(2) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(F).

Existing section 95979(b)(2)(F) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(F).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(G).

Existing section 95979(b)(2)(G) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(G).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(J).

Existing section 95979(b)(2)(J) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(J).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(L).

Existing section 95979(b)(2)(L) is modified to clarify the name for International Organization for Standardization standard referenced in this section.

Rationale for Section 95979(b)(2)(L).

This change is needed to accurately reflect the name of the International Organization for Standardization standard referenced in this section.

Summary of Section 95979(b)(2)(P).

Existing section 95979(b)(2)(P) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(P).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(Q).

Existing section 95979(b)(2)(Q) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(Q).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(R).

Existing section 95979(b)(2)(R) is modified to support the regulatory structure for additional provisions in this section.

Rationale for Section 95979(b)(2)(R).

This change is needed to add to the list of areas that result in a high potential conflict of interest.

Summary of Section 95979(b)(2)(S).

Existing section 95979(b)(2)(S) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(2)(S).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(2)(T).

Existing section 95979(b)(2)(T) is modified to include a high level of conflict of interest for work related to verifying TEAP facility requirements.

Rationale for Section 95979(b)(2)(T).

This change is necessary to ensure a verification body is not reviewing work that they previously conducted.

Summary of Section 95979(b)(3).

Existing section 95979(b)(3) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(3).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(b)(4).

Existing section 95979(b)(4) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(b)(4).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(c).

Existing section 95979(c) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(c).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(d).

Existing section 95979(d) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(d).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e).

Existing section 95979(e) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable. This section is also modified to clarify to whom the verification body must submit the conflict of interest self-evaluation. Additionally the section is modified to require the conflict of interest self-evaluation be approved by ARB or the OPR prior to commencing offset verification services.

Rationale for Section 95979(e).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project. This change is also needed to clarify that the conflict of interest self-evaluation must also be submitted to ARB and that offset verification services may not begin until ARB or the OPR approves the conflict of interest self-evaluation. This will ensure that any potential conflicts are evaluated and found before offset verification services begin. If there is a high conflict of interest, the verification body is not allowed to perform the work for the OPO or APD.

Summary of Section 95979(e)(2).

Existing section 95979(e)(2) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(2).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3).

Existing section 95979(e)(3) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(A).

Existing section 95979(e)(3)(A) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(A).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(B).

Existing section 95979(e)(3)(B) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(B).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(B)(1.).

Existing section 95979(e)(3)(B)(1.) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(B)(1.).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(B)(2.).

Existing section 95979(e)(3)(B)(2.) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(B)(2.).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(B)(3.).

Existing section 95979(e)(3)(B)(3.) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable. This section is also modified to change the timeframe that must be assessed for conflict of interest from three years to five years.

Rationale for Section 95979(e)(3)(B)(3.).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project and to make the timeframe for assessing conflict of interest consistent throughout the section.

Summary of Section 95979(e)(3)(B)(4.).

Existing section 95979(e)(3)(B)(4.) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(B)(4.).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(B)(5.).

Existing section 95979(e)(3)(B)(5.) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable. This section is also modified to change the timeframe that must be assessed for conflict of interest from three years to five years.

Rationale for Section 95979(e)(3)(B)(5.).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project and to make the timeframe for assessing conflict of interest consistent throughout the section.

Summary of Section 95979(e)(3)(D).

Existing section 95979(e)(3)(D) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(D).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(e)(3)(E).

Existing section 95979(e)(3)(E) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(e)(3)(E).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(f).

New section 95979(f) is added to include the process and requirements for ARB and OPR approval of conflict of interest self-evaluations.

Rationale for Section 95979(f).

This section is necessary to ensure that there is no conflict of interest before offset verification services begin, and to put a streamlined process is in place for ARB and OPR review of project information.

Summary of Section 95979(f)(1).

New section 95979(f)(1) is added to require ARB or the OPR to review the conflict of interest self-evaluation and to make a determination if it meets the requirements of the Regulation.

Rationale for Section 95979(f)(1).

This section is necessary to ensure that there is a streamlined process is in place for ARB and OPR review of project information. Staff chose 30 calendar days to be consistent with the timeframe for reviewing the NOVS.

Summary of Section 95979(f)(1)(A).

New section 95979(f)(1)(A) is added to require verification bodies to respond within 10 calendar days to requests from ARB and an OPR.

Rationale for Section 95979(f)(1)(A).

This section is needed to ensure that verification bodies respond to requests by ARB and the OPR for revisions to the conflict of interest self-evaluation in a timely manner when revisions are requested.

Summary of Section95979(f)(1)(B) .

New section 95979(f)(1)(B) is added to clarify how ARB and an OPR will treat a high potential conflict of interest.

Rationale for Section 95979(f)(1)(B).

This section is needed to clarify that if ARB or an OPR finds a high potential conflict of interest, the verification body will not be able to provide services for the OPO or APD.

Summary of Section 95979(f)(1)(C).

New section 95979(f)(1)(C) is added to clarify how ARB and an OPR will treat a low potential conflict of interest.

Rationale for Section 95979(f)(1)(C).

This section is needed to clarify that if there is a low potential conflict of interest the verification body may proceed with the offset verification services for the OPO or APD.

Summary of Section 95979(f)(1)(D).

New section 95979(f)(1)(D) is added to clarify how ARB and an OPR will treat a medium potential conflict of interest.

Rationale for Section 95979(f)(1)(D).

This section is needed to clarify that if there is a medium potential conflict of interest ARB or the OPR may allow offset verification services to occur, if based on the mitigation plan and all other factors, an acceptable level of risk exists.

Summary of Section 95979(f)(2).

New section 95979(f)(2) is added to clarify that if the offset project is listed with the OPR, the OPR will make the conflict of interest determination.

Rationale for Section 95979(f)(2).

This section is needed to clarify that even though the conflict of interest self-evaluation is submitted to both ARB and the OPR, the approval or denial of a conflict of interest will

be given by the OPR if the offset project is listed with an OPR. Review of the conflict of interest is one of the administrative functions that ARB has delegated to OPRs.

Summary of Section 95979(g).

Existing section 95979(f) is renumbered to section 95979(g).

Rationale for Section 95979(g).

This change is necessary because the numbering structure of this section changed due to the addition of new section 95979(f).

Summary of Section 95979(g)(1).

Existing section 95979(g)(1) is modified to clarify that the verification body must notify both ARB and the OPR of changes in potential conflict of interest situations.

Rationale for Section 95979(g)(1).

This change is needed to ensure that ARB is also notified of any changes in potential conflict of interest. ARB needs to be aware of all changes to conflict of interest to ensure that offset verification services only occur when there as an acceptable level of risk.

Summary of Section 95979(g)(2).

Existing section 95979(g)(2) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(g)(2).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(g)(3).

Existing section 95979(g)(3) is modified to clarify that the verification body must notify both ARB and the OPR of changes in potential conflict of interest situations.

Rationale for Section 95979(g)(3).

This change is needed to ensure that ARB is also notified of any changes in potential conflict of interest. ARB needs to be aware of all changes to conflict of interest to ensure that verification services only occur when there as an acceptable level of risk.

Summary of Section 95979(g)(3)(A).

Existing section 95979(g)(3)(A) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(g)(3)(A).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(g)(3)(B).

Existing section 95979(g)(3)(B) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(g)(3)(B).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(g)(5).

Existing section 95979(g)(5) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(g)(5).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Summary of Section 95979(h).

Existing section 95979(g) is renumbered to section 95979(h).

Rationale for Section 95979(h).

This change is necessary because the numbering structure of this section changed due to the addition of new section 95979(f).

Summary of Section 95979(h)(2).

Existing section 95979(h)(2) is modified to clarify that the conflict of interest requirements apply to both an Offset Project Operator, and an Authorized Project Designee, if applicable.

Rationale for Section 95979(h)(2).

This change is necessary to ensure that no individuals on the offset verification team have a conflict with any party associated with the offset project.

Section 95979.1 Additional Requirements for Air Quality Management Districts and Air Pollution Control Districts.

Summary of Section 95979.1.

New section 95979.1 is added to include additional requirements for air districts for assessing conflict of interest, including the ability to act as an OPR, OPO, APD, or verification body. However, the air districts may not act in multiple roles for the same offset project.

Rationale for Section 95979.1.

This section is needed to ensure there are no conflict of interests for an air district providing offset verification services and registry services. Given their status as regulatory entities, air districts are unique in comparison to other market participants and may perform multiple roles under the offsets program; but not for the same offset project.

Summary of Section 95979.1(a).

New section 95979.1(a) is added to include additional requirements for air districts for assessing conflict of interest.

Rationale for Section 95979.1(a).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol. .

Summary of Section 95979.1(a)(1).

New section 95979.1(a)(1) is added to include additional requirements for air districts for assessing conflicts of interest.

Rationale for Section 95979.1(a)(1).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol.

Summary of Section 95979.1(a)(1)(A).

New section 95979.1(a)(1)(A) is added to allow air districts to register with ARB's CITSS.

Rationale for Section 95979.1(a)(1)(A).

This section is needed to allow air districts to register in CITSS which is prohibited for all other verification bodies and OPRs that are not government agencies.

Summary of Section 95979.1(a)(1)(B).

New section 95979.1(a)(1)(B) is added to allow air districts to hold compliance instruments.

Rationale for Section 95979.1(a)(1)(B).

This section is needed to allow air districts to hold compliance instruments, which is prohibited for all other verification bodies and OPRs that are not government agencies.

Summary of Section 95979.1(a)(2).

New section 95979.1(a)(2) is added to identify what air districts accredited as offset verifies and/or approved as OPRs may not do.

Rationale for Section 95979.1(a)(2).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol. An independent system of implementation, verification, and project review is consistent with international best practices and existing regulatory and voluntary offset programs.

Summary of Section 95979.1(a)(2)(A).

New section 95979.1(a)(2)(A) is added to prohibit air districts from being an OPO or APD and a verification body for the same offset project.

Rationale for Section 95979.1(a)(2)(A).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol.

Summary of Section 95979.1(a)(2)(B).

New section 95979.1(a)(2)(B) is added to prohibit air districts from being an OPO or APD and an OPR for the same offset project.

Rationale for Section 95979.1(a)(2)(B).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol.

Summary of Section 95979.1(a)(2)(C).

New section 95979.1(a)(2)(C) is added to prohibit air districts from being an OPR and a verification body for the same offset project.

Rationale for Section 95979.1(a)(2)(C).

This section is needed to ensure an independent system of review during the issuance of a registry credit resulting from the implementation of an offset project using an ARB Compliance Offset Protocol.

Section 95980. Issuance of Registry Offset Credits.

Summary of Section 95980(c).

Existing section 95980(c) is modified to clarify that the requirements in the COP would supersede the Regulation for determining the start of the initial crediting period.

Rationale for Section 95980(c).

This change is needed because some COPs have project type specific requirements for the start of the crediting period. If the applicable COP has such requirements, those must be followed and not the more general requirements in this section.

Section 95980.1 Process for Issuance of Registry Offset Credits.

Summary of Section 95980.1(a).

Existing section 95980.1(a) is modified to correct and delete inaccurate references in this section.

Rationale for Section 95980.1(a).

This change is needed to ensure that correct references are used in this provision.

Summary of Section 95980.1(c).

Existing section 95980.1(c) is modified to delete inaccurate references in this section.

Rationale for Section 95980.1(c).

This change is needed to ensure that correct references are used in this provision.

Summary of Section 95980.1(d).

New section 95980.1(d) is added to allow an OPR to request additional information for the issuance of registry offset credits from the OPO, APD, or verification body as needed, before issuing offset credits.

Rationale for Section 95980.1(d).

This section is needed to allow the OPR to request any additional information from those responsible for the offset project, or those that verified the project, which the OPR deems necessary to the issuance of registry offset credits.

Summary of Section 95980.1(d)(1).

New section 95980.1(d)(1) is added to require the OPR to request any additional information within the 45 day review timeframe.

Rationale for Section 95980.1(d)(1).

This section is needed to clarify that the timeframe of 45 calendar days in section 95980(b) is not extended due to information requests by an OPR. This will ensure that the registry offset credit issuance process will conclude in a specified period of time to support timely information for the market on offset supply.

Summary of Section 95980.1(d)(2).

Section 95980.1(d)(2) is added to include provisions for an OPR to deny issuance of registry offset credits if the requirements of the Regulation are not satisfied. In addition, this section adds a dispute resolution process for an OPO or APD when crediting is denied by the OPR.

Rationale for Section 95980.1(d)(2).

This section is needed to allow OPRs to deny issuance of registry offset credits if the GHG reductions and GHG removal enhancements do not meet the requirements of the Regulation. This section is also needed to provide OPOs or APDs with a mechanism to resolve any issues before a final determination regarding crediting is made by an OPR.

Summary of Section 95980.1(d)(3).

New section 95980.1(d)(3) is added to require the OPR to make a final determination on the OPO or APD petition within 30 days. In addition, this section is added to allow the OPR to ask for additional information from the OPO, APD, or verification body.

Rationale for Section 95980.1(d)(3).

This section is needed to give the OPR adequate time to make a final decision on registry offset credit issuance and to give the OPO and APD a maximum timeframe that may be needed for the OPR review. In addition, this section is needed to allow the OPR to request and review any other materials that may be helpful in making a final issuance determination.

Summary of Section 95980.1(d)(4).

New section 95980.1(d)(4) is added to require that an OPR submit a report to ARB with an explanation of its denial of crediting.

Rationale for Section 95980.1(d)(4).

This section is needed to require that OPRs provide ARB with a report that will assist ARB in its dispute resolution review of the offset project information.

Summary of Section 95980.1(d)(5).

New section 95980.1(d)(5) is added to include a dispute resolution process with ARB, if an OPR denies issuance of registry offset credits.

