

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 18-17

April 27, 2018

Agenda Item No.: 18-3-3

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 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 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, 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 Board heard a report from program 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 State 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 has developed and publicly released a draft disclosure discussion of potential NOx 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, 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, and circulated it as Appendix D to the Staff Report for a 45-day public comment period from March 9, 2018 through April 23, 2018; and

WHEREAS, the draft environmental analysis (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), cultural resources, 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/traffic and utilities and service systems. The potentially significant and unavoidable adverse impacts are primarily related to short-term, construction-related activities. This 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.

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

1. Consider any additional conforming modifications that are appropriate, and make them available for public comment, with any additional supporting documents and information, for a period of at least 15 days. 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. Work with interested stakeholders to develop a calculation method, accounting process and related requirements to allow hydrogen stations and direct current fast chargers for electric vehicles to earn credits on the basis of the capacity of the ZEV infrastructure. Such credits should be issued in addition to credits received for fuel dispensed through such ZEV infrastructure. The purpose of such capacity credits would be to support the expansion of such infrastructure as directed by the Governor's Executive Order B-48-18.
3. Explore with stakeholders the opportunities to increase the magnitude of ZEV vehicle rebates funded by sale of LCFS credits. Focus these discussions on the possibility to offer the rebate at the point of sale of the vehicle. Evaluate the opportunities to harmonize rebate designs statewide and explore synergies with other rebate programs, including the Clean Vehicle Rebate Project.
4. 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 CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a).
5. If appropriate, prepare and circulate any further environmental analysis to the extent required by CARB'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.
6. Present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments raising significant environmental issues, along with the final environmental analysis, for consideration for approval.

7. Present to the Board, at a subsequently scheduled public hearing, the amendments for consideration for adoption.
8. Continue to develop and complete all necessary corrective action associated with expeditious compliance with the October 18, 2017 revised writ of mandate

I hereby certify that the above is a true and correct copy of Resolution 18-17 as adopted by the Air Resources Board.

Rana McReynolds, Clerk of the Board

Resolution 18-17

April 27, 2018

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95490, 95491, 95492, 95493, 95494, 95495, 95496, and 95497; and Adopt sections 95483.3, 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, Title 17, California Code of Regulations, as set forth in Appendix A to the Initial Statement of Reasons, released March 6, 2018.