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October 16, 2024

SUBMITTED ELECTRONICALLY

Re: Comments on October 1, 2024 Proposed 15-Day Changes to Proposed Regulation Order

Ms. Rajinder Sahota
California Air Resources Board (CARB)
1001 I Street
Sacramento, CA 95814

Ms. Sahota:

We have reviewed the Proposed 15-Day Changes to the Low Carbon Fuel Standard (LCFS) proposed amendments. As we have noted in past comments, in our direct engagement with the CARB staff and Board, and through our industry associations, ADM believes the changes proposed in August 2024 were ill-advised – for California consumers, the clean fuels market, and ultimately, the program’s role in advancing sustainable practices. The latest proposal only serves to deepen our concerns.

In short, the rapid transition to arbitrary caps for certain feedstocks could lead to fuel price shocks that hurt consumers and businesses without delivering commensurate environmental benefits. According to the *Los Angeles Times*, “In September of last year, CARB estimated that the change could lift gasoline prices 47 cents a gallon, or \$6.4 billion a year.”¹ This estimate was made before the supply-constraining feedstock cap was under consideration. The actual increase is likely to be even higher.

We regret that CARB decided not to convene a stakeholder workshop after the summer round of 15-day changes. As we noted in our August 27 comment letter, several proposals were introduced into the last package with no workshop or even prior notice that they were under consideration. Foremost of these is the crop-based feedstock cap for soy, canola, and now sunflower oils. A workshop would have afforded stakeholders the opportunity to hear from CARB staff on the science and data behind why such a cap is necessary. Instead, on both the feedstock cap and new sustainability criteria, we are left to interpret these requirements and trust staff will work in good faith with biofuels producers during implementation.

¹ <https://www.latimes.com/environment/story/2024-10-10/california-air-regulators-consider-hiking-gasoline-prices>

Following is a summary of our views on these latest changes.

Impacts on consumer fuel prices: California’s state legislature is currently in a rare special session called by Governor Newsom, focused on rising fuel prices. The governor’s office noted that the session has been convened in part “to avoid supply shortages that create higher prices at the pump for consumers.”²

As a producer of biofuels blended with petroleum products, ADM is concerned about the impacts the proposed LCFS amendments may have on fuel costs. An arbitrary cap on crop-based feedstocks and redundant, hastily designed sustainability requirements will quickly lead to the very supply shortages Gov. Newsom cites. It will force most biofuels out of the California market, and families and businesses across California would pay this price most dearly. This is likely why Democratic State Assemblymember Corey Jackson (D-Perris) recently said, “For me, this special session has been about ensuring that gas prices are going down... And certainly, if CARB is creating regulations that will increase gas prices, we’re going to have to take a look at that and see if we have to rein in their authority.”³

According to data from the U.S. Energy Information Administration, California fuel prices indeed far outpace the national average.

Gasoline (90% petroleum, 10% ethanol) is the most-used transportation fuel in California, with 97% of all gasoline being consumed by light-duty cars, pickup trucks, and sport utility vehicles. In 2022, 13.6 billion gallons of gasoline were sold, according to the Department of Tax and Fee Administration.⁴ The average California regular grade gasoline price per gallon in 2023 was 36% higher than the national average. Families and businesses bear the burden, and supply and demand realities indicate that further restricting supply in the fuels market is likely to steepen the increase even further in the years ahead.

Regular Grade Gas Price per Gallon, 2023		
Jurisdiction	2023 average price	CA Percentage over national average
California ⁵	\$4.77	36%
U.S. nationwide ⁶	\$3.51	

The story on diesel fuel (including biodiesel and renewable diesel) is much the same. Diesel is the second largest transportation fuel used in California, representing 17% of total fuel sales. According to the State Board of Equalization, in 2022, 3.6 billion gallons of diesel were sold.⁷ The average California diesel price per gallon in 2023 was 27% higher than the national average. Business and industry initially bear the burden of these price spikes, but the costs are passed onto consumers, who are hit twice – directly for gasoline and indirectly through everyday commerce that is dependent on diesel-powered heavy-duty trucks, rail, off-road construction equipment, and marine transport.

² <https://www.gov.ca.gov/2024/08/31/gas-price-special-session>

³ Ibid, *Los Angeles Times*

⁴ <https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/california-gasoline-data-facts-and-statistics>

⁵ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPMR_PTE_SCA_DPG&f=A

⁶ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPMR_PTE_NUS_DPG&f=A

⁷ <https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/diesel-fuel-data-facts-and-statistics>

No. 2 Diesel Price per Gallon, 2023		
Jurisdiction	2023 average price	CA Percentage over national average
California ⁸	\$5.35	27%
U.S. nationwide ⁹	\$4.21	

All the while, the state is implementing Advanced Clean Cars, Advanced Clean Trucks, and Advanced Clean Fleets programs to increase electric vehicle sales and use in the state. Coupled with these programs is a scheduled phase-out of new internal combustion engine (ICE) vehicle sales in 2035. Drivers and industries will continue using ICE vehicles well beyond 2035, and a traditional fuels market will be necessary to fuel them. The pressure being applied to that market under the latest LCFS proposed amendments now will intensify in the decades to come.

