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Catherine H. Reheis-Boyd
President

Via web: http://www.arb.ca.gov/lispub/comm/bclist.php

October 16, 2013

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA95814

RE: **Amendments To The California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms, September 4, 2013**

Dear Sir or Madam:

The Western States Petroleum Association (WSPA) is a trade association that represents 27 companies that explore for, develop, refine, market and transport petroleum, petroleum products and natural gas in the Western States. Many of our members operate extensively in California and have facilities that are impacted directly by the California Air Resources Board's (ARB's) Cap and Trade Program.

In response to the proposed California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms posted September 4, 2013, we are submitting comments on a number of issues. We anticipate, given the complexity of the Cap and Trade Program and the expectation that the ARB will continue to make changes in program regulations and procedures in response to stakeholder input, that additional opportunities to suggest improvements or recommendations will occur in the near future.

We also note that the ARB conducted a refinery workshop on benchmarking on October 7. WSPA is reviewing the workshop materials and will provide comment within the next week so that ARB Staff have time to adequately evaluate and act on suggestions or questions.

WSPA has comments on issues as noted below. To assist ARB in evaluating the comments, we note Section (Sxxxxx) or page numbers when possible.

Industry Assistance

WSPA strongly supports the ARB's proposed increases in Industry Assistance Factors for the 2nd and 3rd compliance period. WSPA pledges to work with ARB to determine whether the remaining reduction of 25% that exists in the 3rd compliance period is truly needed or whether it may contribute to leakage and trade exposure.

Change to Complexity Weighted Barrel (CWB)

WSPA strongly supports ARB's proposed change to Complexity Weighted Barrel (CWB). In order to assist ARB with use of CWB, WSPA will submit separate comments noting where amendments to the current Mandatory Reporting Regulation (MRR) are needed.

Sector Equity

We note that the discussion draft proposes to amend the treatment of natural gas in regard to allowances, but does not address any amendments to the treatment of other transportation fuels. If no changes are made, then ARB would be creating serious inequities in treatment of fuel sectors. If these inequities are allowed to persist, they could result in distortions in the allowance market and adverse economic impacts to California. The Cap and Trade program should treat all forms of consumed energy (both gaseous and liquid) and energy markets equally.

Cost Containment

WSPA supports the proposed amendments to address short-term allowance cost containment in order to address market volatility and its ultimate impact on the California economy. However, WSPA encourages ARB to take further steps in the regulation to address longer term potential imbalances between supply and demand for allowances.

WSPA believes that the proposed regulation needs additional measures to address potential long term imbalances to allowance supply and demand and potential adverse economic impacts. An analysis of such measures and potential economic impacts would be responsive to Board Resolution 12-51. For example, WSPA supports broader use of offsets by expanding the offset supply. Several options were discussed at the June 25th Workshop both by the panel of economic experts and in a proposal developed by the Joint Utilities Group.

We believe that of the options discussed by the economic experts, adding the indirect linkage through acceptance of valid national and international offsets and allowances would provide the environmental benefits while controlling costs and potential adverse economic impact on the state's economy. WSPA also supports the removal of the offset limit, which inhibits investment in offset programs and undermines the very goal of AB32, which is the reduction of CO2 emissions.

In addition, we support expanding offsets, changing holding limits, and limited borrowing policy options described in the Joint Utility Group Cost Containment Proposals as presented in the June 25, 2013 workshop (see Attachment A). Among the offset proposals we believe that there is substantial merit to the following:

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- Allowing compliance entities to carry over offsets between compliance periods
- Redistributing unused offsets back to compliance entities, and
- Improving the potential supply of eligible offset projects both geographically, as mentioned above and by changing the project commencement date

These proposals recognize the important role offsets can play to reduce unnecessary upward pressure on allowance prices and prevent depletion of the allowance price containment reserve while meeting the environmental goals of the program. Exposure to the high costs in the final tiers of the APCR and market volatility will ultimately lead to emissions and jobs leakage as companies struggle under carbon costs higher than those which are workable in the relevant geographical markets.

> Recommendation: WSPA suggests that ARB establish a mechanism by which it could provide new additional allowances to the market to prevent costs from exceeding the highest cost in the APCR, as required by Board Resolution 12-51. ARB should further study the removal of holding limits and of other means of increasing the supply of compliance instruments, such as offset carryover across compliance periods, the redistribution of unused offsets, and widening the offset market geographically and temporally.
>
> WSPA encourages ARB to extend the 100% assistance factor through the third compliance period and to include in its evaluation economic and legislative reports, such as the 2012 Legislative Analyst Office (LAO) study on carbon markets, which states that the environmental goals of AB32 would not be compromised by giving free allowances to industry, as the gradual lowering of the emissions cap would still drive CO2 reductions.

