At its November 21, 2019, public hearing, the California Air Resources Board (CARB or Board) considered staff’s proposed amendments to title 17, California Code of Regulations (CCR), sections 95481, 95483, 95485, 95486.1, 95487, 95491 and 95495. These sections comprise parts of the Low Carbon Fuel Standard (LCFS) Regulation. Resolution 19-27 of the Board approved the adoption of the proposed amendments.

The Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days in accordance with Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer was directed to evaluate all comments received during the public comment periods, and present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer was directed to take final action to adopt the regulation after addressing all appropriate conforming modifications.

The resolution and all regulatory documents for this rulemaking are available online at the following CARB website: https://ww2.arb.ca.gov/rulemaking/2019/lcfs2019

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in strikethrough to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in double strikethrough and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in attachments to this notice.
Summary of Proposed Modifications

Staff’s proposed modifications to the originally proposed amendments to sections 95481, 95483, 95485, 95487 and 95491, title 17 CCR are summarized below and attached to this notice as Attachment A.

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, or non-substantive revisions made to improve clarity. Notably, staff proposes to change terminology from “Borrowed Credits” to “Advanced Credits” in the proposed LCFS amendments to better characterize the credits that will be advanced, if necessary, from future years to be sold in a current Credit Clearance Market (CCM). This change is intended to more accurately convey, rather than change, the meaning of relevant provisions. For a complete account of all modifications in the originally proposed regulatory amendments, refer to the double underline and double strikeout sections of the regulation(s) in Attachment A.

A. Modifications to Section 95481. Definitions and Acronyms.

1. In section 95481(a), staff proposes to add definitions for the terms “Advanced Credits” and “Advanced Credit Window,” replacing, without any modification to the definitions themselves, the previously proposed definitions for “Borrowed Credits” and “Borrowed Credit Window.” As mentioned above, staff proposes to change the defined term “Borrowed Credits” to “Advanced Credits” throughout the regulation. This change is necessary to better characterize and accurately represent the mechanism of issuing these credits, specifically, bringing the credits forward in time, rather than borrowing and then repaying those credits in the future.

2. In section 95481(a)(133), staff proposes to add a definition of rural areas. This addition is necessary in order to implement modified requirements for the holdback credit equity projects in section 95483(c)(1)(A)6. as described below. Staff proposes to define a census tract as a rural area if at least 75 percent of its population is identified as rural by the latest United States Census data. Staff proposed this definition to reasonably balance the need for effective implementation and tracking in the program while ensuring that any region with a clear majority of rural population is covered.

B. Modifications to Section 95483. Fuels Reporting Entities.

1. In section 95483(c)(1)(A)4., staff proposes several modifications related to the administrative costs of the Clean Fuel Reward program.

   a. Staff proposes to add clarifying description of what is meant by the term “start-up costs” of the Clean Fuel Reward program. This addition is necessary in order to clarify the scope of the required proportional
limitation of administrative costs that may be funded by LCFS credit proceeds associated with the Clean Fuel Reward program, which in turn is designed to promote administrative efficiency, as discussed on page III-6 of the Initial Statement of Reasons (ISOR).¹

b. The initial amendment proposal limited the administrative costs of the Clean Fuel Reward program to ten percent of LCFS credit proceeds contributed to the program annually. This limit on administrative costs was designed to ensure efficient program administration and thus maximize the LCFS credit value benefit to EV drivers. But because the Clean Fuel Reward program is the first of its kind, predicting some administrative costs is difficult. In order to provide adequate necessary flexibility for implementing the program efficiently and effectively notwithstanding reasonable but difficult to forecast costs, staff proposes adding a process for the Clean Fuel Reward program administrator to request Executive Officer approval to exceed the ten percent spending limit for administrative costs. The modification is proposed in response to stakeholder comments and is necessary to facilitate reasonable flexibility and program continuity if administrative costs are at any point reasonably higher than the default limitation. As an example of a currently unknown but likely to be reasonable expense that could potentially result in administrative costs exceeding the ten percent limit, California Public Utilities Commission (CPUC) Resolution E-5015 requires the initial program administrator Southern California Edison to procure sufficient insurance to mitigate any potential risk associated with its role in the implementation of the program. The cost of such insurance is currently unknown. This proposed modification will allow the administrator to ensure continuous implementation of the program while adding flexibility to allow the Executive Officer to determine, based on the included regulatory criteria whether the higher administrative costs are necessary to administer the Clean Fuel Reward program.

