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Rajinder Sahota
Industrial Strategies Division Chief
California Air Resources Board
P.O. Box 2815
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Comment Submitted via LCFS Workshop Rulemaking Portal

RE: Low Carbon Fuel Standard ("LCFS") Guidance 20-03, and Related Issues included in Potential Regulation Revisions Workshop

Dear Ms. Sahota,

This letter provides comment regarding the reference in the Low Carbon Fuel Standard ("LCFS") Regulations Revisions Workshop to LCFS Guidance 20-03 ("Guidance"). The staff presentation presented at the LCFS workshop stated,

- Staff is considering proposing to:
  - Incorporate clarifications arising from feedback on guidance 20-03
  - Clarify spending requirements apply to all the entities generating credits using electricity pathways, including electric forklifts and fixed guideway applications
  - Add details on appropriate uses of credit proceeds, including limits on using for administrative costs."[1]

A prior version of this comment was previously submitted in response to the release of Draft Guidance 20-03. We appreciate the review of Guidance 20-03 in an LCFS rulemaking because of its importance and because it is CleanFuture's perspective that Guidance 20-03 goes beyond what is contained in the LCFS regulation. In particular, the LCFS workshop presentation states, "The LCFS regulation requires all entities generating credits using electricity pathways to use the resulting credit proceeds to invest in transportation electrification and include a summary in the annual compliance report."[2] CleanFuture disagrees with this assertion in that the current LCFS regulatory language regarding EV credit proceeds covers only specific applications and entities as further discussed by this letter. CleanFuture appreciates that the California Air Resources

[1] LCFS Potential Regulation Amendments Day 1 Presentation at slide 26, available at https://ww2.arb.ca.gov/sites/default/files/2020-10/101420presentation_carb.pdf ; LCFS workshop information available at https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/lcfs-meetings-and-workshops

[2] Id.

Board (CARB) is revisiting these issues and incorporating clarifications based on feedback to the Draft Guidance. We are also encouraging CARB to change some aspects of what is contained in Guidance 20-03 so that the LCFS regulation remains highly effective and valuable to privately owned EV fleets. One key aspect to emphasize for private fleets at the very outset is that the LCFS credit value is utilized by private fleets to off-set the total cost of ownership for EV fleets, and that this is the single most important factor in facilitating EV market penetration. The LCFS in its current form is well-received by private fleets who appreciate a new revenue stream from their EV fleet. This enthusiasm will be dampened or eliminated to the extent that CARB structures EV proceeds provisions that forces private fleets to spend LCFS credit revenues in a constrained fashion with mandatory reporting that is appropriate only to regulated utilities.

This comment requests that the California Air Resources Board ("CARB") maintain consistency with the existing LCFS regulatory language in the following respects: a) the requirements imposed by Guidance 20-03 and the Reporting Template should apply only to Load-Serving Entities (LSEs) and not to non-LSEs; b) in the forklift sector, Guidance 20-03 approaches and Reporting Template should apply only to Electric Distribution Utilities (EDUs); and, c) CARB should not impose a minimum mandated level of credit proceeds spending on non-LSEs.

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CleanFuture is a leading environmental company that has worked for over a decade to electrify and improve the efficiency of a wide range of vehicle fleets. CleanFuture is a designated credit generator for hundreds of fleets and thousands of vehicle units pursuant to California's LCFS. CleanFuture strongly supports the LCFS program and the electrification of the full range of vehicle types. As discussed in this comment, based on CleanFuture's extensive participation in this rapidly evolving marketplace, it is our firm opinion that the imposing of sweeping obligations on non-LSEs in these categories and sectors will have the unintended consequence of making the LCFS less successful in achieving its objectives. For the various EV markets, CleanFuture recommends that CARB recognize the remarkable and growing success of the LCFS program and follow the time-tested maxim, "since it isn't broken, don't fix it."

Analysis of Obligations Imposed by the Guidance 20-03 and Reporting Template As compared to the LCFS Regulatory Language

In the Guidance, several statements suggest that the LCFS regulation imposes spending requirements upon entities including non-LSEs generating credit using electricity pathways ("electricity credit") in all categories except for ZEV Fueling Infrastructure pathways. The following excerpts are representative but are not an exhaustive list of these statements.

