Comments of the Western Power Trading Forum
On the California Air Resources Board's
Modified Regulation Order
For a California Cap and Trade Program

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I. Introduction and Overview

The Western Power Trading Forum[1] (WPTF) appreciates the opportunity to provide comments to the California Air Resources Board (ARB) on its Modified Regulation Order for a California Greenhouse Gas Cap and Trade Program (MRO). WPTF supports establishment of a cap and trade program as the most cost-effective and efficient means of achieving emission reductions under Assembly Bill 32 (AB32). However, we have a number of concerns that should be addressed before ARB adopts and implements final regulations.

- The MRO's arbitrary limits on holding of compliance instruments and the auction purchases are inadequate for covered entities with large compliance obligations. The holding limits should be modified to provide for holding limits that are based on an entity's recent emissions levels, and the auction purchase limit should be increased to 25%
- Despite the guidance provided in the December Board Resolution approving the cap and trade program, the MRO still does not adequately address the situation of independent power producers with long-term contracts that do not provide for pass-through of allowance costs. The MRO should be modified to provide a direct allocation of allowances to provide for these situations, unless other solutions are identified.
- The MRO's treatment of imported electricity is inconsistent with normal practices and commercial arrangements in the wholesale power markets. The definition of resource shuffling and rules for specifying imports must be modified to be more consistent with these markets.
- The MRO does not provide sufficient clarity regarding the entity responsible for carbon associated with electricity imports and is vulnerable to legal challenges. CARB should work with the CAISO and the Department of Justice to develop the most legally and technically sound basis, consistent with the CAISO tariff, for an approach that holds the bidding/scheduling entity responsible for imports via the external interties.
- The 'buyer-liability' approach for offsets is unworkable and will prevent the development of a viable offsets program. The MRO should be modified to eliminate the potential retroactive invalidation of offset compliance instruments otherwise the costs of reaching the cap will be significantly higher for the State overall as well as individual covered entities.
- The enforcement provisions could penalize covered entities errors in the tracking system or verification process. The MRO should be modified to eliminate the potential for obligated entities to be saddled with additional compliance obligations based on an audit of previously verified emission reports.

[1] WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

- WPTF believes that elements of MRO that deal with the corporate attestations impose unreasonable burdens on the Authorized Account Representative, and should be modified to be more consistent with normal commercial practice.

We discuss each of these concerns below. We then recommend specific changes to the regulation to address these concerns, following the organizations and headings used in the MOR.

II. Comments

The compliance instrument holding limit and auction purchase limit should be modified to ensure that covered entities with large compliance obligations can secure the necessary allowances.

The MRO limits the number of allowances a regulated entity can hold in any given year, and the limits are essentially identical for all covered entities.[2] Given the variation in the sizes of covered entities' compliance obligation, setting the holding limit at the same level for all entities is inappropriate: an entity with low emissions would potentially be able to hold sufficient allowances to cover their compliance obligations for multiple years, while an entity with high emissions may not be able to hold sufficient allowances to cover even a single year. The holding limit would thus greatly restrict the ability of larger entities to manage their compliance. The provision that exempts allowances in the compliance account up to the level of accrued emissions is not sufficient to address this problem because it would require annual retirement of allowances in order to stay under the holding limits, which undermines the intended flexibility of the three-year compliance interval.

Rather than set the holding limit at the same level for all entities, the holding limit itself for covered entities should be set relative to each entity's most recent emissions data report, and all allowances in the compliance account and any allowances banked from previous periods should be exempted from the holding limit. This would ensure that each entity has sufficient flexibility to manage its compliance obligation over time. For voluntary associated entities, the holding limit shall be calculated as outlined in 95920(d).

Similarly, the MRO's ten percent auction purchase limit also disadvantages entities with large compliance obligations. While entites with small compliance obligations may be able to procure all their compliance needs for a year in a single auction, entities with larger compliance obligations would not. As WPTF has previously stated, we see no compelling need for a purchase limit and would prefer that it be eliminated. If ARB retains the purchase limit, we recommend raising it to 25% for all market participants, including IOUs. This limit is consistent with that used in the Regional Greenhouse Gas Initiative.

