



October 19, 2013

Via web and email: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**RE: Proposed Amendments to the California Cap On Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (45-day draft comment)**

Dear Sir or Madam:

The California League of Food Processors (CLFP) welcomes this opportunity to provide comments to the proposed changes to the Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms. CLFP, founded in 1905, is a non-profit trade association representing food processors with production facilities in California. Member companies are primarily canners, freezers, dryers and dehydrators of fruits and vegetables. Additional processor members include cheese, snack foods, juice bottlers, nuts, and specialty processors of a variety of food products. Our members operate over 200 processing plants throughout California.

CLFP provides the following comments:

**Industry Assistance**

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

**Cost Containment**

CLFP 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, CLFP encourages ARB to take further steps in the regulation to address longer term potential imbalances between supply and demand for allowances.

CLFP believes that the proposed regulation needs additional measures to address potential long term imbalances to allowance supply and demand given the potential for future adverse economic impacts. For example, CLFP supports broader use of offsets, both through increasing the percentage of offsets allowed beyond the current 8% and by expanding the offset supply. These options were discussed at the June 25th Workshop.



CLFP supports acceptance of valid national and international offsets and allowances as such linkage would provide environmental benefits while controlling costs and potential adverse economic impact on the state's economy. CLFP 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.

Among the offset proposals we believe that there is substantial merit to the following:

- 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 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 Allowance Price Containment Reserve (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.

CLFP makes the following recommendations:

- ARB should establish a mechanism by which it could provide new additional allowances to the market to prevent costs from exceeding the highest cost in the Allowance Price Containment Reserve.
- ARB 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.

Finally, CLFP 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 – Buyer Liability**

CLFP 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. Increasing the burdens on forestry offsets could make the offset availability in the state much more limited and unattractive.



### **True-Up – Allocation for Industry Assistance (95891(b)) (page 116)**

CLFP supports the True-Up provisions contained in new section 95891(b) which allows the use of “future” allowances provided for allocation true-up to meet past compliance obligations under specified circumstances.

However, the ARB proposed amendments contain provisions that may injure smaller obligated entities, those emitting <100 MMTCO<sub>2</sub>e annually, based on a emissions decline during the first compliance period when subject to the energy-based benchmark.

Food processors are subject to the vagaries and unpredictability of weather, varying crop yields, and disease. The raw product must be processed within a few short hours of harvest and cannot be stored or stockpiled to hedge against the risks posed by Mother Nature. Adding the burden of the potential loss of industry assistance only adds to the burden of uncertainty that food processors face.

CLFP opposes any determination that would decrease industry assistance under the proposed true-up methodology where any decrease in emissions in the first compliance period arise from circumstances unrelated to market demand or technology for obligated entities with annual emissions <100 MMTCO<sub>2</sub>e.

### **General Provisions for Direct Allocations (95890(d)), (page 132)**

ARB is proposing to provide free allowances to non-EITE entities (Universities, Public Service Facilities, etc.) i.e.: State Government facilities. While ARB has stated its reasoning behind the gift of allocations to these entities, nevertheless the allowance allocation amounts to a waiving of the rules, appearing more a special treatment based on political sensitivity rather than program dynamics. As all private industrial emitters have been subjected to a rigorous effort to enforce compliance, CLFP believes that ARB’s actions raise questions as to the goals of the program given state facilities are receiving different treatment than private companies under the rules. As such, CLFP opposes this proposal.

### **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...”

CLFP finds this requirement, covering “the entity” and “all other entities” with which it is directly or indirectly associated, 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.

CLFP recommends the following:

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.

#### **CITSS Content (Appendix B, 1.4)**

CLFP is 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.”

CLFP is concerned over information submitted by program participants being made public. Overall, the proposed language in Appendix B is vague and subject to interpretation.

CLFP strongly believes that all information submitted under CITSS should be considered confidential and not be disclosed to the public, absent compelling reason and justification. We oppose sharing the names and IDs of account representatives and account viewing agents registered in CITSS. The privacy right of such individuals should be protected.

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

ARB has proposed the following 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.”

CLFP 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 casts an extremely wide ARB net without offering any compelling justification as to need or plans for this information.

ARB should explain why the current rules requiring the registration of a Primary Account Representative (PAR) and one or more Alternate Account Representatives (AAR) is insufficient or will not provide ARB



with enough contact points to a company. As proposed, the regulation places unwarranted burdens on both companies and ARB, and is a clear example of regulatory over-reach.

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

ARB has proposed new registration requiring that any “changes” in information must be submitted to the ARB within 10 days, and any newly required information must be provided within 30 days of rule adoption.

CLFP recognizes that ARB should be informed 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 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.

CLFP recommends that ARB revise both of these requirements to provide for notification to 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 Cap-and-Trade obligation. In large companies, it is possible that this could involve dozens (or more) of “associations”. Extreme examples could include shared ownership of processing facilities in Asia or India.

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, CLFP opposes the proposed amendments.

**§ 95893. Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers**

Food processors are the second largest industrial consumers of natural gas in the state. Managing operating costs is a priority and fuel costs represent a significant portion of those costs. Under the current ARB proposal requiring the scheduled consignment of allowances, food processors will likely face significant challenges to business operations and competitiveness with businesses outside of California.

In a December 20, 2012 decision (D.11-02-019), the CPUC approved Pacific Gas and Electric’s (PG&E) 2012-2014 Pipeline Safety Enhancement Plan (PSEP). The commission decision only covers PG&E’s plan, though Sempra is also subject to similar inspection and replacement obligations in a separate proceeding.

The CPUC decision will impact food processors on two levels. First, the physical testing and possible repair or replacement of transmission or distribution pipelines has the potential to affect or disrupt seasonal operations. Secondly, the costs of the implementing the plan will affect all industrial gas users,



as well as food processors, and those costs will be significant. Increases in transportation rates are estimated to be 14% to 40% which will remain throughout the implementation of the PSEP. ARB should recognize such dynamic costs increases, added to the costs of compliance, will impose an extreme hardship on industrial gas users in California.

ARB needs to consider other costs unrelated to Cap-and-Trade and the impacts of consigning allowances merely for the purpose of maintaining a carbon price in natural gas.

CLFP recommends ARB eliminate the consignment provision associated with the allowance allocations to natural gas suppliers and instead, provide the utilities with 100% of their allowances in 2015 with a small decline in free allowance through 2020. This proposal will keep costs manageable for all ratepayers, allowing for a phasing in of the carbon price to natural gas customers, while rewarding the industrial sector facilities, such as food processors, for taking early actions to reduce emissions.

Thank you for your consideration of CLFP comments and recommendations. Please contact me with any questions or comments.

Sincerely,

JOHN LARREA

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