The first sentence of the background section states, "The LCFS regulation requires entities generating credit using electricity pathways (referred to as "electricity credit") to use the resulting credit proceeds to benefit Electric Vehicle (EV) drivers and their customers, and generally invest in projects that promote transportation electrification in California."

This statement is found on the third page of the Guidance:

> "*Non-LSEs may use the electricity credit proceeds resulting from a specific category or sector of electric transportation to invest in transportation electrification projects in the same category or sector. For example, an entity generating electricity credits for public EV charging can use the proceeds to incentivize public EV charging or deploy additional*

> *EV charging infrastructure. Through the annual reporting, entities may demonstrate that they have exhausted opportunities to promote electric transportation in a specific category or sector and use credit proceeds to support transportation electrification in another category or sector."*

Following this statement are a list of examples of spending for a wide range of vehicle types including "electric forklifts, electric cargo handling equipment, electric transportation refrigeration units, electric buses, electric trucks, etc."

Similarly, the Reporting Template imposes expansive obligations on entities that generate electricity credits. The Credit Balance tab of the spreadsheet requires disclosure of confidential business information ("CBI") including electricity credits carried over from the previous calendar year, electricity credits generated during the calendar year, and total proceeds resulting from electricity credits sold during the calendar year. The Qs for All Entities tab requires additional information that businesses typically treat as confidential including a description of all projects funded by electricity credit proceeds, a breakdown of spending for each project, and electricity credit proceeds earmarked for future use.

1. The Imposition of Mandatory Use and Reporting of LCFS Credit Proceeds on Private Businesses Constitutes a Substantial Regulatory Burden.

The Low Carbon Fuel Standard was originally approved by the Office of Administrative Law and became effective on April 15, 2010, and thus is about to enter into its second decade of existence. CARB consistently points to the LCFS as one of its flagship greenhouse gas (GHG) programs, and the program is highly innovative in its use of a market-based mechanism to decarbonize transportation fuel. In terms of cumulative LCFS credit value, the LCFS market is heavily dominated by private businesses including petroleum refiners and importers who are the regulated parties, and companies that produce the largest credit generating fuels: ethanol, renewable diesel, biodiesel, and biomethane. Notably, while the LCFS mandates that the regulated parties achieve the annual fuel standards, it does not dictate the means of compliance. Similarly, the LCFS does not impose mandates on the large volume fuel producing LCFS credit generators that would require these private businesses to spend credit proceeds in a particular manner and report this spending to CARB. For these businesses, CARB is appropriately relying on the market-based nature of the LCFS to incentivize these businesses to supply low carbon fuels to the California transportation market and decarbonize these fuels to the greatest extent feasible. These companies are not burdened to spend proceeds from LCFS credit sales in a prescribed manner and to report that spending to CARB. These LCFS participants continue to generate the large majority of LCFS credits and this free market approach has been highly successful in growing supply and lowering the CI of these fuels.

In the past several years, electricity has become a more significant source of LCFS credit generation and has changed the LCFS landscape with electricity credits representing 19% of credit generation.[3] In particular, highly energy efficient EVs benefit from energy economy ratios (EERs) such that these vehicles can generate significant credits even though the electric "fuel" that the vehicles typically use is comparable in carbon intensity (CI) to diesel, gasoline and fossil

[3] LCFS Quarterly Data Spreadsheet (last updated January 31, 2020), available at https://ww3.arb.ca.gov/fuels/lcfs/dashboard/quarterlysummary/quarterlysummary_013120.xlsx

natural gas. Also importantly, the EDUs that supply electricity to the residences of light-duty EV drivers are not in the business of supplying low carbon intensity fuel but are instead investor owned utilities, publicly-owned utilities, or electrical cooperatives in the business of supplying electricity. Given this situation, there are sound policy reasons for CARB to impose credit proceed use and reporting obligations on EDUs in that these participants are essentially receiving revenues based on their customers' activities.

