UPDATED INFORMATION DIGEST
REGULATION TO IMPLEMENT THE CALIFORNIA CAP-AND-TRADE PROGRAM

Sections Affected: This action amends sections 95802, 95830, 95833, 95852, 95852.2, 95890, 95892, 95895, 95921, 95973, 95975, 95976, 95981, 95983, 95985, and 95990, title 17, California Code of Regulations. This action adopts amended versions of the incorporated California Air Resources Board Compliance Offset Protocol Livestock Projects (2014), Compliance Offset Protocol Ozone Depleting Substances Projects (2014) and Compliance Offset Protocol U.S. Forest Projects (2014a).

Background: The California Global Warming Solutions Act (Assembly Bill 32; Stats. 2006, Chapter 488) (AB 32) authorizes the California Air Resources Board (ARB) to implement a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California. Meeting the goals of AB 32 requires a coordinated set of strategies to reduce GHG emissions throughout the economy that work within a comprehensive tracking, reporting, verification and enforcement framework.

In October, 2011, the Air Resources Board adopted, and the Office of Administrative Law (OAL) subsequently approved, the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (California Cap-and-Trade Regulation). 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 2103. These amendments took effect in October 2013, and specified a January 1, 2014 start date for the linked California and Québec Cap-and-Trade Programs.

In response to continued Board direction and further discussions with stakeholders, staff began a public process to propose additional amendments for Board consideration in the fall of 2013. That set of amendments was further refined before being presented to and approved by the Board in April 2014.

During these hearings, the Board provided ongoing direction to staff to continue considering updates to existing offset protocols, to evaluate further modifications to disclosure requirements, and provide additional allocations. Staff held two workshops and released draft proposed offset protocols for public comment. ARB received more than 65 written comments on the discussion draft protocols and met regularly with stakeholders to discuss concerns and recommendations. On July 29, 2014 staff proposed regulation amendments to address stakeholder concerns about information disclosure related to registration, compliance, and trading requirements; allowance allocations; including a compliance obligation for carbon dioxide that is imported into the State; and modifications to existing offset protocols.

Following the 45-day comment period, the Board considered the proposed amendments at its September 18, 2014 Board meeting. At the September public hearing, the Board directed staff to consider additional modifications to the proposed amendments to the Cap-and-Trade Regulation as part of a subsequent 15-day rulemaking package. Staff continued to meet with stakeholder to develop further modifications, and issued a public notice containing proposed 15-day revisions on October 2, 2014.

Description of the Regulatory Action:

ARB staff is proposing amendments to the Cap-and-Trade Regulation in response to continued Board direction and further discussions with stakeholders. These amendments to the California Cap-and-Trade Regulation would: change the allocation of allowances to two entities; remove the exemption of imported carbon dioxide from the Cap-and-Trade Regulation; change product data definitions; clarify reporting offset credit prices during transfers; increase flexibility and provided clarifications to the requirements for corporate disclosures, including for indirect and direct corporate associations; and update quantification methodologies within amended U.S. Forest Projects, Ozone Depleting Substances, and Livestock Projects Compliance Offset Protocols.

Since the Notice of Proposed Rulemaking was published on July 29, 2014, ARB staff proposed additional modifications to the regulation pursuant to Board direction provided in Attachment B to Resolution 14-31.[1] In Resolution 14-31, the Board directed staff to delay the updates to the common practice values in the U.S. Forest Projects Compliance Offset Protocol until the next proposed update to the Protocol, which will be considered by the Board in December 2014. ARB adopted additional changes to the Cap-and-Trade Regulation and amended Compliance Offset Protocols pursuant to the Board direction. These additional documents were added to the record via a 15-day comment period, pursuant to Government Code section 11347.1.

Summary of Proposed Modifications

A. Modifications to Section 95802. Definitions.

In section 95802, the definition of “Primary Refinery Products” was modified to align with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) and to provide a more accurate listing of Energy Information Administration product codes for each material included in the definition. These changes provide clarity and align the product codes with the materials historically included in this definition.

