

October 10, 2005



Policy and Process for Determining Potential for Conflicts of Interest Between Registry Members and Verifiers

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Please note: In May 2008, the California Climate Action Registry changed the term “certification” and all of its derivations to “verification” in all of its protocols and documents. No other changes have been made to this document.

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Definitions and Acronyms

Affiliate	An organization working through a lead firm (Lead Applicant) to respond to an Energy Commission RFA for Verifiers
Applicant	Firm, or lead firm (if part of a team), responding to an Energy Commission RFA for Verifiers
Approval	Authorization provided by the State of California (through the Energy Commission) and the Registry for a firm to conduct independent assessments of annual GHG emission inventories as reported to the Registry through CARROT
Approved Verifier	Firm or team of firms that has been State- and Registry-approved to conduct verification activities under the Registry program
CARROT	Climate Action Registry Reporting Online Tool, the web-based application through which all Registry members must report their annual GHG emissions inventories
CEC	California Energy Commission (Energy Commission)
Verification	The process used to ensure that a given member's greenhouse gas emissions inventory (either the baseline or annual result) has met a minimum quality standard and complied with the Registry's procedures and protocols for calculating and reporting GHG emissions
Verification Activities	Activities undertaken during verification that include a Registry member hiring a State- and Registry-approved verifier to review a member's reported emissions, verify the accuracy according to standards specified in the Registry's Verification Protocol, and submit a verification opinion to the Registry
Verified Member	A Registry participant that has prepared and submitted its annual GHG emissions report, and had it verified by a State- and Registry-approved verifier
Verifier	A firm or team of firms that has been State- and Registry-approved to conduct verification activities under the Registry program. A verifier may also refer to a single employee within a State- and Registry-approved firm who conducts verification activities.
Client	Registry member interested in engaging the services of a third-party verifier
Conflict of Interest (COI)	A situation in which, because of other activities or relationships with other persons or organizations, a person or firm is unable or potentially unable to render an impartial verification opinion of a

	potential client's greenhouse gas (GHG) emissions, or the person or firm's objectivity in performing verification activities is or might be otherwise compromised
Greenhouse gas (GHG)	For the purposes of the Registry, GHGs are the six gases identified in the Kyoto Protocol: Carbon Dioxide (CO ₂), Methane (CH ₄), Nitrous Oxide (N ₂ O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), and Sulfur Hexafluoride (SF ₆)
Historic Data	Annual GHG emissions inventory data for years prior to the first year for which a member is required to report their GHG emissions information to the Registry
Lead Applicant	An organization coordinating a response to an Energy Commission RFA for Verifiers of other partners to broaden its expertise. A Lead Applicant must provide information about its firm as well as coordinate responses of its partners. If successful, all subsequent verifications will be conducted under the name of the Lead Applicant
Lead Verifier	An individual who has completed a Registry-sponsored verification training workshop and who has the authority to sign a verification firm's opinion submitted to the Registry
Member	A Registry participant that is preparing its annual GHG emissions report, but has not yet submitted its verified report to the Registry
Non-verification Activities	Any activities other than verification activities under the Registry's verification protocol
Partner	An organization working through a lead firm (Lead Applicant) to respond to an Energy Commission RFA for Verifiers
Registry	The California Climate Action Registry
State	The State of California
Subcontractor	An individual or firm that is engaged by a Lead Applicant to perform verification or non-verification activities
Technical Assistance Provider (TA)	A firm or individual that is qualified to provide assistance on GHG-related matters to Registry members. TAs may have completed a State and Registry approval process, but Registry members are not required to only use approved TAs. A firm may be listed as both a State- and Registry-approved verifier and TA, but may not provide both verification and technical assistance services to the same Registry member.

Policy and Process for Determining Potential for Conflicts of Interest Between Registry Members and Verifiers

Overview

This document describes the California Climate Action Registry's (Registry) process to conduct a case-by-case conflict of interest (COI) evaluation between a Registry member (member) and its selected verifier.

After becoming an approved Registry verifier and before signing a contract with a member, the verifier must request an evaluation of the potential for COI from the Registry. This request will trigger the Registry's case-by-case review of the relationship between the verifier and the member. The purpose of the evaluation is to protect the integrity of the verification process and the quality of the member's emissions report by identifying and avoiding situations in which a verifier may be viewed as having an impaired ability to objectively review a potential client's inventory, usually from a pre-existing business or personal relationship.

