State of California
AIR RESOURCES BOARD

REGULATION FOR A LOW CARBON FUEL STANDARD

Resolution 15-36

September 25, 2015

Agenda Item No. 15-7-2

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of greenhouse gas (GHG) emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or categories of sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, section 38580 of the Health and Safety Code requires the Board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by ARB pursuant to Division 25.5;

WHEREAS, the Board approved a list of early GHG actions at its June 21, 2007 hearing and approved additions to the list at its October 25, 2007 hearing, and a subset of nine of these early actions were designated as Discrete Early Action Measures, including the "Low Carbon Fuel Standard" (LCFS) measure to reduce GHG emissions from transportation fuels used in California;

WHEREAS, the LCFS serves an important role in California's ongoing efforts to address climate change and ambient air quality after 2020, including the upcoming Scoping Plan update, Short Lived Climate Pollutant Strategy, mobile source State Implementation Plan, and the State's 50 percent reduction goal in vehicular petroleum fuel use by 2030;

WHEREAS, on July 15, 2013, the State of California Court of Appeal issued its opinion in POET, LLC v. California Air Resources Board (2013) 218 Cal.App.4th 681 (POET), requiring that ARB to take specified actions to set aside the current LCFS regulation

and consider the re-adoption of an LCFS regulation, and staff has identified a number of specific areas in the existing regulation that staff believes could benefit from further refinements and improvements based on Board direction in Resolutions 09-31 and 11-39, comments from stakeholders, and lessons learned during five years of implementation of the LCFS;

WHEREAS, in 2013, 2014, and 2015, ARB staff held five overarching workshops to discuss the LCFS as a whole and 16 topic-specific workshops to discuss proposed revisions to the LCFS, and also participated in numerous other meetings with various stakeholders in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, staff proposed the re-adoption of the Low Carbon Fuel Standard (Proposed LCFS), as set forth in Appendix A to the Initial Statement of Reasons (ISOR) released to the public on December 30, 2014 for a 45-day comment period;

WHEREAS, ARB prepared an environmental analysis for the LCFS and the proposed Regulation on the Commercialization of Alternative Diesel Fuels (ADF) for purposes of the California Environmental Quality Act under its certified regulatory program (Public Resources Code section 21080.5) in a document entitled *Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Draft EA), included as Appendix D to each of the regulations' ISORs circulated for public review;

WHEREAS, having considered the effect of the proposed LCFS and ADF on the state's economy, including motor vehicle fuel efficiency, and having conducted the analyses required by Government Code sections 11346.3 and 11346.5, as summarized in the Notice of Public Hearing to Consider a Low Carbon Fuel Standard, dated December 16, 2014, and the Staff Report: Initial Statement of Reasons for Proposed Rulemaking, dated December 2014, the Board finds that the economic impacts of the proposed LCFS and ADF on the California economy are negligible, considering the size and diversity of California's economy.

WHEREAS, on February 19, 2015, the Board conducted a public hearing on the proposed LCFS;

WHEREAS, following the public hearing, the Board approved Resolution 15-6 directing the Executive Officer to make modifications to the proposed regulatory language, including as appropriate, those modifications generally described in Attachment A to that resolution, along with any additional supporting documents and information, for a period of at least 15 days; to consider written comments submitted during the public review period and make any additional appropriate conforming modifications available for public comment for at least 15 days, evaluate all comments received during the public comment periods, including comments on the Draft EA, and prepare written responses to EA comments as required by ARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a); and to present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments on the Draft EA, along with the Final

Environmental Analysis For The Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations (final EA), for consideration for approval, and staff's final proposed LCFS for consideration for adoption;

WHEREAS, following the February 2015 Board hearing, modified regulatory language and supporting documentation were made available for three 15-day public comment periods, with the changes to the originally proposed text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44 and Government Code section 11340.85, from June 4, 2015 through June 19, 2015, June 23, 2015 through July 8, 2015, and July 31, 2015 through August 17, 2015;

WHEREAS, the University of California caused a scientific peer review to be conducted evaluating the scientific bases for the LCFS pursuant to Health & Safety Code section 57004;

WHEREAS, staff prepared written responses to comments received on the Draft EA during all comment periods in a document entitled *Response to Comments on the Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Response to EA Comments);

