



June 27, 2016

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Jim Aguila
Air Resources Board
1001 I Street
Sacramento, CA 95814

Electronic submittal only via: LCFSWorkshop@arb.ca.gov

RE: RPMG Comments on June 2, 2016 ARB staff presentation -- Proposed LCFS Amendments, including Monitoring and Verification Program

Dear Sam and Jim,

We would like to thank you and your staff for previewing the proposed amendments to the Low Carbon Fuel Standard Regulations (LCFS or Regulation). This informal process allows Renewable Products Marketing Group (RPMG) the opportunity to comment on the sweeping staff proposal to expand the scope and complexity of the LCFS prior to the formality of the official rulemaking process.

RPMG is a biofuel marketing company currently representing our owner and marketing partner ethanol facilities located throughout the Midwest, and is an active stakeholder in the California fuels marketplace. We support clean transportation fuel policy, including California's LCFS, which diversifies fuel supply, incentivizes innovative technology and advanced renewable fuel selection, creates jobs, and, most importantly, improves the environment. The track record of the U.S. renewable fuel industry and the LCFS is a shining example of these activities being achieved through hard work and ingenuity. RPMG participates in greenhouse gas (GHG) reduction and alternative transportation fuel programs throughout the nation and the world. These comments are based on two decades of multijurisdictional experience.

As we have stated in past comments, implementation of the LCFS program is going to take ample communication and joint effort between the ARB and the fuel provider industry, especially during times of update and expansion as being proposed now. We again appreciate the opportunity to discuss these important issues. RPMG acknowledges and appreciates ARB's stated goals of "establishing a robust and dynamic credit market, adding buyer confidence, and providing greater transparency in the credit market," though we must caution that the proposed monitoring and verification system (MVS) single-mindedly pursues these goals by placing great burden on the regulated community at the same time that ARB claims the current credit market is robust and there are no claims of rampant fraud. The market confidence and transparency ARB is seeking to address must be balanced against the equally important needs of market participants to operate in a practical, cost-effective, consistent, equitably implemented, risk-reducing and workable system. Based on our extensive experience with biofuel markets and credit quality assurance programs outside of the LCFS, RPMG firmly believes that ARB's proposal extends past what is reasonably required to the stated goals of this monitoring and verification program. RPMG is directly impacted by what such new components may have on the fuels marketplace and on the workload of participating parties.

Avoiding the many types of market disruptions that are possible unintended consequences of this rulemaking will be a common theme in these comments. A regulatory overreach at this point can create very real market barriers to

California. Any such market barriers will act to place tight restrictions on supply of transportation fuels needed in California and unnecessarily increase fuel costs for consumers.

The three staff presentations from the June 2, 2016 workshop focused on a variety of issues—the new MVS provisions, non-regulatory amendments, and other non-MVS LCFS regulatory changes. While RPMG appreciates ARB providing an initial draft of ideas and possible regulatory language, it is clear that much more thought, collaboration and work will be required to achieve the dual goals of both ARB and program stakeholders. For those entities like RPMG, this rulemaking will be a critical component to doing business in California. It is therefore far more important that the final regulation be workable, than it be implemented in any accelerated arbitrary timeframe.

RPMG is committed to working closely with ARB on these important concepts and we have prepared our comments to the staff-presented material and draft proposal regulatory language on two levels—a higher-level summary of issues, and a more detailed regulatory language review that tracks the sections of the draft regulation. The detailed-language comments accompany this letter in Attachment A. We look forward to additional calls, meetings, and workshops.

MONITORING AND VERIFICATION PROPOSALS

Risk Thresholds, Cost/Benefits and Justification of Costs

The workshop revealed a significant new MVS program that goes far beyond what is needed in the marketplace. These newly proposed requirements will require significant resources on the part of all program participants, including ARB. The only slide referencing costs stated that ARB staff would conduct an “informal survey to solicit representative cost information.” ARB and all impacted stakeholders need to have a full and complete understanding of the potential costs of this proposal prior to moving forward to adoption. RPMG is still working to determine the potential costs of the varied additional requirements, but anticipates they will be material in size. The final cost estimates are dependent on the final level of rigor required by these amendments. As written, they will be much more expensive than needed. Many of RPMG’s recommendations seek to ensure credit validity, but reduce the resource burden on ARB, fuel producers and marketers, and verifiers.

Since the GHG benefits of the program are already occurring, these costs come without any additional carbon reductions. Program costs cannot outweigh program benefits. Support for these programs from the regulated community will depend on whether or not they are worth the price to participate. If they are not, a market barrier will have been created for California, thus pushing fuels to other jurisdictions and materially increasing the cost of compliant fuels for consumers in California.

It is clear that staff would like to increase carbon reduction certainty in the LCFS marketplace. Initial stakeholder comments suggested an “80/20” approach that would accomplish this goal and keep the costs reasonable. RPMG believes staff has instead taken the lead of the Cap and Trade program’s Monitoring and Recordkeeping Regulation (MRR) and gone with a 99.9%, or belt-and-suspenders, approach. LCFS and Cap and Trade are significantly different. The 99.9% approach is a much more expensive way to go without any history to suggest that it is needed. As will be highlighted in other sections, many of the requirements are duplicative, or are rendered unnecessary by other requirements. It was repeated several times in the workshop that the MVS program will be based on risk management, and RPMG agrees that this would be an efficient way to structure the program. However, a risk-based approach is not the program that was unveiled at the workshop. RPMG would suggest that ARB specify the actual material high risks to the program, and adjust the regulation accordingly.

California's program has not to date experienced fraud issues that have been seen in other programs. This positive track record is a testament to California's ability to implement enforceable regulations. Adding any level of additional MVS requirements will benefit the program's ability to ensure compliance and environmental integrity. It is not necessary to jump to a fully restrictive and burdensome regulation, and there should be a middle ground available to ARB.

RPMG recommends that ARB conduct cost estimates and a benefit analysis of the various program components to ensure only the most worthwhile (high risk) aspects are incorporated in the final proposal.