If after completing the case-by-case evaluation, the Registry determines that the risk of COI between Registry member and the verifier is low and no mitigating measures are necessary, the verifier can initiate verification activities. If the verifier receives a notice that the risk of COI is substantial it can either abandon the proposed contract, work with the Registry to identify measures to alleviate the COI risk areas, or appeal the decision.

An approved verifier may perform Registry-related verification services for a member for up to six consecutive calendar years.¹ A complete verification review is conducted in the first year report. In years 2-6 the verifier does not need to seek a full COI determination, but should identify each year any changes to its organization, staffing, business practices or relationship with the member during the previous year.

Policy

For purposes of the Registry's program, a conflict of interest is a situation in which a verifier has competing professional and/or personal interests that could impede its ability to objectively review and evaluate a member's compliance with the Registry's reporting requirements. Even without explicit indication of a compromised relationship between a member and a verifier, a conflict of interest could also involve a situation where the appearance of impropriety could undermine confidence in the verifier's ability to assess the reported emissions.

The Registry considers a verifier to be a firm or team of firms that has been State- and Registry-approved to conduct verification activities under the Registry program. A verifier may also refer to a single employee within a State- and Registry-approved firm who conducts verification activities.

Complex relationships might exist between a verifier and a member. Thus it may be difficult to make an obvious judgment regarding the potential for COI. The Registry will conduct its evaluation process and review each relationship conservatively with the aim to not only ensure

¹ This may include more than six calendar years of emissions data, in situations where the member chooses to also verify historic data during the six calendar years.

the integrity of the emission reports submitted to the Registry but also to avoid the perception of a conflict.² The Registry will use objective criteria and professional judgment to formulate COI opinions and work with all interested parties to resolve problem areas. If the Registry determines that a conflict might exist, it will request that the verifier demonstrate how it can be avoided, eliminated, or otherwise mitigated. As necessary, the Registry may request additional information to assist in making this determination.³

Process

Before beginning verification activities under the Registry program, a verifier must request a determination of COI from the Registry. Upon this request, the Registry will conduct a risk-focused assessment to determine whether a potential for COI exists between the verifier and the member for whom the verifier anticipates providing verification services. To support this determination, the verifier should provide background information identified in section A to the Registry (using *COI Form A*). Sections B – I outline the Registry’s evaluation criteria and process.

The Registry will consider several factors relevant to the nature of the relationship between the verifier and the member when conducting its case-by-case COI evaluation. Factors will include the nature of past and present relationships between the verifier and member, prior and existing service commitments and the types of services provided, magnitude of financial relationships, and sensitivity of the proposed work.

A. Required Information

To assist verifiers in identifying and describing the nature and extent of their relationship with the member, the Registry requires verifiers to answer the questions outlined below, using COI Form A. If the verifier expects to use any subcontractors to complete the proposed verification, this information must also be disclosed for those subcontractors. Verifiers should clearly designate all confidential information; the Registry will not share confidential information with any outside party.

Information must be provided for *all* work conducted within the past three years and within North America. Work related to the design, development, implementation or maintenance of a greenhouse gas inventory must be disclosed, regardless of its location or timing. If there is any question as to whether work performed was related to the design, development, implementation or maintenance of a greenhouse gas inventory, applicants should disclose details of the contract, regardless of its location or timing.

1. Nature of the Relationship

- a. What is, or was, the relationship between any part of the verifier company and the member company contracting for the work?
- b. Do the member and verifier share any formal affiliation or management?
- c. Are the member and verifier engaged in any joint ventures or partnerships?
- d. Have any of the verifier staff assigned to the proposed verification ever conducted work for the member company (including while in the employment of other organizations)?

² Identifying situations that could lead to the perception of a conflict of interest is particularly difficult. Generally, the guiding principle is called “The Press Test”; it asks, would the verifier or the member be uncomfortable if the nature of their relationship were reported in the press, or received public attention?

³ Each COI determination will help the Registry build a greater understanding and inform subsequent COI determinations. These determinations, with all verifier and member identifying information removed, will be posted at the Registry’s password-protected page built explicitly for verifiers at www.climateregistry.org/ServiceProviders/Verifiers.

- e. What links, if any, exist between the member's contracting division and the verifier division contracted to perform verification services?

2. Prior and Existing Service Agreements

- a. What contracts or other arrangements to perform work does the verifier have (or has the verifier had) with the member? What is/was the nature of any work? Where was the work performed, both in terms of geographic location and the business unit(s)?
- b. Do extenuating circumstances exist that could lead to the perception that a contract or work arrangement might cause a conflict of interest? What mitigation measures could alleviate the inference of subjectivity in the verification process?

