



The recently published Low Carbon Fuel Standard (LCFS) Question and Answer Guidance Document (Version 1.0), which can be found on the California Air Resources Board (CARB) website at [http://www.arb.ca.gov/fuels/lcfs/LCFS_Guidance_\(Final_v.1.0\).pdf](http://www.arb.ca.gov/fuels/lcfs/LCFS_Guidance_(Final_v.1.0).pdf), and the public hearing presentations given by CARB staff on July 22, 2011, which can be found at <http://www.arb.ca.gov/fuels/lcfs/regamend/regamend.htm>, are intended to help answer questions that CARB has received from industry stakeholders and propose changes to the existing LCFS regulations. We appreciate and endorse the work that CARB staff has put into these documents and feel they are a great first step in answering some of the many questions that interested parties have regarding the LCFS regulation. We are proposing additional changes for consideration to ensure a balanced and open market atmosphere within which all interested biofuel producers and suppliers may participate.

The LCFS regulations consider the point of importation to be the receipt of fuel into either a stationary or "virtual" tank (as described in the newly published guidance document), and the importer of record to be the owner of that fuel upon receipt into a stationary or "virtual" tank. CARB chose to make the difference/distinction between biofuels destined for a transloading facility versus a stationary tank terminal. In both scenarios, railcars arrive into California and are offloaded. For railcars of biofuel sold delivered to a stationary tank in California, the standard business practice in use today has the point of title transfer to be at the railcar offload flange, NOT when the ethanol is receipted into a stationary tank. Given this standard business practice in use today, suppliers and producers that sell biofuels destined for a stationary tank are not the recognized importer of record, even though the Midwest producer/supplier is the entity that bore the costs for fees and infrastructure to produce a low carbon intensity biofuel and the transportation costs to get the fuel to market.

Based on the current definition of importation, when shipping railcars to a location with a stationary tank, non-California producers and suppliers can be at a competitive disadvantage versus their California counterparts and could exclude the Midwestern biofuels industry from participating in the carbon credit marketplace. The pricing method for a large share of the ethanol sold in California today uses the Oil Price Information Service (OPIS) spot assessment price quotes for 98.4 Carbon Intensity ethanol and 90.1 Carbon Intensity ethanol. The spread between the 98.4 CI quote and the 90.1 CI quote provides a rough idea for the value of the carbon intensity of the ethanol being delivered into California. Depending on market conditions and what the various parties feel the future of the carbon credit market in California will be, there may be little to no current value for lower carbon intensity ethanol. Carbon credits do not expire, therefore Midwest producers and suppliers may wish to retain obligation or transfer partial obligation to the buyer in the belief that carbon credits generated will have a higher value in the future. The issue with this approach is the producer or supplier must be the recognized importer of record, making them a regulated party and having initial control of the carbon intensity values available for transfer. California based biofuel producers don't have this issue – the regulations are clear that they are considered a regulated party due to the production of the biofuel in California, thus discriminating against the Midwest based producer/supplier.

Non California based biofuel producers and suppliers are committed to helping the state of California in achieving its green house gas reduction goals. These producers and marketers have put forth time, effort, and capital to produce a lower carbon intensity fuel. The current definition of importer limits the market opportunity to obtain a full return on their investment. In order to keep the California transportation fuel market open and balanced the current definition of importer needs to be enhanced, recognizing the entity that has title to the product as it enters the state. This enhanced definition would level the playing field for all producers/suppliers who wish to be involved in the LCFS process and be recognized as regulated parties to allow full participation in the LCFS program.



Section 95481

Producer and Supplier Definition Changes

The text in italics and underlines are additional language to be used to enable ethanol marketer to have regulated party status. A sentence has been added to the definition of producer to prohibit a producer from entering volume into the LRT upon the fuel departing from the production facility and being used somewhere outside the state of California. The same language is shown for supplier, for the same reason: avoid counting ethanol not used in California.

(36) "Producer" means, with respect to any liquid fuel, the person who owns the liquid fuel when it is supplied from the production facility. In the case of a production facility that is located outside California, the owner or operator of such a production facility shall be designated the initial regulated party (as the "producer") for purposes of section 95484(a), provided such a person voluntarily elects to become the initial regulated party pursuant to the opt-in/opt-out provisions specified in section 95480.1(b)(2)-(5). A producer shall only report such volume designated for shipment to California.

"Supplier" means, with respect to any liquid fuel, the person who owns the liquid fuel designated for shipment to California from when it departs a production facility outside the state of California to when it is received in an Import Facility. The supplier shall be designated the initial regulated party (as the "supplier") for purposes of section 95484(a), provided such a person voluntarily elects to become a regulated party pursuant to the opt-in/opt-out provisions specified in section 95480.1(b)(2)-(5) unless a prior owner of the liquid fuel has been designated as the initial regulated party. A Supplier shall only report such volume designated for shipment to California.

Importer and Import Facility Definition Changes

Alternatively we are aware and support the change in definition of Import Facility suggested by Poet Ethanol Products, as defined below. This language would also allow suppliers the ability to be the initial regulated party..

(a)25A The transportation equipment that held or carried the product at the point the equipment entered the state of California; or

Section 95486

Certification Requirements

(f)3A. We would ask for further reasoning on why it is necessary to specify a minimum sales volume in order for new Method 2A and 2B fuel pathways to be certified.

"The Fuel that would be produced under the proposed pathway would be sold in California in quantities not less than

- a. 10 million gallons per year for Method 2A applications
- b. 5 million gallons per year for Method 2B applications"

These minimum volume requirements are a deterrent for all biofuel producers, particularly for small producers, that wish to participate in the LCFS program while contributing a lower CI product. We are especially unclear on how this requirement helps the state of California meet it's over all Green House Gas reduction goals.

(f)3B. RPMG recognizes the need to validate and document data presented in fuel pathway registrations, but we feel this can be accomplished more efficiently by reporting quarterly aggregate production or sales volumes similar to required RFS2 reporting activities. Biofuel facilities are currently reporting quarterly production of both



biofuel and co-product volumes. The third party engineering review required for RFS2 registration demonstrates and verifies fuel supply plans, production processes and the ability to produce specific co-products.

Section 95488

Banking, Trading and Purchase of Credits

(a)(2). RPMG advises against introducing unique identification numbers for each credit generated as it will add unnecessary burdens to all reporting and regulated parties. The original method of transacting RINs was approached in this manner, and due to unintended errors in all levels of transactions, it has since been replaced with an electronic aggregate banking system. It is our understanding the LRT already has the functionality of calculating deficit and credit balances available to transact. We would encourage CARB to focus instead on transactions between parties and not individual credits.

We sincerely thank for your time and consideration,

A handwritten signature in black ink, appearing to read "Jessica Wiechman". The signature is fluid and cursive, with a long, sweeping horizontal stroke at the end.

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