

**APPENDIX A  
PROPOSED REGULATION ORDER**

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Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17,  
California Code of Regulations, to read as follows:

**Article 5: CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND  
MARKET-BASED COMPLIANCE MECHANISMS**

**Subarticle 1: Table of Contents**

**§ 95800. Table of Contents.**

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## **Subarticle 2: Purpose and Definitions**

### **§ 95801. Purpose.**

The purpose of this article is to reduce emissions of greenhouse gases associated with entities identified in this article through the establishment, administration, and enforcement of the California Greenhouse Gas Cap-and-Trade Program by applying an aggregate greenhouse gas allowance budget on covered entities and providing a trading mechanism for compliance instruments.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

### **§ 95802. Definitions.**

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

- (1) “Accounts administrator” means the entity acting in the capacity to administer the accounts identified in this regulation. This may be ARB, or could be an entity ARB enters into a contract with.
- (2) “Activity-shifting leakage” means increased GHG emissions or decreased GHG removals that result from the displacement of activities or resources from inside the offset project’s boundary to locations outside the offset project’s boundary as a result of the offset project activity.
- (3) “Additional” means, in the context of offset credits, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or

removals that would otherwise occur in a conservative business-as-usual scenario.

- (4) “Adverse Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement, or that it cannot attest that the Offset Project Data Report conforms to the requirements of this article or applicable Compliance Offset Protocol.
- (5) “Allowance” means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.
- (6) “Alternate authorized account representative” means the single entity identified during the account application process who may act on behalf of the authorized account representative.
- (7) “Annual allowance budget” means the number of California Greenhouse Gas Allowances associated with one year of the California Cap-and-Trade Program in subarticle 6.
- (8) “Asset controlling supplier” means any entity that owns or operates electricity generating facilities or serves as an exclusive marketer for certain generating facilities even though it does not own them, and is assigned a supplier-specific identification number and specified source emission factor by ARB for the wholesale electricity procured from its system and imported into California. Asset controlling suppliers include Bonneville Power Administration (BPA) and the two multi-jurisdictional retail providers in California: PacifiCorp and Sierra Pacific Power Company.
- (9) “Auction” means the process of selling California Greenhouse Gas Allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

- (10) “Auction purchase limit” means the limit on the number of allowances one entity or a group of affiliated entities may purchase from the share of allowances sold at a quarterly auction.
- (11) “Auction reserve price” means a price for allowances below which bids at auction would not be accepted.
- (12) “Auction settlement price” means the price announced by the auction administrator at the conclusion of each quarterly auction. It is the price which all successful bidders will pay for their allowances and also the price to be paid to those entities which consigned allowances to the auction.
- (13) “Authorized account representative” means an entity approved through the application process outlined in 95832 and legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article.
- (14) “Authorized Project Designee” means an entity authorized by an Offset Project Operator to act on behalf of the Offset Project Operator.
- (15) “Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.
- (16) “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.
- (17) “Banking” means the holding of compliance instruments from one compliance period for the purpose of sale or surrender in a future compliance period.



- (18) “Beneficial Holding” means the holding of a compliance instrument in the holding account by one entity in which another entity has an ownership interest.
- (19) “Biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel that is all of the following:
- (A) Registered as a motor vehicle fuel or fuel additive under 40 CFR Part 70;
  - (B) A mono-alkyl ester;
  - (C) Meets American Society for Testing and Material designation ASTM D 6751-08 (*Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, 2008*);
  - (D) Intended for use in engines that are designated to run on conventional diesel fuel; and
  - (E) Derived from nonpetroleum renewable resources.
- (20) “Biomass” means non-fossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material. For the purpose of this article, biomass includes both California Renewable Portfolio Standard (RPS) eligible and non-eligible biomass as defined by the California Energy Commission.
- (21) “Biomass-derived fuels” or “biomass fuels” means fuels derived from biomass.

- (22) “Blendstocks” are petroleum products used for blending or compounding into finished motor gasoline. These include RBOB (reformulated blendstock for oxygenate blending) and CBOB (conventional blendstock for oxygenate blending), but exclude oxygenates, butane, and pentanes plus.
- (23) “Budget year” means the annual allowance budget assigned pursuant to subarticle 6.
- (24) “Business-as-usual scenario” means the set of conditions reasonably expected to occur within the offsets project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.
- (25) “Calendar year” means the time period from January 1 through December 31.
- (26) “California electricity transmission and distribution system” means the combination of the entire infrastructure within California that delivers electric power from electric generating facilities to end users over single or multiple paths.
- (27) “California greenhouse gas emissions allowance” or “CA GHG Allowance” means an allowance issued by ARB and equal to up to one metric ton of CO<sub>2</sub> equivalent.
- (28) “Cap” means the total number of California Greenhouse Gas Allowances that the Executive Officer issues over a given period of time.
- (29) “Carbon dioxide” or “CO<sub>2</sub>” means the most common of the six primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.

- (30) “Carbon dioxide equivalent” or “CO<sub>2</sub> equivalent” or “CO<sub>2</sub>e” means the number of metric tons of CO<sub>2</sub> emissions with the same global warming potential as one metric ton of another greenhouse gas.
- (31) “Carbon stock” means the quantity of carbon contained in an identified GHG reservoir.
- (32) “Cement” means a building material that is produced by heating mixtures of limestone and other minerals or additives at high temperatures in a rotary kiln to form clinker, followed by cooling and grinding with blended additives. Finished cement is a powder used with water, sand, and gravel to make concrete and mortar.
- (33) “Cogeneration” means an integrated system that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential or simultaneous use of the original fuel energy.
- (34) “Combustion emissions” means greenhouse gas emissions occurring during the exothermic reaction of a fuel with oxygen.
- (35) “Compliance account” means an account created by the accounts administrator for a covered entity or opt-in covered entity with a compliance obligation, to which the entity transfers compliance instruments to meet its annual and triennial compliance obligations.
- (36) “Compliance instrument” means an allowance, offset credit or sector-based offset credit. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO<sub>2</sub>e.
- (37) “Compliance obligation” means the quantity of verified reported emissions for which a covered entity must submit compliance instruments to ARB.
- (38) “Compliance offset protocol” means an offset protocol adopted by the Board.

- (39) “Compliance period” means the three-year period for which the compliance obligation is calculated for covered entities.
- (40) “Conflict of interest” means a situation in which, because of financial or other activities or relationships with other persons or organizations, a person or body is unable or potentially unable to render an impartial Offset Verification Statement of a potential client’s Offset Project Data Report, or the person or body’s objectivity in performing offset verification services is or might be otherwise compromised.
- (41) “Conservative” means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.
- (42) “Consumer Price Index for All Urban Consumers” means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers, and is published by the U.S. Bureau of Labor Statistics.
- (43) “Counterparty” means the opposite party in a bilateral agreement, contract, or transaction.
- (44) “Covered entity” means an entity within California that has one or more of the processes or operations and has a compliance obligation as specified in subarticle 7 of this regulation; and that has emitted, produced, imported, manufactured, or delivered in 2008 or any subsequent year more than the applicable threshold level specified in section 95812 (a) of this rule.
- (45) “Crediting baseline” refers to the reduction of absolute GHG emissions below the business-as-usual scenario or reference level across a jurisdiction’s entire sector in a sector-based crediting program after the

imposition of greenhouse gas emission reduction requirements or incentives.

- (46) “Crediting period” means the pre-determined period for which an offset project will remain eligible to be issued offset credits for verified GHG emission reductions or GHG removal enhancements.
- (47) “Data year” means the calendar year in which emissions occurred.
- (48) “Deforestation” means direct human-induced conversion of forested land to non-forested land.
- (49) “Delivered electricity” means electricity that was distributed from a PSE and received by a PSE or electricity that was generated, transmitted and consumed.
- (50) “Diesel fuel” means Distillate Fuel No. 1 and Distillate Fuel No. 2, including dyed and non-taxed fuels.
- (51) “Direct GHG emission reduction” means a GHG emission reduction from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of the Offset Project Operator or Authorized Project Designee.
- (52) “Direct GHG removal enhancement” means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the Offset Project Operator or Authorized Project Designee.
- (53) “Distillate Fuel No. 1” has a maximum distillation temperature of 550 F at the 90 percent recovery point and a minimum flash point of 100 F and includes fuels commonly known as Diesel Fuel No. 1 and Fuel Oil No. 1, but excludes kerosene. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

- (54) “Distillate Fuel No. 2” has a minimum and maximum distillation temperature of 540 F and 640 F at the 90 percent recovery point, respectively, and includes fuels commonly known as Diesel Fuel No. 2 and Fuel Oil No. 2. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).
- (55) “Distillate fuel No. 4” is a distillate fuel oil made by blending distillate fuel oil and residual fuel oil, with a minimum flash point of 131 F.
- (56) “Distillate fuel oil” means a classification for one of the petroleum fractions produced in conventional distillation operations and from crackers and hydrotreating process units. The generic term “distillate fuel oil” includes kerosene, diesel fuels (Diesel Fuels No. 1, No. 2, and No. 4), and fuel oils (Fuel Oils No. 1, No. 2, and No. 4).
- (57) “Electrical distribution utility(ies)” means an Investor Owned Utility (IOU) as defined in the Public Utilities Code section and 218, or a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3, that provides electricity to retail end users in California.
- (58) “Electricity generating facility” means a facility whose sole purpose is to generate electricity and includes one or more electricity generating units at the same location. “Electricity generating facility” does not include a cogeneration facility or self-generation.
- (59) “Electricity importers” are marketers and retail providers that hold title to imported electricity. For electricity delivered between balancing authority areas, the entity that holds title to delivered electricity is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the tag’s physical path, with the point of receipt located outside the state of California, and the point of delivery located inside the state of California. Federal and state agencies are subject to the regulatory

authority of ARB under this article, and include Western Area Power Administration (WAPA), Bonneville Power Administration (BPA) and California Department of Water Resources (DWR). When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.

- (60) “Emissions” means the release of greenhouse gases into the atmosphere from sources and processes in a facility, including from the combustion of transportation fuels such as natural gas, petroleum products, and natural gas liquids. In the context of offsets, “emissions” means the release of greenhouse gases into the atmosphere from sources and processes within an offset project boundary.
- (61) “Emissions data report” or “greenhouse gas emissions data report” or “report” means the report prepared by an operator or supplier each year and submitted by electronic means to ARB that provides the information required by the regulation for the Mandatory Reporting of Greenhouse Gas Emissions.
- (62) “Emissions efficiency benchmark” or “GHG emissions efficiency benchmark” means a performance standard used to evaluate GHG emissions efficiency between and amongst similar facilities or operations in the same industrial sector.
- (63) “End user” means, a final purchaser of electricity or natural gas not for the purposes of retransmission or resale. In the context of natural gas consumption, an “end user” is the point to which natural gas is delivered for consumption.
- (64) “Enforceable” means the authority for ARB to hold a particular party liable and to take appropriate action if any of the provisions of this article are violated.

- (65) “Enterer” means an entity that imports motor vehicle fuel, diesel fuel, ethanol, biodiesel, or any other biomass-derived fuel or renewable fuel and who is the importer of record under federal customs law or the owner of fuel upon import if the fuel is not subject to federal customs law.
- (66) “Entity” means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.
- (67) “Environmental impact assessment” means a detailed public disclosure statement of potential environmental and socioeconomic impacts associated with a proposed project. Such disclosure is a matter of public record and provides detailed information to public agencies and the general public about the effect that a proposed project is likely to have on the environment and ways in which the significant effects of such a project might be minimized, and to indicate alternatives to such a project.
- (68) “Executive Officer” means the Executive Officer of the California Air Resources Board, or his or her delegate.
- (69) “External greenhouse gas emissions trading system” or “External GHG ETS” means an administrative system, other than the California Cap-and-Trade Program, that controls greenhouse gas emissions from sources in its program.
- (70) “Facility” means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations



as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

- (71) “First deliverer of electricity” means either the owner or operator of an electricity generating facility in California or an electricity importer.
- (72) “Flash point” of a volatile liquid is the lowest temperature at which it can vaporize to form an ignitable mixture in air.
- (73) “Fluorinated greenhouse gas” means sulfur hexafluoride (SF<sub>6</sub>), nitrogen trifluoride (NF<sub>3</sub>), and any fluorocarbon except for controlled substances as defined at 40 CFR Part 82, subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 C. With these exceptions, “fluorinated GHG” includes any hydrofluorocarbon; any perfluorocarbon; any fully fluorinated linear, branched, or cyclic alkane, ether, tertiary amine, or aminoether; any perfluoropolyether; and any hydrofluoropolyether.
- (74) “Forest buffer account” means a holding account for forest offset credits. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a Compliance Offset Protocol.
- (75) “Forest owner” means the owner of any interest in the property involved in a forest offset project, but does not include the holder of a conservation easement. Generally, a forest owner is the owner in fee of the property involved in a forest offset project. In some cases, one entity may be the owner in fee while another entity may have an interest in the trees or the timber on the property, in which case all entities or individuals with interest in the property are collectively considered the forest owners. All forest owner(s) are ultimately responsible for all commitments associated with a forest offset project.
- (76) “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, including for

example, consumer products that are derived from such materials and are combusted.

- (77) "Fractionates" means the process of separating natural gas liquids into their constituent liquid products.
- (78) "Fuel" means solid, liquid, or gaseous combustible material. Volatile organic compounds burned in destruction devices are not fuels unless they can sustain combustion without use of a pilot fuel and such destruction does not result in a commercially useful end product.
- (79) "Fuel analytical data" means data collected about fuel usage (including mass, volume, and flow rate) and fuel characteristics (including heating value, carbon content, and molecular weight) to support emissions calculation.
- (80) "Fuel supplier" means a supplier of petroleum products, a supplier of biomass-derived transportation fuels, a supplier of natural gas, or a supplier of liquid petroleum gas as specified in MRR.
- (81) "Fugitive emissions" means those emissions which are unintentional and could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (82) "Gas" means the state of matter distinguished from the solid and liquid states by: relatively low density and viscosity; relatively great expansion and contraction with changes in pressure and temperature; the ability to diffuse readily; and the spontaneous tendency to become distributed uniformly throughout any container.
- (83) "Global warming potential" or "GWP" means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., CO<sub>2</sub>.
- (84) "Greenhouse gas" or "GHG" means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>),

hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), hydrocarbons, and other fluorinated greenhouse gases as defined in this section.

- (85) “Greenhouse gas emission reduction” or “GHG emission reduction” or “greenhouse gas reduction” or “GHG reduction” means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.
- (86) “Greenhouse gas emissions source” or “GHG emissions source” means, in the context of offset credits, any type of emitting activity that releases greenhouse gases into the atmosphere.
- (87) “Greenhouse gas removal” or “GHG removal” means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.
- (88) “Greenhouse gas removal enhancement” or “GHG removal enhancement” means a calculated increase in GHG removals relative to a project baseline.
- (89) “Greenhouse gas reservoir” or “GHG reservoir” means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.
- (90) “Greenhouse gas sink” or “GHG sink” means a physical unit or process that removes a GHG from the atmosphere.
- (91) “HD-5” means a consumer grade of liquefied petroleum gas that contains a minimum of 90% propane, and a maximum of 5% propylene and 5% butanes and ethane.
- (92) “HD-10” means liquefied petroleum gas with no more than 10% propylene.

- (93) “Hold” in the context of a California compliance instrument, is to have the serial number assigned to that instrument registered into a holding account.
- (94) “Hydrocarbon” means a chemical compound containing predominantly carbon and hydrogen.
- (95) “Hydrofluorocarbon” or “HFC” means a class of GHGs consisting of hydrogen, fluorine, and carbon.
- (96) “Hydrogen” means the lightest of all gases, occurring chiefly in combination with oxygen in water; it exists also in acids, bases, alcohols, petroleum, and other hydrocarbons.
- (97) “Imported electricity” means electricity generated outside the state of California and delivered to serve load inside California. Imported electricity includes electricity delivered from a point of receipt located outside the state of California, to the first point of delivery inside the state of California, having a final point of delivery in California. Imported electricity includes electricity imported into California over a multi-jurisdictional retail provider’s transmission and distribution system, or electricity imported into California over a balancing authority’s transmission and distribution system. Imported electricity includes electricity that is a result of cogeneration outside of California. Imported electricity does not include electricity wheeled through California, which is electricity that is delivered into California with final point of delivery outside California.
- (98) “Initial crediting period” means the crediting period that begins with the date that the first GHG emission reductions or GHG removal enhancements took place according to the first offset verification statement that is received by ARB.

- (99) “Intentional reversal” means any reversal caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the project area.
- (100) "Intrastate pipeline" means any pipeline wholly within the state of California that is not regulated as a public utility gas corporation by the California Public Utility Commission (CPUC), not a publicly owned natural gas utility and is not regulated as an interstate pipeline by the Federal Energy Regulatory Commission.
- (101) “Interstate pipeline” means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in the state and is subject to rate regulation by the Federal Energy Regulatory Commission.
- (102) “Inventory position” means a contractual agreement with the terminal operator for the use of the storage facilities and terminaling services for the fuel.
- (103) “Issue” or “issuance” means, in the context of offset credits, the creation of offset credits equivalent to the number of verified GHG reductions or GHG removal enhancements for an offset project. In the context of allowances, issue means the placement of an allowance in an entity’s holding account.
- (104) “Kerosene” is a light petroleum distillate with a maximum distillation temperature of 400 F at the 10-percent recovery point, a final maximum boiling point of 572 F, a minimum flash point of 100 F, and a maximum freezing point of -22 F. Included are No. 1-K and No. 2-K, distinguished by maximum sulfur content (0.04 and 0.30 percent of total mass, respectively), as well as all other grades of kerosene called range or stove oil. Kerosene does not kerosene-type jet fuel.
- (105) “Lead verifier” means a person that has met all of the requirements in section 95132(b)(2) of MRR and who may act as the lead verifier of an

offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

- (106) “Lead verifier independent reviewer” or “Independent reviewer” means a lead verifier within a verification body who has not participated in conducting offset verification services for an Offset Project Developer or Authorized Project Designee for the current Offset Project Data Report who provides an independent review of offset verification services rendered for an Offset Project Developer or Authorized Project Designee as required in section 95977(e)(2)(C)(xviii).
- (107) “Limited Use Holding Account” means an account in which allowances are placed when an entity qualifies for a direct allocation under section 95890. Allowances placed in this account can only be removed for consignment to the auction.
- (108) “Linkage” means the approval of compliance instruments from an external greenhouse gas emission trading system (GHG ETS) to meet compliance obligations under this article, and the reciprocal approval of compliance instruments issued by California to meet compliance obligation in an external GHG ETS.
- (109) “Liquefied Petroleum Gas” or “LPG” means a flammable mixture of hydrocarbon gases used as a fuel. LPG can be mixtures of primarily propane, primarily butane, or mixtures of propane or butane. LPG includes propane grades, HD-5, HD-10, and commercial grade propane. LPG also includes both odorized and non-odorized liquid petroleum gas, and is also referred to as LPG, GLP, LP-Gas, and propane.
- (110) “Listed Industrial Sector” means covered industrial sectors that are eligible for industry assistance specified in Table 8-1 of subarticle 8.

- (111) “Mandatory Reporting Regulation” or “MRR” means ARB’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 2 (commencing with section 95100).
- (112) “Market index” means any published index of quantities or prices based on results of market transactions.
- (113) “Marketer” means a purchasing-selling entity that takes title to wholesale electricity and is not a retail provider.
- (114) “Market-shifting leakage,” in the context of an offset project, means increased GHG emissions or decreased GHG removals outside an offset project’s boundary due to the effects of an offset project on an established market for goods or services.
- (115) “Methane” or “CH<sub>4</sub>” means a GHG consisting on the molecular level of a single carbon atom and four hydrogen atoms.
- (116) “Metric ton” or “MT” means a common international measurement for mass, equivalent to 2,204.6 pounds or 1.1 short tons.
- (117) “Monitoring” means, in the context of offset projects, the ongoing collection and archiving of all relevant and required data for determining the project baseline, project emissions, and quantifying GHG reductions or GHG removal enhancements that are attributable to the offset project.
- (118) “Multi Jurisdictional Retail Provider” means a retail provider that provides electricity to consumers in California and in one or more other states in a contiguous service territory or from a common power system.
- (119) “Municipal solid waste” or “MSW” means solid phase household, commercial/retail, and/or institutional waste, such as yard waste and refuse.

- (120) “Natural gas” means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface, of which its constituents include methane, heavier hydrocarbons, and carbon dioxide. Natural gas may be field quality (which varies widely) or pipeline quality. For the purposes of this rule, the definition of natural gas includes similarly constituted fuels such as field production gas, process gas, and fuel gas.
- (121) “Natural gas liquid” or NGLs, means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods at lease separators and field facilities. Generally, such liquids consist of ethane, propane, butanes, and pentanes plus. “Bulk NGLs” refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.
- (122) “NERC E-tag” means North American Electric Reliability Corporation (NERC) energy tag representing transactions on the North American bulk electricity market scheduled to flow between or across balancing authority areas.
- (123) “Notice of delegation” means a formal notice used to delegate authority to make an electronic submission to the accounts administrator.
- (124) “Offset credit” means a tradable compliance instrument issued or approved by ARB that represents a GHG reduction or GHG removal enhancement of one metric ton of CO<sub>2</sub>e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable.
- (125) “Offset material misstatement” means an error, omission, or misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to believe that an Offset Project Data Report contains errors resulting in



an overstatement of the reported total GHG emission reductions or GHG removal enhancements greater than 5%. Errors, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the Offset Project Data Report is not an offset material misstatement.

- (126) “Offset project” means all equipment, materials, items, or actions that are directly related to or have an impact upon GHG reductions, project emissions, or GHG removal enhancements within the offset project boundary.
- (127) “Offset project boundary” is defined by and includes all GHG emission sources, GHG sinks or GHG reservoirs that are affected by an offset project and under control of the Offset Project Operator or Authorized Project Designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the Offset Project Operator or Authorized Project Designee are not included in the offset project boundary.
- (128) “Offset project commencement” means, for an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of construction, work, or installation. For an offset project that involves the implementation of a management activity, “offset project commencement” means the date on which such activity is first implemented.
- (129) “Offset Project Data Report” means the report prepared by an Offset Project Operator or Authorized Project Designee each year that provides the information and documentation required by this article or a compliance offset protocol.

- (130) “Offset Project Operator” means the entity(ies) with legal authority to implement the offset project.
- (131) “Offset Project Registry” means an entity approved by ARB that lists offset projects, collects Offset Project Data Reports, and facilitates verification of Offset Project Data Reports for offset projects being implemented using a Compliance Offset Protocol.
- (132) “Offset protocol” means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and calculate the project baseline. Offset protocols specify relevant data collection and monitoring procedures, emission factors, and conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.
- (133) “Offset verification” means a systematic, independent, and documented process for evaluation of an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report against ARB’s Compliance Offset Protocols and this article for calculation and reporting GHG baseline emissions, project emissions, GHG reductions, or GHG removal enhancements.
- (134) “Offset verification services” means services provided during verification as specified in section 95977, including reviewing an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report, verifying its accuracy according to the standards specified in this article and applicable Compliance Offset Protocol, assessing the Offset Project Operator’s or Authorized Project Designee’s compliance with this article and applicable Compliance Offset Protocol, and submitting an Offset Verification Statement to ARB or an Offset Project Registry.

- (135) “Offset verification statement” means the final statement rendered by a verification body attesting whether an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report is free of an offset material misstatement, and whether the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol.
- (136) “Offset verification team” means all of those working for a verification body, including all subcontractors, to provide verification services for an Offset Project Operator or Authorized Project Designee.
- (137) “Operational control” for a facility subject to this article means the authority to introduce and implement operating, environmental, health, and safety policies. In any circumstance where this authority is shared among multiple entities, the entity holding the permit to operate from the local air pollution control district or air quality management district is considered to have operational control for purposes of this article.
- (138) “Operator” means the entity, including an owner, having operational control of a facility, or other entity from which an emissions data report is required under article 2, section 95104, title 17, Greenhouse Gas Emissions Data Report. For onshore petroleum and natural gas production, the operator is the operating entity listed on the state well drilling permit, or a state operating permit for wells where no drilling permit is issued by the state.
- (139) “Opt-in Covered Entity” means an entity that meets the requirements of 95811 that does not exceed the inclusion thresholds set forth in section 95812 and may elect to voluntarily opt-in to the cap-and-trade program and be willing to be subject to the requirements set forth in this article.
- (140) “Oxidation” means a reaction in which the atoms in an element lose electrons and the valence of the element is correspondingly increased.