3. Financial Magnitude of Service Agreements

- a. What is the value of the proposed verification under consideration?
- b. What is the value of all services performed for the member in the last three years within their geographic reporting boundary?
- c. What is the value of any GHG services performed for the member, regardless of time or location performed?
- d. What is the magnitude (%) of revenue from any such services when compared to the verifier's total revenue over the same time period?
- e. What types of services does the verifier expect to perform for the member in the next three years within their geographic reporting boundary?

The Registry intends to assist verifiers and members in understanding the COI process by developing guidelines, based on actual scenarios, for situations in which there may be high, medium, or low potential for COI, and elements of successful mitigation plans.⁴ The Registry has also developed a series of templates (see *COI Form A*) that guides verifiers in compiling the required information. After preparing responses to these questions, the verifier should make an assessment of whether the potential for COI is low, medium or high.

If the verifier and member have no pre-existing relationship and/or no anticipated relationship outside the scope of conducting this verification for the Registry, there may be a low potential for conflict of interest.

B. Cause for Automatic Rejection

Generally, no single factor or combination of factors in the verifier-member relationship would in all cases cause or eliminate a potential COI, with two exceptions:

- ***Preparation of member's inventory.*** A verifier is prohibited from consulting on or preparing any part of the GHG emissions inventory for the member that it is being asked to verify as a primary or sub-contractor, regardless of the point in time that that may have occurred. The verifier must declare all of its previous, existing, and planned involvement with the member's GHG monitoring, accounting, reporting, and reduction activities. This includes identifying the group(s)/department(s) of the respective organizations involved, and a description of the specific activities. For each activity identified, the verifier should clearly define the links with other parts of its organization, in particular the unit(s) that performs verification services.

⁴ In building its case-by-case evaluation database, the Registry may disclose COI situations, but it will not reveal company names or sensitive information. If necessary to obtain a legal opinion, the Registry may share relevant documents with its legal counsel or technical advisors. All proprietary information will be kept confidential.

- **Off-cycle applicants.** Registry verifiers may only provide verification services for a given member for a maximum of six consecutive years, beginning with the first year that a member hires a verifier.⁵ After the six year period, the member must contract with a different verifier. The original verifier may not provide verification services to that member for a three year off-cycle period.⁶

C. Potentially Conflicting Services

The Registry provides the following indicative list of services that a verifier might perform for members that are relevant to the COI review. This list is not exhaustive and should not be considered to represent the complete universe of working arrangements pertinent to the COI review. It illustrates the types of relationships that might create a COI when evaluated by the Registry. Undertaking a service included on this list (or similar services not on the list) for a Registry member will not necessarily result in an unfavorable determination.

All potentially conflicting services should be identified, and fully discussed in the application. The Registry holds the verifier responsible for providing any and all information about its relationships or arrangements with a potential client that could reasonably be considered relevant to a COI evaluation.

1. Designing or developing GHG information systems
2. Developing GHG emission factors or other GHG-related engineering analysis
3. Designing energy efficiency, renewable, or other projects which explicitly identify GHG reductions as a benefit
4. Appraisal services of carbon or GHG liabilities or assets
5. Brokering, advising, or assisting in any way in carbon or GHG-related markets
6. Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the member
7. Management over health, environment and safety functions
8. Legal and expert services unrelated to Registry verification

D. Potential Mitigating Factors

The following are examples of factors that mitigate potentially conflicting services by a verifier to a member. These factors will be considered as they apply to the specific verifier-member relationship and services in question. If several mitigating factors apply to the service in question, the likelihood that the Registry will return a favorable determination is increased:

- **Time of Service.** Any service delivered by the verifier to the member that occurred more than three years before the date of the case-by-case COI determination will be viewed as a lower risk by the Registry. However, services rendered related to the design, development, implementation or maintenance of a GHG emissions inventory must be fully disclosed, regardless of the time of delivery.

⁵ The six-year cycle refers to six calendar years. During that period a verifier may review inventories of multiple years without counting as additional years of the six-year cycle. A member may choose to report multiple years of data in any reporting year. For example, a member may join the Registry in 2005 and begin reporting its emissions in 2006. The verifier that they hire in 2006 can review emissions data for any years from 1990 to the present. Starting in 2012, the member must choose a different verifier.

⁶ A verifier may provide verification services to that member again, after the completion of the three year off-cycle period. A verifier will begin an off-cycle period, and may not provide verification services for a member, following any lapse in providing annual verification services to the member.

