



October 16, 2024

Chair Liane Randolph & Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via electronic submission

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

Dear Chair Randolph and Members of the California Air Resources Board:

The Indiana Soybean Alliance (ISA M&P) Membership and Policy Committee appreciates the opportunity to comment on the proposed modifications (Second 15-Day Changes) to the Low Carbon Fuel Standard (LCFS) program. ASA has welcomed engagement with the California Air Resources Board (CARB) and staff throughout this multi-year process to update the LCFS program.

ISA M&P represents our members who are Indiana soybean farmers and works with the American Soybean Association (ASA) to help shape the future for agriculture through national policy.

CARB's Second 15-Day Changes to revise the LCFS did not address our major concerns with provisions included in the August 15-day notice nor did it provide additional clarification or detail related to sustainability reporting requirements for agricultural feedstocks. We do appreciate the additional flexibility related to virgin vegetable oil feedstock limitations, by extending the compliance deadline to January 1, 2028, for all approved pathways at the date of adoption. However, additional feedstock limitations included in the Second 15-Day Changes document could further limit soybean oil market share in California, when compared to the August proposal.

In addition to the new proposals in the Second 15-Day Changes package, ISA M&P remains deeply concerned with the drastic pivot CARB has made in the past few months related to agricultural feedstocks used for biofuels. We continue to encourage that updates to the LCFS program are based on science, as required by AB-32.

Amended Feedstock Cap Considerations

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ISA M&P has significant concerns with the virgin vegetable oil feedstock cap that was included in the initial 15-Day Changes posted in August, especially after CARB itself noted that a cap will increase the utilization of petroleum diesel. The current proposal limits, or caps, the amount of soybean oil that is allowed to generate credits in the program at an arbitrary 20%. Now, CARB is expanding on this cap in its Second 15-Day Changes with the inclusion of sunflower oil. Adding additional feedstocks to the 20% aggregate cap will further limit market access for soybean oil and additional gallons of low-carbon fuels.

Based on CARB's own analysis, a cap on credit generation for vegetable oil feedstocks will lead to an increase in fossil diesel use compared to the status quo. While ISA M&P agrees that all feedstocks entering the California LCFS market should maintain fidelity to the assumptions underlying their life-cycle assessment (LCA), domestic agricultural feedstocks are facing a redundant, triple penalty through an outdated indirect land use change (ILUC) score, stringent sustainability reporting requirements, and a proposed arbitrary cap on credit generation while all other feedstocks, including imports, do not face the same restrictions.

The proposed cap increases soy's carbon intensity (CI) score for amounts over the cap from the established pathway, which is based on science, to the benchmark CI, which is not based on an LCA for soy. This is effectively increasing soy's ILUC score by upwards of 50% for many pathways without a scientific basis. In fact, CARB has refused to use new data related to ILUC while at the same time effectively increasing it by an arbitrary amount.

The increase in ILUC for ag feedstocks above the 20% threshold will effectively shut them out of the LCFS. Biomass-based diesel provides GHG and emissions benefits that are unpriced by the market. As a result, they cost more to produce than they can be sold for and rely on policy to account for these benefits. Without the credit generation, soy will not be able to compete against waste feedstock imports, thereby capping use in the LCFS.

North American agricultural feedstocks for biofuel production are already held to a high standard for participation in the Renewable Fuel Standard (RFS) and the Canadian Clean Fuels Regulations. Rather than adding additional sustainable North American feedstocks to its arbitrary proposed cap, CARB should consider updating carbon intensity analysis and oversight of imported feedstocks, which are not held to the same level of accountability.

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While ISA M&P is steadfast in its opposition to the virgin vegetable oil feedstock cap and the rationale used to reach this conclusion, the Second 15-Day Changes added some additional flexibility to come into compliance with the arbitrary cap. We appreciate CARB's acknowledgement that biofuel production facilities cannot shift production overnight, and thank CARB for updating the grandfathering clause to provide a 2028 compliance date for all approved pathways in the LCFS program.

Carbon Intensity Scoring and Auto Acceleration Mechanism

ISA M&P remains 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 Second 15-Day Changes. Current data indicates a much lower CI score for soybeans, as growers continue to improve soil practices, limit water use, lower on-farm emissions and more. On the one hand, CARB is recommending stringent sustainability guardrails for U.S. soy, but on the other hand is still on track to likely phase-out soy-based biofuels from credit generation by approximately 2035 or sooner.

As CARB looks to develop a more aggressive auto acceleration mechanism to reach CI reduction benchmarks sooner, using outdated methodologies will only limit the output of actual improvement over time in terms of emissions reductions. As CARB updates all other major lifecycle emissions models through this rulemaking, we once again urge action to update the GTAP-BIO model so that the most current, science-based data may be used to determine carbon intensity reductions.

In terms of updating the timeline for analysis of data to trigger the auto acceleration mechanism, ISA M&P appreciates that CARB is seeking to provide additional notice to the market before a trigger is implemented through the ability to analyze data quarter over quarter rather than just annually. This will allow the industry more time to plan and make business decisions ahead of new benchmarks triggering.