B. Modifications to Section 95830. Registration With ARB.

In section 95830(c)(1)(H), staff has further clarified how entities must identify and disclose their non-registered direct corporate associations. This includes providing

[1] Available at: http://www.arb.ca.gov/regact/2014/capandtrade14/attachb.pdf.

additional flexibility that entities may opt to use regarding the number of related entities that must be identified and disclosed, based on their relationship to the Cap-and-Trade Program. Additional changes are proposed governing which types of documentation may be submitted to satisfy the disclosure requirements in sections 95830 and 95833. These modifications build upon the clarifications provided in the regulatory language released during the 45-day comment period, and were made in response to stakeholder comments received during the 45-day comment period. The changes are necessary to provide consistency and clarity in how corporate associations are identified.

In section 95830(f)(1), staff has further clarified 45-day language regarding the timing for updating corporate disclosure information. Specifically, staff has modified the word "annually" to mean "within one year" of a change. Staff has also proposed a change consistent with those made in section 95830(c)(1)(H) regarding how to identify and update information related to non-registered direct corporate associations. Finally, staff has removed a sentence that was originally included to apply to a previous rulemaking. This sentence was inadvertently left in during the originally noticed 45-day comment period. This sentence would require updating of information on a timeline that is now inconsistent with the other changes made during the 45-day comment period and in this 15-day notice. These changes are necessary to ensure clarity in timing for making required updates to submitted information.

C. Modification to Section 95833. Disclosure of Corporate Associations.

In section 95833(d), staff has proposed a clarification to the term "entity" to ensure regulated parties understand this section refers to "registered" entities. Staff has also proposed language to cross-reference the changes made in response to stakeholder comments in section 95830(c)(1)(H). This change is needed to ensure consistency between the sections. In section 95833(e), staff has proposed a modification to clarify that "annually" means "within at least one year" of a change. This modification ensures consistency with section 95830(f)(1) and improved clarity for regulated entities. In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

D. Modifications to Sections 85852, 95852.2, 95890, 95892, 95895, 95921, 95973, 95975, 95976, 95981, 95983, 95985, 95990.

No changes were made to these sections.

E. Modifications to the Ozone Depleting Substances Projects Compliance Offset Protocol.

Subchapter 3.8 was modified to clarify the regulatory compliance language covering the destruction of ODS. Subchapter 5.3(a) was modified to add additional language to clarify that documentation of the disqualified ozone depleting substance (ODS) container's capacity is required or the entire destruction event is disqualified. The

word “of” was inserted in subchapter 6.2(c)(3) for consistency with phrasing elsewhere in the protocol. The date in the title of figure B.1 was changed to accurately reflect the correct version of data provided in table B.6.

In subchapters D(a)(2) and D(a)(3), the 48-hour requirement was altered so that the requirement is based on Continuous Emissions Monitoring System (CEMS) data, if available. Subchapter D(a)(4) was altered and a new subchapter D(a)(5) was added. This clarifies that for facilities where both aggregation and destruction occur there is no need to weigh and sample each container separately until the ODS has been aggregated, identified and destined for destruction. This will prevent facilities that receive multiple containers for aggregation prior to destruction from needing to weigh and sample each container individually prior to aggregation. Subchapter D(a)(5) clarifies that once a container is identified and destined for destruction, the only ODS that may be removed is to meet the sampling requirements of the protocol or any regulatory requirements.

Subchapters D(b)(1)(C), D(b)(2)(B), and D(b)(3)(C) were clarified to state that three minutes is the minimum time that a container must be stationary before weighing and more time may be required for the weight to stabilize prior to obtaining the final weight of the container.

F. Modifications to the Livestock Projects Compliance Offset Protocol.

The definition of “enclosed vessel” was clarified. The modifications include appropriate digester types (and corresponding digester covers) that will achieve the Biogas Collection Efficiency (BCE) for enclosed vessels as outlined in table A.3 of the protocol.

Subchapter 3.5(b) was modified to clarify that the commencement date for a livestock offset project is after any initial startup period when the project becomes operational. This allows the Offset Project Operator or Authorized Project Designee time to solve any operational issues with the system before commencing the project.

Subchapter 5.1(i) was modified to clarify that Offset Project Operators or Authorized Project Designees should use data from the weather station closest the project location that has data available during a reporting period.

