



Regulatory Advisory

July 2010



Low Carbon Fuel Standard Regulatory Advisory: 10-02

Additional Administrative Extension to September 30, 2010 and Other Items Related to the Electronic Reporting Requirements

SCOPE

The Air Resources Board (ARB) is issuing a Regulatory Advisory today, 10-02, which replaces the Low Carbon Fuel Standard (LCFS) Reporting Advisory 10-01 (Reporting Advisory 10-01) in its entirety. Please discard LCFS Reporting Advisory 10-01; it is out of date. This Regulatory Advisory 10-02 will remain in effect through September 30, 2010 or a later date as specified in a subsequent ARB advisory or notice.

BACKGROUND

On November 25, 2009, the ARB adopted the LCFS regulation pursuant to the California Global Warming Solutions Act of 2006. The regulation became effective on January 12, 2010 and was codified at title 17, California Code of Regulations, sections 95480-95490. Additional provisions became effective on April 15, 2010 and were codified in the same sections. The combined final regulation order can be found at: <http://www.arb.ca.gov/regact/2009/lcfs09/lcfscombofinal.pdf>. The LCFS will reduce greenhouse gas (GHG) emissions by reducing the carbon intensity of transportation fuels used in California by an average of 10 percent by the year 2020. Carbon intensity is a measure of the GHG emissions associated with the combination of all of the steps in the "lifecycle" of a transportation fuel. While carbon intensity (CI) standards are not enforced in 2010 (the first year of the regulation), compliance with the reporting and recordkeeping requirements is required for all years, including 2010.

DEFINITIONS

For purposes of this Regulatory Advisory, "we" means ARB, the Board, or ARB staff. Also, "this advisory period" means the period during which this Regulatory Advisory will remain in effect, which is through September 30, 2010 or a later date as specified in a subsequent ARB advisory or notice. Unless otherwise stated, all references to "section" are to the LCFS regulation.

ELECTRONIC REPORTING REQUIREMENT

Current Action: Administrative Extension of Electronic Reporting Requirements to September 30, 2010

Starting in 2010, the LCFS regulation requires regulated parties to submit quarterly progress reports. The first 2010 quarterly report, covering the calendar quarter from January through March, was due on May 31, 2010. Quarterly progress reports are to be submitted using an interactive, internet web-based form for use in reporting the information specified in section 95484(c) of the LCFS regulation and other required data. To facilitate the orderly, effective, and complete reporting by all regulated parties, ARB contracted for the development of an interactive web-based LCFS Reporting Tool (Reporting Tool or LRT), which was expected to be released for beta testing in mid-March 2010. Based on the anticipated release of the Reporting Tool, we administratively extended the May 31, 2010 reporting deadline to June 30, 2010, in Reporting Advisory 10-01.

Since the issuance of the first reporting advisory, contracting delays now require additional time to finalize the Reporting Tool and for regulated parties to become familiar with the Reporting Tool. The contract has been initiated and we anticipate the Reporting Tool and supporting documentation to be released in August 2010 for beta testing, with a final rollout expected on or about August 31, 2010, the deadline for the 2nd-quarter report submission. Therefore, we are administratively providing a further extension to September 30, 2010 for both 1st-quarter and 2nd-quarter electronic reports, as explained below.

To ensure that regulated parties have sufficient time and opportunity to become familiar with the Reporting Tool when it is finalized and to use it to submit their reports, we will administratively delay enforcement of the May 31, 2010 and August 31, 2010 deadlines for electronically submitting the 1st and 2nd quarterly reports of 2010, respectively, as follows:

- Both the 1st-quarter and 2nd-quarter reports that were due May 31, 2010 and August 31, 2010, respectively, under section 95484(c)(1)(A) of the regulation will now be due September 30, 2010. ARB will not enforce the May 31, 2010 and August 31, 2010 deadlines for electronic reporting until after September 30, 2010.
- It remains ARB's intent that, as of the OAL approval date, regulated parties are required to maintain and keep records containing the information specified in section 95484(c), including the interim carbon intensity values discussed in "Current Action: Reporting of 'Interim' Carbon Intensity Values" below, and provide these records to the Executive Officer upon request or as otherwise provided in the LCFS regulation. The OAL approval date applicable for all fuels was January 12, 2010, except for biodiesel and renewable diesel made from Midwest soybean, for which the OAL approval date was April 15, 2010. The ARB will consider enforcement action for failure to maintain and keep such records after the applicable OAL approval date, irrespective of the Reporting Tool's completion in 2010.

Current Action: Reporting of Renewable Identification Numbers (RIN)

In Reporting Advisory 10-01, we stated that, as part of the quarterly reporting requirements for gasoline and diesel fuel, regulated parties must report federal "Renewable Identification Numbers" (RIN) that are retired for facilities in California. ARB staff has subsequently determined that this requirement is of limited utility. We will therefore not enforce the RIN reporting requirement, and staff will be proposing regulatory changes to codify this in a future rulemaking.