WHEREAS, staff prepared written response to all non-environmental comments received during all the comment periods in a document entitled *Responses to Comments on the Low Carbon Fuel Standard,* included as Attachment B to this resolution, and presented it to the Board for consideration;

WHEREAS, a public hearing on the proposed LCFS regulation was held on September 24, 2015, and the public comment period for that hearing was closed on September 24 and Board consideration of the item was continued to September 25, 2015;

WHEREAS, staff provided the Board for its consideration written and oral responses to additional comments received at the September 24, 2015 hearing in a document entitled *Supplemental Responses to Comments on the Low Carbon Fuel Standard,* as set forth in Attachment C to this resolution;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, in consideration of the ISOR, written comments, public testimony, the *Responses to Comments on the Low Carbon Fuel Standard,* the *Supplemental Responses to Comments on the Low Carbon Fuel Standard*, the Final EA, the Response to EA Comments, and the entirety of the record, the Board finds that:

> California's transportation sector is the leading source of GHG emissions in the state, contributing almost 40 percent of the state's annual GHG emissions;

The fuels used in cars, trucks and other transportation sources have a significant impact on GHG emissions; reducing the impact these fuels have on GHG emissions will provide important environmental and possibly economic opportunities;

The proposed regulation was developed using the best available economic and scientific information and will achieve the maximum technologically feasible and cost-effective reductions in GHG emissions from transportation fuel used in California;

The proposed regulation itself establishes no motor vehicle fuel specifications and therefore no multimedia evaluation is required under section 43830.8 of the Health and Safety Code;

The scientific basis of the proposed LCFS was peer reviewed by four peer review panelists pursuant to section 57004 of the Health and Safety Code;

The proposed LCFS was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue as the regulation is implemented and future revisions to it are considered;

No reasonable alternatives to the proposed LCFS considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

The proposed LCFS is consistent with ARB's environmental justice policies and does not disproportionately impact people of any race, culture, or income;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby sets aside its approval of the current LCFS regulation, including Board Resolution 09-31 (April 23, 2009), Executive Order R-09-014 (November 25, 2009), Executive Order R-10-003 (March 4, 2013), and any decision to defer the formulation of mitigation measures relating to NOx emission from biodiesel, and in doing so the Board specifically repeals sections 95480, 95480.1, 95480.2, 95480.3, 95480.4, 95480.5, 95481, 95482, 95483, 95484, 85485, 95486, 95487, 95488, 95489, and 95490, Title 17 California Code of Regulations, as set forth in Attachment A, all to be effective on the date the new provisions approved herein go into effect;

BE IT FURTHER RESOLVED that in consideration of the Final EA certified in Resolution 15-51 and the Response to EA Comments approved in Resolution 15-51, and the entirety of the record, the Board adopts the Findings and Statement of Overriding Considerations set forth in Attachment D to this resolution;

BE IT FURTHER RESOLVED that the Board hereby adopts new sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497, Title 17, California Code of Regulations, as set forth in Attachment A;

BE IT FURTHER RESOLVED that the Executive Officer may further revise the adopted regulatory text with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such; and

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to complete the Final Statement of Reasons, to submit the completed rulemaking package to the Office of Administrative Law, and at that time to transmit the Notice of Decision to the Secretary of the Natural Resources Agency for posting.

BE IT FURTHER RESOLVED that the Board directs staff to determine what additional carbon intensity reductions can be obtained in the 2020 to 2030 timeframe consistent with the upcoming Scoping Plan update, Short Lived Climate Pollutant Strategy, mobile source State Implementation Plan, and the State's 50 percent petroleum reduction goal, and return to the Board with a proposal to further strengthen the LCFS.

I hereby certify that the above is a true and correct copy of Resolution 15-36 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 15-36

September 25, 2015

Identification of Attachments to the Board Resolution

Attachment A:	Final Regulation Order (made available to the public on September 21, 2105)
Attachment B:	*Responses to Comments on the Low Carbon Fuel Standard*
Attachment C:	*Supplemental Responses to Comments on the Low Carbon Fuel Standard*
Attachment D:	Findings and Statement of Overriding Considerations