c. Staff proposes to establish a deadline by which the request for approval of higher than ten percent administrative costs must be submitted to the Executive Officer. Staff proposes a schedule according to which the Clean Fuel Reward program administrator must submit any such request to the Executive Officer for approval of higher than ten percent administrative costs. Staff proposes that for the period of the first six calendar months of the program, including the month in which the first issuance of reward takes place, a request to exceed the ten percent

administrative costs limit must be submitted at least 30 days prior to the first issuance of reward; for the period starting with the seventh calendar month of the program through December 31, 2021, the request must be submitted at least 30 days prior to the beginning of month seven; and for calendar year 2022 and subsequent calendar years, the requested must be submitted by September 30th of the prior year. This modification is necessary in order to establish a reasonable procedure and clear timeline for implementation of any potential administrative costs limit exceedance during the initial program period. This modification is also necessary to provide sufficient time to the Executive Officer for reviewing the request for higher administrative costs and making timely evaluation of the exceedance request based on the regulatory criteria without disrupting program implementation.

d. Staff proposes to include the criteria to be used by the Executive Officer to evaluate requests for an exceedance of the ten percent limit on administrative expenses. The modifications would require such a request to include a detailed list of expected administrative costs, including a description of all efforts made to obtain competitive rates and minimize costs, and a detailed estimate of expected program proceeds. Staff proposes that within 30 days of receiving such a request that includes all necessary information, the Executive Officer will inform the administrator of its decision in writing along with a rationale explaining the basis for a rejection. If a rejection is due to insufficient information, the request for exceedance may be resubmitted after addressing the deficiencies identified by the Executive Officer. These changes are necessary to provide the criteria bases and process upon which the Executive Officer will approve or reject a request for exceedance.

2. In section 95483(c)(1)(A)5., staff proposes modifications to add a deadline date to specify when previously proposed annual reporting on the implementation of the Clean Fuel Reward program must be submitted. The April 30 due date is the same as and designed to be consistent with the date that other LCSF annual reports are due. This change is necessary to clarify the deadline by which the Clean Fuel Reward program implementation report is due.

3. In section 95483(c)(1)(A)6., staff proposes several modifications to the requirements for use of holdback credits for implementing equity projects by Electrical Distribution Utilities (EDU).

a. In section 95483(c)(1)(A)6.a., staff proposes to refer to the equity projects funded by holdback credits as “Holdback Credit Equity Projects.” This modification will facilitate clear references to these specific project types. Staff also proposes to add rural areas as an eligible category to benefit from the holdback credit equity projects, in addition to disadvantaged
communities and/or low-income communities or low-income individuals as previously proposed. This modification is proposed in response to stakeholder feedback that transportation electrification in rural areas is lagging compared to other areas, and that including rural area eligibility for holdback credit equity projects will help accelerate that progress consistent with the intent of the initial proposal. Staff also proposes to move the requirements related to the administrative costs of the holdback equity projects from this subsection to subsection c to improve the organization and readability of those provisions.

i. Staff proposes to combine the allowed projects for low-income individuals previously listed in multiple subsections (formerly ii, iv, v, and vii) into a single subsection (vi). This modification is necessary to improve clarity regarding which project types are directed specifically at low-income individuals while eliminating potential duplication.

ii. In subsection (iii), staff proposes to specify that holdback credit equity projects may include investment in public EV charging infrastructure and EV charging infrastructure in multi-family residences. This modification is necessary to ensure that any incentive for EV charging infrastructure for individual or single-family residence funded by holdback credits equity projects will benefit only low-income individuals in the State as staff proposes in subsection (vi). This ensures that proceeds from holdback credits designated for equity projects are better targeted for the benefits of low-income communities in the State.

iii. In subsection (v), staff proposes to specify that multilingual marketing, education, and outreach efforts should include information about the environmental, economic and health benefits of using electric vehicles, a critical part of the State’s strategy to meet its air quality and climate change goals. This modification is necessary to ensure that these efforts are aligned with the State’s strategy for meeting broader air quality and climate change goals.

