RFA RENEWABLE FUELS ASSOCIATION

30 Years of Leadership

September 28, 2011

Mr. Floyd Vergara
Chief, Alternative Fuels Branch
California Air Resources Board
Headquarters Building
1001 I Street
Sacramento, CA 95812

RE: Comments of the Renewable Fuels Association (RFA) in regard to LCFS proposed amendments as outlined at September 14, 2011 public workshop

Dear Mr. Vergara,

The Renewable Fuels Association (RFA) appreciates the opportunity to provide comments regarding the proposed amendments to the Low Carbon Fuels Standard (LCFS) regulation that were discussed during the California Air Resources Board (CARB) public workshop held September 14, 2011.

RFA is the leading trade association for America's ethanol industry. Its mission is to advance the development, production, and use of ethanol fuel by strengthening America's ethanol industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA represents the majority of the U.S. ethanol industry and serves as the premier meeting ground for industry leaders and supporters.

While we believe many of the proposed amendments will enhance flexibility and improve the tractability of the regulation, we would like to suggest additional modifications to certain proposed amendments and address several issues raised during the workshop.

I. RFA supports the proposed amendments to §95480.2 related to who may voluntarily opt into the LCFS program as a regulated party and §95480.2 regarding opt-in/opt-out procedures.

As acknowledged by ARB, there may be circumstances where out-of-state fuel producers or intermediary parties (such as biofuel distributors/marketers) wish to retain the compliance obligation associated with fuel that is shipped to California. Allowing upstream entities to voluntarily opt into the LCFS program likely would allow them to capture more fully the potential value associated with carbon intensity reductions. Thus, RFA supports the proposed amendments allowing out-of-state producers and distributors/marketers to opt in as regulated parties. We believe the proposed amendments establish sufficient criteria for demonstrating the eligibility of

parties seeking to opt in as regulated parties. In addition, we support the proposed amendments establishing the procedure for opting out of the program. Further, while RFA believes the possibility is remote that multiple parties would claim to be the regulated party for the same volume of fuel, we agree that the proposed process for resolving such disputes (§95480.4) is appropriate.

II. RFA supports the proposed amendments to §95481 regarding the definitions of "import facility" and "producer." However, we recommend slight clarifying modifications to the proposed definition of "importer."

We support the proposed revisions to the definitions of "import facility" and "producer" and believe the new definitions are much more inclusive of various entities involved in the biofuel importation process. RFA also believes the revised definition of "importer" is much improved. However, because some other stakeholders have suggested the revised "importer" definition is too ambiguous, we recommend further modifications to clarify the intent of the provision. RFA supports the following revision, which has been recommended by other stakeholders:

> (24) "Importer" means the person who owns an imported product when it is ~~received~~ delivered at the Import Facility in California defined in Section 95481 (a) 25 (B) through (C) or the person specifically identified as the "Importer" in a commercial agreement between the person who owns and the person receiving the alternative fuel at the point the product is being delivered at the Import Facility defined in Section 95481 (a) 25 (A) through (C).

Changes of this nature to the definition of "importer" would define by default who the importer is, but would still allow for the importer to be the producer, marketer, or other party that is introducing the fuel into commerce in California if both parties to the transaction agree to it in writing. Requiring a consensual arrangement that is explicitly stated in writing would address concerns over ambiguity and should allay the desires of some stakeholders to retain the original definition of importer. RFA agrees that a separate definition for "transloading facility" is no longer necessary, provided the proposed revisions to the definition of "import facility" and the suggested revision above to "importer" are adopted.

III. RFA generally supports the concept of streamlining the Method 2A/2B approval process, but believes some of the proposed certification requirements are impractical, overly burdensome and unnecessary.

We support the concept of conducting the Method 2A/2B approval process outside of the formal regulatory change framework and believe doing so will significantly streamline the process. RFA agrees with CARB's rationale, as outlined at the September 14 workshop, for transitioning this process to a "certification" program. However, as described below, we encourage CARB to reconsider several proposed elements of the certification process that are redundant, excessively burdensome and/or would add little or no value to CARB's evaluation of applications. As currently

constructed, the proposed certification program would likely discourage potential applicants from pursuing new pathway approval due to excessive burden of gathering the required information.

