State of California
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

AMENDMENTS TO THE LOW CARBON FUEL STANDARD REGULATION AND TO THE REGULATION ON COMMERCIALIZATION OF ALTERNATIVE DIESEL FUELS

Public Hearing Dates: April 27, 2018 and September 27, 2018
Agenda Item No.: 18-3-3 and 18-7-4
Addendum Prepared: January 3, 2019

I. GENERAL

A. Background

On November 13, 2018, the California Air Resources Board (CARB or Board) submitted the Final Statement of Reasons (FSOR) for the rulemaking action entitled "Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels," to the Office of Administrative Law (OAL) for its review and approval.

In the course of its review, OAL noted that several non-substantial modifications were required to correct errors. These modifications, described below, clarify and do not materially alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the amendments as adopted by CARB and approved by OAL. (*See* Cal. Code Regs., tit. 1, § 40.)

B. Non-Substantial Modifications

Section 95487(b)(1) was corrected to reference 95487(b)(1)(B) through (F), instead of 95487(b)(1)(B) and (C). The section was renumbered, but the change in numbering was inadvertently not reflected. The language of subsections (D) and (F) was meant to me included, and is the only legally tenable interpretation of the reference.

Section 95483(c)(6) was corrected to reference "(1) through (5) above..." instead of "(1) through (6) above…" because there is no (6) above, and the reference to subsection was erroneous.

Section 95483.2(a)(2)(E) was corrected to reference subsection (D) along with subsections (B) and (C) of section 95483.2(a)(2). Including reference to subsection (D) was the only legally tenable interpretation, and is consistent with sections 95483.2(b)(3)(E) and 95483.2(b)(2)(D), which have the same requirements.

Section 95485(c)(1)(B) was corrected to reference 95485(c)(5), not 95485(c)(4)(E). Reference to the previous section was erroneous as there is no reference to interest within that section.

The language “and approval by” was removed from the proposed additions to section 95483(c)(3) because there was no SOA other than accepting the written acknowledgement.

The language “Deficits do not constitute claims dischargeable in a bankruptcy proceeding. Credits are not assets or any other form of property and thus cannot be distributed by a bankruptcy court” was removed from the proposed additions to section 95483.3(d) because these provisions only restated bankruptcy law as it applies to regulatory obligations and could not alter it; thus their removal does not change the law.

Section 95486.2(b)(2)(E) was amended to specifically reference 95486.2(b)(2)(E)1 for clarity, rather than above (1), which was incorrect.

The language “and subject to updates” was removed from footnote 3 for table 7-2 of section 95488.5(f). This deletion clarifies the provision by eliminating a possible mistaken implication that the document incorporated by reference is not subject to update outside the APA.

The language “limitations or conditions not specifically named in this subarticle” was removed from the proposed additions to section 95488.6(b)(3)(B), instead replaced with the language “applicable limitations or conditions.” This change was also made in section 95488.7(d)(4)(C). The changes more accurately and clearly reflect, without altering, the applicable requirements, conditions, or limitations.

The proposed language “The Executive Officer’s decision to accept or reject the applicant’s scientifically defensible demonstration is binding and not subject to appeal” was removed from section 95488.7(b) because it could be read incorrectly to specify that no further judicial (as opposed to internal) appellate rights were available, although such rights are available under current administrative laws. Thus, it was unnecessary and might imply inconsistency with other legal authorities.

The proposed language “The Executive Officer’s decision regarding requests related to substantiality is binding and not subject to appeal” was removed from section 95488.9(a)(2)
because it could be read incorrectly to specify that no further judicial (as opposed to internal) appellate rights were available, although such rights are available under current administrative laws. Thus, it was unnecessary and might imply inconsistency with other legal authorities.

The proposed language “The Executive Officer’s decision to approve is binding and not subject to appeal” was removed from section 95488.9(b)(1) because it could be read incorrectly to specify that no further judicial (as opposed to internal) appellate rights were available, although such rights

are available under current administrative laws. Thus, it was unnecessary and might imply inconsistency with other legal authorities.

