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

Subject**:** Letter of Comment on Credit Adjustment and Margin of Safety for Proposed Amendments to the LCFS, posted December 19, 2023

Dear Chair Randolph:

Life Cycle Associates would like to take this opportunity to provide our comments on the Proposed Amendments to the Low Carbon Fuel Standard Regulation, posted on December 19, 2023. This letter is focused on two key components of the proposed amendments: Credit Adjustment and Margin of Safety.

Proposed Credit Adjustment
The following is an excerpt from the proposed regulation:

"Credit True Up after Annual Verification. Beginning with the 2025 annual Fuel Pathway Report data reporting year, the Executive Officer may perform credit true up for a fuel pathway that has a lower verified operational CI upon receiving a positive or qualified positive verification statement for the associated annual fuel pathway report and quarterly fuel transactions reports, notwithstanding the prohibition on retroactive credit generation in section 95486(a)(2). To implement this true up, the Executive Officer will calculate an equivalent number of credits representing the difference between the reported CI and the verified operational CI from annual Fuel Pathway Reports for each fuel pathway code reported with non-liquid transaction types and with the following liquid fuel transaction types "Production in California," "Production for Import," and "Import" during a compliance year, and place those credits in the account of each appropriate fuel reporting entity after August 31 for the prior compliance year. The credits will be calculated according to the following equation:"

Expected Impact of Proposed Credit Adjustment

- If a fuel pathway holder's operational CI exceeds their certified CI, 4.0× credits are taken away per § 95486.1. (g).
- The clarity of this penalty eliminates uncertainty associated with non-compliance but does not include any consideration of specific conditions leading to non-compliance.
- If the operational CI is below the certified CI, the under-generated credits may be returned to the fuel pathway holder.
- Pathway holders now have an artificial incentive for an inflated margin of safety (MOS). The expected outcome is election of highly inflated margin of safety to avoid any CI non-compliance risk while still (retroactively) generating all of the credits associated with the operational CI improvement. This measure also

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provides an incentive for deferring the generation of credits and prevents reporting the benefits of the LCFS program as timely and accurately as possible.

Rationale

- CI exceedances are often out of the control of fuel producers, often arising from black swan events outside the scope of a facility's operational control. Black swan examples include extreme weather events or global/regional supply chain disruptions due to the war in Ukraine or COVID-19. These events can create a discrepancy between the certified CI and operational CI for many fuel pathway holders, unrelated to their operation.
- In such situations, fuel producers should not receive high penalties for exceedances that they are unable to mitigate.
- High margins of safety results in skewing of credit reporting and deferred cash flow.

Recommendations:
Application of a Margin of Safety

- Oregon CFP has adopted a quantitative variability approach to determine a margin of safety for their fuel pathways, requiring pathway holders to submit their quantitative variability analysis to support the margin of safety election.
- We find that the quantitative approach under the Oregon CFP may be an appropriate framework for calculating the conservative margin of safety "of a magnitude determined by the applicant", within California's LCFS.
- We recommend inclusion of a similar provision to prevent election of overly conservative MOS as a way to entirely avoid CI non-conformance while creating a significantly large true-up accounting burden on CARB.

Reduced True-up factor for Communicating CI Exceedance in Advance

- We recommend inclusion of a provision that allows for reduced penalty consideration for specific cases:
  - If a fuel producer informs CARB well in advance, in writing, of projected CI exceedance and retains a matching credit balance in their LCFS Reporting Tool (LRT) account at the end of the reporting year, CARB may reduce the CI exceedance factor from 4.0 to 2.0.
- Such a relief should be strongly considered for CI exceedances arising from black swan events.

Thank you for your consideration in reviewing our comments and incorporating them into the final regulation. If you have any questions, please reach out to me directly.

Sincerely,

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