

December 14, 2011

Ms. Mary Nichols
Chairwoman
California Air Resources Board
Headquarters Building
1001 I Street
Sacramento, CA 95812

RE: Comments of the Renewable Fuels Association (RFA) regarding the December 16, 2011 Public Hearing to Consider Amendments to the Low Carbon Fuel Standard Regulation

Dear Ms. Nichols,

The Renewable Fuels Association (RFA) appreciates the opportunity to provide comments regarding the amendments to the Low Carbon Fuels Standard (LCFS) regulation being considered by the California Air Resources Board (CARB) on December 16, 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 several of the proposed amendments will enhance flexibility and improve the tractability of the regulation in the near term, we would like to suggest additional modifications to certain proposed amendments and address several other issues raised during recent CARB workshops.

I. RFA supports the proposed amendments related to who may voluntarily opt into the LCFS program as a regulated party (§95480.2), as well as the amendments governing opt-in and opt-out procedures (§95480.3)

As acknowledged by ARB in the Initial Statement of Reasons (ISOR), 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 value associated with carbon intensity reductions, if such value ultimately develops in the marketplace. Thus, RFA supports the proposed amendments allowing out-of-state producers and distributors/marketers to voluntarily opt in as regulated parties. We believe the proposed amendments establish

sufficient criteria for demonstrating the eligibility of parties seeking to voluntarily 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 amended definition of “importer” in §95481

We support the revision to the definition of “importer” and believe it is much more inclusive of the various entities involved in the biofuel importation process. Further, the revised definition accords with the amendments related to the opt-in/opt-out provisions, as discussed above.

III. We support adjusting the LCFS compliance schedule for gasoline to account for changes to the carbon intensity of CARBOB from 2006 to 2010. However, RFA continues to believe ethanol should be removed from the gasoline baseline.

RFA agrees that it is necessary to revise the compliance schedule to reflect the increase in the average carbon intensity (CI) for CARBOB related to the production and transport of crude oil to California refineries in the most recent year currently available (2009). We note the CI of producing and transporting crude oil in California increased by 20% in just four years, which is far too significant to ignore. Further, we believe updating CARBOB to 2010 is more consistent with the approach to the CaRFG baseline, which assumes inclusion of 10% ethanol (i.e., the previous CaRFG formulation was based on the 2006 carbon intensity of CARBOB, but assumed inclusion of 10% ethanol. In 2006, ethanol was only blended at 5.7%, and 10% ethanol was not widely blended in California until 2010). Still, because the LCFS is a “performance-based” standard, we continue to believe ethanol should be removed from the baseline and all gasoline substitutes should be compared strictly to CARBOB (see our previous comments for more detail on this issue).¹

IV. RFA strongly supports the amendments to §95486 related to accounting for incremental deficits from the use of High Carbon Intensity Crude Oil (HCICO)

Since the LCFS regulation requires detailed full lifecycle GHG accounting for all individual gasoline/diesel substitute pathways, full and accurate accounting of the upstream emissions from individual crude oil pathways should also be required. That is, 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 processes and pathways. For Method 1 and Method 2 biofuels pathways, the LCFS requires documentation of the point of the biofuel’s origin, feedstock characteristics, production process used, the physical pathway the biofuel took to market, and other information. While we agree with other stakeholders that

¹ 1. RFA Comments re: regulatory amendments workshop. Aug. 5, 2011. Available at http://www.arb.ca.gov/lists/lcfs-regamend-ws/6-rfa_comments_july_22_carb_workshop.pdf

2. RFA Comments re: proposed regulation to adopt a Low Carbon Fuel Standard. April 22, 2009. Available at: <http://www.arb.ca.gov/lists/lcfs09/270-rfa.pdf>

the HCICO provision may increase the likelihood of crude oil “shuffling”—just as the LCFS has induced ethanol shuffling—the requirement to account for lifecycle GHG emissions should be the same for all fuels. As such, we believe the amendment to §95486 appropriately balances the requirements of Resolution 09-31 with the concerns of certain stakeholders.

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

We generally support the amendments that move the Method 2A/2B approval process outside of the formal rulemaking framework and believe doing so will significantly streamline the process. RFA agrees with CARB’s rationale, as outlined in the ISOR, for transitioning this process to a “certification” program. While we appreciate CARB’s consideration of some of our previous comments regarding certain elements of the proposed certification program, we still believe several proposed elements of the process 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.

