

State of California
AIR RESOURCES BOARD

**Third Notice of Public Availability of Modified Text and
Availability of Additional Documents and Information**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE
LOW CARBON FUEL STANDARD REGULATION

Public Hearing Date: December 16, 2011
First Public Availability Dates: April 10, 2012 – April 25, 2012
Second Public Availability Dates: August 9 – August 24, 2012
Public Availability Date: September 17, 2012
Deadline for Third Public Comment Period: October 2, 2012

At its public hearing on December 16, 2011, the Air Resources Board (Board or ARB) approved various amendments to California Code of Regulations (CCR), title 17, sections 95480.1, 95481, 95482, 95484, 95485, 95486, 95488, 95490, and adoption of new sections 95480.2, 95480.3, 95480.4, and 95480.5. The approved sections, along with other sections in 17 CCR section 95480 et seq. that were not proposed for modification in this regulatory action, comprise a regulation for implementing the Low Carbon Fuel Standard (collectively referred to hereinafter as “LCFS” or “LCFS regulation”).

The Board’s Action

At the December 2011 hearing, the Board approved a modified staff proposal in response to comments received during the 45-day public comment period that began with release of the public hearing notice on October 26, 2011. The Board subsequently directed the Executive Officer to complete the rulemaking by adopting the final amendments, along with such conforming modifications as may be appropriate. As a result, the first Notice of Public Availability of Modified Text (First 15-Day Change Notice) was issued on April 10, 2012, for which the public comment period ended April 25, 2012.

Based on the comments received, additional modifications to the regulatory text were proposed in the Second Notice of Public Availability of Modified Text (Second 15-Day Change Notice), which was issued on August 9, 2012, with a deadline for public comments of August 24, 2012. That second notice also expressed ARB’s intent to develop additional calculation methodologies, accounting procedures, and other measures to further refine the provisions that address the carbon intensity of petroleum crude oils, blendstocks, intermediates, and finished products refined in California or imported into the State.

As stated in the Second 15-Day Change Notice, staff intended to bifurcate adoption of the regulatory amendments presented at the December 2011 Board hearing. However, due to impending revisions and refinements to some non-crude related amendments, the rulemaking will no longer be bifurcated. Instead, all of the amendments presented at the hearing will be included in one submittal to the Office of Administrative Law (OAL). This would allow all of the amendments and modifications presented in this rulemaking to be considered at one time and will keep the overall rulemaking as clear and simple as possible.

The modified regulatory language is shown in Attachment 1. In this Third 15-Day Change Notice, the original regulatory text is shown in plain type. The proposed modifications, released on October 26, 2011, are shown in ~~striketrough~~ to show deletions and underline to indicate additions. The proposed modifications, released on April 10, 2012, are shown in ~~double strikethrough~~ to indicate deletions and double underline to indicate additions. The proposed modifications, released on August 9, 2012, are shown in ~~double strikethrough italics~~ and double underline italics for deletions and additions, respectively. New proposed deletions and additions to the modified regulatory language, for which we are soliciting comments with this Third 15-Day Change Notice, are shown in ~~double strikethrough bold italics~~ and double underline bold italics, respectively.

Modified Text Being Made Available

The modified regulatory text (Attachment 1) is available online at the following ARB website:

<http://www.arb.ca.gov/regact/2011/lcfs2011/lcfs2011.htm>.

If you would like a hardcopy of this attachment sent to you through postal mail, please contact Ms. Aubrey Sideco at (916) 324-3334 and give your name, company name (if any), and mailing address.

Summary of Proposed Modifications

The following is a summary of the proposed substantive modifications to the regulation and staff's rationale for making them. All references to sections refer to title 17, CCR, unless otherwise noted. The following list does not include modifications to correct typographical and citation errors, numbering errors, grammar errors, or the rearranging of sections and paragraphs for structural improvements, nor does it include minor revisions made to improve clarity or other nonsubstantive modifications.

Section 95480.3. Procedure for Opting Into and Opting Out of the LCFS Program.

1. *Clarified Information Required to Opt-In to the LCFS. Section 95480.3(a).*

Staff proposed language to clarify the information required to be submitted to ARB in order to opt-in to the LCFS program.

2. *Clarified Process for Opt-In Parties to Select Carbon Intensity Value. Section 95480.3(b).*

Staff proposed language to clarify the process for a party that opts-in to the LCFS program to select a carbon intensity value.

3. *Clarified Recordkeeping Requirements for Parties That Opt-In to the LCFS Program. Section 95480.3(d).*

Staff proposed language to clarify that the LCFS recordkeeping requirements applicable to regulated parties will apply to parties that opt-in to the LCFS.

