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March 4, 2021

### **Comments regarding draft Clean Fuel Regulations**

The U.S. Grains Council, Growth Energy, and the Renewable Fuels Association (RFA) are pleased to put forward comments with regards to Environment and Climate Change Canada's (ECCC) *Clean Fuel Regulations* (CFR) published in the *Canada Gazette, part I* last December.

As a whole, the CFR represents an important policy that will monetize carbon reductions in the Canadian fuels market. Similar to state policies in place in California and Oregon, and similar to prospective policies in Washington and New York, we are particularly enthusiastic to see Canada take federal leadership on the implementation of a clean fuel standard, notably as President Joe Biden has pointed towards the possibility of a similar policy in the United States. As you are aware, a recent meeting between President Biden and Prime Minister Trudeau resulted in both sides confirming their commitments to the Paris Climate Agreement targets and achieving net-zero emissions by 2050. This kind of policy leadership in North America presents opportunities that are as innovative and impactful as the first biofuel mandates.

We would like to acknowledge important steps taken by ECCC to incorporate stakeholder feedback in the current version of the CFR. This is seen especially towards recommendations made by agricultural stakeholders to implement aggregate compliance and satisfy land use and biodiversity (LUB) criteria. While there remains some need for refinement on this issue, we are optimistic that through collaboration between domestic stakeholders and ECCC, we can agreeably author these provisions.

And while there are other important details that need to be addressed, including provisions for carbon capture and sequestration and enhanced oil recovery, we hope that you will consider our recommendations that make this policy more robust and towards a possible, eventual establishment of a North American clean fuel standard that would allow carbon credits to transcend the Canada-US border.

It is in this spirit of innovation, collaboration, and partnership that we submit our comments on the draft regulation.

#### *About us*

The U.S. Grains Council is an organization with specialization in markets for barley, corn, sorghum, and related products – particularly ethanol.

The RFA is the leading trade association for America’s ethanol industry, working to advance development, production and use of ethanol as a beneficial renewable fuel.

Growth Energy is the world’s largest association of biofuels and supporters, representing 89 ethanol plants and 91 associate members who serve North America’s need for renewable fuel.

#### **Comments in brief:**

1. **Fair treatment regarding carbon capture and sequestration (CCS), and enhanced oil recovery (EOR):** When used in the production of biofuels, ECCC should recognize CCS and EOR in the CI of the finished fuel, regardless of whether the fuel is produced in Canada or the U.S.
2. **Land use and biodiversity (LUB) criteria:** The U.S. and Canada have strong agricultural practices and already meet stringent sustainability practices. An aggregate acceptance of U.S. and Canadian feedstocks – for all LUB criteria – should be included in the CFR.
3. **Simplify farm-level declarations:** These declarations should be limited in scope to essential information only. In a jurisdiction that is deemed compliant with LUB criteria, this should be limited to farm location, farmer’s or business name, and amount of feedstock sold. Information included on existing paperwork (e.g., supply contracts) should be deemed to meet requirements for CFR declarations, and therefore eliminate the need for a new, standalone document.
4. **Remove any obligation for verification through site visits at farms in jurisdictions deemed compliant with LUB criteria.** The regulation currently provides for a site visit once every five years. In a jurisdiction deemed compliant with all LUB criteria, this is not necessary and could dissuade farmers from selling their crops into the biofuel market.
5. **Continue to frame the CFR as integral to meeting Paris Climate Agreement commitments.** Casting the CFR in this light helps to make the policy non-partisan, given that all major federal parties in Canada are supportive of the Paris targets.
6. **Lifecycle Analysis (LCA) model.** To enable early action by obligated parties and investments by low-carbon fuel producers, ECCC should release all available details of the LCA model immediately.
7. **Recognize ethanol’s octane value.** The current costing of the regulation does not take into account ethanol’s value as a provider of octane. This artificially inflates the cost of implementing the regulation and downplays the benefits consumers will enjoy with higher ethanol blends.

## Analysis

### **Fair treatment regarding carbon capture and sequestration (CCS), and enhanced oil recovery (EOR)**

The current draft regulations do not take a position on whether CCS and EOR conducted outside of Canada would count towards CFR credit generation. However, in ECCC question and answer sessions, it became clear that the current plan recognizes CCS and EOR that is conducted only in Canada. When used to capture and store emissions from the production of biofuels, this storage would be reflected in a lower carbon intensity for that fuel.

However, ECCC also noted that they plan to treat CCS and EOR used in biofuel production conducted outside of Canada differently: it would not count towards the CI of the biofuel.

