

ATTACHMENT B

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

Staff's Suggested Modifications to the Original Proposal

TO BE PRESENTED AT THE DECEMBER 16, 2011 HEARING
OF THE AIR RESOURCES BOARD

Note: Shown below are the staff's suggested modifications to the originally proposed regulatory text set forth in Appendix A to the Staff Report: Initial Statement of Reasons, released October 26, 2011. Only those portions containing the suggested modifications are included.

Comments and Suggested Modifications to the Original Regulatory Proposal Set Forth in Attachment A to Resolution 11-39

All proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

Modifications to section 95481, Definitions and Acronyms.

Define "On-Road." Section 95481(a).

It has been suggested that a definition is needed for "on-road" because section 95484(a)(6)(E) refers to "on-road" electricity, and "on-road" is not defined in the regulation. Staff agrees and proposes a modification to section 95481 to reflect this.

Define "Electric Vehicle (EV)." Section 95481(a) and (b).

It has been recommended that a definition is needed for "electric vehicle" because the terms "EV" (electric vehicle) and "BEV" (battery electric vehicle), among others, are used several times in the regulatory text but are not defined. Staff agrees and proposes a modification to section 95481 to reflect this.

Modifications to section 95482, Average Carbon Intensity Requirements for Gasoline and Diesel.

Update Baseline to 2010. Section 95482(b) and (c).

The baseline is the average CI for gasoline and diesel in a specified year; it is the CI level from which the compliance schedule and its overall 10% CI reduction are derived. It has been suggested that an update to the baseline is appropriate at this time. This is because the original 2009 LCFS rulemaking used a baseline year of 2006, reflecting the most recent year for which data were available. At this time, sufficient data are available at this time to update the baseline to 2009 conditions, and sufficient data may

become available in 2012 to update the baseline to 2010. Because the original rulemaking was intended to incorporate the most recent data representing 2010 conditions, staff agrees with this suggestion and proposes a modification to section 95482 to reflect an update to 2009 or 2010 as may be appropriate.

Modify Compliance Schedules to Reflect Updated Baseline. Section 95482(b) and (c).

It has been suggested that, upon updating the baseline to reflect 2009 data, a revision of the compliance schedules in this section would likewise be appropriate. Staff agrees and proposes a modification to the compliance schedules to reflect the updated baseline and the revised compliance schedules based on a 10% reduction from the updated baseline.

Modifications to section 95484(a)(6), Requirements for Regulated Parties.

Include Any “Person” Operating A Fleet, Rather Than Any “Company.” Section 95484(A)(6)(C).

It has been suggested that the proposed regulatory text for EV fleet operators is unnecessarily narrow, restricting such regulated parties to a “company” operating a fleet rather than a “person.” Under Health and Safety Code section 39047, which is incorporated into the LCFS regulation by reference, “person” includes other entities such as an individual, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or other local, State, or federal government agencies. Staff agrees and proposes a modification to reflect this.

Specify the Regulated Party for EV Battery Switching Stations. Section 95484(a)(6)(C).

It has been suggested that the proposed electricity-regulated party provisions applicable to EV fleet owners does not adequately account for a new type of EV charging business model, which is the case of fleets using a battery switching station. In these cases, it has been suggested that it is more appropriate for the switching-station owner, rather than the fleet owner, to get the EV charging credits because the switching-station owner is best positioned to meet the proposed requirements for returning value to the EV consumer and meet the other related proposed requirements. Staff agrees with this suggestion and proposes to add a modification to section 95484(a)(6)(C) to reflect this.

Modifications to section 95485, LCFS Credits and Deficits.

Revise Table 4, Energy Densities of LCFS Fuels and Blendstocks. Section 95485(a)(1).

It has been suggested that an energy density value for denatured ethanol be used to replace the current value shown for anhydrous ethanol in table 4 in section 95485(a)(1). This is because gasoline and similar fuels use denatured ethanol rather than anhydrous ethanol, so specifying denatured ethanol would improve the table’s clarity for stakeholders. Staff agrees and proposes a modification to reflect this.

Modifications to section 95486, Determination of CI Values.

Add Public Comment Period in Method 2A/2B Certification Process To Identify Factual Errors. Section 95486(f)(3).

It has been suggested that, to maintain the existing transparency of the process for approving new fuel pathways under Method 2A/2B, there needs to be a public comment period prior to the EO taking final action on such Method 2A/2B certification applications. Public comments would be restricted to identifying and commenting on the factual basis of a 2A/2B application. Staff agrees and proposes a modification to reflect this.

Update Lookup Tables To Incorporate New Pathways Approved in the February 2011 Executive Officer Hearing. Section 95486(b)(1).

It has been suggested that Tables 6 and 7 in section 95486(b)(1) be modified to incorporate any new or modified fuel pathways that are adopted as a result of the February 2011 Executive Officer hearing. If the Office of Administrative Law (OAL) takes final action on that rulemaking within the rulemaking timeframe for this proposed regulatory action, staff intends to propose a modification to reflect this.

Update the CI Values or Calculational Methodologies for Crude Oil To Reflect Anticipated Updates in 2012. Section 95486(a) and (b).

It has been suggested that the CI values for crude oil, or the calculational methodologies used to generate those CI values, be updated based on ongoing research being conducted by ARB staff, which is anticipated to be completed in early 2012, as well as other updated information available at that time. Because this additional research and information is anticipated to become available within the rulemaking timeframe for this proposed regulatory action, staff agrees with this suggestion and intends to propose modifications as may be appropriate.

Specify Provisions To Address 2011-2012 Treatment of Crude Oil CIs. Section 95486(b)(2)(A).

It has been suggested that, because the proposed changes to the treatment of crude oil CIs, if approved, would not become effective until January 1, 2013, clear and explicit provisions are needed to specify the treatment of crude oil CIs until those proposed changes enter into force in January 2013. Staff agrees with this and proposes a modification to reflect this by codifying portions of administrative actions taken by the Board, as described in several regulatory advisories on the LCFS.

Modifications to section 95488, Banking, Trading and Purchase of Credits.

Modify Provisions To Permit Blind Trading. Section 95488(c).

It has been suggested that the current proposed regulatory text in section 95488(c)(1)(B) and (C) do not permit “blind” trading (where a third party is involved so that the buyer’s and seller’s identities are not disclosed to each other at the time of the transaction). It has been further suggested that permitting blind trading would encourage credit trading between regulated parties, including competing regulated parties. Staff agrees and proposes a modification to reflect this.