Subchapter 5.1(k) was modified from “drainage and cleaning of” to “the complete drainage and cleaning of solid buildup from” to ensure that protocol language refers to the complete, not partial, removal of solid buildup.

Minor, non-substantive changes were made to subchapter 5.2(l) to ensure proper grammar and spelling.

Equation 5.8 was modified to include a summation for the number of effluent ponds used in a project. This change was made to determine the methane conversion factor (MCF) for projects with multiple effluent treatment systems. Other minor, non-

substantive changes were made to the equation to ensure consistency throughout the protocol. These changes are consistent with the intent of the calculation and ensure the accurate quantification of greenhouse gas (GHG) emission reductions.

Subchapters 6.1(b)(3) and 6.1(b)(4) were modified to allow a single gas flow meter to monitor multiple destructions devices while requiring a conservative biogas destruction efficiency (BDE) determination. These modifications provide flexibility to Offset Project Operators and Authorized Project Designees while maintaining the conservativeness of the GHG emission reduction calculations.

Subchapter 6.2(a)(2) was modified to clarify that permanently fixed instruments, along with portable and manufacturer specified instruments, may be used to field check gas flow meters and continuous methane analyzers.

Tables A.1, A.2 and A.4 were updated to reflect the 2012 typical Average Mass (TAM) and volatile solids (VS) values which are derived from the 2014 U.S. Environmental Protection Agency's *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012 (April 2014).* Changes were made to remove the word "baseline" that unintentionally limited data substitution so it could not apply to project parameters. Additional changes were made to remove the contradiction of including a conservative method for substituting missing data from two parameters in table B.1 but not allowing substitution for missing data from two parameters in the text of the appendix.

Appendix B was reworded to clarify the original intent that data substitution for equipment that monitors operational activity cannot occur and a BDE of 0% must be used for the time period the monitoring device is inoperable. Table B.1 was modified to permit the substitution of a single quarter of methane concentration data in a reporting period.

G. Modifications to the U.S. Forest Projects Compliance Offset Protocol.

Minor, non-substantive change was made to subchapter 6.2.1 step 2 to correct grammar. Modifications were made to subchapter 6.2.1 step 4 to clarify how the baseline, inclusive of all onsite carbon pools, is developed. Clarifications were made that separate, rather than independent, baselines are developed for each carbon pool to acknowledge that estimates are not necessarily independent from one another. Soil carbon was added to the list of carbon pools to be included, as applicable, in the onsite carbon baseline estimate. Mention of harvested wood delivered to mills was removed from this step because directions for quantifying this component of the baseline are provided later in the chapter.

Minor, non-substantive changes were made to subchapter 6.2.3 and 6.3.2 to ensure consistency throughout the protocol.

Criteria for deducting missing biomass was added to table A.2 to require that a standardized approach and a description of how deductions for missing biomass in

standing live trees are estimated and accounted for be included in the inventory methodology. Additional modifications were made to table A.2 to clarify how deductions for missing biomass in standing dead trees are estimated and to emphasize the different approaches and resources that are to be used by projects in California, Oregon, and Washington and projects in the other 45-states. Language was added to appendix A, section A.3 to explain the purpose and proper use of table A.3(b).

Previously added language was moved within Appendix C to enhance clarity. The phrase "prior to delivery to a mill" was added back into equation C.2 to ensure consistency throughout the protocol.

Pursuant to Board direction, the proposed change to the classification of high and a provision on low site classes was amended to revert back to the previous classification. High site class refers to U.S. Forest Service FIA assigned site class productivity codes I-III and low site class refers to U.S. Forest Service FIA assigned site class productivity codes IV-VII. Language was also added to further explain how common practice values are established.

Additional Documents Added to the Record

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following additional documents:

- Regional Biomass Equations Used by FIA to Estimate Bole, Bark and Branches. September 2014. (For use by projects in California, Oregon, and Washington)
- FIA Volume Equation Documentation. September 2014. (For use by projects in California, Oregon, and Washington)
- Assessment Area Data File (Originally approved by Board in October 2011).

Comparable Federal Regulations: There are no federal regulations comparable to the Cap-and-Trade Regulation.

Changes to Underlying Laws: There have been no changes to the statutory authority governing adoption of this regulation.

Changes to the Effect of the Regulation: None.