Current Action: Reporting of "Interim" Carbon Intensity Values

In Reporting Advisory 10-01, ARB staff noted that it intended to release additional guidance on the use of default values, technical calculations or other interim methods for deriving certain values to be reported as one of the fields set forth in Table 3 of section 95484(c). We have since developed guidance on two interim values, as follows:

- 96 – interim CI reporting value for gasoline replacements when CI is unknown, and
- 95 – interim CI reporting value for diesel replacements when CI is unknown.

The interim values noted above may be used for first, second, and third quarter reporting in 2010.

Current Action: Interim Reporting of Physical Pathway Information

Interim guidance was also developed for the reporting of physical pathway information. In the Reporting Tool, regulated parties will be asked to choose an appropriate "Physical Pathway" code (e.g., "PHY01" denotes "Fuel produced in California"). We have received comments from some stakeholders that obtaining physical pathway information has been problematic under certain circumstances. To address this concern, we will administratively permit, during this advisory period, regulated parties to select in the Reporting Tool whatever physical pathway code they believe is most applicable for a given fuel or blendstock. Further, we will not enforce the initial demonstration of physical pathway requirements in section 95484(d)(2)(A) through (E) during this advisory period for any regulated party or other fuel provider, producer, or importer. This means, for example, that a corn ethanol producer does not need to meet the initial demonstration of physical pathway requirements in order for one of its customers (e.g., a gasoline refiner) to use the physical pathway code previously described above to denote the corn ethanol purchased from the corn ethanol producer. In other words, during this advisory period a regulated party may use a physical pathway code provided by a fuel producer or importer, irrespective of whether that producer or importer has obtained ARB approval of its initial demonstration of physical pathway.

Current Action: Retroactive Correction or Adjustments of 2010 1st-Quarter or 2nd-Quarter Reported Values

ARB will not retroactively enforce the accuracy of any value, calculated result, or any other information contained in the 2010 1st-quarter or 2nd-quarter reports submitted prior to the expiration of this advisory period. For example, a regulated party is not required to adjust, replace or otherwise revisit an interim value reported as part of its 1st-quarter or 2nd-quarter 2010 report or any portion of a physical pathway demonstration submitted to ARB staff before or during this

advisory period, including any value that was reported as “Unable to Determine” or “Data Unavailable” before or during this advisory period.

Current Action: High Carbon-Intensity Crude Oils (HCICO)

Regulated parties remain obligated to meet the regulatory requirements pertaining to HCICO. The regulation (section 95484(c) and 95486(b)(2)(A)) requires, among other things, a regulated party to identify, maintain records of, and report the quantities and carbon intensity of its blendstocks, including CARBOB and diesel fuel derived from HCICO. The calculation of carbon intensity, using the CA-GREET tool and other methods as provided in the regulation, is a requirement that is independent of the Reporting Tool.

Because the Lookup Tables in section 95486(b)(1) currently do not specify carbon intensity values for fuels derived from HCICO, under section 95486(b)(2)(A)2.a.ii.I-III, a regulated party of a fuel or blendstock derived from HCICO would need to propose and obtain approval for a new pathway for that fuel or blendstock. Such a new pathway would need to be supported by appropriate records and documentation, which a regulated party is required to obtain, maintain and report to the Executive Officer as provided in the regulation. Alternatively, a regulated party may request approval to use the average carbon intensity value for CARBOB, gasoline, or diesel fuel as provided in section 95486(b)(2)(A)2.a.ii.II. For either of these alternatives, ARB will not enforce the requirement to report the carbon intensity of a fuel or blendstock derived from HCICO until after September 30, 2010, provided the regulated party has collected and provided to ARB by September 30, 2010 the supporting records and documentation needed to make the carbon intensity determination. Also, ARB will not require that Method 2B applications for new pathways of HCICO-derived fuels or blendstocks be approved by September 30, 2010. See 95486(b)(2)(A)2.a.ii.I-III for the exact regulatory provisions.

With regard to identifying crudes that fall within the “2006 California baseline crude mix,” affected regulated parties will need to review their records to determine whether the fuel or blendstock they are reporting for a given compliance period was derived from crudes that meet the definition of “2006 California baseline crude mix” or otherwise does not fall within the definition of “high carbon-intensity crude oil,” both of which are specified in section 95486(b)(2)(A).

FOR MORE INFORMATION

The final regulation order and other rulemaking documents can be found in the LCFS rulemaking website at: <http://www.arb.ca.gov/regact/2009/lcfs09/lcfscombofinal.pdf>. For any questions regarding this advisory, please contact Mr. Floyd Vergara, Manager, Industrial Section at (916) 327-5986 or via email at fvergara@arb.ca.gov, or Ms. Renee Littaua, Manager, Fuels Section at (916) 322-6019 or via email at rlittaua@arb.ca.gov. If this document is needed in an alternate format or language, please contact Ms. Manisha Singh at (916) 323-0014 or mansingh@arb.ca.gov. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.