Allowances should be directly allocated to independent generators that do not have the ability to recover the cost of compliance instruments in existing, long-term power contracts

Page 19 of the "Notice of Public Availability of Modified Text and Availability of Additional Documents" indicates that Staff believes that bilateral contract negotiations would provide the best resolution of concerns of existing power contracts that do not include provisions that would allow full pass-through of carbon costs associated with cap-and-trade. For other sectors, specific

[2] Although the limited exemption differs from entity to entity, the 'base amount' is the same for all.

indsutrial assistance is provided in the form a direct allocation of allowances to provide a reasonable transition to carbon minimization. The exclusion of independent power producers from similar meaningful assistance must be rectified. It is simply not sufficient for CARB to encourage bilateral negotiation, when the MRO provides no incentives that compel both parties to the underlying contracts to negotiate

It is therefore critical that CARB add provisions to the regulation to address the situation of power producers that cannot pass through carbon costs in existing contracts. WPTF recommends two specific provisions. First, for contracts where the counter-party is a utility or other covered entity that receives a direct allocation, the regulation should provide that the entity's annual allocation will be reduced by the amount of allowances required to compensate the affected power producer for carbon costs incurred for delivery of the power under that contract for the previous calendar year. These allowances would instead be deposited in the compliance account of the affected power producer. Second, a limited quantity of allowances should be set-aside for direct allocation of allowances to affected power producers where the counter party is a power marketer or thermal host, rather than a utility. CARB should determine the appropriate size for this set-aside based on its knowledge of the number and size of the affected contracts. In both cases, eligibility requirements for direct allocation to power producers should be defined, and the affected power producer should be required to document the power delivered under these contracts.

WPTF is open to consideration of other approaches to address the situation of independent generators that do not have the ability to recover the cost of compliance instruments in existing, long-term power contracts and recognizes that a one-size-fits-all solution is not possible. But it is imperative that these contracts be addressed.

The definition of resource shuffling and rules for specifying imports must be modified to be more consistent with wholesale energy markets.

WPTF is concerned that the new provisions in the MRO that characterize resource shuffling as a violation and a form of fraud, may result in electricity importers being subject to severe financial and potentially criminal consequences for events that are outside that entity's control. For instance, one of the conditions for resource shuffling, as defined, is that 'during the same interval(s), electricity with higher emissions was delivered to serve load located outside California and in a jurisdiction that is not linked with California's cap and trade program.' This condition is a direct result of economic dispatch, not resource shuffling. When an out-of-state resource serves load in California, by necessity another unit up the dispatch curve – usually with a higher emission rate – will necessarily serve the incremental load in the source jurisdiction. This is a normal and intended consequence of power markets, and completely out of the control of the importing entity.

Second, the definition for resource shuffling for low-emission resources should not apply to all generation, but should be limited to those resources which have the potential to undermine the environmental integrity of the cap and trade program – namely large hydro-electric and nuclear generation. Natural gas generation should not be considered a 'shuffle-able' resource. Natural gas generation is dynamic throughout the WECC; it naturally moves from market to market depending on load and transmission conditions. Restrictions on claims to natural gas generation under the cap and trade program will inhibit normal market transactions and reduce the liquidity of the California power markets.

The requirement that a generation source has historically served load would have a particularly chilling effect. This provision would disadvantage natural gas resources that have chosen to sell through markets rather than bilateral contracts, as they could not meet the historic test for specifying imports into California. Conversely, resources that have historically imported into California under bilateral contracts would be forced to extend those contracts in order to maintain eligibility for a specified emission rate for their imports. As the California Independent System Operator continues to move toward competitive bid-based spot markets for energy and ancillary services, CARB should not be adopting regulations that disincent competitive market behavior.

Finally, one criterion for claims of specified imports is that "the first deliverer must be the facility operator or have ownership or contract rights to electricity generated by the facility or unit claimed." The term 'contract rights' is vague and provides no certainty regarding the type of commercial arrangements would qualify. Without further definition as to the type of arrangements that would qualify, the eligibility of contracts for a facility-specific emission rate would be subject to interpretation by verifiers. This is not acceptable.

WPTF recommends several changes to the MRO to address these concerns. First, the condition regarding electricity with higher emissions being delivered to serve load located outside California should be eliminated. Second, natural gas generation should be considered a 'non-shuffle-able' resource. Third, the historic consumption should not be an eligibility requirement for specification of natural gas resources. And finally, the term 'contract rights' should be clearly defined in the regulation.

Given the complexity of issues surrounding imported electricity, WPTF urges CARB to hold a technical workshop on these matters prior to finalization of the rule.