Offsets – Coal Mine Methane (CMM)

WSPA strongly supports the adoption of the new protocols for Coal Mine Methane. Allowing offsets from other geographic areas besides California provides an important cost containment mechanism for the program that is needed to keep allowance prices in control. As has been stated by many stakeholders, a cost effective program is critical to prevent emissions and economic leakage of jobs to other states that can adversely impact the economic viability of the state.

The CMM protocol will provide a significant supply of offsets to California's cap and trade market. A recent study conducted by Ruby Canyon Engineering shows CMM offset projects could provide over 28 million tons of carbon offset reductions. This would be a significant influx of offset supply to California's Cap-and-Trade system at a time when more offsets are needed to meet future demand.

By way of comparison, analysts expect the cap and trade program to need as many as 220 million tons of carbon offsets and so far the ARB has only approved a few project types that will not produce the needed supply for cost-effective compliance options under AB 32's requirements. Hence, the CMM protocol could provide over 10% of the anticipated offset supply. This is important in light of recent analysis by the American Climate Registry that finds there will be a shortage of offset supply by 29 percent in the first compliance period and up to 67 percent by the third compliance period. This underscores the need for the CMM protocol. ARB approval of the protocol will provide an important financial incentive to encourage coal mine owners and operators to capture and utilize mine methane.

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Offsets – Forestry Offset Liability

WSPA opposes the proposed changes to the forestry offset protocol because of the addition of buyer liability to the forestry offset protocol. The forestry industry already has arguably the most burdensome protocol and adding a buyer liability provision will only serve to make these offsets even less desirable to obligated parties. To date, one of the chief attractions of forestry offsets has been the seller liability provision. Note that offset availability was already limited. Increasing the burdens on forestry offsets could make the offset availability in the state much more limited and unattractive.

Registration of names of employees (S 95830(c) (1) (I)), page 65)

ARB has proposed language: "Names and contact information for all persons employed by the entity in a capacity giving them access to information on compliance instrument transactions or holdings, or involving them in decisions on compliance instrument transactions or holdings."

WSPA opposes proposed amendments that would require registering "all persons" employed by the entity with knowledge of the company's activity with allowances and offsets. This extremely wide ARB net would include those "in a capacity giving them access to information on compliance instrument transactions or holdings, or involving them in decisions on compliance instrument transactions or holdings."

In large companies that are expected to be market participants, including WSPA members, this requirement could include dozens of employees in departments responsible for compliance, accounting, commercial/trading, legal, refining, marketing, strategy and different levels of management. Unfortunately, staff employed in these capacities move to executive and management positions throughout the company routinely. As a result, maintaining an updated registration list would be problematic if not impossible.

WSPA does not understand ARB's need or plans for this information, nor has ARB offered any compelling justification. The registration of a Primary Account Representative (PAR) and one or more Alternate Account Representatives (AAR) should give ARB more than enough contact points to a company. Any more than this is regulatory over-reach and places unwarranted burdens on both companies and ARB.

> Recommendation**:** ARB should eliminate this section and require registration of only those employees designated as PAR, AAR or "Viewing Agents".

Registration of Cap-and-Trade Consultants and Advisors (S 95830(c) (1) (J) and S95923)

Most recently, ARB proposed in Section 95830: "Information required under section 95923 for individuals serving as Cap-and-Trade Consultants and Advisors for entities participating in the Cap-and-Trade Program." WSPA opposes proposed amendments that would require registration of the names and contact information for all "individuals serving as Cap-and-Trade Consultants and Advisors for entities participating in the Cap-and-Trade program" because the requirements are overly broad and it is unclear who this would apply to. In cases where companies do use advisors and consultants,

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it is common business practice for the contracts between the company and consultant to include confidentiality provisions.

Again, WSPA does not understand what ARB would do with this information or how ARB would effectively manage it. This provision is overly broad and does not provide any additional insights into the market. How, for example would ARB propose to address "regulation" of law firms or accounting firms that have multiple clients, each, presumably, under a specific confidentiality agreement?