U.S. ethanol producers would be at a disadvantage under this proposal. CI is the currency of a policy like the CFR. Nearly one-fourth of U.S. ethanol plants have installed carbon capture technology, and an increasing number of U.S. ethanol plants are considering making investments in CCS equipment and technology. Not counting the contribution of CCS to the CI of American produced biofuels, but doing so for Canadian product, would place American biofuels at a trade disadvantage. Meanwhile, U.S. ethanol plants that do not currently run CCS could see this credit distortion as a disincentive towards installing CCS technology, as uptake in Canada could make U.S. ethanol uncompetitive from a CI perspective.

Canada may rely on American produced biofuels to act as a bridge in the near-term while Canadian domestic capacity increases to match growing demand. With this in mind, it is crucial that the carbon intensities of imported fuels are properly calculated. The full range of investments made to reduce CI of these fuels needs to be recognized. Failure to do so would increase the cost of fuels for Canadians without providing any environmental benefit. The provision to count CCS only for Canadian-produced clean fuels and exclude imported ones could be interpreted as a non-tariff barrier. In our view, these provisions could be perceived as a contravention of national treatment provisions in the World Trade Organization's *General Agreement on Tariffs and Trade* (GATT), which stipulates:

*The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. (GATT Article III(4))*

Our current understanding is that ECCC has taken the position that CCS and EOR done outside of Canada does not count towards the CI of biofuels since the quality standard of the process is outside of the Canadian government's control. We recognize that this is an important consideration, however, we respectfully recommend that ECCC set minimal standards for CCS and EOR which can be certified by a third party. In this sense, ECCC will have quality certainty while respecting mutual commitments to free trade.

## Land use and biodiversity criteria

Important progress has been made on LUB criteria since a previous iteration last summer. However, there remain important details to finalize to ensure that feedstocks and biofuels from the U.S. have certainty under aggregate compliance for all LUB criteria.

The success of the CFR is contingent on the policy recognizing the sustainability of existing farming practices in Canada and the U.S. at an aggregate level. This must be the case for all LUB criteria. As it stands, the regulations would recognize Canadian and U.S. feedstocks as meeting only one of the LUB criteria on land expansion. To address the other LUB criteria, the CFR has built in provisions which allow for the recognition of national legislation to obtain aggregate compliance. Notably, legislative recognition can be a pathway to get aggregate compliance for criteria related to protected areas, harvest, and damaging agents (invasive species and pests). At present, however, there is a lack of clarity as to whether or not Canada and the US would see their legislation recognized under the current articulation of CFR LUB criteria.

Canada needs access to imported biofuels and feedstocks from the U.S. to ensure adequate supply. Without aggregate compliance on all LUB criteria for Canada and the U.S., we could see a feedstock and biofuel shortage in Canada that would unnecessarily increase the cost of CFR compliance for Canadians. Given that we know Canadian and U.S. agriculture to be sustainable, such an outcome would be entirely unacceptable.

To be clear, aggregate compliance is needed for all LUB criteria since we do not expect all farmers in Canada and the U.S. will want to meet the legal definitions provided in the CFR. For example, if only 30% of farmers are willing to take on the risk of making such a declaration, then the feedstock market in Canada and the U.S. will become bifurcated, and biofuel producers will be limited to where they can source their ingredients. The difficulties of having a farmer sign such a declaration are especially concerning in the U.S., where we do not expect farmers to have a high degree of information on Canadian regulations. Farming practices in Canada and the U.S. are sustainable – but this does not mean that a farmer far removed from the details of Canadian regulations will be comfortable signing a declaration saying that they comply with a rule they may not have the time to fully read or understand.

To the extent that there is any uncertainty in the current regulations as to whether Canadian and U.S. farmers will benefit from aggregate compliance, this is problematic from our perspective.

To solve this issue, we need a two-stage approach:

### **1 – Reduce risk by assessing the viability of legislative recognition before the CFR is finalized**

We propose that Agriculture and Agri-Food Canada (AAFC) undertake a comprehensive analysis of Canadian farming regulations to show that Canada meets the standards proposed in the draft CFR. AAFC should also reach out proactively to the U.S. Department of Agriculture (USDA) and help facilitate a proactive review of U.S. legislation to ensure that they also meet the needs of the draft CFR. If AAFC identifies any areas that could be a potential issue for Canada or the U.S. in obtaining full aggregate compliance for all LUB criteria, this should trigger new rounds of

consultations to amend the LUB criteria so that they adequately recognize Canadian and U.S. farming as sustainable, while still ensuring that feedstocks produced in other jurisdictions with unsustainable practices are kept out. AAFC should be tasked with this outreach to USDA and avoid any potential trade issues that could arrive from a lack of aggregate compliance for U.S. feedstocks in the CFR.

