

August 27, 2024
Chair Liane Randolph & Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
Via electronic submission

Re: Proposed 15-Day Changes to the Proposed Regulation Order

Dear Chair Randolph and Members of the California Air Resources Board,
On behalf of the South Dakota Soybean Association (SDSA), thank you for the opportunity to comment on the proposed 15-day changes (15-Day Changes) to the Low Carbon Fuel Standard (LCFS) program. SDSA represents soybean farm families across South Dakota on public policy issues important to the soybean industry. Growers across South Dakota have long been committed to producing the world's food, feed, fuel, fiber, and thousands of bioproducts in an environmentally and economically sustainable way.

CARB's 15-day changes to revise the LCFS were quite surprising, as the final package diverged significantly from what was included in the Initial Statement of Reasons (ISOR) and the April 10 public workshop. Of top concern for farmers across our state and the rest of the nation is a proposal that would cap the use of soybean oil and canola oil as feedstocks for biofuels at 20 percent by company.

Artificial restrictions on the market, combined with the inclusion of sustainability limits being proposed, will significantly increase costs, but will not reduce emissions. South Dakota farmers remain frustrated that CARB relies on decades-old data and methods to set carbon intensity (CI) scores for soy while neglecting new economic data. CARB needs to seriously consider the potential indirect emission impacts their expanding preference for waste is having.

SDSA opposes the proposed discretionary authority provided to the Executive Officer to stop accepting new pathways for biomass-based diesel. In addition to discriminating against the lipid-based fuel platform, we are concerned about the unintended impacts on non-lipid pathways, which could produce biomass-based diesel as a co-product. We are also worried that the aggressive step-down of CI benchmarks, which partially result from the removal of the proposed regulation of fossil jet fuel, combined with other changes, will reward importers of waste feedstocks while penalizing farm families across the United States.

As CARB seeks to finalize updates to the LCFS program in the coming months, we respectfully encourage the agency to ensure these updates are based on the most up-to-date science as required by AB-32.

The determination to make such drastic changes to previous CARB proposals so late in the process was shocking to the soybean and biofuels industries. That CARB has changed from arguing that, based on the modeling, a vegetable oil feedstock cap was detrimental to the goals of the LCFS at the April public workshop, to now recommending a strict cap on those feedstocks without employing recent data or science, is confusing to grasp. CARB's own April 10th analysis showed that a feedstock cap would increase greenhouse gas (GHG) emissions in California, which conflicts with requirements in AB-32.

Vegetable Oil Feedstock Cap

The inclusion of a virgin vegetable oil feedstock cap in the 15-day changes was alarming to farm families and the entire biofuels value chain, as reflected in market activity. You may understand our surprise based on the April 10 workshop in which CARB noted that liquid fuels would continue to be needed in the transportation sector in California for at least the next decade. In that same workshop, CARB also claimed that the imposition of a virgin vegetable oil feedstock cap would increase the utilization of petroleum diesel in the transportation sector. In the staff presentation on April 10, they noted that nearly eighty percent of vehicles on the road in California will use combustion engines through 2030. Further, they noted that such a stringent cap on virgin vegetable oils may result in 2.8 billion gallons of fossil diesel utilization in 2030, versus 1.9 billion gallons using a scenario that does not impose the cap proposed by the Environmental Justice Advisory Committee.

In a complete reversal of their prior analysis only four months ago, the CARB staff is now essentially recommending to the board that more fossil diesel be sold into the market in 2030. This recommendation appears to not only go against the goals of AB-32, but it also defies the best science available today. The recommendation seems incongruent with the Intergovernmental Panel on Climate Change, which notes in its sixth assessment report that using existing low-carbon technologies is a crucial component to avoiding catastrophic temperature increases, stating that "biodiesel and renewable diesel fuels...could offer important near-term reductions" for several technologies, including buses, rail, and long-haul trucking.¹

In our current interpretation, the cap may lock the lowest cost and lowest carbon intensity soybean oil-based biofuel (soy methyl esters) producers out of the market. Most soy methyl esters are produced at biodiesel plants adjacent to soybean processing plants. Often, the companies that own and operate soybean processing facilities are not involved in the procurement and processing of non-crop-based oils, such as UCO and tallow.

