BACKGROUND

Pursuant to section 95894 of the Cap-and-Trade Regulation (Regulation), facilities that generate electricity and/or thermal output under legacy contracts may apply to the California Air Resources Board (CARB) for allowance allocation for the purpose of transition assistance for the greenhouse gas emissions related to these contracts. Legacy contract generators are facilities that generate and sell electricity, thermal energy, or both, subject to a legacy contract. Legacy contracts are contracts that were executed prior to September 1, 2006, govern the sale of electricity and/or thermal output, and do not provide for the recovery of Cap-and-Trade Program costs. Legacy contract generators that wish to apply for allowance allocation from the subsequent allowance vintage year must submit an application to CARB by June 1 of the calendar year immediately preceding the vintage year (e.g., for allocation of vintage 2021 allowances, applications must be received no later than June 1, 2020). The application form provided may be used to apply to the CARB for this legacy contract transition assistance. These instructions provide an overview of the application form and instructions for completing and submitting the form. The application form can be found in the “Other Allocation Forms” section of the Cap-and-Trade Program Guidance and Forms web page.

To be eligible to receive legacy contract transition assistance, pursuant to section 95894(a)(3)(C) of the Regulation, a legacy contract generator must make a good faith effort to renegotiate starting at least 60 days, but no less than one year, before the date of the attestation. For example, if a legacy contract generator is applying for vintage 2020 allowance allocation by submitting an application signed on June 3, 2019, a new effort to renegotiate the legacy contract must have commenced between June 1, 2018 and April 4, 2019.
CARB will accept the signed attestations from legacy contract generators regarding renegotiation effort submitted pursuant to section 95894(a)(3)(C) of the Regulation unless CARB has reason to believe that no renegotiation effort occurred. A counterparty to a legacy contract may contest an attestation of renegotiation effort submitted by a legacy contract generator by submitting a signed letter to CARB asserting that the relevant legacy contract generator did not make a good faith effort to renegotiate the legacy contract during the relevant period. CARB will investigate disputes to assess whether there was a good faith renegotiation effort during the relevant period.

Full text of the Regulation is available on the Cap-and-Trade Program website. Relevant excerpts are provided at the end of these instructions. Sections 95112 and 95131(b)(8)(F)(3) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) set the requirements for how some information in this form must be reported. Full MRR text can be found on the MRR Regulation website.

These instructions and the application form are provided for clarity and convenience only. The use of the application form to fulfill these requirements is optional. The instructions and application form do not have the force of law, do not establish new requirements, and in no way supplant, replace, or amend any of the legal requirements of the Regulation.

**INSTRUCTIONS**

Attach a copy of the following portions of the legacy contract for which the generator is seeking transition assistance:

(A) Dates of effective commencement and cessation of terms of contract,
(B) Terms governing price per unit of product, and
(C) Signature page.

If the commencement and/or cessation date is not stated explicitly in the contract, also attach documentation sufficient to identify the commencement and/or cessation date. Include these attachments with the hard copy and electronic submission of this application.

1) In box 1, enter the vintage year for which the legacy contract generator is applying for allowance allocation. For example, applications with a June 1, 2020 deadline for submission are for allocation of vintage 2021 allowances (which will be allocated by October 24, 2020).

2) In box 2, enter the legacy contract generator’s legal name used in the Compliance Instrument Tracking System Service (CITSS) for the Cap-and-Trade Program.

3) In box 3, enter the legacy contract generator’s mailing address used in CITSS.
4) In box 4, enter the legacy contract generator's CARB ID. The CARB ID is a unique number that CARB assigns to each entity reporting emissions under the Mandatory Reporting Regulation.

5) In box 5, enter the legacy contract generator's CITSS ID.

6) In box 6, select either "Yes" or "No" from the dropdown menu to identify whether the legacy contract generator has an industrial counterparty.

