

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-09-014

*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 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 also provided an opportunity to comment on material being added to the rulemaking file;

WHEREAS, 38 written comments on the modified text and material added to the rulemaking file were received during the first supplemental comment period, which ended August 19, 2009;

WHEREAS, on September 23, 2009, additional regulatory modifications prepared in response to the comments and to further improve the regulation were made available for additional public comment for a period of at least 15 days, with the changes to the previously 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 also provided an opportunity to comment on additional material being added to the rulemaking file;

WHEREAS, 18 additional comment letters were timely received by the end of the second supplemental comment period on October 8, 2009;

WHEREAS, the Executive Officer has considered the comments submitted during the two supplemental comment periods;

WHEREAS, Attachment 1 hereto shows new sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590, title 13, California Code of Regulations, reflecting the proposed amendments made available July 20, 2009, with the further modifications made available September 23, 2009; Attachment 1 also reflects a few nonsubstantive corrections identified in Attachment 2 hereto;

WHEREAS, it is ARB's intent that by the end of this rulemaking, Table 7 in section 95486(b) will 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 for supplemental comment and consideration of such comments has not yet been completed;

WHEREAS, in order to have the LCFS regulation in effect in as timely a manner as possible, it is necessary to adopt the remainder of the LCFS regulation prior to completion of the supplemental comment process regarding the two remaining referenced biodiesel and renewable diesel pathways; accordingly Table 7 of section 95486(b) as adopted herein does not include these pathways and the carbon intensity values for the two remaining pathways will be separately adopted by the Executive Officer in this rulemaking and submitted to the Office of Administrative Law by February 2010 as part of this rulemaking after completion of the supplemental comment period on the pathway values;

WHEREAS, I find that the findings of the Board in Resolution 09-31 are equally applicable to the LCFS regulation adopted herein without specified carbon intensity values for the two remaining referenced pathways, and that the diesel compliance schedule in the LCFS regulation is technologically feasible without inclusion of the specified values as shown by the fact that the regulation includes carbon intensity values for biodiesel and renewable diesel from waste oil and tallow which have been listed in Table 7 referenced above, and includes credit trading provisions;

WHEREAS, I further find that the because the LCFS regulation requires only gradual and slight carbon intensity reductions in the early years of compliance, a heavy reliance on biodiesel and renewable diesel from Midwest soybeans is not likely in the early years of the LCFS program, thus an adoption of the specified carbon intensity values by February 2010 will not burden compliance by affected parties;

WHEREAS, I further find that because the LCFS imposes only recordkeeping and reporting requirements for year 2010, and the two additional carbon intensity values will be adopted by the Executive Officer by February 2010, the specified values will not be needed for compliance before the addition of the two carbon intensity values becomes operable;

WHEREAS, it is also ARB's intent to include a severability provision in a new section 95480.1; this severability provision was inadvertently omitted from the versions of the regulation made available for supplemental comment and this provision will also be separately adopted by the Executive Officer in this rulemaking and submitted to the Office of Administrative Law as part of the rulemaking by February 2010 after completion of a supplemental comment period on the provision;

WHEREAS, the rationale for the modifications to the original proposal are described in more detail in the Final Statement of Reasons prepared for this rulemaking, and based on that rationale and the findings in Resolution 09-31, I find that the regulation adopted herein is necessary and appropriate;

WHEREAS, in Resolution 09-31 the Board designated the Executive Officer as the decision maker for the purpose of responding to environmental issues raised in this rulemaking, as provided in title 17, California Code of Regulations, section 60007, and stated that the Board is not prejudging any of the responses that will be made by the Executive Officer to these environmental issues;

WHEREAS, the Final Statement of Reasons for this rulemaking is appended as Attachment 2 hereto and summarizes all of the comments raising significant environmental issues in this rulemaking, and ARB's written responses to those comments;

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

IT IS FURTHER ORDERED that sections 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489 and 94590, title 17, California Code of Regulations, are adopted as set forth in Attachment 1 hereto.

Executed this 25th day of November, 2009, at Sacramento, California.

/s/

James N. Goldstene
Executive Officer

Attachments