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

Amend Subchapter 10 Climate Change, Article 5, sections 95802, 95973, 95975, 95976, 95981, 95985, and 95990, Title 17, California Code of Regulations to read as follows:

Article 5: California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Note: The pre-existing regulation text is set forth below in normal type. The proposed amendments are shown in underline to indicate additions and ~~strikethrough~~ to indicate deletions. "***" indicates that sections of the regulation not printed are not changed.

§ 95802. Definitions.

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

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(116) "Early Action Offset Project" means an offset project that is registered with an Early Action Offset Program, ~~and~~ has been issued early action offset credits, with the exception of reforestation offset projects, which must be registered with an Early Action Offset Program but might not have been issued early action offset credits, and is in good standing with the Early Action Offset Program.

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(190) "Intentional Reversal" means any reversal, except as provided below, which is caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary. A reversal caused by an intentional back burn set by, or at the request of, a local, state, or federal fire protection agency for the purpose of protecting forestlands from an advancing wildfire that began on another property through no negligence, gross negligence, or willful misconduct of the forest owner is not considered an intentional reversal but, rather, an unintentional reversal.

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

§ 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

(a) General Requirements for Offset Projects. To qualify under the provisions set forth in this article, an Offset Project Operator or Authorized Project Designee must ensure that an offset project:

(1) Meets all of the requirements in a Compliance Offset Protocol approved by the Board pursuant to section 95971;

(2) Meets the following additionality requirements, as well as any additionality requirements in the applicable Compliance Offset Protocol, as of the date of Offset Project Commencement:

(A) The activities that result in GHG reductions and GHG removal enhancements are not required by law, regulation, or any legally binding mandate applicable in the offset project's jurisdiction, and would not otherwise occur in a conservative business-as-usual scenario;

(B) The Offset Project Commencement date occurs after December 31, 2006, unless otherwise specified in the applicable Compliance Offset Protocol, except as provided in section 95973(c); and

(C) The GHG reductions and GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the applicable version of the Compliance Offset Protocol under which the offset project has been listed pursuant to section 95975 or under which the offset project has been transitioned to pursuant to section 95973(a)(2)(D) for that offset project type as set forth in the following:

1. Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011 and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014, which are hereby incorporated by reference;

2. Compliance Offset Protocol Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects, November 14, 2014, which are hereby incorporated by reference;
3. Compliance Offset Protocol Urban Forest Projects, October 20, 2011, which is hereby incorporated by reference;
4. Compliance Offset Protocol U.S. Forest Projects, October 20, 2011,~~,~~ Compliance Offset Protocol U.S. Forest Projects, November 14, 2014, and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015 which are hereby incorporated by reference; ~~and~~
5. Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014, which is hereby incorporated by reference~~.~~; and
6. Compliance Offset Protocol Rice Cultivation Projects, June 25, 2015, which is hereby incorporated by reference.

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

§ 95975. Listing of Offset Projects Using ARB Compliance Offset Protocols.

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(e) Offset Project Listing Information Requirements. Before an offset project is publicly listed for an initial or renewed crediting period the Offset Project Operator or Authorized Project Designee must provide the listing information in the most recent version of a Compliance Offset Protocol for that offset project type as set forth in and incorporated by reference:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;
(2) Compliance Offset Protocol Livestock Projects, November 14, 2014;
(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011;
(4) Compliance Offset Protocol U.S. Forest Projects, November 14, 2014 ; ~~and~~
(5) Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014~~.~~; and

(6) Compliance Offset Protocol Rice Cultivation Projects, June 25, 2015.

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

§ 95976. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

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(c) An Offset Project Operator or Authorized Project Designee must put in place all monitoring equipment or mechanisms required by the applicable version of the Compliance Offset Protocol for that offset project type as set forth in:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011 and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;

(2) Compliance Offset Protocol Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects, November 14, 2014;

(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011;

(4) Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014 and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015; ~~and~~

(5) Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014~~.~~; and

(6) Compliance Offset Protocol Rice Cultivation Projects, June 25, 2015.