- (141) “Ozone Depleting Substances” or “ODS” means a compound that contributes to stratospheric ozone depletion.
- (142) “Perfluorocarbons” or “PFCs” means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.
- (143) “Permanent” means, in the context of offset credits, either that GHG reductions or GHG removal enhancements are not reversible, or when GHG reductions or GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions or GHG removal enhancements to ensure that all credited reductions endure for a period that is comparable to the atmospheric lifetime of an anthropogenic CO<sub>2</sub> emission.
- (144) “Permanent Retirement Registry” means the publicly available registry in which the Executive Officer will record the serial numbers of the retired compliance instruments.
- (145) “Petroleum” means oil removed from the earth and the oil derived from tar sands, and/or shale.
- (146) “Petroleum refinery” or “refinery” means any facility engaged in producing gasoline, gasoline blending stocks, naphtha, kerosene, distillate fuel oils, residual fuel oils, lubricants, or asphalt (bitumen) through distillation of petroleum or through re-distillation, cracking, or reforming of unfinished petroleum derivatives. Facilities that distill only pipeline transmix (off-spec material created when different specification products mix during pipeline transportation) are not petroleum refineries, regardless of the products produced.
- (147) “Point of delivery” means the point on an electricity transmission or distribution system where a deliverer makes electricity available to a receiver or available to serve load. This point can be an interconnection with another system or a substation where the transmission provider’s transmission and distribution systems are

connected to another system, or a distribution substation where electricity is imported into California over a multi-jurisdictional retail provider's distribution system.

- (148) "Point of receipt" means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a deliverer. This point can be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system.
- (149) "Portable" means designed and capable of being carried or moved from one location to another. Indications of portability include wheels, skids, carrying handles, dolly, trailer, or platform. Equipment is not portable if any one of the following conditions exists:
- (A) The equipment is attached to a foundation;
  - (B) The equipment or a replacement resides at the same location for more than 12 consecutive months;
  - (C) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year; or
  - (D) The equipment is moved from one location to another in an attempt to circumvent the portable residence time requirements of this definition.
- (150) "Position holder" means an entity that holds an inventory position in motor vehicle fuel, ethanol, distillate fuel, biodiesel, or renewable diesel as reflected in the records of the terminal operator or a terminal operator that owns motor vehicle fuel or diesel fuel in its terminal.
- (151) "Positive Offset Verification Statement" means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted Offset

Project Data Report is free of an offset material misstatement and that the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol.

- (152) “Power” means electricity, except where the context makes clear that another meaning is intended.
- (153) “Proceeds” means monies generated as a result of an auction.
- (154) “Process” means the intentional or unintentional reactions between substances or their transformation, including the chemical or electrolytic reduction or metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock.
- (155) “Process emissions” means the emissions from industrial processes (e.g., cement production, ammonia production) involving chemical or physical transformations other than fuel combustion. For example, the calcination of carbonates in a kiln during cement production or the oxidation of methane in an ammonia process results in the release of process CO<sub>2</sub> emissions to the atmosphere. Emissions from fuel combustion to provide process heat are not part of process emissions, whether the combustion is internal or external to the process equipment.
- (156) “Producer” means a person who owns, leases, operates, controls, or supervises a California production facility.
- (157) “Professional judgment” means the ability to render sound decisions based on professional qualifications and relevant greenhouse gas accounting and auditing experience.
- (158) “Project baseline” means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project’s GHG emission

sources, GHG sinks, or GHG reservoirs within the offset project boundary.

- (159) “Project emissions” means any GHG emissions associated with the implementation of an offset project that must be accounted for in the Offset Project Data Report.
- (160) “Propane” is a paraffinic hydrocarbon with molecular formula  $C_3H_8$ .
- (161) “Property right” means any type of right to specific property whether it is personal or real property, tangible or intangible.
- (162) “Public utility gas corporation” is a gas corporation defined in California Public Utilities Code section 222 that is also a public utility as defined in California Public Utilities Code section 216.
- (163) “Publicly owned natural gas utility” means a municipality or municipal corporation, a municipal utility district, a public utility district, or a joint powers authority that includes one or more of these agencies that furnishes natural gas services to end users.
- (164) “Purchase limit” means the maximum percentage of allowances that may be purchased by an entity of a group of affiliated entities at an allowance auction.
- (165) “Purchasing-selling entity” or “PSE” means the functional entity that purchases or sells, and takes title to, energy, capacity, and reliability-related services. A PSE is identified on a NERC E-tag for each physical path segment.
- (166) “Qualified Positive Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement, but the Offset Project Data Report may include one or more nonconformance(s) with the quantification, monitoring, or metering

requirements of this article and applicable Compliance Offset Protocol which do not result in an offset material misstatement.

- (167) “Qualified Positive Verification Statement” means a statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted emissions data report is free of material misstatement, but the emissions data report may include one or more nonconformance(s) with the requirements of this article which do not result in a material misstatement.
- (168) “Quantifiable” means, in the context of offset projects, the ability to accurately measure and calculate GHG reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.
- (169) “Quantitative usage limit” means a limit on the percentage of an entity’s compliance obligation that may be met by surrendering offset credits, sector-based credits, or other compliance instruments designated to be subject to the limit under this article.
- (170) “Rack” means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer.
- (171) “Radiative forcing” means the change in the net vertical irradiance at the atmospheric boundary between the troposphere and the stratosphere due to an internal change or a change in the external forcing of the climate system such as a change in the concentration of carbon dioxide or the output of the Sun.
- (172) “Real” means, in the context of offset projects, that GHG reductions or GHG enhancements result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and



conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage.

- (173) “Reasonable assurance” means a high degree of confidence that submitted data and statements are valid.
- (174) “Reference Level” means the quantity of GHG emission equivalents that have occurred during the normal course of business or activities during a designated period of time within the boundaries of a defined sector and a defined jurisdiction.
- (175) “Reformulated Gasoline Blendstock for Oxygenate Blending” or “RBOB” has the same meaning as defined in title 13 of the California Code of Regulations, section 2260(a).
- (176) “Register” in the context of a compliance instrument means the act of entering the serial number of a compliance instrument into an account.
- (177) “Registrant” refers to an entity that has completed the process for registration.
- (178) “Registry Services” means all services provided by an ARB approved Offset Project Registry in section 95987.
- (179) “Renewable energy” means energy from sources that constantly renew themselves or that are regarded as practically inexhaustible. Renewable energy includes energy derived from solar, wind, geothermal, hydroelectric, wood, biomass, tidal power, sea currents, and ocean thermal gradients.
- (180) “Reporting year” means data year.
- (181) “Reserve price” see “Auction reserve price.”
- (182) “Reserve Sale Administrator” means the operator of sales from the Allowance Price Containment reserve account, which may be the Executive Officer or an entity designated by the Executive Officer.

- (183) “Retail provider” means an entity that provides electricity to retail end users in California and is an electric corporation as defined in Public Utilities Code section 218, electric service provider as defined in Public Utilities Code section 218.3, local publicly owned electric utility as defined in Public Utilities Code section 224.3, a community choice aggregator as defined in Public Utilities Code section 331.1, or the Western Area Power Administration. For purposes of this article, electrical cooperatives, as defined by Public Utilities Code section 2776, are excluded.
- (184) “Retire” or “retired” or “retirement” means that the serial number for a compliance instrument is registered into the Retirement Compliance Account. Compliance instruments registered into this account cannot be used for further compliance.
- (185) “Reversal” means a GHG emission reduction or GHG removal enhancement for which ARB has issued an offset credit that is subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.
- (186) “Sector” or “sectoral,” when used in conjunction with sector-based crediting programs, means a group or subgroup of an economic activity, or a group or cross-section of a group of economic activities, within a jurisdiction.
- (187) “Sector-based crediting program” is a GHG emissions-reduction crediting mechanism established by a country, region, or subnational jurisdiction in a developing country and covering a particular economic sector within that jurisdiction. A program’s performance is based on achievement toward an emissions-reduction target for the particular sector within the boundary of the jurisdiction.

- (188) “Sector-based offset credit” means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.
- (189) “Self-generation of electricity” means electricity dedicated to serving an electricity user on the same location as the generator. The system may be operated directly by the electricity user or by an entity with a contractual arrangement.
- (190) “Serial number” means a unique number assigned to each compliance instrument for identification.
- (191) “Sequestration” means the removal and storage of carbon from the atmosphere in GHG sinks or GHG reservoirs through physical or biological processes.
- (192) “Source” means greenhouse gas source; any physical unit, process, or other use or activity that releases a greenhouse gas into the atmosphere.
- (193) “Specified source of electricity” or “specified source” means a facility or unit which is permitted to be claimed as the source of imported electricity delivered by an electricity importer. The electricity importer must have either full or partial ownership in the facility/unit or a written contract to procure electricity generated by that facility/unit. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by ARB.
- (194) “Standing live carbon stocks” means the above ground carbon in live tree biomass. Live trees include the bole, stem, branches, roots, and leaves or needles.
- (195) “Stationary” means neither portable nor self propelled, and operated at a single facility.

- (196) “Supplier” means a producer, importer, or exporter of a fossil fuel or an industrial greenhouse gas.
- (197) “Terminal” means a motor vehicle fuel or diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. “Terminal” includes a fuel production facility where motor vehicle fuel is produced and stored and from which motor vehicle fuel may be removed at a rack.
- (198) “Transfer” of a compliance instrument means the removal of the serial number of a compliance instrument from one account and placement into another account.
- (199) “Tribal Nation” means those Native American tribes in the United States and listed in the Federal Register.
- (200) “Unintentional reversal” means any reversal, including wildfires or disease, that is not the result of the forest owner’s negligence, gross negligence, or willful intent.
- (201) “Unspecified source of electricity” or “unspecified source” means electricity generation that cannot be matched to a specific electricity generating facility or electricity generating unit or matched to an asset-controlling supplier recognized by ARB. Unspecified sources contribute to the bulk system power pool and typically are dispatchable, marginal resources that do not serve baseload.
- (202) “Vented emissions” means intentional or designed releases of CH<sub>4</sub> or CO<sub>2</sub> containing natural gas or hydrocarbon gas (not including stationary combustion flue gas), including process designed flow to the atmosphere through seals or vent pipes, equipment blowdown for maintenance, and direct venting of gas used to power equipment (such as pneumatic devices).

- (203) “Verifiable” means that an Offset Project Data Report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body.
  - (204) “Verification body” means a firm accredited by ARB, which is able to render an offset verification statement and provide offset verification services for Offset Project Operators or Authorized Project Designees subject to providing an Offset Project Data Report under this article.
  - (205) “Verifier” means an individual accredited by ARB to carry out offset verification services as specified in section 95977.
  - (206) “Vintage year” means the budget year to which an individual Californian GHG allowance is assigned pursuant to subarticle 6.
  - (207) “Voluntarily Associated Entity” means any entity which does not meet the requirements of section 95811 in this article that intends to voluntarily retire compliance instruments in the cap-and-trade program.
- (b) For the purposes of sections 95801 through 96022, the following acronyms apply:
- (1) “AB 32” means Assembly Bill 32, the California Global Warming Solutions Act of 2006.
  - (2) “ARB” means the California Air Resources Board.
  - (3) “BAU” means business as usual.
  - (4) “BPA” means Bonneville Power Administration.
  - (5) “CAR” means Climate Action Reserve.
  - (6) “CEC” means California Energy Commission.
  - (7) “CFR” means Code of Federal Regulations.
  - (8) “CH<sub>4</sub>” means methane.
  - (9) “CO<sub>2</sub>” means carbon dioxide.
  - (10) “CO<sub>2</sub>e” means carbon dioxide equivalent.
  - (11) “CRT” means Climate Reserve Tonne.
  - (12) “DWR” means California Department of Water Resources.

- (13) "F" means Fahrenheit.
- (14) "GHG" means greenhouse gas.
- (15) "GHG ETS" means greenhouse gas emissions trading system.
- (16) "GWP" means global warming potential.
- (17) "HFC" means hydrofluorocarbon.
- (18) "LPG" means liquefied petroleum gas.
- (19) "MMBtu" means one million British thermal units.
- (20) "MRR" means the Air Resources Board's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions.
- (21) "Mscf" means million standard cubic feet.
- (22) "MWh " means megawatt-hour.
- (23) "MT" means metric tons.
- (24) "NAICS" means North American Industry Classification System.
- (25) "NGLs" means natural gas liquids.
- (26) "NERC" means North American Electric Reliability Corporation.
- (27) "N<sub>2</sub>O" means "nitrous oxide."
- (28) "PFC" means perfluorocarbon.
- (29) "PSE" means purchasing-selling entity.
- (30) "PUC" means the Public Utilities Code.
- (31) "REDD" means reducing emissions from deforestation and degradation.
- (32) "SAR" means the Intergovernmental Panel on Climate Change's Second Assessment Report.
- (33) "SCF" means standard cubic foot.
- (34) "SF<sub>6</sub>" means sulfur hexafluoride.
- (35) "WAPA" means Western Area Power Administration.
- (36) "WCI" means Western Climate Initiative.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

### **Subarticle 3: Applicability**

This article applies to all of the entities identified in this subarticle.

#### **§ 95810. Covered Gases.**

This article applies to the following greenhouse gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF<sub>3</sub>), and other fluorinated greenhouse gases.

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.

#### **§ 95811. Covered Entities.**

This article applies to all of the following entities with associated GHG emissions pursuant to section 95812:

- (a) Operators of Facilities. The operator of a facility within California that has one or more of the following processes or operations:
  - (1) Cement production;
  - (2) Cogeneration;
  - (3) Glass production;
  - (4) Hydrogen production;
  - (5) Iron and steel production;
  - (6) Lime manufacturing;
  - (7) Nitric acid production;
  - (8) Oil and natural gas systems;
  - (9) Petroleum refining;

- (10) Pulp and paper manufacturing;
  - (11) Self-generation of electricity; or
  - (12) Stationary combustion.
- (b) First Deliverers of Electricity.
- (1) Electricity generating facilities: the operator of an electricity generating facility located in California; or
  - (2) Electricity importers.
- (c) Suppliers of Natural Gas. An entity that distributes or uses natural gas in California as described below:
- (1) A public utility gas corporation operating in California;
  - (2) A publicly owned natural gas utility operating in California; or
  - (3) The operator of an intrastate pipeline not included in section 95811(c) (1) or section 95811(c) (2) that distributes natural gas directly to end users.
- (d) Suppliers of RBOB and Distillate Fuel Oil. A position holder of one or more of the following fuels, or an enterer that imports one or more of the following fuels into California:
- (1) RBOB;
  - (2) Distillate Fuel Oil No. 1;
  - (3) Distillate Fuel Oil No. 2.
- (e) Suppliers of Liquefied Petroleum Gas.
- (1) The operator of a refinery that produces liquid petroleum gas in California.
  - (2) The operator of a facility that fractionates natural gas liquids to produce liquid petroleum gas.
  - (3) A consignee of liquefied petroleum gas into California.
- (f) Sections 95811(c), (d), and (e) apply to suppliers of blended fuels that contain the fuels listed above.
- (g) Suppliers of carbon dioxide (CO<sub>2</sub>).



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.

**§ 95812. Inclusion Thresholds for Covered Entities.**

- (a) The inclusion threshold for each covered entity is based on the subset of greenhouse gas emissions that generate a compliance obligation for that entity as specified in section 95852. Reported or reported and verified annual emissions could be either reported or verified pursuant to ARB Regulation for the Mandatory Reporting of Greenhouse Gas Emissions or U.S. Environmental Protection Agency (EPA) Final Rule on Mandatory Reporting of Greenhouse Gases.
- (b) If an entity's aggregated, reported, or verified annual emissions in any data year from 2008 to 2010 from the categories specified in section 95851(a) equal or exceed the thresholds identified below, that entity is classified as a covered entity as of January 1, 2012 and for all future years until any requirement set forth in section 95812(e) is met.
  - (1) Operators of Facilities. The threshold for a facility is 25,000 metric tons of CO<sub>2</sub>e per data year.
  - (2) First Deliverers of Electricity.
    - (A) Electricity Generating Facilities. The threshold for an electricity generating facility is based on the annual emissions from which the electricity originated. The threshold for an electricity generating facility is 25,000 metric tons of CO<sub>2</sub>e per data year.
    - (B) Electricity importers of specified sources of electricity. The threshold for an electricity importer from specified sources is based on the annual emissions of the electricity generating facility from which the imported electricity originated. The

threshold for an electricity importer from a specified source which emits 25,000 metric tons of CO<sub>2</sub>e per year is zero.

- (C) Electricity importers of unspecified sources of electricity. The threshold for electricity delivered from unspecified sources is zero.
- (c) The threshold for a carbon dioxide supplier is based on the sum of its imported and exported carbon dioxide into/out of California. The threshold is 25,000 metric tons of CO<sub>2</sub>e per year.
- (d) If an entity's annual, reported, and verified emissions from any data year between 2011-2014 equal or exceed the thresholds identified below from the categories specified in section 95851(b), that entity is classified as a covered entity as of January 1, 2015, for the year in which the threshold is reached and for all future years until any requirement set forth in section 95812(e) is met.
  - (1) Fuel Suppliers. The threshold for a fuel supplier is 25,000 metric tons of CO<sub>2</sub>e annually from the emissions of GHG that would result from full combustion or oxidation of the quantities of the fuels, identified in section 95811(c) through (f), that are imported and/or delivered to California.
  - (2) Electricity importers. The threshold for an electricity importer of specified or unspecified source of electricity is zero as of January 1, 2015.
- (e) Effect of Reduced Emissions on an Entity's Compliance Obligation. A covered entity continues to have a compliance obligation for each data year of a compliance period, until the following compliance period after one of the following conditions occurs:
  - (1) Annual reports demonstrate GHG emissions less than 25,000 metric tons of CO<sub>2</sub>e per year during one entire compliance period;

- (2) A covered entity shuts down all processes, units, and supply operations subject to reporting, in which case an emissions data report must be submitted for the year in which a facility or supplier's GHG-emitting processes and operations ceased to operate and for the first full year of non-operation following a permanent shutdown. The verification requirements in section 95103 of the Mandatory Reporting Requirements do not apply to the first full year of non-operation following a permanent shutdown.

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.

### **§ 95813. Opt-In Covered Entities.**

- (a) An entity that meets the requirements of section 95811, but does not exceed the inclusion thresholds set forth in section 95812 may elect to voluntarily opt-in to the cap-and-trade program.
- (b) An entity that voluntarily elects to participate in this program under this section must submit its request to the Executive Officer for approval pursuant to subarticle 5, section 95830(c). The Executive Officer shall evaluate such applications and designate approved applicants as opt-in covered entities.
- (c) An opt-in covered entity is subject to all reporting, verification, and compliance obligations that apply to covered entities.
- (d) An opt-in covered entity may be eligible to receive freely allocated allowances subject to subarticles 8 and 9.
- (e) Opt-in participation shall not affect the allowance budgets set forth in subarticle 6.

- (f) Opting out. After the end of any given compliance period an opt-in covered entity may choose to opt out of the program provided its annual emission levels for any data year remain below the inclusion thresholds set forth in section 95812. An entity choosing to opt out of the program must either fulfill its compliance obligations as required pursuant to subarticle 7 or surrender allowances equivalent to all the directly allocated allowances it has received from the budget years for the compliance period in question. An opt-in covered entity that wishes to opt-out of this program must apply to the Executive Officer for approval pursuant to subarticle 5.

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.

**§ 95814. Voluntarily Associated Entities and Other Registered Participants.**

- (a) Voluntarily Associated Entities (VAE).
- (1) An entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments may apply to the Executive Officer pursuant to section 95830(c) for approval as a voluntarily associated entity.
  - (2) The following entities may qualify as voluntarily associated entities:
    - (A) An entity that does not meet the requirements of sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments; or
    - (B) An entity operating an offset project that is registered with ARB pursuant to subarticle 13.
- (b) Other Registered Participants.

- (1) The following entities do not qualify to hold compliance instruments but may qualify as a Registered Participant to serve in the following functions:
  - (A) A verifier pursuant to section 95978;
  - (B) A verification body pursuant to section 95978;
  - (C) Offset Project Registries; or
  - (D) Other third-party registrants pursuant to subarticle 14.
- (2) To qualify as a Registered Participant the entity must obtain registration approval from the Executive Officer pursuant to section 95830 (c).
- (c) A registered entity that has had its holding account revoked pursuant to section 95831(b) may not hold compliance instruments or register with the accounts administrator in the cap-and-trade program in any capacity:

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

## **Subarticle 4: Compliance Instruments**

### **§ 95820. Compliance Instruments Issued by the Air Resources Board.**

- (a) California Greenhouse Gas Emissions Allowances.
  - (1) The Executive Officer shall create California GHG allowances pursuant to the schedule set forth in subarticle 6.
  - (2) The Executive Officer shall assign each California GHG allowance a unique serial number that indicates the annual allowance budget from which the allowance originates
  - (3) Within 15 days of the effective date of this article the Executive Officer shall place these allowances into a holding account under the control of the Executive Officer pursuant to section 95831(c).

- (b) Offset Credits Issued by ARB.
  - (1) The Executive Officer shall issue and register offset credits pursuant to the requirements of subarticle 13.
  - (2) Surrender of offset credits shall be subject to the quantitative usage limit set forth in section 95995.
- (c) Each compliance instrument issued by the Executive Officer represents a limited authorization to emit up to one metric ton in CO<sub>2</sub>e of any greenhouse gas specified in section 95810, subject to all applicable limitations specified in this article. No provision of this article may be construed to limit the authority of the Executive Officer to terminate or limit such authorization to emit. A compliance instrument issued by the Executive Officer does not constitute property or a property right.

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.

### **§ 95821. Compliance Instruments Issued by Approved Programs.**

The following compliance instruments may be used to meet a compliance obligation under this article:

- (a) allowances specified in section 95942(b) and issued by a program approved by ARB pursuant to section 95941;
- (b) offset credits specified in section 95942(c) and issued by a program approved by ARB pursuant to section 95941;
- (c) offset credits recognized for purposes of early action pursuant to section 95990; and
- (d) sector-based offset credits recognized pursuant to subarticle 14.
- (e) compliance instruments specified in section 95821(b) through (d) are subject to the quantitative usage limit set forth in section 95995.

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

## **Subarticle 5: Registration and Accounts**

### **§ 95830. Registration with ARB.**

- (a) The Executive Officer shall serve as accounts administrator or may contract with an entity to serve as accounts administrator.
- (b) An entity cannot hold an ARB-issued compliance instrument until the Executive Officer approves the entity's registration with ARB or the entity is registered with an external program approved by ARB pursuant to subarticles 12 or 14.
- (c) Requirements for Registration.
  - (1) An entity must complete an application that contains the following information:
    - (A) Name and type of organization;
    - (B) Statement of basis for qualifying for registration pursuant to sections 95811, 95813, or 95814;
    - (C) Identification of all other entities registered pursuant to this subarticle with whom the entity has a direct or indirect corporate association pursuant to section 95914, and a brief description of the association;
    - (D) Identification of all entities registered pursuant to this subarticle for whose benefit the entity holds compliance instruments.
    - (E) Applicants may be denied registration based on (i) information provided; or (ii) if the Executive Officer determines the applicant has provided false or misleading information, or has withheld information pertinent to its application.

- (2) An entity must designate an authorized account representative pursuant to section 95832.
- (d) Registration Deadlines.
  - (1) An entity that meets or exceeds the inclusion thresholds in section 95812 must register with the accounts administrator pursuant to this section:
    - (A) within 45 calendar days of the reporting deadline contained in the MRR if the entity is not a covered entity as of January 1, 2012; or
    - (B) within 30 calendar days of the effective date of this regulation for an entity that exceeds the inclusion thresholds in section 95812 for any data year 2008 through 2010.
  - (2) An opt-in covered entity must register with the accounts administrator pursuant to section 95830:
    - (A) within 30 calendar days of the effective date of this regulation for an entity voluntarily electing to be subject to a compliance obligation pursuant to section 95813 during 2012;
    - (B) by November 30 of the calendar year prior to the first year in which it voluntarily elects to be subject to a compliance obligation pursuant to section 95813.
  - (3) Any voluntarily associated entity that intends to hold an ARB-issued compliance instrument must register with the accounts administrator pursuant to section 95830 prior to acquiring such compliance instruments.
- (e) Completion of Registration. Registration is completed when the Executive Officer approves the registration and informs the entity and the accounts administrator of the approval.

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.

**§ 95831. Account Types.**

- (a) Creation of Holding and Compliance Accounts.
  - (1) The Executive Officer shall not approve registration for more than one set of accounts for an entity.
  - (2) Holding Accounts. When the Executive Officer approves a registration for a covered entity, an opt-in covered entity, or a voluntarily associated entity, the accounts administrator will create a holding account for the registrant.
  - (3) Limited Use Holding Accounts. When an entity qualifies for a direct allocation under section 95890, the accounts administrator will create a limited use holding account for the entity that shall be subject to the following restrictions:
    - (A) the entity may not transfer compliance instruments from other accounts into the limited use holding account; and
    - (B) the entity may not transfer compliance instruments from the limited use holding account to any account other than the Auction Holding Account.
  - (4) Compliance Accounts. When a covered entity or opt-in covered entity completes the registration process, the account administrator will create a compliance account for the covered entity.
    - (A) A covered entity or opt-in covered entity may transfer compliance instruments to its compliance account at any time.
    - (B) A compliance instrument transferred into a compliance account may not be removed by the covered entity.
- (b) Suspension, Revocation, or Restriction of Holding Accounts.