Legal certainty is needed on who holds responsibility for electricity imports.

WPTF is aware of concerns that have been raised about the ability of CARB to hold entities legally responsible for deliveries to the CAISO through interties outside the state boundary. Nevertheless, WPTF believes that holding the entity that bids and schedules power into California responsible for the carbon associated with these imports is the correct policy approach. This approach will ensure that the entity that receives payment for power delivery into California – and the carbon premium imbedded in the power price – will also have the carbon obligation for the associated emissions. This result aligns the carbon obligation with the entity best able to control imported emissions and ensures equal treatment of all importers.

The alternative that some stakeholders appear to be advocating is for the CAISO to determine the emissions associated with electricity delivered to external interties, acquire and retire allowances to cover these emissions, and to somehow pass these costs to load. Not only would this alternative be substantially more complicated to implement, but it would create a loophole where imports to California via CAISO external interties would receive a premium for carbon, because it will be reflected in California power prices, but no associated carbon obligation. This would be unfair to other importers, and create an incentive for imports through those points. For these reasons, WPTF opposes an outcome that would require the CAISO being held responsible for carbon.

WPTF understands the legal considerations with respect to imports, and is not in a posistion to conduct a full legal analysis, other than to note that it is in the interest of all capped entities for the regulations with respect to imports to apply to all imports in a similar manner, and to avoid regulations that will provide perverse scheduling incentives. We support CARB's effort to work with the CAISO and the Department of Justice to develop the most legally and technically sound basis, consistent with the CAISO tariff, for an approach that holds the bidding/scheduling entity responsible for imports via the external interties.

An offset buffer account should be established to ensure the integrity of offsets

The MRO provides that a California offset credit may be invalidated by ARB within 8 years of its issuance and that in that event, the user of that offset credit would be required to replace it with another compliance instrument. WPTF and many other stakeholders have consistently opposed such a 'buyer liability' approach for offsets because it is unworkable. Buyers cannot manage the risk of credit invalidation and no insurance products exist now or are likely to emerge to fully mitigate this risk. Covered entities will almost certainly avoid using offsets altogether than be held presumptively liable for errors committed by another party such as an offset project operator, verifier or registry. "Buyer liability" will thus drive the cap and trade program to a "no-offsets" scenario, which ARB has estimated would yield carbon prices of over $100 / ton and raise compliance costs by $18 billion in 2020.

Rather than invalidating offsets after issuance, CARB should instead require that a portion of offset credits issued be deposited in an offset buffer account. In the event that any offsets are found deficient due to that entity's negligence or misconduct, the appropriate quantity would be retired from the buffer account. Offsets that have been issued would be unaffected. This approach would ensure that the environment is made whole in the event that offsets are deemed deficient, while providing certainty to offset buyers that all issued offsets could be used for compliance.

Entities should not be penalized for errors in verification

WPTF has previously raised concerns that the penalties for failure to surrender sufficient compliance instruments were overly punitive and would raise costs of allowances for other compliance entities. We appreciate the changes that the MRO makes to this section, including (i) the provision that penalty allowances are moved to the Auction Holding Account rather than the Allowance Price Reserve Account and (ii) delay in the application of additional penalties until expiration of the Untimely Surrender Period.

However, WPTF remains concerned that the MRO now provides for the possibility that CARB may audit an entity's data emission reports after those reports have been verified, determine emissions for a compliance period have been under-reported, and retroactively hold that entity responsible for surrendering additional compliance instruments to make up the deficiency.

WPTF considers the provisions of this section to be completely inappropriate. Once a covered entity's emissions data report has been verified by an accredited verifier, the covered entity should be able to rely on that report and surrender compliance instruments based on it without a threat that a future audit will create an additional compliance obligation and the possibility of compliance penalities. This potential recalculation of the compliance obligation based on a separate audit is essentially subjecting capped entities to 'double-jeopardy', and holding them

responsible for errors by third-party verifiers. WPTF does not object to auditing of emission reports, but the goal of these audits should be to monitor the performance of verifiers. Any errors found in emission reports should factor into verifiers' ongoing accreditation, but should not result in consequences to the entities that have used that verifier.

The requirements for attestation by Authorized Account Representatives are excessive and must be changed.

