



# Regulatory Advisory

December 31, 2009



## **Low Carbon Fuel Standard Reporting Advisory: 10-01**

### **Reporting Requirements: Limited One-Month Grace Period for Regulated Parties Subject to May 31, 2010 Deadline**

The Air Resources Board (ARB or Board) is completing development of the Low Carbon Fuel Standard (LCFS) Reporting Tool for use by regulated parties subject to the LCFS regulation. In order to ensure adequate time for regulated parties subject to the regulation's May 31, 2010 reporting deadline to become familiar with and effectively use the Reporting Tool, ARB is administratively providing a one-time grace period for submittal of the reports due by that date, as specified below. For purposes of this Advisory, "we" means ARB, the Board, or ARB staff, and "you" means a "regulated party," as that term is defined in the LCFS regulation.

#### **Background and Current Action**

On November 25, 2009, the ARB adopted the LCFS regulation pursuant to the California Global Warming Solutions Act of 2006. The regulation becomes effective on January 1, 2010 and will be codified at title 17, California Code of Regulations, sections 95480-95490. The regulation is currently undergoing final administrative review at the Office of Administrative Law (OAL), and a decision is expected on or before January 12, 2010. The actual effective date may therefore be delayed from the originally intended date of January 1, 2010. ARB staff will promptly notify affected parties of the effective date as soon as the regulation is filed with the Secretary of State.

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 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.

For the year 2010, the regulation requires regulated parties to submit quarterly progress reports. The first quarterly report covering the calendar quarter from January through March is due on May 31, 2010. The 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 has contracted for the development of an interactive web-based LCFS Reporting Tool (Reporting Tool or LRT). The Reporting Tool and supporting documentation are currently under development and are expected to be released by mid-March 2010 for beta testing, with a final rollout expected on or before May 31, 2010.

To ensure that regulated parties have sufficient time and opportunity to become familiar with the Reporting Tool and use it to submit their reports, ARB will enforce the May 31, 2010 requirements as follows:

- ARB will not enforce the May 31, 2010 reporting deadline until after July 1, 2010.
- For this initial quarterly reporting period, ARB will not consider enforcement action against any regulated party for failure to electronically file a report using an interactive, internet web-based form until after July 1, 2010.
- It remains ARB's intent that, as of the date OAL approves the LCFS regulation, regulated parties are required to maintain and keep records containing the information specified in section 95484(c) and provide such records to the Executive Officer upon request or as otherwise provided in the LCFS regulation, as explained in greater detail below. ARB will consider enforcement action for failure to maintain and keep such records after the date OAL approves the LCFS regulation, irrespective of the Reporting Tool's completion in 2010.

#### **Compliance and Enforcement Policies – Questions and Answers**

**Is ARB administratively delaying the enforcement of the May 31, 2010 deadline for electronically submitting the first quarterly report of 2010?**

Yes, ARB will administratively delay the enforcement of the electronic filing requirement, as noted in this advisory, until after July 1, 2010. This action provides a one-month (30 days) grace period for regulated parties to electronically file a

report using an interactive, internet web-based form. However, as noted above, regulated parties remain subject to enforcement action for failure to maintain and keep records containing the information specified in section 95484(c), or failure to provide such records to the Executive Officer upon request or as otherwise provided in the LCFS regulation, subject to the technical “work-arounds” and provisions for reporting unavailable data, as described below, and any subsequent guidance that ARB may issue. As noted, the failure of a regulated party to maintain, keep, and provide such records to the Executive Officer becomes subject to ARB enforcement action upon OAL approval of the LCFS regulation.

Are you still required to report renewable identification numbers (RIN)? If so, which RIN are to be reported?

Yes, as part of the quarterly reporting requirements for gasoline and diesel fuel, regulated parties must report “All Renewable Identification Numbers (RIN)” that are retired for facilities in California. We understand that federal RIN reporting is a nationwide obligation, not a state-by-state requirement. We expect regulated parties to report RIN volumes consistent with their renewable fuel use in California.

Are you required to identify high carbon intensity crude oils (HCICO)? If so, are HCICO carbon intensities available in the regulation?

Yes. 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 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. Further, the LCFS regulation places the obligation on the regulated party for determining the carbon intensity of its fuel or blendstock, including occasions when such fuel or blendstock is derived from HCICO, and that obligation is not dependent on the Reporting Tool. As noted below, ARB staff intends to work with regulated parties to help identify information or data gaps and, to the extent feasible, help fill such data gaps so regulated parties can meet these obligations.

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)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)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 July 1, 2010, provided the regulated party has collected and provided to ARB by July 1, 2010 the supporting records and documentation needed to make the carbon intensity determination. Further, ARB will not require that Method 2B applications for new pathways of HCICO-derived fuels or blendstocks be approved by July 1, 2010. See 95486(b)(2)(A)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). ARB intends to work with regulated parties to help fill in data gaps they may have and to release in early 2010 additional guidance to assist regulated parties in identifying crudes derived from HCICO on a country, regional, process, or other basis.

Is ARB administratively relaxing the data requirements for the first quarterly report of 2010?

Yes, but only to a limited degree. As noted, ARB will administratively relax the enforcement of electronic data-submission requirements for the first quarterly report of 2010. All regulated parties are required to meet the reporting requirements by July 1, 2010, as noted above. To the extent that data are not available for a particular field in Table 3 of section 95484(c), ARB will allow an exception. Regulated parties are required to note this in their reports with “Unable to Determine” or “Data Unavailable,” whichever applies, and provide further explanation to elaborate on the reasons why such information is unavailable or why the regulated party was unable to determine the information.

It should be noted that ARB intends to release in early 2010 additional guidance on “work-arounds,” which involve 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). For any such field that ARB issues subsequent technical guidance, regulated parties will need to report such interim values until the interim technical guidance no longer applies.

When and how will the LCFS Reporting Tool be made available?

The Reporting Tool and supporting documentation are currently under development and are expected to be released by mid-March 2010 for beta testing, with a final rollout expected on or before May 31, 2010.

Does this administrative action affect future reporting requirements?

No. Based on ARB's current schedule for completing the LRT and additional guidance documents, ARB currently intends that this is a one-time limited grace period as described above. This administrative action has no effect on future reporting requirements beyond the May 31, 2010 deadline (now July 1, 2010). Reporting requirements and deadlines remain unchanged for all subsequent compliance periods starting with the August 31, 2009 deadline set forth in section 95484(c)(1)(A).

**For more information**

The final regulation order and other rulemaking documents can be found at the LCFS rulemaking website at <http://www.arb.ca.gov/regact/2009/lcfs09/lcfs09.htm>. If you have 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](mailto:fvergara@arb.ca.gov), or you may contact Ms. Renee Littaua, Manager, Fuels Section at (916) 322-6019 or via email at [rlittaua@arb.ca.gov](mailto:rlittaua@arb.ca.gov). If you need this document in an alternate format or language, please contact Ms. Manisha Singh at (916) 323-0014 or [mansingh@arb.ca.gov](mailto:mansingh@arb.ca.gov). TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.