

22 October 2018

Chairwoman Mary Nichols and Board
California Air Resources Board (ARB)
1001 "I" Street
Sacramento, CA 95814

Dear Chairwoman Nichols and California Air Resources Board Members,

As the premier verification body engaged in provision of offset verification services under the Cap and Trade Program, and as the only accredited verification body headquartered in California, SCS Global Services (SCS) appreciates the opportunity to provide comment regarding the proposed amendments to the Cap-and-Trade Regulation ("the Regulation") as posted for public comment on 4 September 2018.

We very much appreciate that ARB staff are motivated to continually improve the Regulation, and we applaud the Board for providing adequate personnel resources to review the current status of the Regulation and propose changes. In general, we appreciate the intent of all of the procedural modifications discussed below. With some minor revisions, the proposed amendments will significantly improve the workability of the Regulation.

Requirements for Transitioning Projects

We wish to draw your attention to Section 95973(a)(2)(D) of the proposed amendments, which contains the following addition (added language is in underline):

The Offset Project Operator or Authorized Project Designee may transition an offset project to the most recently incorporated version of the Compliance Offset Protocol by updating the listing information in an Offset Project Data Report pursuant to section 95976. Projects transitioning to the most recent version of the Compliance Offset Protocol may only do so with an Offset Project Data Report submitted to ARB or the Offset Project Registry prior to the site visit, pursuant to section 95977.1(b)(3)(D). To properly transition to the most recent version of the Compliance Offset Protocol, the Offset Project Data Report for the transitioning project must specify the most recent protocol version as the version under which the project is reporting, pursuant to section 95976(d)(10). Projects may only transition to the latest version of the Compliance Offset Protocol during a reporting period that is subject to a full offset verification. A project will be considered to have completed the transition to the most recent version of the Compliance Offset Protocol at the time a Positive or Qualified Positive Offset Verification Statement for the applicable reporting period has been approved by ARB.

While we applaud the intent of adding flexibility regarding when transitioning to a new protocol version takes place, there is one area in which the above language, as applied to the forestry protocols, is unclear. When taken together with the pre-existing language, the proposed amendments require submission and reporting, in an offset project data report (OPDR) submitted for transition purposes, of information (e.g., ownership documentation, baseline information) that is typically only included in the initial OPDR and verified in the initial full verification per Section 95977.1(b)(3)(A)(d)(1) of the Regulation. In that case, the requirements of the Regulation in terms of verification are aligned with the requirements in terms of project listing information. However, the proposed amendments do not seem to make provision for verification of the listing information that would be required to be contained in the OPDR. The language refers to a “full offset verification”, but a full offset verification after the initial verification is of limited scope, and does not typically include review of items such as ownership documentation and baseline modeling. We are concerned that, by introducing requirements for provision of information in the OPDR without introducing commensurate requirements for verification of such information, the proposed amendments may be self-contradicting. We recommend a detailed review to ensure that requirements for verification are aligned with requirements for inclusion of listing information in the OPDR.

Requirements for Submission of Notification of Offset Verification Services

Section 95977.1(b)(1) of the proposed amendments contains the following addition:

If a verification is being audited by ARB pursuant to section 95977.1(b)(3)(W) or by an Offset Project Registry pursuant to section 95987(e) and if ARB or the Offset Project Registry notify the verification body of the audit in writing within five working days of receiving the Notice for Offset Verification Services, the verification body may not conduct the site visit until at least 40 calendar days after the Notice for Offset Verification Services is received by ARB and the Offset Project Registry, unless each auditing entity approves in writing an earlier site visit date.

The above language also existed, verbatim, in the preliminary discussion draft of potential changes that was presented during the workshop held 2 March 2018, and the below comments are identical to those raised in response to said discussion draft.

We understand that the intent is to reduce the advance notice required for offset verification services that are not being audited by ARB or an offset project registry (OPR), while simultaneously ensuring that, where offset verification services are subject to an audit, auditing staff have adequate time available in which to plan for attendance on the site visit. While we appreciate this intent, we are concerned that the 40-day waiting period, after the Notice for Offset Verification Services (NOVS) is first received by ARB and the OPR,

would impose undue burden on the conduct of offset verification services. To understand why this is the case, we suggest that the following be considered:

- The NOVS is not typically submitted until after a contractual agreement has been undertaken, between the verification body and the client, to conduct offset verification services. Planning the site visit is, in our experience, an important aspect of the pre-engagement process, as such planning entails ensuring that adequate staff and other resources will be available to support the planned site visit dates. This planning process is typically carried out months in advance of the actual site visit dates, and the date(s) of on-site visits are required, by Section 95977.1(b)(1)(D)(3) of the Regulation, to be included in the NOVS. Aside from the contracting process, there are a variety of practical constraints that lead to a gap between the time of planning for the site visit and the time of submission of the NOVS.
- The limited season available for field-work across much of the United States, coupled with the regulatory deadline for submission of our offset verification statement (as set out in Section 95977(d) of the Regulation) and various practical limitations, act as an effective constraint on the universe of potential site visit dates for a given verification engagement. This is particularly the case when one considers that our staff resources (as with the staff resources of any offset verification body) are finite and, as such, a shift in the site visit dates for one verification engagement will inevitably cause conflict with site visit dates for different verification engagements, resulting in a chain reaction. By the time of submittal of the NOVS, there is often little “wiggle room” available in which to change the planned site visit dates without substantial impact to the verification process.
- While the requirements are only intended to be imposed where offset verification services are under audit, we fear that the potential changes would have the effect of forcing every verification engagement to include a 40-day lead time between submission of the NOVS and the commencement of the site visit (or, at least, to prepare for the contingency of such a lead time being imposed). A de-facto lengthening of required lead time would run counter to the intent behind the potential changes (as we understand it), which was to surgically target situations where offset verification services are subject to an audit and to allow a decrease in lead time in other situations (i.e., to decrease the required lead time, for offset verification services not under audit, from 30 calendar days to 15 calendar days).

We suggest that one or both of the following solutions be considered in order to address our concerns.

1. Introducing a procedural step, occurring earlier than submission of the NOVS, at which ARB and/or the OPR may select offset verification services for audit and notify the offset verification body of such.

- For example, the offset project operator or authorized project designee may be required to formally declare an intent to have offset verification services provided for a given offset project data report prior to the submission of the NOVS. Offset verification services could then be selected for audit based upon information provided in such a “notice of intent” document. This would permit offset verification services selected for audit to be identified at a relatively early stage in the planning process and for all entities involved, the OPO, APD, Offset Verification Body, ARB and/OPR to work in concert to plan the commencement of the offset verification services as well as the site visit dates. With concrete information as to which offset verification services are selected for audit, all parties would be able to proceed with enhanced certainty around timelines. Thus, even a 40-day lead time from submission of the NOVS, for offset verification services under audit, would be considered as a procedural step in the planning of the audit because all parties could confidently apply the required lead time to only the small subset of verification engagements subject to an audit, as opposed to unnecessarily lengthening the lead time on all verification engagements.
- 2. Shortening the required advance notice period, for offset verification services subject to an audit, from 40 calendar days to a more reasonable period, such as 20 calendar days.

We also suggest a slight revision to the following potential addition to Section 95977.1(b)(2):

If the verification body has been notified by ARB or the Offset Project Registry of an audit for the relevant verification, then the verification body must notify the auditing entity at least two working days prior to a revised start date for offset verification services and at least 15 working days prior to a revised site visit date(s), unless each auditing entity approves in writing an earlier date.

In the context of forest offset projects, all site-visit verifications must include a test of the forest carbon inventory, termed “sequential sampling”, in which a subset of inventory plots are re-measured by the offset verification body. One attribute of this test is that it does not utilize a fixed minimum sample size—rather the sample size required varies depending upon the input data. Therefore, while the commencement of the site visit can be planned for (subject to the constraints discussed above), the final date of the site visit cannot be predicted with complete certainty, and is subject to change during the course of the site visit, depending upon the data collected. In our view, the italicized text quoted above does not adequately make allowance for this reality. Since we understand that the date of commencement of the site visit is likely to be of most significant import in planning an audit of any offset verification services, we suggest that the italicized language quoted above be revised to the following (new language is in bold):

*If the verification body has been notified by ARB or the Offset Project Registry of an audit for the relevant verification, then the verification body must notify the auditing entity at least two working days prior to a revised start date for offset verification services and at least 15 working days prior to a revised site visit date(s) **any revised date of commencement of the site visit**, unless each auditing entity approves in writing an earlier date.*

Requirements for Addressing Discrepancies

We note the addition of the following sentence to Section 95977.1(b)(3)(M):

Correctable errors that, when summed, result in less than a three percent overstatement of the GHG emissions reductions or removal enhancements do not need to be fixed. Errors subject to the three percent exception still constitute errors for purposes of this Regulation, and the Offset Project Operator and Authorized Project Designee, if applicable, are still subject to the requirements of sections 96013 and 96014(d), especially if ARB determines the errors have been repeated across multiple Offset Project Data Reports or the errors were intentional in nature.

In our work performing offset verification services, we have found that the pre-existing language (which required that “...the Offset Project Operator or Authorized Project Designee must make any possible improvements and fix any correctable errors to the submitted Offset Project Data Report”) often led to large quantities of time being expended in identifying and correcting errors with very small quantitative impacts. We agree with ARB Staff that “These changes are necessary to avoid a significant amount of work to change relatively small errors in the Offset Project Data Report.” However, we have the following suggestions for improvement in the proposed amendments.