Sustainability Guardrails and Traceability Concerns

ISA M&P remains very concerned about the sustainability guardrails. The sustainability guardrails are more onerous than the specified source requirements used for waste feedstock imports. Palm oil in Southeast Asia has had forced labor concerns¹, but

¹ <https://apnews.com/article/virus-outbreak-only-on-ap-indonesia-financial-markets-malaysia-7b634596270cc6aa7578a062a30423bb>



CARB does not require used cooking oil derived from palm to track social or economic sustainability. Concerningly, petroleum also does not have to track these criteria. CARB's proposal makes it administratively easier to use non-sustainable petroleum² in the state than biofuels that have lower CI scores and are produced from sustainable feedstocks grown in the United States. Land use change is already captured in the ILUC score, which makes it unclear what purpose the guardrails serve.

The Second 15-Day Changes offered a bit more detail about how CARB plans to implement its reporting and requirements in terms of traceability, but we continue to have serious concerns about how this proposal will work in practice. By way of background, soybean products pass through many hands before final use. A soybean is produced, potentially transported to a grain elevator, then must reach a soybean processor to be separated into soybean oil and soybean meal (crushed). The meal and oil can then be delivered to end users. Because of this, ensuring the identity preservation of a soybean is not easily accomplished. Soybeans are a bulk commodity, and infrastructure in the U.S. was not developed to segregate subunits of the crop. This bulk handling system based on comingling is one of the inherent advantages the United States has as it reduces transportation costs, and subsequently on-ground emissions.

CARB's proposal states that farmers will have to declare the geographical shapefiles or coordinates of farm boundaries starting in 2026. This raises many issues including the definition of a farm and how grain must be traced and reported if harvested from several fields but comingled at storage. While the deforestation requirements do not start until 2028, the questions posed above are relevant for the attestations starting in 2026. At that point, farmers will have to declare the boundaries of their farm. CARB settling on one definition for 2026 and another for 2028 would create much confusion. Educational efforts will be needed ahead of 2026. Once farmers understand the program, it will be very difficult to change fundamental definitions.

While 2026 may seem like plenty of time, it is much less for farmers in practice. Soybeans available starting at the beginning of 2026 are from the crop harvested in the fall of 2025 and planted in the spring of 2025. Farmers are purchasing inputs for that crop currently. If delivery points for the next soybean crop require data disclosure, producers need to know that now as they plan out their upcoming crops and lock in investments. So, if new LCFS regulations are not finalized until January 2025 and planting begins in March 2025, it leaves virtually no planning time for a farmer to update practices to adhere to these new attestation requirements.

² <https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2022.858512/full>



If CARB insists on agricultural feedstock traceability, then it should reward sustainable practices beyond what is already assumed in the LCA. For instance, some soybeans are double cropped meaning they are grown as a secondary crop following a primary crop within a growing season. They are not displacing other crops or land uses. Double-crop soybeans should be eligible to have the ILUC component of the CI score removed, or at least shared with the other crop in the rotation.

Entities Eligible to Apply for Fuel Pathways

ISA M&P is concerned about CARB's proposal to give the Executive Officer the discretion to stop accepting new pathways for biomass-based diesel starting in 2031. We do not understand how this benefits the LCFS. Under AB-32, CARB must under statute minimize costs and maximize GHG reductions. It is unclear how this is served by rejecting new pathways. In fact, the LCFS is best served 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 single fuel for prejudicial treatment is baffling given the goals of the LCFS and the authority that establishes it.

Recommendations to CARB

As CARB finalizes its update to the LCFS, ISA M&P aligns itself with the American Soybean Association (ASA) recommendations that will likely prevent an increase in fossil diesel use, improve carbon intensity calculations, and improve market access for sustainable agricultural feedstock providers.

First, CARB should not apply the vegetable oil feedstock cap proposal to North American feedstocks. As noted above, these feedstocks are already subject to guardrails to ensure production on land that has not been converted since 2008. The RFS was designed specifically to prevent land conversion for biofuel production, and U.S. Department of Agriculture (USDA) data shows a decrease in farmland over the same period.

Second, CARB should convene an expert working group to consider issues related to the sustainability provisions and indirect land use change. CARB has utilized working groups in the past to analyze complex issues related to the LCFS and this is no different. Through meetings with CARB staff and board members, decisions are being made using competing schools of thought. Gathering experts to coalesce around an



agreed upon science-based approach moving forward would ensure that CARB is utilizing the best information available. We recommend that this expert working group convenes in 2025 and provide recommendations by October 2026.

Lastly, CARB must undertake a comprehensive update of the GTAP-BIO model for soybean oil used in biofuel production. Without using the most up-to-date and accurate data, CARB is doing a disservice to the feedstock producers and California's citizens by calculating carbon intensity scores not rooted in current fact. Through CARB's own analysis we know that basing decisions off old data will lead to more—not less—emissions in the California transportation sector.

Conclusion

ISA M&P is encouraged by the continued successes of programs that support the development of cleaner, low-carbon fuels. However, it is critical that CARB finalizes updates in a way that does not arbitrarily exclude agricultural feedstocks through policies that are not science-based and run afoul of 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 Second 15-Day Changes did not address any of the fundamental issues raised by soybean farmers in the first 15-Day Changes and fails to acknowledge the potential unintentional consequences of a feedstock outlined by its own employees only a few months before. CARB is required under the law to achieve the maximum technically feasible and cost-effective reductions in GHGs. The two most recent 15-Day Changes show a lack of willingness to achieve the statutory obligations set forth in AB-32.

ISA M&P is 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 U.S. soybean farmers, we appreciate the opportunity to comment and look forward to collaborating with CARB and other relevant stakeholders on implementation of policies that expand the use of soy-based biofuels and market opportunities for soybean farmers.

Sincerely,

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