Potential Verifier and Market-Related Issues

The LCFS credit marketplace is very dynamic and time-sensitive. Any delays in bringing credits to bear can have a significant impact on producers, marketers and obligated parties—and the market itself. The basic program design element presented by staff was that upon adoption of amendments, future LCFS credits would not be permitted to enter the marketplace until they have been fully verified. This arrangement puts capital and cash flows at risk on a continual basis. ANY “adverse” issue spotted by a verifier could severely impact producers and marketers on a level not justified by the potential problem. This issue is compounded by ARB's willingness to defer to verifier subjectivity without structured guidance as to what is acceptable or unacceptable, and which of the various activities carry more weight of higher levels of risk.

It is also very important that there be an opportunity to remedy any issues found by verifiers prior to an adverse statement being issued. The regulations need to provide a timely method to reconcile or “correct” issues that may come up in verifications before market dynamics are impacted. Other biofuel programs provide this option, specifically for this reason. Additionally, for LCFS participants that have multiple locations, producers, venders or credit generators, it is unclear how the regulation would handle an adverse finding as it relates to upstream activity transferred to and reported under a single downstream LRT entity and its subsequent downstream customers. This illustrates how regulated parties in the middle and at the end of the supply chain are virtually held hostage by the minutest detail of all upstream parties in the supply chain of each single quantity of feedstock or fuel.

As with any verification or audit program, their robustness depends on the competency of verifiers/auditors, and the certification system under which they are approved. For a variety of reasons, including other governmental requirements, RPMG already works with professionally licensed consultants/verifiers/auditors who routinely provide RPMG with a critical review. It would be a disservice to the regulated community if those long-standing relationships were forced to be severed simply because they predated this rulemaking. This could be especially troubling if this shuffling of professionals were to occur across the industry all at one time, i.e., MVS rule implementation. Additionally, RPMG questions the need for a limitation placed on the longevity of verify and stakeholder professional engagement given the proposed professional standards required to become a certified verifier. As proposed, entities will need to contract with certified verifiers that have been vetted by ARB—that should be enough “checking the checker.”

RPMG recommends staff revisit the variety of issues surrounding verification procedures and verifier certification such that they are not duplicative, that they recognize the professional standards associated with certification, and the implications for the fuel industry. RPMG, in the strongest terms, requests an opportunity to address potential verification highlighted issues before any delay in credit issuance.

Duplication with Other Renewable Fuel or Accounting Programs

The LCFS program is one of many national and international fuel programs aimed at GHG and fuel diversity issues. The number and complexity of these programs keep growing, as highlighted by these proposed amendments. RPMG, along with many other stakeholders, participates in programs of multiple jurisdictions. What was presented at the June 2 workshop was a stand-alone proposal. California's LCFS MVS program should strive to acknowledge the parts of other programs, including other tax and business accounting principles, into the proposal where appropriate. ARB has historically been a leader in these types of programs, but in this instance there are lots of programs already in place. It would serve the industry, and ARB, well if the California LCFS harmonized or synced up with the rest of the world rather than completely establish a new "gold standard." The goals stated for this program can be accomplished without such a set of newly implemented requirements.

Duplication of efforts and costs on regulated parties should be minimized. The fundamental position of ARB should be to ensure market recognition that the credits generated are valid and the GHG reductions are real. This goal can be accomplished in a number of ways that do not require whole cloth regulatory regimes that do not recognize ongoing efforts. Since the LCFS isn't the only biofuels program currently operating, there should be an ability to provide equivalency to the requirements presented either through work being done already or through the ability to demonstrate compliance in an alternative method that is tailored to specific operations. One-size-fits-all regulatory programs are more expensive and create disincentives to participation. RPMG believes that a "California-only" regulatory regime that does not allow for alternative compliance or equivalency demonstrations will lead to a less impactful program.

RPMG provides two examples to highlight this concern:

- Site visits requirement. It is unnecessary to require additional site visits when producers are required to undergo site visits every three years or upon registration updates in RFS. For fuel producers and fuel types deemed higher risk by the market and participating in QAP, site visits are being conducted annually. ARB today requires the engineer report from these site visits with pathway applications. They are fully aware of the plant operations and design. There are documented, verified professional boots on the ground already. Operations do not change so often that it is necessary to require additional annual site visits. There is no incremental gain or benefit, just an increase in engagement costs and a drain on stakeholder time.
- Production and transaction records are audited through multiple programs throughout the fuel industry for financial, taxation and regulatory purposes. It is reasonable for records pertinent to LCFS to be sampled, based on a predefined sample methodology, and reviewed as part of the validation, verification and monitoring phases of this program. It is wholly unnecessary to set a mandate, let alone an expectation, for every scrap of paper and explicit record to be handled without regard for risk assessment or practicality of the time and effort of all parties involved.

RPMG recommends equivalency provisions be incorporated into the next version of the Regulation such that duplication of costs and efforts are minimized.

Program Enforcement

The LCFS regulation is complex, and the staff proposal makes them even more so. Under the proposal, any number of minor issues could lead to significant enforcement liability. This potential enforcement process is currently proposed to overlay the withholding of LCFS credits for adverse verification statements, which is already a major compliance

motivator. Staff's presentation asserted the obvious—that more violations would be found and pursued by ARB. The goal of the program should be to reduce emissions of GHGs, not to find ways to initiate enforcement actions. Slide 55 explicitly notes that “Corrections to submitted reports made during or after verification do not preclude enforcement.” This statement places producers, marketers and program participants in jeopardy based on the opinion of third parties, rather than of the ARB. As noted above, there is a significant concern in the marketplace about delayed credit issuance. This double-jeopardy issue only compounds those concerns.

The potential for a violation of the Regulation has exponentially grown with this proposal for both pathway holders and regulated parties. RPMG notes that there are many occasions when “pathway holder” and “regulated party” are not the same entity for any given gallon of biofuel. It is appropriate to have separate review tracks for pathway holders and parties transacting fuel under the LCFS. RPMG believes quarter verification is sufficient for both tracks. The review of a full rolling 12-month CI verification should be conducted at each pathway holder quarterly verification. By incorporating this into the quarterly review all stakeholders are timely assured of adherence to pathway operations and maximum CI threshold before credits are generated and it negates the burdensome duplicative requirement of a standalone annual verification for pathway holders. RPMG cannot overstate the importance and acknowledgement that a full 12 months of pathway data must be considered to account for all seasonality and steady-state production variation. This review should be conducted as an ongoing concern and not be placed at the end of a compliance year post credit generation activity.

