

State of California
AIR RESOURCES BOARD

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO
THE LOW CARBON FUEL STANDARD REGULATION AND TO THE
REGULATION ON COMMERCIALIZATION OF ALTERNATIVE DIESEL
FUELS**

Resolution 18-34

September 27, 2018

Agenda Item No.: 18-7-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB 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 CARB 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 CARB pursuant to Division 25.5;

WHEREAS, section 41510 of the Health and Safety Code authorizes the Executive Officer of CARB 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 CARB;

WHEREAS, section 41511 of the Health and Safety Code authorizes CARB 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;

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

WHEREAS, on July 15, 2013, the State of California Court of Appeal, Fifth District issued an opinion in *POET, LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, requiring that CARB take specified actions to correct errors related to the adoption of the first LCFS in 2009, and concluding that the public interests at stake, including the protection of the environment, weighed in favor of preserving the operation of the LCFS while those actions were taken;

WHEREAS, the 2013 POET opinion ordered CARB to, among other things, further consider whether the LCFS might result in increased nitrogen oxide (NOx) emissions due to increases in the use of biodiesel;

WHEREAS, in February 2014, the Fresno County Superior Court issued a writ of mandate ordering the Board to take the actions directed by the Court of Appeal;

WHEREAS, to correct the issues identified in the 2013 POET decision and to improve the LCFS regulation, after multiyear development in close consultation with stakeholders and in consideration of public comments received, on September 25, 2015, with Resolutions 15-36 and Resolution 15-41, the Board set aside the previous LCFS regulation, and adopted a new LCFS regulation, along with a companion regulation for the commercialization of alternative diesel fuels (ADF regulation) designed to, among other things, ensure long term mitigation of any potential NOx emissions increases that might otherwise result from increased use of alternative diesel fuels;

WHEREAS, both the new LCFS and the ADF regulations became effective January 1, 2016, the former published at sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497 of Title 17, California Code of Regulations; and the latter published at sections 2293, 2293.1, 2293.2, 2293.3, 2293.4, 2293.5, 2293.6, 2293.7, 2293.8, 2293.9, and Appendix 1 of Title 13, chapter 5, article 3, California Code of Regulations;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-51, thereby certifying the Final Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations and approving the responses to comments;

WHEREAS, on January 5, 2016, the Fresno County Superior Court discharged its February 2014 writ of mandate;

WHEREAS, on May 30, 2017, the State of California Court of Appeal, Fifth District issued an opinion in *POET, LLC v. California Air Resources Board* (2017) 12 Cal.App.5th 52, reversing the Superior Court's discharge of the February 2014 writ, and directing CARB to complete its compliance with a modified writ of mandate by taking specified actions relating to the issue of potential NOx emissions from biodiesel;

WHEREAS, on November 17, 2017, with Resolution 17-48, the Board set aside the portions of the 2015 LCFS environmental analysis addressing NOx emissions from biodiesel to comply with a revised writ of mandate issued by Fresno County Superior Court on October 18, 2017;

WHEREAS, pursuant to that revised writ of mandate, the LCFS compliance standards for conventional diesel fuel and its substitutes are preserved, by court order, at the 2017 standard until the corrective action is complete and approved by the Superior Court in an order discharging the writ;

WHEREAS, in 2016, the California Legislature adopted Senate Bill 32 (Stats. 2016, Ch. 249), codifying a statewide GHG reduction target of at least 40 percent below 1990 levels by 2030;

WHEREAS, in December 2017, the Board adopted California's 2017 Climate Change Scoping Plan which relies on increased LCFS targets to meet the State's greenhouse gas emissions and air quality goals and enable long-term decarbonization of the transportation sector;

WHEREAS, the Governor of the State of California, in Executive Order B-48-18, established a goal of at least 5 million zero-emission vehicles on California roads by 2030 and directed CARB staff to recommend ways to expand zero-emission vehicle infrastructure through the LCFS;

WHEREAS, the Governor of the State of California, in Executive Order B-55-18, established a statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045;

WHEREAS, the Board heard a report from staff at its June 2017 hearing on the progress of the LCFS program against the program targets; ultra-low carbon fuel availability to achieve the standards; and program benefits provided by credits for producing crudes by innovative methods, low-complexity/low-energy-use refineries,

refinery investments, renewable hydrogen for refineries, and incremental deficits that result from increases in carbon intensity of crude oil;