Rationale for Section 95980.1(d)(5).

This section is needed to provide a mechanism for an OPO or APD to have the project data reviewed by ARB before a final determination is made to deny issuance of registry offset credits. If registry offset credits are not issued, ARB offset credits will also not be issued; therefore, ARB must be the final decision maker for issuance.

Summary of Section 95980.1(d)(6).

New section 95980.1(d)(6) is added to require that an OPR issue registry offset credits if ARB determines that the project meets the requirements in the Regulation.

Rationale for Section 95980.1(d)(6).

This section is needed to provide a mechanism for an OPO or APD to have the project data reviewed by ARB before a final determination is made to deny issuance of registry offset credits. If registry offset credits are not issued, ARB offset credits will also not be issued; therefore, ARB must be the final decision maker for issuance.

Summary of Section 95980.1(e).

Existing section 95980.1(d) is renumbered to section 95980.1(e). Existing section 95980.1(d), now section 95980.1(e) is modified to clarify when an OPR must issue serial numbers for the relevant registry offset credits. This section is also modified to correct and delete inaccurate references in this section.

Rationale for Section 95980.1(e).

This change is necessary because the numbering structure of this section changed due to the addition of new section 95980.1(d) and to ensure that correct references are used in this provision. This change is also needed to clarify that an OPR may create serial numbers at the time of issuance of registry offset credits. For most registries the issuance is simultaneous to the creation of serial numbers.

Section 95981. Issuance of ARB Offset Credits.

Summary of Section 95981(a)(3).

Existing section 95981(a)(3) is modified to clarify that registry offset credits must first be issued before ARB offset credit issuance if an offset project is listed with an OPR.

Rationale for Section 95981(a)(3).

This change is needed to clarify that a project is only required to have registry offset credits issued if an offset project is listed with an OPR.

Summary of Section 95981(b)(3).

Existing section 95981(b)(3) is modified to clarify that both the original and final Offset Project Data Report must be submitted to ARB for issuance of ARB offset credits. This section is also modified to include new section references.

Rationale for Section 95981(b)(3).

This change is needed for ARB to have full documentation when conducting its review to determine whether ARB offset credits should be issued. In addition, this change is needed to correct references in this section due to adding the requirements for the original and final Offset Project Data Reports.

Summary of Section 95981(b)(5).

New section 95981(b)(5) is added to require the OPO or APD to submit a request for ARB offset credit issuance for each Offset Project Data Report.

Rationale for Section 95981(b)(5).

This section is needed to ensure that the OPO and APD submit the correct information to ARB for the issuance of ARB offset credits.

Summary of Section 95981(b)(5)(A).

New section 95981(b)(5)(A) is added to require the OPO to submit the request for issuance of ARB offset credits if any of the ARB offset credits are to be placed into an account other than the OPO's.

Rationale for Section 95981(b)(5)(A).

This section is needed to specify the roles of the OPO and APD in requesting issuance of ARB offset credits. If an OPO is the only party receiving ARB offset credits, the APD may submit the issuance information. However, if the OPO is designating any other party to receive ARB offset credits from the issuance, the OPO must be the one to submit the request for issuance. This ensures that only the OPO has control for the designation of which accounts the ARB offset credits are issued into, and gives the OPO greater protection that the ARB offset credits will be issued into the correct accounts.

Summary of Section 95981(b)(5)(B).

New section 95981(b)(5)(B) is added to specify that Holding Accounts of any party receiving ARB offset credits must be provided in the issuance request and that anyone receiving ARB offset credits must be registered in CITSS.

Rationale for Section 95981(b)(5)(B).

This section is needed so ARB may know which holding accounts to transfer the ARB offset credits to for initial ownership.

Summary of Section 95981(b)(5)(C).

New section 95981(b)(5)(C) is added to include requirements for when the OPO or APD may submit an issuance request to ARB.

Rationale for Section 95981(b)(5)(C).

This section is needed for ease of implementation of the program and to prohibit OPOs or APDs from submitting issuance requests to ARB before registry offset credits have been issued.

Summary of Section 95981(c).

Existing section 95981(c) is added to clarify that the 45 day timeframe for ARB's determination for issuance of ARB offset credits does not start until complete information is received by ARB.

Rationale for Section 95981(c).

This change is needed to provide ARB with adequate time to review offset project information when determining whether to issue ARB offset credits. It may take some time for ARB to receive complete and accurate information from the OPO, APD, verification body, and OPR, and ARB needs the full 45 days to review documentation that is complete and accurate.

Summary of Section 95981(d).

Existing section 95981(d) is modified to clarify that GHG reductions or removal enhancements are credited for the Reporting Period not the Offset Verification Statement.

Rationale for Section 95981(d).

This change is needed to use the consistent terminology of Reporting Period throughout the Regulation. Reporting Period is referred to in many different terms throughout the Regulation.

Summary of Section 95981(e).

Existing section 95981(e) is modified to clarify that the requirements in the relevant COP supersedes the requirements in the Regulation for determining the start of the initial crediting period.

Rationale for Section 95981(e).

This change is needed because some COPs have project type specific requirements for the start of the crediting period. If the applicable COP has such requirements, those must be followed and not the general requirements in this section.

Section 95981.1 Process for Issuance of ARB Offset Credits.

Summary of Section 95981.1(a).

Existing section 95981.1(a) is modified to correct and delete inaccurate references in this section. This section is also modified to clarify that the attestations required by the Regulation must be submitted to ARB or the 15 day timeframe will not begin for issuing ARB offset credits.

Rationale for Section 95981.1(a).

This change is needed to ensure that correct references are used in this provision. This change is also needed to ensure that ARB does not issue any ARB offset credits before the attestations are received. This also allows ARB to have a full 15 days for issuance after receiving the attestations, if they had not been submitted prior to the determination for issuance was made.

Summary of Section 95981.1(c).

Existing section 95981.1(c) is modified to fix grammatical errors and require ARB to notify the OPO, APD or identified third-party of ARB's intent to issue ARB offset credits within 15 days of making the determination to issue. In addition, this section is modified to correct and delete inaccurate references in this section.

Rationale for Section 95981.1(c).

This change is needed to ensure that correct grammar and references are used in this provision. This section also clarifies that ARB will notify all relevant parties of its intent to issue the ARB offset credits within 15 calendar days of its determination. The 15 calendar days does not refer to the actual issuance of the ARB offset credits, as the provision was originally written.

Summary of Section 95981.1(d)(1).

Existing section 95981.1(d)(1) is modified to correct and delete inaccurate references in this section.

Rationale for Section 95981.1(d)(1).

This change is needed to ensure that correct references are used in this provision.

Summary of Section 95981.1(d)(2).

Existing section 95981.1(d)(2) is modified to require the OPO, APD, verification body, and OPR to respond within 10 calendar days to requests from ARB.

Rationale for Section 95981.1(d)(2).

This section is needed to ensure that the OPO, APD, verification body, and OPR respond to requests by ARB in a timely manner when additional information is requested.

Summary of Section 95981.1(e).

Existing section 95981.1(e) is modified to clarify that OPRs must provide proof of registry offset credit cancelation prior to ARB issuing ARB offset credits.

Rationale for Section 95981.1(e).

This change is needed to ensure that OPRs have retired registry offset credits before ARB offset credits are issued to avoid any potential for double crediting the same GHG emission reductions or removal enhancements.

Summary of Section 95981.1(f).

Existing section 95981.1(f) is modified to correct and delete inaccurate references in this section.

Rationale for Section 95981.1(f).

This change is needed to ensure that correct references are used in this provision.

Section 95982. Registration of ARB Offset Credits.

Summary of Section 95982.

The title of section 95982 is changed to add a period at the end of the title.

Rationale for Section 95982.

The change is needed to be consistent with the other titles in this Regulation.

Summary of Section 95982(b).

Existing section 95982(b) is modified to correct and delete inaccurate references in this section. In addition, this section is modified to remove the reference to serial numbers.

Rationale for Section 95982(b).

This change is needed to ensure that correct references are used in this provision. This change is also needed to remove the reference to serial numbers because ARB will not be publicly releasing serial numbers for ARB offset credits.

Section 95983. Forestry Offset Reversals.

Summary of Section 95983(a)(4).

New section 95983(a)(4) is added to clarify which that ARB offset credits are placed into the Forest Buffer Account (FBA) by Reporting Period.

Rationale for Section 95983(a)(4).

This section is needed to clarify which ARB offset credits placed into the FBA must be from the same Reporting Period for which they are issued. This has always been the intent of the Regulation and this provision makes the requirement more explicit.

Summary of Section 95983(b)(2).

Existing section 95983(b)(2) is modified to clarify how ARB will calculate the quantity of ARB offset credits that will be retired from the FBA in the case of an unintentional reversal.

Rationale for Section 95983(b)(2).

This change is needed to provide transparency so that program participants may understand how ARB will calculate its retirement from the FBA in the event of an unintentional reversal.

Summary of Section 95983(b)(2)(A).

New section 95983(b)(2)(A) is added to clarify how many ARB offset credits will be retired from the FBA in the case of an unintentional reversal for an offset project that came into the program directly under a COP.

Rationale for Section 95983(b)(2)(A).

This section is needed to clarify that in the event of an unintentional reversal ARB offset credits will be retired from the FBA in the amount of metric tons reversed, if the offset project came into the program directly under a COP. This distinction is needed because if a project came into the program directly under a COP, ARB holds the entire buffer account contribution from the offset project. There is no other accounting needed to calculate any early action offset credits that may still be in the Early Action Offset Program's (EAOP) buffer account.

Summary of Section 95983(b)(2)(B).

New section 95983(b)(2)(B) is added to provide the equation for calculating how many ARB offset credits will be retired from the FBA in the case of an unintentional reversal for an offset project that transitioned from an EAOP.

Rationale for Section 95983(b)(2)(B).

This section is needed to clarify that in the event of an unintentional reversal ARB offset credits will be retired from the FBA in the amount calculated according to the equation provided in this section, if the offset project transitioned from an EAOP. This distinction is needed because if a project transitioned from an EAOP, the EAOP may still have early action offset credits in its system that would need to be covered by its buffer account. ARB must account for the early action offset credits that may still be in the EAOP's buffer account so that ARB does not retire ARB offset credits for a reversal of early action offset credits that are not issued in the compliance offset program.

Summary of Section 95983(c)(2).

Existing section 95983(c)(2) is modified to clarify an OPO or APD must contract a verification body for verifying a forest offset project's current carbon stocks in the event of an intentional reversal.

Rationale for Section 95983(c)(2).

This change is needed to allow OPOs or APDs to incorporate the required verification of current carbon stocks into the offset verification services that will be performed for the Reporting Period. This will allow the OPO and APD to manage costs of verification by incorporating the additional verification requirements into regularly scheduled verification.

Summary of Section 95983(c)(3).

Existing section 95983(c)(3) is modified to clarify how many ARB offset credits the forest owner must replace in the case of an intentional reversal.

Rationale for Section 95983(c)(3).

This change is needed to provide transparency so that program participants may understand how ARB will calculate the number of ARB offset credits that the forest owner must replace in the event of an intentional reversal.

Summary of Section 95983(c)(3)(A).

New section 95983(c)(3)(A) is added to clarify how many ARB offset credits must be replaced by the forest owner in the case of an intentional reversal for an offset project that came into the program directly under a COP.

Rationale for Section 95983(c)(3)(A).

This section is needed to clarify that in the event of an intentional reversal the forest owner must replace ARB offset credits in the amount of metric tons reversed, if the offset project came into the program directly under a COP. This distinction is needed because if a project came to the program directly under a COP, ARB has issued all of the offset credits for the entire offset project. There is no other accounting needed to calculate any early action offset credits that may have been issued by the EAOP.

Summary of Section 95983(c)(3)(B).

New section 95983(c)(3)(B) is added to provide the equation for calculating how many ARB offset credits must be replaced by the forest owner in the case of an intentional reversal for an offset project that transitioned from an EAOP.

Rationale for Section 95983(c)(3)(B).

This section is needed to clarify that in the event of an intentional reversal the forest owner must replace ARB offset credits in the amount calculated according to the equation provided in this section, if the offset project transitioned from an EAOP. This distinction is needed because if a project transitioned from an EAOP, the EAOP will have issued early action offset credits for the offset project. ARB must account for the early action offset credits that may have been issued by the EAOP so that the forest owner does not have an obligation to ARB to replace offset credits that are not issued in the compliance offset program.

Summary of Section 95983(c)(3)(C).

Existing section 95983(c)(3)(A) is renumbered to section 95983(c)(3)(C). Existing section 95983(c)(3)(A), now section 95983(c)(3)(C) is modified to include a missing reference.

Rationale for Section 95983(c)(3)(C).

This change is needed to accommodate additional requirements added to this section. This change is also needed to clarify which notification this section is referring to.

Summary of Section 95983(c)(3)(D).

Existing section 95983(c)(3)(B) is renumbered to section 95983(c)(3)(D). Existing section 95983(c)(3)(B), now section 95983(c)(3)(D) is modified to clarify that if the forest owner does not replace ARB offset credits in the amount of tons reversed within 6 months, ARB will retire the credits from the FBA.

Rationale for Section 95983(c)(3)(D).

This change is needed to clarify how many ARB offset credits ARB will retire from the FBA if the forest owner does not replace ARB offset credits in the amount required if there is an intentional reversal. This change is also needed to include references to the new sections of 95983 that explain how the replacement amount is calculated.

Summary of Section 95983(c)(4).

Existing section 95983(c)(4) is modified to clarify how many ARB offset credits the forest owner must replace in the event of an early project termination.

Rationale for Section 95983(c)(4).

