A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE
   Cap-and-Trade Linkage 2012

2. TITLE(S)
   17

3. FIRST SECTION AFFECTED
   95802

4. TELEPHONE NUMBER
   916-322-6533

5. FAX NUMBER (Optional)
   916-322-3928

6. AGENCY CONTACT PERSON
   Amy J. Whiting

7. TELEPHONE NUMBER
   916-322-6533

8. AGENCY REGULATIONS\N
   05-11-2012

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

9. SUBJECT OF REGULATIONS
   Cap-and-Trade Reg. to Link the CA and Quebec Cap-and-Trade Programs

10. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

11. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if topics related)
   95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022

12. TITLES
   17

13. TYPE OF FILING
   Regular Rulemaking (Gov. Code §11346)

   Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11346.2, 11346.4)

   Emergency (Gov. Code, §11346.10)

   Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

   Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.10)

   Emergency Readopt (Gov. Code, §11346.1(h))

   Changes Without Regulatory Effect (Cal. Code Regs, title 1, §100)

   File & Print

   Effective on filing with Secretary of State

   §160 Changes Without Regulatory Effect

   Effective Other (Specify)

   Fair Political Practices Commission

   State Fire Marshal

   Other (Specify)

14. CONTACT PERSON
   Amy Whiting

15. TELEPHONE NUMBER
   916-322-6533

16. E-MAIL ADDRESS (Optional)
   awhiting@arb.ca.gov

17. SIGNATURE OF AGENCY HEAD OR DESIGNEE
   Ellen M. Peter, Chief Counsel - 05/10/2013

18. SIGNATURE OF EXECUTIVE OFFICER
   Richard W. Corey, Executive Officer
FINAL REGULATION ORDER

Amend sections 95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022, title 17, California Code of Regulations to read as follows:

Note: The original regulatory text is shown in plain type. The amendments are shown in underline and strikethrough to indicate additions and deletions, respectively. All other portions of the Cap and Trade regulation remain unchanged and are indicated by "***" for reference.

Article 5. California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

§ 95802. Definitions.

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

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(17) “Auction” means the process of selling California Greenhouse Gas Allowances, along with allowances from External Greenhouse Gas Emissions Trading Systems with which California has linked its Cap-and-Trade Program pursuant to subarticle 12, by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

***

(53) Compliance Instrument” means an allowance or offset, issued by ARB or by an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to
subarticle 12, ARB-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$_2$e.

***

(62) "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 2009 or any subsequent year more than the applicable threshold level specified in section 95812(a) of this rule.

***

(131) "Hold" in the context of a compliance instrument, is to have the serial number assigned to that instrument registered into an account assigned to an entity that is registered into the California Cap-and-Trade Program or an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, or an account under the control of the Executive Officer.

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Subarticle 5. Registration and Accounts

§ 95830. Registration with ARB.

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(h) Linking. When California links to an External GHG ETS, each entity must register into a jurisdiction based on the physical location information the entity must provide pursuant to section 95830(c)(1)(A).

(1) An entity located in California or in a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 must register with the jurisdiction in which they are located.

(2) An entity located in the United States may only register with California to participate in its Cap-and-Trade Program.

(3) California will recognize the registration of an entity that registers into an External GHG ETS to which California has linked pursuant to subarticle 12 and allow that entity to participate in the California Cap-and-Trade Program.


§ 95833. Disclosure of Corporate Associations.

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(f) Consolidation of Accounts for Corporate Associations.

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(3) To opt out of consolidation of accounts, the primary account representative or alternate account representative for an entity within the corporate association must provide to the Executive Officer by October 1, 2012:
(4) If an entity registered in the California Cap-and-Trade Program has a direct corporate association with an entity(ies) registered in an External Greenhouse Gas Emissions Trading System to which California has linked its Cap-and-Trade Program pursuant to subarticle 12, the entity registered in the California Cap-and-Trade Program must opt out of consolidation with the entity(ies) registered in an External Greenhouse Gas Emissions Trading System and meet all the requirements of section 95833(f)(3) except for the October 1, 2012 deadline.

(45) To consolidate the accounts for a corporate association the Executive Officer shall instruct the accounts administrator to:

***


Subarticle 10. Auction and Sale of California Greenhouse Gas Allowances

§ 95910. Auction of California GHG Allowances.

(a) Timing of the Allowance Auctions.

(1) In 2012, an auction will be held on November 14.

(2) Beginning in 2013, auctions shall be conducted on the twelfth business day in California or a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 of the second month of each calendar quarter.

***

§ 95911. Format for Auction of California GHG Allowances.

(a) Auction Bidding Format.

***

(5) The allowances for auction in section 95911(a)(3) will also include allowances from a jurisdiction operating an External GHG ETS system to which California has linked pursuant to subarticle 12.

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(c) Method for Setting the Auction Reserve Price.

