



California Biodiesel Alliance

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June 16, 2016

Ms. Ursula Lai  
Lead Staff, Verification  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

**Re: Comments on Proposed LCFS Updates and Verification Regulation.**

Dear Ms. Lai:

Thank you for the opportunity to comment on this proposed regulation. We continue to appreciate the tremendous job that ARB staff do on behalf of our industry and all Californians.

As you may know, the National Biodiesel Board (NBB) serves as the trade association for the U.S. biodiesel and renewable diesel industries. The NBB represents more than 90 percent of domestic biodiesel and renewable diesel production. In addition to governmental affairs activities, the association coordinates the industry's research and development efforts.

The California Biodiesel Alliance (CBA) is a not-for-profit trade association promoting the increased use and production of high quality, renewable biodiesel fuel in California. CBA represents biodiesel feedstock suppliers, producers, distributors, retailers and fleets. Since 2006, CBA has championed the cause of biodiesel in California and has worked on every important issue faced by our industry in this state and at the national level.

Noted below are our joint comments on key portions of the proposed regulation.

General Comments

Our previous comment letter, dated March 22, 2016, focused on four areas that NBB members felt were of particular importance. Those were:

- 1) Greater potential for fraud with respect to foreign entities;
- 2) A need for tighter conflict of interest rules than those set forth in the U.S. Environmental Protection Agency's (EPA) Quality Assurance Plan (QAP) final regulation;
- 3) Importance of cooperation between jurisdictions such as California, Oregon, and British Columbia; and
- 4) The importance of physical verification of feedstocks and unannounced field audits to the success of a verification program.

I would like to begin discussing these issues with a few areas in which we find general agreement.

First, we are pleased with the way in which the conflict of interest provisions have been drafted. ARB staff clearly understand the importance of appropriate conflict of interest rules and the impact that those have on the integrity of the program. We would, however, like to clarify that QAP providers can also provide LCFS verification services without triggering conflict of interest concerns. Since we hope there will be a significant amount of overlap between the two programs, preserving the ability to hire the same firm could result in significant cost savings for producers.

We also appreciate the fact that ARB staff have been clear about the fact that they plan to communicate and cooperate with other jurisdictions in order to verify feedstock use and multi-feedstock mass-balancing. While this is principally an implementation issue, it bears mentioning because it is central to ensuring the program's integrity.

In terms of areas where we might like to see some changes, we believe more could be done to focus on the special risks foreign entities represent due to a variety of factors such as distance from California, feedstock use, proclivity to use a mass-balance compliance approach with high carbon feedstocks as well as a general lack of regulatory and legal oversight in many of their countries of origin. To help address this overriding concern, we requested in our previous comments that the ARB require bonding for foreign entities, just like U.S. EPA does under the federal Renewable Fuel Standard program.

While we still support bonding as the most effective option and hope ARB staff will reconsider its decision not to include such a provision, an alternative approach would be to require third-party verifiers of foreign entities to maintain a higher level of liability insurance than the \$4 million suggested during the public workshop. Although a uniform requirement for liability insurance is a step in the right direction, in our view, it still does not adequately or directly address the enhanced risk of fraud that foreign entities represent. The fact of the matter is that foreign entities represent a higher risk to the program and they should be subject to enhanced requirements. To place higher requirements on the entire marketplace seems unfair to domestic producers—especially those in California already subject to strict regulatory oversight—and would increase overall program costs while decreasing profitability for alternative fuel producers. In short, a sense of political correctness or perhaps an oversensitivity to imputations of protectionism should not impede implementation of the most logical and effective strategies for preventing and detecting fraudulent activity.

In terms of addressing the potential for fraudulent feedstock reporting, it is clear that ARB staff are serious about tackling this issue, and we appreciate this emphasis in the regulation. However, we are not convinced that the significantly greater level of information required relative to the QAP program and substantially higher level of complexity will result in a more effective program. We also question whether or not ARB staff would have the resources to thoroughly examine the volume of information it would receive on a quarterly basis.

