

**DOCKETED**

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*Comment Received From: Advanced Biofuels Association  
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## **Comments from the Advanced Biofuels Association**

*Additional submitted attachment is included below.*



January 31, 2024

**VIA ELECTRONIC FILING**

California Energy Commission  
Docket Unit, MS-4  
Docket No. 23-SB-02  
715 P Street  
Sacramento, California 95814

**Re: Senate Bill X1-2 Implementation – Revised CEC Spot Contract Forms**

On behalf of the Advanced Biofuels Association (“ABFA”), thank you for the opportunity to offer these comments on the California Energy Commission’s (“CEC”) revisions to the spot contract forms as part of Senate Bill X1-2 implementation.

ABFA represents more than 40 companies in the United States and around the world who are engaged in the production, marketing, and distribution of advanced renewable fuels. The Association has a combined global production capacity of more than 12 billion gallons of advanced biofuels. Our members are significantly impacted by the proposed revisions and offer the following comments for your consideration.

***The statute does not require daily submission of settlement information***

Section 25354(l), as amended by Senate Bill X1-2, requires entities “that consummate spot market transactions” to submit daily reports of information regarding such transactions. A plain reading of this provision dictates that spot market transactions are consummated at the time a trade is executed and thus the statutory requirement is satisfied when the daily trading report is submitted.<sup>1</sup> Further, it appears that the primary basis for requiring the settlement form is for CEC to calculate the final price based on the index settlement price. If all pricing fields are entered on the trading form, then CEC should be able to use index publicly available sources to ascertain settlement information, obviating the need for a second form.

Gathering the information necessary to create the settlement report is a resource-intensive undertaking that is unwarranted when compared to the usefulness of the information to CEC. Much of the information required by the settlement form is not required to be reported by any other regulatory body. As a result, some of the information is not currently collected in any coherent, easily retrievable form. Instead, the information is scattered across multiple pieces of transaction documentation, some of which may not even be available the day after a trade given occasional delays in preparing transaction confirmations. Gathering such information from various sources will require implementing new systems, procedures, and training that will be onerous to maintain and even more onerous to develop and implement on such a short timescale.

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<sup>1</sup> See, e.g., *Braunstein v. Superior Court of Monterey County*, 225 Cal. App. 2d 691 (Cal. Ct. App. 1964) (“the contract will be deemed to have been consummated and become binding at the time and place where the last act necessary to its validity was performed.” The last act necessary to validity is usually “the act constituting the acceptance” of an offer).

Because submission of settlement information is not required by statute and not clearly necessary for CEC to ascertain the settlement price, CEC should not finalize the settlement report.

To the extent that CEC is able to demonstrate that any of the information required by the statute, which is not available on the trading report, cannot be obtained by means other than submissions from reporting entities, such reports should be required on no more than a quarterly basis to allow reasonable time for the relevant information to be gathered and reported. Receiving information on a less frequent basis would result in more accurate information being provided, thus aiding, not harming, CEC's ability to determine whether market manipulation has occurred.

***The implementation date should be delayed to accommodate a fair and transparent rulemaking process and to allow for reporting entities to establish necessary compliance systems***

At the January 17, 2024 implementation webinar, in response to numerous comments about the unworkability of the proposed forms similar those raised by ABFA above, CEC staff responded by instructing concerned entities to work with CEC to resolve their concerns in private meetings. Such an ad hoc process occurring outside of the public view will lead to the same fragmented, confusing implementation that has plagued SB X1-2 implementation from the start. While we recognize the immense pressure CEC was placed under to quickly implement an ambiguous statute with little guidance and a short timeline, private conversations and bespoke, entity-by-entity implementation are not the answer.

Further, reporting entities have already invested substantial time and resources in setting up the current reporting systems and procedures. Expecting yet another effort to gather additional information and establish processes for yet another report by February 9 is simply unrealistic.

In response to oral comments, CEC stated that it intends to release FAQs on the new requirements. Such FAQs should be available before, not after, implementation, and should provide clear guidance that place all parties on a level playing field. In order to accommodate a transparent process in which parties have an opportunity to present the practical challenges with the revised forms and CEC has an opportunity to provide universal guidance, and in order for reporting entities to have an opportunity to implement the necessary systems and procedures based upon such guidance, the effective date of the revised forms should be delayed by 180 days.

We look forward to working with CEC further on this matter.

Sincerely,



Michael McAdams, President  
Advanced Biofuels Association  
On behalf of ABFA Member Companies