

October 16, 2024

Hon. Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Second 15-Day Package of Proposed Low Carbon Fuel Standard Amendments

Dear Chair Randolph:

Thank you for the opportunity to comment in response to the second 15-day package of proposed modifications to the 2024 Low Carbon Fuel Standard ("LCFS") amendments that the California Air Resources Board ("CARB") released on October 1, 2024. Our comments provide draft regulatory language that would clarify that winter canola, when it is grown in North America as a second crop or cover crop, should be considered a distinct feedstock from traditional canola for purposes of the proposed oilseed cap and the Table 6 canola value. Part I offers background on the issue and proposed regulatory text. Part II provides more general comments on the second 15-day package.

As a leading oilseed processor, Bunge buys and processes agricultural commodities to turn them into products used in food, animal feed, and renewable diesel. Bunge is also a leader in sustainability, embracing climate-focused decision making and setting ambitious goals. For instance, we are well on our way to meeting our commitment to eliminate deforestation and native vegetation conversion from our supply chains in 2025. Bunge's robust traceability and monitoring systems give us significant insight into our supply chains. We are using technology and data to scale our efforts in geographies where deforestation is a higher risk and working with farmers to incentivize sustainable practices. We have already achieved 100 percent traceability in our direct supply of soy in priority areas in South America. We achieved 97.7 percent traceability in our indirect supply of soy in Brazil's high-risk areas in 2023.

I. Proposed Regulatory Language Related to Winter Canola

A. Background on Winter Canola

In North America, winter canola is canola grown as a second crop—that is, planted in the fall and harvested in the spring between primary crops in a multi-year rotation. Farmers overwhelmingly grow winter canola on land that would otherwise be fallow during that period. As a result, winter canola does not displace other crops or generate additional demand for new

cropland, and it therefore has a demonstrably lower ILUC risk than spring canola.¹ Winter canola also provides soil health and other environmental benefits associated with cover crops. At this time, the market is relatively small for this innovative crop with many environmental benefits and few negative impacts.

Bunge is concerned that two aspects of the current regulatory text may be susceptible to an interpretation that would discourage the market for winter canola.

First, the proposed oilseed cap might be read to include winter canola. In the first 15-day package, CARB proposed a cap on LCFS crediting for canola oil and soybean oil. In the second 15-day package, CARB added sunflower oil to the cap and included other clarifications.² CARB has stated that the oilseed cap is intended to address the “potential adverse impacts” of these crops.³ However, CARB did not clarify in the second 15-day package that the cap does not apply to winter canola. Because the cropping practices used to grow winter canola result in a low or zero ILUC risk, LCFS crediting for winter canola would not cause the “adverse impacts” CARB is trying to address in production of conventional canola, soybean, or sunflower feedstocks. If the cap is interpreted to include winter canola, that would prevent this innovative market from scaling.

Second, Table 6 could be interpreted to require a higher ILUC value for winter canola than is justified by the scientific research. The current regulatory text does not make clear how winter canola would be treated for purposes of LUC accounting under § 95488.3(d) and Table 6.⁴ Table 6 includes ILUC values for six “region/feedstock/fuel combinations,” including “canola biomass-based diesel” from North America.⁵ Although that ILUC value reflects 2015 modeling of conventional North American canola—i.e., canola grown as a primary crop—Table 6 does not specifically say so. As a result, there is risk that Table 6 could be read to mean that same “canola biomass-based diesel” ILUC value applies to North American winter canola, even though its cropping practices justify a lower value.

B. Proposed Regulatory Language

To address these ambiguities, Bunge encourages CARB to clarify that winter canola will not be considered as conventional canola for purposes of the proposed oilseed cap and for purposes of the Table 6 ILUC values. Failure to include these changes could seriously chill efforts to

¹ See, e.g., Farzad Taheripour & Ehsanreza Sajedinia, Purdue University, Induced Land Use Change: Case of Winter Rapeseed Biodiesel (May 2024) (examining the ILUC of the entire canola market and concluding that using winter canola oil as the feedstock “has a significant effect and decreases the corresponding ILUC emissions to about half of spring [canola] ILUC values”).

² CARB, LCFS Second 15-Day Package: Proposed Regulation Order at 36, § 95482(i) (Oct. 1, 2024), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/2nd_15day_atta-1.pdf.

³ CARB, LCFS Second 15-Day Package Notice at 3 (Oct. 1, 2024), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/2nd_15day_notice.pdf.

⁴ Second 15-Day Package: Proposed Regulation Order at 124–25, § 95488.3(d), Table 6.

⁵ *Id.*

develop winter canola in the United States. Accordingly, we recommend adopting the following proposed regulatory language.

First, we recommend adding a new definition to “Definitions and Acronyms” in § 95481(a):

“Primary-Crop Canola” means canola that is the crop produced during that geographical area’s main growing season. Primary-crop canola does not include canola that is grown as a second crop or as a cover crop. A second crop or cover crop would not displace a main crop and would not be detrimental to soil quality.

Both “second crop” and “cover crop” in the above proposed definition are defined by Department of Agriculture regulations.⁶

Second, we recommend including “primary-crop” before “canola oil” in Section 95482(i) to clarify that the oilseed cap applies to conventional canola:

Biomass-based diesel produced from soybean oil, primary-crop canola oil, and sunflower oil is eligible for LCFS credits for up to twenty percent combined of total biomass-based diesel annual production reporting, by company, based on the following transaction types: production in California, produced for import, and import. Any reported quantities of biomass-based diesel produced from soybean oil, primary-crop canola oil, and sunflower oil in excess of twenty percent on a companywide basis will be assigned a carbon intensity equivalent to the carbon intensity benchmark shown in Table 2 in Section 95484(e) for the applicable data reporting year, or the certified carbon intensity for the associated fuel pathway – whichever is greater. For companies which have submitted a biomass-based diesel pathway certification application under CA-GREET3.0 or which have a certified biomass-based diesel pathway prior to the effective date of this regulation, this provision takes effect beginning January 1, 2028.

