SOUTH DAKOTA SOYBEAN ASSOCIATION

5000 South Broadband Lane, Suite 100, Sioux Falls, SD 57108

July 11, 2025

Environmental Protection Division Director, Michelle Miano
Climate Change Bureau Chief, Claudia Borchert
New Mexico Environment Department
Harold L. Runnels Building
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

Re: EIB 25-23 (R) - In the Matter of Proposed Adoption of 20.2.92 NMAC Clean Transportation Fuel Program

Dear Director Miano and Bureau Chief Borchert:

The South Dakota Soybean Association (SDSA) appreciates the opportunity to comment on the EIB 25-23 (R) - In the Matter of Proposed Adoption of 20.2.92 NMAC Clean Transportation Fuel Program. SDSA welcomes engagement with the New Mexico Environmental Improvement Board (EIB), the Climate Change Bureau, and the New Mexico Environment Department (NMED) staff throughout the process to successfully implement the Clean Transportation Fuel Program (CTFP).

SDSA aspires to provide the best guidance possible while avoiding the key pitfalls that have been experienced with the drastic and inequitable pivot made by the California Air Resources Board (CARB) regarding agricultural feedstocks used for biofuels in the California Low Carbon Fuel Standard (LCFS) program. SDSA encourages the guidelines of the CTFP to be based on up-to-date and sound science. Outlined below are our concerns and proposed solutions that will enable New Mexico to meet its climate goals, decrease its reliance on fossil fuels, provide affordable fuel for consumers, and protect the environment and people of New Mexico, while also supporting American soybean farmers and processors who are investing in the future of low-carbon energy.

Avoidance of a Feedstock Cap and Proposed Solutions

SDSA strongly discourages the vegetable oil feedstock cap that has been referenced from California's LCFS program. The current proposal restricts the amount of soybean oil, canola oil and sunflower seed oil that is allowed to generate credits in the program at an inequitable 20% by company.

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CARB's own data demonstrates that vegetable oil feedstocks, including soy, have consistently exceeded the proposed cap since 2021. Currently, virgin vegetable oils account for approximately 30% of the feedstock used in California's biofuels market.

Capping these proven, sustainable, and scalable feedstocks would suppress the supply of renewable diesel, increase reliance on fossil fuels, and potentially lead to higher fuel prices for New Mexico consumers. CARB staff even acknowledged in their April 2024 workshop that a cap would reduce air quality benefits and likely increase NOx and PM2.5 emissions for California. All of this, including the recent tariffs on imported feedstocks, significantly increases costs and further substantiates U.S.-based feedstocks as the clear choice. SDSA urges NMED to avoid the cap on U.S.-based vegetable oil feedstocks, providing a more economically feasible, locally produced, and sustainable, climate-smart option for the people and the planet.

Agricultural feedstocks for biofuel production are already held to a high standard for participation in the U.S. Renewable Fuel Standard (RFS). Rather than adding sustainable U.S.-based feedstocks to an arbitrary proposed cap, NMED needs to update its carbon intensity analysis and oversight of imported feedstocks, which are not held to the same level of accountability. Recent actions by the European Union in response to fraudulent Chinese biodiesel imports underscore this concern[1]. The EU committee recently convened at the request of a member state to discuss allegations of fraud in biodiesel imports from China. Fraud remains a persistent issue with imported feedstocks and requires increased attention. SDSA strongly encourages NMED to adopt enforceable traceability and verification standards, including origin disclosures, documentation audits, and physical testing, to ensure the integrity of the food supply chain. Without implementing sustainable solutions to the above and implementing a cap on U.S. vegetable oil feedstock, NMED would essentially prioritize feedstocks from foreign countries (i.e., China) over those of the United States.

Sustainability Guidelines and Traceability Requirements

SDSA strongly supports the proposed rule's requirements for attestations of specified source feedstocks, including waste feedstocks. Ensuring the integrity of feedstocks is crucial for the credibility of low-carbon fuel programs. We support the inclusion of verification services, professional judgment, and risk assessments for feedstock traceability and verification. This approach aligns with recent updates in other states and will help prevent fraudulent activities.