The policy justification for mandating expenditures and reporting is undercut when the electricity credits are generated by private businesses such as grocery and warehouse retailers with forklift fleets, ports and marine terminals electrifying heavy duty freight and goods movement equipment, local and last-mile delivery fleets electrifying medium- and heavy-duty trucks, and truck fleets electrifying transport refrigeration units. CleanFuture has extensive experience working with these fleets to electrify transport and goods movement and has learned through experience that deliberately taking on new regulatory and reporting burdens is a massive deterrent to these businesses. It is for this reason that CleanFuture has built a robust business that takes on the full range of LCFS compliance responsibilities on behalf of these companies. Businesses considering opt in to the LCFS program must determine whether the time their employees will spend on program compliance and are also concerned by the complexity of the program, the distraction from their core business, and the possibility of future regulatory changes. These businesses are highly averse to disclosing any of their revenue streams or budget plans to state agencies. The companies regard their revenue and expenditures as CBI that should not be disclosed. The companies do not maintain LCFS credit revenue in a segregated account and do not separately develop and track electrification projects budgets. Instead, the companies receive LCFS credit revenue into their general account, and appreciate that the new revenue is improving the typically higher operational expenditures (OPEX) and capital expenditures (CAPEX) associated with electrification. These businesses internally recognize the value of the LCFS program and are enabled to expand their electrification programs as a result.

For all of these reasons, CARB should consider that as a likely outcome that by imposing mandatory credit proceeds tracking, forecasting and reporting requirements, CARB will inadvertently discourage fleet participation in the LCFS and retard the electrification of both private businesses and complex public/private entities like ports/marine terminal operators. CleanFuture predicts this outcome because we have direct experience with how difficult it already is to convince fleets to participate in the voluntary but complex regulatory program. Numerous potential LCFS participants are highly concerned about what strings are attached to the LCFS participation. In multiple instances, CleanFuture has seen businesses delay or decline to participate in the LCFS program because of these concerns; even without the new burdens that CARB is now proposing to impose.

Due to the profound significance of this type of novel regulatory burden on private businesses, such a burden should only be imposed through the use of tailored regulatory language that establishes clear obligations, with the proposed regulations subject to a robust public review process. The following review of the regulatory language and the public process specific to these regulations reveals that there was no public process review of these issues in the LCFS

rulemaking because the changes were quietly added at the final stages of the rulemaking. This contrasts significantly with the robust public participation that occurred on the issue of the use of revenue proceeds by LSEs. As further discussed below, a review of the Final Statement of Reasons (FSOR) reveals that there were 23 references to credit proceeds included.[4] Twenty of these references were comments relating to EDUs or the Statewide Point of Purchase Rebate Program and the other three references were CARB responses to the comments. CleanFuture has been unable to identify any discussion in the FSOR or elsewhere in the rulemaking record of imposing new regulatory burdens on non-LSEs. As a result, the Guidance and Reporting Template should not be applied to non-LSEs until sufficient regulatory language is proposed and reviewed in a rulemaking process.

2. **The plain language of the LCFS Regulation imposes on non-LSEs only the obligation to report Credit Proceeds from Non-metered Residential EV Charging.**

The Guidance asserts that §95491(d)(3)(A) paragraphs 2-7 impose the credit proceeds requirements. However, a review of §95491(d)(3)(A) establishes that the provision addresses only the "Specific Quarterly Reporting Parameters for Electricity used as a Transportation Fuel" (the heading) "For Non-Metered Residential EV charging" (the subheading). The interpretation that paragraphs 2-7 pertain only to non-metered residential EV charging is reinforced by the text of §95491(d)(3)(A)(1) which states: "the EDU must provide the Executive Officer Daily Average EV Electricity Use data for the calculation of credits for non- metered charging from the prior quarter." Consistent with this, there is no reference in §95491(d)(3)(A) that pertains to any type of credit generation except for non-metered residential EV charging.

The interpretation that limits the scope of the subsection to non-metered residential EV charging is fully consistent with the language of §95491(d)(3)(A)(7) which refers to the non-LSE using the credit proceeds "to benefit EV drivers and their customers, and educate them about the benefits of EV transportation (including environmental benefits and costs of EV charging, or total cost of ownership, as compared to gasoline)." This language was clearly developed to reference drivers of light-duty passenger EVs. It is largely irrelevant to such applications as electric trucks, electric buses, electric forklifts, electric transport refrigeration units, electric power for ocean-going vessels, and electric cargo handling equipment. However, despite the limited scope of §95491(d)(3)(A), the Guidance and Reporting Template impose use of LCFS credit proceeds and reporting obligations that far exceed non-metered residential EV charging and extend to electric trucks, electric buses, electric forklifts, electric cargo handling equipment, electric transportation refrigeration units, and electric power for ocean-going vessels.