Section 95480.5. Jurisdiction.

4. *Added submittals pursuant to the crude oil innovative method provision to be subject to California jurisdiction. Section 95480.5(a)(3).*

Staff added language providing that submittal of documentation to ARB pursuant to section 95486(b)(2)(A)4., the crude oil innovative method provision, establishes a person's consent to be subject to the jurisdiction of California.

Section 95481. Definitions and Acronyms.

5. *Clarified Definition of "Aggregation Indicator". Section 95481(a)(1).*

Staff proposed a modification to clarify definition of "Aggregation Indicator".

6. *Clarified Definition of "Biofuel Production Facility". Section 95480.3(a)(8).*

Staff proposed a modification to clarify definition of "Biofuel Production Facility".

7. *Clarified Definition of "Business Partner". Section 95480.3(a)(15).*

Staff proposed a modification to clarify definition of "Business Partner".

8. *Added definition for "day." Section 95481(a)(18.1)*

Staff added a definition for "day" to mean calendar day unless otherwise specified.

9. *Clarified definition for "LRT Reporting Deadlines." Section 95481(a)(40)*

Staff clarified the definition of "LRT Reporting Deadlines" by referencing the quarterly and annual reporting dates specified in section 95484(b)(1).

10. *Clarified definition for “On Road”. Section 95481(a)(45)*

Staff proposed a modification to clarify the definition of “On Road”.

11. *Clarified definition for “Physical Pathway Code”. Section 95481(a)(47)*

Staff proposed a modification to clarify the definition of “Physical Pathway Code”.

12. *Clarified definition for “Production Facility”. Section 95481(a)(51)*

Staff proposed modifications to clarify the definition of “Production Facility”.

13. *Clarified definition for “Transaction Date”. Section 95481(a)(56)*

Staff proposed modifications to clarify the definition of “Transaction Date”.

14. *Clarified definition for Transaction Quantity” Section 95481(a)(57)*

Staff proposed modifications to clarify the definition of “Transaction Quantity”.

15. *Clarified definition for “Transaction Type” Section 95481(a)(58)*

Staff proposed modifications to clarify the definition of “Transaction Type”.

Section 95482. Average Carbon Intensity Requirements for Gasoline and Diesel.

16. *Revised Tables 1 and 2 LCFS Compliance Schedules. Section 95482(b) and (c).*

Staff revised the LCFS compliance schedules with updated average carbon intensity requirements for gasoline and diesel fuel. The average carbon intensity requirements for years 2013 to 2020 reflect reductions from revised base year 2010 carbon intensity values for California reformulated gasoline (CaRFG) and ultralow-sulfur diesel (ULSD).

95484. Requirements for Regulated Parties

17. *Revised reporting requirements. Section 95484(b)(3)(A)4.*

Staff revised the quarterly and annual reporting requirements to accommodate situations when crude is supplied to a refinery without a Marketable Crude Oil Name (MCON). Slight revisions were made to further clarify what producers of California reformulated gasoline blendstock for oxygenate blending (CARBOB), gasoline, or diesel must report for each of its refineries.

18. *Revised Table 3. Section 95486.*

Staff revised the *Summary Checklist of Quarterly and Annual Report Requirements* (Table 3) to be consistent with revisions made to the reporting requirement for gasoline and diesel.

95486. Determination of Carbon Intensity Values

19. *Clarified definition for “Unable to be Determined” Section 95486(a)(4)*

Staff proposed modifications to clarify when a carbon intensity value is defined as “unable to be determined”.

20. *Added Oil Production Greenhouse Gas Emissions Estimator (OPGEE) model (version 1.0) information and incorporated by reference. Section 95486(b)(1).*

Staff added the Oil Production Greenhouse Gas Emissions Estimator (OPGEE) model (version 1.0) information to clarify the specific model, or equivalent model, to be used for the generation of carbon intensity values for crude oil production and transport to California refineries. The OPGEE model version 1.0 is incorporated in the regulation by reference.

21. *Updated fuel pathway supplements. Section 95486(b)(1).*

Staff updated the fuel pathway supplements for CARBOB, CaRFG, and ULSD (supplement version 2.0, dated September 12, 2012).

22. *Added individual crude carbon intensity values in new Table 8. Section 95486(b)(1).*

Staff added individual crude carbon intensity values in separate Table 8, and revised Tables 6 and 7 Carbon Intensity Lookup Tables for gasoline, diesel and their substitutes with updated 2010 CARBOB, ULSD, and baseline crude average carbon intensity values for each fuel.

