
MEMORANDUM

To: lcfsworkshop@arb.ca.gov
From: Conestoga Energy Partners, LLC
Subject: Comments on proposed verification requirements
Date: 06/16/17

Staff continues to reference future verification requirements during ongoing public working meetings focused on a variety of topics related to the LCFS. In light of these references, we would like to submit a second round of suggestions for staff to consider. We've previously submitted detailed feedback on proposed verification requirements in response to the January 2017 public working meeting on ethanol as a transportation fuel. The comments provided herein are in addition to the first round of comments.

Section Reference:

§95494 and §95495 Proposed *Regulatory Requirements 06/02/16*
Violations and Authority to Suspend, Revoke, or Modify

Proposed regulations in §95499(b) require verifiers to identify and implement data checks in an amount sufficient enough to conclude with reasonable assurance that reported information is free of material misstatement. Currently proposed language calls for the data checks to include a number of elements at a minimum including the "recalculation of carbon intensity parameters to check original calculations." In addition, verifiers are required to compare their own calculated values with reported data to confirm the extent and impact of omissions and errors and to issue a statement as to whether the submitted information is free of material misstatement. If we understand correctly, the CI value that the verifier calculates must match the approved CI value exactly. We foresee issues with this requirement if indeed this is the case. As with all industrial operations, there is some slight variability in inputs that may result in a CI with a slightly different numeric value CI than the value on record. By slight, we estimate that the difference would be within 1%-5%. Thus the problem that we foresee with the currently proposed language is that the verifier's replicated CI and the approved CI must match identically. If this isn't the case then, as we understand it, the producer is out of compliance with regulation and enforcement penalties are triggered. We feel this requirement is unnecessary and not realistic.

Please confirm our understanding of the steps that would be triggered if the verified CI and approved CI do not match. Do the mechanisms in §95494 take effect? The proposed penalties in this section imply that every day the pathway remains inaccurate accounts for a separate violation. If these violations are not eliminated by the end of the compliance period then the penalty is ~\$1,000 per deficit. In addition, §95495 states that incorrect

information used to generate and/or support the Approved CI is grounds for potentially deleting the pathway and/or invalidating credits.

We are concerned that the proposed language incorrectly assumes that plants perform in a perfectly stable manner year-over-year without varying plant and process energy consumption that occurs during both normal operations as well as during unforeseen events caused by process disruptions or weather-related events that require plant operators to tweak energy consumption to accommodate different incoming feedstock characteristics. According to currently proposed regulations, the producer would then be subject to a daily fine of \$1,000 and at risk for pathway deletion and credit invalidation.

This situation can be easily avoided if ARB builds into the regulation provisions for slight variability in CI values. We propose two options. Option One would expand the definition the material misstatement threshold currently proposed to not only allow for “discrepancy, omission, misreporting, or aggregation” of data used to calculate CI but also variability in operations that do not affect final credit values by more than five percent. We’d like to emphasize that our intention in expanding the eligibility of events for which the thresholds provides is to avoid triggering the enforcement penalty process. We would expect that if the verified CI differs from the approved CI at all that the resulting number of LCFS credits would reflect the more conservative CI value. Option Two would allow producers to submit and seek approval for multiple fuel pathways that each represents various energy consumption ratios. Come verification time, the producer would then refer back to the relevant pathways and provide verifiers with a weighted average CI score that is most representative of actual operational conditions at the plant over the course of the previous year. Staff may consider requiring that dedicated metering be installed on devices responsible for the variation in energy consumption (i.e. dryers, etc.).