3. **The Cross-references from §95483(c)(2)(C) and §95483(c)(5)(C) to §95491(d)(3)(A) are Insufficient to Create a Novel Reporting Obligation for Private Businesses Due to the Lack of Clear Regulatory Language and Public Notice.**

While it is not referenced in the Guidance Document, CARB may be relying on

[4] Final Statement of Reasons, Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, at https://ww3.arb.ca.gov/regact/2018/lcfs18/fsorlcfs.pdf?_ga=2.30209530.419167578.1586289546-1395274998.1525713939 .

§95483(c)(2)(C) as the regulatory basis for establishing obligations relating to credit proceeds from non-residential EV proceeds. That provision states, "An entity that generates credits for non-residential EV charging must meet the requirements set forth in paragraphs 2. through 7. in section 95491(d)(3)(A), as applicable." However, this provision is highly ambiguous in that it imposes the obligation on "Non-Residential EV Charging" by cross-referencing a provision entitled, "Non-Metered Residential EV Charging" and imposes the requirements "as applicable". To clearly impose these reporting obligations on a category other than non-metered EV residential charging, this provision would logically be included in the specific reporting regulation that pertains to Non-Residential EV Charging: §95491(d)(3)(C).

For Electric Transport Refrigeration Units (eTRU), Electric Cargo Handling Equipment (eCHE), and Electric Power for Ocean-going Vessels (eOGV), a parallel provision exists in §95483(c)(5)(C) that provides, "An entity that generates credits for eTRU, eCHE, or eOGV must meet the requirements set forth in paragraphs 2. through 7. in section 95491(d)(3)(A), as applicable." This provision suffers from the same ambiguity as exists in §95483(c)(2)(C). To clearly impose these reporting obligations on categories other than non-metered EV residential charging, this provision would logically be included in the specific reporting regulation that pertains to the specific type of charging: §95491(d)(3)(F)(for eTRUs), §95491(d)(3)(G)(for eCHEs), and §95491(d)(3)(H)(for eOGVs).

A review of the rulemaking record for the LCFS regulation does not resolve the ambiguity of this language or clarify CARB's intent. The language contained in §95483(c)(2)(C) and in §95483(c)(5)(C) was inserted during the final stages of the rulemaking process, the second 15-day comment period.[5] A review of the presentation from the Public Workshop held August 8, 2018 establishes that the key topic under consideration at this stage of the rulemaking pertained to the crediting provisions for zero emission vehicle fueling infrastructure and other electricity reporting and crediting provisions.[6] Problematically, there was no reference in any of these public materials or in the Final Statement of Reasons to identify the implications of this provisions or to describe CARB's intent in making these last-minute changes that would be used as a regulatory basis for imposing mandatory spending and reporting burdens on private businesses.[7]

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[5] See Proposed Second 15-Day Modifications (posted August 13, 2018), at p. 50-51. This updated version of the proposed LCFS Regulation added the cross-reference to §95491(d)(3)(A)(7) and the phrase "as applicable". Available at https://ww3.arb.ca.gov/regact/2018/lcfs18/15dayatta2.pdf?_ga=2.193065320.419167578.1586289546-1395274998.1525713939

[6] See Attachment D, Public Workshop Materials from a public workshop held on August 8, 2019 by CARB during the development of the 2018 Proposed Amendments to the LCFS Regulation, at p. 5 (Draft Agenda), and the accompanying presentation. Available at https://ww3.arb.ca.gov/regact/2018/lcfs18/15dayattd2.pdf?_ga=2.231415386.419167578.1586289546-1395274998.1525713939 .

[7] Final Statement of Reasons, Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, at https://ww3.arb.ca.gov/regact/2018/lcfs18/fsorlcfs.pdf?_ga=2.30209530.419167578.1586289546-1395274998.1525713939 .

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Given the significant implications of imposing mandatory spending and reporting obligations on private businesses, the ambiguous nature of the regulatory language itself, and the lack of clarification or notice of the intended imposition of these burdens in the rulemaking record, these obligations upon private businesses to spend money in a directed fashion cannot be imposed by the establishment of the Guidance and Reporting Template. As stated in the Guidance, "It is not intended to and cannot establish new mandatory requirements beyond those that are already in the LCFS Regulation, nor can it supplant, replace or amend any of the legal requirements of the regulation." CleanFuture therefore appreciates that CARB is now addressing these issues in a rulemaking.