WHEREAS, in 2016 and 2017, staff conducted 22 public workshops and fuel-specific working meetings, in addition to numerous meetings and teleconferences held with individual stakeholders to discuss concepts for potential proposed amendments to the LCFS and ADF regulations;

WHEREAS, staff has proposed amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, as set forth in Appendix A to the Initial Statement of Reasons released to the public on March 6, 2018;

WHEREAS, the Initial Statement of Reasons prepared by staff presents the rationale and basis for the proposed amendments, including updates and revisions compared to the current regulations, and identifies the data, reports, and information relied upon;

WHEREAS, the Initial Statement of Reasons prepared by staff presents a full program review considering the areas required by Section 95496(b) of Title 17, California Code of Regulations;

WHEREAS, as directed by the October 18, 2017, revised writ of mandate, staff developed and publicly released a draft disclosure discussion of potential NO_x emissions that may have been caused in the past (and may be caused in the future) by the LCFS regulation, included as Appendix G to the Initial Statement of Reasons released on March 6, 2018;

WHEREAS, responding to the Appendix G analysis and as directed by Resolution 18-22 approved by the Board on April 27, 2018, CARB staff has implemented a Voluntary NO_x Remediation Measure (VNRM) and executed grants for \$9 million to fund NO_x reduction projects throughout the state and further remediate any potential historic NO_x emissions increases conservatively estimated in the Appendix G analyses;

WHEREAS, the Initial Statement of Reasons and proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed regulatory action;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, CARB prepared a draft environmental analysis under its certified regulatory program for the proposed amendments entitled *Draft Environmental Analysis Prepared*

for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation (Draft EA), and circulated it as Appendix D to the Staff Report for 45 days from March 9, 2018, through April 23, 2018;

WHEREAS, the Draft EA concluded that implementation of the proposed amendments could result in the following short-term and long-term beneficial and adverse impacts: beneficial impacts to energy demand and greenhouse gases; less-than-significant impacts to air quality (odors), energy demand, greenhouse gases, hazards and hazardous materials, mineral resources, population, employment, and housing, public services, and recreation; and potentially significant and unavoidable adverse impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, energy demand, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, transportation and traffic, and utilities and service systems. The potentially significant and unavoidable adverse impacts are disclosed for both short-term, construction-related activities and long-term operational activities, which explains why some resource areas are identified above as having both less-than-significant impacts and potentially significant impacts. The Draft EA also identifies possible localized operational impacts to air quality from activities including feedstock transport to production facilities, production of biofuels, transport of finished fuels to blending facilities, and from CCS projects, associated with reasonably foreseeable compliance responses to the proposed LCFS regulation. While the Draft EA finds these localized impacts unlikely, CARB cannot dismiss the potential for these impacts, and has conservatively identified these impacts as potentially significant and unavoidable;

WHEREAS, on April 27, 2018, the Board conducted a public hearing on the proposed amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels and the Draft EA prepared for the proposal;

WHEREAS, following the public hearing, the Board adopted Resolution 18-17 directing the Executive Officer to make the modified regulatory language in Attachment A to that resolution, and any additional appropriate conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer was further directed 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). The Executive Officer was directed 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 EA, for consideration for approval, and the finalized amendments for consideration for adoption;

WHEREAS, following the Board hearing, the modified regulatory language and supporting documentation were circulated for two 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 20, 2018 through July 5, 2018, and from August 13, 2018, through August 30, 2018;

WHEREAS, staff reviewed written comments received on the Draft EA and prepared written responses to those comments in a document entitled *Response to Comments on the Draft Environmental Analysis for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation* (Response to EA Comments);

WHEREAS, on September 17, 2018, staff posted on the rulemaking page the Final EA, which includes minor revisions, and the Response to EA comments;

WHEREAS, on September 17, 2018, staff posted on the rulemaking page the *Final Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation* (Final NOx Disclosure Discussion), which includes minor revisions to the draft document released as Appendix G to the Initial Statement of Reasons;

WHEREAS, prior to the duly noticed public hearing held on September 27, 2018, staff presented the Final EA and the Response to EA Comments, and the Final NOx Disclosure Discussion, as set forth in Attachments B, C, and D to this resolution, to the Board for consideration;

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, and public testimony, 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 50 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 fundamental scientific bases of the health protective standards and methodological framework underlying both the LCFS and ADF regulations remained unchanged by this amendment rulemaking, and were peer reviewed in 2015 consistent with Health and Safety Code section 57004;

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 amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, 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 amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

WHEREAS, equity considerations, consistent with legislative priorities for existing incentive programs, should be a critical part of the design of any electric utility-run program funded by LCFS credit value.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the Final EA, set forth in Attachment B to this resolution, was completed in compliance with CARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed and considered the information therein before taking action to approve the amendments.