(d) Offset Project Reporting Requirements. An Offset Project Operator or Authorized Project Designee shall submit an Offset Project Data Report to ARB or an Offset Project Registry for each Reporting Period as defined in section 95802. Each Offset Project Data Report must cover a single Reporting Period. Reporting Periods must be contiguous; there must be no gaps in reporting once the first Reporting Period has commenced. For projects developed under the Compliance Offset Protocol in section 95973(a)(2)(C)1. there may be one Offset Project Data Report submitted for each offset project and the Offset Project Data

Report may cover up to a maximum of 12 months of data. The Offset Project Operator or Authorized Project Designee must submit an Offset Project Data Report to ARB or an Offset Project Registry within 24 months of listing their offset project pursuant to section 95975. The Offset Project Data Report shall contain the information required by the applicable version of the Compliance Offset Protocol for that offset project type as set forth in:

(1) Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011 and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;

(2) Compliance Offset Protocol Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects, November 14, 2014;

(3) Compliance Offset Protocol Urban Forest Projects, October 20, 2011;

(4) Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014, and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015; ~~and~~

(5) Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014~~.~~; and

(6) Compliance Offset Protocol Rice Cultivation Projects, June 25, 2015.

(~~6~~7)The Offset Project Operator or Authorized Project Designee must attest, in writing, to ARB as follows:

"I certify under penalty of perjury under the laws of the State of California the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] are measured in accordance with the [appropriate ARB Compliance Offset Protocol] and all information required to be submitted to ARB in the Offset Project Data Report is true, accurate, and complete."

This attestation must be provided to an Offset Project Registry with the Offset Project Data Report if the offset project is listed with an Offset Project Registry, or to ARB if the offset project is listed with ARB.

(~~7~~8)All Offset Project Data Reports must be submitted within four months after the conclusion of each Reporting Period.

(~~8~~9)If an Offset Project Data Report is not submitted to ARB or an Offset Project Registry by the applicable reporting deadline, the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to be issued ARB offset credits pursuant to section 95981.

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

§ 95981. Issuance of ARB Offset Credits.

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(b) Requirements for Offset Projects Submitted Through an Offset Project Registry Seeking Issuance of ARB Offset Credits. If an Offset Project Operator or Authorized Project Designee provides information for listing pursuant to section 95975, monitors and reports pursuant to section 95976, and has their offset project verified pursuant to sections 95977, 95977.1, and 95977.2 through an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the following information to ARB for issuance of ARB offset credits pursuant to section 95981.1:

(1) The attestations required in sections 95975(c)(1), 95975(c)(2), 95975(c)(3), 95976(d)(~~6~~7), 95977.1(b)(3)(R)4.b., 95977.1(b)(3)(R)4.e., and 95977.1(b)(3)(R)4.f. and any in the applicable Compliance Offset Protocol;

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

§ 95985. Invalidation of ARB Offset Credits.

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(b) Timeframe for Invalidation. ARB may invalidate an ARB offset credit pursuant to this section within the following timeframe if a determination is made pursuant to section 95985(f):

(1) Within eight years of issuance of an ARB offset credit, if the ARB offset credit is issued for early action pursuant to section 95990(h), or within eight years of the date that corresponds to the end of the Reporting Period for which the ARB offset credit is issued, if the ARB offset credit is issued pursuant to section 95981.1, unless one of the following requirements is met;

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(B) The Offset Project Operator or Authorized Project Designee for an offset project developed under one of the protocols listed in section 95985(b)(1)(B)5. does the following:

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5. The provisions in sections 95985(b)(1)(B)(1.) through (4.) apply if an offset project is developed under one of the following Compliance Offset Protocols, and the provisions in sections 95985(b)(1)(B)(1.) through (3.) apply for any early action quantification methodologies approved pursuant to section 95990(c)(5) for the same project types, as well as any applicable provisions in section 95990(l)(3)(A);

a. The Compliance Offset Protocols ~~Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects November 14, 2014~~ in section 95973(a)(2)(C)(2);

b. The Compliance Offset Protocols ~~Urban Forest Projects, October 20, 2011~~in section 95973(a)(2)(C)(3);

c. The Compliance Offset Protocols ~~U.S. Forest Projects, October 20, 2011~~in section 95973(a)(2)(C)(4); ~~and~~

d. The Compliance Offset Protocols ~~Mine Methane Capture Projects, April 25, 2014.~~in section 95973(a)(2)(C)(5); and

e. The Compliance Offset Protocol in section 95973(a)(2)(C)(6).

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

§ 95990. Recognition of Early Action Offset Credits.

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(c) Criteria for Approval of Early Action Offset Credits Issued by Early Action Offset Programs. An early action offset credit may be issued an ARB offset credit pursuant to section 95990(i) if the early action offset credit results from a GHG reduction or GHG removal enhancement which:

(1) Occurred between January 1, 2005 and December 31, 2014 or between January 1, 2005 and December 31, 2015 for projects developed under any of the offset quantification methodologies in section 95990(c)(5)(H);

(2) Is verified pursuant to section 95990(f);

(3) Results from an early action offset project that is listed or registered with an Early Action Offset Program prior to the following:

(A) Early action offset projects developed under any of the offset quantification methodologies in sections 95990(c)(5)(A) through (D) must be listed with an Early Action Offset Program prior to January 1, 2014;

(B) Early action offset projects developed under any of the offset quantification methodologies in sections 95990(c)(5)(E) through (G) must be listed with an Early Action Offset Program prior to January 1, 2015.; and

(C) Early action offset projects developed under any of the offset quantification methodologies in section 95990(c)(5)(H) must be listed by January 1, 2016.