Third, we recommend making clear that the canola LUC value in Table 6 applies only to conventional canola by revising “Canola Biomass-Based Diesel” to read “Primary-Crop Canola Biomass-Based Diesel.”

Fourth, we recommend inclusion of the phrase “cropping practices” throughout § 95488.3(d) to confirm (1) that the pathways in Table 6 may be specific to certain “cropping practices,” and (2) that CARB has authority to designate a distinct pathway and LUC value depending, in part, on cropping practices.

⁶ See 7 C.F.R. § 457.8 (“Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or seed is considered a second crop . . .”); *id.* (“Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement, unless otherwise specified in the Special Provisions. A cover crop may be considered a second crop (see definition of ‘second crop’)”).

(d) Accounting for Land Use Change.

(1) The Executive Officer calculated LUC effects for certain region-specific crop-based biofuels using the GTAP model (modified to include agricultural data and termed GTAP-BIO) and the AEZ-EF model. LUC values for six region/feedstock/[cropping practices](#)/fuel combinations are provided in Table 6 below. The Executive Officer may require a fuel pathway applicant to use one of the values in Table 6, if the Executive Officer deems that value appropriate to use for a region/feedstock/[cropping practices](#)/fuel combination not currently listed in Table 6, based on empirical LUC, crop yields, [cropping practices](#), and emissions factors.

(2) The Executive Officer may determine that no value in Table 6 is conservatively representative of a particular region/feedstock/[cropping practices](#)/fuel combination and assign a more conservative LUC value. Such determination must be based on the best available empirical data, including but not limited to satellite-based remote sensing data for land cover monitoring, crop yields, [cropping practices](#), and emission factors from the AEZ-EF model or carbon stock datasets. For [regions/feedstocks/cropping practices/fuel combinations](#)⁷ not listed in Table 6, the Executive Officer may determine and assign an appropriate LUC value based on empirical land cover data, yields, [cropping practices](#), and emission factors.

In comments on the first 15-day package, Bunge shared its concerns about how the proposed regulatory changes could affect the viability of winter canola-based fuels. Both the oilseed cap and Table 6 LUC values are intended to address land-conversion concerns that are likely inapplicable to winter canola. The narrow edits proposed above reinforce that allowing differential treatment for winter canola in light of its unique cropping practices is fully compatible with CARB's goals in this regulatory process. Even as the proposed changes ensure that winter canola may secure an appropriate, science-based ILUC score, they do not tie CARB's hands or *require* the agency to provide winter canola with a lower ILUC score. This language would simply ensure that the agency maintains discretion to make a science-based determination in light of all potentially relevant factors.

While Bunge believes that the regulatory language proposed above is a promising solution, Bunge is also open to other avenues to clarify that winter canola would not be subject to the oilseed cap and that a pathway with a carbon intensity value lower than that in Table 6 could be certified. We welcome further engagement with CARB on alternative possible solutions.

II. General 15-Day Package Comments

Bunge has long supported the LCFS, which has increased volumes of low-carbon fuels—including the biofuels for which Bunge supplies feedstocks—to cause California's petroleum fuel

⁷ The inclusion of "regions" and "fuel combinations" here addresses an apparent drafting omission in the existing regulation.

use to fall by 1.3 billion gallons since 2019. We are pleased to have contributed in a small way to the 12.63% decline in the carbon intensity of the state's transportation fuels since 2010.

However, Bunge is disappointed that the proposed cap on vegetable oils remained in CARB's second 15-day package, and that the sustainability certifications and associated timelines remained largely unchanged. Historically, the LCFS has carefully set CI scores for fuels based on science, which has been a hallmark of its success. This new proposed policy of adopting arbitrary limits on certain feedstocks threatens to undermine that science-based approach. Bunge also notes that CARB first proposed the sustainability certifications to address LUC concerns *in lieu of a cap*. Now, CARB proposes both, even though they are duplicative. Further, we maintain the concerns that we have previously raised with respect to the proposed sustainability certifications, which do not account for the fact the land-conversion risk is almost non-existent in North America. We encourage CARB to re-examine its proposed certifications to ensure the approach it is taking is commensurate with the risks specific to each region of the world.

While Bunge disagrees with the cap, Bunge appreciates that CARB has amended the proposal to give parties more time to prepare by proposing that the cap take effect January 1, 2028 for companies that have submitted biomass-based diesel pathway certification applications or have certified biomass-based diesel pathways prior to the effective date of the regulation.⁸ Bunge encourages CARB to take a similar approach with the sustainability certifications by moving back implementation of requirements related to farm boundary data and attestations so that these would apply for the 2028 data year, rather than the 2026 data year as currently proposed.⁹ As Bunge expressed in its comments on the first 15-day package, our experience implementing both voluntary and European Union sustainability measures informs our view that beginning compliance in 2028 is a more realistic timeline.

III. Conclusion

In conclusion, Bunge encourages CARB to clarify that the proposed oilseed cap and Table 6 canola ILUC value will not adversely impact winter canola, which has significant promise for further reducing the carbon intensity of California's liquid fuels without causing significant adverse impacts to land use. The draft regulatory language provided here offers one path to make this important clarification.

Bunge appreciates CARB's commitment to improving the LCFS in the 2024 amendments. We hope our comments on the second 15-day package help enhance the program in its final version.

Sincerely,



⁸ Second 15-Day Package: Proposed Regulation order at 36, § 95482(i).

⁹ *Id.* at 169–70, § 95488.9(g)(B).

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