

Clerk of the Board**California Air Resources Board**

1001 I Street, Sacramento, California 95814

Submitted to: <http://www.arb.ca.gov/lispub/comm/bclist.php>**IETA COMMENTS ON CALIFORNIA AIR RESOURCES BOARD'S
PROPOSED MODIFICATIONS TO CALIFORNIA'S CAP-AND-TRADE
REGULATION AND COMPLIANCE PROTOCOLS**

On behalf of the [International Emissions Trading Association](#) (IETA)¹, we appreciate this opportunity to provide comments on the California Air Resources Board (ARB)'s [proposed amendments](#) to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation ("the Regulation") and offset compliance protocols, published on 28 October 2014². IETA's comments focus specifically on: compliance and violation language found in the Regulation and protocols; and the rice cultivation and forestry project compliance offset protocols.

1. COMPLIANCE & VIOLATION LANGUAGE IN REGULATION & PROTOCOLS

The recent Clean Harbors Ozone Depleting Substances (ODS) investigation brought to light a lack of clarity regarding several aspects of whether or not California offset projects sufficiently meet regulatory compliance requirements under California's cap and trade regulation. This lack of clarity – along with the Clean Harbors' investigation experience and final determination – is impacting the supply of offsets and introduced uncertainty to the market about how regulatory compliance will be applied to *all offset project types*, especially those that are required to have subsequent 12-month reporting periods. **This ambiguity of regulatory and protocol compliance language makes it extremely difficult for market participants to establish the probability and magnitude of risks related to compliance with laws requirements.** If offsets are to continue to play an important cost-containment role in California's cap and trade program, it is critical that more specific language and clear boundaries on offset project activities and timing of violations be provided. These issues, and proposed recommendations, are described in more detail below.

Project Activity & Boundary Definitions

Sections 95973(b) of the Regulations specifies that compliance with environmental, health and safety laws and regulations is only relevant to the extent such laws and regulations directly apply to the offset project. Section 95985(c)(2) also specifies that ARB may invalidate offset credits for non-compliance with laws to the extent such non-compliance pertains to the offset project activity and implementation of the offset project. While these provisions are clear, the underlying definitions of "offset project" and "offset project boundary" are ambiguous and overly broad as they potentially apply to activities that are unrelated to an offset project.

¹ IETA is an international business association representing over 140 leading international companies from across the carbon value chain. IETA has extensive experience with greenhouse gas market-based trading programs worldwide, including compliance allowance and offset programs. www.ieta.org

² Board's adoption of [Resolution 14-31](#)² directed ARB Staff to "consider additional modifications to the proposed amendments to the Cap-and-Trade Regulation as part of a subsequent 15-Day rulemaking package".

IETA recommends that the Regulation and revised protocols be modified to clarify that **only activities in the Project Area, designed to increase removals of greenhouse gas emissions from the atmosphere or reduce/prevent emissions, could potentially lead to an invalidation.**

Violation Definition

It is also unclear what constitutes a violation. We believe it is extremely important to ensure that violations unrelated to actual offset project activities will not be grounds for invalidation. Protocol language should clarify that only fully adjudicated violations, which directly affect the number of credits issued from a project, give rise to potential invalidation. Further, citation is not proof of violation and should not form a sufficient basis for invalidating credits issued. **We recommend that only a confirmed formal violation notice should trigger an invalidation investigation.**³

Violation & Reporting Period

Section 95973(b) also states that offset credits from an entire reporting period are not eligible for issuance, if the offset project was out of compliance during the reporting period. For many offset project types with typical reporting periods spanning long periods of time, it seems inappropriate to penalize an entire reporting period for a violation that may have been incurred and rectified within a matter of days. We therefore ask ARB to provide **clarification specifying that only credits arising during the period of an actual violation could potentially be subject to invalidation** rather than all credits arising during the entire Reporting Period.⁴

2. RICE CULTIVATION OFFSET PROTOCOL

ARB's new Rice Cultivation Offset Protocol ("Rice Protocol"), and its accompaniment Staff Report, provide important precedents for future California agricultural offset protocols, such as the Nutrient Management Protocol⁵. It's therefore with a view to ensuring the workability, scalability and economic viability of the important Rice Protocol that we present the following priority observations and recommendations.

Project Measurement

IETA supports the use of science-based, rigorous process models as a cost-effective means to measure greenhouse gas fluxes and emissions reductions from the agricultural and land-use sectors. We applaud ARB for supporting the use of a process-based model (i.e., DNDC model) for use in the Rice Protocol. Going forward, ARB may want to consider the development of **a simplified dashboard for DNDC inputs and refined data input requirements to further enhance the rigor and the cost-effectiveness of this tool.**

³ In the case of mines, for instance, many entities receive citations that are never escalated to violations.

