

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

Supplement to the Final Statement of Reasons for Rulemaking

PUBLIC HEARING TO CONSIDER AMENDMENTS TO
THE LOW CARBON FUEL STANDARD

Public Hearing Date: December 16, 2011
Agenda Item No.: 11-10-2

This Supplement to the Final Statement of Reasons (FSOR) for the Amendments to the Low Carbon Fuel Standard (LCFS) Regulation addresses comments that were inadvertently unattributed/misattributed. This Supplement also identifies additional places in the Final Regulation Order where changes of a technical or grammatical nature would improve the clarity, consistency, or readability of the text, and has accordingly modified the Final Regulation Order. The FSOR, Final Regulation Order, and other rulemaking documents are posted on ARB's website (<http://www.arb.ca.gov/regact/2011/lcfs2011/lcfs2011.htm>) and were filed with the Office of Administrative Law (OAL) on October 10, 2012.

1. Unattributed or Misattributed Commenters

The following table identifies instances in which the commenter (as indicated by its abbreviation identified in the FSOR) was inadvertently not attributed to a comment that that person made (i.e., the commenters' list shown for a comment was incomplete) or the commenter's abbreviation was misattributed. For these unattributed or misattributed commenters, the table below identifies the appropriate attribution by comment number.

	Commenter Abbreviation	Letter Number	Add Commenter Abbreviation to the Following FSOR Comments
1	FORM LETTER3	34	B-6
2	BOELLSTORFF	43	B-6
3	RFA	61	D-6
4	SHIPLEY	66	E-1, E-3, E-4
5	MEYER	72	E-4, E-5, E-7
6	ECOTALITY2	82	C-1 through C-17, C-30, C-31, C-33, C-34

7	WSPA2	86	B-15 through B-24, B-28, C-21, D-24, D-40, D-41, D-56 through D-62, E-7, and G-17 through G-19
8	SFPUC	1st 15 Day - 5	C-18 misattributed to SCEC

2. Comments Not Summarized and Responded To

The following table identifies comments that were not summarized and responded to for the reasons specified below.

	Comment Abbreviation	Letter Number	Reason
1	WSPA1	41	Beyond scope of rulemaking. Comments specifically on the LCFS Program Review (separate board item) were not summarized and addressed in the FSOR.
2	(None)	42	Removed from rulemaking record because it was a duplicate of Comment #65. Commenter called and requested to us to remove the letter because they wanted to resubmit the letter with additional signatures.
3	FORMLETTER7	Presented - 3	Beyond scope of rulemaking.
4	WSPA5	2 nd 15 Day - 2	Beyond scope of 2 nd 15 day notice changes.

Comments not involving objections or recommendations specifically directed towards the regulation procedures are not summarized. These include comments supporting the LCFS proposal and purpose of the program.

3. Additional Non-Substantial Changes

Additional non-substantial modifications were made to clarify the regulation, as described below. These non-substantial modifications do not materially alter the

requirements, rights, responsibilities, conditions or prescriptions contained in the regulation. Text of the Final Regulation Order filed with OAL appears in plain text below and the non-substantial modifications are shown in underline and strikethrough format.

Section 95480.4(d)

This subsection (d) was removed and the subsequent subsection of 95480.4 was renumbered accordingly.

~~(d) — It is a violation of this regulation for a person to register as the regulated party for a specific volume of fuel if doing so would be unreasonable under the circumstances.~~

Section 95486(b)(2)(A)3.b.

The process for calculating the Annual Crude Average carbon intensity was clarified as follows:

- b. Within 15 days of receiving the Annual Compliance reports, ~~or as expeditiously as the Executive Officer determines is feasible,~~ the Executive Officer shall post the Annual Crude Average carbon intensity calculation at the ARB-LCFS website (<http://www.arb.ca.gov/fuels/lcfs/lcfs.htm>) for public comment. Written comments shall be accepted for 15 calendar days following the date on which the analysis was posted. Only comments related to potential factual or methodological errors in the posted Annual Crude Average carbon intensity value may be considered. The Executive Officer shall evaluate the comments received and, if the Executive Officer deems it necessary, may request in writing additional information or clarification from the commenters. Commenters shall have 10 days to respond to these requests. The Executive Officer shall post the final Annual Crude Average carbon intensity value at the ARB-LCFS website within 15 days of completion of the comment period, if no comments are received, ~~or within 15 days of receiving additional information or clarification from the commenters.~~ If comments are received, the Executive Officer shall post the final Annual Crude Average carbon intensity value within 15 days of receiving any additional information or clarification requested from the commenters by the Executive Officer.