> Recommendation**:** ARB should remove this requirement. The requirement to divulge information about advisors, whether paid or not, is intrusive, unnecessary and violates the legal rights of entities to be free to enter into contracts with appropriate contractors on terms of their choice, which terms frequently contain trade secret protecting confidentiality requirements. The requirement could also adversely affect the market in which contractors compete for clients. In addition, given the number of restrictions already in-place and probably difficult to enforce, this requirement is not appropriate.

Updating Registration Information (S95830 (f) (1), page 68)

ARB has proposed new registration requirements: Any **"changes"** in information must be submitted to ARB **within 10 days**, and any newly required information must be provided **within 30 days** of rule adoption.

WSPA recognizes that ARB must be made aware when details of company registrations change. However, as the registration requirements grow in complexity, it is incumbent upon ARB to grant more time for changes to be fully implemented throughout the company up to and including registration on file with ARB. It is therefore unreasonable to continue to request that all updates to information be provided to ARB within 10 days. Further, it is unreasonable to expect that information required by new amendments be provided to ARB within 30 days.

> Recommendation**:** ARB should revise both of these requirements to provide that a company would need to notify ARB within 60 days.

Disclosure of Corporate Associations (S95833 (a), pages 74-75))

ARB has proposed new language for corporate associations that requires disclosure where there is >20% ownership of **any operation worldwide,** regardless of whether it is in California or has any C&T obligation. In large multinational companies, it is possible that this could involve dozens (or more) of "associations". Extreme examples could include shared ownership of a gas pipeline in Africa, or a marine shipping company for crude oils in Asia.

These challenges also would exist for associations with multiple-partners, joint ventures, or multiple-owners, especially if the entity within the State of California operates independently with its own executive management.

For that reason, WSPA opposes the proposed amendments.

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Recommendation**:** ARB should eliminate the proposed new language that requires identification of associations "regardless of whether the second entity is subject to the requirements of this article" and instead state that the requirement should apply **ONLY** where the association operates in California, or has a mandatory or voluntary involvement in the California Cap-and-Trade program.

"Know-Your Customer" Requirements (S95834)

ARB has proposed changes to 95834 (Know Your Customer Requirements) by allowing the Executive Officer to re-verify information listed in Section 95834 (b) every two years for individuals registered as primary account representative, alternate account representative or account viewing agent. This list of information is extensive and includes private confidential information such as a documentation showing bank accounts in the United States. At the start of the program, ARB staff insisted that a copy of a bank statement was required, but subsequently accepted a letter from a bank or from an employer stating the company automatically deposits payroll payment to the employee's bank account in the United States.

Recommendation**:** Amend Section 95834 (b) to clearly indicate the type of documents that can be used to demonstrate an open bank account in the United States.

Emissions without a Compliance Obligation (S95852.2)

Renewable diesel is not currently exempt from a compliance obligation. Renewable diesel is one of many types of renewable fuels used to blend with petroleum based fuels to achieve the low carbon intensity required by the Low Carbon Fuel Standard Regulation. Therefore, similar to biodiesel, renewable diesel should be also listed in this section as emissions without a compliance obligation

Recommendation**:** Amend section 95852.2: Emissions without Compliance Obligation, to include renewable diesel.

Timely Surrender of Compliance Obligations (S95856)

WSPA has identified a series of issues in Section 95856. We highlight them below.

Issue 1: The proposed amendments to sections 95856 (g) and (h) eliminate the requirement for the Executive Officer to retire an annual compliance obligation, and replace it with a review by the Executive Officer to determine if there are sufficient compliance instruments to cover an annual compliance obligation. The new proposal will result in the allowances being kept in the entity's compliance account for the entire compliance period and counted against the limited exemption, instead of being moved to the program's Retirement Account. This will further restrict covered entities from market flexibilities.

Recommendation**:** Keep the current rule language requiring the Executive Officer to retire compliance instrument surrendered and remove the following new proposed sections 95856 (g) and (h).

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Issue 2: The new proposed Section 95856 (h) (2) imposes new requirements for the Executive Officer to retire compliance instruments in a certain order. This action continues to include additional restrictions and constraint on trading. The regulation should not require covered entities to retire allowances in certain order. Instead, the market is best served if the covered entities are able to select which compliance instrument they wish to retire based on their economic decision. Taking away this ability to choose reduces the incentive to behave economically and will reduce market efficiency. At the same time it does nothing to promote ARB's goals of market liquidity or decreasing the potential for market manipulation.