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(5) Results from the use of one of the following offset quantification methodologies and relied on the most recent version thereof at the time of offset project submittal:

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(F) Verified Carbon Standard VMR0001 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

(G) Verified Carbon Standard VMR0002 Revisions to ACM0008 to Include Methane Capture and Destruction from Abandoned Coal Mines Methodology, v1.0~~.~~; and

(H) American Carbon Registry Voluntary Emission Reductions in Rice Management Systems Parent Methodology, version 1.0:

1. American Carbon Registry Voluntary Emission Reductions in Rice Management Systems – California Module, version 1.0; and
2. American Carbon Registry Voluntary Emission Reductions in Rice Management Systems –Mid-South Module, version 1.0.

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(i) Process for Issuance of ARB Offset Credits for Purposes of Early Action. ARB will issue an ARB offset credit that meets the requirements of section 95990(h) in the amount calculated pursuant to section 95990(i)(1) :

(1) ARB offset credits will be issued according to the following schedule:

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(F) ARB offset credits will be issued for early action offset projects generated under Verified Carbon Standard VMR0001 Revisions to ACM0008 to Include Pre-drainage of Methane from an Active Open Cast Mine as a Methane Emission Reduction Activity Methodology, v1.0 or VMR0002 Revisions to ACM0008 to Include Methane Capture and Destruction from Abandoned Coal Mines Methodology, v1.0 according to the following:

1. One ARB offset credit will be issued for one early action offset credit for each early action reporting period that did not include emissions from the production of power, heat or supply to gas grid replaced by the project activity in the baseline (identified as BEUse,y in ACM0008); or
2. No ARB offset credits will be issued for GHG emission reductions credited by an Early Action Offset Program based on data reported by the Offset Project Operator or Authorized Project Designee that

included emissions from the production of power, heat or supply to gas grid replaced by the project activity in the baseline (identified as BEUse,y in ACM0008); ~~and~~

(G) For early action offset credits issued for mine methane capture projects developed under an approved early action quantification methodology no ARB offset credits will be issued for GHG emission reductions credited by an Early Action Offset Program based on data reported by the Offset Project Operator or Authorized Project Designee that included emission reductions from the destruction of methane by a destruction device that would be classified as a non-qualifying destruction device in the Compliance Offset Protocol in section 95973(a)(2)(C)5~~.~~; and

(H) ARB offset credits will be issued for early action offset projects generated under the offset quantification methodology in section 95990(c)(5)(H) according to the following:

1. One ARB offset credit will be issued for one early action offset credit for each early action reporting period that did not include emissions reductions from nitrous oxide (N_2O), soil organic carbon (SOC), reduced fossil fuel consumption and activities ineligible under the Compliance Offset Protocol in section 95973(a)(2)(C)(6); and

   a. Early action offset projects must take the single run output of the De-Nitrification De-Composition (DNDC) model and use equations 5.2.1 and 5.3.1 of the Compliance Offset Protocol in section 95973(a)(2)(C)6. to calculate the baseline and project N_2O, SOC and CH_4.

   b. Early action offset projects must then take the results of equations 5.2.1 and 5.3.1 and use them to calculate the primary source GHG emission reductions from one run of DNDC using the equation for $PER_{i,j}$ from equation 5.4.1 of the Compliance Offset Protocol in section 95973(a)(2)(C)6.

c. Early action offset projects must substitute the results of $PER_{i,j}$ for $BE_{y,i}$ - $PE_{y,i}$ (incorrectly identified as $PE_{y,i}$ - $BE_{y,i}$ and subsequently corrected in errata and clarifications) in equations 7 and 8 of the offset quantification methodology in section 95990(c)(5)(H) to calculate project emission reductions.

d. If modification to the parent methodology identified in the module in section 95990(c)(5)(H)2. results in project energy use emissions (E_{fe} in equation 3) being less than the baseline energy use, both the project and baseline energy use emissions must be set to zero (0). If project energy use emissions are greater than baseline energy use emissions, the actual values must be used.

e. If activities ineligible under the Compliance Offset Protocol in section 95973(a)(2)(C)(6) were employed during an early action reporting period, the relevant cropping parameters from the early action reporting period being considered must be used in place of the baseline parameters for the ineligible activities when running DNDC.