Regarding fuel pathway application requirements, we were pleased to see CARB considered our recommendation to allow the use of CA-GREET defaults for key feedstock production and transportation factors. Still, we feel compelled to point out that biofuel producers rarely have knowledge of the exact points of origin of their feedstock and the geographic boundaries from which the feedstock was sourced, 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. Requiring applicants to describe the origin of their feedstock in detail is impractical and unreasonable, particularly because CARB does not readily allow Method 2 applicants to receive credit for low-intensity agricultural practices. In addition, we believe CARB should allow the use of the default values in the latest version of the Argonne (DOE) GREET model because it contains more current data on agricultural practices than what appears in the CA-GREET.

In addition, 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 analysis and associated lifecycle analysis report. CARB’s proposed certification program 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. The requirement for two years’ worth of transportation invoices is similarly onerous and unnecessary.

Finally, RFA was pleased to see that CARB adopted our recommendations on removing the substantiality requirement for Method 2B applicants and accepting copies of the RFS2 Fuel Producer Co-product Sales Report as sufficient documentation of co-product drying practices.

VI. The efficacy of the LCFS program in the near term significantly depends on reducing the regulation's existing indirect land use change (ILUC) penalties for crop-based biofuels.

We are disappointed that CARB is not considering, as part of these amendments, reductions to the LCFS program's ILUC penalties for corn ethanol. This is particularly frustrating when Resolution 10-49 committed CARB to considering such amendments in the *spring of 2011*. One year has elapsed since the LCFS Expert Workgroup recommended numerous changes to the ILUC analysis, and updated GTAP results have been available for more than 18 months. Yet, CARB staff is unlikely to propose new ILUC factors until summer 2012 at the earliest, and amendments to the regulation's ILUC penalties aren't likely to be effective until 2013.

The unnecessary delay in implementing revised ILUC factors for corn ethanol threatens to undermine the ability of regulated parties to generate necessary credits to comply with the LCFS in the next several years. CARB's own updated compliance scenarios show that, in order to achieve compliance, the carbon intensity of average corn ethanol in 2012 must be 84.7 g/MJ (15% lower than the current assumption of 99.4 g/MJ for "Midwest average corn ethanol").² In 2013, the CI of average corn ethanol must be 81.6 g/MJ (18% lower than the current assumption), and the necessary corn ethanol average CI is 79 g/MJ in 2014 (21% lower). These assumptions are common to all of the new CARB compliance scenarios, and annual compliance cannot be achieved in these scenarios without the use of decreasing corn ethanol CI values over time.

We certainly agree that corn ethanol CI values will continue to decrease over time, but CARB assumes these CI reductions will occur exclusively as a result of reduced direct (i.e., production-related) emissions and that the ILUC penalty remains at 30 g/MJ. Further, CARB assumes these average CI reductions will result from submissions of new or modified Method 2 applications, rather than from ARB-initiated changes to the existing CI look-up table. As stated in our Advisory Panel comments of November 17, 2011, we believe achieving CI reductions of the magnitude assumed by ARB would require a reduction of the ILUC penalty for corn ethanol to the levels recently estimated (i.e., 10-14 g/MJ) by Tyner et al. (July 2010) and Laborde (October 2011).³ As evidenced by ARB's own revised compliance scenarios, we believe a failure to reduce corn ethanol ILUC values *soon* will greatly strain the ability of regulated parties to comply with the LCFS as the CI reduction requirements become more stringent in 2012 and beyond.

While RFA supports some of CARB's proposed revisions to the existing ILUC analysis, as outlined at a September 14, 2011 CARB workshop, we remain opposed to several planned

² See Chapter VI ("Meeting the Targets") and Appendixes B-C of Low Carbon Fuel Standard 2011 Program Review Report. Final Draft. Dec. 8, 2011.

³ RFA Comments re: 2011 Program Review Report Draft. Nov. 17, 2011. Available at: http://www.arb.ca.gov/lists/lcfsadvpanmembers-ws/81-rfa_comments_on_lcfs_program_review_report_draft.pdf

changes that are scientifically unsupported and go against the recommendations of the LCFS Expert Work Group. We commented in depth on the September 14 ILUC workshop in comments dated October 5, 2011, and we incorporate those comments here by reference.⁴

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Thank you again for the opportunity to comment. Please don't hesitate to contact us with any questions or comments regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen", with a stylized flourish extending to the right.

Bob Dinneen
President & CEO

⁴ RFA Comments re: Sep. 14, 2011 CARB ILUC workshop. Oct. 5, 2011. Available at:
http://www.arb.ca.gov/lists/lcfs-regamend-ws/37-rfa_comments_on_carb_iluc_changes_sep14.pdf