There may be business reasons why companies choose to retire instruments in a different order than that specified by the amendments. For example, companies may place different values on different instruments for reasons that are not clear or are competitively sensitive at a particular time. By specifying the order, ARB could be indirectly interfering in business optimization. The responsibility of initiating the surrender and specifying the order of surrender should remain with the obligated entity. Where a company fails to specify the retirement order, ARB could follow the retirement protocol.

Furthermore, the amendments would grant ARB inappropriate authority at the triennial surrender to enter a company's CITSS account and "take" compliance instruments (e.g. allowances) to meet the triennial surrender obligation. While this surrender is required for compliance, it is more appropriate for companies to have the responsibility to execute this surrender. Only if the surrender is not done by a specified date, should ARB have the capability and authority to initiate the surrender.

> Recommendation**:** The proposed rule should allow covered entities to specify the types and quantity of compliance instruments to retire and the order for retirement. We recommend the new proposed Section 95856 (h) (2) (shown below in ~~strike-through~~) be removed.
>
> ~~§95856(h)(2). Surrender of Compliance Instruments~~
> ~~*When a covered entity or opt-in covered entity surrenders compliance instruments to meet its triennial compliance obligation pursuant to section 95856(f), the Executive Officer will retire them from the Compliance Account in the following order:*~~
> ~~*(A) Offset credits specified in section 95820(b) and sections 95821(b) through (d) with oldest credits retired first and subject to the quantitative usage limit set forth in section 95854:*~~
> ~~*(B) Allowances purchased from an Allowance Price Containment Reserve sale or compliance instruments pursuant to section 95821(f)(1);*~~
> ~~*(C) Allowances specified in section 95820(a) and 95821(a) with earlier vintage allowances retired first; and*~~
> ~~*(D) The current calendar year's vintage allowances and allowances allocated just before the triennial surrender deadline up to the true-up allowance amount as determined in section 95891(b),95891(c)(3)(B), 95891(d)(1)(B), 95891(d)(2)(B), 95891(d)(2)(C), 95891(e)(1), or 95894(d)(1) if an entity was eligible to receive true-up allowances pursuant to section 95891(b), 95891(c)(3)(B), 95891(d)(1)(B), 95891(d)(2)(B), 95891(d)(2)(C), 95891(e)(1), or 95894(d)(1)."*~~

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10% Allowances Set Aside for Reserve Auction

Proposed section 95870(b)(1) states that 10% of the allowances from budget years 2015-2020 will be eligible to be sold pursuant to section 95913 (f). This appears to be a typographical error because 95913 (f) is the allowance price containment reserve auction. If 10% of the allowances are withheld for the reserve auction, it could significantly impact the availability of allowances for the advance auction. This typographical error is also in 95870(i)(1).

Recommendation: Modify 95870(b)(1) to state "…will be eligible to be sold pursuant to section 95910 (c)(2)." Modify 95870(b)(2) to state "….not sold pursuant to section **95910 (c)(2)** will be auctioned pursuant to Section **95911 (f)(3)(D)**"

S95870(i)(1) states that beginning in 2015, 10% of all remaining allowances from each vintage will be sold pursuant to Section 95913 (f), which is the reserve auction.

Recommendation: Modify 95870(i)(1) to state "… to be sold pursuant to section **95910 (c)(2)"** , which is the advance auction**.**

True-Ups (Section 95891)

ARB proposed amendments contain several discrepancies in the terminologies used in various equations related to true-up requirements that prevents proper calculations of true-ups and second and third compliance period allocations. In order to facilitate ARB review, WSPA has identified specific issues and made individual recommendations.

FIRST COMPLIANCE PERIOD TRUE-UP

Section §95891(d)(2)(B) as revised defines the process for "trueing debt" as follows: "*TrueUp Debit. If actual 2013 and 2014 emissions are less than the amount of allowances allocated, the entity will need to surrender additional allowances according to the following equation:*

$$TrueUp_{Y,Debit} = 0.8 * [(AE_{Y,2013} + AE_{Y,2014}) - (A_{Y,2013} + A_{Y,2014})]$$

Where:

"$AE_{Y,t}$" = Actual GHG emissions from a facility in year "t" adjusted for heat sales and purchases and electricity sales

"$TrueUp_{Y,Debit}$" = the amount true-up allowances allocated to account for changes in production or allocation not properly accounted for in prior allocations for refinery "Y". This value of allowances for budget year "t" shall be allowed to be used for budget year "t-2" pursuant to 95856 (h)(1)(D) and 95856 (h)(2)(D).