- (1) The Executive Officer may revoke or suspend the registration and accounts of a voluntarily associated entity or opt-in covered entity for violations of this article.
  - (A) If registration is revoked or suspended the entity must sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation.
  - (B) If registration is revoked or suspended and the entity fails to sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation, the accounts administrator will transfer the remaining instruments into the Auction Holding Account for sale at auction on behalf of the entity pursuant to section 95910(d).
- (2) The holding account of any entity may be restricted by the Executive Officer by either of the following:
  - (A) to hold a number of compliance instruments less than the holding limit established in section 95920(b); or
  - (B) to limit or prohibit transfers in or out of the holding account.
- (c) Accounts under the Control of the Executive Officer. The accounts administrator will create and maintain the following accounts under the control of the Executive Officer:
  - (1) A holding account to be known as the Allocation Holding Account into which the serial numbers of compliance instruments will be registered when the compliance instruments are created;
  - (2) A holding account known as the Auction Holding Account into which allowances are transferred to be sold at auction from:
    - (A) the Allocation Holding Account;
    - (B) the holding accounts of those entities for which allowances are being auctioned on consignment pursuant to 95831(b)(1)(B);and

- (C) the limited use holding accounts of those entities consigning allowances to auction pursuant to subarticle 8.
- (3) A holding account to be known as the Retirement Account to which the Executive Officer will transfer compliance instruments from compliance accounts. Alternatively, entities may voluntarily retire compliance instruments by transferring the serial numbers of instruments they are retiring to the Retirement Account.
  - (A) When compliance instruments are registered into the Retirement Account, these compliance instruments cannot be returned to any other holding or compliance account.
  - (B) When compliance instruments are registered into the Retirement Account, any external ETS to which California links will be informed of the retirements.
  - (C) The Executive Officer will record the serial numbers of the retired instruments to a publicly available Permanent Retirement Registry.
- (4) A holding account to be known as the Allowance Price Containment Reserve Account:
  - (A) Into which the serial numbers of allowances allocated by ARB for auction that remain unsold at auction will be transferred.
  - (B) Into which the serial numbers of allowances directly allocated to the Allowance Price Containment Reserve under subarticle 8 will be transferred.
  - (C) Into which the serial numbers of allowances submitted to fulfill an entity's excess emissions obligation pursuant to section 95857(c) will be transferred.
  - (D) From which the Executive Officer will withdraw allowances to sell to covered entities pursuant to section 95913.
- (5) A holding account to be known as the Forest Buffer Account:

- (A) Into which a percentage, of offset credits issued by ARB for Compliance Offset Protocol Forest Projects pursuant to section 95983(a) will be transferred. The percentage is determined pursuant to the Compliance Offset Protocol Forest Projects U.S.,
  - (B) From which the Executive Officer may withdraw offset credits in the case of unintentional project reversals pursuant to 95983(d) (2) and 95985(f). These offset credits will be transferred to the Retirement Holding Account.
- (6) Reserved for Voluntary Renewable Energy Allowance Set-Aside Account.

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.

**§ 95832. Designation of Authorized Account Representative.**

- (a) An application for an account must designate a single authorized account representative and a single alternate authorized account representative who may act on behalf of the authorized account representative. The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative. A complete application for an account shall be submitted to the accounts administrator and shall include the following elements:
  - (1) Name, address, E-mail address, telephone number, and facsimile transmission number of the authorized account representative and any alternate authorized account representative;
  - (2) Organization name;

- (3) A list of all entities subject to a binding agreement for the authorized account representative or any alternate authorized account representative to represent their ownership interest with respect to the compliance instruments held in the account, including a statement of each beneficial owner's percentage ownership interest and a statement of affiliations between beneficial owners;
  - (4) The following certification statement by the authorized account representative and any alternate authorized account representative: "I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in title 17, article 5, sections 95800 et seq. on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the accounts administrator or a court regarding the account";
  - (5) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.
- (b) Unless otherwise required by the Executive Officer, documents of agreement referred to in the application for an account shall not be submitted to the accounts administrator. The accounts administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
  - (c) Authorization of authorized account representative. Upon receipt by the accounts administrator of a complete application for an account under section 95830(c):

- (1) The accounts administrator will establish an account or accounts for the person or persons for whom the application is submitted pursuant to section 95831.
- (2) The authorized account representative and any alternate authorized account representative for the account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article, notwithstanding any agreement between the authorized account representative or any alternate authorized account representative and such entity.
- (3) Any such entity shall be bound by any decision or order issued to the authorized account representative or any alternate authorized account representative by the Executive Officer or a court regarding the account. Any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.
- (d) Each submission concerning the account shall be submitted, signed, and certified by the authorized account representative or any alternate authorized account representative for the entities that own compliance instruments held in the account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: "I am authorized to make this submission on behalf of the entities that own the compliance instruments held in the account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my

knowledge and belief true, accurate, and complete. I consent to the jurisdiction of California and its courts for purposes of enforcement of the laws, rules and regulations pertaining to title 17, article 5, sections 95800 et seq., and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

- (e) The accounts administrator will accept or act on a submission concerning the account only if the submission has been made, signed, and certified in accordance with this section.
- (f) Changing authorized account representative and alternate authorized account representative; changes in entities that own compliance instruments.
  - (1) The authorized account representative for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c) (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative, or the previous alternate authorized account representative prior to the time and date when the accounts administrator receives the superseding application for an account shall be binding on the new authorized account representative and the entities that own the compliance instruments in the account.
  - (2) The alternate authorized account representative for an account may be changed at any time upon receipt by the accounts administrator of a superseding complete application for an account under section 95830(c) (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative, or the previous alternate authorized account representative, prior to the time and date when the accounts

administrator receives the superseding application for an account shall be binding on the new alternate authorized account representative and the entities that own the compliance instruments in the account.

- (3) In the event that a new entity owning compliance instruments in the account is not included in the list of entities in the application for an account, the new entity shall be subject to and bound by the application for an account, the representations, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative, and the decisions, orders, actions, and inactions of the accounts administrator, as if the new entity were included in such list.
  - (4) Within 1 day following any change in the entities that own compliance instruments in the account, including the addition or deletion of entities, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for an account amending the list of entities that own the compliance instruments in the account to include the change.
- (g) Objections concerning authorized account representative.
- (1) Once a complete application for an account under section 95830(c)(1) has been submitted and received, the accounts administrator will rely on the application unless and until a superseding complete application for an account under section 95830(c)(1) is received by the accounts administrator.
  - (2) Except as provided in sections 95832(f)(1), no objection or other communication submitted to the accounts administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative for an account shall affect any representation, action, inaction, or submission of the authorized account



representative or any alternate authorized account representative or the finality of any decision or order by the accounts administrator under title 17, article 5, sections 95800 et seq.

- (3) The accounts administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative for an account, including private legal disputes concerning the proceeds of compliance instrument transfers.
- (h) Delegation by authorized account representative and alternate authorized account representative.
- (1) An authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c) (2).
  - (2) An alternate authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the accounts administrator provided for under section 95832(c) (2).
  - (3) In order to delegate authority to make an electronic submission to the accounts administrator in accordance with section 95832(h)(1) and (2) the authorized account representative or alternate authorized account representative, as appropriate, must submit to the accounts administrator a notice of delegation, that includes the following elements:
    - (A) The name, address, E-mail address, telephone number, and facsimile transmission number of such authorized account representative or alternate authorized account representative;

- (B) The name, address, email address, telephone number and facsimile transmission number of each such natural person, herein referred to as “electronic submission agent”;
  - (C) For each such natural person, a list of the type of electronic submissions for which authority is delegated to him or her; and
  - (D) The following certification statements by such authorized account representative or alternate authorized account representative:
    - (i) “I agree that any electronic submission to the accounts administrator that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under section 95832(h)(3) shall be deemed to be an electronic submission by me.”
    - (ii) “Until this notice of delegation is superseded by another notice of delegation under section 95832(h)(3), I agree to maintain an email account and to notify the accounts administrator immediately of any change in my email address unless all delegation authority by me is terminated.”
- (4) A notice of delegation submitted under section 95832(h)(3) shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the accounts administrator and until receipt by the accounts administrator of a superseding notice of delegation by such authorized account representative or alternate authorized account representative as appropriate. The superseding

notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

- (5) Any electronic submission covered by the certification in section 95832(h)(3)(D) and made in accordance with a notice of delegation effective under section 95832(h)(3) shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

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

## **Subarticle 6: California Greenhouse Gas Allowance Budgets**

### **§ 95840. Compliance Periods.**

Duration of Compliance Periods is as follows:

- (a) The first compliance period starts on January 1, 2012, and ends on December 31, 2014.
- (b) The second compliance period starts on January 1, 2015, and ends on December 31, 2017.
- (c) The third compliance period starts on January 1, 2018, and ends on December 31, 2020.

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.

**§ 95841. Annual Allowance Budgets for Calendar Years 2012-2020.**

The California GHG Allowance Budgets are set as described in Table 6-1.

**Table 6-1: California GHG Allowances Budgets**

	Budget Year	Annual Allowance Budget (Millions of CA GHG Allowances)
First Compliance Period	2012	165.8
	2013	162.8
	2014	159.7
Second Compliance Period	2015	394.5
	2016	382.4
	2017	370.4
Third Compliance Period	2018	358.3
	2019	346.3
	2020	334.2

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

**Subarticle 7: Compliance Requirements for Covered Entities**

**§ 95850. General Requirements.**

- (a) Reporting Requirements. Each covered entity identified in section 95811 is subject to the Mandatory Reporting Regulation.
- (b) Record Retention Requirements. Each covered entity must retain all of the following records for at least 10 consecutive years and must provide such records within 20 calendar days of receiving a written request from the Executive Officer:

- (1) Copies of all data and reports submitted to the Executive Officer under this article and section 95105 of the Mandatory Reporting Regulation, Document Retention and Recordkeeping Requirements;
- (2) Records used to calculate a compliance obligation as specified in section 95853; and
- (3) Verification statement as required pursuant to section 95103(f) of the Mandatory Reporting Regulation, Greenhouse Gas Reporting Requirements.

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.

#### **§ 95851. Phase-in of Compliance Obligation for Covered Entities.**

- (a) Operators of facilities and first deliverers of electricity specified in section 95811(a) and (b) and suppliers of CO<sub>2</sub> specified in section 95811(g) that meet or exceed the annual emissions threshold in section 95812(b) have compliance obligations beginning with the first compliance period.
- (b) The suppliers of natural gas, suppliers of RBOB and distillate fuel oils, and suppliers of liquefied petroleum gas specified in section 95811(c), (d), and (e) and that meet or exceed the annual threshold in section 95812(d) will have a compliance obligation beginning with the second compliance period.

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.

#### **§ 95852. Emission Categories Used to Calculate Compliance Obligations.**

- (a) Operators of Facilities. An operator of a facility covered under section 95811(a) and 95812(b)(1) has a compliance obligation for every metric ton

- of CO<sub>2</sub>e for which a positive verification statement or a qualified positive verification statement is issued, both for process emissions and stationary combustion emissions.
- (b) First Deliverers of Electricity. A deliverer of electricity covered under sections 95811(b) and 95812(b)(2) has a compliance obligation for every metric ton of CO<sub>2</sub>e emissions for which a positive verification statement or qualified positive verification statement is issued, and every metric ton of CO<sub>2</sub>e of stationary combustion emissions, or emissions associated with electricity imported into California from a source in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12.
  - (c) Suppliers of Natural Gas. A supplier of natural gas covered under section 95811(c) and 95812(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions that would result from full combustion or oxidation of all fuel delivered to end users in California, less the fuel that is delivered to covered entities.
  - (d) Suppliers of RBOB and Distillate Fuel Oils. A supplier of petroleum products covered under section 95811(d) or 95812(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions that would result from full combustion or oxidation of the quantities of the following fuels that are imported and/or delivered to California:
    - (1) RBOB;
    - (2) Distillate Fuel Oil No. 1;
    - (3) Distillate Fuel Oil No. 2.
  - (e) Suppliers of Natural Gas Liquids.
    - (1) A producer of liquefied petroleum gas covered under section 95811(e) and 95812(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions that would result from full combustion or oxidation of

all fuel sold, distributed, or otherwise transferred for consumption in California; and

- (2) An importer consignee of liquefied petroleum gas covered under section 95811(e) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions that would result from full combustion or oxidation of all fuel imported into California.
- (f) Suppliers of Blended Fuels. An entity that supplies any of the fuels covered under section 95811(f) and 95812(d) as blended fuels has an aggregated compliance obligation based on the separate constituents of the blend.
- (g) Suppliers of Carbon Dioxide. An entity that supplies carbon dioxide covered under section 95811(g) has an aggregated compliance obligation based on the sum of imported and exported quantities of CO<sub>2</sub>.
- (h) The compliance obligation is calculated based on the sum of (i) emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O resulted from combustion of fossil fuel; (ii) emissions of CH<sub>4</sub> and N<sub>2</sub>O resulted from combustion of all biomass-based fuel; (iii) emissions of CO<sub>2</sub> resulted from combustion of unverifiable biomass-derived fuels, as specified in section 95852.2; (iv) emissions of CO<sub>2</sub> resulted from combustion of biomass-derived fuels not listed in section 95852.2; and (v) all process and vented emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O as specified in the Mandatory Reporting Rule except for those listed in section 95852.2(a)(6) below.

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.

### **§ 95852.1. Compliance Obligations for Biomass-Derived Fuels.**

An entity that has emissions from biomass-derived fuels is required to report and verify its emissions pursuant to Mandatory Reporting Regulation section 95130

and has a compliance obligation for every metric ton of CO<sub>2</sub>e emissions from biomass-derived fuels that would result from full combustion or oxidation of all fuel for emissions identified below:

- (a) Emissions from source categories that are not listed under section 95852.2 below; or
- (b) Emissions, from source categories listed in 95852.2, without information and documentation necessary to establish the validity of biomass-derived fuels which are considered unverifiable pursuant to MRR section 95131(i).

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.

#### **§ 95852.2. Emissions without a Compliance Obligation.**

Emissions from the following source categories as identified in sections 95100 through 95199 of the Mandatory Reporting Regulation count toward applicable reporting thresholds but do not count toward a covered entity's compliance obligation set forth in this regulation. These source categories include:

- (a) Combustion emissions from biomass-derived fuels (except biogas from digesters) from the following sources:
  - (1) Solid waste materials;
  - (2) Waste pallets, crates, dunnage, manufacturing and construction wood wastes, tree trimmings, mill residues, and range land maintenance residues;
  - (3) All agricultural crops or waste; or
  - (4) Wood and wood wastes identified to follow all of the following practices:
    - (A) Harvested pursuant to approved timber management plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 or other locally or nationally approved plan;



- (B) Harvested for the purpose of forest fire fuel reduction or forest stand improvement; and
  - (C) Do not transport or cause the transport of species known to harbor insect or disease nests outside zones of infestation or quarantine zones identified by the department of Food and Agriculture of the Department of Forestry and Fire Protection, unless approved by these agencies.
- (b) Biodiesel:
- (1) Agri-biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, cramble, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.
  - (2) Biodiesel is defined as monoalkyl esters of long chain fatty acids derived from following plant or animal matter that meets the requirements of the American Society of Testing Materials (ASTM) D6751:
    - (A) Waste oils;
    - (B) Tallow; or
    - (C) Virgin oils.
- (c) Fuel ethanol:
- (1) Cellulosic biofuel produced from lignocellulosic or hemicellulosic material that has a proof of at least 150 without regard to denaturants;
  - (2) Corn starch; or
  - (3) Sugar cane.
- (d) Municipal Solid Waste (biogenic fraction only as determined by methodology specified in ASTM D6866):
- (1) Direct combustion; or
  - (2) Conversion to a clean burning fuel:

- (A) Technology does not use air or oxygen in the conversion process except to maintain temperature control;
  - (B) Technology produces no discharges or emissions of air contaminants, including greenhouse gases;
  - (C) No discharges to surface or groundwater;
  - (D) Produces no hazardous wastes as identified in ASTM D6866;
  - (E) Removes recyclable and green waste compostable materials, and recycles or compost these materials; or
  - (F) Any wastes that come to a facility come from an agency that diverts at least 30 percent of all solid waste collected through solid waste reduction, recycling, and composting.
- (e) Biomethane from the following sources:
- (1) All animal and other organic waste; or
  - (2) Landfill gas and wastewater.
- (f) Fugitive and process emissions from:
- (1) CO<sub>2</sub> emissions from geothermal generating units;
  - (2) CO<sub>2</sub> and CH<sub>4</sub> emissions from geothermal facilities;
  - (3) CO<sub>2</sub> emissions from hydrogen fuel cells;
  - (4) At petroleum refineries: asphalt blowing operations, equipment leaks, storage tanks, and loading operations; or
  - (5) At the facility types listed in section 95101(e) of the Mandatory Reporting Regulation, Petroleum and Natural Gas Systems: leak detection and leaker emission factors, and stationary fugitive and “stationary vented” sources on offshore oil platforms.

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.

**§ 95852.3. Effect of Status of Verification Statement on Calculation of Compliance Obligations.**

- (a) In the case of a positive or qualified positive verification statement, the compliance obligation equals the reported and verified emissions, as outlined in section 95131 of the Mandatory Reporting Requirements.
- (b) In the case of an adverse verification statement, for every metric ton of CO<sub>2</sub>e of GHG emissions, as determined by ARB, the compliance obligation equals the ARB-assigned emissions as outlined in section 95103 of the Mandatory Reporting Regulation.
- (c) In the case that an entity does not submit an emissions data report or complete verification, then the Executive Officer will determine its compliance obligation as set forth in section 95103 of the Mandatory Reporting Regulation.

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.

**§ 95853. Calculation of Covered Entity's Triennial Compliance Obligation.**

- (a) A covered entity that exceeds the threshold in section 95812 in any of the three data years preceding the start of a compliance period is a covered entity for the entire compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total verified emissions from all three data years of the compliance period.
- (b) A covered entity that initially exceeds the threshold in section 95812 in the first year of a compliance period is a covered entity for the entire compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total verified emissions from all three data years of the compliance period.

- (c) A covered entity that initially exceeds the threshold in section 95812 in the second year of a compliance period is a covered entity for the second and third years of the compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total verified emissions from the second and third data years of the compliance period.
- (d) A covered entity that initially exceeds the threshold in section 95812 in the third year of a compliance period has a compliance obligation for its verified emissions for that year, but the entity's triennial surrender obligation for the current compliance period is not due the following year. Instead the entity's verified emissions for the third year of the compliance period will be added to the entity's triennial obligation for the subsequent compliance period.
- (e) For a new entrant that is eligible to receive free allowances pursuant to subarticles 8 and 9, the first year for this entity to receive free allowances is the year following the first year in which its emissions exceed the threshold in section 95812. The number of free allowances for this new entrant to receive in that year is twice the number calculated pursuant to section 95891.

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.

**§ 95854. Quantitative Usage Limit on Designated Compliance Instruments—Offset Credits.**

The number of offset credits that each covered entity may surrender to meet its annual or triennial compliance obligation must conform to the following limit:

$$O/S \text{ must be less than } L$$

Where:

O = Total number of compliance instruments that are designated as subject to this quantitative usage limit pursuant to subarticle 4, section 95821(b), (c), and (d).

Sector-based offset credits as defined in section 95821 cannot represent more than 25% of O in the first and second compliance periods and 50% of O in all other periods.

S = Covered entity's annual or triennial compliance obligation.

L = Quantitative offset credit usage limit, set at 0.08.

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.

#### **§ 95855. Annual Compliance Obligation.**

- (a) An entity has an annual compliance obligation for any year when the entity is a covered entity except for the condition specified in section 95853(d);  
and
- (b) The annual compliance obligation for a covered entity equals thirty percent of positive or qualified positive GHG emissions reported from the previous data year.

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.

#### **§ 95856. Timely Surrender of Compliance Instruments by a Covered Entity.**

- (a) A covered entity must surrender one compliance instrument for each metric ton of CO<sub>2</sub>e of GHG emissions for the annual and triennial compliance obligations calculated pursuant to this subarticle.

- (b) Compliance Instruments Valid for Surrender.
  - (1) A California compliance instrument or an allowance approved pursuant to subarticles 4, 12, or 14 may be used to satisfy a compliance obligation.
  - (2) To fulfill any compliance obligation, a compliance instrument must be issued from an allowance budget year within or before the year during which the compliance obligation is calculated, unless:
    - (A) the allowance was purchased from the Allowance Price Containment Reserve pursuant to section 95913; or
    - (B) the allowance is used to satisfy an excess emissions obligation.
- (c) A covered entity must transfer from its holding account to its compliance account a sufficient number of compliance instruments to meet the compliance obligation set forth in sections 95853 and 95855.
- (d) Deadline for Annual Surrender. For any year in which a covered entity has an annual compliance obligation pursuant to section 95855, it must fulfill that obligation
  - (1) By May 15 of the calendar year following the year for which the obligation is calculated if the entity reports by April 1 pursuant to section 95103 of MRR;
  - (2) By July 15 of the calendar year following the year for which the obligation is calculated if the entity reports by June 1 pursuant to section 95103 of MRR.
- (e) Data Review and Determination of Triennial Obligation
  - (1) When a positive or qualified positive verification statement for the third year of the compliance period is received by ARB, the Executive Officer will review the accuracy of the verification statement and determine the covered entity's triennial obligation.
  - (2) If a positive or qualified positive verification statement for the third year of the compliance period is not received by ARB on time as set forth in

MRR, ARB will assign emissions according to the requirements set forth in section 95153 of the Mandatory Reporting Regulation.

- (3) When the data review and reconciliation process, as stated in section 95104 of the Mandatory Reporting Regulation, for a covered entity has concluded, the Executive Officer shall issue a final determination of the covered entity's triennial compliance obligation.
- (f) Triennial Surrender.
- (1) The covered entity must transfer sufficient valid compliance instruments to its compliance account to fulfill its triennial surrender obligation by November 1 of the calendar year following the third year of the compliance period.
  - (2) The total number of allowances and offset credits submitted to fulfill the combined Annual and Triennial Surrender obligations is subject to the quantitative use limit on offset credits pursuant to section 95854.
  - (3) The Triennial Surrender obligation shall equal the Triennial Compliance Obligation calculated pursuant to section 95853 less allowances and offset credits.
- (g) When the Executive Officer has determined the covered entity has met its surrender obligations, the Executive officer shall:
- (1) Retire the compliance instruments surrendered; and
  - (2) Inform programs to which California is linked or recognizes, pursuant to subarticles 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

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.

### **§ 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.**

- (a) Applicability.
  - (1) A covered entity or opt-in covered entity that does not meet the compliance deadline for annual or triennial compliance pursuant to 95856 is subject to the compliance obligation for excess emissions as described in this section; and
  - (2) The compliance obligation for untimely surrender (“excess emissions”) will not apply to a covered entity or opt-in covered entity which is determined to have transferred insufficient instruments to meet the compliance obligations of 95856 solely because of the reversal of an offset credit by the Executive Officer pursuant to section 95983 until 30 days after notice of reversal.
- (b) Excess Emissions.
  - (1) The quantity of excess emissions is the difference between the compliance obligation calculated pursuant to this subarticle and any compliance instruments timely surrendered by the covered entity;
  - (2) The covered entity’s compliance obligation for untimely surrender is calculated as four times the entity’s excess emissions; and
  - (3) A covered entity’s compliance obligation for untimely surrender may only be fulfilled with CA GHG allowances or allowances issued pursuant to subarticle 12.
- (c) Recovery of the Untimely Surrender Obligation.
  - (1) The obligation to surrender allowances for excess emissions is immediately due;
  - (2) Immediately upon determining that a covered entity has excess emissions, the Executive Officer shall prevent any transfers of compliance instruments from the holding account controlled by the covered entity;
  - (3) The Executive Officer shall transfer any remaining allowances from the Holding Account controlled by the covered entity with excess



emissions to its compliance account until the retirement obligations of this section are met;

- (4) If the Executive Officer is unable to retrieve sufficient allowances using the above process, the Executive Officer shall provide the deficient covered entity 30 days to secure the allowances needed to cover its untimely surrender obligation;
  - (5) If the covered entity fails to transfer allowances equal to the untimely surrender obligation pursuant to this section to its compliance account within the period specified in 95857(c)(4), the Executive Officer will:
    - (A) Identify holding accounts controlled by affiliates of the deficient covered entity to which the covered entity has transferred compliance instruments during the compliance period for which a compliance obligation remains unfilled; and
    - (B) The Executive Officer will prevent transfers from the holding accounts identified in (A) above, and retrieve allowances from those accounts to meet the untimely surrender obligation pursuant to this section.
  - (6) Additionally, if the covered entity or opt-in covered entity does not surrender sufficient allowances equal to its untimely surrender obligation pursuant to this section by the end of the 30-day period, the Executive Officer may pursue enforcement activities pursuant to subarticle 15.
- (d) When the covered entity or opt-in covered entity meets its obligations pursuant to subsection (c) above, the Executive Officer shall:
- (1) Remove the restrictions on transfers from the holding accounts controlled by the covered entity and affiliated entities;
  - (2) Transfer the allowances used to fulfill the untimely surrender obligation in the following manner:

- (A) Three fourths to the highest-priced tier of the Allowance Price Containment Reserve Account; and
  - (B) One fourth to the Retirement Account.
- (3) Inform programs to which California is linked or recognizes, pursuant to subarticles 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

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

## **Subarticle 8: Disposition of Allowances**

### **§ 95870. Disposition of Allowances.**

- (a) Allowance Price Containment Reserve. On December 15, 2011, the Executive Officer shall transfer allowances to the Allowance Price Containment Reserve, as follows:
- (1) One percent of the allowances from budget years 2012-2014,
  - (2) Four percent of the allowances from budget years 2015-2017, and
  - (3) Seven percent of the allowances from budget years 2018-2020.
- (b) Advance Auction. On December 15, 2011, the Executive Officer shall transfer two percent of the allowances from budget years 2015-2020 to the Auction Holding Account.
- (1) These allowances shall be auctioned pursuant to section 95910.
  - (2) The proceeds from the sale of these allowances will be deposited into the Air Pollution Control Fund and will be available upon appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq.
- (c) Allocation to Public Utilities.
- (1) Electrical Distribution Utilities. The Executive Officer will place an annual individual allocation in the holding account of each eligible

distribution utility on or before January 15 of each calendar year from 2012-2020 pursuant to section 95892. Allowances available for allocation to electrical distribution utilities shall be 89 million multiplied by the cap adjustment factor in Table 9.2 for each budget year 2012-2020.

