

**State of California
Office of Administrative Law**

**In re:
Air Resources Board**

**Regulatory Action:
Title 17, California Code of Regulations**

**Adopt sections: 95486.3, 95486.4,
95491.2**

**Amend sections: 95480, 95481,
95482, 95483,
95483.1, 95483.2,
95483.3, 95484,
95485, 95486,
95486.1, 95486.2,
95487, 95488,
95488.1, 95488.2,
95488.3, 95488.4,
95488.5, 95488.6,
95488.7, 95488.8,
95488.9, 95488.10,
95489, 95490,
95491, 95491.1,
95495, 95500,
95501, 95502,
95503**

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2025-0103-01

OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

This regulatory action by the California Air Resources Board (Board) proposed to adopt sections 95486.3, 95486.4, and 95491.2, and amend sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95483.3, 95484, 95485, 95486, 95486.1, 95486.2, 95487, 95488, 95488.1, 95488.2, 95488.3, 95488.4, 95488.5, 95488.6, 95488.7, 95488.8, 95488.9, 95488.10, 95489, 95490, 95491, 95491.1, 95495, 95500, 95501, 95502, and 95503 in title 17 of the California Code of Regulations (CCR) to

update requirements pertaining to the Low Carbon Fuel Standard (LCFS) Program.

On January 3, 2025, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On February 18, 2025, OAL notified the Board that OAL disapproved the proposed regulatory action pursuant to the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced regulatory action because the proposed regulatory changes failed to comply with the clarity standard of Government Code section 11349.1, subdivision (a)(3), and for incorrect procedure.

DISCUSSION

The Board's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.) No exemption applies to the present regulatory action under review.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. **Clarity Standard**

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines “clarity” to mean “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

The “clarity” standard is further defined in section 16 of title 1 of the CCR, which provides:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:

(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or

(3) the regulation uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or

(4) ...

(5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” or

(6) the regulation does not use citation styles which clearly identify published material cited in the regulation.

(b) Persons shall be presumed to be “directly affected” if they:

(1) are legally required to comply with the regulation; or

(2) are legally required to enforce the regulation; or

- (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
- (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

The following provisions in the Board's proposed regulatory action do not satisfy the clarity standard.

1.1 Proposed Subsection (d)(2) of Section 95488.3

Proposed subsection (d)(2) of section 95488.3 reads:

The Executive Officer may determine that no value in Table 6 is conservatively representative of a particular region/feedstock/fuel combination and assign a more conservative LUC value. Such determination must be based on the best available empirical data, including but not limited to satellite-based remote sensing data for land cover monitoring, crop yields, and emission factors from the AEZ-EF model or carbon stock datasets. For feedstocks not listed in Table 6, the Executive Officer may determine and assign an appropriate LUC value based on empirical land cover data, yields, and emission factors.

Proposed subsection (d)(2) is unclear for two reasons.

First, proposed subsection (d)(2) is unclear because it can reasonably and logically be interpreted to have more than one meaning and it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, sec. 16, subs. (a)(1) and (a)(5).) With respect to the first sentence, the use of "may" makes it unclear under what circumstances the Executive Officer will determine that no value in Table 6 is conservatively representative of a particular region, feedstock, or fuel combination, and thus, assign a more conservative land use change value. With respect to the third sentence, the use of "may" makes it unclear under what circumstances the Executive Officer will determine and assign a land use change value for feedstocks not listed in Table 6.

Second, proposed subsection (d)(2) is unclear because it uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(3).) With respect to the second and third sentences, the references to “satellite-based remote sensing data for land cover monitoring, crop yields, and emission factors” are vague, as is the reference to “carbon stock datasets” in the second sentence. Absent any clarification of these references, the language is too vague to provide regulated entities with sufficient guidance as to how the Board will utilize this standard.

A number of commenters raised concerns with this language. For example, one comment stated:

...[T]he provision raises substantial concerns about whether and how CARB would determine that a new, more conservative LUC factor is necessary...The new provision further exacerbates this issue by centralizing more decision-making power with the EO, without providing any clear mechanisms for public oversight or involvement. This approach is wholly insufficient and fails to meet the standards of transparency and public participation that are critical for sound environmental governance.