¹ Jaramillo, P., S. Kahn Ribeiro, P. Newman, S. Dhar, O.E. Diemuodeke, T. Kajino, D.S. Lee, S.B. Nugroho, X. Ou, A. Hammer Strømman, J. Whitehead, 2022: Transport. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_Chapter10.pdf

They exclusively make biofuels out of soy oil or canola oil. The current language limits the crediting of soy and canola to 20 percent of reported gallons. This leaves integrated agriprocessing/biofuel producers two choices: 1) exit the market entirely, or 2) be denied a government benefit on 80 percent of their fuel. If this is the current interpretation of the proposed provision, it would significantly and arbitrarily disadvantage the sustainable oilseed biodiesel community.

We echo the concern of the American Soybean Association that the new requirement appears to contradict the statutory guidance laid out in AB-32 to minimize costs.

Sustainability Limits

SDSA was surprised not only to find a feedstock cap in the 15-day changes, but the sustainability limits were also retained. The cap, sustainability limits and Indirect Land Use Change score all additively, and redundantly, address land use change. This has the equivalent effect of giving soy and canola a much higher CI score, increasing the compliance cost associated with delivering the product, despite the lack of direct evidence.

South Dakota farm families are concerned that the requirement proposed by CARB is unneeded given the longstanding, excessively high ILUC figure (relative to more recent modeling efforts). Furthermore, we are extremely disheartened that CARB has not followed the example of governments across North America, where farmers who submit data for compliance are also given the opportunity to be incentivized for conservation efforts. This additional cost without benefit contradicts the language authorizing the LCFS. Section 38562 (b)(7) of AB-32 directs CARB to, "Minimize the administrative burden of implementing and complying with these regulations." Adding supply chain traceability to a bulk delivery system adds a significant administrative burden without changing the GHG emissions of the pathway.

CARB's efforts could be improved and enhanced by outreach to U.S. Department of Agriculture (USDA) personnel who have engaged in activity regarding climate-smart farming practices. USDA recently closed a comment period on its Request for Information on Procedures for Quantification, Reporting, and Verification of Greenhouse Gas Emissions Associated with the Production of Domestic Agricultural Commodities Used as Biofuel Feedstocks. USDA seeks to quantify and qualify the benefits of climate-smart agriculture practices for biofuel programs at the state, national, and international levels using the information received. Communication between CARB and USDA could be enlightening regarding ongoing agricultural sustainability practices.

Through the current sustainable aviation fuel (SAF) federal tax credit (40B), the CI of soy-based biofuels can improve through no-till and cover cropping on fields where the soybeans were produced.

Other farming practices like low-till, nutrient management, enhanced efficiency fertilizers, buffers, wetland and grassland management, tree planting on working lands, planting for higher carbon sequestration, and soil amendments all can and should be accounted to assign a lower CI score to an agricultural feedstock. USDA already tracks all these practices through several of its managed conservation programs. In addition, there are a variety of other practices that scientifically lower the CI score of soybean feedstocks for biofuels, and USDA is actively working to develop mechanisms to account for those.

Given the work being undertaken by USDA and EPA as part of the implementation of the Inflation Reduction Act, SDSA urges CARB to reconsider its proposed sustainability requirements to allow soybean growers the opportunity to participate in the California biofuels market through innovative and climate-smart agriculture practices.

Outdated Scoring

For the last several years, state soybean associations, national associations, and biofuel producers have urged CARB to consider updating its scoring methodology for crop-based biofuels. CARB has refused to consider the best available science and methodology.