Until the rulemaking process is complete and new regulations fully approved, CleanFuture requests that CARB retract Guidance 20-03.

4. **Section 95483(c)(4) establishes the reporting obligations for Electric Forklift Fleets and imposes credit proceeds use and reporting obligations on EDUs only.**

In addition to the broad issues pertaining to why the LCFS regulation does not clearly or properly impose these obligations on non-LSEs, there is also controlling language in the regulations that establishes that the electric forklift sector is only subject to the use and reporting provisions if the credits for electric forklifts are generated by EDUs.

As previously noted, §95483(c)(2)(C) states, "An entity that generates credits for non-residential EV charging must meet the requirements set forth in paragraphs 2. through 7. in section 95491(d)(3)(A), as applicable." (emphasis supplied) Within that same section but specific to forklifts, §95483(c)(4)(B)(3) states, "The EDU can generate credits for electricity supplied to electric forklift fleet in its service territory during a reporting period if not claimed by any other entity under paragraphs 1. and 2., above. The EDU must meet the requirements in section 95491(d)(3)(A), paragraphs 3. through 5." Subsections §95483(c)(4)(A) for forklift fleet owners and §95483(c)(4)(B) for fleet owner designees contain no similar reference to 95491(d)(3)(A). Therefore, for forklift fleets, the LCFS regulation clearly provides that credit proceeds use and reporting requirements are only imposed on Electric Distribution Utilities.

5. **If CARB imposes any credit proceeds use and reporting obligations on non-LSEs, the LCFS regulation establishes no mandatory minimum level of credit proceeds spending.**

Section 95491(d)(3) establishes the "Specific Quarterly Reporting Parameters for Electricity used as a Transportation Fuel." The obligations relating to credit proceeds are found at §95491(d)(3)(A)(2)- (7). The primary operative provisions pertaining to LSEs and non-LSEs differ regarding the required level in one crucial respect: the level of spending that is required from credit proceeds. As the following regulatory language establishes, the LSE must use "all credit proceeds" whereas there is no corresponding mandated level of spending for non-LSEs:

2. The LSE must use all credit proceeds to benefit

current or future EV drivers in California; (emphasis supplied)

(…)

7. A non-LSE credit generator must use credit proceeds to benefit EV drivers and their customers, and educate them about the benefits of EV transportation (including environmental benefits and costs of EV charging, or total cost of ownership, as compared to gasoline). The credit generator must include, in their Annual Compliance Report, an itemized summary of efforts and costs associated with meeting these requirements.

The "all" in §95491(d)(3)(A)(2) that pertains to LSEs is underlined above to emphasize that the word "all" does not appear in the same location of 95491(d)(3)(A)(7). The LCFS Regulation therefore does not impose the same mandatory 100% level of spending on non-LSE credit generators as it does for LSE credit generators.

6. There was Insufficient Time to Impose this Novel and Burdensome Reporting Requirement on Private Businesses for LCFS Credits Generated in 2019.

As has been discussed by this comment, the LCFS regulation does not clearly impose mandatory use and reporting obligations on private businesses and the rulemaking record makes clear that these provisions were added at the final stages of the LCFS rulemaking. The Guidance and Reporting Template are the first clear indications to market participants that CARB intends to impose both spending and reporting requirements. As a result of this lack of clear regulatory obligation, market participants have been unaware of these responsibilities and have not been tracking and gathering the necessary information to enable reporting. It is therefore requested that any such requirements should attach as of the effective date for the revised version of the LCFS regulation.

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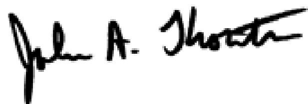
Conclusion

For all of these reasons, CleanFuture respectfully requests that CARB retract the Guidance and Template and clarify that consistent with the LCFS regulation: a) the obligations contained in the Guidance and Template apply only to Load-Serving Entities (LSEs) and do not apply to non-LSEs; b) in the forklift sector, the Guidance and Template only apply to Electric Distribution Utilities (EDUs); c) there is no minimum mandated level of credit proceeds spending imposed on non-LSEs; and, d) that any credit proceeds reporting that CARB does impose on non-LSEs is not initiated until the effective date of the regulations.

CleanFuture looks forward to working with CARB further on the development of these regulations which are of major importance to the industries that we serve.

Thank you for the opportunity to comment.

Sincerely,



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