

VIA EMAIL: ec.cfsncp.ec@canada.ca

July 10, 2020

To: Environment and Climate Change Canada – Clean Fuel Standard Team

Re: Canada's Clean Fuel Standard – Summary Comments to Regulatory Design¹

ABFC appreciates the opportunity to provide comments on the June 2020 consultations with the Technical Working Group stakeholders on final amendments to the design of the liquid class *Clean Fuel Standard* (CFS) regulations, which are to be published in Canada Gazette 1 (CG1) by fall 2020. This document presents a summary of issues for policy makers and ECCC staff on the current design of the CFS liquid class regulations; the companion brief, entitled 'ABFC CFS Detailed Analysis', profiles more comprehensive comments and recommendations.

Target & Timeline

ECCC has proposed material changes to the stringency and implementation schedule for the liquid class CFS regulation. In general, we support the proposed measures:

- i. Delaying implementation of the liquid class regulation to 6 months after publication of the final regulation in Canada Gazette 2 (CG2) in 2021 is prudent in the context of the current economic crisis, and appropriate with respect to enabling a reasonable amount of early credit banking.
- ii. Reducing the initial period compliance requirement to 2.4gCO₂e/MJ fairly recognizes CFS regulatory implementation delay and impacts on project investments and development of clean fuel² supply chains due to COVID 19.
- iii. Establishing a new reduction target of 12gCO₂e/MJ by 2030 and a linear reduction requirement of 1.2g/year between 2022 and 2030 is achievable and provides a stable, clear market signal to support orderly market development for cleaner fuels use.

Recommendation 1 ECCC should adhere strictly to the new compliance target and trajectory, and revised timeline for CG1, CG2, and liquid class regulatory implementation, in order to support clean fuel supply chains and secure new clean fuel investments as part of a resilient, clean energy economic recovery for Canada.

¹ Environment and Climate Change Canada (ECCC) proposed a number of amendments and design changes to the [Proposed Regulatory Approach](#) for the [Clean Fuel Standard](#) in a series of invitation-only webinar meetings with the Technical Working Group (TWG) stakeholders on June 4, 9, 11, 16, 19, and 23 (2020).

² Clean fuels are defined as non-fossil, low carbon fuels that are blended with or replace fossil fuel use. Clean fuels include ethanol, biodiesel, hydrogenation-derived renewable diesel (HDRD), biomass-based crude, renewable heating oil, and fuels produced from municipal and industrial wastes and CO₂ capture. Fossil fuels include refined petroleum products (gasoline, diesel, jet fuel) and natural gas.

Major Issues

The following two sections present significant concerns about the current design approach for the liquid fuel class regulations. These ‘meta-issues’ should be resolved prior to publication of CG1.

Market Trade – Canada & United States

A number of proposed design elements are likely to compromise the current free trade of agricultural, forestry, biofuel, and fossil fuel products between Canada and the US. We are concerned that trade frictions arising from the proposed measures may result in retaliatory actions that negatively impact export market access for Canada’s agricultural, forestry, and biofuels products, and clean technologies. The market trade issues include:

- a. Biofuel products:
 - I. The US allows open market access for Canada-produced biofuels, subject to the ‘aggregate compliance’ and the biomass feedstock criteria set out in RFS2;
 - II. The proposed new Land Use & Biodiversity (LUB) criteria for biofuel feedstocks will restrict market access for US-produced biofuels that currently supply the Canadian market; and
 - III. Differentiated market access requirements for US-produced biofuels with carbon capture and storage (CCS) will restrict market access for these fuels in Canada.
- b. Fossil fuel products:
 - I. Allowing CFS credit generation on fossil fuels (crude oil, natural gas, refined products) that are exported from Canada establishes a subsidy for these fuel products;
 - II. Credit generation on exported energy products (fossil fuels and biofuels) is not allowed under any other national or sub-national renewable fuel regulation (e.g. Canadian, EU, and US regulations, or provincial/state regulations); and
 - III. Energy products (fossil fuels and biofuels) imported from the US to Canada are not entitled to retain emission reduction credits under carbon pricing regulations (CA cap & trade), or low carbon fuel standards (CA, OR). Credits generated pursuant to the BC LCFS are retired upon export of the fuel from the province.
- c. Agricultural commodities:
 - I. Agriculture commodities used, in part, for biofuel markets trade freely between Canada and the US;
 - II. Agricultural land use is monitored for biofuel market impacts in the US pursuant to the ‘aggregate compliance’ provision in RFS2 which affords equal market access for Canadian crops into the US biofuels market; and
 - III. The proposed LUB provisions for the CFS will impose non-tariff trade barriers on US-produced crops and biofuels attempting to supply Canadian market demand.

Recommendation 2 The Government of Canada (GOC) must ensure the CFS does not compromise the free market flow of agricultural, forestry, biofuel, and fossil fuel products between the US and Canada, and our other established trading partners.

Recommendation 3 To support open, fair trade between Canada and the US in biofuel feedstocks, biofuels, and fossil fuels, ECCC should:

- 1) Retire CFS credits on all fuels exported from Canada;
- 2) Adopt a modified ‘aggregate compliance’ provision in the CFS to define eligible biofuel feedstocks for biofuels produced and used in the US and Canada; and
- 3) Engage bilateral consultations between Canada and the US on incorporation of measures within the ‘aggregate compliance’ framework in their respective fuel regulations to address the LUB criteria within agricultural, forestry, and other biomass supply systems (and apply the same criteria to all fuel supply chains – see below).