Section 95832 (a) of the MRO sets forth the regulations pursuant to which a covered entity establishes personnel to serve as the Authorized Account Representative. As part of these regulations, individuals who are tasked with serving as their company's Authorized Account Representative are required to "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;" (page A-63 of the MRO). This certification is overly broad and should not be required for an entity to serve as its company's Authorized Account Representative.

In addition, in this same Section 95832(a) and in Section 95832(d), the Authorized Account Representative is required to attest that all the information submitted by the Authorized Account Representative is true, accurate and complete. Typically, such attestations would state that any such statements are "to the best of my knowledge and belief true, accurate, and complete". This language was contained in the earlier version of Section 95832(d) of the regulation, but has been deleted from the MRO. Removal of this language creates a burden for the Authorized Account Representative that goes beyond what is typical for such attestations, and WPTF believes that the deleted language should be re-instated into the MRO.

Finally, both of these sections of the MRO impose penalties of perjury on any Authorized Account Representative for any inaccurate statement. Subjecting these individuals to penalties of perjury under California law is an excessive individual burden for a person acting in his/her role as a company employee. These provisions should be deleted.

III. Section-by-Section Comments

Subarticle 2. Purpose and Definitions

Definitions (§95802)

As discussed in our general comments, WPTF recommends that natural gas generation should be consider 'non-shuffled' resources. We therefore recommend modifying sub-paragraph (A) under the definition of "Resource-Shuffling" as follows:

> (245) "Resource Shuffling" means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid, for which:
> (A) An emission factor below the default emission factor is reported pursuant to MRR for electricity generated at a hydroelectric facility over 30 MW, or a nuclear generating

facility ~~a generation source~~, that has not historically served California load (excluding new or expanded capacity). ~~And, during the same interval(s), electricity with higher emissions was delivered to serve load located outside California and in a jurisdiction that is not linked with California's Cap-and-Trade Program; or~~

WPTF has provided additional comments on other definitions pertaining to imported electricity in our comments on the mandatory reporting regulation. CARB should ensure that definitions are consistent across both the cap and trade and reporting regulations.

Subarticle 5. Registration and Accounts

Account types (§95831)

Creation of holding and compliance accounts

- WPTF suggests that CARB consider the need for separate compliance accounts for each compliance interval. Different compliance accounts would facilitate entities' tracking and management of compliance across different compliance intervals, and simply the identification of units that are exempt from holding limits.

Accounts under Control of the Executive Officer:

- In paragraph (b)(2) - Auction Holding Account, a reference to untimely surrender of allowances in section 95857(d) is needed.
- Paragraph (4)(c) under Allowance Price Containment Reserve Account, referring to allowances submitted to fulfill an entity's excess emissions obligations pursuant to section 96857(d), should be deleted.

Designation of Authorized Account Representative (§95832)

As discussed above, WPTF considers the requirements for attestation to be excessive and recommends the following changes to paragraphs (a) and (d) of this section.

(a)(4) The authorized account representative and any alternate authorized account representative must attest, in writing, to ARB as follows: "I certify ~~under penalty of perjury under the laws of the State of California~~ 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~~ for entities 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 of an authorized account representative, as specified in title 17, article 5, sections 95800 et seq.~~,~~ on behalf of such entities .~~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.; and
(6) An attestation as follows: "I certify that I have personally examined, and am familiar

with, the statements and information submitted in this document and all its attachments. I also certify ~~under penalty of perjury of the laws of the State of California~~ that all information required to be submitted to ARB is true, accurate, and complete to the best of my knowledge and belief."

(d) Each submission concerning the account shall be submitted, signed, and attested to 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 attestation statement by the authorized account representative or any alternate authorized account representative: "I certify ~~under penalty of perjury under the laws of the State of California~~ that "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 perjury 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 ~~under penalty of perjury under the laws of the State of California~~ that the statements and information submitted to ARB are true, accurate, and complete to the best of my knowledge and believe. " 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."

Subarticle 7. Compliance Requirements for Covered Entities

Emission Categories Used to Calculate Compliance Obligations (§95852)

First Deliverers of Electricity: As currently written, sub-paragraph (b) would seem to create a compliance obligation for emission from all sources in linked jurisdictions, rather than emissions associated with imports from these sources. We therefore suggest the following modification:

" A first deliverer of electricity covered under sections 95811(b) and 95812(bc)(2) has a compliance obligation for emissions, ~~subject to section 95852(b)(1),~~ from a source in California ~~or~~ and, subject to section 95852(b)(1), emissions associated with electricity imported into California from a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12…"

Resource-shuffling: As discussed above, WPTF is concerned that the new provisions in this section that characterize resource shuffling as a violation and a form of fraud, may result in electricity importers being subject to severe financial and potentially criminal consequences for events that are outside that entity's control. We recommend changing the requirements for attestation as below, in recognition of the fact that resource-shuffling is a consequence of the market, and not necessarily under an individual entity's control. Additionally, we suggest that

entities be allowed to submit their attestations electronically in conjunction with annual emissions data reports.