A. *The proposed language requiring that Method 2A applicants sell at least 10 million gallons per year (mgpy) and Method 2B applicants sell at least 5 mgpy in California is unnecessarily restrictive and will discourage small producers of low-carbon intensity (CI) fuels from applying. RFA recommends lowering the minimum volumes to 1 mgpy for Method 2A applicants and 500,000 gallons per year for Method 2B applicants.*

The proposed amendment establishing minimum volume requirements would result in the state of California forgoing the use of certain low-CI fuels simply because the volumes of those fuels sold in California are under the proposed thresholds. In turn, regulated parties would miss out on a potentially significant source of credits that could have otherwise been used for LCFS compliance. As with scale-up and commercialization of any new technology, advanced biofuels with low CI scores are likely to be produced initially in low volumes by smaller facilities. Additionally, ARB itself has acknowledged that as the CI of the biofuel decreases, so too does the volume needed for credit generation. Thus, even very small volumes of low-CI biofuel can go a long way in generating credits for compliance. Further, it is likely that fuels from new advanced biofuels facilities would require establishment of new pathways, as most of them likely would be using feedstocks and/or processes that are not captured in ARB's current look-up table.

As an example of the restrictiveness of the draft provision, the proposed minimum sales volumes would prevent approval of Method 2 pathways for at least 44% of the biodiesel facilities and 54% of the North American advanced biofuel facilities that were identified by Environmental Entrepreneurs (E2) as being potential suppliers of low-CI biofuels to the California market in the mid-term.[1] According to the E2 report, these facilities represent some 200 mgpy of aggregate biodiesel capacity and 50 mgpy of aggregate advanced biofuel capacity; yet, these volumes would not be available for the purposes of LCFS compliance simply because the facilities producing them would be prevented from submitting Method 2 applications to CARB.

We recognize the need to establish a minimum volume threshold to both reduce resource burdens on CARB and to ensure that new pathway fuel volumes have meaningful impacts on LCFS compliance. However, we believe the thresholds currently proposed by ARB are far too high and restrictive. RFA recommends lowering the minimum volumes to 1 mgpy for Method 2A applicants and 500,000 gallons per year for Method 2B applicants. Lowering the thresholds will ensure most producers of new low-CI advanced biofuels are able to participate in the Method 2 process and will also create access to an additional source of credits for regulated parties.

B. *The proposed provision requiring Method 2A/2B applicants to provide information on the points of feedstock origination, feedstock transportation distances and modes, and a*

[1] As part of the LCFS Advisory Panel process, CARB staff asked E2 to prepare a report (available at http://www.arb.ca.gov/fuels/lcfs/workgroups/advisorypanel/20110825_e2_report.pdf) discussing potential advanced biofuel volumes in the near- and mid-term. RFA does not endorse the E2 report's findings and refers to them here only to illustrate the restrictiveness of CARB's proposed minimum volume requirement.

description of feedstock production (agricultural) practices is vague, impractical and ignores the realities of fungible commodities markets.

As part of the Method 2A/2B application process, CARB is proposing to require applicants to provide "[a] description of all feedstocks used, including their points of origination…" and "…all feedstock transportation distances and modes…" The provision further requires that "…the description shall include the agricultural practices used to produce those crops," including energy and chemical use, typical crop yields, feedstock harvesting, transport modes and distances, and other factors. These proposed requirements are vague in that they do not specify the boundaries for determining points of origin (i.e., is the boundary for point of origin at the national, regional, state, county, or other level?). In regard to agricultural practices, the draft language also does not specify whether average values may be used across all feedstocks processed over a given period of time (e.g., one year), or whether specific values must apply to specific feedstock batches.

Notwithstanding the ambiguity of the proposed language, biofuel producers rarely have knowledge of the exact points of origin of their feedstock, nor do they have detailed knowledge of the agricultural practices used to produce the crops. Commodities like grain are highly fungible, and ethanol producers acquire grain from a variety of sources that may change over time due to market conditions. For example, in Year 1, an ethanol plant may source 50% of its corn from local farmers and 50% of its corn from elevator A. In Year 2, that same ethanol plant may source 70% of its corn from a different mix of local farmers, 20% from elevator B, and 10% from elevator C. Thus, requiring applicants to describe the origin of their feedstock in detail is impractical and unreasonable.

In regard to details about feedstock origination and agricultural practices, applicants should only be required to provide documentation if they use values *other than the CA-GREET default* (average) values for these practices in their CA-GREET analysis. We urge CARB to reconsider this proposed requirement and encourage the agency to only request documentation for those values that differ from CA-GREET defaults.