RPMG believes quarterly verification of LCFS pathways should focus on aggregate Carbon Intensity values of fuels brought to market over the preceding 12-month data period as established for CI enforcement, rather than on the myriad individual quarterly data points, which are not definitive of a CI increase. LRT-CBTS reporting and enforcement is dependent on, but separate from, producer/pathway holder CI validation and operations. Both are verified separately and both pose different enforcement liabilities.

NON-REGULATORY PROPOSALS

Unique Identifiers

RPMG believes that having a comprehensive MVS program in place renders Unique Identifiers (UIs) as a duplicative and unnecessary element to the regulation. Once an LCFS credit is issued it will have been through Validation, Production and CI Verification, and Transactional Verification. All credits should then become a fungible commodity. Credits are credits at that point in the market. If necessary, invalidated credits can be replaced with an equal amount of other ARB-issued LCFS credits. The benefits of UIs are greatly diminished because of the MVS rigor, but having UIs in the program creates a tremendous overhead and cost impact to parties through the need to redo existing IT and accounting systems. There will also be a large dedication of staff resources to develop and monitor the required state system. The UI system also increases the tracking and accounting requirements of the program. There will be unintended market consequences of having UIs in the system. Counterparties will be able to request, or demand, that credits be delivered from specific organizations or entities. This only complicates what should be a simple accounting of credit values. When a credit is not a credit, the fundamental policy of the LCFS is undermined.

RPMG believes Unique Identifiers are unnecessary and would not support their inclusion in the program.

REGULATORY PROPOSALS

Know Your Customers

As presented at the workshop, the “Know Your Customers” concept is really about market participants using the LCFS system for nefarious activities. There was considerable discussion about this topic which demonstrated its importance to stakeholders. This is a significant issue that needs to be addressed.

RPMG as an entity has the legal responsibility over the fuels and credits it markets, its individual employees do not. ARB has subsequently noted a willingness to alternative language related to this topic. RPMG supports that path forward, and is firmly opposed to the current proposal. Providing personal financial data and other information not related to the LCFS program from RPMG employees is very problematic. RPMG does not want to be in a position to require employees to provide their private information, especially if it is against their beliefs, to an out-of-state government entity. There are many concerns starting with the risk of cyber-attacks and identity theft, in today’s society. Therefore, personal-information sharing should be minimized. From an ARB standpoint, this is a huge potential liability that can be avoided. RPMG can point to many such instances in the news recently.

This is an area where LCFS and Cap and Trade can diverge since the programs are significantly different. The LCFS marketplace is more closed than the Cap and Trade’s market. There are no brokers taking physical title to credits, third-party banks, speculators or the like in the LCFS market. It is a closed system, providing by design additional protections sought by ARB. ARB staff cited concern regarding fake LRT accounts being created to gain access to the system and LCFS credit market. The current program structure as buyer beware and strong relationships between valid fuel transaction counterparties already provide some level of protection against these activities. ARB wants to “know its customer”, but fuel transaction counterparties in a buyer-beware environment need to “know their customer” as well. This provides an additional level of protection.

Alternatively to establishing LCFS rules to match those of Cap and Trade, if ARB believes that these two regulatory programs should be aligned, RPMG suggests that the LCFS put in appropriate requirements and allow the Cap and Trade program to align later. Just because it is in Cap and Trade now doesn’t mean it is right or a good fit for the LCFS.

RPMG opposes the current Know Your Customer proposal and recommends a higher-level market position be established as the “customer.”

Carbon Capture and Storage

The Regulation implies that the only Carbon Capture and Sequestration (CCS) system that ARB will accept is geologic. RPMG members have been active in the biologic carbon capture space for a considerable amount of time, expending significant resources. The Governor’s Healthy Soils Initiative, and the recently released 2030 Scoping Plan Concepts Paper, recognizes the benefits of working lands to be carbon sinks. From additional discussions with ARB staff it seems like it was not ARB’s position to exclude biologic capture and storage. This position should be clarified in the next draft.

RPMG strongly recommends the eligibility of biologic sequestration as an independent carbon intensity reduction activity from geologic CCS be preserved and explicitly stated within the Regulation.

Additional Regulatory Changes to the LCFS Regulation

There were also a variety of changes proposed to the LCFS Regulation not related to the MVS expansion. These changes are significant and must be fully analyzed by stakeholders prior to finalizing this rule. Whole subsections were replaced with updated language on a Regulation that went into effect less than six months ago. This type of change does not provide the regulatory stability requested of stakeholders and promised by ARB at last year's readoption hearing.

There are a number of changes that RPMG has questions and/or concerns about and we will be analyzing their impacts further. They are summarized here with some initial thoughts:

- Changes to Documentation and Reporting Requirements
 - The proposed benefit of shortening the credit reporting period from 10 days to 3 is not justified
 - RPMG would not support such a change, as it again places unnecessary enforcement jeopardy on reporting parties
- Fuel Transport Mode Requirements
 - Change raises enforcement and verification concerns if transported fuel mode differs from initial integrated CI approval, even if overall CI is not raised
- Point of Regulation for Petroleum and Its Impacts on Incremental Deficits
 - This is a significant change to the program, where the benefits are not quantifiable, especially to the broader marketplace
 - The unintended consequences of this change are not known
- TPC and Export Language Consistency
 - The language between these two sections is inconsistent and could lead to confusion

The attached section-by-section review will address these in more detail.

CONCLUSION

Though there are benefits to the LCFS program of a well-designed MVS program, one that is overly ambitious or off the mark can be burdensome and costly to both ARB and LCFS stakeholders. RPMG, as an experienced biofuels marketing entity operating under other national and international programs, believes this proposal is both overly burdensome and internally duplicative. Today there is complete staff validation of all materials and supporting documents in pathway applications prior to certification, and pathway holders are required to attest to the conditions of the certified pathways to ARB. There are explicit PTD requirements and the requirement for reporting parties to conduct business partner reconciliations of all quarterly reporting data following the entry of transactions. Buyer beware due diligence is conducted where the market demands additional assurance or has identified potential risk, thus questioning the need for new mandatory and redundant efforts.