The proposed language “The Executive Officer’s decision shall be final and not subject to further appeal” was removed from section 95488.2(b)(7) because it could be read incorrectly to specify that no further judicial (as opposed to internal) appellate rights were available, although such rights are available under current administrative laws. Thus, it was unnecessary and might imply inconsistency with other legal authorities.

The proposed language “using the Temporary Pathway Request Form” was removed from section 95488.9(b)(3). The removed language may have inaccurately implied that the form might require additional information beyond what was specified in the regulation.

The language “third party approved by the Executive Officer,” was removed from the proposed additions to section 95491.1(a), instead replaced with the language “a verification body accredited by the Executive Officer pursuant to section 95502.” There is no other third party that will perform this function outside of the accredited bodies pursuant to 95502, therefore this amendment clarifies rather than altering the rights or responsibilities of the proposed amendments.

The proposed language “pursuant to section 95488.7(a)(3)” was amended to delete subsection (a)(3) in section 95491(d)(3)(I). Removing the reference clarifies that the cited provision is not limiting the fuel pathway application requirements and certification process.

The proposed reference to the April 30th deadline within section 95486(a)(5)(A) was moved to after the reference 95487(b) for clarity. Section 95487(b) references the general procedure for completing credit transfers, and not the April 30th deadline.

Section 95491(c)(1) was amended to include “95491(d)” to improve clarity as to where the fuel types can be found, for this subsection.

Section 95491.1(b)(2)(A) was amended to specifically reference 95491.1(b)(1) above, to clarify which subsection was meant to be referenced.

The above described modifications constitute non-substantial changes to the regulatory text primarily because they more accurately reflect the numbering of a section and correct spelling and grammatical errors. As explained, none of the listed changes materially alter the requirements or conditions of the proposed rulemaking action.

C. Modifications to the Original Summary and Response to Comments and Final Statement of Reasons

The following comment was received within the Second 15-day comment period, but not responded to. The comment is available on CARB's webpage: https://www.arb.ca.gov/lists/com-attach/339-lcfs18-BnZVIFE9BDYGLgl5.pdf

Comment: PMSA supports the inclusion of eTRU, eCHE, and eOGV as opt-in categories eligible for credit generation under the LCFS regulation.
. . .
The opportunity to opt-in for credit generating opportunities in these categories will create meaningful incentives for ocean carriers and terminals to use low carbon-intensive options that will reduce greenhouse gases. In addition, by creating opt-in credit generating opportunities, CARB will also support its existing regulatory programs that seek to reduce criteria and toxic pollutants from these source categories.

Agency Response: Please see response to Chapter VI, D-6.1f. Multiple Comments: Support for Proposed Changes to the New Transportation Applications.

Comment: The maritime industry is expanding its use of electrically-powered equipment in some cases. The inclusion of these equipment categories will create incentives for terminal and vessel operators to expand their use of electrified equipment, but only if they are the beneficiaries of the credit generation. The current language in section § 95483 (c)(6)(A), states that "[f]or electricity supplied to eTRU, eCHE, or eOGV, the owner of the FSE is the fuel reporting entity and the credit generator." This language, although consistent with other language in the regulation, is potentially confusing for the delineation of responsibilities and benefits at the state's ports and marine terminals. The public port authority is often the owner of the FSE, since they are landlords to the terminal operators, who typically operate under leases that run anywhere from 20 to 50 years. However it is the marine terminal operator that meters the power supplied to the eTRU, eCHE or eOGV and is billed by the utility for that usage. Beyond installing some of the infrastructure, the port authority is not involved in the supply of power to the equipment.

Section § 95483.2 (b)(8)(B)(6) states "For electric forklifts, eCHE, or eOGV, FSE refers to the facility or location where electricity is dispensed for fueling. If there are multiple FSEs capable of measuring the electricity dispensed at the facility or location, then it is optional to provide serial number assigned to each equipment by the OEM and the name of OEM." Based on this definition, the marine terminal would qualify as the FSE since they are the location where electricity is dispensed and are the entity that is capable of measuring the electricity allocated for each use. If that is the defining language for the FSE owner, then we would read section § 95483 (c)(6)(A) to refer to the marine terminal operator as the FSE owner.