- (2) Reserved for Natural Gas Distribution Utilities.
- (d) Allocation to Industrial Covered Entities. Allowances allocated for the purposes of industry assistance shall be transferred to holding accounts for industrial sectors listed in Table 8-1.
- (1) The Executive Officer will place an annual individual allocation in the holding account of each eligible covered entity on or before January 15 of each calendar year 2012-2020.
  - (2) Allocation to eligible covered entities shall be conducted using the assistance factors specified for each listed industrial sector found in Table 8-1 and the methodology set forth in section 95891.
  - (3) The total amount of allowances allocated for the purposes of industry assistance shall not exceed the available amount of allowances after accounting for allocations made pursuant to section 95870(a) through (c). If the amount calculated under the methodology set forth in section 95891 exceeds the amount of allowances available, the number of allowances available will be prorated equally across all eligible covered entities. The proration will be calculated using the share of allowances available after accounting for allocations made pursuant to sections 95870(a) through (c) compared to total allowances that would be distributed according to the methodology set forth in section 95891.

**Table 8-1: Industry Assistance**

Leakage Risk	ARB Classification	NAICS	Industry Assistance Factor (AF) by Budget Year		
			2012-2014	2015-2017	2018-2020
High	Oil and gas extraction	211111	100%	100%	100%
	Natural gas liquid extraction	211112	100%	100%	100%
	Soda ash mining and manufacturing	212391	100%	100%	100%
	Reconstituted Wood Product Manufacturing	321219	100%	100%	100%
	Paper manufacturing	322121	100%	100%	100%
	Paperboard manufacturing	322130	100%	100%	100%
	All Other Basic Inorganic Chemical Manufacturing	325188	100%	100%	100%
	Flat glass manufacturing	327211	100%	100%	100%
	Glass container manufacturing	327213	100%	100%	100%
	Cement manufacturing	327310	100%	100%	100%
	Lime manufacturing	327410	100%	100%	100%
	Iron and steel mill	331111	100%	100%	100%
	Medium	Food manufacturing	311	100%	75%
Cut and sew apparel mfg		3152	100%	75%	50%
Breweries		312120	100%	75%	50%
Sawmills		321113	100%	75%	50%
Petroleum refining		324110	100%	75%	50%
Pesticide and agricultural chemical manufacturing		325320	100%	75%	50%
Polystyrene foam product mfg		326140	100%	75%	50%
Gypsum product manufacturing		327420	100%	75%	50%
Mineral wool manufacturing		327993	100%	75%	50%
Rolled steel shape manufacturing		331221	100%	75%	50%
Secondary smelting and alloying of aluminum		331314	100%	75%	50%
Secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum)		331492	100%	75%	50%
Iron foundries		331511	100%	75%	50%
Turbine and turbine generator set units manufacturing		333611	100%	75%	50%
Low	Pharmaceutical and medicine mfg	325412	100%	50%	30%
	Aircraft manufacturing	336411	100%	50%	30%

- (e) Reserved for Allocation to Voluntary Renewable Energy Allowance Set-Aside.
- (f) Auction Proceeds for AB 32 Statutory Objectives. All remaining allowances not allocated for uses specified in sections 95870(a)-(e) will be designated for sale at auction. The proceeds from the sale of these allowances will be deposited into the Air Pollution Control Fund and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

## **Subarticle 9: Direct Allocations of California GHG Allowances**

### **§ 95890. General Provisions for Direct Allocations.**

- (a) Eligibility Requirements for Industrial Facilities. A covered entity or opt-in covered entity from the industrial sectors listed in Table 8-1 shall be eligible for direct allocations of California GHG allowances if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statement for the prior year pursuant to the MRR.
- (b) Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statement on its sales number for the prior year pursuant to the MRR.
- (c) Reserved for Natural Gas Distribution Utilities.

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.

**§ 95891. Allocation for Industry Assistance.**

- (a) The Executive Officer shall determine the amount of allowances directly allocated to each eligible covered entity or opt-in covered entity using the product output-based benchmarking allocation calculation methodology specified in subsection (b) if the entity is from the sector listed in both Table 8-1 and Table 9-1. The Executive Officer shall determine the amount of allowances directly allocated to each eligible covered entity or opt-in covered entity using the thermal energy-based benchmarking allocation calculation methodology specified in subsection (c) if the entity is from the sector listed in Table 8-1 but not listed in Table 9-1.
- (b) Product Output-Based Allocation Calculation Methodology. The Executive Officer shall calculate the amount of California GHG Allowances directly allocated under a product output-based methodology annually using the following formula:

$$A_t = \sum_{a=1}^n Output_{a,t} * B_a * AF_{I,t} * C_{I,t}$$

Where,

“A<sub>t</sub>” is the amount of California GHG allowances directly allocated to the operator of an industrial facility for all activities with a product output-based allocation from budget year “t”;

“t” is the budget year from which the direct allocation occurs;

“t-2” is the year two years prior to year “t”;

“t-3” is the year three years prior to year “t”;

“t-4” is the year four years prior to year “t”;

“a” is each eligible activity as defined in Table 9-1;

“n” is the number of eligible activities at a facility;

“Output<sub>a,t</sub>” is the annual arithmetic mean amount of manufactured product output from a specific activity at a given facility for the data years “t-2,” “t-3,” and “t-4,” as reported to ARB under the MRR using the output metrics identified in Table 9-1. If three years of data are unavailable the Executive Officer may employ a shorter time period to calculate the annual average;

“B<sub>a</sub>” is the emissions efficiency benchmark per unit of output assigned by the Executive Officer to each eligible activity defined in Table 9-1;

“AF<sub>l,t</sub>” is the assistance factor for budget year “t” assigned to each listed industrial sector “l” as specified in Table 8-1; and

“c<sub>l,t</sub>” is the adjustment factor for budget year “t” assigned to each listed industrial sector “l” to account for cap decline as specified in Table 9-2.

**Table 9-1: Product Output for Establishing Emissions Efficiency Benchmarks**

Sector	NAICS code	Activity	Product Output
Oil and gas extraction	211111	Crude oil extraction by thermal production technique	Barrel of crude oil by thermal production
		Crude oil extraction by non-thermal production technique	Barrel of crude oil by non-thermal production
		Natural gas extraction	Mscf of natural gas
Soda ash manufacturing	212391	Soda ash mining and manufacturing	Ton of soda ash
Paper manufacturing	322121	Paper manufacturing from purchased pulp	Ton of paper products
Paperboard manufacturing	322130	Paperboard manufacturing from purchased pulp	Ton of paperboard products
Petroleum refining	324110	Petroleum refining	Barrel of petroleum products
		Petroleum refining	Energy intensity index
Flat glass manufacturing	327211	Flat glass manufacturing	Ton of flat glass pulled
Container glass manufacturing	327213	Container glass manufacturing	Ton of container glass pulled
Cement manufacturing	327310	Cement manufacturing	Ton of cement produced
Lime manufacturing	327410	Dolime manufacturing	Ton of dolime produced
Gypsum manufacturing	327420	Gypsum manufacturing	Ton of gypsum products
Mineral wool manufacturing	327993	Fiber glass manufacturing	Ton of fiber glass pulled
Steel mill using electric arc furnace	331111	Steel production using electric arc furnace	Ton of steel produced
Hot rolled steel manufacturing	331221	Hot rolled steel production from purchased steel	Ton of rolled steel produced

- (c) Thermal Energy Based Allocation Calculation Methodology. The Executive Officer shall calculate the amount of California GHG Allowances directly allocated under the thermal energy based methodology annually using the following formula:

$$A_i = (Steam * B_{Steam} + TE * B_{Fuel}) * AF_{I,t} * c_{I,t}$$

Where,



“ $A_t$ ” is the amount of California GHG allowances directly allocated to the operator of an industrial facility with a thermal energy-based allocation from budget year “ $t$ ”;

“ $t$ ” is the budget year from which the direct allocation occurs;

“Steam” is the historical baseline annual arithmetic mean amount of steam consumed, measured in MMBtu, at the industrial facility for use in any industrial process, including heating or cooling applications.

This value shall include any steam used to generate electricity consumed on-site but shall exclude any steam used to generate electricity for sale or transfer to off-site end users;

“ $B_{\text{Steam}}$ ” is the emissions efficiency benchmark per unit of steam, 0.06244 California GHG Allowances/MMBtu Steam;

“TE” is the historical baseline annual arithmetic mean amount of thermal energy produced from fuel combustion at a given facility, measured in MMBtus. This value shall include any energy used to generate electricity consumed on-site but shall exclude any energy used to generate electricity for sale or transfer to off-site end users. This value shall exclude energy to generate the steam accounted for in the “Steam” term;

“ $B_{\text{Fuel}}$ ” is the emissions efficiency benchmark per unit of energy from fuel combustion, 0.05307 California GHG Allowances/MMBtu;

“ $AF_{l,t}$ ” is the assistance factor for budget year “ $t$ ” assigned to each listed industrial sector “ $l$ ” as specified in Table 8-1; and

“ $c_{l,t}$ ” is the adjustment factor for budget year “t” assigned to each listed industrial sector “l” to account for cap decline as specified in Table 9-2.

- (1) Data Sources. In determining the average annual baseline values, the Executive Officer may employ all available data reported to ARB under the MRR for data years 2008-2010 and third-party verified data reported to the California Climate Action Registry for data years 2000-2007.
- (2) Maximum Free Allocation. The Executive Officer shall ensure that the annual amount of California GHG Allowances directly allocated under the thermal energy based methodology to a covered entity for operations at a facility shall not exceed 110% of the maximum annual level of greenhouse gas emissions emitted during the historical data years of 2000-2010 from the facility in question.
- (3) New Entrants. Covered entities of facilities that were not in operation prior to 2011 and are eligible for free allocation under the thermal energy-based methodology shall be assessed a baseline annual steam and/or thermal energy use values based on expected activity levels as determined by the Executive Officer.
- (4) Facility Closures. Covered entities that are no longer subject to the cap-and-trade program due to reduced emissions or facility closure as determined subject to section 95812(b) shall no longer be eligible to receive allowances.

**Table 9-2: Cap Adjustment Factors for Assistance to Industry**

<b>Cap Adjustment Factors for Assistance to Industry</b>		
<b>Budget Year</b>	<b>Cap Adjustment Factor (c) for All Other Industries</b>	<b>Cap Adjustment Factor (c) for Cement Manufacturing (NAICS 327310)</b>
2012	1.000	1.000
2013	0.981	0.991
2014	0.963	0.981
2015	0.944	0.972
2016	0.925	0.963
2017	0.907	0.953
2018	0.888	0.944
2019	0.869	0.935
2020	0.851	0.925

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.

**§ 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers.**

- (a) Reserved for allocation to electrical distribution utilities.
- (b) Transfer to Utility Accounts.
  - (1) Investor owned utilities. The Executive Officer will place allowances in the limited use holding account created for each electrical corporation.
  - (2) Publicly owned Electric Utilities. At least 90 days prior to receiving a direct allocation of allowances, publicly owned electric utilities will inform the Executive Officer of the share of their allowances that is to be placed:
    - (A) In the publicly owned electric utility’s compliance account, or
    - (B) In the publicly owned electric utility’s limited use holding account.

- (c) Monetization Requirement. Each calendar year, an electrical distribution utility must offer for sale at auction all allowances in a limited use holding account that were issued:
  - (1) from budget years that correspond to the current calendar year; and
  - (2) from budget years prior to the current calendar year.
- (d) Limitations on the Use of Auction Proceeds.
  - (1) Proceeds obtained from the monetization of allowances directly allocated to a publicly owned electric utility shall be subject to any limitations imposed by the governing body of the utility and to the additional limitations set forth in section 95892(d)(3) below.
  - (2) Proceeds obtained from the monetization of allowances directly allocated to investor owned utilities shall be subject to any limitations imposed by the California Public Utilities Commission and to the additional limitations set forth in section 95892(d)(3) below.
  - (3) Auction proceeds obtained by an electrical distribution utility shall be used exclusively for the benefit of retail ratepayers of each electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers.
    - (A) Investor owned utilities shall ensure equal treatment of their own customers and customers of electricity service providers and community choice aggregators.
    - (B) To the extent that an electrical distribution utility uses auction proceeds to provide ratepayer rebates, it shall provide such rebates with regard to the fixed portion of ratepayers' bills or as a separate fixed credit or rebate.
    - (C) To the extent that an electrical distribution utility uses auction proceeds to provide ratepayer rebates, these rebates shall not be based solely on the quantity of electricity delivered to ratepayers from any period after January 1, 2012.

- (e) Reporting on the Use of Auction Proceeds. No later than June 30, 2013, and each calendar year thereafter, each electrical distribution utility shall submit a report to the Executive Officer describing the disposition of any auction proceeds received in the prior calendar year. This report shall include:
- (1) The monetary value of auction proceeds received by the electrical distribution utility.
  - (2) How the electrical distribution utility's disposition of such auction proceeds complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.

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.

### **§ 95893. Reserved for Allocation to Natural Gas Distribution Utilities for Protection of Natural Gas Ratepayers**

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

## **Subarticle 10: Auction and Sale of California Greenhouse Gas Allowances**

### **§ 95910. Timing of Auction of California GHG Allowances.**

- (a) Timing of the Allowance Auctions.
- (1) The first auction shall be conducted on February 14, 2012.
  - (2) Subsequent auctions shall be conducted on the twelfth business day of the first month of each calendar quarter.

- (b) An allowance may be designated for auction prior to its vintage year.
- (c) For each quarterly auction:
  - (1) Auction of Allowances from Current Budget Year. From the budget year that matches the current calendar year, one quarter of the allowances designated for auction pursuant to section 95870(f) will be offered.
  - (2) Auction of Allowances from Future Budget Years. From the budget year three years subsequent to the current calendar year, one quarter of the allowances designated for advance auction pursuant to section 95870(b) will be offered.
  - (3) Auctions of allowances from different budget years will be conducted separately.
- (d) Auction of Consigned Allowances.
  - (1) An entity may consign allowances to the Executive Officer for sale at the quarterly auctions only from a limited use holding account.
  - (2) When the Executive Officer withdraws allowances or offset credits from suspended or revoked holding accounts pursuant to 95831(b)(1):
    - (A) Allowances shall be consigned to the next auction.
    - (B) If after review the Executive Officer determines the withdrawn offset credits are valid, the Executive Officer will retire them, withdraw a similar number of allowances from the Auction Holding Account, and consign those allowances to auction in place of the retired offset credits.
  - (3) Each consigning entity agrees to accept the auction settlement price for allowances sold at auction.
  - (4) Allowances consigned to auction at least 60 days prior to the regular quarterly auction will be offered for sale at that auction.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

**§ 95911. Format for Auction of California GHG Allowances.**

- (a) Auction Format.
  - (1) The auction will consist of a single round of bidding.
  - (2) Bids will be sealed.
  - (3) Bid quantities must be submitted as multiples of 1,000 metric tons of CO<sub>2</sub>e.
  - (4) Bid prices must be submitted in whole dollars and whole cents.
- (b) Auction Reserve Price Schedule.
  - (1) Each auction will be conducted with an auction reserve price.
  - (2) No allowances will be awarded for bids lower than the auction reserve price.
  - (3) If an auction settlement price equals the reserve price:
    - (A) The auction operator will fulfill winning bids with allowances from consignment sources in the following order:
      - (i) allowances consigned to auction pursuant to section 95910(d)(2);
      - (ii) allowances consigned from limited use holding accounts pursuant to subarticle 5;
      - (iii) allowances directly allocated by ARB to auction pursuant to subarticle 8.
    - (B) When there are insufficient winning bids to exhaust the allowances from a consignment source in (A) above, the auction operator will sell an equal number of allowances from each consigning entity in that source.
  - (4) Allowances designated by ARB for an auction which remain unsold when the auction settlement price equals the auction reserve price

shall be transferred to the highest-priced tier in the Allowance Price Containment Reserve Account.

- (5) Disposition of Consigned Allowances Remaining Unsold at Auction.
  - (A) Allowances consigned to auction from limited use holding accounts that remain unsold at auction will be returned to the respective source accounts.
  - (B) Allowances consigned to auction pursuant to section 95831(b)(1) that remain unsold at auction will be held in the Auction Holding Account until the next auction.
- (6) Method for Setting the Auction Reserve Price.
  - (A) For auctions conducted in calendar year 2012 the Reserve Price shall be \$10 per metric ton of CO<sub>2</sub>e for vintage 2012 allowances, and \$11.58 per metric ton of CO<sub>2</sub>e for vintage 2015 allowances.
  - (B) For auctions conducted in calendar years after 2012 the Reserve Prices shall be the Auction Reserve Prices for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.
- (c) Auction Purchase Limit. For auctions conducted from January 1, 2012, through December 31, 2014, the share of allowances of any vintage year offered at any quarterly auction which may be purchased by one entity or a group of entities with a corporate association pursuant to 95914 shall be limited to less than:
  - (1) For covered entities and opt-in covered entities: ten percent of the allowances offered for auction.
  - (2) For investor owned electrical utilities receiving a direct allocation of allowances pursuant to 95892(b) and subject to the monetization requirement pursuant to 95892(c): the auction purchase limit in (A)



does not apply. This subsection (B) shall not be interpreted to exempt said investor owned electrical utilities from any other requirements of this article; and

- (3) For all other auction participants: four percent of the allowances offered for auction.
- (d) Determination of Winning Bidders and Settlement Price. The following process shall be used to determine winning bidders, amounts won, and a single auction settlement price:
  - (1) Each bid will consist of a price and the quantity of allowances, in multiples of 1,000 metric tons of CO<sub>2</sub>e, desired at that price.
  - (2) Each bidder may submit multiple bids.
  - (3) Beginning with the highest bid price, bids will be considered in declining order by price, and the auction operator shall reject a bid:
    - (A) If acceptance of the bid would result in violation of the purchase limit pursuant to sections 95911(c), 95914, and 95915;
    - (B) If acceptance of the bid would result in violation of the holding limit pursuant to sections 95914 and 95920(b); or
    - (C) If acceptance of the bid would result in a total value of accepted bids for an auction participant greater than the value of the bid guarantee submitted by the auction participant pursuant to section 95912(i).
  - (4) Beginning with the highest bid price, bids will be considered in declining order by price and entities submitting bids at that price will be awarded allowances until either:
    - (A) The next lower bid price is less than the auction reserve price, in which case the current price becomes the auction settlement price; or
    - (B) The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of

allowances yet to be awarded, in which instance, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in section 95911(d)(5) shall apply.

- (5) Resolution of tie bids:
  - (A) If the quantity of allowances contained in the bids placed at the lowest bid is greater than the quantity of allowances available to be sold at that price, then the auction operator will assign a random number to each bundle of 1,000 metric tons of CO<sub>2</sub>e contained in each of the bids at that price.
  - (B) Beginning with the lowest random number assigned and working in increasing order of the random numbers assigned, the auction operator shall sell allowances to the bidder assigned the random number until the remaining allowances are sold.

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

#### **§ 95912. Auction Administration and Registration.**

- (a) The Executive Officer may serve as auction administrator or designate an entity to serve as auction administrator.
- (b) The Executive Officer may direct that the California allowances designated for auction be offered through an auction conducted jointly with other jurisdictions to which California links pursuant to subarticle 12, provided the joint auction conforms with this article.
- (c) Auction Registration Requirements. An entity that intends to participate in the auction must complete an auction registration at least thirty days prior to the auction.
  - (1) The details of the auction will be provided in a public notice by the Executive Officer no later than 60 days prior to the auction.

- (2) An entity will be required to provide information and documentation which must include:
  - (A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;
  - (B) the existence of any direct or indirect corporate associations pursuant to 95914;
  - (C) Declarations as to the beneficial holding of any compliance instrument that may be acquired through the auction which requires disclosure of bidding associations pursuant to 95915, or that already exists prior to the auction;
  - (D) The identification of any indictment or felony conviction of the bidder, or any member, director, principal, partner, or officer of the applicant or any associated or related entity;
  - (E) The identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity market or exchange.
  - (F) The applicant's holding account number.
- (d) Protection of Confidential Information.
  - (1) An entity approved for auction participation shall not publicly release confidential information related to its auction participation, including:
    - (A) Qualification status;
    - (B) Bidding strategy;
    - (C) Bid price or bid quantity information;
    - (D) Information on the financial security it provides to the auction administrator;
    - (E) Other information identified in the auction application by the auction administrator.
  - (2) If an entity participating in an auction has retained the services of an advisor regarding auction bidding strategy, the entity must ensure

against the advisor transferring information to other auction participants or coordinating the bidding strategy among participants.

- (3) To the extent permitted by state law, the Executive Officer will treat the information contained in the auction application as confidential business information.
- (4) Following the auction, the Executive Officer may release the following information:
  - (A) The names of the bidders;
  - (B) Auction settlement price; and
  - (C) Aggregated or distributional information on purchases with the names of the entities withheld.
- (e) If the Executive Officer determines that a bidder has provided false or misleading information, or has withheld pertinent information in its application, or has violated any part of the auction rules, the bidder may be prohibited from participating in any future auctions. This prohibition shall be in addition to any other penalties, fines, and additional remedies available at law.
- (f) An entity registering as an auction participant must also be registered as provided in sections 95811, 95813, or 95814, as applicable.
- (g) An entity whose holding account has been revoked or is currently suspended pursuant to section 96011 cannot participate in an auction.
- (h) All bids shall be submitted on a schedule and in a form and manner prescribed by the Executive Officer and will be considered binding offers for the purchase of allowances under the rules of the auction.
- (i) Registrants must provide a bid guarantee to the auction administrator at least one week prior to the auction.
  - (1) The bid guarantee must be in one or a combination of the following forms:

- (A) A bond issued by a financial institution with a United States banking license.
  - (B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check.
  - (C) An irrevocable letter of credit issued by a financial institution with a United States banking license.
  - (D) If California participates in a joint auction with one or more Canadian Provinces pursuant to 95912 (b) then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.
- (2) The amount of the bid guarantee must be greater than or equal to the sum of the value of the bids submitted by the auction participant.
- (j) At least 60 days prior to each auction the auction administrator shall publish on the following information:
- (1) The date and time of the auction;
  - (2) application instructions for applying to participate in the auction;
  - (3) the form and manner for submitting bids;
  - (4) the procedures for conducting the auction;
  - (5) the administrative requirements for participation; and
  - (6) the number of CA GHG Allowances that will be available at each auction.
- (k) To conduct the auction the auction administrator will:
- (1) process registration bid guarantees;
  - (2) determine that bids and bid quantities conform with purchase limits set for the auction pursuant to 95911(c), the holding limit pursuant to 95920(b), and the amount of the bid guarantee provided by the registrant;
  - (3) determine the winning bids and auction price; and
  - (4) inform the Executive Officer of the auction results.