(1) Resource shuffling is prohibited, is a violation of this article and is a form of fraud. ARB will not accept a claim that emissions attributed to electricity delivered to the California grid are at or below the default emissions factor for unspecified electricity specified pursuant to MRR section 95111 if that delivery involves resource shuffling. The following attestations must be submitted to ARB annually in writing, by certified mail ~~only~~ or electronically in conjunction with the annual emissions data report:

(A) "I certify under penalty of perjury of the laws of the State of California that [facility or company name] has not intentionally engaged in the activity of resource shuffling to reduce compliance obligation for emissions~~, based on emission reductions that have not occurred~~."

(B) "I understand I am participating in the Cap-and-Trade Program under title 17, California Code of Regulations, article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as the exclusive venue to resolve."

Specified imports: As discussed above, WPTF urges CARB to define the term 'contract rights' in paragraph 2(B) of this section. We would be happy to work with staff to develop an appropriate definition.

Timely Surrender of Compliance Instruments by a Covered Entity (§95856)

In the previous version of the regulation, allowances issued in the year during which the compliance obligation is calculated were eligible to be used for compliance for emissions that accrued in the previous year. This provision was useful in that at the end of a compliance interval, it provided entities with the ability to use a small portion of allowances issued for the first year of the subsequent compliance period to cover emissions accrued in the previous year. This flexibility is identical to that provided under the European Emissions Trading Program, where allowances issued in one year could be used toward the compliance obligation in that year.

We understand that the language of this section was changed to clarify that all allowance vintages within an compliance period may be used for emissions accrued in that compliance period. However, this change also eliminated the end-of-compliance interval flexibility that was present in the previous version. We therefore suggest the following changes to paragraph (b)(2) of this section:

"To fulfill any compliance obligation, a compliance instrument must be issued from an allowance budget year within or before the year ~~for~~ during which the compliance obligation is calculated, unless:

(A) The allowance is from an annual budget year within the same compliance interval as

the year for which the compliance obligation is calculated; or
(B) The allowance was purchased from the Allowance Price Containment Reserve pursuant to section 95913; or
(C) The allowance is used to satisfy an excess emissions obligation; ”

Untimely Surrender of Compliance Instruments by a Covered Entity (§95857)

WPTF is concerned that errors or unavailability of the allowance tracking system could hinder a covered entity's ability to comply with the timely surrender obligation. In the event, that this occurs, covered entities should not be subject to enforcement penalities. We suggest the following change to address this possibility:

“(a) (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 section 95856 solely because of the invalidation of an ARB offset credit by the Executive Officer pursuant to section 95985 until 90 days after notice of invalidation or due to errors in or unavailability of the allowance tracking system.”

Compliance Obligation for Under-Reporting in a Compliance Period (§95858)

As discussed above, WPTF strongly objects to the notion that covered entities should be held responsible for errors in verification. The entirety of section §95858 should be deleted.

Disposition of Allowances (§95870)
An allowance set-aside should be added to this section to provide for direct allocation of allowances to independent generators with the inability to renegotiate long-term contracts without provisions for carbon pass through.

General Provisions for Direct Allocations (§95890)

This section should be modified to include requirements for direct allocation of allowances to independent generators with the inability to renegotiate long-term contracts without provisions for pass-through of carbon costs. The allocation should be limited to emissions incurred under the terms of the contract, and should be moved directly to the generator's compliance account.

Subarticle 10. Auction of California GHG Allowances

Format for Auction of California GHG Allowances (§95911)

As discussed above, the auction purchase limits for covered entities in all auctions should be increased to 25% and the exemption for electrical distribution utilities should be eliminated as follows.

(c) Auction Purchase Limit.