To date the LCFS program has not shown a high risk for fraud or abuse. RPMG strongly urges ARB to look at the material risks to the program rather than every possible issue scenario for incorrect data, be it intentional or not, and then regulate from a position of bureaucracy. The costs and impact of this proposal should also be well known prior to presenting this regulation to the ARB Board for consideration. It is far more critical to get this right, than to get it done in any predetermined, short time frame.

Sincerely,



Jessica Hoffman
Regulatory and Compliance Manager
RPMG, Inc.

Enc: Section-by-section review

cc: Renee Lawver
Floyd Vergara
Rajinder Sahota
Anil Prabhu
Manisha Singh

RPMG

Attachment A

Document Format Notes:

- 1) RPMG suggested changes are in red double underlined or strikeout text.
- 2) Points of concern are highlighted in yellow,
- 3) Comments precede excerpted language and are in blue,
- 4) All citations come from June 2, 2016 workshop regulatory language:
http://www.arb.ca.gov/fuels/lcfs/lcfs_meetings/proposed_regorder_060216.pdf

§ 95483 (a)

RPMG questions the value of changing this LCFS section to match the annual Cap and Trade program and MRR requirements. How would the Incremental Deficit be applied if refiners are decoupled from the original obligation? RPMG request additional clarity on this new interaction between portions of the regulation.

(a) Regulated Parties for CARBOB and Diesel (including the CARBOB and Diesel portion of liquid fuel blends). The regulated parties for CARBOB and Diesel under the LCFS are intended to be the same as the required reporting parties for CARBOB and Diesel volumes under the Regulation for Mandatory Reporting of Greenhouse Gas Emissions (MRR) contained in Sections 95100-95158 of Title 17 of the California Code of Regulations.

(1) For CARBOB and Diesel (including the CARBOB and Diesel portion of liquid fuel blends), the regulated party is the reporting party covered under the MRR, section 95121(d)(1)-(4).

(2) The Obligation for CARBOB and Diesel Cannot Be Transferred.

§ 95483. Regulated Parties (c)(2)

In light of change to point of regulation for gasoline and diesel, RPMG requests clarity on this section. We question how this would actually work, and why it is necessary. Is there a real world example of a counterparty transferring just the credits but keeping the deficits associated with a gallon of fuel?

(2) Transfer of Blends of Liquid Alternative Fuels with CARBOB or Diesel ("Blend").

(A) Person Acquiring the Blend Becomes the Regulated Party for the Liquid Alternative Fuel Portion of the Blend. Except as provided for in section 95483(c)(2)(B), on each occasion that a person transfers ownership of a

Blend before it has been transferred from its final distribution facility, the recipient of ownership of the Blend (i.e., the transferee) becomes the regulated party for the liquid alternative fuel portion of the Blend. The transferor shall provide the recipient a product transfer document that prominently states the information specified in 95491(c)(1).

(B) *Transfer of Blends and Retaining Compliance Obligation for the Liquid Alternative Fuel Portion of the Blend.* Section 95483(c)(2)(A) notwithstanding, the transferor may elect to remain the regulated party and retain the LCFS compliance obligation for the liquid alternative fuel portion of the transferred Blend by written contract with the recipient. The transferor shall provide the recipient at the time of transfer with a product transfer document that prominently states the information specified in 95491(c)(1).

§ 95483.2. Establishing a LCFS Reporting Tool Account

RPMG supports this change to remove the requirement to mail a hardcopy original.

(b) *Requirements to Establish Account.*

- (1) A reporting party, including a regulated or opt-in party, must register in the LRT-CBTS. The on-line application form requires:
 - (A) Organization Name, Address, State and Country, Date, and Place of Incorporation.
 - (B) Organization Federal Employer Identification Number (FEIN), Primary Contact Name, Business and Mobile Phone, E-mail Address, Username, and Password.

A letter on company letterhead stating the basis for qualifying for an account pursuant to sections 95483 or 95483.1 of the LCFS and naming the primary account administrator and at least one secondary account administrator. This letter must be signed by the business owner, a managing partner, or a corporate officer. A signed pdf copy must be uploaded in the LRT-CBTS to complete the application process. ~~The original is to be mailed to:~~

~~California Air Resources Board
c/o Low Carbon Fuel Standard Program
P.O. Box 2815
Sacramento, CA 95812~~

§ 95483.2. Establishing a LCFS Reporting Tool Account

RPMG understands the concern ARB has outlined, but we firmly hold that the individual rights and beliefs of our employees should be respected as they relate to this issue.

RPMG suggest the language below as a supplement to the proposal.

(e) Know Your Customer Requirements.

(1) All individuals (account administrators, credit facilitators and brokers) in addition to the requirements contained elsewhere for registering with the LRT-CBTS system must provide the following documentation, **except as provided in subparagraph (2):**

(A) The address of the primary residence of the applicant, which may be shown by any of the following:

1. A valid government-issued identity card with an expiration date;
2. Any other government-issued identity document containing an individual's primary address; or
3. Any other document that is customarily accepted by the State of California as evidence of the primary residence of the individual;

(B) Date of birth;

(C) Employer name, contact information, and address;

(D) Either a passport number or driver's license number, if one is issued;

(E) An open bank account in the United States;

(F) Employment or other relationship to an entity that has registered or has applied to register with the LRT-CBTS system if the individual

(2) Individuals (account administrators, credit facilitators and brokers) are not required to provide information in (1) if they are employees of a corporate entity that accepts the risk of incorrect or fraudulent use of the LRT-CBTS system.

§ 95487. Credit Transactions (b)(2)

This hierarchy has the potential for unintended consequences and market issues. If Unique Identifiers (UIs) are used in the LCFS program, this system of retirement could cause problems if RPMG counterparties request the transfer of certain uniquely ID'd credits and those credits have been retired under this hierarchy. This is a regulatory internal consistency issue. ARB can't have program predisposed to hierarchy if all credits are not equal. This also demonstrates the problems with having UI's implemented in a non-regulatory fashion at a later date. ARB needs a coordinated approach. RPMG does not support the use of UIs AND the establishment of a mandatory monitoring and verification scheme.