- (l) Following the auction, the Executive Officer will:
  - (1) Certify whether the auction was operated pursuant to this article;
  - (2) After certification, direct the auction operator to:
    - (A) Collect payments from winning bidders;
    - (B) Declare forfeit and retain the bid guarantee mechanism submitted pursuant to 95912(i) for any bidder that fails to tender full payment when due for allowances awarded at auction, in an amount equal to any unpaid balance.
    - (C) Deposit auction proceeds from sales of ARB allowances sold at auction into the Air Pollution Control Fund.
    - (D) Distribute auction proceeds to entities that consigned allowances for auction pursuant to 95910(d).
  - (3) Upon determining that the payment for allowances has been deposited into the Air Pollution Control Fund or transferred to entities that consigned allowances, transfer the serial numbers of the allowances purchased into each winning bidder's Holding Account;
  - (4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances purchased at auction; and
  - (5) Publish the auction results at [www.arb.ca.gov](http://www.arb.ca.gov).

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

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

- (a) The Executive Officer may administer sales from the Allowance Price Containment Reserve or contract with an entity to administer sales from the Allowance Price Containment Reserve.

- (b) If California links to an external greenhouse gas emissions trading system (GHG ETS) then the linkage agreement will specify whether covered entities in the linked GHG ETS will be eligible to purchase from a jointly operated Allowance Price Containment Reserve, or whether each ETS will operate such Reserves separately.
- (c) Timing, Eligible participants, and Limitations.
  - (1) Eligible participants.
    - (A) Only covered entities (including opt-in covered entities) registered as provided in sections 95811 or 95813 shall be eligible to purchase allowances from the Allowance Price Containment Reserve.
    - (B) Only covered entities (including opt-in covered entities) which hold no compliance instruments in their holding accounts or limited use holding accounts may purchase allowances from the Allowance Price Containment Reserve.
  - (2) The administrator of the Allowance Price Containment Reserve shall offer all of the allowances in the Allowance Price Containment Reserve Account at each reserve sale.
  - (3) Timing.
    - (A) The first reserve sale will be conducted on March 4, 2012.
    - (B) Subsequent sales shall be conducted three weeks after each quarterly allowance auction pursuant to 95910.
    - (C) The administrator shall provide all eligible participants with written notice of the number of allowances available for sale and the terms of the sale at least four weeks prior to the sale.
  - (4) Limitation. Allowances purchased from the Allowance Price Containment Reserve are subject to the Holding Limit established pursuant to section 95920.
- (d) Reserve Tiers.

- (1) Creation of Reserve Tiers. The Executive Officer shall divide allowances allocated to the Allowance Price Containment Reserve into three equal-sized tiers.
  - (2) Reserve Tier Prices. Sales of reserve allowances in calendar year 2012 shall be conducted at the following prices:
    - (A) Allowances from the first tier shall be offered for \$40 per allowance;
    - (B) Allowances from the second tier shall be offered for \$45 per allowance; and
    - (C) Allowances from the third tier shall be offered for \$50 per allowance.
  - (3) Increase in Release Prices. In calendar years subsequent to 2012, allowances from each tier shall be offered at prices equal to the offer price for each tier from the previous calendar year increased by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.
- (e) Submissions of Bids to Purchase. At least two weeks prior to the scheduled sale, a covered entity shall submit to the reserve sale administrator:
- (1) a schedule of bids containing the number of allowances the entity intends to purchase from each of the three reserve tiers, in multiples of 1,000 metric tons of CO<sub>2</sub>e, up to the covered entity's holding limit; and
  - (2) a bid guarantee in an amount greater than or equal to the sum of the value of the bids submitted by the covered entity, in one or a combination of the following forms:
    - (A) A bond issued by a financial institution with a United States banking license.
    - (B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check.



- (C) An irrevocable letter of credit issued by a financial institution with a United States banking license.
  - (D) If California participates in a joint Allowance Price Containment Reserve with one or more GHG ETS programs in the Canadian Provinces to which it links and covered entities from linked systems are eligible to purchase from the Reserve pursuant to 95913(b), then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.
- (f) Purchase Determinations.
- (1) The reserve sale administrator will conduct sales from each tier in succession, beginning with the lowest to the highest priced tier.
  - (2) For each tier the reserve sale administrator will only accept a bid
    - (A) If acceptance of the bid would not result in violation of the holding limit pursuant to 95920(b); or
    - (B) If acceptance of the bid would not result in a total value of accepted bids for a covered entity greater than the value of the bid guarantee submitted by the covered entity pursuant to section 95913(e)(2).
  - (3) If the sum of bids accepted by the reserve sale administrator for a tier is less than or equal to the number of allowances in the tier, the reserve sale administrator will determine the total amount to be distributed from each tier to each covered entity as equal to the number of allowances for which the entity submitted bids which were accepted by the reserve sale administrator.
  - (4) If the sum of bids accepted by the reserve sale administrator for a tier is greater than the number of allowances in the tier, the reserve sale administrator will determine the total amount to be distributed from each tier to each covered entity using the following procedure.

- (A) The reserve sale administrator will calculate the share of the tier to be distributed to each bidding entity by dividing the quantity bid by that entity and accepted by the reserve sale administrator by the total quantity of bids which were accepted by the reserve sale administrator.
  - (B) The reserve sale administrator will calculate the number of allowances distributed to each bidding entity from the tier by multiplying the bidding entity's share calculated in (2)(A) above by the number of allowances in the tier, rounding the number down to the nearest whole number.
- (5) Inform the Executive Officer of the calculated distributions as required.
- (g) Resolution of Sales. Following each sale of allowances from the Allowance Price Containment Reserve, the Executive Officer shall:
- (1) Certify that the reserve sale was conducted pursuant to this article;
  - (2) Upon certification of the sale results, authorize the reserve sale administrator to process payments from covered entities and deposit proceeds into the Air Pollution Control Fund;
  - (3) Upon determining that the payment for allowances has been deposited into the Air Pollution Control Fund, transfer the serial numbers of the allowances purchased from the Allowance Price Containment Reserve Account into each winning bidder's compliance account;
  - (4) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances sold;  
and
  - (5) Publish the sale results at [www.arb.ca.gov](http://www.arb.ca.gov).

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.

**§ 95914. Disclosure of Direct and Indirect Corporate Associations.**

- (a) Entities registered pursuant to 95830 must disclose direct and indirect corporate associations with other registered entities.
  - (1) An entity has a “direct corporate association” with another entity if either one of these entities:
    - (A) Holds more than twenty percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;
    - (B) Holds or can appoint more than twenty percent of common directors of the other entity;
    - (C) Holds more than twenty percent of the voting power of the other entity; or
    - (D) Controls more than twenty percent of the other entity’s affairs through some other means.
    - (E) Holds compliance instruments in its own holding account in which the other entity has an ownership interest.
  - (2) An entity has an “indirect corporate association” with another entity if one of these entities:
    - (A) Has a direct corporate association with another party that has a direct corporate association with the other entity in question, or through a longer line of direct corporate associations; and
    - (B) The percentage ownership of the entity in the other entity, obtained by multiplying the percentages of ownership at each association in a line of direct corporate associations, must be more than twenty percent.
- (b) If California links its ETS program with one or more GHG ETS programs in Canadian Provinces, then entities shall disclose corporate associations with entities registered into those ETS programs.

- (c) If a registered entity has a direct or indirect corporate association with another registered entity, the information that must be disclosed includes:
  - (1) The name of the other entity;
  - (2) The share of the corporate association's purchase and holding limits assigned to the entity and associated entities pursuant to 95914(e) and 95914 (f);
  - (3) The type of corporate association (i.e., direct or indirect) and a brief description of the association, to include the following descriptors:
    - (A) Corporate parent;
    - (B) Subsidiary;
    - (C) Sister company;
    - (D) Partnership; and
    - (E) Other description.
- (d) The entity must disclose the information to the Executive Officer:
  - (1) When registering pursuant to section 95830;
  - (2) At any time after registering when a disclosable association is created or exists;
  - (3) Within 30 days of a material change to the information disclosed on direct and indirect corporate associations; and
  - (4) At least 60 days prior to an auction when reporting a material change to the information disclosed, otherwise the entity may not participate in that auction.
- (e) Application of the Corporate Association Disclosure to the Purchase Limit at Auction.
  - (1) The total number of compliance instruments which may be purchased in a single auction by a group of entities with a disclosed corporate association is limited pursuant to section 95911(c).
  - (2) Entities part of a corporate association may allocate shares of the purchase limit among themselves, if:

- (A) The group of associated entities must inform the Executive Officer when submitting the auction application of an allocation of the purchase limit among the associated entities; this allocation results in each entity having a specified percentage share of the group's purchase limit.
  - (B) The sum of the shares allocated to each entity must be less than or equal to the purchase limit pursuant to section 95911(c).
  - (C) Each associated entity's allocated purchase share becomes the purchase limit for that entity.
- (3) If entities with a corporate association do not allocate shares of the purchase limit among themselves, then the auction administrator will apply the purchase limit to the entities as follows:
  - (A) The administrator will order the entities' bids from highest to lowest bid price.
  - (B) Working from the highest to the lowest bid, the auction administrator will accept bids until the purchase limit for the associated entities is met.
  - (C) The auction operator will conduct this procedure before conducting the auction pursuant to section 95911.
- (f) Application of the Corporate Association Disclosure to the Holding Limit.
  - (1) The total number of compliance instruments held by a group of entities with a disclosable corporate association must sum to less than the holding limit of the group of associated entities pursuant to section 95920(b).
  - (2) Entities part of a corporate association may allocate shares of the holding limit among themselves.
    - (A) The group of associated entities must inform the Executive Officer of the allocation or changes to the allocation pursuant to

section 95914(d); this allocation results in each entity having a specified percentage share of the group's holding limit.

- (B) The sum of the shares allocated to each entity must be less than or equal to the holding limit.
- (3) If entities with a corporate association do not allocate shares of the holding limit among themselves, the accounts administrator will not record any transaction which would result in the entities with a corporate association exceeding the holding limit.

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.

#### **§ 95915. Identifying Disclosable Bidding Associations.**

- (a) Entities registering for the auction pursuant to section 95912 must disclose bidding associations with other entities also registered into the California cap-and-trade system or registered into one or more GHG ETS programs in Canadian Provinces to which California has linked.
- (b) An entity has a disclosable "bidding association" with another entity if it:
  - (1) Has any form of agreement with another entity;
  - (2) Is partnered with the other entity for bidding purposes.
  - (3) Has agreed to provide assistance in any other way with the exception of investment or auction advisory services with the other entity.
- (c) Disclosure requirements.
  - (1) Disclosable bidding associations must be reported in the auction registration application pursuant to section 95912(c).
  - (2) A complete description of the agreement or association, including parties to the agreement; their relationships, including which entity is purchasing and holding compliance instruments on behalf of a

recipient; and any terms or conditions. A copy of any documents that constitute or memorialize the agreement or association must be provided. If no such documents exist, the description of the agreement must explain how the agreement or association was created.

- (d) Timing of Disclosure.
  - (1) The entity must disclose the information to the auction operator at least 30 days prior to an auction when reporting a material change to the information disclosed, otherwise the entity may not participate in that auction.
  - (2) Within 30 days of an auction or after filing an auction application, an entity may not communicate information on auction participation with any other entity that has not been disclosed as part of a bidding association, except as requested by the auction operator to remediate an auction application.
  - (3) Since an entity may not re-file the auction application after the deadline, an entity that makes a material change after the deadline may not participate in the auction.
- (e) Application of the Bidding Association Disclosure to the Purchase Limit at Auction.
  - (1) The auction operator shall apply the purchase limit for an entity designated as the “recipient” in a bidding association to the bids submitted by that entity alone.
  - (2) Entities part of a bidding association may allocate shares of the purchase limit among themselves.
    - (A) The group of associated entities must inform the Executive Officer of an allocation of the purchase limit among the associated entities, such that the sum of the shares allocated to each entity sums to the purchase limit.

- (B) Each associated entity's allocated purchase share becomes the purchase limit for that entity.
- (3) If entities with a bidding association do not allocate shares of the purchase limit among themselves, the auction operator shall calculate the purchase limit for an entity or entities designated as a "purchaser" in a bidding association as the limit less the sum of bids submitted by the entity or entities in the bidding association designated as the "recipient," divided by the number of entities in the bidding association designated as "purchaser."

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

## **Subarticle 11: Trading and Banking**

### **§ 95920. Trading.**

- (a) General Prohibitions on Trading. The following practices involving any California compliance instruments are prohibited:
  - (1) a trade involving a counterparty whose identity is not disclosed to the Executive Officer;
  - (2) a trade involving, related to, or associated with:
    - (A) any manipulative or deceptive device in violation of this article;
    - (B) a corner or an attempt to corner the market for a regulated instrument;
    - (C) fraud, or an attempt to defraud any other entity;
    - (D) a false, misleading, or inaccurate report concerning information or conditions that affects or tends to affect the price of a regulated compliance instrument;



- (E) an application, report, statement, or document required to be filed pursuant to this article, a statement which is false or misleading with respect to a material fact, or which omits any material fact required to be stated therein or necessary to make the contents therein not misleading; or
- (F) any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made or provided to an entity on or through which transactions in regulated instruments occur, are settled, or are cleared.

(b) Holding Limit.

- (1) The holding limit is the maximum number of California GHG allowances that may be held by an entity or group of associated entities registered pursuant to section 95830.
- (2) The holding limit will apply to each entity with a holding account.
- (3) Calculation The holding limit will be calculated and applied within each calendar year using the following formula:

$$\text{Holding Limit} = 0.1 * \text{Base} + 0.025 * (\text{Annual Allowance Budget} - \text{Base})$$

In which:

“Base” equals 25 million metric tons of CO<sub>2</sub>e.

“Annual Allowance Budget” is the number of allowances associated with the current budget year pursuant to subarticle 6.

- (4) Limited Exemption from the Holding Limit.
  - (A) Allowances transferred by a covered entity or an opt-in covered entity to its compliance account during a single calendar year are exempt from the holding limit up to an amount equal to the

emissions reported in a positive or qualified positive verification statement covering the previous calendar year.

- (B) The limited exemption for a calendar year is the sum of all previous annual transfer limits.
  - (C) On December 31 of the calendar year following the end of a compliance period, the limited exemption will be will be reduced by the sum of the entity's verified emissions over that compliance period.
  - (D) If a positive or qualified positive verification statement is not received by ARB on time as set forth in MRR, then ARB will calculate the exemption based on emissions assigned according to the requirements set forth in article 2, section 95130, title 17, California Code of Regulations, Requirements for Verification of Emissions Data Reports.
- (5) If the Executive Officer determines that a reported transaction would result in an entity's holdings exceeding the holding limit, then the Executive Officer shall not approve the transaction pursuant to section 95921(a).
  - (6) The application of the holding limit will treat holdings of entities with a corporate association pursuant to section 95914 as being held by a single entity unless existing law or regulation prohibits coordinated market activity by the associated entities, including the transfer of instruments between accounts controlled by associated entities.
  - (7) The application of the holding limit will treat beneficial holdings by an agent as part of the holding of the owner.
- (c) Restrictions on Registered Entities. The Executive Officer may impose the following restrictions on entities registered pursuant to section 95830 that violate any provision specified in this article:

- (1) the number of compliance instruments held by a covered entity or opt-in covered entity may be restricted to an amount sufficient to cover its reported emissions;
- (2) a covered entity or an opt-in covered entity may be subject to additional annual surrender requirements; and
- (3) the registration of opt-in covered entities, voluntarily associated entities, and other registered participants under section 95830 may be suspended or revoked.

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

#### **§ 95921. Conduct of Trade.**

- (a) Each trade must meet the requirements set forth in this subarticle or the trade will not be accepted by the accounts administrator.
- (b) Information Requirements. The following information must be provided for the accounts administrator to record the transaction:
  - (1) Account number and authorized account representative of seller;
  - (2) Account number and authorized account representative of purchaser;
  - (3) Serial number of compliance instrument;
  - (4) Date and time of transaction agreement;
  - (5) Settlement date and time, if not the same as date and time of transaction agreement;
  - (6) Price of the instrument in U.S. dollars. If California links to Canadian provinces pursuant to subarticle 12, the price of the instrument may be reported in Canadian dollars;
  - (7) Account number and authorized representative of an entity for whom the instrument is to be held in benefit;

- (c) The seller and buyer must report each transaction within three calendar days of settlement of the transaction agreement.

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.

### **§ 95922. Banking, Expiration, and Voluntary Retirement.**

- (a) Allowances issued for a current or previous compliance period. A CA GHG allowance or an allowance approved pursuant to subarticle 12 may be held (“banked”) by an entity registered pursuant to section 95930.
- (b) Allowances issued for a future compliance period. A CA GHG Allowance or an allowance approved pursuant to subarticle 12 issued from an allowance budget year within a future compliance period may be held by an entity registered pursuant to section 95930.
- (c) Expiration of Compliance Instruments. A California compliance instrument does not expire and is not removed from the tracking system until:
  - (1) it is surrendered by a covered entity or opt-in covered entity and retired by the Executive Officer;
  - (2) an entity voluntarily submits the instrument to the Executive Officer for retirement; or
  - (3) the instrument is retired by an approved external GHG emissions trading system to which the California system is linked as provided in subarticle 12.
- (d) Voluntary Retirement of Compliance Instruments.
  - (1) An entity registered pursuant to section 95930 may voluntarily submit any compliance instrument for retirement.
  - (2) To voluntarily retire a compliance instrument, the registered entity submits a transaction report to the accounts administrator listing its

account number, the serial numbers of the instruments to be retired, and the ARB Retirement Account as the destination account.

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

## **Subarticle 12: Linkage to External Greenhouse Gas Emissions Trading Systems**

### **§ 95940. General Requirements.**

A compliance instrument issued by an external greenhouse gas emissions trading system (GHG ETS) may be used to meet the requirements of this Article if the external GHG ETS and the compliance instrument have been approved pursuant to sections 95941 and 95942.

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.

### **§ 95941. Procedures for Approval of External GHG ETS.**

The Board may approve a linkage with an external GHG ETS after public notice and opportunity for public comment in accordance with the Administrative Procedure Act (Government Code sections 11340 et seq.). Provisions set forth in this Article shall specify which compliance instruments issued by a linked GHG ETS may be used to meet a compliance obligation under this Article.

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.

### **§ 95942. Approval of Compliance Instruments from External GHG ETS.**

- (a) Once a linkage is approved, a compliance instrument issued by the approved external GHG ETS, as specified in section 95942, may be used to meet a compliance obligation under this Article.
- (b) An allowance issued by an approved external GHG ETS and specified in section 95942 is not subject to the quantitative usage limit specified in section 95854.
- (c) An offset credit or sector-based credit issued by an external GHG ETS is subject to the quantitative usage limit specified in section 95854, when used to meet a compliance obligation under this Article.

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

### **§ 95943. Reserved for Linkage.**

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

## **Subarticle 13: Offset Credits Issued by ARB**

### **§ 95970. General Requirements for Offset Credits Issued by ARB.**

An Offset Project Operator or its Authorized Project Designee must meet the requirements for offset credits issued by ARB. An offset credit issued by ARB must:

- (a) represent a GHG emission reduction or GHG removal enhancement that is real, additional, quantifiable, permanent, verifiable, and enforceable;
- (b) when used for compliance under this Article be subject to the quantitative usage limit pursuant to section 95855;

- (c) result from the use of a Compliance Offset Protocol adopted by the Board pursuant to section 95971;
- (d) result from an offset project that meets the requirements specified in section 95973;
- (e) result from an offset project that is listed pursuant to section 95975;
- (f) follows the monitoring, reporting and record retention requirements pursuant to section 95976;
- (g) be verified pursuant to sections 95977 through 95978;
- (h) be issued pursuant to sections 95980 through 95981; and
- (i) be registered pursuant to section 95982.

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.

#### **§ 95971. Procedures for Approval of Compliance Offset Protocols.**

The Board shall provide public notice of and opportunity for public comment prior to approving any Compliance Offset Protocols, including updates or modifications to existing Compliance Offset Protocols.

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.

#### **§ 95972. Requirements for Compliance Offset Protocols.**

- (a) To be approved by the Board, a Compliance Offset Protocol must:
  - (1) accurately determine the extent to which GHG emission reductions or GHG removal enhancements are achieved by the offset project type;

- (2) establish data collection and monitoring procedures relevant to the type of GHG emissions sources or GHG sinks for that offset project type;
  - (3) establish a project baseline that reflects a conservative estimate of business-as-usual performance or practices for the offset project type;
  - (4) account for activity-shifting leakage and market-shifting leakage for the offset project type;
  - (5) account for any uncertainty in quantification factors for the offset project type;
  - (6) ensure GHG emission reductions are permanent;
  - (7) include a mechanism to ensure permanence of GHG removal enhancements for sequestration offset project types; and
  - (8) establish the length of the crediting period pursuant to section 95972(b) for the relevant offset project type.
- (b) **Crediting Periods.** The crediting period for a non-sequestration project must be no less than 7 years and no greater than 10 years. The crediting period for a sequestration project must be no less than 10 years and no greater than 30 years.

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



- (2) meet the following additionality requirements as of the date of Offset Project Commencement:
  - (A) the GHG emission reduction or GHG removal enhancement activities, that result in GHG reductions or GHG removal enhancements, is not required by law, regulation, or any legally binding mandate applicable in the project's jurisdiction, or any GHG reduction or GHG removal enhancement activities that would otherwise occur in a conservative business-as-usual scenario;
  - (B) the Offset Project commencement date occurs after December 31, 2006; and
  - (C) the GHG reductions or GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the Compliance Offset Protocol for that offset project type as set forth in the following:
    - (i) Compliance Offset Protocol Ozone Depleting Substances Projects, incorporated by reference [DATE];
    - (ii) Compliance Offset Protocol Livestock Projects, incorporated by reference [DATE];
    - (iii) Compliance Offset Protocol Urban Forest Projects, incorporated by reference [DATE]; and
    - (iv) Compliance Offset Protocol U.S. Forest Projects U.S., incorporated by reference [DATE].
- (3) be located in the United States, Canada, or Mexico.
- (b) Local, Regional, and National Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional and national requirements on environmental impact assessments that apply based on the offset project location.

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.

#### **§ 95974. Authorized Project Designee.**

- (a) General Requirements for Designation of Authorized Project Designee. An Offset Project Operator may designate an entity as an Authorized Project Designee at the time of offset project listing. The Offset Project Operator must identify to ARB or an Offset Project Registry the rights and responsibilities they are assigning or delegating to an Authorized Project Designee at the time of offset project listing.
- (1) The Offset Project Operator may assign ownership rights of offset credits to the following:
- (A) Authorized Project Designee; or
  - (B) any other third party not otherwise prohibited by this article.
- (2) The Offset Project Operator may delegate responsibility to the Authorized Project Designee for performing the requirements of sections 95975, 95976, and 95977.
- (b) Modifications to Authorized Project Designee and Activities. An Offset Project Operator may modify or change an Authorized Project Designee, or any other third party authorized pursuant to section 95974(a)(1), for a listed offset project once within each calendar year after the offset project has been listed by ARB or an Offset Project Registry by submitting a request, in writing, to ARB or an Offset Project Registry.

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.**

- (a) General Requirements for Offset Project Operators or Authorized Project Designees Who Are Submitting an Offset Project for Listing. Before an offset project can be listed by ARB or an Offset Project Registry the Offset Project Operator, its Authorized Project Designee or another third party as provided in section 95974(a)(1) must be:
- (1) registered with ARB pursuant to section 95830; and
  - (2) must not be subject to any Holding Account restrictions imposed pursuant to section 96011.
  - (3) An offset project must be listed by an Offset Project Registry approved pursuant to section 95986, if the offset project listing is not being originated by ARB.
- (b) General Requirements for Offset Project Listing. For offset projects being listed by ARB or an Offset Project Registry in an initial or renewed crediting period, the Offset Project Operator or Authorized Project Designee must:
- (1) Attest, in writing, to ARB as follows:  
“I certify under penalty of perjury under the laws of California the GHG reductions or GHG removal enhancements for [project] from [date] to [date] will be measured in accordance with the [appropriate ARB Compliance Offset Protocol] and all information required to be submitted to ARB is true, accurate, and complete”;
  - (2) Attest, in writing, to ARB as follows:  
“I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program”; and
  - (3) provide all documentation required pursuant to section 95975(c) to ARB or an Offset Project Registry.

- (4) The attestations in section 95975(b)(1) and 95975(b)(2) may be provided to an Offset Project Registry with the listing information but must be provided to ARB when the requirements in section 95981(d)(1) apply.
- (c) 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 a Compliance Offset Protocol for that offset project type as set forth in:
  - (1) Compliance Offset Protocol Ozone Depleting Substances Projects, [DATE];
  - (2) Compliance Offset Protocol Livestock Projects, [DATE];
  - (3) Compliance Offset Protocol Urban Forest Projects, [DATE]; and
  - (4) Compliance Offset Protocol U.S. Forest Projects [DATE].
- (d) Notice of Completeness for Offset Project Listing Information. The Offset Project Operator or Authorized Project Designee will be notified after review by ARB or the Offset Project Registry, if the information submitted pursuant to section 95975(c) is complete and may be listed. If it is determined that the information submitted pursuant to section 95975(c) is incomplete, the Offset Project Operator or Authorized Project Designee will be notified within 30 calendar days by ARB or an Offset Project Registry.
- (e) Timing for Offset Project Listing in an Initial Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 95975(c) to ARB or an Offset Project Registry no later than the date at which the Offset Project Operator or Authorized Project Designee submits its required Offset Project Data Report to ARB or an Offset Project Registry pursuant to section 95976.

