

ATTACHMENT 1

PROPOSED MODIFIED REGULATION ORDER

Subchapter 10 Climate Change, Article 5, Sections 95802, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022 are amended to read as follows:

Note: Proposed linkage-related amendments were originally noticed on May 9, 2012, in double underline and ~~double-strikeout~~ as they were part of a series of amendments to the Cap-and-Trade Regulation. The Office of Administrative Law approved the first set of non-linkage related amendments on September 1, 2012. The linkage-related amendments are now depicted in single underline and ~~single-strikeout~~. Only changes to the originally noticed linkage-related amendments are shown in double underline and ~~double-strikeout~~.

Article 5: AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS 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:

[No changes were made to subsections (1) through (16).]

- (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

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bid, taking bids, and then distributing the allowances to winning bidders.

[No changes were made to subsections (18) through (52).]

- (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 CO₂e.

[No changes were made to subsections (56) through (61).]

- (62) “Covered Entity” means an entity withing 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~~8~~ or any subsequent year more than the applicable threshold level specified in section 95812(a) of this rule.

[No changes were made to subsections (63) through (128).]

- (129) “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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[No changes were made to subsections (130) through (287).]

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.

- (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.

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.

§ 95833. Disclosure of Corporate Associations.

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- (f) Consolidation of Accounts for Corporate Associations.
- (1) By January 1, 2013, the Executive Officer will consolidate the accounts held by entities registered into the California Cap-and-Trade Program pursuant to section 95830 that are part of a direct corporate association into a consolidated set of accounts.
 - (2) By October 1, 2012, the primary account representative or alternate account representative for all entities that are part of a direct corporate association and intend to have their accounts consolidated must provide to the Executive Officer:
 - (A) Confirmation of the corporate association if not already provided;
 - (B) Confirmation of the entity's intent to have its account consolidated with that of the other entities within the corporate association; and
 - (C) A change of primary account representative and alternate account representative to new representatives that will serve as the primary account representative and alternate account representatives for the consolidated accounts.
 - (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:
 - (A) Confirmation of the corporate association if not already provided;
 - (B) An attestation, signed by the officer of the entity who is responsible for the conduct of the account viewing agent and is one of the officers disclosed pursuant to section 95830(c)(1)(B), that the entity seeks exclusion of its account from the consolidated set of accounts to be created; and
 - (C) Confirmation of the opt-out decision by the primary account representative or alternate account representative for any entity

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opting out of consolidation, as well as the primary account representative or alternate account representative designated for any entities remaining in the corporate association consolidated account pursuant to section 95833(f)(2)(C). This confirmation will include a distribution of the purchase and holding limits between the consolidated corporate association and any associated entities opting out of consolidation.

(D) 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 95822(f)(3).

- (4) To consolidate the accounts for a corporate association the Executive Officer shall instruct the accounts administrator to:
- (A) Create a single consolidated set of accounts for members of a corporate association that accept consolidation;
 - (B) Include a compliance account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a compliance account;
 - (C) Include a limited use holding account only for a corporate association with at least one member entity that accepts consolidation that is eligible for a limited use holding account;
 - (D) Complete all valid transfer requests in the system involving any accounts for the members of the corporate association;
 - (E) Transfer all compliance instruments in the existing accounts held by the member entities to the appropriate corporate association accounts; and

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- (F) Close the accounts held by the individual member entities of the corporate association that have not opted out.

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. Auction of California GHG Allowances

- (a) Auction of California GHG Allowances.
- (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 and 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.
- (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 California GHG allowances.
 - (4) Entities registered into the California Cap-and-Trade Program must submit bids in whole U.S. dollars and whole cents.
 - (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.
- (1) The Auction Reserve Price for vintage 2013 allowances auctioned in 2012 will be \$10 per allowance. For advance auctions conducted in 2012, the Reserve Price shall be \$10 per allowance for vintage 2015 allowances.
 - (2) Beginning in 2012, and each year thereafter, the Auction Administrator will announce the Auction Reserve Price for auctions to be conducted the following calendar year on the first day in December that is a business day in California. The Reserve Price shall be stated in U.S. dollars.
 - (3) The auction administrator will calculate the Auction Reserve Price using the following procedure:
 - (A) The Auction Reserve Price in U.S. dollars shall be the U.S. dollar Auction Reserve Price for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.
 - (B) Prior to the opening of the auction window on the day of the auction, the Auction Administrator shall announce the Auction Reserve Price.
 - (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.