7) If "Yes" was selected in box 6, enter the legacy contract counterparty's legal name used in CITSS in box 7. If "No" was selected in box 6, enter "Not Applicable" in box 7. See the most recent CITSS Registrant Report in the publicly available information section of the main Cap-and-Trade Program webpage to find the legal name used in CITSS.

8) If "Yes" was selected in box 6, enter the legacy contract counterparty's CARB ID in box 8. If "No" was selected in box 6, enter "Not Applicable" in box 8.

9) In box 9, select either "Yes" or "No" from the dropdown menu to identify whether the legacy contract generator is a stand-alone generator.

10) If "Yes" is selected in box 9, select "Yes" from the dropdown menu in box 10 if the legacy contract generator sells all of its electricity output under the legacy contract or select "No" from the dropdown menu in box 10 if the generator produces any electricity that is not sold under the legacy contract. If "No" is selected in box 9, select "Not Applicable" from the dropdown menu in box 10.

11) In box 11, enter the legacy contract commencement date as stated in the legacy contract for which the legacy contract generator is seeking transition assistance.

12) In box 12, enter the legacy contract cessation date as stated in the legacy contract for which the legacy contract generator is seeking transition assistance.

13) Box 13 must be completed only for legacy contract generators that are not stand-alone generators. In box 13, legacy contract generators that are not stand-alone generators enter the amount of electricity (MWh) sold under the legacy contract for the applicable year. Legacy contract generators without an industrial counterparty must enter legacy contract electricity for the 2012 data year (i.e., in the first row, with the data year labeled "2012"). Legacy contract generators with an industrial counterparty must enter legacy contract electricity for the most recent data year (i.e., 2019 data year information should be reported on an application submitted in 2020, and this data should be entered in the second row, with the data year labeled "2019").

14) Box 14 must be completed only for legacy contract generators that are not stand-alone generators. In box 14, legacy contract generators that are not stand-alone
generators enter the amount of legacy contract qualified thermal output (MMBtu) sold under the legacy contract for the applicable year. Legacy contract generators without an industrial counterparty must enter legacy contract qualified thermal output for the 2012 data year (i.e., in the first row, with the data year labeled "2012"). Legacy contract generators with an industrial counterparty must enter legacy contract qualified thermal output for the most recent data year (i.e., 2019 data year information should be reported on an application submitted in 2020, and this data should be entered in the second row, with the data year labeled "2019").

15) Box 15 must be completed only for legacy contract generators that are stand-alone generators. In box 15, legacy contract generators that are stand-alone generators enter the greenhouse gas emissions in metric tons of carbon dioxide equivalent (MTCO$_2$e) associated with electricity sold under the legacy contract for the data year. Legacy contract generators without an industrial counterparty must enter legacy contract electricity emissions for the 2012 data year (i.e., in the first row, with the data year labeled "2012"). Legacy contract generators with an industrial counterparty must enter legacy contract electricity emissions for the most recent data year (i.e., 2019 data year information should be reported on an application submitted in 2020, and this data should be entered in the second row, with the data year labeled "2019"). A legacy contract generator that is a stand-alone generator may also optionally enter in box 13 the amount of generation (MWh) for this legacy contract electricity in the data year.

16) The attestation at the bottom of the application must be signed and dated by the primary or alternate account representative of the legacy contract generator, and the signed and dated attestation must be included in the application submission.

SUBMITTING COMPLETED APPLICATIONS

Complete applications must be submitted by certified U.S. mail and received by CARB no later than June 1 of the year prior to the vintage year of the requested allowance allocation (or the first business day thereafter if June 1 is not a business day). For vintage 2021 allowance allocation, applications are due no later than June 1, 2020. Please mail the complete application to the following address:

California Air Resources Board  
Attn: Eileen Hlavka  
Climate Change Program Evaluation Branch, 6th Floor  
1001 "I" Street  
Sacramento, CA 95814

CARB also requests that the completed Excel workbook be emailed as an attachment to edu-allocation@arb.ca.gov along with a PDF version of the application form that includes the attestation signed by a primary or alternate account representative for the legacy contract generator. Questions may be directed to (916) 322-7648 or edu-allocation@arb.ca.gov.
Cap-and-Trade Regulation Sections Relevant to Legacy Contract Transition Assistance

These excerpts of the unofficial electronic version of the Cap-and-Trade Regulation are provided for reference and convenience.