This change is needed to provide transparency so that program participants may understand how ARB will calculate the number of ARB offset credits that the forest owner must replace in the event of an early project termination.

Summary of Section 95983(c)(4)(A).

New section 95983(c)(4)(A) is added to clarify how many ARB offset credits must be replaced by the forest owner in the case of an early project termination for an offset project that came to the program directly under a COP. In addition, this section is added to clarify how many ARB offset credits must be replaced by the forest owner in the case of an early project termination for an improved forest management project that came into the program directly under a COP.

Rationale for Section 95983(c)(4)(A).

This section is needed to clarify that in the event of an early project termination the forest owner must replace ARB offset credits in the amount of metric tons reversed, if the offset project came into the program directly under a COP. This distinction is needed because if a project came into the program directly under a COP, ARB has issued all of the offset credits for the entire offset project. There is no other accounting needed to calculate any early action offset credits that may have been issued by the EAOP.

Additionally, this section is needed to clarify that in the event of an early project termination of an improved forest management project the forest owner must replace ARB offset credits in the amount of metric tons reversed multiplied by a compensation rate specified in the COP. The COP includes specific requirements for compensation for improved forest management projects, and those must also be followed.

Summary of Section 95983(c)(4)(B).

New section 95983(c)(4)(B) is added to clarify how many ARB offset credits must be replaced by the forest owner in the case of an early project termination for an offset project that transitioned from an EAOP.

Rationale for Section 95983(c)(4)(B).

This section is needed to clarify that in the event of an early project termination the forest owner must replace ARB offset credits in the amount calculated according to the equation provided in this section, if the offset project transitioned from an EAOP. This distinction is needed because if a project transitioned from an EAOP, the EAOP will have issued early action offset credits for the offset project. ARB must account for the early action offset credits that may have been issued by the EAOP so that the forest owner does not have an obligation to ARB to replace offset credits that are not issued in the compliance offset program.

Summary of Section 95983(c)(4)(C).

New section 95983(c)(4)(C) is added to clarify how many ARB offset credits must be replaced by the forest owner in the case of an early project termination for an improved forest management project that transitioned from an EAOP.

Rationale for Section 95983(c)(4)(C).

This section is needed to clarify that in the event of an early project termination of an improved forest management project the forest owner must replace ARB offset credits

in the amount of metric tons calculated pursuant to section 95983(c)(4)(B) multiplied by a compensation rate specified in the COP. The COP includes specific requirements for compensation for improved forest management projects, and those must also be followed.

Summary of Section 95983(c)(4)(D).

Existing section 95983(c)(4)(A) is renumbered to section 95983(c)(4)(D). Existing section 95983(c)(4)(A), now section 95983(c)(4)(D) is modified to clarify that ARB will notify the forest owner of the number of ARB offset credits they must replace.

Rationale for Section 95983(c)(4)(D).

This change is needed to accommodate additional requirements added to this section and to clarify that ARB is notifying the forest owner of the number of ARB offset credits that must be replaced.

Summary of Section 95983(c)(4)(E).

Existing section 95983(c)(4)(B) is renumbered to section 95983(c)(4)(E). Existing section 95983(c)(4)(B), now section 95983(c)(4)(E) is modified to require the forest owner to replace ARB offset credits in the event of an early project termination instead of ARB retiring credits from the FBA.

Rationale for Section 95983(c)(4)(E).

This change is needed to accommodate additional requirements added to this section. In addition, this change is necessary to require that the forest owner replace ARB offset credits in the event of an early project termination instead of ARB automatically retiring ARB offset credits from the FBA. The FBA must be used as a backstop for making the program whole, rather than the first remedy.

Summary of Section 95983(c)(4)(F).

Existing section 95983(c)(4)(C) is renumbered to section 95983(c)(4)(F). Existing section 95983(c)(4)(C), now section 95983(c)(4)(F) is modified to specify how many ARB offset credits ARB will retire from the FBA if the forest owner does not replace the amount of ARB offset credits required in the event of an early project termination.

Rationale for Section 95983(c)(4)(F).

This change is necessary to accommodate additional requirements added to this section. In addition, this change is needed to specify how many ARB offset credits ARB will retire from the FBA if the forest owner fails to replace some or all of the required

ARB offset credits as a result of an early project termination. The FBA may be used as a backstop to ensure that the program is made whole, if the forest owner does not replace some or all of the required ARB offset credits. The forest owner will still be subject to enforcement action.

Summary of Section 95983(d)(1).

Existing section 95983(d)(1) is modified to correct terminology and clarify that all ARB offset credits, including those issued for early action, will be retired in the event a forest offset project is terminated due to an unintentional reversal.

Rationale for Section 95983(d)(1).

This change is needed to ensure that the correct terminology is used throughout the Regulation in relation to the type of offset credits that are issued by ARB. Early action offset credits are issued by Early Action Offset Programs.

Section 95984. Ownership and Transferability of ARB Offset Credits.

Summary of Section 95984(a).

Existing section 95984(a) is modified to correct and delete inaccurate references in this section.

Rationale for Section 95984(a).

This change is needed to ensure that correct references are used throughout the Regulation.

Section 95985. Invalidation of ARB Offset Credits.

Summary of Section 95985(b)(1).

Existing section 95985(b)(1) is modified to clarify that the timeframe for invalidation of ARB offset credits is eight years unless the requirements in this section are met.

Rationale for Section 95985(b)(1).

This change is needed to clarify the timeframes for which ARB offset credits may be invalidated. This section distinguishes between the timeframe for invalidation for ARB offset credits that are issued according to a COP and ARB offset credits that are issued under an early action quantification methodology. The timeframe in which ARB offset credits issued for early action may be invalidated starts from when ARB issues the offset credits. The timeframe in which ARB offset credits issued under a COP may be

invalidated starts from the date that corresponds to the end of the Reporting Period from which the offset credits were issued.

Summary of Section 95985(b)(1)(A).

Existing section 95985(b)(1)(A) is modified to clarify the requirements that OPOs or APDs must meet to shorten the invalidation timeframe for ODS destruction projects.

Rationale for Section 95985(b)(1)(A).

This change is needed to clarify the requirements that OPOs and APDs of ODS destruction projects must meet in order to shorten the invalidation timeframe from eight to three years.

Summary of Section 95985(b)(1)(A)(1.).

New section 95985(b)(1)(A)(1.) is added to clarify that ODS projects must be verified by a different verification body than the one that did the original verification.

Rationale for Section 95985(b)(1)(A)(1.).

This section is needed to clarify the secondary verification requirements formerly in original section 95985(b)(1)(A) for ODS destruction projects. To shorten the timeframe for ODS projects a second verification must be conducted by a different verification body to ensure that ARB offset credits should have been issued and to ensure that there are no inaccuracies or inconsistencies that were not found during the first full verification. A second full regulatory verification must be conducted for ODS projects because they are not continuous projects and conclude after the initial verification. Without a second full verification there is not another verification body that reviews any information for the project, as is the case for the other project types that are continuous projects and have periodic verification.

Summary of Section 95985(b)(1)(A)(2.).

New section 95985(b)(1)(A)(2.) is added to require the second full verification to occur within three years of ARB offset credit issuance and the verification must result in a positive or qualified positive opinion.

Rationale for Section 95985(b)(1)(A)(2.).

This section is needed to require that the second verification to shorten the timeframe for invalidation for an ODS destruction project be conducted within three years of the issuance of ARB offset credits. Since a second verification would shorten the

invalidation timeframe to three years, the verification needs to occur within those three years and result in a positive or qualified positive verification opinion.

Summary of Section 95985(b)(1)(A)(2.)(a.).

New section 95985(b)(1)(A)(2.)(a.) is added to clarify that the verification body must submit the documentation for the second verification conducted to reduce the invalidation timeframe for ODS destruction projects to the OPR the project with which the project is listed.

Rationale for Section 95985(b)(1)(A)(2.)(a.).

This section is needed so that verification bodies know to submit their verification related materials to the OPR and not ARB.

Summary of Section 95985(b)(1)(A)(2.)(b.).

New section 95985(b)(1)(A)(2.)(b.) is added to require an OPR to review the second verification conducted to reduce the invalidation timeframe for ODS destruction projects and submit a report to ARB with its findings.

Rationale for Section 95985(b)(1)(A)(2.)(b.).

This section is needed to include a process for reviewing the second verification conducted to reduce the invalidation timeframe for ODS destruction projects. The verification related materials will be sent to the OPR for review. This mirrors the process in place for the review of all other full offset verification services conducted in the program. In addition, the OPR must submit a report to ARB detailing its findings of the second verification. This will allow ARB to understand the OPR's review of the materials and its findings.

Summary of Section 95985(b)(1)(A)(2.)(c.).

New section 95985(b)(1)(A)(2.)(c.) is added to require the OPR to review the second verification conducted to reduce the invalidation timeframe for ODS destruction projects within 45 calendar days of receiving it.

Rationale for Section 95985(b)(1)(A)(2.)(c.).

This section is needed so the OPO and APD know when the review of the second verification will be completed. 45 calendar days will give the OPR enough time to review the offset verification and contact the verification body if there are any questions regarding the verification.

Summary of Section 95985(b)(1)(A)(2.)(d.).

New section 95985(b)(1)(A)(2.)(d.) is added to require the OPR to submit its report to ARB on the second verification conducted to reduce the invalidation timeframe for ODS destruction projects within 15 working days of completing its review.

Rationale for Section 95985(b)(1)(A)(2.)(d.).

This section is needed to give the OPR enough time to write its report to ARB and to ensure a timely process.

Summary of Section 95985(b)(1)(A)(3.).

New section 95985(b)(1)(A)(3.) is added to specify how the invalidation timeframe ARB offset credits is reduced to three years, if the requirements for a second regulatory verification are met.

Rationale for Section 95985(b)(1)(A)(3.).

This section is needed to specify that if all the requirements for a second regulatory verification are met, the invalidation timeframe will be reduced to three years.

Summary of Section 95985(b)(1)(A)(3.)(a.).

New section 95985(b)(1)(A)(3.)(a.) is added to specify that ARB offset credits issued under a COP may be invalidated for three years, if the requirements to reduce the invalidation timeframe are met.

Rationale for Section 95985(b)(1)(A)(3.)(a.).

This section is needed to specify that if the requirements to reduce the invalidation timeframe are met, the invalidation timeframe is reduced from eight years to three years, and the invalidation timeframe starts from the date that corresponds to the end of the Reporting Period from which the offset credits were issued.

Summary of Section 95985(b)(1)(A)(3.)(b.).

New section 95985(b)(1)(A)(3.)(b.) is added to specify that ARB offset credits issued for early action may be invalidated for three years, if the requirements to reduce the invalidation timeframe are met.

Rationale for Section 95985(b)(1)(A)(3.)(b.).

This section is needed to specify that if the requirements to reduce the invalidation timeframe are met, the invalidation timeframe is reduced from eight years to three

years, and the invalidation timeframe starts from the date that the ARB offset credits are issued.

Summary of Section 95985(b)(1)(B).

Existing section 95985(b)(1)(B) is modified to clarify the requirements that must be met to shorten the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments.

Rationale for Section 95985(b)(1)(B).

This change is needed to clarify the requirements that OPOs and APDs for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments must meet in order to shorten the invalidation timeframe eight to three years.

Summary of Section 95985(b)(1)(B)(1.).

New section 95985(b)(1)(B)(1.) is added to require that a different verification body be used to verify a subsequent Offset Project Data Report to shorten the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects.

Rationale for Section 95985(b)(1)(B)(1.).

This section is needed to clarify the subsequent verification requirements formerly in original section 95985(b)(1)(B) for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments. To shorten the timeframe for these project types a different verification body must conduct offset verification services for a subsequent Offset Project Data Report. Because these project types are continuous projects, with periodic verification requirements, a rotation of verifiers will ensure there are no inaccuracies or inconsistencies that were not found during the prior verification.

Summary of Section 95985(b)(1)(B)(2.).

New section 95985(b)(1)(B)(2.) is added to require the second verification body to conduct offset verification services for a subsequent Offset Project Data Report to shorten the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, within three years of ARB offset credit issuance. In addition, this section

is added to require that the subsequent verification conducted by the second verification body result in a positive or qualified positive opinion.

Rationale for Section 95985(b)(1)(B)(2.).

This section is needed to clarify that the second verification body conduct offset verification services for a subsequent Offset Project Data Report to shorten the timeframe for invalidation for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, within three years of the issuance of ARB offset credits. Since the invalidation timeframe would be shortened to three years, the subsequent verification needs to occur within those three years.

Summary of Section 95985(b)(1)(B)(3.).

New section 95985(b)(1)(B)(3.) is added to specify that the invalidation timeframe for ARB offset credits is three years, if the requirements for a subsequent verification are met.

Rationale for Section 95985(b)(1)(B)(3.).

This section is needed to specify that if all the requirements for a subsequent verification are met, the statute of limitations will be reduced to three years.

Summary of Section 95985(b)(1)(B)(3.)(a.).

New section 95985(b)(1)(B)(3.)(a.) is added to specify that ARB offset credits issued under a COP may be invalidated for three years, if the requirements to reduce the statute of limitations are met.

Rationale for Section 95985(b)(1)(B)(3.)(a.).

This section is needed to clarify the process of reducing the invalidation timeframe, such that if the requirements to reduce the statute of limitations are met, the invalidation timeframe is reduced from eight years to three years, and the invalidation timeframe starts from the date that corresponds to the end of the Reporting Period from which the offset credits were issued.

Summary of Section 95985(b)(1)(B)(3.)(b.).

New section 95985(b)(1)(B)(3.)(b.) is added to specify that ARB offset credits issued for early action may be invalidated for three years, if the requirements to reduce the statute of limitations are met.

Rationale for Section 95985(b)(1)(B)(3.)(b.).