iv. In subsection (vi), as described in item (i) above, staff proposes to combine into a single subsection the list of allowed projects for low-income individuals previously included in multiple subsections (formerly ii, iv, v and vii). This modification is necessary to clearly identify allowed project types designed specifically to serve low-income individuals while eliminating potential duplication with other allowed projects which are not specific to low-income individuals.
v. In subsection (vii), staff proposes to specify that in addition to local environmental justice advocates and local municipalities, the EDU must also coordinate with local community-based organizations to identify and develop customized holdback equity projects that are subject to Executive Officer approval. This modification is necessary to ensure that community-based organizations are included in the development of any special equity projects, such that the related extent to which the local needs of the communities have been incorporated into the project must be considered among other previously proposed bases for the approval of such a project. Staff proposes that the Executive Officer will inform the EDU of its decision in writing along with a rationale explaining the basis for a rejection. If a rejection is due to insufficient information, the request for approving the project may be resubmitted after addressing the deficiencies identified by the Executive Officer. These changes are necessary to provide the criteria bases and process upon which the Executive Officer will approve or reject a request for approving alternative projects.

b. In section 95483(c)(1)(A)6.b., staff proposes to require opt-in EDUs, as part of their annual LCFS reporting, to include a discussion of how their portfolio of holdback credit equity projects are consistent with the findings and recommendations of the Senate Bill (SB) 350 Low-Income Barriers Study, Part B report prepared by CARB. This modification is based on stakeholder feedback and is necessary to ensure that holdback credit equity projects implemented by each EDU are aligned with the other ongoing efforts to address the barriers identified for adoption of transportation electrification, especially for low-income California residents. This modification is designed to facilitate the development of meaningful and cost-effective projects, and avoid duplicative efforts.

c. In section 95483(c)(1)(A)6.c., staff proposes to specify that administrative costs for equity projects may count toward the total spending requirements for equity projects, but must not exceed ten percent of total spending on these projects annually. This change is in response to stakeholder feedback and is necessary to align the holdback equity project provision with similar State programs that include administrative cost spending within the total spending requirements. The ten percent limit on administrative costs will ensure that holdback credit proceeds are primarily used to deliver benefits to disadvantaged communities and low-income individuals, while still allowing sufficient funding for effective implementation of these programs.
d. In section 95483(c)(1)(A)6.c., staff proposes to include a process for an EDU to request CARB Executive Officer approval for a higher than ten percent spending limit when local community-based organizations are involved with implementation of the holdback credit equity projects. This modification is proposed based on stakeholder feedback that some equity projects are best implemented in coordination with local community-based organizations, especially projects designed to cover difficult-to-reach areas and communities, resulting in higher administrative costs for the project implementation. This change is necessary to provide EDUs additional flexibility for designing equity projects, while allowing the Executive Officer to ensure that the proceeds from the holdback credits are used in an efficient and effective manner for implementing equity projects. Staff proposes that any request for exceedance of the ten percent limit must be submitted to the Executive Officer by September 30 for the costs to be incurred in the next calendar year. The timing requirement is necessary to ensure sufficient time is available for review of requests prior to implementation of projects in the following year. Staff also proposes items that must be included in a request and criteria the Executive Officer will use in evaluating requests. These items include a complete description of the equity projects planned by the EDU, an estimate of total administrative costs relative to total spending on the projects, and evidence that the community-based organization is a non-profit organization focused on serving communities and areas eligible for holdback credit equity projects as per this subsection. Staff proposes that within 30 days of receiving such a request that includes all necessary information, the Executive Officer will inform the EDU of its decision in writing and provide a rationale if the request is rejected. If the rejection is due to insufficient information, the request can be resubmitted after addressing the deficiencies identified in the Executive Officer decision. These modifications are necessary in order to specify the reasonable process and criteria bases upon which the Executive Officer will approve or reject the request.

C. Modifications to Section 95485. Demonstrating Compliance.

1. In section 95485(c)(2)(A), staff proposes to extend the Credit Clearance Market (CCM) period one month, to end August 30 rather than July 31. This change is necessary to provide the CCM participants additional time to complete credit transfers during the CCM period. This modification is in response to stakeholder comments that the current time frame may be insufficient to finalize negotiations and contractual arrangements for completing credit transfers, especially in the event that the pool of credit sellers in the CCM is expanded due to issuance of advanced credits to EDUs.
2. In section 95485(c)(2)(D), staff proposes to add a requirement that entities obligated to acquire credits in the CCM complete payment to the seller before the credit transaction is initiated by the seller in the LCFS Reporting Tool – Credit Bank and Transfer System (LRT-CBTS), unless both the parties agree to other payment terms. This change is in response to stakeholder feedback that finalizing payment terms for contracts designed for one-time credit trades may become an obstacle to timely completion of contracts within the CCM period, especially given EDU restrictions on contracting based on prudent risk management standards and California Public Utility Commission requirements for Investor-owned Utilities (IOU) who may be required to participate in CCM. This addition is necessary in order to facilitate effective incorporation and implementation of the previously proposed advanced crediting provisions.