Section 95802. Definitions

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

“Legacy Contract” means a written contract or tolling agreement, originally executed prior to September 1, 2006, governing the sale of electricity and/or legacy contract qualified thermal output at a price, determined by either a fixed price or price formula, that does not provide for recovery of the costs associated with compliance with this regulation; the originally executed contract or agreement must have remained in effect and must not have been amended since September 1, 2006 to change or affect the terms governing the California greenhouse gas emissions responsibility, price, or amount of electricity or legacy contract qualified thermal output sold, or the expiration date. For purposes of this regulation, legacy contracts exclude contracts that have been amended to include a Legacy PPA Amendment, as defined in the Combined Heat and Power Program Settlement Agreement Term Sheet pursuant to CPUC Decision 10-12-035, with a privately owned utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU). This definition of a “Legacy Contract” does not apply to opt-in covered entities.

“Legacy Contract Counterparty” means an entity that has been identified, pursuant to section 95894, and may also be identified under industrial allocation pursuant to Table 8-1 to receive an allowance allocation, and has a contract to purchase legacy contract qualified thermal output and/or electricity from a legacy contract generator with an industrial counterparty, or from a legacy contract generator without an industrial counterparty, determined by the Executive Officer pursuant to 95894(b) to be eligible for transition assistance under 95894.

“Legacy Contract Emissions” means the covered emissions calculated, based on a positive or qualified positive emissions data verification statement issued pursuant to MRR, by the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty, that are a result of either electricity and/or legacy contract qualified thermal output sold to a legacy contract counterparty, and calculated pursuant to section 95894 of this regulation.

“Legacy Contract Generator with an Industrial Counterparty” means a covered entity that generates and sells electricity, thermal energy, or both, subject to a legacy contract with a legacy contract counterparty that is identified as eligible for allowance allocation pursuant to section 95891.
“Legacy Contract Generator without an Industrial Counterparty” means a covered entity that generates and sells electricity, thermal energy, or both, subject to a legacy contract, and does not also sell electricity or thermal energy under the legacy contract to a covered entity eligible for allowance allocation pursuant to section 95891.

“Legacy Contract Qualified Thermal Output” means thermal energy that is sold to a legacy contract counterparty, and reported pursuant to MRR.

Section 95894. Allocation to Legacy Contract Generators for Transition Assistance.

(a) Demonstration of Eligibility. Opt-in covered entities are not eligible for transition assistance due to legacy contract emissions. To be eligible to receive a direct allocation of allowances under this section, the primary or alternate account representative of a legacy contract generator with an industrial counterparty or a legacy contract generator without an industrial counterparty shall submit the following in writing via certified mail to the Executive Officer by June 1 of each year as applicable:

(1) A letter to ARB stating covered entity's name and ARB ID, identity of legacy contract counterparty, and statement requesting transition assistance for the previous data year’s legacy contract emissions.

(A) Previous data year’s legacy contract emissions, pursuant to section 95894(c); and

(B) 2012 data year's legacy contract emissions, pursuant to section 95894(d).

(2) Copy of the following portions from the legacy contract for which it is seeking an allocation;

(A) Dates of effective commencement and cessation of terms of contract.

(B) Terms governing price per unit of product.

(C) Signature page.