This section is needed to clarify the process of reducing the invalidation timeframe, such that if the requirements to reduce the statute of limitations are met, the invalidation timeframe is reduced from eight years to three years, and the invalidation timeframe starts from the date that the ARB offset credits are issued.

Summary of Section 95985(b)(1)(B)(4.).

New section 95985(b)(1)(B)(4.) is added to clarify the requirements that OPOs or APDs must meet to shorten the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed.

Rationale for Section 95985(b)(1)(B)(4.).

This change is needed to clarify the invalidation timeframe process, such that the requirements that OPOs and APDs for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments must meet to shorten the invalidation timeframe from eight years to three years, if the offset project is in the last year of a crediting period that will not be renewed.

Summary of Section 95985(b)(1)(B)(4.)(a.).

New section 95985(b)(1)(B)(4.)(a.) is added to require that a different verification body verify the last Offset Project Data Report to shorten the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed.

Rationale for Section 95985(b)(1)(B)(4.)(a.).

This section is needed to clarify the a second regulatory verification is required to reduce the statute of limitations for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed. To shorten the timeframe a second verification must be conducted by a different verification body to ensure that there are no inaccuracies or inconsistencies that were not found during the first full verification. A second full regulatory verification must be conducted for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a

crediting period that will not be renewed because the project will end and no other verification services will be conducted for the offset project.

Summary of Section 95985(b)(1)(B)(4.)(b.).

New section 95985(b)(1)(B)(4.)(b.) is added to require that the second regulatory verification conducted to shorten the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed, to occur within three years of ARB offset credit issuance. In addition, this section is added to require that the second verification result in a positive or qualified positive opinion.

Rationale for Section 95985(b)(1)(B)(4.)(b.).

This section is needed to require that the second verification to shorten the timeframe for invalidation for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed, to be conducted within three years of the issuance of ARB offset credits. Since a second verification would shorten the invalidation timeframe to three years, the verification needs to occur within those three years.

Summary of Section 95985(b)(1)(B)(4.)(b.)(i.).

New section 95985(b)(1)(B)(4.)(b.)(i.) is added to require the verification body to submit the documentation for the second verification conducted to reduce the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed, to an OPR.

Rationale for Section 95985(b)(1)(B)(4.)(b.)(i.).

This section is needed so that verification bodies know to submit their verification related materials to the OPR and not to ARB.

Summary of Section (b)(1)(B)(4.)(b.)(ii.).

New section 95985(b)(1)(B)(4.)(b.)(ii.) is added to require an OPR to review the second verification conducted to reduce the invalidation timeframe for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed, and submit a report to ARB with its findings.

Rationale for Section 95985(b)(1)(B)(4.)(b.)(ii.).

This section is needed to include a process for reviewing the second verification conducted to reduce the statute of limitations. The verification related materials will be sent to the OPR for review. This mirrors the process in place for the review of all other full offset verification services conducted in the program. In addition, the OPR must submit a report to ARB detailing its findings on the second verification. This will allow ARB to understand the OPR's review of the materials and its findings.

Summary of Section 95985(b)(1)(B)(4.)(b.)(iii.).

New section 95985(b)(1)(B)(4.)(b.)(iii.) is added to require that the OPR review the second verification conducted to reduce the statute of limitations for non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments, that are in the last year of a crediting period that will not be renewed within 45 calendar days of receiving it.

Rationale for Section 95985(b)(1)(B)(4.)(b.)(iii.).

This section is needed so the OPO and APD know when the review of the second verification will be completed. 45 calendar days will give the OPR enough time to review the offset verification statements and contact the verification body if there are any questions regarding the verification. This timeframe also ensures a timely process.

Summary of Section 95985(b)(1)(B)(4.)(b.)(iv.).

New section 95985(b)(1)(B)(4.)(b.)(iv.) is added to require the OPR to submit its report to ARB on the second verification conducted to reduce the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects that are in the last year of a crediting period that will not be renewed, within 15 working days of completing its review.

Rationale for Section 95985(b)(1)(B)(4.)(b.)(iv.).

This section is needed to give the OPR enough time to write its report to ARB and ensure a timely process.

Summary of Section 95985(b)(1)(B)(5.).

Some text in existing section 95985(b)(1)(B) is moved to new section 95985(b)(1)(B)(5.). New section 95985(b)(1)(B)(5.) is added and modified to identify the COPs and early action quantification methodologies for which a different verification body must conduct offset verification services for a subsequent Offset Project Data Report to reduce the invalidation timeframe.

Rationale for Section 95985(b)(1)(B)(5.).

This section is needed to include the list of COPs that and early action quantification methodologies for which a different verification body must conduct offset verification services for a subsequent Offset Project Data Report to reduce the invalidation timeframe. These include COPs and early action quantification methodologies for the following project types: U.S. forestry, urban forestry, livestock, and mine methane capture projects.

Summary of Section 95985(b)(1)(B)(5.)(a.).

Existing section 95985(b)(1)(B)(1.) is renumbered to new section 95985(b)(1)(B)(5.)(a.).

Rationale for Section 95985(b)(1)(B)(5.)(a.).

This change is needed to accommodate a new numbering structure in this section.

Summary of Section 95985(b)(1)(B)(5.)(b.).

Existing section 95985(b)(1)(B)(2.) is renumbered to new section 95985(b)(1)(B)(5.)(b.). Existing section 95985(b)(1)(B)(2.), 95985(b)(1)(B)(5.)(b.) was modified to accommodate the addition of the COP Mine Methane Capture Projects to this section.

Rationale for Section 95985(b)(1)(B)(5.)(b.).

This change is needed to accommodate the addition of the COP Mine Methane Capture Projects to this section.

Summary of Section 95985(b)(1)(B)(5.)(c.).

Existing section 95985(b)(1)(B)(3.) is renumbered to new section 95985(b)(1)(B)(5.)(c.). Existing section 95985(b)(1)(B)(3.), 95985(b)(1)(B)(5.)(c.) modified to accommodate the addition of the COP Mine Methane Capture Projects to this section.

Rationale for Section 95985(b)(1)(B)(5.)(c.).

This change is needed to accommodate the addition of the COP Mine Methane Capture Projects to this section.

Summary of Section 95985(b)(1)(B)(5.)(d.).

New section 95985(b)(1)(B)(5.)(d.) is added to include the potential COP Mine Methane Capture Projects Protocol which staff is proposing for Board adoption.

Rationale for Section 95985(b)(1)(B)(5.)(d.).

This change is necessary to support the potential adoption of new offset protocols by the Board.

Summary of Section 95985(c)(1).

Existing section 95985(c)(1) is modified to specify the significant figures to use when evaluating an overstatement of GHG reductions and GHG removal enhancements.

Rationale for Section 95985(c)(1).

This change is needed to be consistent with the threshold for overstatement of GHG reductions and GHG removal enhancements as defined in the definition for “offset material misstatement.” The use of 5.00 indicates that offset material misstatement should be evaluated to three significant figures.

Summary of Section 95985(c)(1)(A).

Existing section 95985(c)(1)(A) is modified to specify the significant figures to use when evaluating an overstatement of GHG reductions and GHG removal enhancements.

Rationale for Section 95985(c)(1)(A).

This change is needed to be consistent with the threshold for overstatement of GHG reductions and GHG removal enhancements as defined in the definition for “offset material misstatement.” The use of 5.00 indicates that offset material misstatement should be evaluated to three significant figures.

Summary of Section 95985(e)(2).

Existing section 95985(e)(2) is modified to fix the spelling for the word “entities.”

Rationale for Section 95985(e)(2).

This change is needed to fix the spelling error for the word “entities.”

Summary of Section 95985(g)(1)(A)(2.).

Existing section 95985(g)(1)(A)(2.) is modified to remove the reference to serial numbers for ARB offset credits.

Rationale for Section 95985(g)(1)(A)(2.).

This change is also needed to remove the reference to serial numbers because ARB will not be publicly releasing serial numbers for ARB offset credits.

Summary of Section 95985(h).

Existing section 95985(h) is modified to change the application of this section to non-sequestration and urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments.

Rationale for Section 95985(h).

This change is needed to apply the provisions in section 95985(h) urban forestry offset projects and U.S. forestry offset projects issued on or after the effective date of these amendments.

Summary of Section 95985(h)(1).

Existing section 95985(h)(1) is modified to apply this section to ARB offset credits issued to urban forest projects and ARB offset credits issued to U.S. forest projects after the effective date of these amendments.

Rationale for Section 95985(h)(1).

This change is needed to align the liability rules for invalidation for all project types to buyer liability. Staff has chosen the effective date of these amendments to give the market time to plan for the shift in liability for U.S. forest projects. This will require that after the effective date of these amendments, the buyer, or retiree, must replace any invalidated offset credits for all project types. This provision is necessary to ensure that purchasers and users of offset credits do their due diligence in seeking out high-quality offset credits. Under the existing requirements, a loop hole was created, where there was no way to ensure environmental integrity of the program if forestry offsets were used for compliance that were subsequently invalidated, were not replaced by the offset project operator. Also, ARB has clear enforcement authority over covered entities that will be using ARB offsets for compliance.

Summary of Section 95985(h)(1)(C)(2.).

Existing section 95985(h)(1)(C)(2.) is modified to include a reference so that the OPO knows how many ARB offset credits they must replace.

Rationale for Section 95985(h)(1)(C)(2.).

This change is needed to clarify that the OPO would need to replace ARB offset credits that are invalidated if the buyer, or retiree, is no longer in business. This will ensure that ARB can make the program whole, even if the buyer, or retiree, is out of business. This was always the intent of this provision and this change makes the language more clear.

Summary of Section 95985(h)(1)(C)(3.).

Existing section 95985(h)(1)(C)(3.) is modified to include a reference so that the OPO knows how many ARB offset credits they must replace.

Rationale for Section 95985(h)(1)(C)(3.).

This change is needed to clarify that the OPO would need to replace ARB offset credits that are invalidated if the buyer, or retiree, is no longer in business. This will ensure that ARB can make the program whole, if the buyer, or retiree, is out of business. This was always the intent of this provision and this change makes the language more clear.

Summary of Section 95985(h)(1)(D).

Existing section 95985(h)(1)(D) is modified to remove the reference to serial numbers for ARB offset credits.

Rationale for Section 95985(h)(1)(D).

This change is needed to remove the reference to serial numbers because ARB will not be publicly releasing serial numbers for ARB offset credits.

Summary of Section 95985(h)(1)(E).

Existing section 95985(g)(1)(E) is modified to remove the reference to serial numbers for ARB offset credits.

Rationale for Section 95985(h)(1)(E).

This change is also needed to remove the reference to serial numbers because ARB will not be publicly releasing serial numbers for ARB offset credits.

Summary of Section 95985(h)(2).

Existing section 95985(h)(2) is modified to apply this section to ARB offset credits issued to urban forest projects and ARB offset credits issued to U.S. forest projects after the effective date of these amendments.

Rationale for Section 95985(h)(2).

This change is needed to align the liability rules for invalidation for all project types to buyer liability. Staff has chosen the effective date of these amendments to give the market time to plan for the shift in liability for U.S. forest projects. This will require that after the effective date of these amendments, the buyer, or retiree, must replace any invalidated offset credits for all project types. This provision is necessary to ensure that

purchasers and users of offset credits do their due diligence in seeking out high-quality offset credits. Also, ARB has clear enforcement authority over covered entities that will be using ARB offsets for compliance.

Summary of Section 95985(h)(2)(B)(2.).

Existing section 95985(h)(2)(B)(2.) is modified to include a reference so that the OPO knows how many ARB offset credits they must replace.

Rationale for Section 95985(h)(2)(B)(2.).

This change is needed to clarify that the OPO would need to replace ARB offset credits that are invalidated if the buyer, or retiree, is no longer in business. This will ensure that ARB can make the program whole (preserve environmental integrity), even if the buyer, or retiree, is out of business. This was always the intent of this provision and this change makes the language more clear.

Summary of Section 95985(h)(2)(B)(3.).

Existing section 95985(h)(2)(B)(3.) is modified to include a reference so that the OPO knows how many ARB offset credits they must replace.

Rationale for Section 95985(h)(2)(B)(3.).

This change is needed to clarify that the OPO would need to replace ARB offset credits that are invalidated if the buyer, or retiree, is no longer in business. This will ensure that ARB can make the program whole (preserve environmental integrity), even if the buyer, or retiree, is out of business. This was always the intent of this provision and this change makes the language more clear.

Summary of Section 95985(i).

Existing section 95985(i) is modified to clarify that this section refers to U.S. forest projects and that the provisions in this section apply to ARB offset credits issued to U.S. forest projects prior to the effective date of these amendments .

Rationale for Section 95985(i).

This change is needed to clarify that this provision applies to U.S. forest projects and not urban forest projects. This change is also needed to clarify that this section applies to ARB offset credits issued to U.S. forest project prior to the effective date of these amendments. After the effective date of these amendments, the provisions in section 95985(h) apply to ARB offset credits issued to U.S. forest projects. This change is needed to align the liability rules for invalidation for all project types to buyer liability. This provision is necessary because under the current requirements, if a

covered entity retires a forestry ARB offset credit and then it gets invalidated, the forest landowner is responsible and the covered entity is still considered to be in compliance even if it does not have enough valid compliance instruments. By aligning the invalidation requirements for forestry with the existing invalidation requirements for other project types, entities are required to have enough valid compliance instruments to be considered in compliance with the regulation.

Summary of Section 95985(i)(1).

Existing section 95985(i)(1) is modified to clarify that this section refers to U.S. forest projects and that the provisions in this section apply to ARB offset credits issued to U.S. forest projects prior to the effective date of these amendments.

Rationale for Section 95985(i)(1).