- (f) Listing Status of Offset Projects in an Initial Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset project for listing in an initial crediting period and the required documentation pursuant to section 95975(c), and ARB or the Offset Project Registry has reviewed the offset project against the additionality requirements in section 95973(a)(2), the offset project listing status will be “Proposed Project.” If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request ARB to make a final determination if the project meets the requirements in section 95975 to be listed for an initial crediting period by the Offset Project Registry. In making this determination, ARB may consult with the Offset Project Registry before making the final determination.
- (g) Timing for Offset Project Listing in a Renewed Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 95975(c) for a renewed crediting period to ARB or an Offset Project Registry no earlier than 18 months and no later than 9 months from conclusion of the initial crediting period or a previous renewed crediting period.
- (h) Listing Status of Offset Projects in a Renewed Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset project for listing in a renewed crediting period and the required documentation pursuant to section 95975(c), and ARB or the Offset Project Registry has reviewed the offset project against the additionality requirements in section 95973(a)(2)(A) and (2)(C) as of the date of the commencement of the renewed crediting period, the offset project listing status will be “Proposed Renewal.” If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request ARB to make a final

determination if the project meets the requirements in section 95975 to be listed for a renewed crediting period by the Offset Project Registry. In making this determination, ARB may consult with the Offset Project Registry before making the final determination.

- (i) Limitations for Crediting Period Renewals. A crediting period may be renewed if the offset project meets the requirements for additionality pursuant to subsections 95975(f) and (h).
  - (1) The crediting period for non-sequestration projects may be renewed twice for the length of time identified by the Compliance Offset Protocol.
  - (2) Sequestration projects are not subject to any renewal limits.

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.**

- (a) General Requirements for Monitoring Equipment for Offset Projects. The Offset Project Operator or Authorized Project Designee must employ the procedures in the Compliance Offset Protocol for monitoring measurements and project performance for offset projects. All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer. All modeling, monitoring, sampling, or testing procedures must be conducted in a manner consistent with the applicable procedure.
- (b) The Offset Project Operator or Authorized Project Designee must use the missing data methods as provided in a Compliance Offset Protocol for that offset project type, if provided and applicable.

- (c) An Offset Project Operator or Authorized Project Designee must put in place all monitoring equipment or mechanisms required by a Compliance Offset Protocol for that offset project type as set forth in:
- (1) Compliance Offset Protocol Ozone Depleting Substances Projects, [DATE];
  - (2) Compliance Offset Protocol Livestock Projects, [DATE];
  - (3) Compliance Offset Protocol Urban Forest Projects, [DATE]; and
  - (4) Compliance Offset Protocol U.S. Forest Projects [DATE].
- (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 annually and cover a calendar year. The Offset Project Data Report shall contain the information required by a Compliance Offset Protocol for that offset project type as set forth in:
- (1) Compliance Offset Protocol Ozone Depleting Substances Projects [DATE];
  - (2) Compliance Offset Protocol Livestock Projects [DATE];
  - (3) Compliance Offset Protocol Urban Forest Projects [DATE]; and
  - (4) Compliance Offset Protocol U.S. Forest Projects; [DATE]
  - (5) 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 California the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] are measured in accordance with the [appropriate ARB approved protocol] and all information required to be submitted to ARB in the Offset Project Data Report is true, accurate, and complete.”

This attestation may be provided to an Offset Project Registry with the Offset Project Data Report but must be provided to ARB when the requirements in section 95981(d)(1) apply.

- (6) All Offset Project Data Reports for the previous year's reported data are due April 1.
  - (7) If an Offset Project Data Report is not submitted to ARB or an Offset Project Registry by the applicable reporting deadline, the GHG reductions or GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to receive offset credits.
- (e) Requirements for Record Retention for Offset Projects. An Offset Project Operator or its Authorized Project Designee must meet the following requirements:
- (1) The Offset Project Operator or Authorized Project Designee must retain the following documents:
    - (A) all information submitted as part of the Offset Project Data Report;
    - (B) documentation of the offset project boundary, including a list of all GHG emissions sources and GHG sinks included in the offset project boundary and the project baseline, and the calculation of the project baseline, project emissions, GHG emission reductions, or GHG removal enhancements;
    - (C) fuel use and any other underlying measured or sampled data used to calculate project baseline emissions, GHG emission reductions, or GHG removal enhancements for each source, categorized by process and fuel, or material type;
    - (D) documentation of the process for collecting fuel use or any other underlying measured or sampled data for the offset project and its GHG emissions sources and GHG sinks for quantifying project baseline emissions, project emissions, GHG emission reductions, or GHG removal enhancements;



- (E) documentation of all project baseline emissions, project emissions, GHG emission reductions, or GHG removal enhancements;
- (F) all point of origin and chain of custody documents required by a Compliance Offset Protocol, if applicable;
- (G) all chemical analyses, results, and testing-related documentation for material and sources used for inputs to project baseline emissions, project emissions, GHG emission reductions, or GHG removal enhancements;
- (H) all model inputs or assumptions used for quantifying project baseline emissions, project emissions, GHG emission reductions, or GHG removal enhancements;
- (I) any data used to assess the accuracy of project baseline emissions, GHG emission reductions, or GHG removal enhancements from each offset project GHG emissions source or GHG sink, categorized by process;
- (J) quality assurance and quality control information including information regarding any measurement gaps, missing data substitution, calibrations or maintenance records for monitoring equipment, or models providing data for calculating project baseline emissions, project emissions, GHG emission reductions, or GHG removal enhancements;
- (K) a detailed technical description of any offset project continuous measurement/monitoring system, including documentation of any findings and approvals by federal, state, or local agencies;
- (L) raw and aggregated data from any measurement system;
- (M) documentation of any changes over time and the log book on tests, down-times, calibrations, servicing, and maintenance for any measurement/monitoring equipment providing data for

- project baseline calculations, project emissions, GHG emission reductions, or GHG removal enhancements;
- (N) for sequestration offset projects, documentation of inventory methodologies and sampling procedures including all calculation methodologies and equations used, and any data related to plot sampling; and
  - (O) any other documentation or data required to be retained by a Compliance Offset Protocol, if applicable.
- (2) Documents shall be retained in paper, electronic, or other usable format for five years after the end of the crediting period for non-sequestration offset projects or, for sequestration offset projects, the length of time that the offset project is issued offset credits plus 100 years.
  - (3) The documents retained pursuant to this section must be sufficient to allow for the verification of each Offset Project Data Report.
  - (4) Upon request by ARB or an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide to ARB or an Offset Project Registry all documents pursuant to this section, including data used to develop an Offset Project Data Report within 10 calendar days of the request.
- (f) General Procedure for Interim Gas or Fuel Analytical and Monitoring Equipment Data Collection. This section only applies if a Compliance Offset Protocol does not already include methods for collecting or accounting for data in the event of missing data due to an unforeseen breakdown of gas or fuel analytical monitoring data equipment.
- (1) In the event of an unforeseen breakdown of an offset project data monitoring equipment and gas or fuel flow monitoring devices required for the GHG emission reductions or GHG removal enhancement estimation, ARB may authorize an Offset Project Operator or

Authorized Project Designee to use an interim data collection procedure if ARB determines that the Offset Project Operator or Authorized Project Designee has satisfactorily demonstrated that:

- (A) the breakdown may result in a loss of more than 20 percent of the source's gas or fuel data for the year covered by an Offset Project Data Report;
  - (B) the gas or fuel analytical data monitoring equipment cannot be promptly repaired or replaced without shutting down a process unit significantly affecting the offset project operations, or that the monitoring equipment must be replaced and replacement equipment is not immediately available;
  - (C) the interim procedure will not remain in effect longer than is reasonably necessary for repair or replacement of the malfunctioning data monitoring equipment; and
  - (D) the request was submitted within 30 calendar days of the breakdown of the gas or fuel analytical data monitoring equipment.
- (2) An Offset Project Operator or Authorized Project Designee seeking approval of an interim data collection procedure must, within 30 calendar days of the monitoring equipment breakdown, submit a written request to ARB that includes all of the following:
- (A) the proposed start date and end date of the interim procedure;
  - (B) a detailed description of what data are affected by the breakdown;
  - (C) a discussion of the accuracy of data collected during the interim procedure compared with the data collected under the Offset Project Operator's or Authorized Project Designee's usual equipment-based method; and

- (D) a demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.
- (3) ARB may limit the duration of the interim data collection procedure or include other conditions for approval.
- (4) Data collected pursuant to an approved interim data collection procedure shall be considered captured data for purposes of compliance with a Compliance Offset Protocol. When approving an interim data collection procedure, ARB shall determine whether the accuracy of data collected under the procedure is reasonably equivalent to data collected from properly functioning monitoring equipment, and if it is not, the relative accuracy to assign for purposes of assessing possible offset material misstatement under section 95977(e)(2)(C)(xvii) of this article.

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.

**§ 95977. Verification of GHG Emission Reductions or GHG Removal Enhancements from Offset Projects.**

- (a) General Requirements. An Offset Project Operator or its Authorized Project Designee must obtain the services of an ARB-accredited verification body for the purposes of verifying Offset Project Data Reports submitted under this Article.
- (b) Schedule for Verification of Non-Sequestration Offset Projects. The verification of GHG emission reductions or GHG removal enhancements for non-sequestration offset projects must be performed annually and cover a calendar year. If an Offset Project Commencement date is during a calendar year, the verification of GHG emission reductions or GHG

removal enhancements may be included in the verification for the next full calendar year.

- (c) Schedule for Verification of Sequestration Offset Projects. The verification of GHG emission reductions or GHG removal enhancements for sequestration offset projects must be performed at least once every six years and may cover up to six years of GHG reductions or GHG removal enhancements by calendar year. After an initial verification with a Positive Offset Verification Statement, reforestation offset projects may defer the second verification for twelve years, but verification of Offset Project Data Reports must be performed at least once every six years thereafter.
- (d) Timing for Submittal of Offset Verification Statements to ARB or an Offset Project Registry. Any Offset Verification Statement must be received by ARB or an Offset Project Registry by October 1 of the year in which the Offset Project Data Report was submitted. If the Offset Verification Statement is not submitted to ARB or an Offset Project Registry by the verification deadline, the GHG reductions or GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to be issued offset credits.
- (e) Requirements for Offset Verification Services.
  - (1) Rotation of Verification Bodies. An offset project shall not have more than six consecutive years of offset project data verified by the same verification body or verifier(s). An Offset Project Operator or Authorized Project Designee may contract with a previous verification body or verifier(s) only after three years of offset project data have been verified by a different verification body or verifier(s).
  - (2) Offset Verification Services. GHG emissions, GHG reductions, or GHG removal enhancements from a listed offset project must be verified according to the following verification requirements.

- (A) Notice of Verification Services for Offset Projects. Before offset verification services may begin, the verification body must submit a Notice of Verification Services to ARB and an Offset Project Registry, if applicable. The verification body may begin offset verification services for the Offset Project Operator or Authorized Project Designee ten working days after the Notice for Verification Services is received by ARB or the Offset Project Registry, or earlier if approved by ARB in writing. The Notice for Verification Services must include the following information:
- (i) the name of the offset project type, including the length of the offset project crediting period, and title of the Compliance Offset Protocol used to implement the offset project;
  - (ii) a list of staff who will be designated to provide offset verification services as part of an offset verification team, including the names of each designated staff member, the lead verifier, independent reviewer, all subcontractors, and a description of the roles and responsibilities each team member will have during the verification process;
  - (iii) documentation that the offset verification team has the skills required to provide offset verification services for the Offset Project Operator or Authorized Project Designee. At least one offset verification team member must be accredited by ARB as an offset project specialist for an offset project of that type; and
  - (iv) general information on the Offset Project Operator or Authorized Project Designee, including:
    - a. the name of the Offset Project Operator or Authorized Project Designee, including contact information, address, telephone number, and E-mail address;

- b. the locations that will be subject to offset verification services;
  - c. the date(s) of on-site visits, with address and contact information; and
  - d. a brief description of expected offset verification services to be performed, including expected completion date.
- (B) If any information submitted pursuant to sections 95977(e)(2)(A)(ii) and 95977(e)(2)(A)(iv) changes after the Notice for Verification Services is submitted to ARB and the Offset Project Registry, if applicable, the verification body must notify ARB and the Offset Project Registry, if applicable, at least five days prior to the start of offset verification services. If any information submitted pursuant to sections 95977(e)(2)(A)(ii) and 95977(e)(2)(A)(iv) changes during verification services, the verification body must notify ARB and the Offset Project Registry, if applicable, before the offset verification statement is provided to ARB or the Offset Project Registry.
- (C) Offset verification services must include the following:
- (i) Verification Plan for Offset Projects. The offset verification team must obtain information from the Offset Project Operator or Authorized Project Designee necessary to develop a Verification Plan. Such information must include the following:
    - a. information to allow the offset verification team to develop a general understanding of offset project boundaries, operations, project baseline emissions, and annual GHG reductions or GHG removal enhancements;

- b. information regarding the training or qualifications of personnel involved in developing the Offset Project Data Report;
  - c. the name and date of the Compliance Offset Protocol used to quantify and report project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol; and
  - d. information about any data management system, offset project monitoring system, and models used to track project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol.
- (ii) The offset verification team must develop an Offset Verification Plan that includes, at a minimum:
- a. dates of proposed meetings and interviews with personnel related to the offset project;
  - b. dates of proposed site visits;
  - c. types of proposed document and data reviews; and
  - d. expected date for completing offset verification services.
- (iii) The offset verification team must discuss with the Offset Project Operator or Authorized Project Designee the scope of the offset verification services and request any information and documents needed for initial offset verification services. The offset verification team must review the documents submitted and plan and conduct a review of original documents and supporting data for the Offset Project Data Report.



- (iv) Site Visits for Offset Projects. For a non-sequestration offset project, at least one accredited offset verifier in the offset verification team, including the project specialist, must make at least one site visit every year to each offset project location for which an Offset Project Data Report is submitted. For a forest or urban forest offset project, at least one accredited offset verifier in the offset verification team, including the project specialist, must make a site visit every year that offset verification services are provided. A site visit is also required after the first full calendar year of operations of an offset project. During the site visit, the offset verification team member(s) must conduct the following:
- a. during the initial site visit the offset verification team members must:
    - (i) assess offset project eligibility and additionality according to section 95973 and the applicable Compliance Offset Protocol;
    - (ii) confirm that the project boundary is appropriately defined;
    - (iii) review project baseline calculations and modeling;
    - (iv) assess the operations, functionality, data control systems, and review GHG measurement and monitoring techniques; and
    - (v) confirm that all applicable eligibility criteria to design, measure, and monitor the offset project conforms to the requirements of the applicable Compliance Offset Protocol; and
  - b. during the initial and each subsequent site visit the offset verification team must:

- (i) check that all project boundaries, GHG emissions sources, GHG sinks, and GHG reservoirs in the applicable Compliance Offset Protocol are identified appropriately;
- (ii) review and understand the data management systems used by the Offset Project Operator or Authorized Project Designee to track, quantify, and report GHG reductions, GHG removal enhancements, or other data required as applicable in the Compliance Offset Protocol. This includes reviewing data collection processes and procedures, sampling techniques and metering accuracy, quality assurance/quality control processes and procedures, and missing data procedures. The offset verification team member(s) must evaluate the uncertainty and effectiveness of these systems;
- (iii) interview key personnel involved in collecting offset project data and preparing the Offset Project Data Report;
- (iv) make direct observations of equipment for data sources and equipment supplying data for sources in the sampling plan determined to be high risk;
- (v) collect and review other information that, in the professional judgment of the team, is needed in the verification process;
- (vi) confirm the offset project conforms with all local, state, or federal environmental regulatory requirements; and
- (vii) review all chain of custody documents as required in the Compliance Offset Protocol, if applicable.
- (viii) If the offset project is found by the offset verification team to not meet the requirements of section 95977(e)(2)(C)(iv)(b.) (vi) the offset project is ineligible to

- receive offset credits for GHG reductions or GHG removals quantified and reported in the Offset Project Data Report.
- (v) The offset verification team must review offset project operations to identify applicable GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs required to be included and quantified in the Offset Project Data Report as required by the applicable Compliance Offset Protocol. This must include a review of the GHG emissions inventory and each type of GHG emissions source and GHG sink to ensure that all GHG emissions sources, GHG sinks, and GHG reservoirs required to be reported for the offset project are properly included in the Offset Project Data Report.
  - (vi) An offset Project Operator or Authorized Project Designee must make available to the offset verification team all information and documentation used to calculate and report project baseline and annual GHG emissions, GHG reductions, and GHG removal enhancements and other information required by the applicable Compliance Offset Protocol.
  - (vii) Sampling Plan for Offset Project Data Reports. As part of confirming the Offset Project Data Report, the offset verification team must develop a sampling plan that meets the following requirements:
    - a. The offset verification team must develop a sampling plan based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale, and complexity of the offset verification services for an Offset Project Operator or Authorized

Project Designee. The analysis must review the inputs for the development of the submitted Offset Project Data Report, the rigor and appropriateness of the GHG data management system, and the coordination within an Offset Project Operator's or Authorized Project Designee's organization to manage the operation and maintenance of equipment and systems used to develop the Offset Project Data Reports;

- b. The offset verification team must include a ranking of GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary by amount of contribution to total CO<sub>2</sub>e emissions, GHG reductions, or GHG removal enhancements, and a ranking of GHG emissions sources, GHG sinks, or GHG reservoirs with the largest calculation uncertainty; and
- c. The offset verification team must include a qualitative narrative of uncertainty risk assessment in the following areas as applicable to the Compliance Offset Protocol:
  - (i) data acquisition equipment;
  - (ii) data sampling and frequency;
  - (iii) data processing and tracking;
  - (iv) project baseline and annual GHG emissions, GHG reductions, and GHG removal enhancement calculations;
  - (v) data reporting;
  - (vi) chain of custody requirements; and
  - (vii) management policies or practices in developing Offset Project Data Reports.
- (viii) After completing the analysis in sections 95977(e)(2)(C)(vii)(a.) through 95977(e)(2)(C)(vii)(c.), the

offset verification team must include in the sampling plan a list which includes the following:

- a. GHG emissions sources, GHG sinks, and GHG reservoirs that will be targeted for document reviews to ensure conformance with the Compliance Offset Protocol and data checks as specified in 95977(e)(2)(C)(xii), and an explanation of why they were chosen;
  - b. methods used to conduct data checks for each GHG emissions source, GHG sinks, and GHG reservoirs; and
  - c. a summary of the information analyzed in the data checks and document reviews conducted for each GHG emissions source, GHG sink, or GHG reservoir.
- (ix) The sampling plan list prepared pursuant to section 95977(e)(2)(C)(viii) must be updated and finalized prior to the completion of verification services.
- (x) The offset verification team must revise the sampling plan to describe tasks completed or needed to be completed by the verification team as relevant information becomes available and potential issues emerge of offset material misstatement or nonconformance with the requirements of the Compliance Offset Protocol and this subarticle.
- (xi) The verification body must retain the sampling plan in paper, electronic, or other format for a period of not less than ten years following the submission of each Offset Verification Statement. The sampling plan must be made available to ARB or the Offset Project Registry within 10 days upon request. The verification body must also retain all material received, reviewed, or generated to render an Offset Verification Statement for an Offset Project Operator or

Authorized Project Designee for ten years following the submittal of each Offset Verification Statement. The documentation must allow for a transparent review of how a verification body reached its conclusion in the Offset Verification Statement.

- (xii) Data Checks for Offset Project Data Reports. To determine the reliability of the submitted Offset Project Data Report, the offset verification team must use data checks. Such data checks must focus first on the largest and most uncertain estimates of project baseline GHG emissions, project emissions, GHG reductions, or GHG removal enhancements, and the offset verification team must:
- a. use data checks to ensure that the appropriate methodologies and GHG emission factors have been applied in calculating the project baseline and annual GHG emissions, project emissions, GHG reductions, or GHG removal enhancement calculations in the Compliance Offset Protocol;
  - b. chose GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs for data checks based on their relative sizes and risks of offset material misstatement or nonconformance as indicated in the sampling plan;
  - c. use professional judgment in the number of data checks required for the offset verification team to conclude with reasonable assurance whether the Offset Project Operator's or Authorized Project Designee's total annual reported GHG reductions or GHG removal enhancements are free of offset material misstatement and the Offset Project Data Report otherwise conforms to

the requirements of the Compliance Offset Protocol and this subarticle. At a minimum a data check must include the following:

- (i) tracing data in the Offset Project Data Report to its origin;
  - (ii) looking at the process for data compilation and collection;
  - (iii) reviewing all GHG inventory designs, and sampling procedures, if applicable;
  - (iv) recalculating GHG emissions, project emissions, GHG reductions, or GHG enhanced removals estimates to check original calculations;
  - (v) reviewing calculation methodologies used by the Offset Project Operator or Authorized Project Designee for conformance with the Compliance Offset Protocol and this subarticle;
  - (vi) reviewing meter and fuel analytical instrumentation calibration, if applicable; and
  - (vii) reviewing the quantification from models approved for use in the Compliance Offset Protocol, if applicable; and
- d. compare its own calculated results with the reported offset project data in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be investigated. The comparison of data checks must provide enough detail to indicate which GHG emissions sources, GHG sinks, and GHG reservoirs were checked, the types and quantity of data that were evaluated for each GHG emissions source, GHG sink,

and GHG reservoir, and any discrepancies that were identified.

- (xiii) Offset Project Data Report Modifications. As a result of review by the offset verification team and prior to completion of an Offset Verification Statement, the Offset Project Operator or Authorized Project Designee must make any possible improvements or corrections to the submitted Offset Project Data Report, and a revised Offset Project Data Report must be submitted to ARB or the Offset Project Registry. Documentation for all Offset Project Data Report submittals must be retained by the Offset Project Operator or Authorized Project Designee for the length of time specified in section 95976(e)(2).
- (xiv) To verify that the Offset Project Data Report is free of offset material misstatement, the offset verification team must make its own determination of GHG reductions or GHG removal enhancements relative to the project baseline, and must determine whether there is reasonable assurance that the Offset Project Data Report does not contain an offset material misstatement for the Offset Project Operator or Authorized Project Designee, on a CO<sub>2</sub>e basis. To assess conformance with this subarticle and the Compliance Offset Protocol the offset verification team must review the methods and factors used to develop the Offset Project Data report for adherence to the requirements of this subarticle and the Compliance Offset Protocol.
- (xv) Issues Log. The offset verification team must keep a log of any issues identified in the course of offset verification activities that may affect determinations of offset material



misstatement and nonconformance. The issues log must identify the section of this subarticle or Compliance Offset Protocol related to the nonconformance, if applicable, and indicate if the issues were corrected by the Offset Project Operator or Authorized Project Designee prior to completing the offset verification services. Any other concerns that the offset verification team has with the preparation of the Offset Project Data Report must be documented in the issues log. The issues log must indicate whether the issues could have any bearing on offset material misstatement or conformance.

- (xvi) An assessment of offset material misstatement is conducted for annual net GHG reductions or GHG removal enhancements relative to the project baseline in metric tons of CO<sub>2</sub>e.
- (xvii) The offset verification team must determine whether the GHG reductions or GHG removal enhancements quantified and reported in the Offset Project Data Report contain an offset material misstatement using the following equation:

$$\text{Percent accuracy} = 100\% - \sum \frac{[\text{Errors} + \text{Omissions} + \text{Misreporting}] \times 100\%}{\text{Total reported emissions}}$$

Where:

“Errors” means any differences between the reported GHG emissions, project emissions, GHG reductions, or GHG removal enhancements and GHG emissions, project emissions, GHG reductions, or GHG removal enhancements for a data source subject to data checks in 95977(e)(2)(C)(xii) calculated by the offset verification team.

“Omissions” means any GHG emissions, GHG reductions, project emissions, or GHG removal enhancements that the offset verification team concludes must be part of the Offset Project Data Report, but were not included by the Offset Project Operator or Authorized Project Designee in the Offset Project Data Report.

“Misreporting” means duplicative, incomplete, or other GHG emissions, project emissions, GHG reductions, or GHG removal enhancements the offset verification team concludes should, or should not, be part of the Offset Project Data Report.

“Total reported emissions” means annual reported net GHG reductions or GHG removal enhancements relative to the project baseline in metric tons CO<sub>2</sub>e.