Additionally, another comment stated:

CBE appreciates that this change acknowledges the diverse range of factors needed for a comprehensive analysis but is concerned with the lack of clarity regarding the Executive Officer's calculations, as well as when and how this discretionary correction tool will be used.

In addition to addressing the clarity concerns in proposed subsection (d)(2), the Board must revise the responses to comments to reflect any changes made to the regulation text.

1.2 Proposed Subsection (b) of Section 95488.3

Proposed subsection (b) of section 95488.3 reads:

The Executive Officer may approve updates to a Tier 1 CI Calculator if necessary to conform the methodological consistency of the calculator with the CA-GREET4.0 model or associated data sources specified in the CA-GREET4.0 Model Documentation, which is incorporated by reference. Such necessary conformances are limited to correcting errors in formulas or emission factors or broken links. The Executive Officer will post any such proposed updates to a Tier 1 CI Calculator for 45 days for public comment prior to approval. The posted information will include the rationale for the proposed alignment with the CA-GREET4.0 model or other associated data sources. If public comments identify the need for significant revision of the proposed update, a revised Calculator will be posted for further public comment. Upon Executive Officer approval of an updated Tier 1 CI Calculator, a fuel pathway applicant may use the updated calculator in the quarter in which it is approved.

Proposed subsection (b) is unclear for two reasons.

First, proposed subsection (b) is unclear because it can reasonably and logically be interpreted to have more than one meaning and it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, sec. 16, subs. (a)(1) and (a)(5).) With respect to the first sentence, the use of "may" makes it unclear when the Executive Officer will approve updates to a Tier 1 Calculator, assuming the updates are necessary to conform to the CA-GREET4.0 model or associated data sources specified in the CA-GREET4.0 Model Documentation. With respect to the fifth sentence, the reference to "further public comment" is vague and does not specify the method by which "further public comment" shall be solicited or the time period within which comments may be provided by the public. With respect to the sixth sentence, the proposed text is vague and does not specify how the Executive Officer will notify the public of such approval. Additionally, the use of "may" indicates that the applicant is not required to utilize the updated calculator in the quarter in which the updated calculator is approved, but the proposed text is silent with respect to when the use of the updated calculator will be required.

Second, proposed subsection (b) is unclear because it uses a term which does not have a meaning generally familiar to those “directly affected” by the regulation, and the term is defined neither in the regulation nor in the governing statute. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(3).) With respect to the fifth sentence, the reference to “significant revision” is vague and undefined, leaving the regulated public without meaningful guidance regarding the scope of changes that trigger the opportunity for additional public input.

In the event the Board amends this subsection to resolve the aforementioned clarity issues, the proposed regulatory text must comply with the substantive and procedural requirements of the APA with respect to substantive changes to the Tier 1 CI Calculators incorporated by reference in section 95488.3.

1.3 Proposed Subsection (c)(1)(B) of Section 95483

Proposed subsection (c)(1)(B) of section 95483 reads in part:

The Executive Officer may direct up to 45% of base credits to eligible OEMs of light-duty battery-electric or plug-in hybrid electric vehicles, if the statewide share of all new zero emission vehicle sales for model year 2024 zero emission vehicles certified under California Code of Regulations, title 13, section 1962.2 is less than 30 percent of total light-duty vehicle sales for all OEMs in California, based on data reported pursuant to that regulation.

Proposed subsection (c)(1)(B) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of “may” makes it unclear whether the Executive Officer will direct base credits to eligible OEMs of light-duty battery-electric or plug-in hybrid electric vehicles, if the statewide share of all new zero emission vehicle sales for model year 2024 zero emission vehicles certified under section 1962.2 of title 13 of the CCR is less than 30 percent of total light-duty vehicle sales for all OEMs in California. Additionally, it is unclear how the Executive Officer will determine the specific percentage of base credits to be directed to eligible OEMs of light-duty battery-electric or plug-in hybrid electric vehicles.

Several commenters raised concerns with this language. For example, one comment stated:

The regulation appears to allow the EO to direct anywhere from 0 percent to 45 percent of the base credits to eligible OEMs, but there is no indication of the criteria that might be used to determine the portion directed to OEMs. Clarifying the criteria would make the regulation more transparent. The regulation is also not clear if the portion assigned to OEMs is fixed or could change year-to-year.