This change is needed to clarify that this provision applies to U.S. forest projects and not urban forest projects. This change is also needed to clarify that this section applies to ARB offset credits issued to U.S. forest project prior to the effective date of these amendments. After the effective date of these amendments, the provisions in section 95985(h) apply to ARB offset credits issued to U.S. forest projects. This change is needed to align the liability rules for invalidation for all project types to buyer liability. Staff has chosen the effective date of these amendments to give the market time to plan for the shift in liability for U.S. forest projects. This will require that after the effective date of these amendments, the buyer, or retiree, must replace any invalidated offset credits for all project types. This provision is necessary to ensure that purchasers and users of offset credits do their due diligence in seeking out high-quality offset credits. Also, ARB has clear enforcement authority over covered entities that will be using ARB offsets for compliance.

Summary of Section 95985(i)(1)(A).

Existing section 95985(i)(1)(A) is modified to clarify that this section refers to U.S. forest projects.

Rationale for Section 95985(i)(1)(A).

This change is needed to clarify that this provision applies to U.S. forest projects and not urban forest projects.

Summary of Section 95985(i)(2).

Existing section 95985(i)(2) is modified to clarify that this section refers to U.S. forest projects.

Rationale for Section 95985(i)(2).

This change is needed to clarify that this provision applies to U.S. forest projects and not urban forest projects.

Section 95986. Executive Officer Approval Requirements for Offset Project Registries.

Summary of Section 95986(b).

Existing section 95986(b) is modified to clarify that an OPR must meet and maintain the requirements of this section.

Rationale for Section 95986(b).

This change is needed to clarify that once an OPR is approved, it must continue to meet the requirements upon which is was approved. This ensures that OPRs maintain the standards required by the Regulation over time.

Summary of Section 95986(c).

Existing section 95986(c) was removed from the Regulation.

Rationale for Section 95986(c).

This change is needed because OPRs may not be registered in CITSS.

Summary of Section 95986(d)(4).

Existing section 95986(d)(4) is modified to include a definition for the term "environmentally-focused market" to clarify the intent of this section.

Rationale for Section 95986(d)(4).

This change is needed to ensure that OPRs approved by ARB have demonstrated experience that will be needed to conduct registry services while operating as an OPR. This text also clarifies the experience of air districts that is relevant to demonstrating experience to apply as an OPR.

Summary of Section 95986(j).

Existing section 95986(j) is modified to clarify that the OPR must have at least two years of experience in areas related to registry services to be an approved OPR.

Rationale for Section 95986(j).

This change is needed to ensure that OPRs approved by ARB have demonstrated experience that will be needed to conduct registry services while operating as an OPR. The two years is consistent with the requirements in section 95986(d)(4).

Summary of Section 95986(l)(3).

Existing section 95986(l)(3) is modified to correct a spelling error.

Rationale for Section 95986(l)(3).

This change is needed to correct a spelling error for the word “extension.”

Summary of Section 95986(m).

New section 95986(m) is added to clarify that the approval requirements in section 95986 apply to a designated subdivision of the OPR.

Rationale for Section 95986(m).

This section is needed to clarify that all OPR approval requirements are applied at the designated subdivision level, if the applicant designates a subdivision of the organization to be approved as an OPR.

Summary of Section 95986(n).

New section 95986(n) is added to require that an OPR make itself available to ARB audit.

Rationale for Section 95986(n).

This section is needed to ensure that ARB has access to relevant materials while on the site of an audit.

Section 95987. Offset Project Registry Requirements.

Summary of Section 95987(b)(2).

Existing section 95987(b)(2) is modified to clarify that an OPR must make registry issuance information publicly available within 10 working days.

Rationale for Section 95987(b)(2).

This change is needed to clarify when the OPR must make the information listed in section 95987(b)(2) publicly available. This change is needed because the information

listed in section 95987(b)(2) will not be available at the time the Offset Verification Statement is issued as indicated in the original text.

Summary of Section 95987(b)(2)(E).

New section 95987(b)(2)(E) is added to clarify that an OPR must make the final Offset Project Data Report publicly available.

Rationale for Section 95987(b)(2)(E).

This section is needed to require the OPR to make the final Offset Project Data Report publicly available. This will allow the basis for the registry offset credit issuance to be more transparent, as the public will be able to see the OPO's or APD's assertions.

Summary of Section 95987(b)(2)(F).

Existing section 95987(b)(2)(E) is renumbered to section 95987(b)(2)(F)

Rationale for Section 95987(b)(2)(F).

This change is needed to accommodate additional provisions in this section.

Summary of Section 95987(d).

Existing section 95987(d) is modified to require the OPR to consult with ARB before giving guidance on the compliance offset program.

Rationale for Section 95987(d).

This change is needed to ensure that the OPRs are giving consistent and approved guidance. ARB is the only party that may interpret the Regulation and make guidance on the compliance offset program publicly available.

Summary of Section 95987(e).

Existing section 95987(e) is modified to only allow full offset verifications to count towards the OPR audit requirements.

Rationale for Section 95987(e).

This section is needed to clarify that only audits of full offset verifications are allowed to count towards the 10 percent annual audit requirements for OPRs. This clarification is needed so that OPRs do not use desk review audits or interim verifications towards meeting the 10 percent audit requirements.

Subarticle 14: Recognition of Compliance Instruments from Other Programs

Section 95990. Recognition of Early Action Offset Credits.

Summary of Section 95990(c)(3).

Existing section 95990(c)(3) is modified to move requirements from 95990(c)(3) to 95990(c)(3)(A) to add additional early action quantification methodologies for mine methane capture projects.

Rationale for Section 95990(c)(3).

This change is needed to include new potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(c)(3)(A).

New section 95990(c)(3)(A) is added to require that livestock, ODS, U.S. forestry, and urban forestry early action offset projects list with an EAOP by January 1, 2014.

Rationale for Section 95990(c)(3)(A).

This section is added to move the requirements that livestock, ODS, U.S. forestry, and urban forestry early action offset projects must list with an EAOP by January 1, 2014, from existing section 95990(c)(3) to this new section. These are not new requirements; however, they were moved to new section 95990(c)(3)(A) to accommodate additional requirements for potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(c)(3)(B).

New section 95990(c)(3)(B) is added to include listing requirements for potential early action quantification methodologies for mine methane capture projects which staff is proposing for Board adoption.

Rationale for Section 95990(c)(3)(B).

This section is added to allow mine methane capture early action offset projects to have a later listing date than the other project types for early action, since the protocol was added to the program must later than the others.

Summary of Section 95990(c)(5)(C).

Existing section 95990(c)(5)(C) is modified to accommodate additional provisions in this section for new potential early action quantification methodologies for mine methane capture projects.

Rationale for Section 95990(c)(5)(C).

This change is needed to accommodate additional provisions in this section for new potential early action quantification methodologies for mine methane capture projects.

Summary of Section 95990(c)(5)(D).

Existing section 95990(c)(5)(D) is modified to accommodate additional provisions in this section for new potential early action quantification methodologies for mine methane capture projects.

Rationale for Section 95990(c)(5)(D).

This change is needed to accommodate additional provisions in this section for new potential early action quantification methodologies for mine methane capture projects.

Summary of Section 95990(c)(5)(E).

New section 95990(c)(5)(D) is added to include the Verified Carbon Standard Revisions to ACM0008 to Include Pre-drainage of Methane from an Active Open Cast Mine as a Methane Emission Reduction Activity Methodology, v1.0 and Revisions to ACM0008 to Include Methane Capture and Destruction from Abandoned Coal Mines Methodology, v1.0 on the list of approved early action quantification methodologies. These methodologies have not yet been approved as staff is proposing them to the Board for adoption.

Rationale for Section 95990(c)(5)(E).

This change is needed to include the potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(d)(2)(B).

Existing section 95990(d)(2)(B) is modified to include requirements for parties that must register with ARB for potential mine methane capture early action offset projects.

Rationale for Section 95990(d)(2)(B).

This change is needed to include requirements that OPOs, APDs, and holders must meet if they are listing an early action offset project under the potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(e).

Existing section 95990(e) is modified to require that an OPO, APD, or holder(s) list an early action offset project before ARB reviews the conflicts of interest and verification information for the offset project.

Rationale for Section 95990(e).

This change is needed to require that an early action offset project is listed with ARB, before ARB will review any information related to conflicts of interest or desk reviews. This is needed so ARB has basic information related to the offset project before it reviews any other documentation. In addition, an OPO, APD, or holder(s) must list the project to signal to ARB that the offset project is coming into the compliance offset program before ARB will review any other documentation related to the transition of early action offset credits to ARB offset credits.

Summary of Section 95990(e)(1)(B)(2.).

Existing section 95990(e)(1)(B)(2.) is modified to include a reference to mine methane capture projects for which staff is proposing an early action quantification methodologies to the Board for adoption.

Rationale for Section 95990(e)(1)(B)(2.).

This change is needed to require that OPOs, APDs, and holders must submit the information in this section if they are listing an early action offset project under the potential early action quantification methodologies for mine methane capture projects which staff is proposing for Board adoption.

Summary of Section 95990(e)(1)(C).

Existing section 95990(e)(1)(C) is modified to accommodate additional provisions in this section.

Rationale for Section 95990(e)(1)(C).

This change is needed to accommodate new requirements added in new section (e)(1)(C)(2.).

Summary of Section 95990(e)(1)(C)(1.).

New section 95990(e)(1)(C)(1.) is added to accommodate additional provisions in this section and contains text previously in section 95990(e)(1)(C).

Rationale for Section 95990(e)(1)(C)(1.).

This change is needed to accommodate new requirements added in new section (e)(1)(C)(2.). The original text has not changed.

Summary of Section 95990(e)(1)(C)(2.).

New section 95990(e)(1)(C)(2.) is added to require holders to contact the OPO or APD of the project to be eligible to list the early action offset project.

Rationale for Section 95990(e)(1)(C)(2.).

This section is needed to clarify that if holder(s) do not get written permission from the OPO or APD to list the early action project, the holder(s) must show proof of the request to list the offset project to ARB and allow the OPO or APD 30 days to list the offset project themselves. This is intended to allow the holder(s) to list as long as they work with the OPO or APD up front. If the OPO or APD will not list the offset project themselves within a timely manner, ARB will allow the holder(s) to list the project on its own.

Summary of Section 95990(e)(2)(F).

Existing section 95990(e)(2)(F) is modified to require the OPO, APD, or holder(s) to identify the verification body's association with the project under the EAOP in the listing information.

Rationale for Section 95990(e)(2)(F).

This change is needed to clarify that the OPO, APD, or holder(s) must provide the information related to the verification bodies that conducted verification work under the EAOP. This is a necessary distinction because early action offset projects may have participated in voluntary programs other than the EAOP.

Summary of Section 95990(e)(2)(G).

New section 95990(e)(2)(G) is added to clarify that for ODS destruction early action offset projects each destruction event may be considered an individual project.

Rationale for Section 95990(e)(2)(G).

This section is needed to clarify that each reporting period for an ODS destruction early action offset project may be considered an individual project when an OPO, APD, or holder lists the early action offset project. This is consistent with the requirements for ODS destruction projects developed under the COP.

Summary of Section 95990(e)(3).

New section 95990(e)(3) is added to clarify that multiple Reporting Periods may be submitted simultaneously, but it is not required to include all Reporting Periods when listing early action offset projects.

Rationale for Section 95990(e)(3).

This section is needed to clarify that an OPO, APD, or holder(s) does not have to list all Reporting Periods for an early action offset project. OPOs or APDs may decide to leave some Reporting Periods in the voluntary market because of pre-existing contractual arrangements, or other reasons.

Summary of Section 95990(e)(4).

Existing section 95990(e)(3) is renumbered to new section 95990(e)(4). This section is modified to use the new term “early action reporting period,” defined in section 95802.

Rationale for Section 95990(e)(4).

This change is needed to accommodate new requirements in this section. This change is also needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(f)(1).

Existing section 95990(f)(1) is modified to require that the offset verification team include a project specific verifier on the verification team for desk reviews of early action offset projects.

Rationale for Section 95990(f)(1).

This section is needed to require that an offset project specific verifier reviews the offset project information during a desk review. This will ensure that the offset project information is reviewed by an ARB-accredited verifier that has specific expertise in the applicable offset project type.

Summary of Section 95990(f)(3).

Existing section 95990(f)(3) is modified to use the new term “early action reporting period,” defined in section 95802. This section is also modified to include a reference to new provisions added to section 95990(f), which allows OPOs, APDs, or holders to opt out of the desk review under certain circumstances. This section is also modified to specify that an early action desk review can only be conducted once for each reporting period.

Rationale for Section 95990(f)(3).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP. This change is also needed to reference additional requirements that were added to section 95990(f)(3). These requirements allow an OPO, APD, or holder to opt out of the desk review and go straight to a full verification of the early action offset project information if they cannot get access to the relevant information. This change is also needed to clarify that ARB will only accept one desk review finding for each reporting period. If multiple holders list the offset project, ARB will only accept the first desk review findings submitted. This desk review finding will determine whether the reporting period meets the requirements of the Regulation.

Summary of Section 95990(f)(3)(B).

Existing section 95990(f)(3)(B) is modified to require that the desk review verification body recalculate the data checks conducted by the original EAOP verification body.

Rationale for Section 95990(f)(3)(B).

This change is needed to clarify that the desk review verification team must recalculate the data checks that the original verification body calculated and ensure they were calculated correctly during the initial verification done under the EAOP. This is not a change to the Regulation, but a clarification. This is needed to ensure that the original verification body did their due diligence in the original verification and that the original verification body did not make any errors.

Summary of Section 95990(f)(3)(C).