- **Location.** Services provided by the verifier to a business unit, facility or office of the member located outside of North America will be considered a lower risk for a conflict of interest.
- **Type of Services.** Services that do not appear on the list of potentially conflicting services will be considered a lower risk of COI by the Registry.
- **Financial Value of Services.** The Registry will view as a lower risk the provision by the verifier of other services of which the monetary value is small relative to the value of verification. Cases where the total value of services provided to the member is very small as a percentage of the verifier's revenue over the same period may also be less cause of concern.

E. Notice of Determination of COI

No later than 30 business days from the time case-by-case evaluation materials are received and deemed to be complete, the Registry will provide a determination of COI to the verifier. This determination will take the form of a letter, stating whether the Registry considers the potential for a conflict to be low, medium, or high. In cases with a determination of low COI, the evaluation process is complete for that year and the Registry requires no further information. In the case of a finding of high or medium potential COI, the letter will identify the causes identified as potential conflicts and give verifiers the opportunity to present a mitigation plan.

The Registry recommends obtaining the notice of determination of COI before signing a contract for verification services for the Registry's program.

F. Mitigation Plan

If a verifier is deemed to have high or medium potential for COI, it can choose to propose a plan to mitigate the potential for COI. In this process, the Registry relies on verifiers and members to accurately and fully disclose relevant information. The Registry will consider transparency a key step in any mitigation plan. At a minimum, the mitigation plan should include:

- Demonstration that any conflicted individuals (verifier or subcontractor staff) have been removed and insulated from the project.
- Explanation of any changes to organizational structure or verification team. Demonstration that any conflicted unit has been divested or moved into an independent entity or any conflicted subcontractor has been removed.
- Other circumstances that specifically address other sources for potential COI.

Verifiers should use *COI Form B: Mitigation Plan*, attached, to present this plan.

G. Monitoring of COI

Following the completion of verification work for year one, the Registry relies on the verifier to provide information for ongoing monitoring of potential COI, and to disclose any new relationship with the member that may impact the objectivity of the verifier's judgment. The Registry considers disclosure of any potential issue a key step to addressing the potential for COI. The verifier needs to disclose immediately to the Registry any potentially emerging COI, either at the staff or board level or those that result from organizational changes (e.g., mergers and acquisitions, partnerships, joint ventures).

If, for any reason, the Registry determines that a new relationship constitutes a conflict of interest that cannot be mitigated, the Registry will require the member to choose a new verifier going forward. The Registry may also invalidate any verification results from the time at which such a conflict of interest arose and could not be mitigated.

H. Appeal process

If a verifier or member disputes the Registry's COI determination, they can appeal the decision, with detailed explanation, to the Registry's Appeal Committee. The Committee will consist of an odd number of individuals, including at least one Registry staff member, one Registry Board member, a representative from the CEC, and representatives from other State agencies, as relevant. The Committee may consult a verifier, lawyer, or other experts for assistance, but any expert will not have a vote in the committee's final decision. All information will be kept confidential. The Committee will consider the original finding, the detailed explanation, and provide a final answer based on a majority vote. Their decision will be binding.

I. Rescission of Approval

If the verifier is found to have intentionally violated the conflict of interest policies, the Registry and the State reserve the right to rescind approval of a verifier for any appropriate period of time.

References

48 Code of Federal Regulations Part 1501, et al.

American National Standards Institute (ANSI):

- ISO 14000 National Accreditation Program [http://www.ansi.org/public/iso14000/rab_9.html]

International Standards Organization

- Guide 65, *General Requirements for bodies operating product verification systems*
- Guide 66, *General Requirements for bodies operating assessment and verification/registration of environmental management systems (EMS)*

U.S. Environmental Protection Agency:

- Procurement Policy Notice No. 91-06, 95-04, *Agency Response to Questions Submitted at the Conflict of Interest Forum, Conflict of Interest Mitigation Strategies*
- Conflict of interest rules, <http://www.epa.gov/oam/ptod/COI/COIindex.htm>

U.N. Framework Convention on Climate Change, Kyoto Protocol Clean Development Mechanism

- *Conflict of interest rules*, <http://unfccc.int/cdm/rules/modproced.html>
- *Procedures for accrediting designated operational entities*, <http://unfccc.int/cdm/doe.html>

U.S. Securities and Exchange Commission:

- *Proposed Rule on auditors*, <http://www.sec.gov/news/digest/11-20.txt>