



September 1, 2017

Ursula Lai
California Air Resources Board
1001 I Street
Sacramento, CA 95812
LCFSworkshop@arb.ca.gov

Dear Ms. Lai:

The California Biodiesel Alliance (CBA) appreciates the opportunity to comment on the 2018 Amendments to the Low Carbon Fuel Standard and Concept Paper presented at the August 7th workshop. CBA is California's not-for-profit biodiesel industry trade association, representing the state's biodiesel producers and a broad range of stakeholders. CBA endeavors to increase awareness about biodiesel as California's leading and widely available advanced biofuel that delivers significant economic, environmental, and energy diversity benefits throughout the state. Our comments here will focus primarily on the proposed Third Party Verification Program which is sure to have significant impact on our members and the industry at large, so we appreciate careful consideration of our feedback.

Validation & Ongoing Verification

CBA supports the concept that the initial validation of fuel pathways should use two prior years of data ("Validation"). As the next GREET update is expected January 2019, producers should be able to use the simplified model using calendar years 2017 and 2018.

CBA supports Ongoing Third-Party Verification of Carbon Intensity Scores ("Verification") on an annual basis. However, we have serious concerns that the proposed methodology may lead to inaccurate CI scores and an overly burdensome program. As you know, CI scores are not static, but are variable depending on numerous factors including feedstock, energy efficiency, production process, transport distance, etc. During the last application process, ARB recommended that applicants use the "worst case scenario" in order to avoid understating the CI score. We recommend the following improvement:

- After Validation, the producer is free to use the applicable CI for **up to one year**.
- The next year, the producer would be required to update the GREET model along with Third Party Verification. If the CI is lower, no action would be taken except that the producer would use the lower CI score for the following year. If the CI has been



exceeded **by 5% or less**, the producer would be assessed a deficit equal to the over-generation. **No further penalty would be assessed against the producer.** This would encourage participants to lower their CI every year, allowing the program to generate the maximum possible number of valid credits. We feel this is far more advantageous than encouraging the “worst case scenario” where the biggest loser is the program itself when valid credits go un-generated.

- CBA requests further clarification on the definition of “material misstatement” to understand whether we support revocation of pathways and/or invalidation of credits for variances over 5%. While we support that there should be harsh penalties for those nefariously using the LRT to commit fraud, CBA must ensure that small variances due to the fluid nature of the inputs to the CI model will not cause invalidation of the credits generated by legitimate producers. We must all be cognizant of the potential market chilling that could occur if obligated parties fear invalidation of credits (similar to RIN fraud debacle in 2012).
- CBA sees no risk in allowing limited deficits to be assessed against renewable fuel producers under this program, similar to the deficits assessed against refiners.

Monitoring Plan

CBA supports the requirement that each plant develop and maintain its own monitoring plan. Our industry is concerned with the costs associated with tracking the transport distance of each shipment in and out of the plants. We suggest limiting verification of this detail and instead, rely on attestation from the producer similar to the EPA’s Separated Food Waste Plan.

Accreditation and Oversight

A primary concern for our industry is the potential misrepresentation of CI scores for fuels by foreign producers who may be out of reach for practical enforcement by ARB.

- CBA supports the requirement of in-person site visits. However, we feel strongly that the third party verifiers shall be companies that are based in the United States to ensure enforcement by ARB.
- All producers, including foreign entities, should be subject to random, unannounced audits from ARB. ARB should not approve a foreign pathway if it does not have the resources to conduct such audits. We understand that domestic participants should also be subject to scrutiny, but we are extremely concerned that if the burden falls more heavily on the domestic producers, the program will not do anything to curb potential abuse from abroad.
- CBA is firmly opposed to any feedstock verification patterned after ISCC, as such a program would be too burdensome and would result in feedstock suppliers sending their product out of state to avoid the cost.