Existing section 95990(f)(3)(C) is modified to use the new term “early action reporting period,” defined in section 95802. This change is also needed to require that the verification body submit a report to ARB detailing the findings of the early action desk review and to require the OPO, APD, or holder(s) to submit the early action reporting periods for listing before ARB will review the verification related information.

Rationale for Section 95990(f)(3)(C).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP. This change is also needed to require the desk review verification body to submit a report to ARB detailing how it came to its conclusion to submit a positive desk review finding. This will help ARB in reviewing the desk review verification body’s work during the desk review verification. This change is also needed to require an early action reporting period to be listed prior to the desk review findings being submitted. This will help ARB in tracking project documents by having a listing created before any other documents are received.

Summary of Section 95990(f)(3)(D).

Existing section 95990(f)(3)(D) is modified to use the new term “early action reporting period,” defined in section 95802.

Rationale for Section 95990(f)(3)(D).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(f)(3)(E).

Existing section 95990(f)(3)(E) is modified to use a new term defined in section 95802.

Rationale for Section 95990(f)(3)(E).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(f)(3)(F).

New section 95990(f)(3)(F) is added to include a process for ARB review of the desk review findings submitted by the verification body. If ARB does not agree with a positive finding submitted by the verification body, ARB will deny the findings and require a full verification be conducted. ARB will seek additional information from the desk review verification body and the party that listed the early action offset project, if needed, before making its determination.

Rationale for Section 95990(f)(3)(F).

This section is needed to provide a process for ARB to review the desk review findings submitted by the desk review verification body. This process will allow ARB to make the final decision as to whether the initial verification and the desk review meets the requirements of the Regulation, since ARB is the issuer of ARB offset credits.

Summary of Section 95990(f)(3)(G).

New section 95990(f)(3)(G) is added to include a process so the OPO, APD, or holder(s) may opt out of the desk review under certain circumstances.

Rationale for Section 95990(f)(3)(G).

This section is needed to allow OPOs, APDs, and holders to opt out of the desk review if the desk review verification body is unable to obtain the required information for the desk review from the original verification body. This will save the OPOs', APDs', and holders' time and costs associated with a desk review if they cannot obtain the information needed to conduct the desk review.

Summary of Section 95990(f)(4).

Existing section 95990(f)(4) is modified to use the new term "early action reporting period," defined in section 95802.

Rationale for Section 95990(f)(4).

This change is needed to include the new term "early action reporting period" to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(f)(6).

Existing section 95990(f)(6) is modified to correct terminology and references used in this section. This section is also modified to clarify that the OPO, APD or holder does not have to move forward with full offset verification, but the project would be ineligible for crediting.

Rationale for Section 95990(f)(6).

This change is needed to correct references and terminology in this section and make them consistent throughout the Regulation. This change is also needed to clarify that a full verification of an early action offset project is based on the original reporting information submitted to the EAOP. In a full verification an ARB-accredited verification body is no longer checking the work of another verification body, it is conducting its own

independent offset verification services. The full verification is based on the early action quantification methodology under which the OPO or APD reported to the EAOP. This change is also needed to clarify that a full verification is not required and the OPO, APD, or holder(s) may opt out of the compliance offset program and keep the early action offset credits in the voluntary market. However, if the desk review or information for the desk review is insufficient a full offset verification must be conducted to transition the early action offset credits into ARB offset credits.

Summary of Section 95990(f)(6)(E).

Existing section 95990(f)(6)(E) is modified to use the new term “early action reporting period,” defined in section 95802.

Rationale for Section 95990(f)(6)(E).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(f)(7).

Existing section 95990(f)(7) is modified to use the new term “early action reporting period,” defined in section 95802.

Rationale for Section 95990(f)(7).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(g).

Existing section 95990(g) is modified to use the new term “early action reporting period,” defined in section 95802. This section is also modified to clarify that conflict of interest self-evaluations for multiple early action reporting periods may be submitted together for an early action offset project. This section is also modified to require that the early action offset project listing be approved by ARB prior to submittal of a conflict of interest self-evaluation for the early action offset project.

Rationale for Section 95990(g).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP. This change is also needed to clarify that a conflict of interest self-

evaluation for an early action offset project may be submitted for multiple early action reporting periods. This clarifies that a verification body does not need to submit one self-evaluation for each early action reporting period associated with one early action offset project. This change is also needed clarify that the OPO, APD, or holder(s) must have the listing for the corresponding early action reporting periods for the early action offset project approved before the verification body may submit the self-evaluation. This gives ARB adequate time to process the listing information and allows ARB to collect basic information about the offset project before ARB must review other project documentation.

Summary of Section 95990(g)(2)(A).

Existing section 95990(g)(2)(A) is modified to clarify that the conflict of interest requirements must be assessed against the OPO, APD and any holder(s) that are transitioning early action offset credits to ARB offset credits.

Rationale for Section 95990(g)(2)(A).

This change is needed to clarify that if there is an APD, the verification body must assess conflict of interest against the APD. This change is also needed to clarify that if a holder has contracted with the verification body to conduct verification for an early action offset project, the verification body must assess conflict of interest against that holder. This is needed to ensure that there are no prior relationships that may cause a potential conflict of interest between the APD or holder, if applicable, and the verification body, its staff, and any subcontractors on the team.

Summary of Section 95990(g)(2)(B).

Existing section 95990(g(2)(B) is modified to use the new term “early action reporting period,” defined in section 95802.

Rationale for Section 95990(g)(2)(B).

This change is needed to include the new term “early action reporting period” to distinguish between Reporting Periods under a COP and reporting periods as defined by the EAOP.

Summary of Section 95990(h)(3).

Existing section 95990(h)(3) is modified to clarify that the verification under the EAOP must be completed by September 30, 2015 to be eligible for issuance of ARB offset credits in lieu of early action offset credits.

Rationale for Section 95990(h)(3).

This change is needed to ensure that the verification body conducting verification services under the EAOP has completed its services by September 30, 2015. This gives the original verification body enough time to verify any GHG reductions or GHG removal enhancements that were achieved through 2014.

Summary of Section 95990(h)(5)(B)(2.).

Existing section 95990(h)(5)(B)(2.) is modified to require OPOs, APDs, or holders to submit attestations for issuance of ARB offset credits for potential mine methane capture early action offset projects.

Rationale for Section 95990(h)(5)(B)(2.).

This change is needed to require that OPOs, APDs, and holders submit attestations to ARB for issuance of ARB offset credits, if they are seeking issuance of early action offset credits for GHG reductions achieved under the potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(h)(6)(A).

Existing section 95990(h)(6)(A) is modified to fix punctuation in the attestation language.

Rationale for Section 95990(h)(6)(A).

This change is needed to ensure correct punctuation is used in this provision.

Summary of Section 95990(h)(6)(B).

Existing section 95990(h)(6)(B) is modified to fix punctuation in the attestation language.

Rationale for Section 95990(h)(6)(B).

This change is needed to ensure correct punctuation is used in this provision.

Summary of Section 95990(i)(1)(D)(1.).

Existing section 95990(i)(1)(D)(1.) is modified to require that ARB notifies the EAOP of how many early action offset credits must be retired from its buffer account for ARB offset credits to be issued to an early action offset project.

Rationale for Section 95990(i)(1)(D)(1.).

This change is needed to clarify that ARB will notify the EAOP of how many ARB offset credits must be retired for purposes of ARB offset credit issuance and subsequent placement in the Forest Buffer Account (FBA). This process provides for the removal and retirement of early action offset credits in an EAOP's buffer account for reissuance as ARB offset credits and placement in ARB's FBA.

Summary of Section 95990(i)(1)(D)(1.)(a.).

Existing text in section 95990(i)(1)(D)(1.)(a.) is deleted and replaced by new text that requires early action offset credits to meet the requirements in section 95990 to qualify for placement in the FBA.

Rationale for Section 95990(i)(1)(D)(1.)(a.).

This section is needed to clarify that only early action offset credits that meet the requirements of section 95990 may be used to meet ARB's Forest Buffer Account requirements. Staff has removed the requirement that early action offset credits issued from 2001-2004 be placed into the FBA because these offset credits do not meet the requirements of section 95990.

Summary of Section 95990(i)(1)(D)(1.)(b.).

Existing text in section 95990(i)(1)(D)(1.)(b.) is deleted and replaced by new text which explains that if ARB offset credits were placed in the Forest Buffer Account in excess of what is required by these revisions, the ARB offset credits will be canceled so that they may be returned to the EAOP.

Rationale for Section 95990(i)(1)(D)(1.)(b.).

This section is needed to allow ARB to transfer offset credits back to the EAOP if those offset credits do not meet the requirements of section 95990, or ARB took more early action offset credits from the EAOP than was required. The original text in this section required the EAOP to transfer its entire buffer account contributions for an early action offset project to ARB, even if the offset credits did not meet the requirements of this section, or ARB did not need the entire amount of the buffer account contribution for that offset project. To ensure that ARB does not have to cover any losses from a reversal in the EAOP, ARB is refunding these credits back to the EAOP, so that the EAOP can manage these offset credits in its own buffer account.

Summary of Section 95990(i)(1)(D)(1.)(b.)(i.).

New section 95990(i)(1)(D)(1.)(b.)(i.) is added to specify that ARB will transfer offset credits back to the EAOP if they do not meet the requirements of section 95990.

Rationale for Section 95990(i)(1)(D)(1.)(b.)(i.).

This section is needed to refund the 2001-2004 vintage offset credits that ARB receives from the EAOP. These offset credits do not meet the requirements of the Regulation and, therefore, may not be used in the FBA.

Summary of Section 95990(i)(1)(D)(1.)(b.)(ii.).

New section 95990(i)(1)(D)(1.)(b.)(ii.) is added to specify that early action offset credits taken from the EAOP's buffer account in excess of the number required by these revisions will be returned to the EAOP.

Rationale for Section 95990(i)(1)(D)(1.)(b.)(ii.).

This section is needed to refund early action offset credits to the EAOP in the cases where ARB required the EAOP to transfer more buffer pool credits than needed to cover the ARB offset credits issued for that offset project.

Summary of Section 95990(i)(1)(D)(2.).

Existing section 95990(i)(1)(D)(2.) is modified to include a calculation that quantifies how many ARB offset credits must be contributed to ARB's FBA.

Rationale for Section 95990(i)(1)(D)(2.).

This section is needed to clarify the number of ARB offset credits that ARB will require to be placed in the FBA when early action offset credits are transitioned to ARB offset credits for forest offset projects. This will make the ARB process for determining this amount more transparent to participants in the program.

Summary of Section 95990(i)(1)(D)(2.)(a.).

New section 95990(i)(1)(D)(2.)(a.) is added to clarify that ARB will calculate the FBA contribution for an early action reporting period by using the requirements in the COP for U.S. forest projects.

Rationale for Section 95990(i)(1)(D)(2.)(a.).

This section is needed to clarify that ARB will use the reversal risk rating in the U.S. Forest Projects COP to calculate the number of ARB offset credits that must be placed

into ARB's FBA. This is needed to ensure that ARB's FBA has adequate supply in the case of an unintentional reversal, and to ensure that all forest offset projects in the compliance offset program contribute an appropriate and proportionate amount of ARB offset credits to the FBA.

Summary of Section 95990(i)(1)(D)(2.)(b.).

New section 95990(i)(1)(D)(2.)(b.) is added to clarify which values of risk that ARB will use to calculate the reversal risk rating for the FBA contribution.

Rationale for Section 95990(i)(1)(D)(2.)(b.).

This section is needed to clarify that ARB will use the maximum value for each risk category that is calculated in the reversal risk rating in the COP, unless during the original verification, the verification body reviewed the risk category and made a determination for that category that would lower the risk rating for that category. This will ensure that the reversal risk rating is applied consistently between early action offset projects and compliance offset projects.

Summary of Section 95990(i)(1)(D)(2.)(c.).

New section 95990(i)(1)(D)(2.)(c.) is added to clarify that qualified conservation easements may not apply retroactively to early action offset projects to reduce the reversal risk rating.

Rationale for Section 95990(i)(1)(D)(2.)(c.).

This section is needed to clarify that a qualified conservation easement entered into after the original verification of the GHG reductions and GHG removal enhancements may not be applied to reduce the reversal risk rating retroactively. This is needed because a qualified conservation easement cannot be retroactively applied because it does not exist in the early action quantification methodologies approved for forest early action offset projects. This is also needed to allow the qualified conservation easement to be used to reduce the reversal risk rating once the offset project transitions to the COP.

Summary of Section 95990(i)(1)(D)(3.).

Existing section 95990(i)(1)(D)(3.) is modified to clarify how many ARB offset credits will be issued to the OPO, APD, or holder(s) for forest early action offset projects after the FBA contribution is calculated.

Rationale for Section 95990(i)(1)(D)(3.).

This change is needed to clarify how many ARB offset credits will be issued to the OPO, APD, or holder(s) once ARB has calculated the FBA contribution required for the early action reporting period. This section provides a transparent calculation for how ARB will determine the issuance amount to forest offset projects.

Summary of Section 95990(i)(1)(D)(3.)(a.).

Existing section 95990(i)(1)(D)(3.)(a.) is modified to include a calculation to quantify how many ARB offset credits will be issued to the OPO, APD, or holder(s) for a forest early action offset project once ARB has calculated the FBA contribution required for the early action reporting period. The equation is applied if no early action offset credits have been retired from the EAOP's buffer account, and the risk rating in the COP is less than or equal to the risk rating calculated by the EAOP.

Rationale for Section 95990(i)(1)(D)(3.)(a.).

This change is needed to clarify how many ARB offset credits will be issued to the OPO, APD, or holder(s) if no early action offset credits have been retired from the EAOP's buffer account, and the risk rating in the COP is less than or equal to the risk rating calculated by the EAOP. If these criteria are met then ARB will issue one ARB offset credit for each early action offset credit being transitioned. In this case the contribution being transferred from the EAOP's buffer account is sufficient to cover the amount needed to meet the FBA contribution requirements in the Regulation, and no additional ARB offset credits must be deducted from the OPO, APD, or holder(s) issuance request.