Additionally, another comment stated:

CARB allocates “up to 45% of base credits” without establishing criteria or a framework for determining the applicable percentage. GM recommends that CARB establish criteria for credit allocation which will bring increased regulatory certainty to the LCFS program.

In addition to addressing the clarity concerns in proposed subsection (c)(1)(B), the Board must revise the response to comments to reflect any changes made to the regulation text.

1.4 Proposed Subsection (c)(1)(D)1.a. of Section 95483

Proposed subsection (c)(1)(D)1.a. of section 95483 reads:

Additional rebates and incentives beyond existing local, federal, and State rebates and incentives for purchasing or leasing new or previously owned EVs. The Executive Officer may require that a portion of OEM base credit proceeds in a calendar year be spent on this project type.

Proposed subsection (c)(1)(D)1.a. is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The circumstances under which the Executive Officer may require a portion of OEM base credit proceeds to be spent on this project type are not described in the proposed text, and neither is the method of determination, including any relevant factors, criteria, or other information the Executive Officer may consider. The proposed language also does not explain

how the Executive Officer will determine what portion of OEM base credit proceeds must be spent on this project type.

1.5 Proposed Subsection (d) of Section 95488

Proposed subsection (d) of section 95488 reads in part:

Beginning January 1, 2031, the Executive Officer may choose not to accept new fuel pathway applications using CA-GREET2.0 for biomass-based diesel, if the number of unique Class 3-8 ZEVs reported or registered in California exceeds 132,000 ZEVs or NZEVs on December 31, 2029.

Proposed subsection (d) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of “may” makes it unclear when the Executive Officer will choose to accept new fuel pathway applications, even if the specified requirements are met.

1.6 Proposed Subsection (f)(3)(A) of Section 95488.9

Proposed subsection (f)(3)(A) of section 95488.9 reads in part:

The Executive Officer may renew crediting periods for fuel pathways that were certified before the effective date of the regulation, for up to three consecutive 10-year crediting periods; and for fuel pathways representing projects that have broken ground on or after the effective date of the regulation and before January 1, 2030, for up to two consecutive 10-year crediting periods.

Proposed subsection (f)(3)(A) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of “may” makes it unclear when the Executive Officer will renew crediting periods for fuel pathways. Additionally, as written, it is unclear what factors, criteria, or other information will be evaluated by the Executive Officer to render this determination.

1.7 Proposed Subsections (g)(6)(C)2. and (g)(7)(C)2. of Section 95488.9

Proposed subsections (g)(6)(C)2. and (g)(7)(C)2. of section 95488.9 read: "The Executive Officer will review and may approve certification systems meeting the criteria under section 95488.9(g)(8)." Proposed subsections (g)(6)(C)2. and (g)(7)(C)2. are unclear because they can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of "may" makes it unclear when the Executive Officer will choose not to approve a certification system, even if the certification system satisfies the criteria specified in section 95488.9(g)(8).

1.8 Proposed Subsection (g)(8)(A) of Section 95488.9

Proposed subsection (g)(8)(A) of section 95488.9 reads: "The Executive Officer will review and may approve certification systems based on the following criteria:" Proposed subsection (g)(8)(A) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of "may" makes it unclear when the Executive Officer will choose not to approve a certification system, even if the certification system satisfies the criteria specified in section 95488.9(g)(8).

1.9 Proposed Subsection (g)(8)(H) of Section 95488.9

Proposed subsection (g)(8)(H) of section 95488.9 reads:

The Executive Officer may remove or suspend an approved certification system standard that no longer meets the requirements of section 95488.9(g)(8)(A). The Executive Officer may also remove, suspend, or otherwise modify approval of an approved certification system standard if appropriate for consistency with a modification, removal, or suspension of the certification system standard in an analogous GHG program.