(3) An attestation under penalty of perjury under the laws of the State of California that:

(A) Each legacy contract does not allow the covered entity to recover the cost of legacy contract emissions from the legacy contract counterparty purchasing electricity and/or legacy contract qualified thermal output from the unit or facility;

(B) The legacy contract was originally executed prior to September 1, 2006, remains in effect, and has not been amended since that date to change the terms
governing the price or amount of electricity or legacy contract qualified thermal output sold, the GHG costs, or the expiration date;

(C) The operator of the legacy contract generator with an industrial counterparty or the legacy contract generator without an industrial counterparty made a good faith effort, but was unable to renegotiate the legacy contract with the counterparty to address recovery of the costs of compliance with this regulation.

(4) Data requested pursuant to Section 95894.

(5) If, subsequent to the submittal of the foregoing information and supporting documentation, there is any material change in the information and statements provided to the Executive Officer, the party who submitted such information and statements shall submit a supplemental attestation and supporting materials addressing any such material change to the Executive Officer within 30 days after the change occurs.

(b) Determination of Eligibility. Upon receipt of the information required by paragraph (a) of this section, the Executive Officer shall determine whether the party submitting such information has demonstrated that it is eligible to receive a direct allocation of allowances pursuant to this section and shall notify that party by October 10 each year if it is eligible to receive an allocation calculated pursuant to section 95894(c) or 95894(d) for the following compliance year.

(c) Allocation to Legacy Contract Generators with an Industrial Counterparty. If the counterparty (or entity in a direct corporate association with the counterparty) is a covered entity or opt-in covered entity that is in a sector listed in Table 8-1, the following formulae apply based on the type of generation facility:

(1) For stand-alone generation facilities that are legacy contract generators with an industrial counterparty, the following equations apply:

\[ A_t = (EE_{mlc,t-2} \times c_{a,t} \times AF_{llc,t}) + TrueUp_t \]

Where:

\( A_t \) is the amount of California GHG allowances directly allocated to the legacy contract generator with an industrial counterparty for legacy contract emissions from budget year \( t \). This value shall only be calculated if the entity meets the eligibility requirements, pursuant to section 95894(a) and 95894(b), and is covered under the Cap-and-Trade Program during budget year \( t \);

\( EE_{mlc,t-2} \) is the emissions reported, in MTCO2e, associated with electricity sold under the legacy contract in the data years two years before year \( t \);
“ca,t” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty;

“AFllc,t” is the assistance factor associated with the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t”; and

\[ TrueUp_t = (EEmlc \times c_{a,t-2} \times AF_{llc,t-2}) - At_{t-2, no true-up} \]

Where:

“TrueUp_t” is the amount of true-up allowances allocated to account for the emissions reported for data year “t” and allowed to be used for compliance for the budget year two years prior to year “t” and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D);

“EEmlc,t-2” is the emissions reported, in MTCO2e, associated with electricity sold under the legacy contract in the data years two years before year “t”;

“ca,t-2” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for the year two years prior to year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty;

“AFllc,t-2” is the assistance factor associated with the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for two years before budget year “t”; and

“At_{t-2, no true-up}” is the amount of California GHG allowances directly allocated to the legacy contract generator with an industrial counterparty for legacy contract emissions from the budget year two years prior to year “t,” not including the true-up for that budget year.

(2) For legacy contract generators with an industrial counterparty subject to section 95894(c), but not covered by section 95894(c)(1), the following equations apply:

\[ At = ((Q_{lc,t-2} \times Bs + E_{lc,t-2} \times Be) \times AF_{llc,t} \times c_{a,t}) + TrueUp_t \]

Where:

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“At” is the amount of California GHG allowances directly allocated to the legacy contract generator with an industrial counterparty for legacy contract emissions from budget year “t”. This value shall only be calculated if the entity meets the eligibility requirements, pursuant to section 94894(a), and 95894(b), and is covered under the Cap-and-Trade Program during budget year “t”;

“Qlc,t-2” is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

“Elc,t-2” is the electricity, in MWh, sold under the legacy contract in the data year two years prior to year “t,” as reported under MRR;

“Be” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“Bs” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu thermal;

“AFlcc,t” is the assistance factor associated with the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t”;

