



Western States Petroleum Association
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Vice President

October 10, 2017

Mr. Sam Wade
Branch Chief
California Air Resources Board
1001 I Street
Sacramento, California 95814

sent via email: LCFSworkshop@arb.ca.gov

Re: WSPA Comments on ARB Preliminary Draft 2017 LCFS Regulation Amendments

Dear Sam,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide feedback on the California Air Resources Board (ARB) Preliminary Draft Low Carbon Fuel Standard (LCFS) Regulation Amendments and the ARB staff presentation at the associated LCFS Workshop, held on September 22, 2017 in Sacramento, CA. WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

General Comments

Recent WSPA Feedback

WSPA continues to encourage ARB staff to review the LCFS program feedback provided by WSPA in comment letters for and participation in the series of ARB LCFS Working Sessions and Workshops during the past year (listed in our comment letter regarding the August 7, 2017 ARB LCFS Workshop).

Anticipated LCFS Credit Availability and 2021-2030 CI Reduction Targets

Since ARB staff has now presented initial thoughts on Carbon Intensity (CI) Targets through 2030, it further reinforces even ARB's expectation that there would be no future surplus in the LCFS credits bank. ARB staff has stated at past workshops that this approach was an acceptable outcome to promote obligated parties to "start-up" credit generating facilities. WSPA has long argued that the credit clearance market, or any cost containment mechanism, is not a substitute for a feasible program with sustainable targets. While cost containment plays an important role to protect the consumer and the market from unforeseen circumstances, it should not be used to compensate for unsustainable targets.

Need for Complete Version of Pre-Regulatory Draft Regulation Amendments

WSPA recognizes that the LCFS regulatory amendments are still in the pre-regulatory stage and the proposed regulatory language is subject to change. However, over the past two years, ARB has released a number of variations of elements of the LCFS regulatory language with this latest version still not a complete regulation amendment. WSPA believes that ARB and stakeholders would be best served by being able to comment on another pre-regulatory draft document that is complete.

Comments on Preliminary Draft Regulation Amendments

The comments provided below are based on the preliminary draft language presented by ARB to date (with “gaps”) as well as the ARB staff presentation from the September 22nd LCFS Workshop. These comments are referenced by either the preliminary draft language section number or the September 22nd ARB staff workshop presentation slide number.

§ 95481 – Definitions

Page 10. Conventional Jet Fuel: This proposed definition is too limiting and incorrect. Conventional jet fuel is not required to average API gravity of 40.7. WSPA requests that ARB reference ASTM D1655 as the specification for jet fuel: specific gravity should be between 775 and 840 kg/m³ (37.0 to 51.0 API gravity). T10 max is 205 C (401 F). Military jets may have different specifications, such as specific gravities, distillation or freeze point.

Page 13. Fuel Pathway Holder: Under the proposed definition, producers and importers of CARBOB and CARB Diesel would be “Fuel Pathway Holders” because they are reporting fuels using a Lookup Table fuel pathway code. The regulations then contain various requirements for “Fuel Pathway Holders” (§ 95488.9 - Maintaining Fuel Pathways, for example) that do not seem appropriate for CARBOB and CARB diesel.

§ 95482 - Fuels Subject to Regulation

Page 25. WSPA recommends that Renewable Diesel (such as R100) be specified as a regulated fuel under § 95482(a) in addition to B100. It is noteworthy that Oregon Department of Environmental Quality Clean Fuel Program is proposing to list Renewable Diesel as a regulated fuel.

Page 26. By eliminating exemption for aircraft from § 95482(d)(4)e 26) results in Avgas being subject to LCFS requirements pursuant to § 95482(a)(13)). WSPA urges that ARB to retain the aircraft exemption.

§ 95483 - Fuel Reporting Entities

Page 40 and Slide 14. WSPA suggests that ARB clarify how is the determination made if propane, dispensed as a transportation fuel, will be subject to the gasoline benchmark or the diesel benchmark for credit or deficit calculations.

Page 41. In § 95483(i), corrections should be allowed with no penalty in the LRT-CBTS for up to one year after a transaction is entered in the system.

Page 45. Pursuant to § 95483(d) and with regard to recordkeeping requirements for exported products containing blendstocks produced through co-processing operations, ARB has proposed guidance for renewable content in exported gasoline or diesel. WSPA has commented previously on the problematic nature of this potential guidance and its impact on ethanol, biodiesel, renewable biomass, and renewable diesel blending. WSPA continues to urge ARB to forego the proposed guidance on accounting of the renewable content of exported gasoline and diesel blends and only consider restrictions related to exports of neat renewable fuels where there is a realistic risk of double counting should these exports re-enter the state.