Proposed subsection (g)(8)(H) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) With respect to the first sentence, the use of "may" makes it unclear when the Executive Officer will remove or suspend an approved certification system standard that no longer meets the requirements

of section 95488.9(g)(8)(A). Additionally, as written, it is unclear why the Executive Officer would opt to remove an approved certification system as opposed to suspending the approved certification system. With respect to the second sentence, the use of “may” makes it unclear when the Executive Officer will remove, suspend, or otherwise modify approval of an approved certification system. Additionally, as written, it is unclear why the Executive Officer would opt to remove an approved certification system as opposed to suspending the approved certification system or modifying the approval of the certification system. Furthermore, in the event the Executive Officer opts for suspension or modification of the certification system, it is unclear how those limitations or modifications will be determined by the Executive Officer and what factors, criteria, or other information will be evaluated by the Executive Officer to render the determination.

1.10 Proposed Subsection (b) of Section 95488.10

Proposed subsection (b) of section 95488.10 reads in part:

Beginning with the 2025 annual Fuel Pathway Report data reporting year, the Executive Officer may perform credit true up for a fuel pathway...that has a lower verified operational CI upon receiving a positive or qualified positive verification statement for the associated annual fuel pathway report and quarterly fuel transactions reports, notwithstanding the prohibition on retroactive credit generation in section 95486(a)(2)...Only reporting quarters for which complete operational data are reported in the applicable AFPR are eligible for credit true up of a temporary fuel pathway.

Proposed subsection (b) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of “may” makes it unclear under what circumstances the Executive Officer will choose to perform a credit true up for a fuel pathway. A number of commenters requested that the Board revise the “may” to a “shall” in proposed subsection (b). However, in the response to comments in the Final Statement of Reasons, the Board explains:

The language as drafted accurately and clearly specifies that the Executive Officer (EO) may perform credit true ups for fuel

pathways if the specified conditions are met. Generally, the EO will carry out credit true ups, but the permissive “may” rather than “shall” is more accurate because one important narrowing clarification (“Only reporting quarters for which complete operational data are reported in the applicable AFPR are eligible for credit true up of a temporary fuel pathway.”) to the general true up condition is identified in the final sentence of the provision.

Although the aforementioned response indicates that the Board chose to retain the “may” in an effort to reflect the limitation imposed by the last sentence of proposed subsection (b), the use of “may” has a broader application than the one reflected in the Board’s response.

In addition to addressing the clarity concern in proposed subsection (b), the Board must revise the response to comments to reflect any changes made to the regulation text.

1.11 Proposed Subsection (b)(2) of Section 95491

Proposed subsection (b)(2) of section 95491 reads in part:

As a partial and limited exception to the prohibition on retroactive credit claims in section 95486(a)(2), the Executive Officer may issue a percentage of the credits that would have been generated by a timely quarterly fuel transactions report up to three business days after the reporting deadline if the following conditions are met....

Proposed subsection (b)(2) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The use of “may” makes it unclear when the Executive Officer will choose not to issue a percentage of credits, even if the enumerated conditions are met.

1.12 Proposed Subsection (a)(1)(A) of Section 95491.2

Proposed subsection (a)(1)(A) of section 95491.2 reads in part: “If manufacturer’s recommended procedures do not exist, then a reasonable method must be identified that meets the accuracy requirements of this

section.” Proposed subsection (a)(1)(A) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) As written, it is unclear whether the reasonableness analysis is limited to whether the method meets the accuracy requirements specified in section 95491.2, or whether the reasonableness analysis is a separate, additional requirement.

1.13 Proposed Subsection (b)(2)(A) of Section 95491.2

Proposed subsection (b)(2)(A) of section 95491.2 reads:

For report types not identified in section 95491.2(b)(2)(B), if missing data exists, the entity may use a temporary method for a period not to exceed six months, or may submit for Executive Officer approval an alternate method of reporting the missing data as early as possible but no later than 10 days after report submittal. Alternate methods are required in all instances where missing data exceeds six months, and the Executive Officer may evaluate on a case-by-case basis.

Proposed subsection (b)(2)(A) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) With respect to the first sentence, the proposed text does not explain how the Executive Officer will determine whether to approve the alternate method. With respect to the second sentence, the use of “may” makes it unclear whether the Executive Officer must evaluate all alternate methods submitted, or whether the Executive Officer may choose not to evaluate every alternate method submitted.

