

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE REGULATION ON THE COMMERCIALIZATION OF ALTERNATIVE DIESEL FUELS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to the Regulation on the Commercialization of Alternative Diesel Fuels (ADF).

DATE: February 27, 2020

TIME: 9:00 A.M.

LOCATION: California Environmental Protection Agency
California Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., February 27, 2020, and may continue at 8:30 a.m., on February 28, 2020. Please consult the agenda for the hearing, which will be available at least ten days before February 27, 2020, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 10, 2020. Written comments not physically submitted at the hearing must be submitted on or after January 10, 2020, and **received no later than February 24, 2020**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. CARB requests that, when possible, written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail: Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal.Rptr. 249 (1975). This action is proposed to implement, interpret and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 40000, 43000, 43016, 43018, 43026, 43101, 43830.8 and 43865, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal.Rptr. 249 (1975).

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected: Proposed amendments to California Code of Regulations, title 13, division 3, chapter 5, article 3, subarticle 2, section 2293.2 and Appendix 1.

Background and Effect of the Proposed Regulatory Action:

California Air Resources (CARB or Board) staff is proposing to amend the Regulation on the Commercialization of Alternative Diesel Fuels (Alternative Diesel Fuel regulation) to improve the rigor and clarity of its testing and certification program.¹ The Alternative Diesel Fuel (ADF) regulation is a key element of California's Fuels Program;² it preserves or improves public health and the environmental and emissions benefits associated with the use of innovative ADFs in California. This report presents staff's proposal to amend the ADF regulation to reinforce the emissions certification testing

¹ Codified at Title 13, California Code of Regulations, sections 2293-2293.9 and Appendix 1 of Subarticle 2.

² California's Fuels Program includes several fuels regulations and programs that establish the overarching framework of California's transportation fuel policies. Background information about the program is available at: <https://ww3.arb.ca.gov/fuels/background.htm>.

requirements and require biodiesel additives and ADF formulations uniformly to be certified according to new certification procedures. The proposed amendments will further ensure that additives or ADF formulations are certified to mitigate potential oxides of nitrogen (NOx) emissions increases from the use of biodiesel consistent with rigorous and appropriate protocols.

CARB may also consider other changes to the sections affected, as listed on page two of this notice, during the course of this rulemaking process.

Background on the ADF Regulation

The ADF regulation governs the introduction and use of innovative alternative diesel fuels in California, while preserving or enhancing public health, the environment and the emissions benefits of the existing motor vehicle diesel fuel regulations. The regulation consists of two major parts: 1) a three stage process for ADFs to be introduced into the California market including, if necessary, a determination of mitigation measures needed to ensure no degradation in air quality, and 2) in-use requirements for biodiesel as the first ADF.

The first part of the regulation establishes the administrative and regulatory framework for the commercialization of ADFs. The formal framework is necessary for two primary reasons. First, programs such as the California's Low Carbon Fuel Standard (LCFS) and the federal Renewable Fuels Standard incentivize the rapid development of ADFs. Many of these fuels provide criteria pollutant and toxic air contaminant emission reductions in addition to their greenhouse gas (GHG) benefit. Second, some ADFs may have adverse effects under certain and limited circumstances.

The biodiesel portion of the ADF regulation includes provisions designed to control potential increases in NOx emissions that could otherwise be caused by the use of biodiesel under certain and limited circumstances. The biodiesel provisions contain a process for certification of additives or ADF formulations that have demonstrated, through emissions testing, to mitigate potential NOx increases from the use of biodiesel. Additives approved for NOx emission control purposes used to meet the in-use requirements must result in emissions equivalence with CARB diesel.

Regulatory Development of the ADF Regulation

The Board approved the ADF regulation for adoption on September 25, 2015, and the regulation entered into full effect on January 1, 2016. The regulation was subsequently amended in 2018.

Beginning in 2016, regulated parties started reporting produced, imported, and blended amounts of all biodiesel blendstocks and the biodiesel blends produced, pursuant to the reporting and recording requirements of the biodiesel in-use provisions of the regulation. The biodiesel in-use requirements, which mitigate potential NOx increases, went into effect on January 1, 2018. Effective January 1, 2018, all biodiesel blends above the

NOx control level must be NOx mitigated by using additives or fuel formulations approved by CARB.

In 2018, staff proposed amendments to the ADF biodiesel in-use NOx mitigation sunset provisions and certification requirements of the regulation to ensure long term NOx mitigation. The amendments were adopted by the Board on September 27, 2018 and took effect in January 2019.

