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August 27, 2024

SUBMITTED ELECTRONICALLY

Re: Comments on August 12, 2024 Proposed 15-Day Changes to Proposed Regulation Order

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

Ms. Sahota:

We reviewed with interest and concern the Proposed 15-Day Changes to the Low Carbon Fuel Standard (LCFS) proposed amendments. ADM and the broader biofuels sector has been central to the LCFS as a landmark policy in emissions reduction. Our company and industry are integral to the greenhouse gas (GHG) reduction California has seen under the program, and in order to continue this positive trajectory, all manner of biofuels must contribute, including those produced from crop-based feedstocks. Deployment of these fuels is essential to decarbonizing the transportation sector in California, North America, and the world. In fact, according to the International Energy Agency, biofuels must triple globally by 2030 in order to remain on the organization's net zero pathway.[1]

CARB's mission is "to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy."[2] And one of its foremost values, as identified in the agency's most recent Roadmap is, "Science-based: We develop and implement research, policies, and technologies on evidence-based foundations to create positive change."[3]

On both counts, this latest proposal falls short of both objectives. Rather than trusting CARB's own carbon intensity scoring model and allowing the market to work as intended, it arbitrarily establishes a cap on biofuels derived from oilseeds. This neither considers "effects on the economy" nor relies on "evidence-based foundations." In reality, the proposed 9% stepdown

[1] https://www.iea.org/commentaries/india-could-triple-its-biofuel-use-and-accelerate-global-deployment
[2] https://ww2.arb.ca.gov/about
[3] https://ww2.arb.ca.gov/sites/default/files/2021-01/CARB_vision_roadmap_0121.pdf

in GHG emissions and increase in stringency will promote low carbon intensity feedstock fuels immediately, making a crop-based biofuel cap wholly unnecessary. Importantly, this would allow California to maintain optionality and better navigate potential reactionary fuel price impacts on drivers.

Further, this latest proposal – which was released without the benefit of stakeholder engagement, despite numerous public workshops focused on every other proposed amendment to the program – would disincentivize farmers from investing in more sustainable practices at a time that they are adopting them at a rapid pace. Squelching agricultural innovation at this time sends the wrong signal to the largest current and future source of significant carbon intensity reductions for California's transportation fuel market. ADM recently announced the establishment of Gradable, a joint venture with Farmers Business Network to expand a technology platform that enables more farmers and buyers to derive value from grain produced using sustainable practices. 20,000 farmers across more than 12 million acres already are leveraging this program. It has scored for carbon intensity reductions more than 200 million bushels of corn and soybeans, analyzed 48 million acre-years of agronomic events, and facilitates over $30 million in financial incentives for sustainable practices each year. We cannot afford to squander this progress.

Our company does not offer these observations lightly. ADM made substantial contributions to low-carbon energy policy long before passage of California's AB 32. Since our founding, we have transformed crops into products that serve the energy and food security needs of a growing world. Specific to biofuels, we first produced ethanol in 1978 and added biodiesel production in 2006. Each year in the U.S., we manufacture more than 1.4 billion gallons of corn-based ethanol and produce or market more than 400 million gallons of biodiesel. This production directly supports CARB's aim to reduce GHG emissions, displacing nearly two billion gallons of fossil fuels each year. These contributions across the biofuels sector are the most significant reason for the success of the LCFS over the years.

Following are specific comments regarding the most recent proposal's more ambitious target reduction for 2025; soy and canola feedstock cap; and updated sustainability requirements. **We appreciate your careful consideration of our comments and respectfully request an additional workshop before the November Board meeting to receive answers to our and sector questions on the proposal**.

Nine percent increase in stringency for 2025 in benchmark schedule

ADM has consistently supported and contributed to GHG reduction targets under the LCFS. As noted, our record of biofuels production and deployment of these fuels to the California market have been critical to the success of the program. Signaling our commitment, we joined other industry stakeholders last year in urging CARB to finalize its updated GHG targets in 2024 and ensure their applicability this compliance year. The latest proposal to increase the 2025 stepdown immediately by 9% is an admirable action to further displace fossil fuels and will likely reduce the bank of excess credits in the system significantly, particularly if the increased stringency applies to the full calendar in 2025. This increased stringency would promote less carbon intense fuels naturally and render the 20% oilseed-based feedstock cap unnecessary.

Virgin soy or canola oil cap

ADM, our biofuels sector partners, and the broader agricultural community have engaged CARB staff in good faith during the consideration of these amendments over the past eight months and since the outset of this process through all of 2023, seeking to find a reliable path forward on sustainability practices. Our dialogue has yielded positive policy concepts to address concerns on deforestation and environmental justice; supply California with reliable, verified fuels; and support U.S. farmers who supply the feedstock for cleaner fuels and the consumers who realize lower prices thanks to their availability.

We were therefore disappointed by the recent proposal to establish in 2028 a 20% eligibility cap on a company's biomass-based diesel produced from virgin soy or canola oil. The proposal was dropped in the 15-day package with no notice or supporting stakeholder engagement through the workshop process. Throughout the workshops CARB staff signaled its perspective that arbitrary feedstock caps would undermine the effectiveness of the program while noting that additional guardrails (i.e., the sustainability provisions) needed to be integrated into the program.

While the impact on fuels production and flows may not be immediate, the arbitrary cap sends a chilling message to the biofuels sector and our farmer partners who have contributed dutifully to the program's GHG goals since its inception. The most consequential impacts:

- <u>Lack of uniform traceability across feedstocks</u>: With the more stringent 9% stepdown, it is essential that additional fuels flowing into the California market be fully and transparently verified as to their origin, composition, and supply chain. If oils from crop-based feedstocks must be fully traceable and meet sustainability provisions, so too should oils derived from waste-based feedstocks. As proposed, this is not the case. The absence of traceability for waste oils could be an incentive for feedstock providers to blend them with virgin oils, with feedstocks ranging from oilseeds to palm and more.

