



Regulatory Advisory

September 2010



Low Carbon Fuel Standard Regulatory Advisory: 10-03

Optional Reporting of First and Second Quarter 2010 Reports, Limited Enforcement of Third and Fourth Quarter 2010 Reports, and Related Items

SCOPE

The Air Resources Board (ARB) is issuing a Regulatory Advisory today, 10-03, which replaces the September 30, 2010 reporting deadline specified in Low Carbon Fuel Standard (LCFS) Regulatory Advisory 10-02, as well as provides additional guidance on related items noted in Regulatory Advisory 10-02. This Regulatory Advisory 10-03 will remain in effect through April 30, 2011, 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 applicable 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 April 30, 2011 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

As described below, we are administratively treating 2010 as a year in which regulated parties have the opportunity to become familiar with the electronic reporting tool that ARB staff has developed to assist regulated parties with the electronic submittal of their 2010 quarterly reports. The requirement that regulated parties submit the first quarter (Q1) and second quarter (Q2) 2010 reports will not be enforced, and while third quarter (Q3) and fourth quarter (Q4) 2010 reports and the annual compliance 2010 report are being required, any enforcement will be limited to timeliness requirements. By contrast, 2011 will be treated as a full compliance year, and all requirements, including but not limited to timeliness, accuracy and completeness, will be enforced for all quarter and annual compliance reports for 2011.

Current Action: Submittal of 2010 Q1 and Q2 Reports Is Recommended But Optional

Since the issuance of the first and second LCFS advisories, the beta version of the Reporting Tool has been released for regulated parties to become familiar with the Reporting Tool ("LCFS RT Test Release Version 1.0" or simply "beta version"). At this time, the beta version is designed for acceptance testing but not for actual submittal of quarterly reports to ARB. Accordingly, the most important objective for the beta version LRT at this time is to encourage all regulated parties to register online and access the beta version and use it on a trial basis before 2011 to become familiar with all its features and identify any questions users may have that need to be addressed. Therefore, we are administratively taking the following actions:

- The Q1 and Q2 reports are no longer mandatory and no longer due September 30, 2010. Nonetheless, ARB highly encourages regulated parties to take the opportunity to use the LRT beta version and voluntarily submit their Q1 and Q2 reports. Actual electronic submittal of reports for these quarters is recommended but optional. The voluntary submittal of these reports will help ARB determine the progress of fuel producers, importers, and other providers are making toward meeting the 2011 requirements and will help ARB determine steps that may be needed to help facilitate further progress. Q1 and Q2 reports that are submitted will not be subject to enforcement actions for lack of timeliness, completeness, or accuracy, at any point in the future (i.e., ARB will not enforce 2010 Q1 and Q2 reports retroactively).

Current Action: Timely Submittals of 2010 Q3 and Q4 Reports and Annual Compliance Report Are Required

Because we expect the LRT beta version will achieve operational status in Fall 2010, the regulation's reporting dates for the Q3 and Q4 reports remain in effect and are unaffected by this Regulatory Advisory 10-03; Q3 and Q4 reports therefore remain due November 30, 2010, and February 28, 2011, respectively. Further, the 2010 annual compliance report remains due April 30, 2011. However, like the Q1 and Q2 reports, the Q3 and Q4 reports and the 2010 annual compliance report will not be subject to enforcement actions for lack of accuracy or completeness. Also, ARB will not enforce 2010 Q3 and Q4 reports and the 2010 annual compliance report retroactively for lack of accuracy or completeness. Again, the emphasis here is on regulated parties using the LRT beta version for their Q3 and Q4 Reports, with the added emphasis for Q3 and Q4 reports on their timely submittals.

Current Action: Timely, Complete and Accurate Submittal Is Required for 2011 Quarterly and Annual Reports

Because we expect the LRT will be fully operational before the end of 2010, this Regulatory Advisory does not affect any of the submittal deadlines in 2011, and all 2011 quarterly and annual compliance reports will be subject to enforcement action for their timeliness, completeness, accuracy, and any other applicable requirements specified in the regulation.

Current Action: Extension of Actions Taken in Regulatory Advisory 10-02

For purposes of this advisory, the following actions noted in LCFS Regulatory Advisory 10-02 remain in effect through this advisory period or as otherwise noted below ("no change" means the action taken in Regulatory Advisory 10-02 for that item has not changed except as noted):

- Reporting of Renewable Identification Numbers (RINs) – no change;
- Reporting of Interim Carbon Intensity Values – no change;
- Interim Reporting of Physical Pathway Information – no change;
- Retroactive Correction or Adjustments of 2010 Q1 or Q2 Reported Values – no change;
- High Carbon-Intensity Crude Oils (HCICO) – no change except that the submittal of carbon intensity values of fuels or blendstocks derived from HCICO will be treated as described above for other data contained in the 2010 quarterly and annual compliance reports. Further, the "supporting records and documentation needed to make the carbon intensity determination" for HCICO-derived fuels or blendstocks are no longer required to be submitted to ARB by September 30, 2010. Instead, the Executive Officer may request such records be submitted to ARB as provided in section 95484(d).

FOR MORE INFORMATION

Currently, the LRT beta version itself can be accessed at <https://ssl.arb.ca.gov/LCFSRTUAT/>, as specified in a listserv announcement on September 2, 2010. However, this site is likely to change when the LRT is released in final form. Other LRT-related materials can be accessed at: <http://www.arb.ca.gov/fuels/lcfs/workgroups/workgroups.htm>. 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/lcfscombfinal.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. Michelle Buffington at (916) 324-0368 or mbuffing@arb.ca.gov. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.