1.14 Proposed Subsection (b)(2)(C) of Section 95491.2

Proposed subsection (b)(2)(C) of section 95491.2 reads in part:

For deficit generating entities that do not submit an alternate method request within the timeframes identified in this section, the Executive Officer will assign a conservative alternate method for use during the missing data timeframe.

Proposed subsection (b)(2)(C) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) The proposed text does not describe the process the Executive Officer will utilize to assign an alternate method for the missing data timeframe. Additionally, the proposed text does not enumerate the factors, criteria, or other information the Executive Officer will use to choose the conservative alternate method.

1.15 Proposed Subsection (b)(2)(B) of Section 95491.2

Proposed subsection (b)(2)(B) of section 95491.2 reads in part:

For Fuel Pathway Applications, Annual Fuel Pathway Reports, and Quarterly Fuel Transactions Reports, the missing data substitution methods in Table 13 shall be used except in situations that do not result in a reasonable or conservative replacement. In this situation the entity must submit an alternative method for Executive Officer approval.

[...]

If all the quality assured data for the time periods required under Table 13 do not exist or it is not possible to replace the data using the methods in Table 13, the reporting entity must request approval from the Executive Officer to use an alternate method as early as possible but no later than 10 days after submitting their annual or quarterly report.

Proposed subsection (b)(2)(B) is unclear for two reasons.

First, proposed subsection (b)(2)(B) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) With respect to the second sentence, the proposed text does not explain how the Executive Officer will determine whether to approve the alternative method.

Second, proposed subsection (b)(2)(B) is unclear because it uses a term which does not have a meaning generally familiar to those “directly affected” by the regulation, and the term is defined neither in the regulation nor in the governing statute. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(3).) Although “quality assured

data" is defined for purposes of mandatory greenhouse gas emissions reporting requirements specified in Article 2 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the CCR, "quality assured data" is undefined for purposes of the LCFS Program, which falls within Subarticle 7 of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the CCR. Without a definition for this term, the regulated public is left without meaningful guidance regarding how to comply with this requirement.

1.16 Proposed Definition of "LCFS Data Management System" in Section 95481

The proposed definition of "LCFS Data Management System" in section 95481 reads:

"LCFS Data Management System" is the system designated by CARB into which LCFS participants submit LCFS program information or manage credits. This includes the AFP, the LRT-CBTS, the LCFS verification portal, and any new iteration of these platforms used by CARB.

The proposed definition of "LCFS Data Management System" is unclear because it can be reasonably and logically interpreted to have more than one meaning and it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, sec. 16, subs. (a)(1) and (a)(5).) The proposed definition of "LCFS Data Management System" references three systems, as well as any new iterations of these systems that the Board may use. However, existing section 95483.2 already lists the online systems that comprise the Board's LCFS Data Management System. In this rulemaking action, the Board also sought to revise existing section 95483.2 as follows:

The LCFS Data Management System refers to all the online systems responsible for LCFS data management and program implementation. The LCFS Data Management System comprises ~~three~~two interactive and secured web-based systems: Alternative Fuel Portal, and LCFS Reporting Tool and Credit Bank and Transfer System, ~~and LCFS Verification Portal.~~

The differences between the definition of the LCFS Data Management System in section 95481 and the description of the LCFS Data Management System in

section 95483.2 make the meaning of this term unclear. Additionally, “any new iteration of these platforms” that have a regulatory effect would need to be adopted pursuant to the APA.

1.17 Proposed Definition of “Standard Value” in Section 95481

The proposed definition of “standard value” in section 95481 reads:

“Standard Value” is an input value established or developed by CARB, which may be used under specified conditions and is typically not subject to validation or verification.

The proposed definition of “standard value” is unclear because it can reasonably and logically be interpreted to have more than one meaning and it conflicts with the Board’s description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1) and (a)(2).) The proposed definition does not explain how the input value is established or developed by the Board, under what specified conditions the input value will be utilized, or under what circumstances the input value is subject to validation or verification. In response to a public comment asserting that the reference to “standard value” in the proposed definition of “fugitive methane” was vague, the Board stated that “standard values are developed based on scientific literature and available data and set at a level that is conservative....” These requirements are not specified either in the proposed definition of “standard value” or the proposed definition of “fugitive methane.”

