



September 27, 2011

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Proposed California Cap on Greenhouse Gas Emissions Regulations: Proposed 15-Day Modifications, Second Notice

Submitted Electronically: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Dear Clerk of the Board:

Agricultural Council of California (Ag Council) is a public policy association representing more than 15,000 farmers across California, ranging from farmer-owned businesses to the world's best-known brands. As such, many of our member companies will be required to participate in the cap and trade portion of this regulation. Ag Council appreciates the opportunity to comment on the Second Notice of the *Proposed California Cap on Greenhouse Gas Emissions Regulations: Proposed 15-Day Modifications* as posted on September 12, 2011.

Ag Council appreciates the Air Resources Board's (ARB) decision to delay implementation of cap and trade for one year. There are many outstanding issues with this regulation that we continue to work on, therefore the delay in implementation is appreciated by our membership.

ARB's clarifications on untimely surrender of compliance instruments (§95857) are appreciated. The 5% flexibility threshold and 6-month time period to surrender compliance instruments allows some room to respond to a changing system. However, as this regulatory framework is likely to evolve on several levels, Ag Council requests that ARB consider the remainder of the first compliance period as a grace period for implementation for participants in cap and trade. Participants will be learning more about their technology and the regulatory requirements as the first compliance period begins in 2013, as will ARB staff and enforcement officials. By removing the 5% threshold and increasing the 6-month timeframe to the end of the first compliance period, it will provide more flexibility for participants and staff to create a system that works for everybody.

Ag Council is concerned that ARB has not adequately addressed concerns we have outlined in previous comments. Ag Council's central issue of concern with the regulation still remains, and that is the designation of food manufacturing being categorized in the "medium" Leakage Risk Classification in Table 8-1.

As stated in our previous comments, dated December 14, 2010, "the regulation states that the Industry Assistance Factor is essentially the ability an industry has to pass-on carbon costs. With

low-cost competitors throughout the world, even a minimal increase in cost could displace certain market segments as demonstrated in the previously listed reports.”

As stated in our comments submitted on August 10, 2011, “Ag Council believes the formula for trade exposure and emissions leakage should be reevaluated to give special consideration to agricultural import and export markets. Food processing should be moved to the “high” leakage risk category, due to increasing international and domestic markets as stated in data points provided in our December comments. Additionally, food manufacturing is located in the second Industry Assistance Factor tier (Industry Assistance Factor of 100%; 75%; 50%), and should be moved to the top industry assistance factor tier due to price pressures from international markets. Even a minimal increase in costs could displace U.S. markets, giving more ground to domestic and international competitors.

The EU’s Emission Trading System (ETS) recognized the food processing industry as being especially vulnerable to leakage. While some food processing sectors were given 100% free allowances, others were considered under the *de minimis* category and therefore do not have to participate. California is no different as many of our commodities compete for market space in a domestic and global economy. As such, by working within this regulatory system, we support moving food processors from the “medium” to the “high” leakage category in Table 8-1. Without our food processors, many sectors of production agriculture would not have a home in the marketplace.

Ag Council agrees with staff assessments in the December report, regarding domestic competition as being problematic as it relates to the food and agricultural industry. A different approach should be taken for food processing in determining compliance costs and/or emissions intensity. The emissions intensity variable in the product-based allocation calculation should be replaced with another variable that truly represents the cost of compliance for the food industry. Staff should take more time to work with the food processing industry to determine an appropriate factor for this variable.”

According to ARB staff, analysis has been conducted which demonstrates that the food processing industry will benefit from the cap and trade program during the first compliance period, therefore, food manufacturing remains in the “medium” leakage category. However, we have not been given the opportunity to review staff’s analysis of these findings, so our request to move to the “high” leakage category remains at the forefront.

Ag Council appreciates the opportunity to work with ARB on this regulation. We look forward to continuing our work on climate change and are hopeful for a workable outcome for our industry. Should you have any questions or concerns, please do not hesitate to contact me at (916) 443-4887.

Sincerely,



Emily Rooney
President