The Initial Statement of Reasons (ISOR or Staff Report) for the proposed amendments builds on the comprehensive and extensive work that was done in support of the original 2015 rulemaking³ and the amendments to the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations (2018 Amendments).⁴ The full regulatory record and background for these ADF regulation rulemakings is available at the Alternative Diesel Fuels Rulemaking History webpage.⁵ Additional program information is available at the ADF webpage.⁶

Proposed Amendments to the ADF Regulation

Staff is proposing amendments to reinforce the process for certification of additives and ADF formulations. Staff anticipates that parties will continue to wish to undergo certification as demand for ADFs grow. As this market develops, it is appropriate to ensure that all certified products undergo consistent and rigorous testing. At present, however, products have been certified under different versions of the regulation, and the testing protocols have changed over time. Accordingly, these amendments require all certified products going forward to use the same testing procedures, and ensure these procedures are rigorous, and consistent with the public health protection purposes of the ADF regulation.

The proposed amendments to the certification procedures would require, in addition to various additional clarifying terms, 1) emissions testing at two independent labs, 2) additional emissions testing with a commercially available Designated Equivalent Limits Diesel, 3) presence of a qualified observer during test fuel preparation and emissions

³ See "Staff Report: Initial Statement of Reasons: Proposed Regulation on the Commercialization of Alternative Diesel Fuels." January 2 (2015); and "Final Statement of Reasons for Rulemaking, Including Summary of Public Comments and Agency Responses." September (2015). Available at: <https://ww3.arb.ca.gov/regact/2015/adf2015/adf2015.htm>.

⁴ See "Staff Report: Initial Statement of Reasons: Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels." March 6 (2018); and "Final Statement of Reasons: Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels." November (2018). Available at: <https://ww2.arb.ca.gov/rulemaking/2018/low-carbon-fuel-standard-and-alternative-diesel-fuels-regulation-2018>.

⁵ Alternative Diesel Fuels Rulemaking History webpage available at: <https://ww2.arb.ca.gov/our-work/programs/alternative-diesel-fuels/alternative-diesel-fuels-rulemaking-history>.

⁶ Alternative Diesel Fuels webpage available at: <https://ww2.arb.ca.gov/our-work/programs/alternative-diesel-fuels>.

testing, 4) more stringent chain of custody demonstration provisions. The amendments would require that any certified additive or alternative diesel fuel formulation would need to pass a statistical test for emissions equivalence with diesel for both NOx and particulate matter (PM) at both emissions testing labs and on both diesel test fuels.

Staff is also proposing amendments that would require all biodiesel additives and ADF formulations to be certified according to new certification procedures. Existing certified products could continue to be used before January 1, 2021 under legacy certifications, but use after that date will be allowed only for products certified under the procedures of these amendments. Staff is also proposing to include renewable diesel blends with biodiesel and conventional diesel consisting of at least 75 percent renewable diesel and at most 20 percent biodiesel as an approved emissions equivalent formulation, as ratios of at least 2.75 to 1 of renewable diesel to biodiesel are sufficient to fully mitigate NOx emissions from biodiesel.⁷ Therefore, an R75 B20 fuel would provide NOx emissions reductions compared to CARB Diesel and would be NOx beneficial as a whole.

Objectives and Benefits of the Proposed Regulatory Action:

As discussed above, staff is proposing amendments to reinforce the process for certification of additives and ADF formulations. The objective of the proposed amendments is to ensure that the process for certification of additives or alternative diesel fuel formulations is consistent for all products in the market and provides assurance that those additives or formulations that pass emissions testing are effective in mitigating the potential NOx emissions from biodiesel use. Given that the proposed amendments will continue to ensure the NOx emissions reductions required by the ADF regulation, these amendments will also protect public health and safety, worker safety, and the State's environment. A detailed description of the proposed amendments is provided in Chapter III of the "Staff Report: Initial Statement of Reasons - Public Hearing to Consider the Proposed Amendments to the Regulation on the Commercialization of Alternative Diesel Fuels," referred to as the ISOR. The Proposed Regulation Order is Appendix A of the ISOR.

Comparable Federal Regulations:

There are no current federal regulations comparable to the proposed regulation.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

⁷ See "Proposed Regulation on the Commercialization of Alternative Diesel Fuels – Staff Report: Initial Statement of Reasons." January 2 (2015). Available at: <https://www.arb.ca.gov/regact/2015/adf2015/adf15isor.pdf>

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

The determinations of the Board's Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandates to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

A detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter VIII of the ISOR.

NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A

detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter VIII of the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed regulatory action is to ensure that the process for certification of additives and alternative diesel fuel formulations provides assurance that those additives or formulations that pass emissions testing are effective at mitigating the potential NOx emissions from the use of the biodiesel.

A summary of these benefits is provided, please refer to “Objectives and Benefits,” under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page 5.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In total, up to 59 businesses with California operations maybe impacted by the proposed amendments; 8 biodiesel producers, 15 importers, 32 blenders, 3 additive manufacturers and 1 auto emissions testing lab. Six entities are both producers/importers and blenders. Thirteen importers (out of the total 15 importers) have their headquarters located out of the state. All biodiesel production are located in-state. Five blenders reported their business addresses as out-of-state. The auto emissions testing lab is located in-state.

Additive manufacturers are the only directly impacted businesses, and all of the additive manufacturers are small businesses. Only those additive manufacturers that wish to certify to supply their products after the effective date for the uniform certification requirement are impacted by the proposed regulation. The proposed amendments require biodiesel additives and ADF formulations uniformly to be certified according to new certification procedures. These three manufacturers would need to certify their additives or formulations according to new certification procedures if they wished to continue using them in California after January 1, 2021. That certification could result in a one-time initial cost of \$525,000 for one manufacturer or \$1.6 million for all three manufacturers combined.

Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

ENVIRONMENTAL ANALYSIS

CARB prepared an environmental analysis (EA) for the 2018 Amendments under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). As we discuss below, in light of this analysis, staff concluded that no additional environmental review is required for these amendments.

The EA, included in Appendix D of that ISOR, entitled Appendix D: Final Environmental Analysis for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation (2018 EA), dated September 17, 2018, determined that the impacts associated with the 2018 Amendments included: beneficial impacts to energy demand and greenhouse gases (GHG); less than significant impacts to air quality (odor), energy demand, GHGs, 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 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 were identified above as having both less than significant impacts and potentially significant impacts. The EA also identified 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 carbon capture and sequestration (CCS) projects, associated with reasonably foreseeable compliance responses to the LCFS regulation and the ADF regulation. While the EA found these localized impacts unlikely, CARB could not dismiss the potential for these impacts, and conservatively identified these impacts as potentially significant and unavoidable.

While the 2018 EA concluded that many impacts associated with the 2018 Amendments could be reduced to a less-than-significant level through conditions of approval applied

to project-specific development, the authority to require and implement that mitigation lies with land use agencies or other agencies approving the development projects, not with CARB. Consequently, the 2018 EA took a conservative approach in its significance conclusions and disclosed, for CEQA compliance purposes, that impacts from the development of new facilities or modification of existing facilities associated with reasonably foreseeable compliance responses to the 2018 Amendments could be potentially significant and unavoidable under several resource areas. These significance determinations are discussed in greater detail in the 2018 EA.⁸

In regard to these proposed amendments to the ADF regulation, staff has determined that no additional environmental review is required because there are no changes that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects than previously identified in the 2018 EA. The basis for reaching this conclusion is provided in Chapter VI of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks' Office at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la

⁸ See "Final Environmental Analysis Prepared for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation." September 27 (2018). Available at: https://www3.arb.ca.gov/regact/2018/lcfs18/finalea.pdf?_ga=2.153489400.1380169015.1569650930-60175395.1569650915.

audiencia del Consejo. TTY/TDD/Personas que necesitan este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative, James Guthrie, Staff Air Pollution Specialist, Emerging Technology Section, at (916) 327-1508 or Susie Chung, Air Pollution Specialist, Emerging Technology Section, at (916) 327-0647.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled Staff Report: Initial Statement of Reasons – Public Hearing to Consider the Proposed Amendments to the Regulation on the Commercialization of Alternative Diesel Fuels.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on CARB's website listed below or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on January 7, 2020.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

FINAL STATEMENT OF REASONS AVAILABILITY

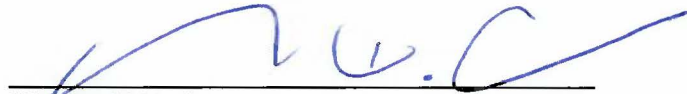
Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice or may be accessed on CARB's website listed below.

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at

<https://ww2.arb.ca.gov/rulemaking/2020/adf2020>

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: December 24, 2019

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.