Issue: The problem with this section is the inconsistent use of year "t" in the two definitions above. Under "$AE_{Y,t}$", the year "t" is intended to be 2013 and 2014, while year "t" under "$TrueUp_{Y,Debit}$" is

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intended to represent 2015. If the proposed language is left unchanged, year t-2 under the "$TrueUp_{Y,Debit}$" definition may be misconstrue as years 2011 and 2012.

Recommendation: We recommend clarifying §95891 (d)(2)(B) and changes to the definition $AE_{Y,t}$ as follows:

§95891(d)(2)(B): TrueUp Debit. If actual 2013 and 2014 emissions are less than the amount of allowances allocated, the entity will need to surrender additional allowances to meet the first compliance period triannual compliance obligation according to the following equation:

If: $(AE_{y,2013} + AE_{y,2014}) < (A_{y,2013} + A_{y,2014})$

Then, $TrueUp_{Y,Debit} = 0.8 * [(AE_{Y,2013} + AE_{Y,2014}) – (A_{Y,2013} + A_{Y,2014})]$

Where:

~~*"$AE_{Y,t}$" = Actual GHG emissions from a facility in year "t" adjusted for heat sales and purchases and electricity sales*~~

"$AE_{Y,2013}$" = Actual GHG emissions from a facility in year "2013" adjusted for heat sales and purchases and electricity sales

"$AE_{Y,2014}$" = Actual GHG emissions from a facility in year "2014" adjusted for heat sales and purchases and electricity sales

SECOND AND THIRD COMPLIANCE PERIOD TRUE-UP

For the allocation equation in S95891 (b):

$$A_t = (\sum O_{a,t-2} * B_a * AF_{a,t} * C_{a,t}) + TrueUP_t$$

In this section, $TrueUP_t$ is defined and calculated as follows:

"$trueup_t$" is the amount of true-up allowances allocated to account for changes in production or allocation not properly accounted for in prior allocations. This value of allowances for budget year "t" shall be allowed to be used for budget year "t-2" pursuant to 95856 (h)(1)(D) and 95856 (h)(2)(D). This value is calculated using the following formula:

$$TrueUp_t = (\sum O_{a,t-2} * B_a * AF_{a,t-2} * C_{a,t-2}) + A_{t-2,no\ trueup}$$

It appears that the intent of the allocation equation is to include both true up debit and true up credit in the determination of the annual allocation. However, the true up formula in this section contradicts the formulas for true up debit "$TrueUp_{Y,Debit}$" and true up credit "$TrueUp_{Y,Credit}$" specified for facilities with an EII value for the first compliance period as described in S95891(d)(2)(B) and (C).

Issue: §95891(d)(2)(B) and (C) already specified true up formulas for facilities with an EII which are not the same as the true up formula in this section 95891 (b). Furthermore, true up debit and true up credit are calculated differently. Consequently, the $TrueUP_t$ value in the allowance budget year 2015

and 2016 for facilities with EII should follow the approach in §95891(d)(2)(B) and (C).

> Recommendation**:** To ensure consistency throughout the regulation, we recommend revising the definition "trueup$_t$" in the regulation be as follows:

"trueup$_t$" is the amount of true-up allowances allocated to account for changes in production or allocation not properly accounted for in prior allocations. This value of allowances for budget year "t" shall be allowed to be used for budget year "t-2" pursuant to 95856 (h)(1)(D) and 95856 (h)(2)(D). Except for budget year 2015 and 2016 for facilities with EII, ~~T~~this value is calculated using the following formula:

$$TrueUp_t = (\sum O_{a,t-2} * B_a * AF_{a,t-2} * C_{a,t-2}) + A_{t-2,no\ trueup}$$

Where:

$O_{a,t-2}$ .....

$A_{t-2,no\ trueup}$ .....

$AF_{a,t-2}$ .....

$C_{a,t-2}$ .....

For budget year 2015, TrueUP$_t$ for facilities with EII, is equal to TrueUp$_{Y,Debit}$ or TrueUp$_{Y,credit}$ *pursuant to 95891 (d)(2)(B) and 95891 (d)(2)(C). This value of allowances for budget year 2015 shall be allowed to be used for budget year 2013 and 2014 pursuant to 95856 (h)(2)(D).*

For budget year 2016, TrueUP$_t$ for facilities with EII, is equal to zero.