§ 95484 - Carbon Intensity Benchmarks

Page 56-57. WSPA requests that ARB revise the CI benchmarks of gasoline and diesel in Tables 1 and 2

starting with year 2019 as a result of the updates of the CA-GREET and OPGEE models.

Slide 19. As noted in the General Comments above, ARB staff's initial thoughts on Carbon Intensity (CI) Targets through 2030 (culminating with a target of 18%) lead to the expectation that there would be no future surplus in the LCFS credits bank. WSPA strongly believes that these targets need to be adjusted through 2030 and must be driven by more realistic estimates of what are sustainable.

§ 95485 - Demonstrating Compliance

Page 63. § 95485(c)(3)C(3) should be deleted as it is covered in the definition section.

Pages 61 and 65. While § 95485 (c)(1) and (5) language has not been modified, WSPA supports additional language that states interest is not applied to the balance of deficits if there are not enough credits available in the Credit Clearance Market (CCM). If an obligated party was unable to purchase credits in the normal market during the compliance year, and then were unsuccessful getting credits in the CCM, it should not be punished by additional interest obligation.

Page 66. As stated in a previous WSPA comment letters, WSPA strongly supports removal the 20% limit in § 95485 (d)(1), as this limit is arbitrary. Similarly, the 10% limit in § 95485 (d)(2) should be removed.

§ 95486 - Generating and Calculating Credits and Deficits

Page 67. A number of questions were raised by participants over §95486(a)(3) and inclusion of Buffer Credit concept during the September 22, 2017 ARB LCFS Workshop. ARB staff proposed that under Carbon Capture and Sequestration (CCS) that a percentage of all credits from a CCS project be diverted into the buffer account to create an insurance pool for all CCS projects in the event of a reversal of the credits is needed. Additionally, ARB indicated that other "orphaned" credits could also be placed in the buffer account. As currently written, all diverted generated credits are effectively trapped in the buffer account.

WSPA needs more information on the Buffer Credit concept before taking a position on the concept's viability as, at this point, the concept is not clear in terms of intent and functionality. We do look forward to further discussing this concept with ARB staff.

Page 69. In Table 4, it is suggested that the basis for the change in the energy density of natural gas be stated.

Page 70. The § 95486(b)(3)(A) equation should be clarified by removing the "/" and replacing it with the word "or".

Page 72. Jet Fuel EER needs to be added to Table 5. Also, the rationale of the EER increase for heavy duty BEV or PHEV to 5.0 needs to be provided.

§ 95487 - Credit Transactions

Slide 26. A LCFS credit exchange would only be viable if ARB guarantees the credits. How would ARB be implementing the verification program on credits that have been sold forward but not yet generated? What would happen with the credit bank if future credits were sold for a clean fuel project that goes bankrupt before all (or any) of the credits are generated?

Page 77 and 78. In § 95487(c)(1)(D) and § 95487(c)(3), WSPA suggests the word "business" be added as follows: "...after days (5 business days, 10 business days)".

§ 95488.4 - Lookup Table Fuel Pathway Application Requirements and Certification Process

Page 91. In Table 7, CARBOB CI increased from 99.78 to 100.82. A breakdown the CI of CARBOB and diesel between crude, refinery emissions, transportation, and tail pipe emissions should be provided to explain the contributing factors for the changes. There is a reference to a footnote (1) for CARBOB and diesel but the footnote is missing. Please clarify if footnote is still necessary. Also, the propane CI proposed at the August 7, 2017 ARB Workshop was 89.69 gCO₂e/MJ for crude refining but no explanation has been provide as to why the propane CI has now been reduced to 81.08 gCO₂e/MJ. WSPA requests that explanation.

§ 95488.8 - Special Circumstances for Fuel Pathway Applications

Page 112. While the reference to Renewable Diesel in Table 8 has been stricken, the name “biodiesel” has also been stricken. Does this mean that Fuel Pathway Code (FPC) for plant oil with a CI of 80 may be used for Renewable Diesel before a provisional CI is granted? What is the basis for the changes in the CI values of FPC in Table 8? Were the PFCs BIOD200T, BIOD201T and BIOD202T removed because they will be replaced with other codes?

Page 114. In § 95488.8(c)(2), it is not clear why there is special language for provisional pathways with regard to submission before or after June 30 but no equivalent language for regular pathway submissions (pathway with 24 months of data). WSPA requests clarification.

§ 95488.9 - Maintaining Fuel Pathways

Page 177 and Slide 37. As noted in previous WSPA comment letters, we strongly recommend a tolerance of CI (i.e., +/-5 gCO₂e/MJ) if a verified CI exceeds the approved before enforcement action is taken. As an alternative option, ARB could replace the CI with the higher value, if within the tolerance, with no enforcement action.