BE IT FURTHER RESOLVED that the Board approves the Response to EA Comments set forth in Attachment C to this resolution, and the written responses prepared by staff to comments received at the hearing on this matter set forth in Attachment F.

BE IT FURTHER RESOLVED that the Board approves the Final NOx Disclosure Discussion set forth in Attachment D to this resolution, and adopts the findings therein in compliance with the October 18, 2017, revised writ of mandate.

BE IT FURTHER RESOLVED that in consideration of the Final EA, the Response to EA Comments, and the entirety of the record, the Board adopts the Findings and Statement of Overriding Considerations set forth in Attachment E to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts amendments to sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497 of Title 17, California Code of Regulations, and section 2293.6 and Appendix 1 of Title 13, California Code of Regulations, and adopts sections 95483.3, 95486.1, 95486.2, 95488.1, 95488.2, 95488.3, 95488.4, 95488.5, 95488.6, 95488.7, 95488.8, 95488.9, 95488.10, 95490, 95491.1, 95498, 95499, 95500, 95501, 95502, and 95503 of 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.

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

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor development of the Carbon Capture and Sequestration Protocol under the Low Carbon Fuel Standard (CCS Protocol) and to propose technical updates to the CCS Protocol, including the monitoring requirements, as needed.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor development of the ZEV Fueling Infrastructure credits under the Low Carbon Fuel Standard, including how those credits impact the business case for such projects, and to propose technical updates as needed.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the cost containment provisions of the Low Carbon Fuel Standard, including the Credit Clearance Market, and to propose technical adjustments through future rulemaking if needed to further strengthen the cost containment features of the program.

BE IT FURTHER RESOLVED that, with respect to any statewide electric utility-run point-of-vehicle-purchase clean fuel rebate program funded by LCFS credit value, the Board hereby directs the Executive Officer to take the following actions:

1. No later than every five years, re-evaluate the minimum contribution of each electric utility to the statewide point-of-purchase rebate program funded by LCFS credit value, with the goal of gradually and progressively adjusting the contribution of all utilities to a consistent level to help expedite the transition to zero emission vehicles.
2. Provide adequate notification to the electric utilities, and to any utility-designated statewide program administrator, of any forthcoming staff proposal that would eliminate the utilities' ability to continue a statewide

program. Notification should be given at least two years prior to the proposed effective date of any such changes.

3. Work with stakeholders to establish an equity-based framework for the possible uses of base credit value from residential charging, consistent with Legislative priorities. Continue to evaluate the efficacy of such provisions and propose adjustments to the electric utilities as needed.
4. Update the Board on the proposed program design prior to entering into any governance agreement.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to report to the Board on the implementation status of the LCFS program annually.

I hereby certify that the above is a true and correct copy of Resolution 18-34 as adopted by the Air Resources Board.

Cristina Granados, Clerk of the Board

Resolution 18-34

September 27, 2018

Identification of Attachments to the Board Resolution

- Attachment A*:** Final Regulation Order for the Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel, sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497 of Title 17, California Code of Regulations, and section 2293.6 and Appendix 1 of Title 13, California Code of Regulations, and adopts sections 95483.3, 95486.1, 95486.2, 95488.1, 95488.2, 95488.3, 95488.4, 95488.5, 95488.6, 95488.7, 95488.8, 95488.9, 95488.10, 95490, 95491.1, 95498, 95499, 95500, 95501, 95502, and 95503 of Title 17, California Code of Regulations, released to the public September 17, 2018.
- Attachment B*:** *Final Environmental Analysis Prepared for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations*, released to the public September 17, 2018.
- Attachment C*:** *Response to Comments on the Draft Environmental Analysis for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation* released to the public September 17, 2018.
- Attachment D*:** *Final Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation*, released to the public September 17, 2018.
- Attachment E*:** Findings and Statement of Overriding Considerations.
- Attachment F*:** *Supplemental Response to Comments on the Draft Environmental Analysis for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation*.

***Attachments A, B, C, D, E and F are NOT attached to the proposed resolution; they are simply described on this page.**