23. *Updated carbon intensity values to 2010 baseline. Section 95486(b)(2)(A)1.*

Staff updated CARBOB, ULSD, and Baseline Crude Average carbon intensity values to reflect a 2010 Baseline. The 2009 baseline calendar year referenced in CARBOB and diesel fuel deficit calculations were updated to 2010.

24. *Included application process for innovative crude production methods. Section 95486(b)(2)(A).*

Staff proposed modifications to specify the process for a crude oil producer to apply for approval of innovative crude production methods. A regulated party or oil producer would need to obtain approval of the innovative crude oil production method before a

regulated party can receive credit under the LCFS regulation for use of that crude oil production method.

25. *Clarified Method 2A/2B pathway application requirements. Section 95486(f)(3)(C).*

Staff proposed language to clarify the information that would be required to be submitted in the Method 2A/2B application form and made modifications to other application requirements, including format for citations and references.

26. *Specified process for application completeness determination. Section 95486(f)(3)(D).*

Staff proposed revisions to clarify the process that will be used to determine if a Method 2A/2B application is complete and the process for a party to submit additional information, if needed.

27. *Clarified procedures for public comment on Method 2A/2B applications. Section 95486(f)(3)(E).*

Staff proposed modifications to specify the process for submission of public comments on Method 2A/2B applications and the applicant's opportunity to respond to any public comments on Method 2A/2B applications.

28. *Specified the date on which evaluation of a Method 2A/2B application will begin. Section 95486(f)(3)(F).*

Staff proposed modifications to clarify the time period for evaluation of a Method 2A/2B application, including the date on which evaluation would begin.

29. *Specified That Method 2A/2B Applications Denied without Prejudice May Be Resubmitted. Section 95486(f)(3)(H).*

Staff proposed amendments to clarify the applications that are denied without prejudice may be resubmitted.

30. *Clarified evaluation criteria for Method 2A/2B applications. Section 95486(f)(3)(I).*

Staff proposed amendments to clarify the criteria against which Method 2A/2B applications would be evaluated.

31. *Specified Recordkeeping Requirements for Approved Method 2A/2B Applications. Section 95486(f)(3)(L).*

Staff proposed amendments to specify the recordkeeping requirements for approved Method 2A/2B applications, including that records required to be retained must be submitted to the Executive Officer within 20 days of a written request.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added the following documents to the rulemaking record in support of the proposed action:

- El-Houjeiri, H.M. and A.R. Brandt, Department of Energy Resources Engineering, Stanford University (September 4, 2012), “Oil Production Greenhouse Gas Emissions Estimator (OPGEE) Model Version 1.0;”
- El-Houjeiri, H.M. and A.R. Brandt, Department of Energy Resources Engineering, Stanford University (August 22, 2012, v1.0), “Oil Production Greenhouse Gas Emissions Estimator (OPGEE) Model Version 1.0, User guide & Technical documentation;”
- Supplement Version 2.0 (September 12, 2012) to Stationary Source Division, Air Resources Board (February 27, 2009, v.2.1), “Detailed California-Modified GREET Pathway for California Reformulated Gasoline Blendstock for Oxygenate Blending (CARBOB) from Average Crude Refined in California;”
- Supplement Version 2.0 (September 12, 2012) to Stationary Source Division, Air Resources Board (February 28, 2009, v.2.1), “Detailed California-Modified GREET Pathway for California Reformulated Gasoline (CaRFG);” and
- Supplement Version 2.0 (September 12, 2012) to Stationary Source Division, Air Resources Board (February 28, 2009, v.2.1), “Detailed California-Modified GREET Pathway for Ultra Low Sulfur Diesel (ULSD) from Average Crude Refined in California.”

The computer model, its supporting files, and supporting documents and information identified above are being relied upon solely as support for the modified regulatory text as described in this notice.

Availability of the Attachments and Other Materials

By this notice, the modified regulatory text and supplemental documents and information added to the rulemaking record and identified above are being made available for public comment prior to the final action by the Board’s Executive Officer. As noted above, the documents listed above as attachments to this notice can be obtained from ARB’s website at the following address: <http://www.arb.ca.gov/regact/2011/lcfs2011/lcfs2011.htm>, or from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814. If you would like a hardcopy of this

attachment sent to you through postal mail, please contact Ms. Aubrey Sideco at (916) 324-3334 and give your name, company name (if any), and mailing address.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to amend sections 95480.1, 95481, 95482, 95484, 95485, 95486, 95488, 95490, and adopt new sections 95480.2, 95480.3, 95480.4, and 95480.5, title 17, CCR, after making them available to the public for comment for a period of at least fifteen days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such conforming modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments will only be accepted on the modifications identified in this notice or the related supplemental materials and may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>.

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m. local time on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations or the related supplemental materials shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo ó otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments (6)

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.