- (2) *Credit Retirement Hierarchy.* The process developed in the LRT-CBTS to retire credits for purposes of meeting a compliance obligation will use the following default hierarchy:
- (A) Credits acquired during the extended credit carryback purchase period of January 1st to March 31st following the prior compliance period and designated for carryback will be retired first;
 - (B) Credits acquired during a previous compliance period (in order of earliest completed transfer "~~recording date~~" "date completed" first) will be retired next;
 - (C) Credits generated in a previous compliance ~~year period~~ (in order of the earliest quarter first in which the credits were generated) will be retired last.

§ 95487. Credit Transactions (c)(1)(c)

RPMG does not support this change. This change is not justified for the sake of a slightly more robust Dashboard. See comment letter for additional rationale regarding enforcement.

- (C)(B) *Credit Seller Requirements.* When a credit transfer agreement has been reached, within ~~40 business~~ 3 days the Seller must initiate the documentation by completing and posting for the Buyer's review an online Credit Transfer Form (CTF) provided in the LRT-CBTS. The CTF shall contain the following fields:

§ 95487. Credit Transactions (c)(1)(c)

RPMG generally questions the need for this additional information request and what the data will be used for. Seems like overkill and another regulatory requirement that RPMG must ensure compliance with on a routine basis.

9. The price or equivalent value of the consideration (in U.S. dollars) to be paid per credit proposed for

transfer, excluding any fees. If the agreement does not contain a price for LCFS credits, the seller may enter a price of zero dollars only if the transfer request is submitted to fulfill a type of agreement listed in a. through c. below.

- a. The proposed transfer is between parties with a direct corporate association;
- b. The proposed transfer is to reflect an adjustment in CI value of fuel transacted;
- c. The proposed transfer is for a transfer agreement that incorporates credit trade along with other product sales or purchases, and does not specify a price or cost basis for the sale of the credits alone;

The seller must disclose the type of agreement in the CTF. If the pricing terms are not covered by the agreement types listed in section 95487(c)(1)(C)(9)a. through c. then the seller must explain the reason for price unavailability using the comment section in CTF and upload a copy of transfer agreement including the terms of credit pricing.

10. Expected Termination Date of the agreement. If the last term of the transfer agreement is completed when the credit transfer request process is completed, then the date the transfer request is submitted should be entered as the Expected Termination Date. If there is financial reconciliation, contingency, or other terms not settled prior to the completion of the credit transfer request, the parties are required to state the date the terms are expected to be settled as the Expected Termination Date. If the transfer agreement does not specify a date for the settlement of financial reconciliation, contingency, or other terms after the transfer request is completed, the entity may enter the ExpectedTerminationDateas“NotSpecified”.

§ 95488. Obtaining and Using Fuel Pathways.

RPMG questions the need to remove this language, especially as it is less than six months from its effective date. There are advantages to continuity of regulations, particularly in the LCFS marketplace.

(a) *Applicability.* The requirements set forth in this section shall apply to Regulated Parties and other entities that obtained fuel pathway certifications or registrations under the provisions of the previous LCFS regulation order, and to Regulated Parties and other entities that are seeking or have obtained certified fuel pathway certifications under the provisions set forth in section 95488(c) of this regulation order. Except as provided in section 95488(a)(1) below, any fuel pathway certification that was approved under the former LCFS and any use of a fuel pathway by a fuel producer who registered under the former LCFS is automatically deactivated on the effective date of this subarticle. All fuel providers that initiate the process of securing a LCFS fuel pathway, as set forth in section 95488(c) of this regulation order on or after the effective date of this regulation order shall be bound by the provisions of this regulation order. Subsections (1) and (2), below, apply to entities that had obtained Method 1 registrations, or obtained or applied for fuel pathway certifications prior to the effective date of this regulation order.

(1) A fuel pathway certification or a registered fuel provider's use of a fuel pathway that is described in subsections (A), (B), or (C) and was in effect on December 31, 2015, may remain valid for as long as one year after the effective date of this subsection, and shall then be automatically deactivated. The Executive Officer may revoke or modify the fuel pathway certification or a registered fuel producer's use of the pathway during the year after the effective date if the producer fails to follow operational conditions or reporting requirements in the pathway approval or under former section 95486(f). Fuel producers may apply for new certifications as set forth in section 95488(c) to replace pathway certifications that will be deactivated or request recertification of legacy pathways as set forth in section 95488(a)(2) below. The following pathway certifications and registered fuel producer use of pathways are eligible for the deactivation schedule in this subsection:

(A) Fuel pathways that were registered under the voluntary Biofuel Producer Registration system prior to the effective date of this regulation order. This provision applies to pathways obtained under the Method 1 provisions of the former LCFS (former sections 95486(a) and (b)), or the Method 2 provisions of the former LCFS (former section 95486(f)), and then subsequently registered under the voluntary Biofuel Producer Registration system.

(B) Fuel pathways that were certified under the Method 2 provisions of the former LCFS (former section 95486(f)) prior to the effective date of this regulation order.

(2) *Recertification of legacy pathways.* Fuel providers may apply for recertification as set forth below to replace pathway certifications subject to being deactivated.

- (A) ~~Applicants seeking to recertify a legacy pathway shall begin the application process by completing the online account registration process and submitting an electronic New Pathway Request Form prior to February 1, 2016, indicating that they are seeking recertification of a legacy pathway.~~
- (B) ~~Recertifications will be processed by the Executive Officer using information previously supplied to the Executive Officer under the provisions of the former LCFS regulation order, provided such information was complete pursuant to the former LCFS regulation's requirements. The requirements of subsections 95488(c)(3) through (5) and subsection 95488(e) are not applicable to recertifications, unless the Executive Officer specifically requests such information from an applicant.~~
- (C) ~~The Executive Officer will determine the classification of each recertification under the tier structure described in subsection 95488(b).~~
- (D) ~~The result of the Executive Officer's decision on recertifications shall be final and not subject to further appeal. Denied applicants may submit New Pathway Request Forms pursuant to section 95488.~~
- (3) ~~"Batch" processing in 2016. Applications to recertify fuel pathway certifications, registrations that were approved under the previous LCFS (and still in effect on the date this regulation goes into effect), and new applications for fuel pathways in 2016 will, to the extent feasible, be processed in groups based on fuel type in the following order of priority: ethanol, biodiesel, renewable diesel, compressed natural gas, liquefied natural gas, and all others.~~

§ 95488. Obtaining and Using Fuel Pathways (b)(2)(F)(3)

This language implies that CCS is only geologic. RPMG recommends ARB insert language or provide guidance that explicitly notes that CI reductions through biologic sequestration 1) do not need a QM and 2) are still retained in the Pathway approval process.