“ca,t” is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year “t” as specified in Table 9-2. The subscript "a" designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

\[
TrueUp_{t} = ((Q_{lc,t-2} \times Bs + E_{lc,t-2} \times Be) \times AFlcc_{lc,t-2} \times ca_{lc,t-2}) - AF_{t-2,no\ true-up}
\]

Where:

“TrueUp_t” is the amount of true-up allowances allocated to account for the emissions reported for data year “t” and allowed to be used for compliance for the budget year two years prior to year “t” and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D);

“Qlc,t-2” is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

“Bs” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu;

“Elc,t-2” is the electricity, in MWh, sold under the legacy contract in the data year two years prior to year “t,” as reported under MRR;
“Be” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“AFIcc,t-2” is the assistance factor associated with the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty in the budget year two years prior to year “t”;

“ca,t-2” is the cap adjustment factor for the budget year two years prior to year “t” as specified in Table 9-2. The subscript "a" designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

“At-2,no trueup” is the amount of California GHG allowances directly allocated to the legacy contract generator with an industrial counterparty for legacy contract emissions from the budget year two years prior to year “t,” not including the true-up for that budget year.

(d) Allocation to Legacy Contract Generators without an Industrial Counterparty. Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2021 through the life of the legacy contract.

(1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$A_t = (EE_{mlc} \times c_t) + TrueUp_{CP3}$$

Where:

“A_t” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“EE_{mlc}” is the emissions reported, in MTCO2e, associated with electricity sold under the legacy contract in 2012; and

“c_t” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

“TrueUp_{CP3}” is the amount of true-up allowances allocated from budget year 2020 to account for allocation not properly accounted for in prior allocations. This value of allowances from budget year “t” shall be allowed to be used for compliance for budget year t-2 and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D).
For budget years 2021 and beyond, “TrueUp\textsubscript{CP3}” is equal to zero. For budget year 2020, this value is calculated by the following equation:

\[
TrueUp_{\text{CP3}} = \sum_{t=2018}^{2019} EEm_{lc} \times c_t
\]

(2) For legacy contract generators without an industrial counterparty not subject to either section 95894(c) or section 95894(d)(1), allowance allocation is calculated by the following equation:

\[
A_t = (Q_{lc} \times B_s + E_{lc} \times B_e) \times c_t + TrueUp_{\text{CP3}}
\]

Where:

“A\textsubscript{t}” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty, for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“Q\textsubscript{lc}” is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in data year 2012, as reported pursuant to MRR;

“E\textsubscript{lc}” is the electricity, in MWh, sold under the legacy contract in data year 2012;

“B\textsubscript{e}” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“B\textsubscript{s}” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu; and

“c\textsubscript{t}” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

“TrueUp\textsubscript{CP3}” is the amount of true-up allowances allocated from budget year 2020 to account for allocation not properly accounted for in prior allocations. This value of allowances from budget year “t” shall be allowed to be used for compliance for budget year t-2 and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D). For budget years 2021 and beyond, “TrueUp\textsubscript{CP3}” is equal to zero. For budget year 2020, this value is calculated by the following equation:

\[
TrueUp_{\text{CP3}} = \sum_{t=2018}^{2019} (Q_{lc} \times B_s + E_{lc} \times B_e) \times c_t
\]
(e) Data Sources. In determining the appropriate values for sections 95894(c)-(e), the Executive Officer may employ all available data reported to ARB under MRR and all other relevant data, including invoices, that demonstrate the amount of electricity and legacy contract qualified thermal output sold or provided for off-site use does not include a carbon cost in the budget year for which the legacy contract generator is seeking an allocation. If necessary, the Executive Officer will solicit additional data to establish a representative allocation. The operator of the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty must provide the additional data upon request by the Executive Officer.

(f) Contract Expiration or Generator Closure. Once a legacy contract expires or the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty closes operations, the generator will no longer be eligible for free allocation pursuant to 95890(e), and allocation will be prorated for the time in which the contract was eligible.