

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-10-003

*Relating to the Public Hearing to Adopt a Regulation to Implement the California
Low Carbon Fuel Standard*

WHEREAS, on April 23, 2009, the Air Resources Board (ARB or Board) conducted a public hearing to consider adoption of a regulation to implement the California Low Carbon Fuel Standard (LCFS);

WHEREAS, following the public hearing on April 23, 2009, the Board adopted Resolution 09-31, in which the Board approved the adoption of title 17, California Code of Regulations, sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590 as set forth in Attachment A thereto, with the modifications set forth in Attachment B thereto;

WHEREAS, Resolution 09-31 directed the Executive Officer: (1) to incorporate into the approved regulations and incorporated document(s) the modifications described in Attachment B thereto and such other conforming modifications as may be appropriate; (2) to make the modified regulations (with the modifications clearly identified) and any additional documents or information available for public comment for a period of at least 30 days; (3) to consider any comments submitted during the supplemental comment period, and then (4) either to adopt the regulations as made available with any appropriate additional nonsubstantial modifications, to make additional modifications available for public comment for an additional period of at least 15 days, or to present the regulations to the Board for further consideration if he determines that this is warranted;

WHEREAS, on July 20, 2009, the modified regulatory text, reflecting the amendments approved by the Board and other conforming modifications to best reflect the intent of the Board at the hearing, were made available for public comment for a period of 30 days with the first 15-Day Notice of Public Availability of Modified Text, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 and Government Code section 11340.85;

WHEREAS further modifications were made available for public comment for a period of 15 days with the second 15-Day Notice of Public Availability of Modified Text on September 23, 2009, in accordance with the provisions of title 1, California Code of Regulations, section 44 and Government Code section 11340.85;

WHEREAS, written comments were received during both supplemental comment periods that addressed modifications to the proposed title 17, California Code of Regulations, sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590, and ARB has responded to the comments received in

the Final Statement of Reasons in accordance with the requirements of Government Code section 11346.9;

WHEREAS, it was ARB's intent that by the end of the LCFS rulemaking process, Table 7 in section 95486(b) would include specified carbon intensity values for biodiesel (fatty acid methyl esters-FAME) converted from Midwest soybeans, and for renewable diesel converted from Midwest soybeans; however, the process of making these carbon intensity values available had not been completed in time to solicit public comment during the first two supplemental comment periods;

WHEREAS, I found that the findings of the Board in Resolution 09-31 are equally applicable to the LCFS regulation if adopted without specified carbon intensity values for the two remaining referenced pathways, and that the LCFS regulation is technologically and commercially feasible without inclusion of the specified values;

WHEREAS, in order to have the LCFS regulation in effect in as timely a manner as possible, it was necessary to bifurcate the LCFS regulation, and adopt sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590 without the inclusion of the specified carbon intensity values referenced above;

WHEREAS, on November 25, 2009, the Executive Officer adopted the first part of the bifurcated LCFS regulation, consisting of sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590 of title 17, California Code of Regulations, which were appended to Executive Order R-09-014, and reflected modifications made during the initial comment period, and the first and second supplemental comment periods;

WHEREAS, on January 12, 2010, the first part of the bifurcated LCFS regulation consisting of sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590, of title 17, California Code of Regulations was approved by the Office of Administrative law, filed with the Secretary of State and enter into effect on the same day;

WHEREAS, in order to complete the adoption of the LCFS regulation, on December 15, 2009, the amended text of sections 95480.1, 95481, 95486 of title 17, California Code of Regulations, adding carbon intensity values for biodiesel and renewable diesel produced from Midwest soybeans, as well as a severability clause, were made available for public comment for a period of 30 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 and Government Code section 11340.85; at the same time, the public was provided an opportunity to comment on material being added to the rulemaking file;

WHEREAS, nine written comments on the modified text and material added to the rulemaking file were received during this third supplemental comment period, which ended August 19, 2009;

WHEREAS, as a result of the comments received during the third notice period and ARB staff analysis, the Executive Officer concluded that a reevaluation was needed for part of the supporting documentation for the carbon intensity values provided in the third supplemental comment period;

WHEREAS, on February 1, 2010, the modified regulatory text was made available for a period of 15 days, with changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 and Government Code section 11340.85; at the same time, the public was provided an opportunity to comment on material being added to the rulemaking file;

WHEREAS, two written comments on the modified text and material added to the rulemaking file were received during this fourth supplemental comment period, which ended February 16, 2010;

WHEREAS, the Executive Officer has considered the comments submitted during the third and fourth supplemental comment periods, and responses to comments received are included in the Supplement to Final Statement of Reasons appended hereto as Attachment 2;

WHEREAS, the rationale for the modifications to sections 95480.1, 95481, and 95486 of title 17, California Code of Regulations adopted by the Executive Officer on November 25, 2009 and effective January 12, 2010, are described in more detail in the Supplement to the Final Statement of Reasons, appended hereto as Attachment 2, and based on that rationale and the findings in Resolution 09-31, I find that the modifications to the adopted regulation are necessary and appropriate; and

WHEREAS, Attachment 1 hereto shows amended sections 95480.1, 95481, and 95486 of title 17, California Code of Regulations, which reflect modifications made available to the public December 15, 2009, and further modifications made available February 1, 2010;

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 09-31 are incorporated herein.

IT IS FURTHER ORDERED that the amendments to sections 95480.1, 95481, and 95486, title 17, California Code of Regulations, are adopted as set forth in Attachment 1 to this order.

Executed this 4th day of March, 2010, at Sacramento, California.

/s/

James N. Goldstene
Executive Officer

Attachments