- <u>Undermining of Climate Smart Agriculture and farmers</u>: Regenerative and Climate Smart agriculture is critical to driving new value for feedstocks and reducing carbon intensity through more sustainable farm practices. ADM's 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. That is what will allow us to enroll 5 million acres of farmland globally by 2025. Our program helps customers, including those in the fuels space, meet emissions commitments and requirements. Sustainability is a hallmark across the agricultural sector. You may be aware that the American Soybean Association is a founding partner of the Soy Sustainability Assurance Protocol (SSAP), which verifies and documents sustainable production on a national scale.

  If oilseed feedstocks are limited in the California market, more farmers practicing regenerative agriculture will be left on the sidelines. Shutting them– and the clean fuels they help to provide – out will restrict supply and drive costs higher.

> A significant enabler of our nation's path to energy security has been the agricultural sector. Even before – but especially since – the U.S. Renewable Fuel Standard (RFS), liquid biofuels have been an essential part of our domestic energy mix. Other programs to incentivize use of these lower-carbon fuels globally and here at home – including the LCFS – have followed suit. Such programs have had a parallel benefit to farmers, whose crops not only meet the world's food needs, but can also drive cleaner energy. Farmers have long shouldered the responsibility of feeding and fueling society, and limiting their involvement in the LCFS would be a clear sign that the California market is no longer open for their business.

Despite this artificial cap's impacts on liquid fuels for on-road transportation, we do recognize and support the fact that it would not apply to sustainable aviation fuel. This nascent market needs feedstock variety. Our sector is prepared to be a foundation of this new market, just as it has for on-road transportation emissions reductions. However, it should be recognized that refiners that produce SAF also produce significant volumes of renewable diesel as a matter of plant design and optimal efficiency. Thus, the proposal to cap virgin oil feedstocks may have the unintended consequence of constraining the production of SAF. Feedstock diversity across the transportation fuels system is essential, and the proposed cap should not be adopted.

Sustainability requirements

In our February 20, 2024 comments to the December 2023 proposed amendments, we and others in our sector provided very specific feedback on CARB's proposed sustainability criteria. The April workshop was so heavily attended that not all stakeholders were able to fully engage and receive clarity on how the sustainability requirements would be administered. This is another reason why an additional workshop before November is warranted.

The latest proposed changes to these criteria leave us with similar questions to those raised earlier this year, largely regarding the administration and predictability of these proposed new elements of the program. 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 that the feedstocks have not been sourced by lands that were converted after 2008.

To comply, a company would need to have attestations and spatial data for canola or soy that is harvested in 2025. Contracting with canola and soy growers will begin over the next two months. Therefore, we will be entering into contracts and making business decisions with no clear guidance on what will be required and how the requirements will be administered. To enable planning, participation and provide a degree of investment certainty, delaying implementation of these requirements to 2027 would ensure feedstock providers can make business decisions and enter into contracts with a full understanding of the requirements.

Likewise, we understand that beginning in 2028, fuel producers must obtain third party certification that, at a minimum, ensures feedstocks are not sourced on lands converted after 2008. Again, clarity on the administration of these requirements is important. As discussed with CARB staff and noted below, we believe there are existing standards that are consistent with the proposed sustainability provisions and, as such, there is no benefit in creating new duplicative or inconsistent standards. We are prepared to work with staff on subsequent implementation guidance which will be critical for effective administration of the provisions.

As a reminder, under the RFS, sustainability criteria as proposed by CARB are met and in some cases exceeded. Specifically, under the RFS:

- Fuel feedstocks must not be sourced from agricultural land cleared or deforested after December 19, 2007.
- Environmental, social, and economic criteria are taken into account in developing annual fuel volumes under the program.
- Transparent public review of and comment on proposed annual volumes and changes to the rule are central to the continual development of the program. Proposed changes, public comment, and associated documents are posted on the U.S. EPA's website to review by stakeholders and the general public.
- Scientific experts within EPA and associated technical advisory panels provide regular input into changes to the program.
- A rigorous audit program via EPA, including high standards, training to ensure competency, and transparency to the public, is maintained.

On each of these and more points, the comprehensive RFS meets or exceeds sustainability certification criteria as proposed by CARB. Moreover, as we highlighted in our February comment letter, recognizing the RFS in this manner would avoid the burden of duplicative criteria and reporting, allowing the program to stand on firm, proven ground on sustainability while ensuring that biofuels producers and feedstock providers are held to account.

Finally, in our review of the latest proposed changes, there are no sustainability criteria applied to waste oils and foreign waste importers. For reasons explained earlier in this letter, ensuring the validity of these feedstocks is necessary to ensure the LCFS program operates with the integrity expected by all stakeholders. Please note that the European Union is establishing a Union Database to trace all feedstocks, including used cooking and waste oils, and biofuels 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.

Conclusion

ADM has long been and continues to be a leader in biofuels production and an innovator in sustainable agricultural practices. The most recent proposal from CARB staff would reverse course on the progress our company, sector, and country are making on both. We appreciate your consideration of our comments and look forward to engaging with CARB staff at an additional workshop before the Board's November vote. Ultimately, we ask that CARB consider an additional set of 15-day amendments to remove the provision concerning the establishment of an arbitrary cap on certain feedstocks.

As always, we offer the opportunity to discuss our comments further at your convenience. We associate ourselves with comments submitted by Growth Energy, Clean Fuels Alliance America, National Oilseed Processors Association, American Soybean Association, and California Advanced Biofuels Association.

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

Sincerely,

Greg Morris
Senior Vice President
President, Ag Services & Oilseeds

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

The Honorable Board Members of CARB

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