1.18 Proposed Subsections (b)(3)(A)1. and (b)(3)(A)2. of Section 95486.2

Proposed subsections (b)(3)(A)1. and (b)(3)(A)2. of section 95486.2 read:

(A)1. If estimated potential FCI credits from all approved FSEs exceed 2.5 percent of deficits in the prior quarter, the Executive Officer will not approve additional FCI pathways....

2. If estimated potential FCI credits from an individual applicant's approved FSEs exceed 0.5 percent of deficits in the prior quarter, the Executive Officer will not approve additional FCI pathways....

Proposed subsections (b)(3)(A)1. and (b)(3)(A)2. are unclear because they present information in a format that is not readily understandable by persons “directly affected.” (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(5).) Despite the language in subsections (b)(3)(A)1. and (b)(3)(A)2., the formula specified in subsection (b)(3)(B) indicates information from the “most recent quarter for which data is available” must be used. These discrepancies make it unclear whether the estimated potential FCI credits must be calculated based on information from the most recent quarter for which data is available or based on information from the prior quarter.

1.19 Proposed Subsections (c)(3)(B), (e)(4)(B), and (f)(4)(B) of Section 95489

Proposed subsections (c)(3)(B), (e)(4)(B), and (f)(4)(B) of section 95489 read:

If the Executive Officer deems the application ready for validation, the applicant will be notified accordingly and provided with a list of eligibility requirements and comparison baseline inputs required for validation.

Proposed subsections (c)(3)(B), (e)(4)(B), and (f)(4)(B) are unclear because they present information in a format that is not readily understandable by persons “directly affected.” (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(5).) First, it is unclear how notification will occur. Second, the reference to the “list of eligibility requirements” is vague. Without further clarification or the addition of relevant cross references, it is unclear what the list of eligibility requirements will contain or how the eligibility requirements will be determined by the Executive Officer.

1.20 Proposed Subsection (g)(1)(D)2.c. of Section 95488.8

Proposed subsection (g)(1)(D)2.c. of section 95488.8 reads:

(D) The specified source feedstock attestation letter must make the following specific attestations:

[...]

2. All data and information supplied are true and accurate in all areas, but not limited to the following:

[...]

c. The specified source feedstocks were not intentionally produced, modified, or contaminated to meet the definition.

Proposed subsection (g)(1)(D)2.c. is unclear because it presents information in a format that is not readily understandable by persons “directly affected.” (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(5).) Despite the language of proposed subsection (g)(1)(D)2.c., the specific attestation language included in proposed subsection (g)(1)(D)3.e. contains no reference to feedstocks “intentionally produced.” Proposed subsection (g)(1)(D)3.e. reads in part:

3. The signed specified source feedstock supplier attestation letter must:

[...]

e. Include the following attestation:

I certify that the _____ (specified source feedstock) supplied by (facility/company) meets all of the following requirements: ... 4) The specified source feedstock was not intentionally modified or contaminated to meet the definition.

As such, it is unclear whether the specified source feedstock attestation letter must attest that specified source feedstocks were not intentionally produced to meet the definition.

1.21 Proposed Subsection (g)(5)(C)1. of Section 95488.9

Proposed subsection (g)(5)(C)1. of section 95488.9 reads:

The attestation letter must

1. Be maintained by the fuel pathway holder and submitted upon request by a CARB accredited verifier or verification body or the Executive Officer.

Proposed subsection (g)(5)(C)1. is unclear because it presents information in a format that is not readily understandable by persons “directly affected.” (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(5).) Despite the language of proposed subsection (g)(5)(C)1. that states an attestation letter must be maintained by a fuel pathway holder, proposed subsection (g)(5)(C) states: “Fuel pathway holders and fuel pathway applicants utilizing biomass under section

95488.9(g)(1)(A) must maintain an attestation letter.” As such, it is unclear whether fuel pathway holders and fuel pathway applicants must maintain the attestation letter, or only fuel pathway holders.