- (xviii) Completion of offset verification services must include:
- a. Offset Verification Statement. Upon completion of the offset verification services pursuant to section 95977(e)(2) the verification body must complete an Offset Verification Statement, and provide it to the Offset Project Operator or Authorized Project Designee and ARB or the Offset Project Registry by the verification deadline pursuant to section 95977(d). Before the Offset Verification Statement is completed, the verification body must have the offset verification services and findings of the offset verification team independently reviewed within the verification body by an independent reviewer not

involved in verification services for that Offset Project Operator or Authorized Project Designee during that year.

- b. The independent reviewer shall serve as the final check of the offset verification team's work to identify any significant concerns, including:
  - (i) errors in planning;
  - (ii) errors in data sampling; and
  - (iii) errors in judgment by the offset verification team that are related to the draft offset verification statement.
- c. The independent reviewer must maintain independence from the offset verification services by not making specific recommendations about how the offset verification services should be conducted. The independent reviewer will review documents relevant to the offset verification services provided and identify any failure to comply with the requirements of this subarticle or with the verification body's internal policies and procedures for providing offset verification services. The independent reviewer must concur with the verification findings before the Offset Verification Statement can be issued.
- d. When the offset verification team completes its findings:
  - (i) The verification body must provide to the Offset Project Operator or Authorized Project designee a detailed verification report. The detailed verification report must at a minimum include the verification plan, the detailed comparison of the data checks conducted during offset verification services, the issues log identified in the course of

verification activities and the issue resolutions, and any qualifying comments on findings during offset verification services. The detailed verification report must also include the calculations performed in 95977(e)(2)(C)(xvii) and be made available to ARB or the Offset Project Registry within 10 days upon request.

(ii) The verification body must provide the Offset Verification Statement to the Offset Project Operator or Authorized Project Designee and ARB or the Offset Project Registry, attesting to ARB whether the verification body has found the submitted Offset Project Data Report to be free of offset material misstatement, and whether the Offset Project Data Report is in conformance with the requirements of this subarticle and the Compliance Offset Protocol.

(iii) In the case of a Qualified Positive Offset Verification Statement, the verification body will qualify the Offset Verification Statement to indicate any non-conformances contained within the Offset Project Data Report and that these non-conformances do not result in an offset material misstatement.

(iv) The offset verification team must have a final discussion with the Offset Project Operator or Authorized Project Designee explaining their findings and notifying the Offset Project Developer or Authorized Project Designee of any unresolved issues noted in the issues log before the Offset Verification Statement is finalized.

(v) The lead verifier in the offset verification team must attest to ARB in the offset verification statement that the offset verification team has carried out all offset verification

services as required by this subarticle, and the lead verifier who has conducted the independent review of offset verification services and findings must attest to his or her independent review on behalf of the verification body and his or her concurrence with the offset verification findings.

(vi) The lead verifier must attest in the offset verification statement, in writing, to ARB as follows:

“I certify under penalty of perjury under the laws of California the offset verification team has carried out all offset verification services as required by section 95977 and the findings are true, accurate, and complete and have been independently reviewed by an independent reviewer as required under sections 95977(e)(2)(C)(xviii)(a.) - 95977(e)(2)(C)(xviii)(c).”

(xix) Prior to the verification body providing an Adverse Offset Verification Statement to ARB or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must be provided at least ten working days to modify the Offset Project Data report to correct any offset material misstatement or nonconformance found by the offset verification team. The modified report and Offset Verification Statement must be submitted to ARB or the Offset Project Registry before the applicable verification deadline, unless the Offset Project Operator or Authorized Project Designee makes a request to ARB or an Offset Project Registry pursuant to section 95977(e)(2)(C)(xix)(a.)

a. If the Offset Project Operator or Authorized Project Designee and the verification body cannot reach agreement on modifications to the Offset Project Data

Report that result in a Positive Offset Verification or Qualified Positive Offset Verification Statement, due to a disagreement on the requirements of this article or Compliance Offset Protocol, the Offset Project Operator or Authorized Project Designee may petition the Executive Officer or Offset Project Registry to make a decision as to the verifiability of the submitted Offset Project Data Report.

- b. If the Executive Officer or Offset Project Registry determines that the Offset Project Data Report does not meet the standards and requirements specified in this article, the Offset Project Operator or Authorized Project Designee shall have the opportunity to submit within 30 calendar days of the date of this decision any Offset Project Data Report revisions that address the Executive Officer's or Offset Project Registry's determination, for re-verification of the Offset Project Data Report. In re-verifying a revised Offset Project Data Report, the verification body and offset verification team shall be subject to the requirements in sections 95977(e)(2)(C)(xviii)(a.) through 95977(e)(2)(C)(xviii)(d.), and must submit the revised Offset Verification Statement to ARB or the Offset Project Registry within 15 days.
- c. If the Offset Project Operator or Authorized Project Designee disagrees with a determination made by an Offset Project Registry, they can re-initiate the dispute resolution process in section 95977(e)(2)(C)(xix)(a.) through the Executive Officer.

- (i) The process must be reinitiated within 60 days of the applicable verification deadline.
  - (ii) The Executive Officer, verification body, Offset Project Operator or Authorized Project Designee shall be held to the requirements in section 95977(e)(2)(C)(xix)(b.).
- (xx) Upon submission of the Offset Verification Statement to ARB or the Offset Project Registry, the Offset Project Data Report must be considered final and no further changes may be made. All verification requirements of this article shall be considered complete.
- (xxi) If the Executive Officer finds a high level of conflict of interest existed between a verification body and an Offset Project Operator or Authorized Project Designee, or an Offset Project Data Report that received a Positive Offset or Qualified Positive Offset Verification Statement fails an ARB audit, the Executive Officer may set aside the Positive Offset or Qualified Positive Offset Verification Statement submitted by the verification body and require the Offset Project Operator or Authorized Project designee to have the Offset Project Data Report re-verified by a different verification body within 90 calendar days of this finding.
- (xxii) Upon request by the Executive Officer or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the data used to generate an Offset Project Data Report, including all data available to the offset verification team in the conduct of offset verification services within 10 working days of the request.
- (xxiii) Upon request by the Executive Officer or the Offset Project Registry the verification body must provide ARB or the Offset

Project Registry the detailed verification report given to the Offset Project Operator or Authorized Project Designee, as well as the sampling plan and any other supporting documentation. All documentation must be provided by the verification body to the Executive Officer or the Offset Project Registry within 10 working days of the request.

(xxiv) Upon written notification by ARB the verification body must make itself available for an offset verification services audit when providing Offset Verification Services for a project using a Compliance Offset Project protocol listed with ARB or an Offset Project Registry.

(f) Additional Project-Specific Requirements for Offset Verification Services. In addition to meeting the verification requirements in this section, GHG emission reductions or GHG removals resulting from an offset project must also meet any additional verification requirements in the Compliance Offset Protocol, if applicable for an offset project of that type.

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.

### **§ 95978. Offset Verifier and Verification Body Accreditation.**

A verifier or verification body must meet the accreditation requirements in title 17, article 2, section 95132 to provide verification services to verify GHG emission reductions or GHG removal enhancements for offset projects listed pursuant to this article.

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.



**§ 95979. Conflict of Interest Requirements for Verification Bodies for Verification of Offset Project Data Reports.**

- (a) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, and verifiers accredited by ARB to perform verification services.
- (b) The potential for a conflict of interest shall be deemed to be high where:
  - (1) the verification body and Offset Project Operator or Authorized Project Designee share any senior management staff or board of directors membership, or any of the senior management staff of the Offset Project Operator or Authorized Project Designee have been employed by the verification body, or vice versa, within the previous three years; or
  - (2) within the previous three years, any staff member of the verification body or any related entity has provided to the Offset Project Operator or Authorized Project Designee any of the following non-offset verification services:
    - (A) designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions, unless the review was part of providing GHG offset verification services;
    - (B) developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a California Environmental Quality Act (CEQA) GHG analysis that includes offset project specific information;
    - (C) designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions or GHG removal enhancements as a benefit;

- (D) designing, developing, implementing, internally auditing, consulting, or maintaining a GHG emission reduction or GHG enhanced removal offset project;
- (E) owning, buying, selling, trading, or retiring shares, stocks, or GHG offset credits from the offset project;
- (F) dealing in or being a promoter of offset credits on behalf of an Offset Project Operator or Authorized Project Designee;
- (G) preparing or producing GHG-related manuals, handbooks, or procedures specifically for the Offset Project Operator or Authorized Project Designee;
- (H) appraisal services of carbon or GHG liabilities or assets;
- (I) brokering in, advising on, or assisting in any way in carbon or GHG-related markets;
- (J) directly managing any health, environment or safety functions for the Offset Project Operator or Authorized Project Designee;
- (K) bookkeeping or other services related to the accounting records or financial statements;
- (L) any service related to information systems, including 14001 certification, unless those systems will not be part of the verification process;
- (M) appraisal and valuation services, both tangible and intangible;
- (N) fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the verification process;
- (O) any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;

- (P) any internal audit service that has been outsourced by the Offset Project Operator or Authorized Project Designee that relates to the Offset Project Operator's or Authorized Project Designee's internal accounting controls, financial systems, or financial statements, unless the result of those services will not be part of the verification process;
- (Q) acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the Offset Project Operator or Authorized Project Designee;
- (R) any legal services;
- (S) expert services to the Offset Project Operator or Authorized Project Designee or a legal representative for the purpose of advocating the Offset Project Operator's or Authorized Project Designee's interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony; and
- (T) any regulatory enforcement action, including citations and fines.

"Member" for the purposes of this section means any employee or subcontractor of the verification body or related entities of the verification body. "Member" also includes any individual with majority equity share in the verification body or its related entities.

"Related entity" for the purposes of this section means any direct parent company, direct subsidiary, or sister company.

- (3) The potential for conflict of interest will be deemed to be high when any member of the verification body provides any type of incentive to an Offset Project Operator or Authorized Project Designee to secure an offset verification services contract.

- (4) The potential for a conflict of interest will also be deemed to be high where any member of the verification body has provided offset verification services for the Offset Project Operator or Authorized Project Designee within the last three years, except within the time periods in which the Offset Project Operator or Authorized Project Designee is allowed to use the same verification body as specified in sections 95977(e)(1).
- (c) The potential for a conflict of interest must be deemed to be low where no potential for a conflict of interest is found under section 95979(b) and any non-offset verification services provided by any member of the verification body to the Offset Project Operator or Authorized Project Designee within the last three years are valued at less than 20 percent of the fee for the proposed verification.
- (d) The potential for a conflict of interest must be deemed to be medium where the potential for a conflict of interest is not deemed to be either high or low as specified in sections 95979(b) and 95979(c), or where there are any instances of personal or familial relationships between the verification body and management or employees of the Offset Project Operator or Authorized Project Designee.
- If a verification body identifies a medium potential for conflict of interest and wishes to provide offset verification services for the Offset Project Operator or Authorized Project Designee for an offset project listed with ARB or an Offset Project Registry, the verification body must submit, in addition to the submittal requirements specified in section 95979(e), a plan to avoid, neutralize, or mitigate the potential conflict of interest situation. At a minimum, the conflict of interest mitigation plan must include:
- (1) a demonstration that any members with potential conflicts have been removed and insulated from the project;

- (2) an explanation of any changes to the organizational structure or verification body to remove the potential conflict of interest. A demonstration that any unit with potential conflicts has been divested or moved into an independent entity or any subcontractor with potential conflicts has been removed; and
  - (3) any other circumstance that specifically addresses other sources for potential conflict of interest.
- (e) Conflict of Interest Submittal Requirements for Accredited Verification Bodies. Before providing any offset verification services, the verification body must submit to the Offset Project Operator or Authorized Project Designee and ARB or the Offset Project Registry a self-evaluation of the potential for any conflict of interest that the verification body, its staff, its related entities, or any subcontractors performing offset verification services may have with the Offset Project Operator or Authorized Project Designee for which it will perform offset verification services. The submittal must include the following:
- (1) identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in sections 95979(b), (c), and (d);
  - (2) identification of whether any member of the offset verification team has previously provided offset verification services for the Offset Project Operator or Authorized Project Designee, and, if so, the years in which such offset verification services were provided; and
  - (3) identification of whether any member of the offset verification team or related entity has engaged in any non-offset verification services of any nature with the Offset Project Operator or Authorized Project Designee either within or outside California during the previous three years. If non-offset verification services have previously been provided, the following information must also be submitted:

- (A) identification of the nature and location of the work performed for the Offset Project Operator or Authorized Project Designee and whether the work is similar to the type of work to be performed during verification;
- (B) the nature of past, present, or future relationships with the Offset Project Operator or Authorized Project Designee including:
  - (i) instances when any member of the offset verification team has performed or intends to perform work for the Offset Project Operator or Authorized Project Designee;
  - (ii) identification of whether work is currently being performed for the Offset Project Operator or Authorized Project Designee, and if so, the nature of the work;
  - (iii) how much work was performed for the Offset Project Operator or Authorized Project Designee in the last three years, in dollars;
  - (iv) whether any member of the offset verification team has any contracts or other arrangements to perform work for the Offset Project Operator or Authorized Project Designee or a related entity; and
  - (v) how much work related to GHG reductions or GHG enhanced removals the offset verification team has performed for the Offset Project Operator or Authorized Project Designee or related entities in the last three years, in dollars;
- (C) explanation of how the amount and nature of work previously performed is such that any member of the offset verification team's credibility and lack of bias should not be under question;

- (D) a list of names of the staff that would perform offset verification services for the Offset Project Operator or Authorized Project Designee, and a description of any instances of personal or family relationships with management or employees of the Offset Project Operator or Authorized Project Designee that potentially represent a conflict of interest;
  - (E) identification of any other circumstances known to the verification body, or Offset Project Operator or Authorized Project Designee that could result in a conflict of interest; and
  - (F) attest, in writing, to ARB as follows:

“I certify under penalty of perjury of the laws of California the information provided in the Conflict of Interest submittal is true, accurate, and complete.”
- (f) Monitoring Conflict of Interest Situations.
- (1) After commencement of offset verification services, the verification body must monitor and immediately make full disclosure, in writing, to ARB or the Offset Project Registry regarding any potential for a conflict of interest situation that arises for a project using a Compliance Offset Protocol. This disclosure must include a description of actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.
  - (2) The verification body must monitor arrangements or relationships that may be present for a period of one year after the completion of offset verification services for a project using a Compliance Offset Protocol. During that period, within 30 days of entering into any contract with the Offset Project Operator or Authorized Project Designee for which the verification body has provided offset verification services, the verification body must notify ARB or the Offset Project Registry of the contract and the nature of the work to be performed. ARB or the Offset

Project Registry, within 30 working days, will determine the level or conflict using the criteria in sections 95979(a) through (d), if the Offset Project Operator or Authorized Project Designee must re-verify their Offset Project Data Report, and if accreditation revocation is warranted by ARB.

- (3) The verification body must notify ARB or the Offset Project Registry within 30 days, of any emerging conflicts of interest during the time offset verification services are being provided for a project using a Compliance Offset Protocol.
  - (A) If ARB or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium risk, and this risk can be mitigated, then the verification body meets the conflict of interest requirements to continue to provide offset verification services for the Offset Project Operator or Authorized Project Designee.
  - (B) If ARB or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium or high risk, and this risk cannot be mitigated, then the verification body will not be able to continue to provide offset verification services for the Offset Project Operator or Authorized Project Designee, and may be subject to the suspension or revocation of accreditation by ARB under title 17, article 2, section 95132(d).
- (4) The verification body must report to ARB and the Offset Project Registry, if applicable, any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of offset verification services.
- (5) ARB may invalidate a Positive or Qualified Positive Offset Verification Statement received in section 95981(d) if it discovers a potential



conflict of interest has arisen for any member of the offset verification team. In such a case, the Offset Project Operator or Authorized Project designee shall be provided 90 calendar days to complete re-verification.

- (6) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this article, the Executive Officer may rescind accreditation of the body, its verifier staff, or its subcontractor(s) for any appropriate period of time as provided in title 17, article 2, section 95132(d).

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.

#### **§ 95980. Issuance of Offset Credits.**

- (a) One offset credit, which represents one metric ton of CO<sub>2</sub>e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued only if:
  - (1) ARB or an Offset Project Registry has listed the offset project pursuant to section 95975;
  - (2) the GHG emission reductions or GHG removal enhancements were issued a Positive Offset or Qualified Positive Offset Verification Statement pursuant to section 95977; and
  - (3) ARB or an Offset Project Registry has received a Positive Offset or Qualified Positive Offset Verification Statement issued and attested to by an ARB-accredited verification body for the time period for which offset credits would be issued.
- (b) Determination for Timing and Duration of Initial Crediting Periods. The initial crediting period will begin with the date that the first verified emission reductions or removal enhancements occur, according to the first Positive

Offset or Qualified Positive Offset Verification Statement that is received by ARB or an Offset Project Registry.

- (c) Determination for Timing and Duration of Renewed Crediting Periods. A renewed crediting period will begin the day after the conclusion of the prior crediting period.

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. Process for Issuance of Offset Credits.**

- (a) ARB or an Offset Project Registry will issue an offset credit that meets the requirements of section 95980 to an Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1), no later than 45 calendar days after a Positive Offset or Qualified Positive Offset Verification Statement is received by ARB or an Offset Project Registry.
- (b) Change of Listing Status. When ARB or an Offset Project Registry issues an offset credit for an offset project, the listing status for that offset project will be changed to either “Active Project” or “Active Renewal.”
- (c) Notice of Determination of Issuance of Offset Credits. Not later than 15 calendar days after ARB or an Offset Project Registry issues an offset credit, ARB or an Offset Project Registry will notify the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1) of the issuance.
- (d) Requirements for Offset Projects Submitted Through an Offset Project Registry Seeking Issuance of ARB Offset Credits.

- (1) 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 section 95977 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:
  - (A) the attestations required in sections 95975(b)(1), 95975(b)(2), 95976(d)(5), 95977(e)(2)(C)(xviii)(d.)<sup>(ii)</sup>, 95977(e)(2)(C)(xviii)(d.)<sup>(v)</sup>, and 95977(e)(2)(C)(xviii)(d.)<sup>(vi)</sup>;
  - (B) offset project listing information submitted to an Offset Project Registry pursuant to sections 95975(b) and (c);
  - (C) offset project data reports submitted to an Offset Project Registry pursuant to section 95976(d);
  - (D) verification statement submitted pursuant to section 95977(e)(2)(C)(xviii)(d.)<sup>(ii)</sup>;
  - (E) the detailed verification report required in section 95977(e)(2)(C)(xviii)(d.)<sup>(i)</sup>
  - (F) attest, in writing, to ARB as follows:

“I certify under penalty of perjury of the laws of California all information provided to ARB for issuance of offset credits is true, accurate, and complete.”
- (2) ARB will notify the Offset Project Operator, Authorized Project Designee, or other third party identified in section 95974(a)(1) within 30 calendar days if the information in section 95981(d)(1) is complete or request additional specific information.
- (3) Within 30 calendar days of determining the information submitted in section 95981(d)(1) is complete, ARB will issue offset credits that meet the requirements of section 95980.

- (4) ARB may request any additional information from the Offset Project Operator, Authorized Project Designee, Offset Project Registry, or verification body before issuing offset credits that meet the requirements of section 95980.
- (5) If ARB determines the information submitted in sections 95981(d)(1) and (d)(4) does not meet the requirements for issuance of ARB offset credits, then the Offset Project Designee or Authorized Project Operator may petition the Executive Officer, within 10 days of denial, for a review of submitted information in section 95981(d)(1) and (d)(4) and respond to any issues that prevent the issuance of ARB offset credits.
- (6) The Executive Office must make a final determination within 30 calendar days of receiving the request in section 95981(d)(5) and may request additional information from the Offset Project Operator or Authorized Project Designee, verification body, or Offset Project Registry. This determination made by the Executive Officer is final.
- (e) If the offset credits issued pursuant to section 95981(a) originated from an offset project submitted through an Offset Project Registry, the Offset Project Registry must retire the original offset credits issued by the Offset Project Registry in its system before ARB registers the offset credits pursuant to section 95982.
- (f) Receipt of Offset Credits Issued by ARB. ARB will transfer the offset credits into the Holding Account of the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator pursuant to section 95974(a)(1), within 15 working days of the notice of determination pursuant to sections 95981(c) and (d).

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.

**§ 95982. Registration of Offset Credits Issued by ARB.**

An offset credit issued by ARB will be registered by:

- (a) creating a unique ARB serial number; and
- (b) transferring this serial number to the Holding Account of the listed Offset Project Operator, Authorized Project Designee, or another third party as provided in section 95974(a)(1) unless otherwise required by section 95983.

**§ 95983. Offset Reversals.**

- (a) For forest sequestration projects, a portion of the offset credits issued by ARB must be placed into the Forest Buffer Account, or if the offset project is originally submitted through an Offset Project Registry the portion of the offset credits issued by the Offset Project Registry must be transferred to ARB for placement in the Forest Buffer Account.
  - (1) The amount that must be placed in the Forest Buffer Account upon credit issuance shall be determined as set forth in Compliance Offset Protocol for Forest Projects [DATE].
  - (2) Offset credits will be transferred to the Forest Buffer Account by ARB at the time of offset credit registration pursuant to section 95982.
  - (3) If a forest offset project is originally submitted through an Offset Project Registry, all offset credits that should be set aside into the Forest Buffer Account must be transferred to ARB by the Offset Project Registry. The Offset Project Registry must retire the original offset credits issued by the Offset Project Registry in its system.
- (b) Unintentional Reversals. If the Offset Project Operator or Authorized Project Designee determines there has been any unintentional reversal, it

must notify ARB, in writing, of the reversal within six months of its discovery.

- (1) In the case of an unintentional reversal the Offset Project Operator or Authorized Project Designee shall, provide in writing:
    - (A) an explanation of the nature of the unintentional reversal; and
    - (B) a verified estimate of current carbon stocks within the offset project boundary within one year of the discovery of the unintentional reversal.
  - (2) If ARB determines that there has been an unintentional reversal, it will retire a quantity of offset credits pursuant to section 95985(e).
- (c) Intentional Reversals. Requirements of the Offset Project Operator or Authorized Project Designee for intentional reversals are as follows:
- (1) If an intentional reversal occurs, the Offset Project Operator or Authorized Project Designee shall, within 30 calendar days of the intentional reversal:
    - (A) give notice, in writing, to ARB of the intentional reversal; and
    - (B) provide a written description and explanation of the intentional reversal to ARB.
  - (2) After ARB receives written notice by the Offset Project Operator or Authorized Project Designee, ARB will determine if an intentional reversal has occurred, and notify, in writing, the Offset Project Operator or Authorized Project Designee of its determination.
  - (3) Within three months of receiving the notice for intentional reversal from ARB, the Offset Project Operator or Authorized Project Designee shall submit a verified estimate of current carbon stocks within the offset project boundary.
- (d) Disposition of Forest Sequestration Projects After an Unintentional Reversal. If a reversal lowers the forest offset project's actual standing

live carbon stocks below its project baseline, the forest offset project will automatically be terminated by ARB or an Offset Project Registry.

- (1) If the forest offset project is automatically terminated due to an unintentional reversal, another offset project may be initiated and submitted to ARB or an Offset Project Registry for listing within the same offset project boundary.
  - (2) If the forest offset project has experienced an unintentional reversal and its actual standing live carbon stocks are still above the approved baseline levels, it may continue without termination as long as the unintentional reversal has been compensated by the Forest Buffer Account. The offset project must continue contributing to the Forest Buffer Account in future years as quantified in section 95983(a)(1).
- (e) Disposition of Forest Sequestration Projects After an Intentional Reversal.
- (1) If ARB determines that an intentional reversal has occurred pursuant to section 95983(c), the forest offset project will automatically be terminated by ARB or an Offset Project Registry.
  - (2) New offset projects may not be initiated within the same offset project boundary if the forest offset project is terminated due to an intentional reversal.
  - (3) Offset credits issued to an offset project that suffers an intentional reversal may be determined to be invalid pursuant to section 95985.

**§ 95984. Ownership and Transferability of Offset Credits Issued by ARB.**

Initial ownership of an offset credit will be with the registered Offset Project Operator, Authorized Project Designee, or another third party as provided in section 95974(a)(1) unless otherwise required by section 95983. An offset credit issued by ARB may be sold, traded, or transferred, unless:

- (a) the offset credit has been retired or surrendered for compliance in any voluntary or regulatory program;

- (b) it resides in the Forest Buffer Account pursuant to section 95983; or
- (c) it has been invalidated pursuant to section 95985.