Auction Administration and Participant Application (S95912(d)(4), page 173)

ARB proposed the following language: "An attestation that the entity participating in the auction, and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833, has not been subject to any previous or ongoing investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market, including a change in the status of an ongoing investigation…" The requirement, covering "the entity" and "all other entities" with which it is directly or indirectly associated is so broad as to be impossible to comply with because an entity cannot be expected to know if any such association "has been subject to previous or ongoing investigations". Moreover, even if investigations were undertaken in the past, or are even pending, an investigation does not imply wrong-doing.

Of even greater concern, one of the currently required attestations requires the company to confirm that it is not under investigation for potential violation of any rule, regulation or law associated with any commodity, securities, or financial market. A company might not know that it is under investigation. Furthermore, the proposed amendments would expand this to also require that the company attest that none of its corporate associations is similarly under investigation. This is clearly regulatory over-reach, unreasonable, and will place a burden on companies that is impossible to satisfy. It could, in fact, result in chilling the market – which is exactly the opposite of ARB's intent.

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Recommendation**:** ARB should withdraw the proposed amendments that expand attestation requirements. Any agency could initiate an investigation, or any individual could request an investigation or initiate a lawsuit leading to an investigation, and the entity would be unable to participate in an auction and to remain compliant with the Cap & Trade Regulations. If any attestation is required, it should only be pertaining to actual findings of violations of laws pertaining to the Cap & Trade regulation by the attesting party and not its associates.

Auction Administration/Bid Guarantee (S95912(j)(1)(B), pg. 175)

ARB has proposed the following language: "A bid guarantee submitted in any form other than cash must be payable within one business day of payment request." This seems, even with the advent of electronic transfers, an overly aggressive requirement. Certainly payment and reconciliation must be done promptly, but systems and people do fail and some provision needs to be made for the "normal course of business".

Recommendation**:** WSPA recommends that the period be five working days to account for weekends, holidays etc.

Bid Guarantee Penalties and Restrictions

Section 95912 (j)(5)(D) is a new rule which states that if the bid guarantee is less than the maximum value of the bids to be submitted, it would result in a violation pursuant to section 95914. Under section 95914, the Executive Officer may impose significant penalties on the entity, including restricting its participation at an unspecified number of future auctions. Under the auction rules in section 95911 (e)(3) and 95912 (j)(10), the auction operator already has the authority to reject bids that exceed the bid guarantee. Considering this action, which could occur inadvertently, to be a violation with significant penalties seems excessive and unnecessary.

Recommendation: Eliminate S95912 (j)(5)(D). The auction administrator should reject all bids in excess of the bid guarantee.

Allowance Price Containment Reserve (pg. 181) [Additional Allowances for Cost Containment]

ARB has proposed language in 95913(f)(5) that has multiple references to sections that do not exist. For example, in Section (E): "The allowances defined in section 95870(j)(1) will be sold beginning with the latest vintage and then the preceding vintages, from latest to most recent, until all accepted bids at the highest price tier are filled or until all the allowances defined in section 95870(j)(1) have been sold." Reference is made to 95870(j) which does not exist in the modified or original regulation. If ARB is citing currently proposed regulatory language, it should be clearly noted.

It seems like the intent of this section is to make additional allowances available at the highest tier of the reserve sale, if there is more demand for allowances at the highest tier than allowances available for sale. Section 95870(j) is missing, which is necessary to interpret and comment on section 95913(f)(5).

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This approach does not provide "additional" allowances; it merely creates the potential for a shortage of allowances in later years and a concomitant price spike in allowances.

> Recommendation: Delete this requirement. In lieu of the proposed regulation ARB should evaluate whether and to what extent longer-term potential imbalances exist between allowance supply and demand. WSPA suggests that CARB's evaluation include economic and legislative reports and that CARB establish a mechanism by which it could provide new additional allowances to the market to prevent prices from exceeding the highest price in the APCR. CARB should further study other means of increasing the supply of compliance instruments, such as offset carryover across compliance periods, the redistribution of unused offsets, and widening the offset market geographically and temporally.

Section 95914(c)(1)(A) prevents disclosure of intent to participate, etc. to entities other than those identified in section 95914(c)(2). The institution providing the bid guarantee will know that the registered entity intends to participate in the auction. An entity participating in an auction has to provide a bid guarantee provided by an external entity.