3. Carbon capture and sequestration (CCS). CCS projects must use a Board-approved quantification methodology including monitoring, reporting, verification, and permanence requirements associated with the carbon storage method being proposed or the innovative method. If the innovative method involves delivery of carbon captured by the alternative fuel producer to a third party to store the carbon, both the alternative fuel producer and the third party must

apply and will be considered joint applicants for approval of the innovative method; and

§ 95488. Obtaining and Using Fuel Pathways (c)(2)(B)

RPMG notes the inconsistency between the highlighted phrases—“applications” and “certified pathway”. This inconsistency could cause confusion or potential enforcement actions if the Pathway didn’t match the application. RPMG would prefer ARB clarify that the Certified Pathway is the guiding document.

(B) The fuel that will be reported under the newly certified pathway will conform to the fuel pathway described in the Tier 1 or Tier 2 **application** in all areas, including, but not limited to the following:

1. Feedstocks used to produce the fuel;
2. Fuel and feedstock production technology;
3. Regions in which feedstocks and finished fuel are produced;
4. Modes used to transport feedstocks and finished fuel and the transport distances involved;
5. Types and amounts of thermal, ~~and electrical~~ and other energy consumed in both feedstock and finished fuel production;
6. Full life cycle carbon intensity, which must be no higher than the carbon intensity specified in the Tier 1 or Tier 2 **application; and certified pathway;**
7. Fuel production operations, which shall conform at all times with the fuel pathway described in the Tier 1 or Tier 2 application.

§ 95488 (c)(3)(A)(2)

RPMG questions the removal of the third party audit option in lieu of submitting all records in an application. But RPMG does support the replacement language in subsection 2-Summary Spreadsheet.

~~b. —Production Processes Covered. The invoices submitted under this provision shall cover the energy consumed in all unit operations devoted to feedstock handling and pre-processing; fuel production; co-product handling and processing; waste handling, processing, and treatment; the handling, processing and use of chemicals, enzymes, and organisms; the generation of process energy, including the generation, handling and processing of combustion fuels; and all plant monitoring and control systems. If the fuel produced or any by-products or co-products receive additional processing after they leave site, such as additional~~

~~distiller's grains drying or fuel distillation, invoices covering the energy consumed for those processes must also be submitted. If the fuel production facility is co-located with one or more unrelated facilities, and energy consumption invoices are not separately available for the fuel production process, the applicant shall obtain a third-party energy audit sufficient to establish the long-term, typical energy consumption patterns of the fuel production facility.~~

~~3. In lieu of receipts or invoices for energy consumption, fuel sales, feedstock purchases, or co-product sales, the applicant may seek Executive Officer approval to submit audit reports prepared by independent, third-party auditors that document energy consumption, fuel sales, feedstock purchases, or co-product sales.~~

§ 95488 (c)(6)

RPMG notes that this section explicitly states that “Actual CIs vary over time due to a variety of factors, including but not limited to seasonality, feedstock properties, plant maintenance, and unplanned interruptions and shutdowns. A fuel production operation will not be found to be in violation of its operating conditions unless a CI calculated from production data covering a full year of operations is higher than the certified CI reported for that fuel in the LRT-CBTS system”. This highlights that the program is built upon a 12-month calculation and that any production or thermal information review less than a year is not representative and should not be subject to enforcement action. As such, RPMG could support quarterly verifications, provided they cover the preceding 12-months, rather than a duplicative annual verification.

- (6) *Relationship of Pathway Carbon Intensities to Units of Fuel Sold in California.*
 - (A) LCFS CIs represent the life cycle greenhouse gas emissions, expressed in a per-megajoule of finished-fuel-energy basis, associated with long-term, steady-state fuel production operations. Actual CIs vary over time due to a variety of factors, including but not limited to seasonality, feedstock properties, plant maintenance, and unplanned interruptions and shutdowns. A fuel production operation will not be found to be in violation of its operating conditions unless a CI calculated from production data covering a full year of operations is higher than the certified CI reported for that fuel in the LRT-CBTS system. Fuel producers labeling fuel sold in California with LCFS CIs (in product transfer or similar

documents), and regulated parties reporting those CIs in the LRT-CBTS system, must ensure, therefore, that the fuel so labeled and so reported will be found to have a life cycle CI, as calculated from production data covering a year of operations, that is equal to or less than the CIs reported in the LRT-CBTS system and on product transfer documents. Regulated parties shall not report fuel sales under any LCFS CI unless they have determined that the actual CI of that fuel, calculated as described in this section, is equal to or less than the LCFS CI under which sales of that fuel are reported in the LRT-CBTS system.

§ 95488 (c)(6)(G)

RPMG requests ARB clarify this section. We understand that the term “non-grid” is necessary to ensure that existing transmission and distribution systems are not used to deliver the renewable power to a biofuel facility. We believe that renewable power transmitted to such a facility through dedicated power lines, even if there is additional capacity from that renewable generating facility, should be considered “non-grid”. It is unreasonable for the entire renewable electricity generation site (e.g. an entire wind farm) to be dedicated to a single biofuel facility.

(G) Indirect accounting mechanisms for renewable energy generation, such as the use of renewable energy certificates, cannot be used to reduce an energy source’s CI. Renewable energy sources that may be used to reduce CI are limited to renewable electricity from a dedicated (non-grid) form of generation, such as wind turbines and photovoltaic arrays.

§ 95498. Requirements for Verification of Fuel Pathway Carbon Intensity and Fuel Volumes.

RPMG is not supportive of having “high risk” undefined and left to the verifier’s determination. This is a critical part of a verification and should be consistently implemented.