3. In section 95485(c)(3)(A), staff corrected a typographical error which was referring to an incorrect section in the regulation.

4. In section 95485(c)(3)(C), staff proposes several non-substantive edits to implement the terminology change from “borrowed credits” to “advanced credits”.

5. In section 95485(c)(3)(D)3., staff proposes to specify that the annual update to the maximum LCFS credit price will go into effect starting June 1 of every year. The updated maximum credit price will apply to all credit agreements settled on June 1 or after. This modification is necessary to provide a specific date each year that the maximum credit price will be adjusted, which will provide greater clarity and transparency to market participants and facilitate negotiation of credit transfer agreements.

6. In section 95485(c)(3)(F)1., staff proposes that parties pledging credits into CCM agree to withhold those credits from sale in the on-going LCFS credit market, if a CCM will occur, until August 31. This modification is necessary to reflect the extended CCM period as discussed in item C.1. above.

7. In section 95485(c)(3)(F)4., staff proposes to change the closing date of CCM period from July 31 to August 30. This change is necessary to reflect the extended CCM as discussed in item C.1. above.

8. In section 95485(c)(3)(F)5., staff proposes modifications to specify that parties voluntarily pledging credits for sale into Credit Clearance Market (CCM credit pledges other than pledges of advanced credits) may not reject an offer to purchase those credits, based on the credit pricing terms, if the buyer is willing to offer the maximum credit price. These changes are necessary to specify that entities voluntarily pledging credits must accept a reasonable offer at the maximum price for available credits, and that any entities receiving advanced credits are not subject to this provision.
9. Staff proposes to delete section 95485(c)(4)(C) to eliminate duplication with 95485(c)(2)(A), which provides the same details on the CCM period.

D. Modifications to Section 95487. Credit Transactions.

1. In section 95487(a)(2)(D), staff proposes modifications to the internal regulatory reference for the prohibition on selling or transferring credits above the maximum credit price. The modification is necessary to clarify that the credit price maximum applies to all transactions occurring in the LCFS market, as explained in chapter 1, section C of the ISOR, and eliminate any potential confusion that the credit price maximum might only apply to credit transactions in the CCM.2

E. Modifications to Section 95491. Fuel Transactions and Compliance Reporting.

1. In section 95491, staff proposes to update Table 12 to reflect the modified extended CCM period as modified and discussed in item C.1. above, and to include the specified date, discussed in item C.5. above, when a new maximum LCFS credit price becomes effective. These modifications are necessary to incorporate these modified and additional dates into the preexisting timeline reference table.

Environmental Analysis

These proposed modifications do not change implementation of the regulation in any way that is anticipated to affect the conclusions of the environmental analysis addendum included in the Staff Report because the modifications consist primarily of refinements and clarifications to the initial proposal. At this stage in this rulemaking process, CARB does not expect that any changes in compliance responses resulting from the modifications would result in any of the circumstances requiring recirculation of the analysis as set forth in section 15088.5 of the CEQA Guidelines.

Additional Document Incorporated by Reference and Supplemental Documents Added to the Record

In accordance with Government Code section 11347.1, subdivision (a), staff has added to the rulemaking record and invites comments on the following:


California Public Utilities Commission. (2019). Resolution E-5015. Southern California Edison Company’s proposed implementation plan for the Low Carbon Fuel Standard-funded statewide point-of-purchase Clean Fuel Reward program. Retrieved from: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M311/K266/311266079.PDF.

These documents are available for inspection by contacting Chris Hopkins, Regulations Coordinator, at (916) 445-9564.

**Agency Contacts**

Inquiries concerning the substance of the proposed regulation may be directed to the agency representative Jim Duffy, Branch Chief, Transportation Fuels Branch, Industrial Strategies Division, at (916) 323-0015, or Firas Abu-Sneneh, Air Pollution Specialist, Alternative Fuels Section, at (916) 323-1009.

**Public Comments**

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

Postal mail: Clerks’ Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: https://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 verbal 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 CARB in one of the two forms described above and received by CARB no later than 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 shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk’s Office 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 alterno u 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.

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: February 3, 2020

Attachment

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 CARB's website (www.ARB.ca.gov).