[1] EU industry demands answers as 'fraudulent' Chinese biofuels continue to flow - Euractiv

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Further, this issue has drawn significant attention from the federal government, including recent interim final guidance issued by the U.S. Department of the Treasury on the 45Z Clean Fuel Production Credit, which excludes the use of imported used cooking oil (UCO) under the tax credit due to verification concerns.

SDSA recommends that NMED work closely with federal agencies, such as the U.S. Treasury, U.S. Department of Agriculture (USDA), Environmental Protection Agency (EPA), U.S. Trade Representative (USTR), and U.S. Customs and Border Protection, to better align on additional substantiation and record-keeping requirements as they are developed.

If NMED ever insists on agricultural feedstock traceability, it should be voluntary and reward sustainable practices beyond what is already assumed in any lifecycle analysis (LCA). USDA has developed a tool to quantify carbon intensity (CI) reductions for no-till, cover crops and nitrogen inhibitors. Considering this integral information, the carbon intensity of soy-based biofuels could be improved through the mentioned climate-smart agricultural practices on fields where the soybeans are produced. Other farming practices, such as low-till, nutrient management, enhanced efficiency fertilizers, buffer strips, wetland and grassland management, tree planting on working lands, planting for higher carbon sequestration, and soil amendments, should all be accounted for to assign a lower CI score to an agricultural feedstock. USDA already tracks all these practices through several of its managed conservation programs. Additionally, various other practices exist that scientifically lower the CI score of soybean feedstocks for biofuels, and USDA is actively working to develop mechanisms to account for these. If NMED asserts tracing feedstocks back to the farm, then it should also acknowledge when those feedstocks are produced with lower CI practices.

Moreover, USDA has recognized the CI reduction benefits of certain sustainable or climate-smart practices for clean fuel transportation programs and is undertaking a rulemaking process to develop final guidelines for quantifying these practices. Through informed planting decisions, effective soil management, and other sustainable practices, soybean farmers are continually reducing their environmental impact. Additionally, some soybeans are double-cropped, meaning they are grown as a secondary crop after a primary crop within the same growing season. They are growing on land that would otherwise be fallow. Double-crop soybeans should be eligible to have the indirect land use change (ILUC) component of the CI score removed or at least shared with the other crop in the rotation. SDSA proposes addressing the issues above by proactively collaborating with USDA, aligning efforts, and implementing solutions.

SOUTH DAKOTA SOYBEAN ASSOCIATION

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Modernized, Accurate, Climate-Smart Carbon Intensity Modeling and Scoring

SDSA is concerned that without a comprehensive update to the Global Trade Analysis Project model for biofuels (GTAP-BIO), which is utilized by other state LCFS programs like California, U.S. soy-based feedstocks will be phased out of the program's future. Current data indicate a significantly lower CI score for U.S. soybeans, as growers continue to improve soil practices, limit water use, reduce on-farm emissions, and more.

SDSA urges NMED to consider what constitutes significant indirect emissions, as we do not believe that U.S. soy should be penalized for farming practices employed by competitors in South America. Such a penalty on U.S. soy is arbitrary and capricious and does not reward U.S. farmers for their continued stewardship of farmland at home. To put this in perspective, 37% of the total emissions calculated for biodiesel produced with U.S. soy and 36% of emissions for renewable diesel produced with U.S. soy come from the ILUC penalty placed on our crops. Simply put, regardless of how much work farmers do to improve emissions reductions at home, we will never be able to compete with imported waste feedstocks if ILUC penalties are imposed.
Unfortunately for U.S. soy, the imposition of ILUC penalties directly puts the crop at a disadvantage to foreign feedstocks that are allowable in the programs. Trade disruptions between the United States and China have resulted in China no longer increasing U.S. soy purchases. Instead, China feeds its demand growth almost solely from Brazil. Meanwhile, U.S. soybean yields continue to grow. The result of these developments is that the U.S. is able to supply more biofuels without affecting production in South America. By utilizing a scoring mechanism such as ILUC, which calculates emissions based on speculation about the linkages between U.S. soybean farming and Brazilian deforestation, NMED is effectively imposing a reverse tariff on U.S. soy. Soybean farmers cannot continue to grow a crop to fuel New Mexico and the rest of America if we continue to be placed at a disadvantage to foreign feedstock competition.