Fairness – Balanced Regulatory Approach

A central tenet in the development of regulations and standards is the application of ‘equivalency’ across different products or supply chains to ensure the policy is ‘fair’ by creating a level playing field for competing market sectors. The principles of ‘fairness’ are imbedded in fuel regulations (RFS, LCFS), fuel quality standards (ASTM, CGSB), and sustainability certification systems (ISCC, RSB), etc. by adhering to consistent principles and criterion for all fuel supply systems.

Several elements of the proposed CFS introduce bias and interfere with fair market competition. Certain design elements unfairly bias the CFS towards emission reductions in incumbent fossil fuel supply systems (e.g. oilsands and crude oil extraction, natural gas production, petroleum refining); this represents a marked departure from original regulatory intentions and established clean fuel regulations in British Columbia, California, and Oregon.³ While greenhouse gas emission reductions are necessary and welcome from all corners, the systemic bias favouring the oil and gas sector will impair investment and job creation in the development of Canada’s clean fuel sectors. Further, by failing to establish zero and low emission clean fuel platforms, Canada will compromise its ability to exceed its 2030 emission reduction goals and will fail to achieve net zero emissions by 2050.⁴

The elements which introduce bias and interfere with fair market competition include:

- a. LUB criteria – all fuel production systems, including oil and gas, renewable power generation for electric vehicles (EVs) and hydrogen fuel cell vehicles (HFCVs), steam reforming methane with CCS for ‘blue hydrogen’ production, and biomass feedstocks for biofuels, have impacts on land use. *Land use criteria for the evaluation of impacts of fuels must be applied to all fuel production systems in an equivalent and consistent manner.*
- b. CFS credits on exported fossil fuels – in addition to the trade issues noted above, the entitlement for a single class of fuels, fossil fuels, to retain CFS credits on exports for fuels not combusted in Canada bends the stated first objective of the regulation (ECCC: “to reduce

³ In June 2019, ECCC re-characterized the CFS design on its website as: “a performance-based approach designed to incent the innovation and adoption of clean fuel technologies in the oil and gas sector and the development and use of low-carbon fuels throughout the economy.” Prior to June 2019, the website reference stated the CFS design would: “incent the use of a broad range of lower carbon fuels, alternative energy sources and technologies, such as electricity, hydrogen, and renewable fuels, including renewable natural gas.”

⁴ Even if 100% of process emissions from fossil fuel extraction and refining were eliminating, 75-80% of the greenhouse gas emissions are still released upon fossil fuel combustion for transport, heat, and power.

- GHG emissions by lowering the lifecycle carbon intensity of fuels used in Canada) and awards a subsidy to fossil fuel exporters. All fuels should be treated in a similar manner and retire CFS credits upon export.*
- c. Co-processed fuels – fuels refined from co-processing animal fats, vegetable oils, or other ‘biomass-based crude’ (or biocrude) oils with crude oil or bitumen are proposed to be subject to a unique ‘Quantification Methodology’ to determine the quantity and lifecycle carbon intensity of finished fuel products. ECCC proposes a differentiated approach that favours co-processing at petroleum refineries over stand-alone biofuels production in: (i) the determination of credits; (ii) the allocation of credits between fuel classes; and (iii) the eligibility to retain credits on fuel export. The CFS should treat all biofuels production (standalone or co-processing) in a similar manner.
- d. Credit generation – ECCC has established a dual credit generation system: (i) Quantification Methodologies (QMs) for fossil fuel producers; and (ii) Fuel LCA Model (FLM) credits for biofuel, non-fossil liquid fuels, and for specified fuel switching in transport (EVs, hydrogen, gaseous). ECCC proposes to allow ‘proponent-led’ processes to develop new QMs on an ‘ad hoc’ basis, with insecure and incomplete access for all market stakeholders to the QM development process. No principles of ‘equivalence’ or adherence to ‘as good or better’ tests for veracity of the QM credit generation system have been established. The CFS should ensure that the QM scheme is consistent with the FLM as to: (i) the application of principles, criteria, boundary conditions, and methodology; and (ii) validation, verification, and audit of each period results.

Recommendation 4 ECCC should establish level and fair market conditions for all fuels by adopting measures which are consistent and equally applied to each class of fuels.⁵ Specifically, each of the four elements identified above requires corrective action.

Summary

We applaud and support the Government of Canada’s efforts to establish a national clean fuel standard. We believe the measure will be a key part of Canada’s economic recovery, attracting \$ billions in new clean fuel investments and creating stable, good paying jobs across Canada as part of a durable, clean growth economy. To optimize the economic and climate action benefits of the CFS, we recommend priority attention to three core issues:

1. Strictly adhere to the new timeline and proposed target and trajectory
2. Eliminate trade barriers and irritants to protect open market access for Canadian exports
3. Balance the regulatory approach to ensure fair competition

⁵ The CFS liquid fuel class regulation has three categories of credit generation: fossil fuel improvements (Compliance Category 1), renewable and non-fossil liquid fuels (Compliance Category 2), and specified end-use fuel switching in transportation (Compliance Category 3).