RPMG notes that by-products are not currently reported under the LCFS.

RPMG interprets this section as suggesting a Fuel Transport Mode review could be a verification or enforcement issue if it doesn’t match precisely the certified pathway approval FTM, even if the total CI for the pathway is not exceeded.

(b) Verification Requirements. Responsible parties must contract with an accredited verification body to verify the validity of LCFS credits entering the market. To verify the

legal transfer of credits and fuel volumes, responsible parties must also obtain the services of an accredited verification body to verify the accuracy of subsequent fuel transactions for fuels sold with obligation up to point of final distribution. Verifications shall include quarterly and annual verifications.

(1) Quarterly verifications for fuel pathway holders and reporting parties

(A) Quarterly verification scope for fuel pathway holders includes:

1. Conformance review of high risk pathway contributors.
2. Accuracy of reported volumes of fuels produced during the applicable quarter under a certified fuel pathway.
3. Accuracy of reported by-products or co-products records associated with fuel production.
4. Total production volume.
5. Fuel transport mode.

RPMG notes that most of the information being requested in a quarterly verification is already part of the reconciliation process. This is a duplicative requirement.

(B) Quarterly verification scope for reporting parties includes:

1. Accuracy of reported fuel transactions by reporting parties including, but not limited to, reconciliation of fuel volumes along the supply chain, the proper assignment of obligation throughout the supply chain, and product transfer documentation associated with fuel transactions reported in the LRT-CBTS.

RPMG notes that not all fuel pathway holders are the reporting entity, and in fact many to most are not.

(2) Annual verification for fuel pathway holders

(A) Annual verification scope for fuel pathway holders includes:

1. Full verification of entire life cycle associated fuel pathways described in section 95498(b)(1)(A), including feedstock acquisition, total fuel production and sale of fuel and any by-products or co-products.
2. Volumetric reconciliation of fuels reported in the LRT-CBTS since the last annual verification.
3. Volumetric reconciliation of reported by-products and co-products records since the last annual verification.

- (B) Annual verification reports must be submitted by September 1st for the prior year.

RPMG is opposed to the six year requirement. This is a specialized field and RPMG has existing relationships with accredited and certified professionals that would be instantly severed under this provision. See letter for additional rationale.

- (3) Fuel pathway holders required to obtain quarterly and annual verifications under section must contract with accredited verifying bodies. Responsible parties shall not use the same verification body or verifier(s) for more than six consecutive years. The six year period begins on the date the responsible party first contracts for any independent third-party verification. This includes ARB verification services, for the scope of activities or operations under the USEPA Facility ID or LCFS Facility ID for uploading supporting documents for carbon intensity calculations and fuel volume determination, and ends on the date the final verification statement is submitted.
- (4) Reporting parties required to obtain quarterly verifications under section 95498 must contract with accredited verifying bodies. Responsible parties shall not use the same verification body or verifier(s) for more than six consecutive years, which includes any verifications conducted under this article. The six year period begins on the date the responsible party first contracts for any independent third-party verifications. This includes ARB verification services, for the scope of activities or operations under the USEPA Facility ID or LCFS Facility ID for uploading supporting documents for LRT-CBTS transactions, and ends on the date the final verification statement is submitted.
- (5) A responsible party may contract verification services from a previous verification body or verifier(s) only after not using the previous verification body or verifier(s) for at least three years.
- (a) Validation Requirements. Any fuel pathway applicant must obtain the services of an accredited verification body to validate the carbon intensity for any proposed fuel pathway.

RPMG seeks clarity on the “Phase-in” period and looks forward to the opportunity to discuss in more detail. The workshop explanation left RPMG with a number of significant questions.

- (b) Verification Phase-in period during 2017 to 2018 *-To be discussed at the June 2nd Workshop.*

§ 95499. Requirements for Verification Services.

Questions of staff: Can an entity contract with different verifiers for their

Quarterly and Annual verifications? Would the language in (a) require a single notice, or multiple notices?

Also, the highlighted language implies only one verifier per facility. There are valid business and professional reasons why separate verifiers may be required/used.

- (a) Notice of Verification Services. The verification body shall submit a notice of verification services to ARB for validations and both quarterly and annual verifications. The verification body may begin verification services for the responsible party ten working days after the notice is received by the Executive Officer and the Executive Officer has determined, pursuant to 95501(f), that the potential for conflict of interest is acceptable. The notice must include the following information:
- (1) A list of the staff who will be designated to provide verification services as a verification team, including the names of each designated staff member, the lead verifier, and all subcontractors, and a description of the roles and responsibilities each member will have during verification.
 - (2) Documentation that the verification team is qualified to provide verification services for the responsible party. This documentation must demonstrate:
 - (A) To provide fuel pathway verification, at least one verification team member is accredited by ARB as a life cycle specialist verifier and a fuel transactions specialist verifier.
 - (B) To provide LRT-CBTS transaction verification, at least one verification team member is accredited by ARB as a fuel transactions specialist verifier.
 - (3) General information on quarterly and annual verifications, including:
 - (A) The USEPA Facility ID for fuels covered by the U.S. Environmental Protection Agency's RFS2 program. For fuels not covered by the RFS2 program, the LRT-CBTS system LCFS Facility ID:
 - (B) The name, address, and contact information for the regulated party including a list of upstream and downstream entities, including but not limited to feedstock suppliers and purchasers of co-products, electricity from facilities cogenerating and exporting electricity, and finished fuel.
 - (C) The date(s) of scheduled on-site visit(s), if required in section 95499(a)(1), with facility addresses and contact information:

RPMG notes that this “description” can’t be as open ended as currently written. There needs to be minimum standards of what is expected so that both the entity and the verifier can agree on a scope of work.

(D) A brief description of expected verification services to be performed, including expected completion date.

(4) If any of the information under section 95501 (a)(1) or 95501 (a)(3) changes after the notice is submitted to ARB or during the verification services, the verification body must submit an updated conflict of interest self-evaluation form at least five working days before the verification services start date. If any information submitted under section 95501 (a)(1) or 95501 (a)(3) changes during the verification services, the verification body must notify ARB. In either instance, the conflict of interest must be reevaluated pursuant to section 95501(f) and ARB must approve any changes in writing.