- The language that “Correctable errors that, when summed, result in less than a three percent overstatement of the GHG emissions reductions or removal enhancements do not need to be fixed” do not address whether the three percent threshold also applies to “possible improvements”. As stated, the language opens the door for the possibility that a correctable error may not need to be made, due to leading to less than a three percent overstatement, but the issue could be termed an area of “possible improvement” and correction may be required nonetheless. This does not seem to be in line with the intent of ARB staff. Unless there is a compelling reason to include the reference to “any possible improvements”, it is recommended that this language be stricken. It has always been unclear to us what the distinction was between a “possible improvement” and a “correctable error”.
- ARB staff may wish to modify “three percent” to “3.00%” for consistency with the numeric formatting in the definition of “offset material misstatement”.

- The language “...the Offset Project Operator and Authorized Project Designee, if applicable, are still subject to the requirements of sections 96013 and 96014(d), especially if ARB determines the errors have been repeated across multiple Offset Project Data Reports or the errors were intentional in nature” is highly problematic. The suggestion is that a recurring correctable error could constitute a “false, fictitious or fraudulent statement or representation” per Section 96014(d)(2). While we understand that repeated commission of the same error may seem by some to be fraudulent in nature, such a view does not take into adequate account the inherent complexities of offset project quantification of the manner in which professional judgment must often be applied in determination of whether an error exists. We find it highly inappropriate to suggest a relationship between an offset verification body’s independent determination of what constitutes an error and the assessment of criminal penalties of the Health and Safety Code. We suggest the entire clause “...the Offset Project Operator and Authorized Project Designee, if applicable, are still subject to the requirements of sections 96013 and 96014(d), especially if ARB determines the errors have been repeated across multiple Offset Project Data Reports or the errors were intentional in nature” be stricken.

Requirements for Conflict Of Interest Assessment

Additionally, the potential changes to Section 95979 of the Regulation present a useful opportunity to make further modifications to strengthen the clarity of this section as it pertains to use of subcontractors, and we would like to encourage your staff to take such measures. The specific areas to which we would like to call the attention of your staff are identified below.

- Section 95979(b)(2) of the Regulation applies to “any staff member of the verification body or any related entity or any member of the offset verification team”. “Member”, as defined in Section 95979(b), means “any employee or subcontractor of the verification body or related entities of the verification body”. It is unclear what is meant by “subcontractor”, particularly whether this term refers to entities with which a verification body has a contractor-client relationship or whether it refers to individuals who are employed by such entities. The “evaluation of conflict of interest for offset projects” form required by ARB implies that the latter definition of “subcontractor” is intended by ARB, as does the reference “the verification team” in Section 95979(b)(2) (as a verification team is a collection of individuals, not entities), but it would be best if this could be clarified in the Regulation through a definition of the term “subcontractor”.
- Section 95979(c) of the Regulation states that “The potential for a conflict of interest must be deemed to be low where no potential for a conflict of interest is found under section 95979(b) and any non-offset verification services provided by any member of the verification body to the Offset Project Operator, Authorized Project

Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee within the last five years are valued at less than 20 percent of the fee for the proposed offset verification...” Given the definition of “member”, as quoted above, it is unclear whether the reference to “any member of the verification body” refers solely to staff members of the verification body or whether this language also refers to sub-contractors with which the verification body has a contractor-client relationship. The latter interpretation would be extremely cumbersome for offset verification bodies, such as SCS, that provide a wide array of certification and verification offerings, and would impose an extraordinary paperwork burden in order to identify situations that, practically speaking, have no potential to result in a real or perceived conflict of interest.¹ We suggest that the language quoted above be revised to the following (added language in bold): “The potential for a conflict of interest must be deemed to be low where no potential for a conflict of interest is found under section 95979(b) and any non-offset verification services provided by any **staff** member of the verification body to the Offset Project Operator, Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee within the last five years are valued at less than 20 percent of the fee for the proposed offset verification...” This change would codify a much more logical interpretation that is consistent with the design of the “evaluation of conflict of interest for offset projects” form required by ARB.

In summary, SCS appreciates the opportunity to provide comment and input into this important rulemaking process. I encourage your staff to follow up with me directly regarding any of our comments.

Sincerely,



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¹ There are over 1,000 unique records in SCS’ subcontractor database. Almost all of these pertain to subcontractors working under programs that (1) are insulated, both formally and informally, from SCS’ Greenhouse Gas Verification Program and (2) as such, have no potential to impact the outcome of any offset verification services provided by SCS.