Slide 38. In response to modifications/updates to OPGEE and CA-GREET, WSPA requests that ARB provide an implementation protocol and calendar to provide guidance and avoid confusion for regulated parties. We look forward to discussing this item further with ARB staff.

Page 117. Proposed § 95488.9(d) recordkeeping requirements are stated as 10 years. WSPA requests that the limit recordkeeping requirements be no more than 5 years.

§ 95489 - Provisions for Petroleum Based Fuels

Slide 44. Consistent with the ARB staff's request on Slide 16 of the ARB's September 14, 2017 Refinery Investment Credit Pilot Program (RICPP) Workshop, WSPA believes that to better define the types of projects that would be eligible under the RICPP, an eligible project list should developed to include (but not be limited to) such projects as: waste heat recovery, more efficient heat exchanger trains, reduced fired heater duty, natural gas usage reduction, co-generation upgrade, replacement or new installation, solar panels or wind turbine installation or upgrades, and more efficient hydrogen production. If ARB staff opts to compile such a list, we would caution that it should be used for illustrative purposes and urge staff to retain the flexibility to consider/approve energy efficiency projects that are not explicitly listed, as appropriate.

Page 199. Current proposed regulation language under § 95489(f)(1)(A) seems to imply that only projects with air district permits qualify. Not all CO₂e reduction projects will require an authority-to-construct permit. ARB should eliminate the statement “A project is eligible if the authority-to-construct permit was approved after January 1, 2016” in § 95489(f)(1)(A). WSPA believes that project startup date is a more appropriate eligibility criterion, and that any project that starts up post-LCFS re-adoption should be eligible under the program.

§ 95490 - Provisions for Fuels Produced Using Carbon Capture and Sequestration

Pages 212 and 213. It is not clear if the provisions of this section apply to California plants only or to plants located outside California (and outside the United States) as well.

Pages 177 and 213. It appears that eligibility for CCS credits is limited to CO₂ captured on-site per § 95490(a)(1)(A) and § 95489(c)(1)(A)(2). WSPA believes that there are cases where capturing off-site would meet the objectives of the program and, therefore, be allowed. ARB should seek further stakeholder input on this topic to discuss possible links between the implementation of capture off-site and the reduction in carbon intensity of the fuel that is finally produced.

§ 95491 - Fuel Transactions and Compliance Reporting

Page 226. For exports, WSPA does not support the revision of § 95491(d)(1)(C)(1) with regard to the “default percentage values”. Export of gasoline should be E10 and export of diesel should be ULSD.

Page 234. WSPA suggests that an explanation or citation be provided for the term “fuel truncations report” in Table 12.

Page 235. In § 95491.1(a)(1), WSPA suggests that ARB should limit recordkeeping requirement at no more than 5 years, instead of 10 years.

§ 95496 - Regulation Review

This section should not be removed. To the contrary, ARB should establish a frequent, periodic review cycle of the LCFS program to evaluate the feasibility, effectiveness and cost-benefit of the program. WSPA would like to further discuss with ARB staff, in the near future, what the appropriate schedule for LCFS program review may be.

§ 95500 - Validation and Verification

Page 246. In § 95500(d)(3)(A), WSPA requests that clarity be provided as to what is meant by “credit issuance” in the context of the verification of a crude oil report.

Page 247. In § 95500(f), it would be useful for ARB provide guidance as to how a verifier handle a pathway that was submitted with CA-GREET 2.0 prior to 2019. Specifically, our question is how a pathway would be verified when the version of CA-GREET changes.

Page 249. In § 95500(h), it is not clear how ARB determines whether a “correctable error” was indeed a “minor” error versus an intentional omission or misstatement that the verifier caught, but allowed the audited entity to correct. WSPA requests examples of correctable errors.

§ 95502 - Accreditation

Page 268. In § 95502(b)(1)(A), WSPA requests clarity with regard to a small business, not rated by S&P or Moody’s, ability to qualify as a verification body.

Slides 70-72. It is important that the expected pool of Lead Verifiers be sufficient to support the program. Does ARB have an estimate of the number of individuals that are expected to meet all the Lead Verifier requirements?

§ 95503 - Conflict of Interest

WSPA suggests that ARB clarify whether a verifier who provides verification services under the Cap & Trade program can also provide verification services under the LCFS program for the same regulated party without conflict of interest.

WSPA appreciates this opportunity to provide our feedback. If you have any questions, please contact me at (805) 701-9142 or via e-mail at tom@wspa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas A. Gaudin". The signature is fluid and cursive, with a long horizontal stroke at the end.

cc: Catherine Reheis-Boyd, WSPA