2. No ARB offset credits will be issued for GHG emission reductions credited by an Early Action Offset Program based on a baseline set applying data from the common practice in the rice growing region rather than data specific to a project's fields.

(~~H~~I) If an early action offset project is issued ARB offset credits pursuant to section 95990(i)(1)(D) and transitions from Climate Action Reserve Forest Project Protocol version 2.1 to the most recent version of the Compliance Offset Protocol in section 95973(a)(2)(C)4. pursuant to section 95990(k) the early action offset project may calculate its project baseline pursuant to section 95990(k)(1)(D) and use the following method to determine if it could qualify for additional early action offset credits:

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(k) Transition of Early Action Offset Projects to the Compliance Program.

(1) Early Action Offset Project Transition to ARB Compliance Offset Protocols. Early action offset projects must transition to ARB Compliance Offset Protocols no later than February 28, 2015, or by February 28, 2016 for projects developed under any of the offset quantification methodologies in section 95990(c)(5)(H), by submitting listing information required pursuant to section 95975 to ARB or an Offset Project Registry and having that listing approved:

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(E) Early action offset projects using Climate Action Reserve Forest Project Protocol versions 3.0 through 3.2 must use the most recent version of the Compliance Offset Protocol in section 95973(a)(2)(C)4. and subtract from the project baseline any carbon stocks from any optional pools that are excluded in the Compliance Offset Protocol beginning with the last reporting period under the Early Action Offset Program. Decreases will not constitute a reversal; ~~and~~

(F) Early action offset projects using Climate Action Reserve Coal Mine Methane Project Protocol versions 1.0 and 1.1, Verified Carbon Standard VMR0001 Revisions to ACM0008 to Include Pre-drainage of Methane from an Active Open Cast Mine as a Methane Emission Reduction Activity Methodology version 1.0, and Verified Carbon Standard VMR0002 Revisions to ACM0008 to Include Methane Capture and Destruction from Abandoned Coal Mines Methodology version 1.0 must use and meet all the requirements in the Compliance Offset Protocol in section 95973(a)(2)(C)5~~.~~; and

(G) Early action offset projects using American Carbon Registry Voluntary Emission Reductions in Rice Management Systems Parent Methodology, version 1.0 must use and meet all the requirements in the Compliance Offset Protocol in section 95973(a)(2)(C)6.

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(3) Listing Requirements for Transition of Early Action Offset Projects. At the time an early action offset project transitions to a Offset Protocol pursuant to section 95990(k)(1), the Offset Project Operator or Authorized Project Designee must:

(A) Meet the requirements for offset projects pursuant to section 95973; and

(B) List the offset project pursuant to section 95975.

(C) To transition an early action offset project to the ARB compliance offset program, the offset project must be listed with ARB or an Offset Project Registry by February 28, 2015, but, if applicable, has until September 30, 2015 to complete the verification of any GHG reductions and GHG removal enhancements under the Early Action Offset Program that were achieved between 2005 and 2014 with the submittal of an Offset Verification Statement to the Early Action Offset Program.

(D) To transition an early action offset project developed under any of the offset quantification methodologies in section 95990(c)(5)(H) to the ARB compliance offset program, the offset project must be listed with ARB or an Offset Project Registry by February 28, 2016, but, if applicable, has until April 30, 2016 to complete the verification of any GHG reductions and GHG removal enhancements under the Early Action Offset Program that were achieved between 2005 and 2015 with the submittal of an Offset Verification Statement to the Early Action Offset Program.

(4) After an early action offset project lists with ARB pursuant to section 95990(k)(3), it must meet the following requirements:

(A) Monitoring, reporting, and record retention requirements pursuant to section 95976;

(B) GHG reduction and GHG removal enhancement verification requirements pursuant to sections 95977 through 95978;

(C) Be issued a registry offset credit pursuant to section 95980.1 or an ARB offset credit pursuant to section 95981.1 for any GHG reductions or GHG removal enhancements it achieves.

(5) ARB will not issue ARB offset credits after August 31, 2016 for any GHG reductions or GHG removal enhancements achieved through 2014 and issued early action offset credits by an Early Action Offset Program and after December 31, 2016 for projects developed under any of the offset quantification methodologies in section 95990(c)(5)(H) for any GHG reductions or GHG removal enhancements achieved through 2015 and issued early action offset credits by an Early Action Offset Program.

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