October 16, 2024

The Honorable Steven S. Cliff, Ph.D.
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

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

RE: Proposed Low Carbon Fuel Standard Amendments; Second Notice of Public Availability of Modified Text

Dr. Cliff and Chair Randolph:

NATSO, Representing America's Travel Centers and Truckstops, and SIGMA: America's Leading Fuel Marketers (together, the "Associations") represent more than 80 percent of retail sales of motor fuel in the United States.[1] On behalf of the diverse and forward-thinking retail fuel industry, we are eager to work with the California Air Resources Board ("CARB" or the "Agency") to advance policies that lower transportation emissions in California. This second iteration of 15-Day Changes (the "Proposed Amendments")[2], in concert with CARB's other recently proposed changes to the Low Carbon Fuel Standard ("LCFS"),[3] threaten to unnecessarily stunt investment in clean fuels while simultaneously raising prices at the pump consumers.[4]

The Associations urge the Agency to modify the Proposed Amendments for heavy duty hydrogen refueling infrastructure ("HRI") by (i) removing the restrictions on credit generation tied to capital expenditure; and (ii) adjusting the proposed derating factor for HRI credits to 37.5 percent. The Associations also encourage the Agency to dispense with the Proposed Amendments that would cap soy-, sunflower-, and canola-based fuel credit generation under the LCFS, while maintaining the new, robust sustainability provisions that would apply to these crops.

---

[1] NATSO currently represents approximately 5,000 travel plazas and truckstops nationwide, comprising both national chains and small, independent locations. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. The retail fuels and convenience industry provide 2.38 million jobs at approximately 120,000 retail establishments across the country.

[2] "Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information, Proposed Low Carbon Fuel Standard Amendments", California Air Resources Board, (October 1, 2024), *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_notice.pdf

[3] "Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information, Proposed Low Carbon Fuel Standard Amendments", California Air Resources Board, (August 12, 2024), *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_notice.pdf

[4] The Associations previously filed extensive comments on the first iteration of 15-Day Changes proposed by the Agency in August, and encourage CARB to closely consider the fuel market implications detailed at length in those comments, in addition to the concerns outlined in this document. *See* NATSO, SIGMA comments (August 27, 2024), *available at* www.arb.ca.gov/lists/com-attach/7482-lcfs2024-AmxTNFwpUnJXPgJd.pdf.

I. The Proposed Amendments for Heavy Duty Hydrogen Refueling Infrastructure.

Many of the Associations' members – particularly those with highway locations that service heavy duty commercial trucks – are actively expanding their hydrogen capabilities in response to market- and federal policy signals. They have developed new commercial relationships with companies in the hydrogen value chain, actively participate in multiple "hydrogen hub" projects – including the ARCHES project in California – and are actively exploring hydrogen grant and loan guarantee opportunities.

Commercial decisions to invest in heavy duty vehicles will be grounded in economics. Businesses will not buy heavy duty electric or hydrogen vehicles at scale unless the total cost of operation is comparable to the cost of diesel-powered trucks. The cost of hydrogen is, by far, the most impactful component of a prospective consumer's total cost of ownership. Minimizing fuel costs should therefore be an essential element of any policy intended to decarbonize heavy duty trucking, including via hydrogen as a transportation fuel. As transportation energy retailers and distributors, our membership will rely upon hydrogen producers to provide an economical supply of clean hydrogen in the years ahead.

The LCFS should *maximize* the market's ability to realize these objectives. Any additional requirements or restrictions should be pursued only if they do not effectively preclude the industry from developing in the first place. The Proposed Amendments threaten to do precisely that.

The proposed derating factor for public HRI (50 percent), coupled with low station capacity requirements (set at 6,000 kilograms per day), will result in LCFS incentives being inadequate to prompt investments in heavy duty HRI in California. Unless rectified to ensure the viability of the HRI credits, the Proposed Amendments will fail to support the capacity necessary to achieve the Agency's decarbonization objectives. The Associations recommend a derating factor of *at most* 37.5 percent. A derating factor of 37.5 percent (62.5 percent capacity factor) will partially remediate the capital risk taken by heavy duty hydrogen station developers and encourage investment.

The Agency has also proposed to restrict HRI credit generation by capping it at 1.5 times the capital expenditures ("capex"). The capex restrictions and derating factor are intended to serve identical purposes, but when combined, add considerable, unnecessary investment risk for developers. This will hinder the development of heavy duty hydrogen refueling stations that are vital for the state to achieve its low carbon goals. <u>The Associations thus urge CARB to eliminate the 1.5x capex limitation and adjust the derating factor for heavy duty HRI to 37.5 percent</u>.

II. The Proposed Cap on Certain Biomass-Based Feedstocks.

There is no environmental rationale for imposing company-wide 20 percent caps on credits for biomass-based diesel produced from virgin soybean, sunflower, and canola oil (the "Proposed

Cap").[5] The LCFS is designed to reward the most environmentally compelling feedstocks through a progressive reduction in carbon intensity ("CI"). The Proposed Amendments would abandon this approach, representing a dramatic departure from the direction Agency staff has signaled throughout the workshop process. Indeed, CARB has worked extensively to develop robust feedstock sustainability provisions for soy-, sunflower- and canola-based fuels.

A structure under which fuels are no longer assigned a CI score based on their actual environmental attributes is antithetical to the stated purpose of the LCFS and decidedly undermines the Program's environmental integrity. The imposition of a cap on soy-, sunflower-, and canola-based feedstocks would also severely hinder the market's ability to satisfy the ambitious CI reduction targets included in the Proposed Amendments. The Proposed Cap will also expose California's transportation emissions to a small number of economically viable, low-carbon feedstocks, many of which are imported from overseas and thus exposed to protectionist policy changes now under consideration at the federal level.

Finally, the Proposed Cap on sunflower-based fuels is a violation of the California Administrative Procedures Act (the "APA"). The principle of fair notice is a fundamental underpinning of the California APA, and serves to ensure that regulated industries are able to engage meaningfully in the rulemaking process. Indeed, the APA requires a 45-day notice for any "substantial" changes to a proposal that are not "sufficiently related" to the original text.[6] The addition of the Proposed Cap is both a substantial change and one that diverges significantly from the initial proposal. Limiting stakeholders to a 15-day comment period undermines the fair notice requirement and thus impedes the ability of the public to evaluate, and respond to, the Proposed Amendments.

III. Conclusion

Thank you for considering our perspective on these important topics. We would welcome the opportunity to further discuss these issues with you at any time.

Sincerely,

NATSO, Representing America's Travel Plazas and Truckstops
SIGMA: America's Leading Fuel Marketers

[5] The "Proposed Cap" in this comment letter is used to refer to the proposed amendment to assess biomass-based diesel from virgin soybean ("soy"), sunflower, and canola oil in excess of 20 percent the carbon intensity of the applicable diesel pool benchmark for that year.

[6] *See* Cal. Gov. Code § 11346.8(c) ("No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) non-substantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.").