⁴ Forest carbon projects, in particular, are susceptible to this reality, as a majority of the credits from a Forest Project may be issued in the first Reporting Period and, in the instance of a violation occurring inside this initial reporting period, invalidating all of the credits for a one-day or one-time violation would be unreasonable.

⁵ The Rice Protocol has established a framework that can enable the creation of a Nutrient Management Protocol. In 2014, EDF conservatively estimates a Nutrient Management Protocol could generate 25 MMT by 2030.

Project Consolidation

Regarding project consolidation, IETA acknowledges ARB's inclusion of the provision allowing Authorized Project Designees (APD) to group together multiple producers, or Offset Project Operators (OPO), as an important initial step towards making project development more economically viable. The proposed approach allows the sharing of risk between project developers (APDs) and agricultural producers (OPOs). Working together, risks can be mutually spread and managed and result in a more robust offsets program not only for ARB, but also for APDs and OPOs. Similarly, allowing multiple producers to report greenhouse gas emissions reductions under a single Offset Project Data Report (OPDR), as proposed, will reduce the burden on individual producers, while relying on the expertise of experienced project developers with proper data management systems and project management expertise to develop consolidated OPDRs.

Project Verification

IETA supports cost-effective yet rigorous approaches to verification. We therefore **support ARB's Staff Report's inclusion of the Rice Cultivation Protocol Pilot Verification Program**, which will fund the verification of projects using two approaches for a 3-year period. This Pilot Program will allow for a comparative assessment of the outcomes of the two approaches. Such a comparative analysis, if well designed, will be a valuable and worthwhile initiative, as well as provide foundational information on which to base the development of updates to the Rice Protocol and the development of future additional agricultural protocols.

In the Rice Protocol, ARB requires individual verification statements for every OPO within a consolidated OPDR submitted by a single APD. **We believe this requirement should be changed to require audits of all OPO data, as collected, managed and stored by APDs, but only site visits on a scientifically identified sample of farms or fields within a collective project⁶.** If audits reveal errors or indicate problems that may be systemic, a more in-depth verification could be required.

Project Data Disclosure

As currently written, this Rice Protocol's full project data disclosure requirement may divulge proprietary or confidential business information. Like most business entities, agricultural producers must protect proprietary and confidential business information from public disclosure. While some of the information collected from individual producers participating in a consolidated Rice Protocol project might be necessary to include in private reports to ARB, the requirement for such data to be made publicly available will lessen or negate the willingness and ability of rice producers to participate. **IETA therefore suggests that ARB clearly state that "any proprietary and confidential business information will not be publicly shared at any point".**

⁶ See C-AGG's proposed approach recognizing that project verifiers already develop Sampling Plans in a transparent and documented manner - the proposed approach relies on the rigor of science to reduce verification costs without sacrificing program integrity.

3. FORESTRY PROJECT PROTOCOL

The following shares several proposed improvements to the forestry protocol and language in the Regulation, in order to improve the program's workability and landowner participation while fully maintaining the integrity and permanence of credited greenhouse gas emissions reductions.⁷

Forest Owner Definition

The current "Forest Owner" definition, found in Section 95802(a)(109) of the Regulation is ambiguous and leads to differing interpretations by ARB, Project Proponents, and verifiers, thereby leading to inconsistency in its application. **We recommend the definition of "Forest Owner" within the Protocol (and the Regulation) be modified to include only those entities that have an interest in the real property and have current control over or management of the Project Area.**

Project Life

Chapter 3.5.1 of ARB's Forest Protocol requires that unless a new owner (of any part) of the Project agrees to take over the Forest Project responsibilities and commitments, the Project is terminated and offsets must be retired in an amount equal to, or in excess of, those issued. This requirement, which is already limiting the number of projects participating in California's program, is unnecessary and restricts the ability of a landowner to sell any or all of the land included in a Project for at least 100 years. **We believe that Forest Owners should be allowed to sell, or otherwise transfer, a portion of the Project Area from the Project, without obligating the new owner to the 100 year commitment** (or what remains of it) provided that the OPO or APD undertakes an additional verification prior to the sale.

In Conclusion

IETA appreciates the opportunity to record our comments related to ARB's proposed modifications to the Regulation and compliance offset protocols. IETA remains committed to supporting the design and growth of a fully-functional, linkable California carbon market to help achieve the goals of AB32 in a robust and economically-efficient manner. If you have any questions, or further clarification is required, please do not hesitate to contact IETA's North American Director, Katie Sullivan, at sullivan@ieta.org.

Sincerely,



Dirk Forrister
IETA President and CEO

⁷ In addition to the above comments, we strongly encourage ARB to consider the more detailed related forestry project protocol comments found in Blue Source LLC's submission available [here](#).