“High Risk” Feedstock

CBA is very concerned with ARB’s characterization of Used Cooking Oil (“UCO”) as a feedstock with higher risk for mischaracterization that requires chain of custody evidence to the point of origin. While it is true that feedstocks with lower CIs are more attractive for financial reasons, we believe there are multiple ways to ensure compliance with the program that do not place an undue burden on producers or renderers. CBA offers the following suggestions:

- ARB should require producers submit a copy of the Separated Food Waste Plan that is required for the RFS Program (rather than requiring duplicative information). This plan requires producers to list the names and addresses of its feedstock suppliers and the estimated travel distance for the feedstock. Producers should be allowed to rely on statements from suppliers on this plan when submitting pathway applications. In other words, harsh penalties should be limited to cases of fraudulent or other nefarious conduct, and those participating in the market in good faith should be given ample latitude to cure any defects in their supplier information through assessment of deficits.
- Third party verifiers should conduct a mass balance of the chemical inputs and outputs at the plant. In order to convert used cooking oil to biodiesel, the plant must utilize chemicals like methanol, catalyst and sulfuric acid. A plant utilizing a virgin feedstock would use less methanol and catalyst for the conversion and would NOT use sulfuric acid. A baseline should be established at validation and be verified by the Third Party Verifier. In addition, a plant that is utilizing used cooking oil would generate a lower quality glycerin co-product. While it is not in our interest to request further scrutiny as far as verification, we believe a mass balance of chemicals may be less burdensome than chain of custody with restaurant grease.
- At the site visit and at ARB audits, representative samples should be taken from feedstock tank(s) and sent to a laboratory to check for certain markers that would identify the type of oil.

Beware of Unintended Consequences

California is the largest low carbon fuel market in the world, but it is important to remember that it is not the only low carbon fuel market. These other markets, which are expected to grow in number, will be competing with California for low carbon fuels and low carbon feedstocks. Although CBA understands the importance of a strong verification program in order to guarantee the integrity of the California LCFS and supports this effort, the organization is concerned that if ARB were to create a verification program that is too onerous, it could create unintended consequences that could damage the program. Given the size of the California market, it affects prices on the global level. For example, it is now standard for low carbon markets as varied as British Columbia and Switzerland to use the price of carbon credits in California when determining the value of renewable fuels. Even the municipal fleet of New York



City is willing to pay “California prices” for low carbon fuel. This is the case because these markets must be willing to match the California market in order to secure product. Likewise, the California market affects low carbon feedstock markets. There are only two net exporters of animal fat and waste oils in the world: Australia and the US. For other markets to import animal fat or UCO from the US, they will have to match the bid level of US biomass-based producers, and all US biomass-based producers will have to match the bid of their domestic competitors that serve the California market. So if ARB were to impose a verification program that is overly burdensome, CBA expects renewable fuel producers to move product to these different markets at the expense of California. Likewise, feedstock suppliers might refuse to participate in the system and instead sell their product to end users that are not supplying biofuels to California. One could see the perverse effect of UCO leaving California to be used as a feedstock for another low carbon market, and this very process being accelerated by high carbon credit prices in California.

Conflict of Interest

CBA disagrees with the six-year limitation on 3rd party verifiers. Program participants should be free to use any verifier that is in good standing with ARB. The burden should be on the 3rd party verification company to demonstrate to the State of California that it is acting appropriately, and not burden the renewable fuel producers to alternate its vendors unnecessarily.

In closing, CBA would like to thank you for your continued thoughtful deliberation on this challenging issue. We all share the common goal of wanting this program to maintain its integrity, discourage bad actors and encourage the use of the lowest carbon feedstocks possible. The most important points in this letter, including addressing the fluidity of CI and the mitigation of risk of low carbon feedstocks, deserve more attention and deliberation. In that regard, CBA would like to request an in person meeting before the next workshop to go over some of these points in more detail.

Please feel free to contact me with any questions at 619-236-8588.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Case".

Jennifer Case
Chair
California Biodiesel Alliance