Alternatively, PMSA proposes that language be modified to read "[f]or electricity supplied to eTRU, eCHE, or eOGV, the owner of the eTRU, eCHE, or eOGV is the credit generator for electricity supplied to each respective unit and shall satisfy fuel reporting requirements to the State." In this way, it will be clear that the credit generator is the owner of the eTRU, eCHE, or eOGV. Since it is the equipment owner who makes decisions of equipment deployment and usage, the owner is responsible for the decisions that CARB wishes to incentivize.

> **Agency Response:** Please see response to Chapter VI, D-6.12a. Multiple Comments: Fuel Reporting Entity and Credit Generator for Proposed New Electric Transportation Applications.

Comment: We also have some concerns regarding section § 95483 (c)(6)(C), which states "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." That section; specifically section § 95491(d)(3)(A)(7), for non-LSE credit generators states that the 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." This is confusing in regards to credits generated by eTRU, eCHE or eOGC as they are not obviously related to EV transport, however we have been told verbally by ARB staff that the intent of this language is to ensure that the generated credits be conferred to the owners or operators of the equipment being plugged in, be they eTRU, eCHE or eOGV. We support that requirement, and we would appreciate language, or at least formal recognition and citation through supporting documentation from ARB that such is the case. (PMSA2_SF66-3)

> **Agency Response:** The requirements of §95483(c)(6)(C) state that the credit generators for eTRU, eCHE, or eOGV should meet the requirements in section 95491(d)(3)(A), "as applicable." Staff would like to clarify that requirements in section 95491(d)(3)(A) are unique in the sense that they only apply to entities generating credits for EV charging. Credit generators for other EV categories such as eTRU, eCHE, or eOGV are not subject to similar requirements. Staff commits to publish guidance documents to clarify the requirements for each electricity category.

Comment: PMSA has additional concerns regarding the practicality of § 95483.2(b)(8)(A)(7), which states "For eTRU, FSE refers to each eTRU. Fuel reporting entities for eTRU fueling must provide the serial number assigned to the unit by the OEM and the name of the OEM." The eTRUs that are used in the maritime industry are fundamentally different from those used in over-the-road domestic freight. The eTRU is intergrated into the marine container, with the use of a "clip-on" generator available when the marine container leaves the marine terminal. Tens of thousands of different integrated eTRUs move through marine container terminals annually. It may be administratively impossible to register every unit that

moves through the facility. Additionally, the marine terminal may not have information on the manufacturer or serial number of the integrated refrigeration unit, but would have information on the marine container containing the integrated eTRU. PMSA recommends that CARB make two allowances to this provision. First, for those entities able to provide individual equipment information, allow the submission of container identification number (which are unique) in lieu of eTRU manufacturer and serial number. Second, for those entities that have installed separate metering for their eTRUs, allow meter data to be submitted as would be the case for EV charging. (PMSA2_SF66-4)

> **Agency Response:** Please see Response D-6.15c, in the FSOR. EER Values for New Electric Transportation Applications, in Chapter V.

Comment: PMSA also recommends that CARB develop an Energy Economy Ratio (EER) values for the use of various sources of LNG as a bunker fuel on vessels. There are an increasing number of vessel orders for dual-fuel capable ships. These ships will be capable of using traditional marine diesel bunkers or liquefied natural gas (LNG) as a fuel. Whether these future ships use LNG will depend on the availability of LNG fuels and the impact to competitiveness the use of LNG will have. The use of LNG as a marine fuel has the potential to eliminate diesel particulate matter, reduce nitrogen oxide emissions, and, depending on the source, reduce GHG emissions. CARB can encourage the use of low carbon intensity LNG fuels by establishing EER values for variously-sourced LNG used as a marine fuel. Doing so will create a clear signal to the maritime industry. (PMSA2_SF66-5)

> **Agency Response:** Please see response to Chapter VI, W-1.11. Multiple Comments: Not Within Scope of Rulemaking.