> Recommendation: Edit language to allow, at a minimum, disclosure to the financial or other institution that the participating entity uses to satisfy the bid guarantee requirements.

Holding Limit Allocation

Section 95914(d)(2) is proposed to state that "Entities that are part of a direct corporate association must allocate shares of the purchase limit amongst themselves. This allocation of the shares of the purchase limit must be provided pursuant to section 95830". This requirement seems unnecessary when all entities with a direct corporate association are consolidated pursuant to section 95833(f)(1). Also reference to section 95830 appears incorrect.

> Recommendation: Modify 95914(d)(2) to state "Entities that are part of a direct corporate association **and have opted out of consolidation pursuant to section 95833 (f)(3)** must allocate shares of the purchase limit amongst themselves. This allocation of the shares of the purchase limit must be provided pursuant to section ~~95830~~ **95833 (f)(3)(C)(2)"**

Trading (Section 95920)

In this amendment, ARB proposed not to retire the annual compliance obligation in the compliance account, but only to review and ensure there are adequate credits in the account. If adopted, this proposed amendment will impose more restrictions in the number of allowances qualified for limited exemption because the allowances equal to each annual compliance obligation will continue to reside in the compliance account instead of being retired to the program retirement account. This new restriction will add more constraint to entities with a large compliance obligation such as fuel suppliers creating an environment more susceptible to market manipulation.

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Recommendation**:** To avoid this potentially adverse market effect, we recommend removing the requirement for having to place allowances in the compliance account to qualify for limited exemption (§95920 (d)(2)). This flexibility will enable participants to optimize trade activities and better manage the cost exposure associate with the market fluctuation. We suggest deleting the requirement for placing allowances in the Compliance Account in the last sentence of the following section:

> *§95920 (d)(2) Limited exemption from the Holding Limit:*
> *The limited exemption from the holding limit is the maximum number of allowances which can be held in an entity's compliance account that will not be included in the holding limit calculated pursuant to section 95920 (c)(1).* ~~*To qualify for inclusion within the limited exemption, allowances must be placed in the entity's Compliance Account.*~~

Limited Exemption from Holding Limit

Section 95920(d)(2)(B), with the proposed modification allows NO "Limited Exemption from the Holding Limit" until October 1, 2014. In the original regulation, there was a limited exemption starting June 1, 2012, which increased on October 1st each year, based on the entity's recent emissions data report with positive/qualified positive emissions.

Recommendation: Retain original language in Section 95920(d)(2)(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." Also retain original language in 95920(d)(2)(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".

Conduct of Trade/Information for Transfer Requests (S95921(b)(1)(B)

This section requires the identification of an account representative for destination account. This information is already available in CITSS.

Recommendation: Delete this requirement.

(S95921(b)(3)(A) and 95921(b)(4)(A)(B)

Requires dates that an over-the-counter agreement was entered and terminated, and transfer schedule. The information has no bearing on the integrity of the trading process.

Recommendation: Delete these requirements.

(S95921(b)(3)(C), 95921(b)(4)(D)(E)(F)(G) and 95921(b)(5)(E)

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Requires the price of compliance instrument, transfers of products, and the pricing method. The auctions' settlement price and the reserve auctions are the best indicators for price containment. Reporting of over-the-counter price to CITSS will not provide added value to the market.

Recommendation: Delete this requirement.

S95921(b)(4)(C), page 198).

ARB has proposed language: If the transaction agreement provides for further compliance instrument transfers after the current transfer request is approved, specify the scheduled frequency as monthly, quarterly, annual, or unspecified." ARB does not need this information.

Sections 95921(b)(2)-(5) are asking for too much information about transactions. Section (4)(C), in particular, highlights this in that an entity is already required to report a transaction within three days after the settlement date, that is, the date of payment and transfer of allowances to the purchaser. If an entity makes an agreement to purchase allowances from another entity every quarter, the purchaser should only have to report the allowances it has actually paid for and received each quarter.

Recommendation: Delete this requirement.

S95921(b)(5)(C) and (D)

Requires the date of close of trading for the contract and identification of the contract as spot or future. Entering the information for Exchange-Based Agreement is unnecessary because ARB can obtain the information from the exchange.

Recommendation: Delete this requirement.

(S95921(b)(6)(F)

The use of the term "bundles" in Section 95921 (b)(6)(F) may be misleading. It implies that the products flow together, whereas an entity's obligation and the products from the manufacturing partner are flowing in opposite directions. Additionally, the term "transaction agreement" was added in several places without a definition. The term "agreement" is commonly used and most entities do not use the term "transaction agreement" in their businesses.