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- (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.
- (4) The Auction Reserve Price will be announced prior to the opening of the auction window at 10 a.m. Pacific Standard Time (or Pacific Daylight Time when in effect) on the day of auction, and will be in effect until the window closes at 1 p.m. Pacific Standard Time (or Pacific Daylight Time when in effect).
- (5) The ~~The announcement day for the~~ Auction Reserve Price in section 95911(c)(2) will be announced ~~made~~ 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.

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 Participant Application.

- (c) Auction Notification. At least 60 days prior to each auction, the auction administrator shall publish the following information:
- (1) The date and time of the auction;
 - (2) Auction application requirements and instructions;
 - (3) The form and manner for submitting bids;

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- (4) The procedures for conducting the auction;
- (5) The administrative requirements for participation; and
- (6) The number of allowances from California that will be available at the auction.
- (7) For the announcement of the first quarter auction, the number of allowances to be available for sale during the calendar year and the Auction Reserve Price in effect for the calendar year pursuant to section 95911(c).
- (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.
 - (2) The amount of the bid guarantee must be greater than or equal to the maximum value of the bids to be submitted.

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- (A) The value of a set of bids equals the quantity of bids submitted at or above that price times that price. The value of the set of bids is calculated at each price at which the bidder will submit a bid.
- (B) The maximum value of a set of bids is the highest value of a set of bids calculated at each price at which the bidder will submit a bid.
- (3) The bid guarantee will be made payable to the financial services administrator.
- (4) The bid guarantee will expire no sooner than 21 days after the auction date.
- (5) The financial services administrator will evaluate the bid guarantee and inform the auction administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Executive Officer.
- (6) If an entity has submitted more than one form of bid guarantee then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in section 95912(i)(1).
- (7) If the auction participant submits a single bid guarantee instrument to cover bids in both the current and advance auctions, the auction administrator will apply the value of the bid guarantee to the current auction first when accepting bids pursuant to section 95911(e)(3). The remaining value of the bid guarantee will be used to determine acceptance of bids into the advance 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.

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

(d) Timing of Reserve Sales.

- (1) The first Reserve sale will be conducted on March 8, 2013.
- (2) Subsequent Reserve sales shall be conducted on the first day six weeks after each quarterly allowance auction scheduled pursuant to section 95910 that is also a business day in California.
- (3) The Reserve sale administrator shall provide all eligible participants with notice of the number of allowances available for sale and the terms of the sale at least four weeks prior to the sale.
- (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.

- (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.

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.

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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.

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.

- (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:
 - (1) Holding account number of the source account and identification of two individuals who are the primary-account representative and/or alternate account representatives initiating the transfer request;
 - (2) Holding account number of destination account and identification of a primary account representative or alternate account representative for the destination account confirming the transfer request;
 - (3) Serial numbers of the compliance instruments;
 - (4) Date of the transaction agreement for which the transfer request is submitted;

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- (5) Actual or expected settlement date, if not the same as date of the transaction agreement;
- (6) Price of the compliance instrument in U.S. dollars.
Disclosure of price is not required for transfers between entities with a direct corporate association or from an entity's holding account to its compliance account.
- (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).

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

§ 95942. Approval Interchange 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 ~~the serial numbers of~~ any California compliance instruments that the External GHG ETS accepts for compliance.

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- (g) The Executive Officer will agree to inform the appropriate official in the approved External GHG ETS of ~~the serial numbers 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 ~~them~~ the 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.

§ 95943. Linked External GHG ETS

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.

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.

- (b) The purchase or holding of a compliance instrument issued by ARB, unless the entity holding the compliance instrument is registered in an approved External GHG ETS pursuant to subarticle 12;

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

§ 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 another jurisdiction by having registered into an External GHG ETS to which California has linked its Cap-and-Trade Program pursuant to section 95830(h) and subarticle 12.

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.