(b) Verification services must include:

(1) Verification plan. The verification team must develop both quarterly and annual verification plans:

(A) Any verification plan must include the following information from the responsible party:

1. Information to allow the verification team to develop a general understanding of production fuel volumes, LRT-CBTS reported fuel volumes, and credit transactions;
2. Information to allow the verification team to perform a mass balance of the fuel facility, such as type and amount of feedstock going into fuel facility, type and amount of co-products and by-products, and any others;

This is not a defined term and could lead to confusion or an adverse statement.

3. Fuel pathway monitoring plan;

4. Contracts, sales/purchase agreements, or any other supporting documents issued to track the finished fuel;
5. Sales/purchase agreements for LCFS credits;
6. Information on fuel pathway/s under verification that describes all aspects of a fuel's pathway life cycle that contributes to the total CI.
7. Previous verification reports.

(B) Proposed schedule of the verification services must include:

1. Dates of proposed meetings/interviews with the reporting

entities;

2. Dates of proposed site visits, as deemed necessary by verifier or ARB;
3. Types of proposed document and data reviews;
4. Expected date for completing verification services.

RPMG has significant questions and concerns about this section. What exact “financial data” will be reviewed? Does this include the general ledger of the corporation? Contracts that are not associated with CI values? How is confidential business information handled? What if the financial management system is integrated with non-CI related information? Is this an enforcement point?

- (2) Reconciliation of fuel volume and associated transactions reported in the LRT-CBTS. For verification of reported fuels transactions, the verification team must conduct an evaluation of the financial data management systems environmental data management systems, product transfer documentation, and any other information associated with the legal transfer of transportation fuels and the transfer of fuel obligation.

Does this section require each and everybody on a verification team attend a meeting with the responsible party? The fuel pathway applicant may not be the reporting party, does the verifier have to meet with both a marketer and a producer for the same fuel?

- (3) Planning meetings with the responsible party. The verification team must discuss with the fuel pathway applicant, fuel pathway holder, or reporting party, the scope of the verification services and request any information and documents needed for initial verification services. The verification team must review the documents submitted and plan and conduct a review of original documents and supporting data for the verification service.

RPMG notes that under the RFS, the on-site requirement is met once every three years. RPMG questions the need for a second independent on-site inspection, and would request consistency or equivalency between the LCFS and the RFS on this point.

- (4) Site visits. At least one accredited verifier in the verification team, including the fuel life cycle specialist and the fuel transactions specialist, must make at least one site visit during each calendar year. During the site visit, the verification team member(s) must:

Does “all” really mean ALL information. This is a tremendous amount of material as has been discussed previously. RPMG suggests ARB revisit this

requirement.

- (A) Check that all information specified in sections 95484 to 95486, 95488, and 95491, as applicable to the regulated party are identified appropriately.

RPMG notes that this is a very subjective determination. With adverse statements and the possibility of a delay in issuing LCFS credits, this is a very worrisome provision and use of language.

- (B) Review the data management systems used by the regulated party to track, quantify, and report carbon intensity value(s), fuel volumes, and fuel transactions. The verification team shall evaluate the effectiveness of these systems.

- (C) Perform tasks that, in the professional judgment of the team, are needed in the verification process, potentially including the following:

1. Interview key personnel, such as process engineers and metering experts, as well as staff involved in compiling and uploading data for verifications:
2. Observe equipment for data sources and equipment supplying data for sources determined in the sampling plan to be high risk:
3. Assessing conformance with measurement accuracy, and data capture, requirements:
4. Reviewing contracts and invoices to confirm carbon intensity parameters, fuel volume and fuel transactions documentation.

- (D) Requirements for verification protocols - **To be discussed at the June 2nd Workshop.**

- (5) *Reviewing of facility operations and financial transactions.* The verification team shall review facility operations and financial transactions to identify applicable carbon intensity parameters and supporting data for fuel volume determination. This shall include a review of material listed in sections 95484 to 95486, 95488, and 95491. The verification team shall also ensure that the reported fuel pathway codes are accurately represented in the LRT-CBTS and that all reported fuel pathway codes have undergone necessary verifications prior to being used.

The highlighted phrasing is very open ended and open to interpretation and confusion. This is a very worrisome provision and use of language.

- (6) Sampling plan. As part of confirming carbon intensity values, reported fuel volumes, and LRT-CBTS transactions, the verification team shall develop a sampling plan that meets the following requirements:
- (A) The sampling plan must be based on an analysis of the likely nature, scale and complexity of the verification services for the contracted responsible party. The analysis shall review the inputs for the submitted information, the rigor and appropriateness of data management systems, and the coordination within the various parties who produce and market transportation fuels to manage the operation and maintenance of equipment and systems used to develop data.

RPMG notes that having a verifier “make its own determination of ...” is again very open ended. With credit issuance at risk, RPMG requests a much less subjective standard.

- (8) Findings. To verify that the submitted information is free of material misstatements, the verification team shall make its own determination of carbon intensity parameters, fuel volume quantitation, and/or fuel transactions for checked data and shall determine whether there is reasonable assurance that reported data for any of the before mentioned verifications does not contain a material misstatement following the guidelines outlined in this article and most recent CA-GREET model. To assess conformance with this article the verification team shall review the methods and factors used to develop reported data for adherence to the requirements of this article and ensure that other requirements of this article are met.

RPMG notes that having the verification body independently reviewed undermines the professional certification process ARB is trying to establish. This is a “check the checker” duplication. At some point ARB has to take attestations and sample of records at face value. If they are incorrect or fraudulent, then ARB enforcement can address the problem.

(c) Completion of verification services must include:

- (1) Verification Statement. Upon completion of the verification services specified in section 95499(b), the verification body shall complete a carbon intensity, fuel volume, or fuel transactions verification statement, and provide those statements to the responsible party and ARB by the applicable verification deadlines specified in section 95498(b)(1)(B) and 95498(b)(2)(B). Before the carbon intensity, fuel volume, or fuel transactions verification statement is completed, the verification body shall have the verification services and findings of the verification team independently reviewed within the verification body by an independent reviewer who is a lead verifier not involved in services for that regulated party, reporting entities, or upstream and downstream entities during that year.