



BRAZILIAN SUGARCANE INDUSTRY ASSOCIATION

ETHANOL • SUGAR • ELECTRICITY

October 8, 2009

VIA ELECTRONIC DELIVERY

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Reference: *Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information to Implement the Low Carbon Fuel Standard*

To Whom It May Concern:

The Brazilian Sugarcane Industry Association (UNICA) welcomes the opportunity to briefly comment in support of the proposed modifications to the regulatory text and additional information available for California's proposed Low Carbon Fuel Standard (LCFS). These comments expand on our previous correspondence on the lifecycle calculations of sugarcane ethanol submitted by letters dated April 16, August 19, and September 25, 2009. In short, UNICA supports the proposed modifications and recommends they be finalized at the earliest opportunity given the thorough opportunities for public comment and review provided to date.

Among the fuel pathways completed for use in the LCFS are three pathways for producing ethanol from Brazilian sugarcane: one using average production processes only, one that includes mechanized harvesting and electricity co-product credit, and one with electricity co-product credit but not mechanized harvesting.

The later two pathways are currently subject to public review as minor proposed modifications to the original proposed LCFS regulation. The public has been given adequate notice of and opportunity to comment on these pathways through a 30-day comment period held from July 20, 2009, until August 19, 2009, and the current 15-day comment period that ends October 8, 2009. These pathways are also sufficiently related to the original proposed rule, which received a separate 45-day comment period and ample public hearing discussions. In addition, these pathways are supported by a robust environmental analysis, reflected in the rulemaking record. Because these pathways have been established through an adequate public process, and are well-supported by the best available science, we believe the California Air Resources Board (ARB) has full authority to finalize them at the earliest possible opportunity, and recommend ARB do so.

As the record shows, the three sugarcane ethanol pathways have been established through a robust public process. For 45 days, the ARB made available to the public the initial proposed regulatory language and the “Staff Report: Initial Statement of Reasons (ISOR) for Proposed Regulation to Implement the Low Carbon Fuel Standard,” which presents the rationale and basis for the proposed regulation and identifies the data, reports, and information relied upon. These materials included information about all three sugarcane ethanol pathways. Specifically, the ISOR, made public in March 5, was explicit in indicating, in Table ES-6 “Fuel Pathways Under Development for Use in the LCFS,” that the ARB was working on two additional pathways for sugarcane ethanol.

On April 23, 2009, following the initial 45-day period, ARB issued Resolution 09-31, approving the LCFS regulation. ARB also approved modifications to the regulation, in accordance with a March 5, 2009 Staff Report. Among these modifications, the Staff updated the Lookup Tables to include a pathway for ethanol from sugarcane. In addition, ARB indicated that the final LCFS regulation would specify additional carbon intensity (“CI”) values for direct pathways for Brazilian sugarcane as deemed warranted by the Executive Officer. Therefore, the public has been put on notice since at least March 5, 2009, that ARB proposed to include the three sugarcane ethanol pathways in the final regulation.

On July 20, 2009, the agency circulated the modified LCFS regulation and related analyses, which provided details on the three sugarcane ethanol pathways. The modified regulations and related record materials were made available for a 30-day public comment period, until August 19, 2009. The additional materials include a July 20, 2009 report on scenarios for sugarcane ethanol to account for improved harvesting practices and the export of electricity from sugarcane ethanol plants in Brazil using energy from bagasse.

The sugarcane ethanol pathways proposed in the regulations circulated on July 20, 2009, are sufficiently related to the original proposed rule. They represent minor regulatory modifications that have been subject to an appropriate level of public review. Specifically, the three CI values for sugarcane ethanol in the latest version of the proposed LCFS rule are “sufficiently related to the original text [such] that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.” See Gov. Code § 11346.8(c). Indeed, UNICA’s April 16, 2009 comments discussed the usefulness for multiple separate pathways for sugarcane ethanol in order to accurately reflect the realities of the fast changing sugarcane industry. On the ground in Brazil, there is significant use of mechanical harvesting and bagasse for electricity, and these processes are not mutually exclusive. In short, the issue of whether and how alternative pathways might be developed for mechanically harvested, non-burned sugarcane ethanol and the adoption of more efficient cogeneration technologies was squarely presented by the initial proposed rule. The three pathways set forth in the July 20, 2009 version of the regulation were therefore sufficiently related to the original proposal.

As such, the 30-day comment period held in July and August of 2009 was more than adequate. In fact, because this change was sufficiently related to the text of the LCFS regulation as it was

originally proposed, the agency was only required to provide an additional 15-day comment period. See Gov. Code § 11346.8(c). Therefore, no additional public comment is required. Notably, even if ARB was required to have circulated all three sugarcane ethanol pathways for a full 45-day comment period, it has now done so. In addition to the original 45-day comment period, the public has been provided a total of an *additional* 45 days (the 30-day comment period, plus the ongoing 15-day comment period) to consider all three proposed sugarcane ethanol pathways, and submit comments. Moreover, the agency has made the supporting analysis for these pathways available for consideration by the public.

Finally, among the most recent revisions to the proposed LCFS regulation, CARB has proposed a minor change to one of the sugarcane ethanol pathways. The Lookup Table carbon intensity ("CI") value for the pathway for producing ethanol from Brazilian sugarcane with average production process, mechanized harvesting, and electricity co-product credit was incorrect due to a slight mathematical error. The direct emissions CI value (gCO₂e/MJ) for this pathway was listed as 12.20, instead of 12.40. None of the assumptions underlying this CI value have changed; the new value is simply a technical, non-substantive correction of the originally-circulated text. This change is thus insignificant and does not warrant any further public process.

In sum, the public notice and comment process that ARB has provided for the LCFS regulation is consistent with California administrative procedure law.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joel Velasco". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joel Velasco
Chief Representative - North America