(1) The auction purchase limit is the maximum number of allowances offered at each quarterly auction which can be purchased by any entity or group of entities with a disclosable corporate association pursuant to section 95833.
(2) The auction purchase limit will apply to auctions conducted from January 1, 2012 through December 31, 2014.
(3) For the advance auction of future vintage allowances conducted pursuant to section 95910(c) the purchase limit is 25 percent.
(4) For the auction of current vintage allowances:

(A) The purchase limit for covered entities and opt-in covered entities will be ~~10~~ 25 percent of the allowances offered for auction; and

(B) ~~The purchase limit does not apply to electrical distribution utilities receiving a direct allocation of allowances pursuant to section 95892(b) and subject to the monetization requirement pursuant to section 95892(c). This provision shall not be interpreted to exempt said electrical distribution utilities from any other requirements of this article; and~~

(~~C~~) The purchase limit for all other auction participants is four percent of the allowances offered for auction.

Subarticle 11. Trading and Banking

Trading (§95920)

WPTF recommends that this section be modified ensure that the holding limit does not disadvantage covered entities with large compliance obligations. Specifically, we recommend changes to subparagraph (d)(1) and elimination of sub-paragraphs (d)(2) (B) – (H):

(d)The holding limit ~~will be calculated~~ for allowances qualifying pursuant to section 95920(c)(1) will be calculated as
(1) for covered entities, the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during the year ~~sum of~~:
(2) for voluntary associated entities, The number given by the following formula:
Holding Limit = 0.1*Base + 0.025*(Annual Allowance Budget – Base)
In which:
"Base" equals 25 million metric tons of CO_2e.
"Annual Allowance Budget" is the number of allowances issued for the current budget year.

(2) A Limited Exemption from the Holding Limit is calculated as:
(A) The limited exemption is the number of allowances which are exempt from the holding limit calculation after they are transferred by a covered entity or an opt-in covered entity to its compliance account.
~~(B) On June 1, 2012 the limited exemption will equal the annual emissions most recent emissions data report that has received a positive or qualified positive emissions data~~

~~verification statement.~~

~~(C) Beginning in 2013 on October 1 of each year the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year.~~

~~(D) If for any year ARB has assigned emissions to an entity in the absence of a positive or qualified positive emissions data verification statement the calculation of the limited exemption will use the assigned emissions.~~

~~(E) For the first compliance period all reported emissions or assigned emissions used to calculate the limited exemption will include only the emissions associated with the scope for the program during the first compliance period.~~

~~(F) Beginning in 2015, all reported emissions or assigned emissions used to calculate the limited exemption will include the emissions associated with the change in scope taking place in 2015.~~

~~(G) On January 1, 2015 the limited exemption will be increased by the amount of emissions included in the emissions data report received during 2014 but not yet included in the limited exemption pursuant to section 95920(d)(2)(E).~~

~~(H) On December 31 of the calendar year following the end of a compliance period, the limited exemption will be reduced by the sum of the entity's compliance obligation over that compliance period.~~

Conduct of Trade (§95921)

We have no recommended changes to this section, but would note that the requirements for transactions could and should be built into the functionality of the market tracking system. For instance, the requirement in subparagraph (a)(1)(A)that both parties to a transaction must report the transaction to the accounts administrator within three calendar days can be operationalized within the tracking system by requiring the accounts representative of both Parties to authorize the transfer of units between holding accounts. Similarly, the information requirements in subparagraph (c) should be integrated into electronic transaction requests within the tracking system.

Banking, Expiration and Voluntary Retirement (§95922)

The language in this section should be made consistent with that of section 95831 (Account Types). For instance, sub-paragraph (c)(1) refers to surrender (of a compliance instrument) by a covered entity, whereas section 95831 refers to the transfer of compliance instruments from entity compliance accounts to the Retirement Account.

Subarticle 12. Linkage to External Greenhouse Gas Emission Trading Systems

Procedures for Approval of External GHG ETS(§95941)

WPTF anticipates that linkage of the California Cap and Trade Program to an external ETS within the WECC would necessitate changes to California's annual allowance budget to account

for electricity imports from the linked jurisdiction. WPTF recommends that CARB explicitly provide for this eventuality in the regulation.

Subarticle 13. ARB Offset Credits and Registry Offset Credits

Invalidation of ARB Offset Credits (§95985)As stated in the overview, WPTF strongly opposes invalidation of offset credits after issuance. We would support the creation of a buffer account, similar to the a forest buffer account, to protect covered entity interests, but will defer to other stakeholders on the appropriate language.