Summary of Section 95990(i)(1)(D)(3.)(a.)(i.).

New section 95990(i)(1)(D)(3.)(a.)(i.) is added to include a calculation to quantify how many early action offset credits the EAOP must retire from its buffer account.

Rationale for Section 95990(i)(1)(D)(3.)(a.)(i.).

This section is needed to clarify how many early action offset credits must be retired by the EAOP once ARB calculates the required FBA contribution. This amount depends on the number of ARB offset credits that the OPO, APD, or holder(s) is seeking issuance of.

Summary of Section 95990(i)(1)(D)(3.)(a.)(ii.).

New section 95990(i)(1)(D)(3.)(a.)(ii.) is added to include a calculation to quantify how many ARB offset credits the OPO, APD, or holder(s) will receive in a Holding Account after ARB has calculated the FBA contribution.

Rationale for Section 95990(i)(1)(D)(3.)(a.)(ii.).

This section is needed to clarify how many ARB offset credits ARB will issue into the OPO's, APD's, or holder'(s) Holding Account once ARB calculates the required FBA contribution. This provides the OPO, APD, and holder(s) transparency by providing the process that ARB uses to determination how many ARB offset credits the OPO, APD, and holder(s) will receive.

Summary of Section 95990(i)(1)(D)(3.)(b.).

Existing section 95990(i)(1)(D)(3.)(b.) is modified to include a calculation to quantify how many ARB offset credits will be issued to the OPO, APD, or holder(s) for a forest early action offset project once ARB has calculated the FBA contribution required for the early action reporting period. The equation is applied if no early action offset credits have been retired from the EAOP's buffer account, and the risk rating in the COP is greater than the risk rating calculated by the EAOP.

Rationale for Section 95990(i)(1)(D)(3.)(b.).

This change is needed to clarify how many ARB offset credits will be issued to the OPO, APD, or holder(s) if no early action offset credits have been retired from the EAOP's buffer account, and the risk rating in the COP is greater than the risk rating calculated by the EAOP. If these criteria are met then ARB will issue ARB offset credits in the amount calculated pursuant to the equation in this section. In this case the contribution being transferred from the EAOP's buffer account is insufficient to cover the amount needed to meet the FBA contribution requirements in the Regulation and ARB must deduct ARB offset credits from the amount issued to the OPO, APD, or holder(s), in an amount to cover the difference.

Summary of Section 95990(i)(1)(D)(3.)(b.)(i.).

New section 95990(i)(1)(D)(3.)(b.)(i.) is added to include a calculation to quantify how many early action offset credits the EAOP must retire from its buffer account.

Rationale for Section 95990(i)(1)(D)(3.)(b.)(i.).

This section is needed to clarify how many early action offset credits must be retired by the EAOP once ARB calculates the required FBA contribution. This amount depends

on the number of ARB offset credits for which the OPO, APD, or holder(s) is seeking issuance.

Summary of Section 95990(i)(1)(D)(3.)(b.)(ii.).

New section 95990(i)(1)(D)(3.)(b.)(ii.) is added to include a calculation to quantify how many ARB offset credits the OPO, APD, or holder(s) will receive in a Holding Account after ARB has calculated the FBA contribution.

Rationale for Section 95990(i)(1)(D)(3.)(b.)(ii.).

This section is needed to clarify how many ARB offset credits ARB will issue into the OPO, APD, or holder(s) Holding Account once ARB calculates the required FBA contribution. This provides the OPO, APD, and holder(s) transparency by providing the process that ARB uses to determination how many ARB offset credits the OPO, APD, and holder(s) will receive.

Summary of Section 95990(i)(1)(D)(3.)(c.).

New section 95990(i)(1)(D)(3.)(c.) is added to include a calculation to quantify how many ARB offset credits will be issued to the OPO, APD, or holder(s) for a forest early action offset project once ARB has calculated the FBA contribution required for the early action reporting period. The equation is applied if early action offset credits have been retired from the EAOP's buffer account. This calculation is applied regardless of whether the reversal risk rating is equivalent under the EAOP and the COP.

Rationale for Section 95990(i)(1)(D)(3.)(c.).

This section is needed to clarify how many ARB offset credits will be issued to the OPO, APD, or holder(s) if early action offset credits have been retired from the EAOP's buffer account for reversals. If early action offset credits have been retired from the EAOP's buffer account then ARB will issue ARB offset credits in the amount calculated pursuant to the equation in this section. In this case the contribution being transferred from the EAOP's buffer account is insufficient to cover the amount needed to meet the FBA contribution requirements and ARB must deduct ARB offset credits from the amount issued to the OPO, APD, or holder(s), in an amount to cover the difference.

Summary of Section 95990(i)(1)(D)(3.)(c.)(i.).

New section 95990(i)(1)(D)(3.)(c.)(i.) is added to include a calculation to quantify how many early action offset credits the EAOP must retire from its buffer account.

Rationale for Section 95990(i)(1)(D)(3.)(c.)(i.).

This section is needed to clarify how many early action offset credits must be retired by the EAOP once ARB calculates the required FBA contribution. This amount depends on the number of ARB offset credits for which the OPO, APD, or holder(s) is seeking issuance.

Summary of Section 95990(i)(1)(D)(3.)(c.)(ii.).

New section 95990(i)(1)(D)(3.)(c.)(ii.) is added to include a calculation to quantify how many total ARB offset credits will be issued for the early action reporting period once ARB has calculated the required FBA contribution.

Rationale for Section 95990(i)(1)(D)(3.)(c.)(ii.).

This section is added to clarify how many total ARB offset credits ARB will issue for an early action reporting period if early action offset credits have been retired from the EAOP's buffer account. The total amount includes ARB offset credits that will be placed into the OPO's, APD's, or holder(s) Holding Account, and ARB offset credits that will be placed into the FBA account to account for the early action offset credits that cannot be transferred because they have already been retired.

Summary of Section 95990(i)(1)(D)(3.)(c.)(iii.).

New section 95990(i)(1)(D)(3.)(c.)(iii.) is added to include a calculation to quantify how many ARB offset credits the OPO, APD, or holder(s) will receive in a Holding Account after ARB has calculated the FBA contribution.

Rationale for Section 95990(i)(1)(D)(3.)(c.)(iii.).

This section is needed to clarify how many ARB offset credits ARB will issue into the OPO, APD, or holder(s) Holding Account once ARB calculates the required FBA contribution. This provides the OPO, APD, and holder(s) transparency by providing the process that ARB uses to determination how many ARB offset credits the OPO, APD, and holder(s) will receive.

Summary of Section 95990(i)(1)(D)(3.)(d.).

New section 95990(i)(1)(D)(3.)(d.) is added to require that EAOPs show proof of early action offset credit retirement upon ARB's request.

Rationale for Section 95990(i)(1)(D)(3.)(d.).

This section is needed to require that an EAOP provide proof to ARB that early action offset credits are retired prior to ARB's issuance of ARB offset credits for the same GHG

reductions and GHG removal enhancements. This ensures that offset credits are not issued for the same GHG reductions or GHG removal enhancements in both programs.

Summary of Section 95990(i)(1)(D)(4.).

Existing section 95990(i)(1)(D)(4.) is deleted. Existing section 95990(i)(1)(D)(5.) is renumbered to new section 95990(i)(1)(D)(4.). No changes were made to the text in this section.

Rationale for Section 95990(i)(1)(D)(4.).

This change is needed because existing section 95990(i)(1)(D)(4.) was deleted, which caused a renumbering of this section.

Summary of Section 95990(i)(1)(D)(5.).

Existing section 95990(i)(1)(D)(6.) is renumbered to new section 95990(i)(1)(D)(5.).

Rationale for Section 95990(i)(1)(D)(5.).

This change is needed because existing section 95990(i)(1)(D)(4.) was deleted, which caused a renumbering of this section.

Summary of Section 95990(i)(1)(E).

New section 95990(i)(1)(E) is added to include requirements for how many ARB offset credits will be issued for potential mine methane capture early action offset projects.

Rationale for Section 95990(i)(1)(E).

This change is needed to include requirements that specify how many early action offset credits will be issued for potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(i)(1)(F).

New section 95990(i)(1)(E) is added to include requirements for how many ARB offset credits will be issued for early action offset credits generated under the Verified Carbon Standard Revisions to ACM0008 to Include Pre-drainage of Methane from an Active Open Cast Mine as a Methane Emission Reduction Activity Methodology, v1.0 and Revisions to ACM0008 to Include Methane Capture and Destruction from Abandoned Coal Mines Methodology, v1.0 .

Rationale for Section 95990(i)(1)(F).

This change is needed to include requirements that specify how many early action offset credits will be issued for potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption.

Summary of Section 95990(i)(1)(F)(1).

New section 95990(i)(1)(E)(1) is added to specify that one ARB offset credit will be issued for each early action offset credit if the early action reporting period does not take credit for avoided emissions from the use of the captured mine methane

Rationale for Section 95990(i)(1)(F)(1).

This change is needed to include requirements that specify how many early action offset credits will be issued for potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption. It is appropriate to credit on a one to one basis if avoided emissions are not account for in the reporting period.

Summary of Section 95990(i)(1)(F)(2).

New section 95990(i)(1)(E)(2) is added to specify that no ARB offset credits will be issued for early action reporting periods that take credit for avoided emissions from the use of the captured mine methane

Rationale for Section 95990(i)(1)(F)(2).

This change is needed to include requirements that specify how many early action offset credits will be issued for potential early action quantification methodologies for mine methane capture projects, which staff is proposing for Board adoption. It is appropriate to not credit the reporting periods that take credit for avoided emissions because it is policy not to credit avoided emissions from covered sectors such as electricity and fuel because they would be covered in California and ineligible for offset credits .

Summary of Section 95990(i)(1)(F)(2)(a).

Existing section 95990(i)(1)(F)(2.)(a.) is modified to correct a section reference. This section is also modified to clarify that if ARB offset credits are issued under section 95990(i)(1)(F)(1.), the ARB offset credits will issued to the OPO or APD.

Rationale for Section 95990(i)(1)(F)(2)(a).

This change is needed because new section 95990(i)(1)(E) was added, which caused references to other provisions in this section to change. This change is also needed to clarify that if any additional ARB offset credits are issued under section 95990(i)(1)(F)(1.), the ARB offset credits will issued to the OPO or APD, and not holders.

Summary of Section 95990(i)(1)(F)(2)(b).

Existing section 95990(i)(1)(F)(2.)(b.) is modified to correct a section reference.

Rationale for Section 95990(i)(1)(F)(2)(b).

This change is needed because new section 95990(i)(1)(E) was added, which caused references to other provisions in this section to change.

Summary of Section 95990(i)(1)(F)(3).

New section 95990(i)(1)(F)(3.) is added to clarify that this section does not apply to holders.

Rationale for Section 95990(i)(1)(F)(3).

This section is needed to clarify that this section does not apply to holders of early action offset credits, because the additional sequestration calculated is applied at the offset project level, and the OPO or APD is the only party that may have claims to those ARB offset credits, as they are not owned by any holders.

Summary of Section 95990(i)(1)(G).

Existing section 95990(i)(1)(E) is renumbered to new section 95990(i)(1)(F).

Rationale for Section 95990(i)(1)(G).

This change is needed because new section 95990(i)(1)(E) was added, which caused a renumbering of this section.

Summary of Section 95990(i)(3).

Existing section 95990(i)(3) is modified to include consistent terminology throughout this section.

Rationale for Section 95990(i)(3).

This change is needed to ensure that consistent terminology is used throughout this section for permanently retiring or canceling early action offset credits.

Summary of Section 95990(i)(4).

Existing section 95990(i)(4) is modified to include consistent terminology throughout this section.

Rationale for Section 95990(i)(4).

This change is needed to ensure that consistent terminology is used throughout this section for the parties that are transitioning early action offset credits to ARB offset credits.

Summary of Section 95990(j)(1).

Existing section 95990(j)(1) is modified to apply ARB offset credit transfer rules to ARB offset credits issued for additional sequestration credited pursuant to section 95990(i)(1)(F).

Rationale for Section 95990(j)(1).

This change is needed to make a distinction between transferring ARB offset credits issued pursuant to sections 95990(i)(1)(A) through (E), and ARB offset credits issued pursuant to section 95990(i)(1)(F) for additional sequestration from transitioning the baseline for early action forest projects using version 2.1. The requirements for transferring ARB offset credits issued for additional sequestration crediting to Holding Accounts are described in this section and these requirements may only be applied to OPOs and APDs, and not holders.

Summary of Section 95990(j)(2).

Existing section 95990(j)(2) is modified to apply the ARB offset credit transfer rules to ARB offset credits issued according to sections 95990(i)(1)(A) through (E).

Rationale for Section 95990(j)(2).

This change is needed to make a distinction between ARB offset credits issued pursuant to sections 95990(i)(1)(A) through (E), and ARB offset credits issued pursuant to section 95990(i)(1)(F) for additional sequestration from transitioning the baseline for early action forest projects using version 2.1. The requirements for transferring ARB offset credits to Holding Accounts for sections 95990(i)(1)(A) through (E) are described in this section and these requirements may be applied to OPOs, APDs, and holder(s).

The requirements for transferring ARB offset credits issued for additional sequestration from transitioning the baseline for early action forest projects using version 2.1 to Holding Accounts are described in section 95990(j)(1) and the requirements may only be applied to OPOs and APDs, and not holders.

Summary of Section 95990(j)(2)(A).