It has long been our view that desk audits reliant upon paper trails are weak strategies for detecting fraud, particularly with respect to companies located in developing nations where the rule of law is not as established as it is in this country. Instead, our members support what we consider to be a more targeted, efficient, and ultimately effective approach focused on unannounced field audits and physical verification of feedstocks for high risk contributors.

Our recommendation would be to revisit the proposed regulation with an eye toward reducing complexity (and related costs) and focusing on ways in which the ARB can concentrate efforts on the highest risks and the most effective strategies for detecting fraud (e.g. unannounced field audits and physical verification of feedstocks) as opposed to essentially capturing the entire marketplace with one very large, (potentially) very expensive net. Ultimately, we would like to see the ARB's verification program look identical to the QAP program in terms of structure, but perhaps with several added measures that staff believe would prove beneficial. This type of "QAP+LCFS" compliance approach would dramatically reduce costs for the industry and California fuel consumers.

#### Unique Identifiers

We are not convinced that the benefits of a Unique Identifier program would outweigh the costs. At the risk of appearing overly simplistic, we believe the ARB should focus on unannounced field audits and physical verification of feedstocks while foregoing many of the more complicated and expensive elements of the proposed regulation. We also wonder if the ARB could accomplish many of its goals with information obtained from the federal Renewable Identification Number (RIN) program.

Finally, we have learned from implementation of the RIN program that obligated parties will use traceability to obtain product discounts from all but the very largest of biodiesel producers. This would undoubtedly occur with a Unique Identifier program and would disadvantage California producers whose businesses are scaled to serve local and regional markets.

#### High Risk Pathway Contributors

We strongly support a risk-based verification and enforcement approach. Below are some ideas for further development of the concept.

During the workshop, it was suggested that third-party verifiers would decide which companies are High Risk Pathway Contributors. In other words, the scheme would essentially rely on self-reporting. We are highly skeptical about the efficacy of such an approach. Instead, we suggest that ARB staff make the determination based on the extent to which a Pathway Contributor meets the following risk-based criteria: (1) Distance of production facility from California; (2) Total distance travelled by feedstock; (3) Complexity of supply chain; (4) Use of mass-balancing compliance approach with high carbon feedstocks; (5) Production facility reliance on used cooking oil not collected from local sources; and (6) Volume of fuel sold into the California Low Carbon Fuel Standard program.

In our view, these criteria should not be strictly defined, but rather ARB staff should have the flexibility and authority to make a High Risk Pathway Contributor designation based on the totality of information available and the extent to which the production facility meets the risk assessment criteria described in the previous paragraph.

Once a designation is made, ARB staff should have the authority to request additional documentation (information beyond the streamlined QAP+LCFS compliance structure we propose). In addition, physical verification of feedstocks and unannounced field audits should be conducted regularly to ensure compliance, the frequency of which would be determined by ARB staff based on the totality of information available and its own assessment of risk based on staff expertise. The cost of unannounced field audits should be borne by High Risk Pathway Contributors.

#### Materiality Threshold

The materiality threshold for lifecycle assessments (LCA) is undefined in the regulation. Based on consultations with LCA experts, we believe the measurement should be 2 g/MJ or 5 percent of the carbon intensity value. This standard would account for the typical variance expected with regard to plant operations and performance.

#### Implementation Timeline

Given the inherent complexity and importance of this issue, we would support lengthening the timeline related to promulgation of this regulation. In particular, our industry is concerned about the regulatory and financial burden associated with the Alternative Diesel Fuel regulation, which becomes fully implemented on January 1, 2018. In order to avoid having to manage two new and major compliance programs simultaneously, we would prefer that implementation of this regulation begin January 1, 2019 or later.

#### Conclusion

It is clear that staff are taking this issue seriously and have developed a deep understanding of the underlying issues. We appreciate this thorough approach and have every confidence that it will yield a result that proves effective, practical, and affordable.

Thank you, in advance, for your consideration of our views on this important matter. If we may be of any assistance, please feel free to contact us at any time.

Sincerely,



Jennifer Case  
Chair  
California Biodiesel Alliance



Shelby Neal  
Director of State Government Affairs  
National Biodiesel Board