We repeat here our call for a workshop where diverse stakeholders can discuss the impact of these new proposals. In parallel with that workshop, CARB should update its last fuel price estimate (of at least 47 cents higher) to account for the additional supply restrictions the Board is considering. Indeed, as Assemblymember Blanca Rubio (D-Baldwin Park) asserted, “While the Legislature is currently working to address petroleum price spikes through the public process, it is unfortunate CARB is unwilling to provide an estimate of the monetary impacts amendments to the LCFS will have. This process is intended to be public and collaborative.”¹⁰

Crop-based feedstock cap on oilseeds: Very few changes have been made to the feedstock cap, despite robust feedback from biofuels producers. One of those changes is particularly troubling, as the latest proposal includes the most restrictive interpretation of the feedstock cap as well – limiting it to 20% of a company’s material flowing to California rather than 20% of the company’s total biomass-based diesel production. This compounds the supply constraint since integrated biofuel producers have business models established using solely virgin vegetable oils and cannot readily adjust processes for the California market. The punitive cap will force biofuels companies like ADM and American farmers who sustainably grow our feedstocks from the California market.

Several biofuels companies and allied associations have met with CARB staff and Board members over the last six weeks, further elaborating on these concerns. It was clear from the questions asked by CARB in these meetings that the agency would benefit from additional education from and dialogue with our sector. We offer it again here and hope that CARB will commit to it as well, in direct meetings and an additional stakeholder workshop. Without this dialogue, we are left with essentially the same construct first unveiled in August.

We reiterate that the cap lacks a plan to trace origins and components of all feedstocks serving the California market. The U.S. market, particularly the west coast, has seen a large spike in waste oils from countries in Asia, including China. Should these amendments be adopted by the Board next month, these feedstocks would be uncapped, placing U.S. farmers at a significant disadvantage – even farmers practicing regenerative agriculture.

⁸ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2D_PTE_SCA_DPG&f=A

⁹ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2D_PTE_NUS_DPG&f=A

¹⁰ Ibid, *Los Angeles Times*

At ADM, we know these practices well, and we partner with farmers who carry them out – enough that will allow us to enroll 5 million acres globally by 2025. Our regenerative agriculture program features direct financial support for farmers; easy processes and cutting-edge technologies to ensure low barriers to entry; and a broad range of support and guidance from third-party experts. Through this, we help customers meet emissions commitments and requirements. Yet under the proposed amendments, many of these farmers will be significantly disadvantaged in favor of more difficult to trace and verify products imported from overseas.

Sustainability provisions: Our feedback on the sustainability provisions is consistent with questions and concerns we have raised in comment letters as well as briefings with the agency. For example, we understand that beginning in 2026, fuel producers must collect and submit supply chain data, including spatial data of farm boundaries where feedstocks are sourced; and maintain an attestation letter that assures the feedstocks have not been sourced from lands that were converted after 2008. Likewise, beginning in 2028, fuel producers must obtain third party certification on feedstock sourcing. In each of these cases, we seek clarity on the administration of these requirements and recognition that under the federal Renewable Fuel Standard (RFS), sustainability criteria proposed by CARB are already being met and, in some cases, exceeded. Finally, CARB staff is not suited to be the arbiter of sustainability practices and likely does not have the resources to carry this out.

We request again that CARB at a minimum delay implementation of these sustainability requirements to 2027 or later. As it currently stands, to comply with these new provisions, our company would need to have attestations and spatial data for canola or soy that will be planted within the next six months and harvested next fall (for the 2026 fuel year, reported in 2027). Unless this implementation date is changed, we will be entering into contracts without a full understanding of what is required of us and our farmer partners.

As with the arbitrary cap, these provisions apply only to crop-based feedstocks, not feedstocks derived from waste or animal fats. We previously called to your attention the European Union's emerging Union Database, which will trace all feedstocks, including used cooking and waste oils and crop-based products to ensure integrity of the supply chain. The database is backed by the data and verification practices of the International Sustainability & Carbon Certification (ISCC) and should be a model and resource for CARB.

Our commitment: While we are disappointed with the LCFS amendments process and product, ADM stands ready to continue dialogue with CARB Board and staff, in the weeks until the November 8 Board vote and during programmatic implementation if the Board votes in favor. ADM pioneered renewable fuels decades ago, and we offer our expertise in biofuels, sustainable agriculture, and market dynamics to the entire CARB team to help the LCFS achieve continued GHG reduction, without saddling families and businesses with higher prices.

Beyond these comments, we associate ourselves with those submitted by Growth Energy, Clean Fuels Alliance America, National Oilseed Processors Association, and California Advanced Biofuels Association – all organizations that represent the interests of our sector, which has achieved much in clean fuels policy.

If you have any questions or need further clarification and detail, please contact me at Greg.Morris@adm.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Morris". The signature is fluid and cursive, with the first name "Greg" and last name "Morris" clearly distinguishable.

Greg Morris
Senior Vice President
President, Ag Services & Oilseeds

cc: Liane M. Randolph, Chair
California Air Resources Board

Honorable Board Members

Honorable Steven S. Cliff, Ph.D., Executive Officer
California Air Resources Board