New section 95990(j)(2)(A) is added to require that OPOs, APDs, and holder(s) must submit an issuance request for ARB offset credits to be transferred into a Holding Account.

Rationale for Section 95990(j)(2)(A).

This section is needed to clarify the requirements that OPOs, APDs, and holder(s) must meet when requesting issuance of ARB offset credits. This section is needed to ensure that the OPO and APD submit the correct information to ARB for the issuance of ARB offset credits. This change is also needed to ensure that the OPOs, APDs, and holder(s) requesting issuance of ARB offset credits actually own early action offset credits from the early action reporting period for which they are seeking issuance of ARB offset credits.

Summary of Section 95990(j)(2)(B).

New section 95990(j)(2)(B) is added to require parties receiving ARB offset credits to be registered with ARB.

Rationale for Section 95990(j)(2)(B).

This section is needed because a party must be registered with ARB and have an account in CITSS before it may receive any ARB offset credits into a Holding Account.

Summary of Section 95990(j)(2)(C).

New section 95990(j)(2)(C) is added to require ARB to make information related to early action offset credit eligibility publicly available.

Rationale for Section 95990(j)(2)(C).

This section is needed to give program participants information related to the eligibility of early action offset credits for the compliance offset program. Once ARB makes information related to the eligibility of early action offset credits publicly available on its website, market participants will know whether offset credits they hold may also be eligible to be brought into the program.

Summary of Section 95990(k)(1).

Existing section 95990(k)(1) is modified to require that an offset project must be listed under a COP by February 28, 2015, in order to eligible to transition from an early action offset project to a COP.

Rationale for Section 95990(k)(1).

This change is needed to clarify that an OPO or APD must list the offset project under a COP by February 28, 2015 in order to transition an early action offset project to a COP. This section now clarifies that listing is achieved by submitting the listing information in section 95975 to ARB or an OPR and having that information approved.

Summary of Section 95990(k)(1)(C).

Existing section 95990(k)(1)(C) is modified to correct the name of the COP for ODS destruction projects.

Rationale for Section 95990(k)(1)(C).

This change is needed to ensure that the name of the COP for ODS destruction projects in this section is correct.

Summary of Section 95990(k)(1)(D).

Existing section 95990(k)(1)(D) is modified to clarify that forest offset projects developed under version 2.1 of the early action forest quantification methodology must calculate a baseline from offset project commencement under the EAOP through project transition, plus 100 years. This section is also modified to correct punctuation.

Rationale for Section 95990(k)(1)(D).

This change is needed to clarify that an OPO or APD must calculate the baseline for a forest early action offset project originally developed under version 2.1 when it transitions to a COP by recalculating the baseline based on the requirements in the COP from the time of offset project commencement under the EAOP, to the time it transitions to the COP, plus one hundred years. This change is needed to clarify the intent of the Regulation. This change is also needed to correct punctuation in this section.

Summary of Section 95990(k)(1)(E).

Existing section 95990(k)(1)(E) is modified to correct punctuation.

Rationale for Section 95990(k)(1)(E).

This change is needed to correct punctuation in this section.

Summary of Section 95990(k)(1)(F).

New section 95990(k)(1)(F) is added to require that when an OPO or APD is transitioning an early action offset project using the potential early action mine methane capture quantification methodologies that staff is proposing to be adopted by the Board, they must use the proposed Compliance Offset Protocol Mine Methane Capture Projects Protocol.

Rationale for Section 95990(k)(1)(F).

This section is needed to require OPOs and APDs of early action offset projects developed under the potential early action mine methane capture quantification methodology to use the staff-proposed ARB COP for mine methane capture projects.

Summary of Section 95990(k)(3)(C).

Existing section 95990(k)(3)(C) is modified to require that an Offset Verification Statement is submitted to the EAOP to complete the verification requirements for transitioning to a COP.

Rationale for Section 95990(k)(3)(C).

This change is needed to clarify that an Offset Verification Statement must be submitted to an EAOP to complete verification and qualify to transition to a COP. Verification in this section refers to the verification performed under the EAOP.

Summary of Section 95990(k)(5).

New section 95990(k)(5) is added to require that all ARB offset credits issued for early action be issued by ARB by August 31, 2016.

Rationale for Section 95990(k)(5).

This section is needed to ensure that all actions to transition early action offset credits to ARB offset credits are completed by August 31, 2016. This will give early action participants enough time to complete all transition activities and gives ARB certainty for when crediting under the early action program component of the Regulation will end.

Summary of Section 95990(l)(1).

Existing section 95990(l)(1) is modified to apply the invalidation requirements in this section to ARB offset credits issued to urban forest projects and ARB offset credits issued to U.S. forest projects after the effective date of these amendments.

Rationale for Section 95990(l)(1).

This change is needed to streamline the requirements for invalidation of ARB offset credits issued in lieu of early action offset credits, with the requirements in section 95985.

Summary of Section 95990(l)(1)(A).

Existing section 95990(l)(1)(A) is modified to remove the requirement that an OPO or APD must be issued ARB offset credits for the invalidation rules of this section to apply.

Rationale for Section 95990(l)(1)(A).

This change is needed because an OPO or APD may not be issued ARB offset credits as they may request the ARB offset credits to be issued to another third-party.

Summary of Section 95990(l)(2).

Existing section 95990(l)(2) is modified to clarify that this section refers to U.S. forest projects and that the provisions in this section apply to the invalidation requirements of ARB offset credits issued to U.S. forest projects prior to the effective date of these amendments.

Rationale for Section 95990(l)(2).

This change is needed to streamline the requirements for invalidation of ARB offset credits issued in lieu of early action offset credits, with the requirements in section 95985.

Summary of Section 95990(l)(3).

New section 95990(l)(3) is added to include requirements that an OPO or APD must meet to shorten the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects.

Rationale for Section 95990(l)(3).

This section is added in response to stakeholder comments that additional scenarios are needed to allow offset projects that originate as early action to reduce the invalidation timeframe.

Summary of Section 95990(l)(3)(A).

New section 95990(l)(3)(A) is added to include requirements that an OPO or APD must meet for shortening the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that transition to a COP.

Rationale for Section 95990(l)(3)(A).

This section is added in response to stakeholder comments that additional scenarios are needed to allow offset projects that originate as early action to reduce the invalidation timeframe.

Summary of Section 95990(l)(3)(A)(1.).

New section 95990(l)(3)(A)(1.) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects that originate as early action.

Rationale for Section 95990(l)(3)(A)(1.).

This section is needed to clarify the requirements to shorten the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects. An ARB-accredited verification body must conduct offset verification services for a subsequent Offset Project Data Report under the COP. Because these project types are continuous projects, with periodic verification requirements, a subsequent verification by an ARB-accredited verification body will ensure there are no inaccuracies or inconsistencies not found in the previous verification.

Summary of Section 95990(l)(3)(A)(2.).

New section 95990(l)(3)(A)(2.) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects that originate as early action.

Rationale for Section 95990(l)(3)(A)(2.).

This section is needed to require that the subsequent verification be conducted by an ARB-accredited verification body that is a different verification body than has verified the early action offset project before. Because these project types are continuous projects,

with periodic verification requirements, a rotation of verification bodies will ensure that there are no inaccuracies or inconsistencies not found in the previous verification.

Summary of Section 95990(l)(3)(A)(3.).

New section 95990(l)(3)(A)(3.) is added to require that the second verification body must conduct offset verification services for a subsequent Offset Project Data Report to shorten the invalidation timeframe for U.S. forestry, urban forestry, livestock, and mine methane capture projects that originated as early action, within three years of ARB offset credit issuance.

Rationale for Section 95990(l)(3)(A)(3.).

This section is needed to require that the second verification body conduct offset verification services for a subsequent Offset Project Data Report to shorten the timeframe for invalidation for U.S. forestry, urban forestry, livestock, and mine methane capture projects within three years of the issuance of ARB offset credits. Since the invalidation timeframe would be shortened to three years, the subsequent verification needs to occur within those three years.

Summary of Section 95990(l)(3)(B).

New section 95990(l)(3)(B) is added to include requirements that an OPO or APD must meet for shortening the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that do not transition to a COP.

Rationale for Section 95990(l)(3)(B).

This section is added in response to stakeholder comments that additional scenarios are needed for offset projects that originate as early action to reduce the invalidation timeframe. OPOs and APDs for continuous projects have communicated to ARB that they do not want to wait until they transition to a COP to shorten the invalidation timeframe, which is why staff has added this additional pathway to shorten that timeframe.

Summary of Section 95990(l)(3)(B)(1.).

New section 95990(l)(3)(B)(1.) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that originate as early action, and do not transition to a COP.

Rationale for Section 95990(l)(3)(B)(1.).

This section is needed to clarify that to shorten the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that originate as early action and do not transition to a COP, a second verification must be conducted of the original reporting information by a different verification body to ensure that ARB offset credits should have been issued and to ensure there are no inaccuracies or inconsistencies not found in the first verification. A second full regulatory verification must be conducted for projects that will not, or have not yet, transitioned to a COP so that another verification body reviews the work of the OPO or APD.

Summary of Section 95990(l)(3)(B)(2.).

New section 95990(l)(3)(B)(2.) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that originate as early action and do not transition to a COP.

Rationale for Section 95990(l)(3)(B)(2.).

This section is needed to require that the subsequent verification be conducted by an ARB-accredited verification body that is a different verification body than has verified the early action offset project before. A second full regulatory verification must be conducted for these projects that have not yet transitioned another verification body must review the work of the previous verification body. The verification body must be different to ensure that there are no inaccuracies or inconsistencies not found in the previous verification.

Summary of Section 95990(l)(3)(B)(3.).

New section 95990(l)(3)(B)(3.) is added to require that the second verification body must conduct offset verification services to shorten the invalidation timeframe for ODS destruction projects that originated as early action, within three years of ARB offset credit issuance.

Rationale for Section 95990(l)(3)(B)(3.).

This section is needed to require that the second verification body conduct offset verification services for the same Offset Project Data Report to shorten the timeframe for invalidation for U.S. forestry, urban forestry projects, livestock, and potential mine methane capture projects that originate as early action and do not transition to a COP within three years of the issuance of ARB offset credits. Since the invalidation

timeframe would be shortened to three years, the subsequent verification needs to occur within three years. This section also requires that a site visit be conducted. This is a requirement for all full offset verification services under the Regulation.

Summary of Section 95990(l)(4).

New section 95990(l)(4) is added to include requirements that an OPO or APD must meet for shortening the invalidation timeframe for ODS destruction projects that originate as early action.

Rationale for Section 95990(l)(4).

This section is added to streamline the requirements for invalidation of ARB offset credits for ODS destruction projects with those in section 95985.

Summary of Section 95990(l)(4)(A).

New section 95990(l)(4)(A) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for ODS destruction projects that originate as early action.

Rationale for Section 95990(l)(4)(A).

This section is needed to clarify that to shorten the invalidation timeframe for ODS projects that originate as early action, a second verification must be conducted of the original reporting information by a different verification body to ensure that ARB offset credits should have been issued and to ensure there are no inaccuracies or inconsistencies not found in the first verification. A second full regulatory verification must be conducted for ODS projects because they are not continuous projects and conclude after the initial verification. Without a second full verification there is not another verification body that reviews any information for the project, as is the case for the other project types that are continuous projects and have periodic verification.

Summary of Section 95990(l)(4)(B).

New section 95990(l)(4)(B) is added to clarify the verification requirements that must be met to shorten the invalidation timeframe for ODS destruction projects that originate as early action.

Rationale for Section 95990(l)(4)(B).

This section is needed to require that the subsequent verification be conducted by an ARB-accredited verification body that is a different verification body than has verified the early action offset project before. A second full regulatory verification must be

conducted for ODS projects because they are not continuous projects and conclude after the initial verification. Without a second full verification there is not another verification body that reviews any information for the project, as is the case for the other project types that are continuous projects and have periodic verification.

Summary of Section 95990(l)(4)(C).

New section 95990(l)(4)(C) is added to require that the second verification body must conduct offset verification services to shorten the invalidation timeframe for ODS destruction projects that originated as early action, within three years of ARB offset credit issuance.

Rationale for Section 95990(l)(4)(C).

This section is needed to require that the second verification body conduct offset verification services for the same Offset Project Data Report to shorten the timeframe for invalidation for ODS destruction projects within three years of the issuance of ARB offset credits. Since the invalidation timeframe would be shortened to three years, the subsequent verification needs to occur within three years.

Summary of Section 95990(l)(5).

New section 95990(l)(5) is added to clarify that the invalidation timeframe begins when ARB offset credits are issued if the ARB offset credits were issued in lieu of early action offset credits.

Rationale for Section 95990(l)(5).

This section is needed to specify that the invalidation timeframe starts from the date that the ARB offset credits are issued if the ARB offset credits were issued in lieu of early action offset credits.

Subarticle 15. Enforcement and Penalties.

Section 96022. Jurisdiction of California.

Summary of changes to section 96022:

This section is being amended to clarify that rights held by entities pursuant to the Foreign Sovereign Immunities Act are not being abrogated by this regulation.

Rationale for changes to section 96022:

This section is being changed to reflect concern on the part of international stakeholders that the cap-and-trade program was attempting to abrogate rights held under the Foreign Sovereign Immunities Act.

Summary of Appendix B

New section Appendix B is added to incorporate the tracking system user terms into the Regulation.

Rationale for Appendix B

This addition is necessary to ensure that the rules for the tracking system are codified in the Regulation as well.

Summary of Appendix C

Appendix C is added to clarify the date of quarterly auctions and Reserve sales from 2015 through 2020.

Rationale for Appendix C

Appendix C is required to clarify dates and to alter the date of the Reserve sale immediately preceding the compliance obligation on November 1 pursuant to Board Resolution 12-51.

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