

# Comments on Proposed Low Carbon Fuel Standard Amendments Based Upon October 14, 2011 Draft

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Thank you for the opportunity to comment on the proposed changes to the Low carbon Fuel Standard. These comments pertain to the draft of the proposed regulation that was published for use in the October 14, 2011 Workshop. The proposed changes will make satisfying the LCFS more difficult.

## **§95486 comments**

If I heard staff correctly during the workshop, comments received based upon the Draft that was released for the September 14, 2011 workshop were either incorporated in this draft or rejected for some reason. Therefore rather than revisit the comments I submitted on the earlier draft LCFS regulation I will focus on the latest draft and the existing regulation. The proposed changes in §95486 continue to have the greatest potential to make it more difficult for biofuel producers to supply California with cleaner burning biofuels and may create trade barriers.

Again, if I heard staff correctly during the October 14, 2011 Workshop, the changes in language in §95486 are intended to clarify rather than actually change the LCFS regulation. I disagree. To illustrate why I disagree I have constructed a table comparing the existing regulation with the October 14, 2011 version of proposed regulation.

Note, the construction of this comparison has been made more difficult by a clerical error that resulted in proposed changes appearing to be part of the existing regulations. Also, portions of the existing regulation that were crossed out in the September draft are not crossed out in the October draft. When commenting on portions of text with conflicting cross outs I will comment when the new text creates a significant change in the regulation or when assuming both portions of text survive review would create conflict. I strongly recommend you correct this error before the Office of Administrative Law (OAL) begins their review and definitely before the start of the official 45 day comment period.

## Comparison of Existing and Proposed LCFS §95486

Existing	Proposed per October, 14, 2011	Impact
(a)(2)...must use Method 1 as set forth in (b)(2)(B) unless approved for using 2A or 2B	(a)(2)...may use method 1 if Lookup Table contains closely corresponding pathways	Difference between <u>must</u> use and <u>may</u> use is significant change not a clarification.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to Executive Officer (EO) approval.	(a)(2) to closely correspond the pathway must be consistent in all in <u>all</u> important respects with the Lookup Table pathway documentation	"most closely corresponds" is doable. "all" is generally non attainable. The proposed regulation really says very few if any can use Method 1. This is a big change that stops low carbon fuel innovation.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(A)(B)(C)(D)(E)(F) pathway corresponds closely when it is generally consistent with Lookup Table pathway in the following areas: (A)(B)(C)(D)(E)(F)	"all important" & "generally consistent" in proposed regulation are inconsistent and undefined. Change from one to five criteria is a major change not a clarification.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(A) Feedstocks used	Could be considered to be a clarification because "production process" probably includes feedstock selection.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(B) Production technology	Could be considered to be a clarification because "production process" probably includes production technology.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(C) Geographic Regions	Definitely a significant change because not included in existing regulations. Also, OAL should consider the potential for this provision to make CA vulnerable to restraint of trade litigation. Net differences probably not significant see Note 1.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(D) Modes of transportation	Definitely a significant change because not included in existing regulations. Also, net differences may be insignificant and Lookup Table values contain errors that overstate renewable diesel distribution and use carbon by 0.43gmCO <sub>2</sub> e/MJ. See Note 2.
(b)(2)(B)Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(E) Types and amounts of energy consumed by feedstocks and process	Definitely a significant change because not included in existing regulations. Net differences probably insignificant. It takes about the same amount of energy to do the same work regardless of location. Global economic pressure makes high energy consumers non-competitive. Note 1 provides a confirming opinion.