## **2 – Finalization and obtaining formal approvals**

Once the CFR is finalized, official applications will need to go to ECCC from AAFC and USDA for both Canada and the U.S. to be recognized as compliant with all LUB criteria at the aggregate level.

Ultimately, the work we do now in stage one will make or break the success of the formal applications put forward in stage two. For this reason, it is critical that AAFC be given a leadership role on this issue.

### **Simplify farm-level declarations**

These declarations should be limited in scope to essential information only. In a jurisdiction that is deemed compliant with all LUB criteria, this should be limited to basic information such as farm location, corporate name, date, and amount and type of feedstock sold.

Information included on existing paperwork (e.g. supply contracts, paperwork required under USMCA) should be deemed to meet requirements for CFR declarations, and therefore eliminate the need for a new, standalone document.

### **Site visits at farms in jurisdictions deemed compliant with LUB criteria**

The regulation currently provides for a site visit once every five years. In a jurisdiction deemed compliant with all LUB criteria, a site visit achieves no purpose since this is not the unit of measurement used to ascertain compliance. It would also be redundant with existing regulatory enforcement measures. We propose that verification be focused on ensuring that biofuel facilities, and other stakeholders that consolidate feedstocks such as grain elevators and crushing facilities, are indeed sourcing eligible feedstocks.

### **CFR as integral to meeting Paris Climate Agreement commitments**

Policies like the CFR should be viewed as standard practice for a country to meet its commitments to the Paris Climate Agreement. We recommend that to the extent possible the CFR should be portrayed as essential to any country looking at Paris commitments for 2030, as well as those seeking to attain net zero emissions by 2050.

## **Lifecycle Analysis model**

As ECCC is aware, the carbon intensity (CI) of a fuel is what dictates how many compliance credits a fuel can provide. In other words, CI translates indirectly into dollars. With this in mind, it comes as no surprise that many stakeholders are anxiously awaiting to see how their low-carbon fuel will fare under the new LCA model. In the case of obligated parties, looking at the CI of a fuel in conjunction with its price will dictate which compliance pathway it chooses.

Traditionally, Canada has relied on the GHGenius platform to calculate the CI of fuels. The project to develop a new LCA model for the CFR has injected considerable uncertainty into what the application of this policy will look like. Uncertainty makes it more difficult to encourage investment in carbon fuel infrastructure.

To address this problem, ECCC should immediately publish the current details, even if incomplete, of its LCA model. Releasing these details as soon as possible will provide an important opportunity for stakeholders to provide constructive feedback before the lifecycle assessment model is finalized.

Early action credit generation is set to begin in less than one year. However, ethanol supply contracts for 2022 and 2023 are being negotiated now. It is therefore imperative to have all details possible about the LCA tool.

## **Recognize ethanol's octane value**

As a part of the publication of the draft CFR, ECCC released a regulatory impact assessment statement (RIAS) with the aim of forecasting the cost of implementing the policy. The RIAS looked at costs of blending and distributing ethanol but did not include cost advantages of using the fuel, notably with respect to octane.

Ethanol has a research octane number of 113, whereas gasoline purchased at fueling stations typically offer octanes of 87, 89, and 91. Consumers pay a premium for high octane gasoline. However, ethanol is one of the cheapest sources of octane available. As Canada moves towards a 15% ethanol blend, consumers will benefit from the higher-octane fuel and refiners will benefit from using ethanol as their clean source of octane enrichment over other dirtier and often carcinogenic additives. Either way, ethanol's octane value will save money by reducing the cost of refining or providing a richer fuel without added costs.

It is important that the regulatory impact assessment of the policy recognize the octane benefits of ethanol. Failure to do so artificially inflates the costs of greenhouse gas reductions and sends the wrong message to Canada and CFR skeptics.

## CONCLUSION

The U.S. Grains Council, the Renewable Fuels Association and Growth Energy are supportive of successful Clean Fuel Regulations in Canada. The Council actively promotes the use of ethanol globally and believes that a strong CFR in Canada would lead to an increase in the use of renewable fuels in general, which will contribute to Canada's fight against climate change and reaching emissions reduction targets.

The Council and its partners will continue to be supportive of such policies and look forward to continuing to engage constructively with Environment and Climate Change Canada, as well as others in the Government of Canada.

We would be pleased to address any questions you may have regarding this submission.