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(3) The auction administrator will calculate the Auction Reserve Price using the following procedure:

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(C) The auction administrator shall set the exchange rate as the most recently available noon daily buying rate for U.S. and Canadian dollars as published by the Bank of Canada, and shall announce the exchange rate prior to the opening of the auction window.

(D) The Auction Reserve Price in Canadian dollars shall be the Canadian dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus adjusted in the manner provided for in section 83.3 of the Financial Administration Act (R.S.Q., c. A-6.001) of Quebec.

(E) The auction administrator will use the announced exchange rate to convert to a common currency the Auction Reserve Prices previously calculated separately in U.S. and Canadian dollars. The auction administrator will set the Auction Reserve Price equal to the higher of the two values.

***
(5) The Auction Reserve Price in section 95911(c)(2) will be announced on the first day in December that is a business day in California and in any jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12 and the Reserve Price shall also be stated in the currency (or currencies) used in an External GHG ETS to which California has linked pursuant to subarticle 12.

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§ 95912. Auction Administration and Participant Application.

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(c) Auction Notification. At least 60 days prior to each auction, the auction administrator shall publish the following information:

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(8) If California has linked to a jurisdiction operating an External GHG ETS pursuant to subarticle 12, the number of allowances in section 95912(c)(6) will also include the allowances made available by the linked jurisdiction.

***

(i) Auction participants must provide a bid guarantee to the financial services administrator at least 12 days prior to the auction.

(1) The bid guarantee must be in one or a combination of the following forms:

(A) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier’s check;

(B) An irrevocable letter of credit issued by a financial institution with a United States banking license; or

(C) A bond issued by a financial institution with a United States banking license.
(D) The bid guarantee submitted by any entity registered with California will be in U.S. dollars.

(E) The bid guarantee will be in the currency used by the jurisdiction with which the entity has registered.

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

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(d) Timing of Reserve Sales.

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(4) The subsequent Reserve sales in section 95913((d)(2), shall be conducted on the first day six weeks after each quarterly allowances auction scheduled pursuant to section 95910 that is also a business day in California and any linked jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12.

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(i) Entities registered in an External GHG ETS to which California has linked pursuant to subarticle 12 are not eligible to purchase from the Reserve.

Subarticle 11. Trading and Banking

§ 95920. Trading.

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(g) The holding limit in section 95920(a) shall include holdings of any allowances issued by a jurisdiction operating an External GHG ETS to which California has linked pursuant to subarticle 12.

(h) The “Annual Allowance Budget” in section 95920(d) is calculated as the sum for the current budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12. The “Annual Allowance Budget” in section 95920(e) is calculated as the sum for a budget year of the annual compliance budgets of California and all External GHG ETS programs to which California has linked pursuant to subarticle 12.


§ 95921. Conduct of Trade.

***

(b) Information Requirements for Transfer Requests. Parties to the transfer request agree to provide documentation about the transaction for which the transfer request was submitted upon the request of the Executive Officer. The following information must be reported to the accounts administrator as part of a transfer request before any transfer of allowances can be recorded on the tracking system:

***
(7) If California links to Canadian jurisdictions pursuant to subarticle 12, the price of the compliance instrument may be reported in Canadian dollars in section 95921(b)(6).

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Subarticle 12. Linkage to External Greenhouse Gas Emissions Trading Systems

§ 95942. Approval of Compliance instruments from with Linked External Greenhouse Gas Emissions Trading Systems GHG-ETS.

***

(d) Once a linkage is approved, a compliance instrument issued by California may be used to meet a compliance obligation within the approved External GHG ETS.

(e) Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in California.

(f) The administrator of the approved External GHG ETS must agree to inform the Executive Officer of any California compliance instruments that the External GHG ETS accepts for compliance.

(g) The Executive Officer will agree to inform the appropriate official in the approved External GHG ETS of any compliance instrument accepted by California for compliance.
(h) The Executive Officer will register into the Retirement Account compliance instruments issued by California that are used for compliance within the approved External GHG ETS, along with information identifying the External GHG ETS actually retiring the compliance instruments.


§ 95943. Reserved for Linkage Linked External GHG ETS. [Repealed]

Covered or opt-in entities may use compliance instruments issued by the following programs to meet their compliance obligation under this article:

(a) Government of Quebec (effective January 1, 2014).


Subarticle 15. Enforcement and Penalties

§ 96010. Jurisdiction.

***

(b) The purchase or holding of a compliance instrument issued by ARB:1

unless the entity holding the compliance instrument is registered in an approved External GHG ETS pursuant to subarticle 12:

***


§ 96022. Jurisdiction of California.

Any party that participates in the Cap-and-Trade Program is subject to the jurisdiction of the State of California unless the party is subject to the jurisdiction of an External GHG ETS to which California has linked its Cap-and-Trade Program pursuant to section 95830(h) and subarticle 12.