State of California
AIR RESOURCES BOARD

# REGULATION FOR A LOW CARBON FUEL STANDARD

Resolution 15-6

February 19, 2015

Agenda Item No.: 15-2-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code 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, section 41510 of the Health and Safety Code authorizes the Executive Officer of ARB to have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions, or any records required to be maintained in connection by the ARB;

WHEREAS, section 41511 of the Health and Safety Code authorizes ARB to adopt rules and regulations to require the owner or operator of any air pollution emission source to take reasonable actions for the determination of the amount of such emission from such source;

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, after several years of development in close consultation with stakeholders and in consideration of public comments received, the Board approved at its April 2009 hearing the LCFS regulation in Resolution 09-31, and the regulation became effective on April 15, 2010 and is codified in title 17, California Code of Regulations, sections 95480 through 95490;

WHEREAS, the Board heard an update from staff on implementation of the LCFS at its November 2010 hearing, where the Board affirmed staff's plans to implement the LCFS and provided additional direction to staff in Resolution 10-49;

WHEREAS, the Board approved amendments to the LCFS in December 2011, which became effective on November 26, 2012;

WHEREAS, the Board provided additional direction to staff in Resolution 11-39 during the December 2011 hearing;

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, holding that the LCFS approved in 2009 would remain in effect and that ARB could continue to implement and enforce the 2013 regulatory standards while taking steps to remedy California Environmental Quality Act and Administrative Procedure Act issues noted in the ruling;

WHEREAS, the *POET* decision requires that ARB 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 received from stakeholders, and lessons learned during five years of implementation of the LCFS;

WHEREAS, in 2013 and 2014, ARB staff conducted five overarching workshops to discuss the LCFS as a whole and 15 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, ARB staff is proposing that the Board re-adopt the Low Carbon Fuel Standard, including updates and revisions compared to the current regulation, as set forth in Appendix A to the document entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Re-Adoption of the Low Carbon Fuel Standard" (ISOR), which was released to the public on December 30, 2014;

WHEREAS, the ISOR prepared by ARB staff presents the rationale and basis for the proposed re-adoption, including updates and revisions compared to the current regulation, and identifies the data, reports, and information relied upon;

WHEREAS, the ISOR and proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, ARB, as the lead agency for the proposed regulation, has prepared a Draft Environmental Analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, §§ 60000 through 60007) to comply with the California Environmental Quality Act (Pub. Resources Code § 21080.5 et seq.), included the Draft EA as Appendix D to the ISOR, and provided opportunity for public comment on the Draft EA for at least 45 days, from January 2, 2015, through February 17, 2015; and

WHEREAS, the Draft EA evaluated potential significant adverse and beneficial impacts from implementation of both the proposed LCFS regulation and the regulation for Commercialization of Alternative Diesel Fuel, and stated that the regulations could result in beneficial impacts to GHGs through substantial reductions in emissions from transportation fuels in California from 2016 through 2020 and beyond, long-term beneficial impacts to air quality through reductions in criteria pollutants, and beneficial impacts to energy demand; could result in less than significant or no impacts to mineral resources, population and housing, public services, and recreation; could result in significant and unavoidable adverse impacts to aesthetics, agriculture resources, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, transportation and traffic, and utilities, and short-term construction-related air quality impacts primarily related to reasonably foreseeable construction projects and minor expansions to existing operations; and could also result in significant cumulative impacts in certain resource areas.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby directs the Executive Officer to take the following actions:

1. Make any modifications in the regulatory language (including, as appropriate, modifications generally described in Attachment A), along with any additional supporting documents and information, available for public comment for a period of at least 15 days; also consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days.

2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by ARB's certified regulatory program at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a).

3. If appropriate, prepare and circulate any further environmental analysis to the extent required by ARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and as necessary, consider all feasible mitigation or alternatives that could eliminate or substantially lessen any significant adverse environmental impacts identified.

4. Present to the Board, at an expeditiously scheduled public hearing, staff's written responses to any comments raising significant environmental issues, along with the final environmental analysis, for consideration for approval.

5. Present to the Board, at an expeditiously scheduled public hearing, the proposed regulation for consideration for adoption.

6. Present a progress report to the Board by the end of 2017 focused on fuel volumes and net credit balance.

I hereby certify that the above is a true and correct copy of Resolution 15-6 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

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## Identification of Attachments to the Board Resolution

**Attachment A:** Staff's Suggested Modifications to the Original Proposal (Distributed at the February 19, 2015, ARB hearing and later revised based on Board direction at the hearing)