Sections 95486(b)(2)(A)4.c.vi. and 95486(f)(3)(B)1.

As was discussed in the Initial Statement of Reasons, page 19, a redacted copy of all documents containing Confidential Business Information must be submitted. This was clarified in sections 95486(b)(2)(A)4.c.vi. and 95486(f)(3)(B)1. as follows:

All documents (including spreadsheets and other items not in a standard document format) that contain confidential business information (CBI) must prominently display the phrase “Contains Confidential Business Information” above the main document title and in a running header. Additionally, a separate, redacted version of ~~most~~ such documents must also be submitted. The redacted versions must be approved by the applicant for posting to a public LCFS web site. Within redacted documents, specified redactions must be replaced with the phrase “Confidential business information has been deleted.” This phrase must be displayed clearly and prominently wherever CBI has been redacted.

Section 95488(e)(1) and (2)

To clarify the timing of public disclosure of credit/deficit balances and credit transfer information, section 95488(e)(1) and section 95488(e)(2) were revised to read as follows:

(1) The Executive Officer shall, ~~as frequently as he/she deems is feasible and appropriate but~~ no less frequently than quarterly, provide to the public a report containing a summary of credit generation and transfer information including, but not limited to:

...

(2) The Executive Officer shall provide reports, ~~as frequently as he/she deems is feasible and appropriate but~~ no less frequently than monthly, to regulated parties and the public containing information necessary or helpful to the functioning of a credit market. Such reports may include recent information on credit transfer volumes, credit prices and price trends and other informat0069on determined by the Executive Officer to be of value to market participants and the public. The Executive Officer shall establish, and may periodically modify, a schedule for the routine release of these reports.

4. Section 95486(f)(3)(C)3.

Section 95486(f)(3)(C)3. requires applicants to submit invoices covering energy consumed during the most recent two-year period of relatively typical operations. This provision was discussed with the regulated community in workshops, and we note that no comments were received related to this requirement. Therefore, we believe this section is clearly understood by the regulated community.

5. Peer Review

OAL requested that we explain why External Scientific Peer Review, as set forth in section 57004 of the Health and Safety Code, is not required for the Low Carbon Fuel Standard (LCFS) amendments. The purpose of the External Scientific Peer Review entity is to prepare a written report that evaluates the scientific basis or scientific portions of a proposed rule. The scientific basis and scientific portions of the LCFS were peer reviewed in accordance with Health and Safety Code section 57004 as part of the 2009-2010 rulemaking process. See <http://www.arb.ca.gov/fuels/lcfs/peerreview/peerreview.htm> and <http://www.arb.ca.gov/fuels/lcfs/peerreview/request.pdf>. The scientific basis of the LCFS, which was evaluated approvingly by the peer reviewers in 2009, is the concept of lifecycle analysis (LCA). The LCA is the aggregate of the greenhouse gas (GHG) emissions associated with all individual steps in a fuel's full lifecycle (i.e., "well-to-wheel" GHG emissions). Among other things, the present amendments to the LCFS improve the accuracy of calculating the GHG emissions associated with petroleum fuels, but these amendments do not change in any way the scientific basis or scientific portions of the regulation. Accordingly, the amendments are of a technical, rather than scientific nature, and are therefore not subject to the requirements of Health and Safety Code section 57004.

6. Consultation with California Public Utilities Commission

We consulted with California Public Utilities Commission (CPUC) in developing these proposed amendments to the LCFS regulation. As mentioned in the Initial Statement of Reasons (page 46), we worked with CPUC, particularly with respect to amendments to the electricity regulated party provisions.