C. *The proposed requirement to provide two years' worth of invoices for energy purchases is onerous and unnecessary, given that applicants attest to the accuracy of the energy usage values recorded in their CA-GREET lifecycle analysis report.*

CARB's proposed requirements for Method 2A/2B applications clearly requires applicants to attest to the veracity and accuracy of the information submitted, including all inputs to the CA-GREET model. Therefore, it is duplicative and unnecessary to require applicants to submit two years' worth of energy invoices when energy use is already documented—and attested to—in the compulsory CA-GREET analysis, lifecycle analysis report, and other required information. If CARB continues to believe this information is necessary, it should revise the language to require only a representative sample of energy invoices from the last two years, or to require submittal of this information only on an as-needed basis.

D. Much of the information requested by CARB for Method 2A/2B applications is already available via established reporting for the federal Renewable Fuel Standard (RFS2).

As RFA pointed out in our comments of August 5, biofuel producers are already submitting much of the information that CARB is proposing to require to the U.S. EPA as part of the RFS2 program.[2] Requiring Method 2 applicants to submit copies of their RFS2 third-party engineering review *in addition to* separate documentation describing feedstocks used, combustion-powered equipment, co-products, process flow diagrams, and other information is duplicative and an abuse of both CARB and applicant resources. A far more practical approach would be to request that Method 2 applicants forward copies of their RFS2 registration package, third-party engineering reviews and possibly copies of certain standard reports required by U.S. EPA for RFS2 compliance.[3]

We strongly encourage ARB to re-evaluate the proposed requirements for Method 2A/2B certification. As currently crafted, the excessive and unnecessary burden on biofuel producers will likely discourage many potential applicants from pursuing approval of a new or modified pathway.

IV. RFA supports ARB efforts to account for additional emissions generated above baseline gasoline/diesel levels from the use of HCICO. We believe the most appropriate method for accounting for these emissions is through development of specific pathways for various HCICO sources.

The final LCFS regulation and Board Resolution 09-31 clearly required CARB staff to develop a system by which regulated parties calculate and report additional deficits (above base deficit levels) accrued through the use of high carbon intensity crude oil (HCICO). Yet, nearly two years after implementation of the regulation, regulated parties still are not being held accountable for additional emissions generated as the result of using HCICO sources. As other stakeholders have indicated, increased use of HCICOs could partially or entirely offset any emissions benefits derived through the increased use of low carbon fuels under the LCFS. We understand that there are challenges associated with tracking sources of crude oil to their various points of origin. However, these challenges are not insurmountable and several of CARB's proposed options for approaching HCICO requirements are reasonable and meet the spirit and intent of the original provision.

Further, as a general matter of fairness, oil refiners should be required to account for the emissions impacts of different feedstocks and refining processes just as biofuel producers are required to identify specific production pathways that most closely represent their feedstocks and processes. For biofuels pathways, the LCFS requires detailed documentation of the point of the biofuel's origin, the production process used, the physical pathway the biofuel took to market, and other information. Why should non-average crude oil sources not be held to the same standard? Indeed, biofuels are no less fungible or exchangeable than crude oil. RFA supports the current approach to

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[2] See http://www.arb.ca.gov/lists/lcfs-regamend-ws/6-rfa_comments_july_22_carb_workshop.pdf

[3] For example, the RFS2 Renewable Fuel Producer Co-products Report (RFS0700) requires producers to report the types and amounts of co-products they produce (i.e., DDGS, WDG, and other forms).

HCICO accounting as outlined in 95486(b)(2)(A)2. and we encourage CARB to move as quickly as possible to implement this approach.

V. RFA supports some of CARB's proposed revisions to the existing ILUC analysis, but is opposed to several planned changes that are scientifically unsupported and go against the recommendations of the LCFS Expert Work Group.

RFA will provide detailed comments not later than October 5 on CARB's proposed revisions to indirect land use change (ILUC) values. As noted in our comments of August 5, RFA agrees with the decision by CARB staff to adopt the recommendations of the Expert Workgroup (EWG) pertaining to use of updated energy sector elasticity values, improved treatment of distillers grains, improved treatment of livestock sector responses, use of revised estimates for yield on new cropland, and revised emission factors. However, we disagree with CARB's intent to disregard the EWG recommendations related to the "price/yield" elasticity value used in the Global Trade Analysis Project (GTAP) model. Further, we believe CARB's proposal to prevent the GTAP model from reaching equilibrium by "freezing" food consumption raises serious policy and technical concerns. We also have concerns regarding the methodology and assumptions used by CARB's contractors in the construction of new emissions factors. We will elaborate on these concerns and others in our forthcoming comments.

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Thank you for the opportunity to comment on the proposed regulatory concepts and amendments. Please do not hesitate to contact us with any questions or comments regarding the contents of this letter.

Sincerely,

Geoff Cooper
Vice President, Research & Analysis

cc:
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