We remain deeply concerned that without a comprehensive update to the Global Trade Analysis Project model for biofuels (GTAP-BIO) that CARB utilizes, soy-based feedstocks will be phased out of the LCFS even without the additional limitations being proposed in the 15-day changes. Current data indicates a much lower CI score for soybeans as farm families continue to improve soil practices, limit water use, lower on-farm emissions and many of the best practices that deserve reward. On the one hand, CARB is recommending stringent sustainability guardrails for U.S. soy, but on the other hand, it is still likely to phase out soy-based biofuels from credit generation by approximately 2035 or sooner.

CARB has indicated plans to update all major models for lifecycle emissions calculations except for GTAP-BIO in the updated LCFS rulemaking. The soy industry has made vast improvements in sustainability and efficiency over the past two decades, with even greater improvement goals ahead. At the same time, CARB continues to rely on a 2014 model that uses data from 2004. The ILUC score accounts for half or more of the CI score for soy-based biofuels. CARB's current modeling assigns soy biomass-based diesel with an ILUC impact of 29.1g CO₂e/MJ, whereas updated results from the model used to calculate ILUC scores indicate a value of between 9 and 10 gCO₂e/MJ for soybeans². The recently released 40BSAF-GREET 2024 model has an ILUC score of 12.2 for soy-based sustainable aviation fuel in federal programs.

² Taheripour, F., Karmai, O., and Sajedinia, E. (2023). *Biodiesel Induced Land Use Changes: An Assessment Using GTAP-BIO 2014 Data Base*. Purdue University

The benefits of the LCFS can only be achieved if CI values are accurately captured. If land use change concerns are large enough to justify sustainability guardrails and capping virgin vegetable oil feedstocks, then the modeling should also be updated to reflect current land use change data.

Entities Eligible to Apply for Fuel Pathways

We are concerned about CARB's 15-Day Changes to give the Executive Officer discretion to stop accepting new pathways for biomass-based diesel starting in 2031. We do not understand what provision of the AB-32 statute is served or justifies this arbitrary and highly selective change. CARB must, under statute, minimize costs and maximize GHG reductions. It is unclear how this is served by rejecting new pathways. In fact, the requirements of current law are met by allowing the most available pathways. If these pathways cannot achieve cost-effective GHG savings, they will not be utilized by the market in the LCFS. In essence, an increase in pathways can only serve to improve GHG benefits in California. Singling out a specific fuel for prejudicial treatment is baffling, given the goals of the LCFS and the authority that establishes it. Executive Order S-01-07 establishing the LCFS specifically cites diversity of fuels as a motivation for the program, and this proposal contradicts one of the stated purposes of the program. In addition, this provision, if implemented, could also significantly disadvantage other biofuel production processes, which may produce biomass-based diesel as a co-product, for example, in a system where SAF is a predominant product.

Conclusion

SDSA is encouraged by the continued success of programs that support the development of cleaner, low-carbon fuels. However, it is critical that CARB finalize updates in a way that does not arbitrarily exclude agricultural feedstocks through policies that are not science-based and conflict with CARB's mandate, including capping vegetable oil feedstocks and applying onerous sustainability guardrails that add cost without rewarding farming practices that lower CI.

CARB's 15-day changes, released in August 2024, are deeply concerning for farm families. CARB has singled out soybean and canola oil for adverse, prejudicial treatment. No up-to-date scientific evidence has been presented to justify the decision. In fact, CARB has refused to update the science as required by law for these feedstocks. This alone calls into question the integrity of a performance-based LCFS. Even more frustrating for farm families, CARB is now proposing feedstock caps, traceability requirements and authority to reject applications for these fuels produced from them. Again, CARB has not shown any scientific justification. In fact, the LCFS is already aggressively punishing soy farm families for land use change requirements.

Farmer families across South Dakota remain eager to continue working with CARB to support the role of agriculture in diversifying the fuel supply while reducing GHGs and increasing clean air in California and beyond. On behalf of South Dakota soybean farm families, we appreciate the opportunity to comment and look forward to collaborating with CARB and other relevant stakeholders on the implementation of policies that expand the use of soy-based biofuels and market opportunities for farm families that produce soybeans.

Sincerely,



Kevin Deinert
President
South Dakota Soybean Association