If NMED wishes to proceed with proposing ILUC values, SDSA recommends that the Department reevaluate the ILUC value for soy-based feedstocks and update it to reflect the most recent scientific findings. In June 2023, Purdue University published a report[2] that is more recent than the one used to develop the ILUC value in the proposed rule table. The new report concluded that a range of values from 9.11 to 9.78 gCO2e/MJ should be used, based on shock sizes ranging from 1.05 to 3.22 billion gallons.

[2]Farzad Taheripour, Omid Karami, and Ehsanreza Sajedinia “Biodiesel induced land use changes: An assessment using GTAP BIO 2014 database”, June 2023

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As NMED seeks to achieve targeted CI reductions by 2030 and 2040, using outdated methodologies will only limit improvements in emissions reductions. SDSA urges swift action to update the GTAP-BIO model, allowing for the use of the most current, climate-smart, and science-based data to determine carbon intensity reductions. SDSA proposes that this issue be addressed by proactively utilizing the updated information and collaborating with designated subject matter experts to ensure successful implementation.

Recommended Climate-Enhancing Solutions for NMED

As NMED finalizes the implementation of the CTFP, SDSA recommends several actions that will likely prevent an increase in fossil diesel use, improve carbon intensity calculations, and improve market access for sustainable U.S. agricultural feedstock providers.

First, NMED should not apply the vegetable oil feedstock cap proposal to U.S. feedstocks. These feedstocks are already subject to federal guardrails to ensure production on land that has not been converted since 2008. The RFS was explicitly designed to prevent land conversion for biofuel production, and USDA data shows a decrease in farmland over the same period.

Second, SDSA retains a strong position regarding the ability of supply chains to fully comply with sustainability and traceability requirements. NMED should consider allowing soybean growers the opportunity to participate in the New Mexico biofuels market through innovative and climate-smart agricultural practices.

If voluntary traceability can be used to demonstrate additional benefits in CI scoring, NMED should embrace programs already developed through farmer input and provide improved scoring for feedstocks that employ sustainability practices to minimize changes in comparative costs (i.e., USDA-accredited programs and practices). NMED should collaborate with USDA to develop an aligned framework for quantifying climate-smart agricultural practices, specifically for biofuel feedstocks.

Third, NMED should 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, NMED is doing a disservice to U.S. feedstock producers and New Mexico's citizens by calculating carbon intensity scores that are not based on current facts. Through other state LCFS programs, such as California, CARB's own analysis confirms that prejudicial feedstock treatment will lead to increased emissions in the California transportation sector, harming the environment. SDSA foresees similar negative consequences in New Mexico, if appropriate implementation is not enacted.

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Sustainable Pathway Forward

SDSA is encouraged by the continued successes of programs that support the development of cleaner, low-carbon fuels. However, it is crucial that NMED finalizes implementation updates in a manner that equitably incorporates U.S. agricultural feedstocks through science-based policies, aligning with the most current information, while promoting the sustainability of U.S.-based products and businesses. This includes not capping U.S. vegetable oil feedstocks, but applying sustainability guidelines that are economically feasible for farmers while rewarding their practices that lower CI. SDSA believes that recognizing climate-smart U.S. agriculture strikes the right balance between ensuring feedstocks are sourced sustainably and, at the same time, leveraging available data to provide more value to those producers working towards decarbonizing their energy production.

SDSA also requests that NMED respond in writing to substantiate their decisions regarding the apprehensions expressed in this letter. We look forward to your transparent decisions and written responses.

SDSA is eager to collaborate with NMED to support the role of agriculture in diversifying the fuel supply, while reducing carbon intensity and enhancing clean air in New Mexico and beyond. On behalf of South Dakota soybean farm families, I appreciate the opportunity to comment and look forward to collaborating with NMED and other relevant stakeholders on the implementation of policies that expand the use of U.S. soy-based biofuels and market opportunities for U.S. soybean farmers.

Sincerely,

Kevin Deinert
President
South Dakota Soybean Association