1.22 Proposed Subsections (a)(1)(B)1. and (b)(1)(B)1. of Section 95486.4

Proposed subsections (a)(1)(B)1. and (b)(1)(B)1. of section 95486.4 read: “Be located within five miles of any ready or pending Federal Highway Administration Alternative Fuel Corridor.” The language of proposed subsections (a)(1)(B)1. and (b)(1)(B)1. are unclear because they conflict with the Board’s description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(2).) The proposed text does not explain how the five-mile distance is required to be calculated. However, in the response to comments in the Final Statement of Reasons, the Board explains: “The distance is calculated by determining the shortest great-circle distance between the proposed site and an alternative fuel corridor.” If the Board intends to impose this specific requirement on the regulated public, it must be specified in regulation.

1.23 Proposed Subsection (f) of Section 95482

Proposed subsection (f) of section 95482 reads in part:

Any volumes of transportation fuel derived from palm oil or palm derivatives reported through the LCFS program must be assigned the ULSD carbon intensity found in Table 7-1 of the LCFS regulation.

Proposed subsection (f) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) As written, it is unclear whether the reference to reporting through the “LCFS program” is referring to reporting via the “LCFS Data Management System” as defined in section 95481 and/or section 95483.2.

1.24 Proposed Subsection (g) of Section 95482

Proposed subsection (g) of section 95482 reads in part:

Any volumes of bio-CNG, bio-LNG, and bio-L-CNG used in CNG vehicles reported through the LCFS program after December 31,

2040, must be assigned the ULSD carbon intensity found in Table 7-1 of the LCFS regulation.

Proposed subsection (g) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(1).) As written, it is unclear whether the reference to reporting through the “LCFS program” is referring to reporting via the “LCFS Data Management System” as defined in section 95481 and/or section 95483.2.

1.25 Proposed Definition of “Break ground” in Section 95481

The proposed definition of “break ground” in section 95481 reads:

“Break ground” means earthmoving and site preparations necessary for construction of the digester system and supporting infrastructure that starts following approval of all necessary entitlements/permits for the project.

The proposed definition of “break ground” is unclear because it conflicts with the Board’s description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(2).) The proposed definition does not contain a timeframe, other than to indicate the earthmoving and site preparations start “following approval of all necessary entitlements/permits for the project.” However, in the response to comments in the Final Statement of Reasons, the Board explains: “Staff believes that the current definition adequately suggests that construction activity should begin shortly after breaking ground.” If the Board intends to require construction activity to begin within a specified timeframe, the definition should be revised to reflect that intent.

1.26 Proposed Subsection (a)(2)(E) of Section 95486.4

Proposed subsection (a)(2)(E) of section 95486.4 reads in part: “The station nameplate refueling capacity for the permitted hours of operation calculated using the most recent HyCap model....” Proposed subsection (a)(2)(E) is unclear because the regulation does not use a citation style that clearly identifies published material. (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(6).) The reference to “most recent” should be replaced with a version date in accordance with section 20 of title 1 of the CCR or with a cross reference to the September 16,

2024, version of the HyCap model that is proposed for incorporation by reference in section 95481.

For the reasons discussed above, the proposed regulatory changes failed to comply with the clarity standard of the APA.

2. Incorrect Procedure

OAL also notes the following issues that must be addressed prior to any resubmission of this regulatory action.

2.1 Final Regulation Text

The final regulation text, including authority and reference citations, requires nonsubstantive revisions pursuant to section 40 of title 1 of the CCR. These revisions will be discussed with the Board.

2.2 Documents Incorporated by Reference

Several of the documents incorporated by reference require nonsubstantive revisions pursuant to section 40 of title 1 of the CCR. These revisions will be discussed with the Board.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), the Board may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to the Board on the date indicated below.

The Board must make any substantive regulatory text changes, which are sufficiently related to the originally noticed text, available for public comment for at least 15 days pursuant to subdivision (c) of Government Code section 11346.8 and section 44 of title 1 of the CCR. Any comments containing objections or recommendations must be summarized and responded to in the Final Statement of Reasons. The Board must also revise the existing responses to

comments to reflect the changes made to the regulation text. The Board must resolve all other issues raised in this Decision of Disapproval of Regulatory Action prior to the resubmittal of this regulatory action.

Date: February 25, 2025

_____/s/_____

Lindsey S. McNeill
Attorney IV

For: Kenneth J. Pogue
Director

Original: Steven S. Cliff, Ph.D.,
Executive Officer

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