(b)(2)(B) Except for approved 2A & 2B pathways must use the Lookup Table CI that most closely corresponds to the production process subject to EO approval.	(a)(2)(E) CI must be lower than Lookup Table pathway or shall do 2B pathway	Definitely a significant change because not included in existing regulations. Accuracy of LCA and ILUC CI methodology does not justify one way street for non substantial differences. See Note 1 for precedent.
(a)(3) if the EO disagrees with the CI selected from the Lookup Table by the regulated party the EO shall choose a CI from the Lookup Table that most closely corresponds to the pathway for the that fuel	(a)(3) if the EO believes the Lookup Table does not contain a closely corresponding pathway the EO shall rule out the use of Method 1	The change from "shall chose" to "shall rule out the use of" is a significant change not a clarification.
Note1: In their proposed rule, "Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards" EPA states, " <i>GHG emissions from producing biodiesel with canola/rapeseed grown in other countries should be very similar to the GHG emissions we modeled for Canadian and U.S. canola, though they could be slightly (and insignificantly) higher or lower.</i> "		
Note 2: Renewable diesel will be distributed via pipeline like ULSD not via truck like biodiesel and renewable diesel decreases NOx emission 14% relative to ULSD.		

By now an impartial observer should agree that some of the alleged clarifications are actually significant changes not clarifications. That is not a problem if previously approved and pending applications to use Method 1 pathways are grandfathered under the existing regulations.

The "all" and "generally consistent" language and definition need to be resolved in the proposed (2)(a) language before the regulation becomes effective.

The potential trade litigation issues the (a)(2)(C) provision can create should be considered before "Geographic regions" are added to the criteria for using Method 1.

Embracing USEPA's precedent: "*GHG emissions from producing biodiesel with canola/rapeseed grown in other countries should be very similar to the GHG emissions we modeled for Canadian and U.S. canola, though they could be slightly (and insignificantly) higher or lower.*" should greatly reduce staff Method 2B pathway workload, increase potential low carbon fuel supply and lower LCFS compliance costs. It may be too late to adopt such a policy during the rulemaking but the Board should definitely be asked if it should be considered in the future.

### Other issues

Will increasing the CI of diesel fuel and gasoline make it necessary to recalculate all of the completed pathways? When new pathways are applied for will they use the old or the new diesel and gasoline CIs?

Assuming we do not have to recalculate all of the pathways because the CI's of gasoline and diesel fuel increased, the increased carbon intensities (CI) for CARBOB and CARB ULSD are steps in the right direction for everyone except low carbon blendstock producers. Increasing the CI of CARBOB from 95.86 to 97.52 gmCO<sub>2</sub>e/MJ and the CI of CARB ULSD from 94.71 to 96.36 gmCO<sub>2</sub>e/MJ will make the

carbon reduction in California larger while making low carbon fuel blendstocks more effective, lowering their demand, lowering overall LCFS compliance costs, strengthening the California economy and lowering world carbon emissions caused by indirect land use change. This change is unfair to those who have made investments based upon projected demands that assumed the lower base fuel CIs. Hopefully the value increase due to increased effectiveness and increased base fuel demand due to a stronger California economy will offset some of the value loss caused by reduced demand caused by the increased effectiveness. Knowing that they have harmed low carbon blendstock investors, it would be nice if regulators would look for ways to lower rather than raise barriers to market participation. Two areas for potential improvement are:

- 1) Reduce uncertainties such as those associated with land use change.
- 2) Streamline the 2A/2B application process and minimize the associated paperwork requirements

Delaying the resolution of the LUC issue until 2012 increases uncertainty.

The 2A/2B certification program has the potential to be helpful if the paperwork requirements are simplified and minimized.

Making the pathway available only to the applicant has the potential to add value for the biofuel investor but also has the potential to create an excessive number of pathways that could complicate compliance.

The availability of default pathway values should not be used as an excuse for delaying CARB in house and 2B pathway completions because blendstocks that use the default values simply will not be able to compete with blendstocks that qualify for lower CIs.

Argonne has released an updated GREET model. It has some fuels and default values that are not in the current CA GREET model. When will they be incorporated into the CA GREET? Can applicants use values from the latest GREET model as validated or verified inputs to the CA GREET model? A yes answer might facilitate the certification procedure.