

WSPP's Specified Source Initiative Exhibit C-SS User's Guide

The following tips were compiled by members of the Contract Subcommittee during the Specified Source Initiative drafting process as optional considerations for members using Exhibit C-SS. The tips are not provided as legal or commercial advice, and members should seek their own legal counsel to make their own determinations regarding use of Exhibit C-SS and these optional considerations.

With respect to the RECs provisions in Section 1.e, users should note that this document is written for compliance with the regulations to take effect for 2014, which differ from those in place for 2013. Accordingly, users of this Exhibit C-SS for 2013 transactions may want to consider adding an additional requirement that “the RECs must be retired and verified pursuant to MRR” if applicable, referring to Cap-and-Trade Regulation §95852(b)(3) and the “Specified Source Guidance for Reporters” from CARB dated February 8, 2013.

For Section 1.f: Parties can use Regulation Incorporation if they want to incorporate the requirements of the Cap and Trade Regulations as they are now or change from time to time, most particularly with respect to what it means for a transaction to be a specified source transaction within the meaning of the Cap-and-Trade Rules. Checking the second box in the EF True-Up of Section 1.d will provide that the parties will be subject to the changes in the rules of how emissions factors for source energy are calculated. The parties perform the obligations set forth in the document as agreed between them, presumably with the intent that such obligations meet the then-current requirements for the transaction to be a Specified Source Transaction. The parties using Exhibit C-SS are not taking on the burden of changing performance if the regulations change, unless if they check Regulation Incorporation, in which case the Seller is agreeing to do so. Note that with CARB Regulations, there is the further risk that regulations on occasion may be purported to be changed retroactively.

For Section 6.c: Users may consider, in the case of certain sources for certain transaction tenors, adding an optional covenant for the Seller to provide the Purchaser notice of changes to the Source that may cause the EF_{sp} to change.

Parties may consider adding the following optional covenant respecting cooperation in light of rule changes to Section 6: “The Parties shall take reasonable steps to cooperate to implement administrative changes required to be implemented during the term of this transaction to meet existing or new CARB requirements; provided, however, that neither Party shall be obligated to incur expenses with respect to all outstanding affected transactions in excess of \$xxxx (the “Expense Cap”); provided, further, that if a Party anticipates that the cost of such reasonable steps exceeds the Expense Cap, it shall notify the other Party and such other Party may within [x] Business Days after receipt of such notice agree to reimburse all expenses in excess of the Expense Cap for such reasonable steps that the Parties mutually agree upon.”

Section 7 uses a fixed factor of TL of 1.02, as defined in this document, which is that currently in the Cap-and-Trade Regulations, instead of incorporating by reference the TL factor in the Cap-and-Trade Regulations. Since Cap-and-Trade Regulation 95111(b)(3) uses a TL factor of 1.0 “when deliveries are reported as measured at a first point of receipt within the balancing authority area of the asset-controlling supplier,” no “TL” is used since there is no need to multiply by 1.

Members have noted that one way for a seller to amicably make a purchaser whole could be to provide the specified source deliveries promised by extending the original transaction tenor to encompass such deliveries, if the same can be done within the applicable verification period, and repricing the already delivered substitute energy as commodity energy.

Parties may consider adding the following optional provision to Section 7.c to provide that the Purchaser will provide the Seller a rebate in the EF True-Up should the emissions factor assigned by CARB be lower, i.e., the Source emits fewer greenhouse gases, than contracted: If EF True-Up applies and EF_{asn} is less than EF_{sp} , then Purchaser shall pay Seller:

If Delivery Point is Source busbar or the Source is an ACS system for which deliveries are reported as measured at a first point of receipt located within the balancing authority area of that ACS:

$$(\text{Contract Quantity} - \text{SEQ}) * (EF_{sp} - EF_{asn}) * GHG_{avg}$$

If Delivery Point is not the Source busbar or the Source is an ACS system for which deliveries are *not* reported as measured at a first point of receipt located within the balancing authority area of the ACS:

$$(\text{Contract Quantity} - \text{SEQ}) * TL * (EF_{asn} - EF_{sp}) * GHG_{avg}$$