**§ 95985. Invalidation of Offset Credits.**

- (a) An offset credit issued by ARB under this Article will remain valid:
  - (1) until the offset credit has been retired or surrendered for compliance in any voluntary or regulatory program; or
  - (2) unless invalidated pursuant to section 95985(b).
- (b) An offset credit may be determined to be invalid for the following reasons:
  - (1) a finding pursuant to section 95983 that a reversal occurred in a forest sequestration project; or
  - (2) ARB has determined that errors by verifiers, verification bodies, Offset Project Operators, Authorized Project Designee, or others involved in producing the documentation used to support the issuance of offset credits are sufficient to warrant a reversal.
- (c) If ARB determines that an offset credit it issued is invalid pursuant to this section:
  - (1) the offset credit will be cancelled and removed from any Holding or Compliance account or the ARB Forest Buffer Account;
  - (2) the current holder, user, or retiree of the offset credit will be notified at the time of ARB's determination; and
  - (3) any approved program for linkage pursuant to subarticle 12 will be notified of the invalidation at the time of ARB's determination.
- (d) If an offset credit found to be invalid pursuant to this section, except as provided in section 95985(e) and (f), has been retired or surrendered for compliance in any voluntary or regulatory program, the user or retiree of that offset credit must replace each metric ton of CO<sub>2</sub>e with another approved compliance instrument pursuant to subarticle 4, within 30 calendar days pursuant to this section. If the user or retiree does not



replace the invalid offset credit within 30 calendar days of the notice of invalidation, each outstanding offset credit will constitute a violation. If the user or retiree is no longer in business ARB will require the Offset Project Operator or Authorized Project Designee to replace the offset credits and will notify the Offset Project Operator or Authorized Project Designee that they must replace them. The Offset Project Operator or Authorized Project Designee must replace each metric ton of CO<sub>2</sub>e with another approved compliance instrument pursuant to subarticle 4, within 30 calendar days of being notified by ARB. If the Offset Project Operator or Authorized Project Designee does not replace the invalid offset credit within 30 calendar days of being notified by ARB, each outstanding offset credit will constitute a violation.

- (e) If an intentional reversal occurs from a forest offset project, the Offset Project Operator or Authorized Project Designee must replace each metric ton of CO<sub>2</sub>e with another approved compliance instrument pursuant to subarticle 4, within 30 calendar days of being notified by ARB. If the Offset Project Operator or Authorized Project Designee does not replace the invalid offset credit within 30 calendar days of being notified by ARB, each outstanding offset credit will constitute a violation.
- (f) If an unintentional reversal occurs from a forest offset project, ARB will retire offset credits in the amount of tons reversed from the Forest Buffer Account. All other invalidated offset credits must be replaced pursuant to section 95985(d).

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.

## **§ 95986. Executive Officer Approval Requirements for Offset Project Registries.**

- (a) The approval requirements specified in this subarticle apply to all Offset Project Registries that will operate to provide registry services under this article.
- (b) The Executive Officer may approve Offset Project Registries that meet the requirements specified in this section.
- (c) The Offset Project Registry must be registered with ARB and apply for a Holding Account pursuant to section 95830.
  - (1) Offset Project Registry Approval Application. To apply for approval as an Offset Project Registry, the applicant shall submit the following information to the Executive Officer.
    - (A) name of applicant;
    - (B) name of president or chief executive officer;
    - (C) list of all board members, if applicable;
    - (D) addresses of offices located in the United States;
    - (E) documentation that the applicant carries least fifty million U.S. dollars of liability insurance; and
    - (F) list of any judicial proceedings and administrative actions filed against the applicant within the previous five years, with a detailed explanation as to the nature of the proceedings.
  - (2) The applicant must submit, in writing, the procedures to screen and address internal conflicts of interest. The applicant must provide the following information to the Executive Officer:
    - (A) staff, management, and board member conflict of interest policy where there is clear criteria for what constitutes a conflict of interest. The policy must:
      - (i) identify specific activities and limits on monetary and non-monetary gifts staff, management, or board members must not conduct or accept to meet the Offset Project Registry's internal policies of conflict of interest policy; and

- (ii) include a requirement for annual disclosure by each staff, management, or board member of all monetary or non-monetary gifts received for the previous calendar year;
  - (B) list of all service types provided by the applicant,
  - (C) the industrial sectors the applicant serves,
  - (D) locations where services are provided; and
  - (E) a detailed organizational chart that includes the applicant and any parent, subsidiary, and affiliate companies.
- (3) The program has the following capabilities for registration and tracking of offset credits:
  - (A) a comprehensive registration requirement for all registry participants
  - (B) tracking ownership and transactions of all offset credits it issues at all times; and
  - (C) possesses a permanent repository of ownership information on all transactions involving all offset credits it issues from the time they are issued to the time they are retired, including prices and counter-parties.
- (d) The applicant's primary business must be operating an Offset Project Registry for voluntary or regulatory purposes.
  - (4) The applicant may not act as an Offset Project Developer, Authorized Project Designee, or offset project consultant once approved as an Offset Project Registry.
  - (5) The applicant may not act as a verification body and provide verification services pursuant to section 95977 once approved as an Offset Project Registry.
- (e) The Offset Project Registry must continue to maintain the liability insurance required in section 95986(c) while it provides registry services

to Offset Project Operators or Authorized Project Designees who are implementing offset projects.

- (f) If any information submitted pursuant to sections 95986(c) through (e) changes after the approval of an Offset Project Registry, the Offset Project Registry must notify the Executive Officer within 30 calendar days and provide updated information consistent with that required in sections 95986(c) through (e).
- (g) The Offset Project Registry must attest, in writing, to ARB as follows:
  - (1) “As the authorized representative for this Offset Project Registry, I understand that the Offset Project Registry is voluntarily participating in the California cap-and-trade program under title 17, article 5, and the Offset Project Registry is now subject to all regulatory requirements and enforcement mechanisms of this program”;
  - (2) “All information generated and submitted to ARB by the Offset Project Registry related to an offset project that uses an ARB Compliance Offset Protocol will be true, accurate, and complete”;
  - (3) “All information provided to ARB as part of an ARB audit of the Offset Project Registry will be true, accurate, and complete”;
  - (4) “All registry services provided will be in accordance to the requirements of section 95987”;
  - (5) “The Offset Project Registry is committed to participating in all ARB training related to ARB’s compliance offset program or Compliance Offset Protocols”; and
  - (6) The authorized representative of the Offset Project Registry must attest in writing, to ARB: “I certify under penalty of perjury under the laws of California I have authority to represent the Offset Project Registry and all information provided as part of this application is true, accurate, and complete.”

- (h) The management staff at the Offset Project Registry must take ARB provided training on ARB's compliance offset program.
- (i) ARB Approval.
  - (1) Within 60 calendar days of receiving an application for approval as an Offset Project Registry and completion by all management staff of the training required in section 95986(h), the Executive Officer will inform the applicant in writing either that the application is complete or that additional specific information is required to make the application complete.
  - (2) The applicant may be allowed to submit additional supporting documentation before a decision is made by the Executive Officer.
  - (3) Within 60 calendar days following completion of the application process, the Executive Officer shall approve an Offset Project Registry if evidence of qualification submitted by the applicant has been found to meet the requirements of sections 95986(c) and (d) and issue an Executive Order to that effect.
  - (4) The Executive Officer and the applicant may mutually agree, in writing, to longer time periods than those specified in subsections 95986(i)(1) and 95986(i)(3).
  - (5) The Executive Officer approval for an Offset Project Registry is valid for a period of five years, whereupon the applicant may re-apply. At the time of re-application, the Offset Project Registry must meet all of the requirements in section 95986(c) and must not have been subject to any enforcement action under this article.
- (j) Modification, Suspension, and Revocation of an Executive Order Approving an Offset Project Registry. The Executive Officer may review, and for good cause, modify, suspend, or revoke an Executive Order providing approval to an Offset Project Registry.

- (1) During revocation proceedings, the Offset Project Registry may not continue to provide registry services.
- (2) Within five working days of suspension or revocation of approval, an Offset Project Registry must notify all Offset Project Operators or Authorized Project Designees for whom it is providing registry services, or has provided registry services within the past 12 months, of its suspension or revocation of approval.
- (3) An Offset Project Operator or Authorized Project Designee who has been notified by an Offset Project Registry of a suspended or revoked approval must re-submit its project information with a new Offset Project Registry or ARB.

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.

#### **§ 95987. Offset Project Registry Requirements.**

- (a) The Offset Project Registry shall use Compliance Offset Protocols approved pursuant to section 95971 to determine whether an offset project may be listed with the Offset Project Registry for potential issuance of ARB offset credits.
- (b) The Offset Project Registry must make the following information publicly available for each offset project:
  - (1) within 10 working days of the offset project listing requirements being deemed complete in section 95975(d):
    - (A) offset project name;
    - (B) offset project location;
    - (C) Offset Project Operator and, if applicable, the Authorized Project Designee;

- (D) type of offset project;
  - (E) name and date of the Compliance Offset Protocol used by the offset project;
  - (F) date of offset project listing submittal and Offset Project Commencement date; and
  - (G) identification if the offset project is an Initial or renewed crediting period;
- (2) within 10 working days of the Offset Project Data Report being issued an Offset Verification Statement:
- (A) annual project baseline emissions;
  - (B) annual GHG reductions or GHG removal enhancements achieved by the offset project;
  - (C) the unique serial numbers of offset credits issued by the Offset Project Registry to the offset project;
  - (D) total, by calendar year, of verified GHG reductions or GHG removal enhancements for the offset project; and
  - (E) Offset Verification Statement for each year the Offset Project Data Report was verified; and
- (3) clear identification of which offset projects are listed and submitting Offset Project Data Reports using Compliance Offset Protocols.
- (c) Conflict of Interest Review by Offset Project Registries. The Offset Project Registry must apply the conflict of interest requirements in section 95979 when making a conflict of interest determination for a verification body proposing to conduct verification services under section 95977. The Offset Project Registry must review and make sure the conflict of interest submittal in section 95979(e) is complete. When an Offset Project Operator submits its information pursuant to section 95981(d) to ARB, the Offset Project Registry must provide ARB with the information and attestation identified in section 95979(e).

- (d) The Offset Project Registry may provide guidance to Offset Project Operators, Authorized Project Designees, or offset verifiers for offset projects using a Compliance Offset Protocol, if there is no clear requirement for the topic in an ARB Compliance Offset Protocol, this article, or an ARB guidance document.
  - (1) An Offset Project Registry must maintain all correspondence and records of communication with an Offset Project Operator, Authorized Project Designee, or offset verifier when providing clarifications or guidance for an offset project using a Compliance Offset Protocol.
  - (2) Before providing such guidance, the Offset Project Registry may request ARB to provide clarification on the topic.
  - (3) Any Offset Project Operator or Authorized Project Designee requests for clarifications or guidance must be documented and the Offset Project Registry response must be submitted on an ongoing monthly basis to ARB beginning with the date of approval as an Offset Project Registry.
- (e) The Offset Project Registry must audit at least 20% of the annual verifications of its offset projects developed using a Compliance Offset protocol.
  - (1) The audit must include the following checks:
    - (A) attendance with the offset verification team on the offset project site visit;
    - (B) in-person or conference call attendance for the first offset verification team and Offset Project Operator or Authorized Project Designee meeting;
    - (C) in-person or conference call attendance to the last meeting or discussion between the verification team and Offset Project Operator or Authorized Project Designee;



- (D) documentation of any findings during the audit that lead to the Offset Project Registry to provide guidance or require corrective action with the verification team, including a list of issues noted during the audit and how those were resolved;
  - (E) a review of the detailed verification report and sampling plan to ensure that it meets the minimum requirements in section 95977 and documentation of any discrepancies found during the review; and
  - (F) an investigative review of the conflict of interest assessment provided by the verification body, which includes the following:
    - (i) discussions with both the lead verifier who submitted the conflict of interest assessment form and the Offset Project Registry or Authorized Project Designee to confirm the information on the conflict of interest assessment form is true, accurate, and complete;
    - (ii) an Internet-based search to ascertain the existence of any previous relationship between the verification body and the Offset Project Operator or Authorized Project Designee, and if so the nature and extent; and
    - (iii) any other follow up by the Offset Project Registry to have reasonable assurance that the information provided on the conflict of interest assessment form is true, accurate, and complete.
- (2) All information related to audits of offset projects developed using a Compliance Offset Protocol must be provided to ARB within 10 days of an ARB request.
- (3) The audits must be selected to provide a representative sampling of geographic locations of all offset projects, representative sampling of verification bodies, representative sampling of lead verifiers,

representative sampling of offset project types, and representative sampling of offset projects by size.

- (4) The Offset Project Registry must provide an annual report to ARB by January 31 for its previous year's audit program of offset projects developed using Compliance Offset Protocols that includes:
  - (A) a list of all offset projects audited;
  - (B) locations of all offset projects audited;
  - (C) verification bodies associated with each offset project and names of offset verification team members;
  - (D) dates of site visits;
  - (E) Offset Project Registry staff that conducted the audit; and
  - (F) audit findings as required in section 95987(e)(1)(D) through (E).
- (f) The Offset Project Registry must provide all information in its possession, custody, or control related to a listed offset project within 10 days of request by ARB.
- (g) The Offset Project Registry must make its staff and all information related to listed offset projects by the Offset Project Registry available to ARB during any audits or oversight activities initiated by ARB to ensure the requirements listed in section 95987 are being carried out as required by this article.
- (h) The Offset Project Registry must retire any offset credits issued for a project using a Compliance Offset Protocol once notified by ARB that the offset credits are eligible to be issued by ARB.
- (i) The Offset Project Registry must provide an annual report by January 31 of the previous year's offset projects that are at least listed using a Compliance Offset Protocol. The report must contain the name of the offset project, type of offset project and applicable Compliance Offset Protocol, name of Offset Project Operator or Authorized Project Designee, location of project, status of offset project, associated verification body,

crediting period, amount of any credits issued to date, amount of any credits retired for the offset project by the Offset Project Registry to date.

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.

### **§95988. Record Retention Requirements for Offset Project Registries.**

All information submitted and correspondence related to listed offset projects by the Offset Project Registry must be maintained by the Offset Project Registry for five years after the end of the crediting period for non-sequestration offset projects or, for sequestration offset projects the length of time that the offset project is issued offset credits by the Offset Project Registry plus 100 years.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

## **Subarticle 14: Recognition of Compliance Instruments from Other Programs**

### **§ 95990. Recognition of Offset Credits for Early Action.**

- (a) ARB shall accept offset credits from offset projects registered with third-party offset programs approved pursuant to section 95990(c) if the offset credits meet the criteria set forth in this section.
- (b) Criteria for Approval of Offset Credits Issued by Third Parties. An offset credit may be used to meet a compliance obligation under this article if the offset credit results from a GHG reduction or GHG removal enhancement which:
  - (1) occurred between January 1, 2005, and December 31, 2014;
  - (2) is verified pursuant to section 95990(f);
  - (3) results from an offset project with an offset project commencement date prior to January 1, 2012;

- (4) results from an offset project located in the United States; and
- (5) results from the use of one of the following offset quantification methodologies:
  - (A) Climate Action Reserve Livestock Protocol versions 1.0 through 3.0;
  - (B) Climate Action Reserve Urban Forest Protocol versions 1.0 through 1.1;
  - (C) Climate Action Reserve Ozone Depleting Substances Protocol version 1.0; and
  - (D) Climate Action Reserve Forest Protocol version 2.1; or
  - (E) Climate Action Reserve Forest Protocol versions 3.0 through 3.2, if the offset project meets the following requirements for ensuring permanence:
    - (i) conservation easement; or
    - (ii) contribution of offset credits based on the reversal risk of the offset project to an insurance buffer account.
- (c) Approval of Third-Party Offset Programs for Purposes of Accepting Offset Credits for Early Action. To qualify as a third-party offset program for purposes of accepting offset credits for early action, the program must be issued an Executive Order pursuant to section 95986(d); or meet the following requirements:
  - (1) The program must provide documentation that it carries at least two million U.S. dollars of liability insurance.
  - (2) The program has the following capabilities for registration and tracking of offset credits:
    - (A) a comprehensive registration requirement for all registry participants;
    - (B) tracking ownership and transactions of all offset credits it issues at all times; and

- (C) a permanent repository of ownership information on all transactions involving all offset credits it issues from the time they are issued to the time they are retired, including prices and counter-parties.
- (3) The program's primary business is operating an offset project registry for voluntary or regulatory purposes.
- (4) The program must agree to submit any available original documentation submitted by an Offset Project Operator or third-party verifier regarding the offset project, including registration documentation, sampling plans, and verification reports.
- (5) The program must agree to retire and disqualify any offset credits it issues when retired or used in any voluntary or regulatory program, including when they are retired or approved for use in the California Cap-and-Trade Program.
- (6) An authorized representative of the third-party offset program must attest in writing, to ARB, as follows:
  - "I certify under penalty and perjury of the laws of California the information provided in demonstrating this program meets the requirements in Section 95990(c) and is true, accurate, and complete."
  - "Upon acceptance of any offset credits for early action purposes, this program will meet the requirements in section 95990(c)(5)."
- (d) Registration of Offset Credits Issued by Third Parties. Once an offset credit that is issued by an approved third-party offset program is determined by ARB to meet the criteria set forth in section 95990(b), ARB will assign an ARB serial number to the offset credit. Both the approved third-party offset program and ARB shall maintain the serial numbers of the offset credits it issues in perpetuity and track the transactions of offset credits until ARB retires it, at which time ARB will notify the approved third-party offset program to simultaneously retire it.

- (e) Ineligible Offset Credits Issued by Third Parties. This section does not apply to an offset credit issued by an approved third-party offset program that has been retired, canceled, or used to meet a voluntary commitment or a surrender obligation in any voluntary or regulatory system.
- (f) Regulatory Verification of Offset Credits for Early Action. Any offset credits issued by an approved third-party offset program that meet the requirements in section 95990(b) must be verified under the following requirements to be used to meet a compliance obligation under this article:
  - (1) The project must be verified by an ARB-accredited verification body that meets the accreditation requirements in section 95978.
  - (2) The verification body is subject to the conflict of interest requirements in section 95979. The potential for conflict of interest must be assessed against the Offset Project Developer for the project and any individuals or companies that currently hold the serialized offset credits for the project that will be submitted to be issued an ARB serialized offset credit. The conflict of interest submittal in section 95979 must be submitted to ARB.
  - (3) The verification body must conduct all of the offset verification services in section 95977 for the offset project and serialized offset credits that will potentially be issued ARB offset credits, for each offset data report for each year of the offset credits issued by the approved third-party offset program.
    - (A) If the offset project is still in operation, the verification body must conduct a site visit as required in section 95977(e)(2)(C)(iv).
    - (B) If the offset project is no longer in operation, the verification body will conduct a desk review of any available original documentation to confirm any previous verification findings

related to the types of verification services required in section 95977(e)(2)(C)(iv).

- (i) The Offset Project Operator or the approved third-party offset program must provide the verification report(s) for the offset project to the ARB verifier to assist in the verification and desk review.
  - (ii) The Offset Project Operator must provide any original documentation to assist the verification body in its desk review.
- (C) The sampling plan in section 95977(e)(2)(C)(vii) must cover all serialized offset credits issued by the approved third-party offset program that may potentially be issued an ARB offset credit;
- (D) The data checks in section 95977(e)(2)(C)(xii) must include checks across the sources identified in the sampling plan, covering all years of the serialized offset credits issued by the approved third-party offset program that may potentially be issued an ARB offset credit;
- (E) The verification body must submit an offset verification statement to ARB covering the serialized offset credits issued by the approved third-party offset program for the offset project that may potentially be issued an ARB offset credit;
- (F) Only serialized offset credits issued by an approved third-party offset program that are within the scope of the offset verification services for an offset project and have received a positive offset or qualified positive offset verification statement are eligible to be issued an ARB offset credit.

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.

### **§ 95991. Sector-Based Offset Credits.**

Sector-based offset credits may be generated through reduced or avoided GHG emissions from within, or carbon removed and sequestered from the atmosphere by, a specific sector in a particular jurisdiction. The Board may consider for acceptance compliance instruments issued from sector-based offset crediting programs that meet the requirements set forth in section 95994 and originate from developing countries or from subnational jurisdictions within those developing countries, except as specified in subarticle 13.

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.

### **§ 95992. Procedures for Approval of Sector-Based Crediting Programs.**

The Board may approve a sector-based crediting program in an eligible jurisdiction after public notice and opportunity for public comment in accordance with the Administrative Procedure Act (Government Code section 11340 et seq.). Provisions set forth in this article shall specify which compliance instruments issued by an approved sector-based crediting program may be used to meet a compliance obligation under this Article.

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.

### **§ 95993. Sources for Sector-Based Offset Credits.**

Sector-based credits may be generated from:

- (a) Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans; and



- (b) Reserved for other sources of sector-based credits.

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.

### **§ 95994. Requirements for Sector-Based Offset Crediting Programs.**

- (a) General Requirements for Sector-Based Crediting Programs. The Board may consider for approval a sector-based crediting program which may include the following sectoral requirements:
- (1) Sector Plan. The host jurisdiction has established a plan for reducing emissions from the sector.
  - (2) Monitoring, Reporting, Verification, and Enforcement. The program includes a transparent system that regularly monitors, inventories, reports, verifies, and maintains accounting for emission reductions across the program's entire sector, as well as maintains enforcement capability over its reference activity producing credits.
  - (3) Offset Criteria. The program has requirements to ensure that offset credits generated by the program are real, additional, quantifiable, permanent, verifiable and enforceable.
  - (4) Sectoral Level Performance. The program includes a transparent system for determining and reporting when it meets or exceeds its crediting baseline(s), and evaluating the performance of the program's sector during each program's crediting period relative to the business as usual or other emissions reference level.
  - (5) Public Participation and Participatory Management Mechanism. The program has established a means for public participation and consultation in the program design process.
  - (6) Nested Approach. If applicable, the program includes:

- (A) Offset project-specific requirements that establish methods to inventory, quantify, monitor, verify, enforce, and account for all project-level activities
  - (B) a system for reconciling offset project-based GHG reductions in sector-level accounting from the host jurisdiction.
- (b) Sector-Specific Requirements. Pursuant to section 95996, specific sectors may have specific requirements unique to that sector.

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.

#### **§ 95995. Quantitative Usage Limit.**

Sector-based offset credits approved by ARB for compliance pursuant to section 95821(d) are subject to the quantitative usage limit specified in section 95854.

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.

#### **§ 95996. Reserved for Sector-Specific Requirements.**

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.

#### **§ 95997. Reserved for Approved Sector-Based Crediting Programs.**

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

## **Subarticle 15: Enforcement and Penalties**

### **§ 96010. Jurisdiction.**

Any of the following actions shall conclusively establish a person's consent to be subject to the jurisdiction of the State of California, including the administrative authority of ARB and the jurisdiction of the Superior Courts of the State of California:

- (a) registration with ARB pursuant to subarticle 5;
- (b) the purchase or holding of a compliance instrument issued by ARB;
- (c) receipt of compensation of any kind, including sales proceeds and commissions, from any transfers of allowances or offset credits issued by ARB pursuant to subarticle 13 or recognized by ARB pursuant to subarticle 14; or
- (d) verification of an offset credit to be issued by ARB.

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.

### **§ 96011. Authority to Suspend, Revoke, or Modify.**

- (a) The Executive Officer may suspend, revoke, or place restrictions on the Holding Account of a voluntarily associated entity determined to be in violation of any provision of this article.
- (b) The Executive Officer may place restrictions on a Holding Account of a covered entity or an opt-in covered entity determined to be in violation of any provision of this article or of article 2 of this subchapter.
- (c) The Executive Officer may suspend or revoke the registration for an entity registered pursuant to 95814(b).

- (d) The Executive Officer may suspend, revoke, or modify any Executive Order issued under this article or under article 2 of this subchapter, including an order accrediting a verifier, for a violation of any provision of this article.

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.

### **§ 96012. Injunctions.**

Any violation of this article may be enjoined pursuant to Health and Safety Code section 41513.

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.

### **§ 96013. Penalties.**

Penalties may be assessed pursuant to Health and Safety Code section 38580 for any violation of this article.

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.

### **§ 96014. Violations.**

- (a) If a covered entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 95856 or 95857 there is a separate violation of this Article for each required compliance instrument that has not been surrendered.

- (b) There is a separate violation for each day or portion thereof after the compliance date that each required compliance instrument has not been surrendered.
- (c) Each day or portion thereof in which any other violation of this Article occurs is a separate offense.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

## **Subarticle 16: Other Provisions**

### **§ 96020. Severability, Effect of Judicial Order.**

Each provision of this article shall be deemed severable, and in the event that any provision of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

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.

### **§ 96021. Confidentiality.**

- (a) Emissions data submitted to ARB under this article is public information and shall not be designated as confidential.
- (b) Any entity submitting information to the Executive Officer pursuant to this subarticle may claim such information as “confidential” by clearly identifying such information as “confidential.” Any claim of confidentiality by an entity submitting information must be based on the entity’s belief that the information marked as confidential is either trade secret or otherwise exempt from public disclosure under the California Public Record Act (Government Code, section 6250 et seq.). All such requests for confidentiality shall be

handled in accordance with the procedures specified in California Code of Regulations, title 17, sections 91000 to 91022.

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.

### **§ 96022. Reserved Provisions.**

[Placeholder]: Provisions to be developed.

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.