Recommendation: Reword the paragraph as follows:

> *(b)(6)(F) The proposed transfer results from an ~~transaction~~ agreement that ~~bundles compliance instruments~~ incorporates compliance instrument requirements with other product sale or purchase, and does not specify a price or cost basis for the sale or purchase of compliance instruments alone.*

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General Prohibitions on Trading (S95921(f), page 202)

ARB has proposed language that prohibits an entity from holding allowances for another entity that has ownership or financial interest in those allowances, unless the entities share a direct corporate relationship. While such a requirement is understandable to ensure that a bank does not hold allowances for an industrial entity in order to get around a holding limit, the language is not clear enough to allow direct or indirect entities to hold allowances for each other. The ownership issue and financial interests could become muddy due to corporate structures.

WSPA is concerned with the trade restrictions and market complexity introduced in the proposed amendments. These proposed restrictions will eliminate critical transactions such as options, futures, forwards, and right of first refusal contracts. These types of transactions promote a robust and efficient market structure. WSPA understands the agency's need to identify "bad actors", but rules must be designed so that honest parties are able to avoid inadvertent missteps.

ARB should provide guidance similar to guidance issued for resource shuffling that explains specific safe harbors or specific examples of bad behavior. This is needed in the rulemaking to provide some measure of definition to allow regulated parties to understand the limits or boundaries that ARB means to enforce.

Prohibitions on trading are generally overbroad and should be curtailed to permit legitimate transactions that support program objectives and create liquidity. For example, requiring that "an entity cannot acquire allowances and hold them in its own holding account on behalf of another entity" could be interpreted to interfere with the ability of entities to purchase allowances from market makers at auction prices.

ARB should provide a safe harbor for forward contracts under the trading prohibition. The new proposal includes additional language that deviates materially from the guidance provided by ARB in December 2012. The new language uses very broad language that could be read to mean that the safe harbor is practically inaccessible. This language needs to be scaled back to be consistent with the December 2012 guidance.

Additionally the beneficial holdings provisions do not allow escrow arrangements because by definition, such arrangements involve a holding on behalf of another. Escrow is a fundamental component of corporate transactions and this could create unnecessary obstacles to numerous corporate transactions involving covered entities. We support the addition of a safe harbor for escrow accounts, in addition to the safe harbor for forward contracts and for direct corporate associations.

Recommendation: Delete the proposed changes to Prohibitions on Trading requirements.

Jurisdiction of California (S96022(c), pg. 338)

ARB has proposed language in 96022(c): "A party that has rights and protections under the Foreign Sovereign Immunities Act consents to civil enforcement of the laws, rules and regulations pertaining to this article in California's courts, subject to the rights and protections afforded to entities subject to

the Foreign Sovereign Immunities Act, including removal to federal court."

Recommendation**:** Strike or revise this language to make it clear that an entity that is subject to another jurisdiction linked to the California program cannot be tried in either California or U.S. Federal court (if the entity is a non-US entity). The proposed language would make it possible to try the entity in both California and in the linked jurisdiction.

CITSS Content (Appendix B, 1.4)

Issue: We are concerned with the following statement in Appendix B. Section 1.4 of the regulation:

"User understands that ARB will retain and use the Content consistent with the applicable regulation(s) and may disclose Content to the public to the extent the disclosure is required by California law or legal process, or to the extent that disclosure is not prohibited by California law."

We have consistently expressed concerns over information submitted by program participants being made public. The proposed language in Appendix B is vague and subject to interpretation.

Recommendation**:** We suggest that ARB list in this appendix the information collected under this regulation that will not be disclosed to the public and that the disclosure is not required under California law. We are concerned that much of the confidential information provided in the CITSS registration may be deemed, wrongfully, to be public information under California law.

We strongly believe that almost all information submitted under CITSS should not be disclosed to the public. For example, we oppose sharing the names and IDs of our account representatives and account viewing agents registered in CITSS. The privacy right of these individuals should be protected. Additionally, net positions of individual entity or consolidated entities should not be made public as it could increase the potential for market manipulation and decrease overall market liquidity.

We appreciate the opportunity to submit these comments. Should you have any questions, feel free to contact me or Mike Wang (cell: 626-590-4905; email: mike@wspa.org).

Regards,

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