



Main Office
605 Clark Ave.
PO Box 104898
Jefferson City, MO 65110
(800) 841-5849

DC Office
1331 Pennsylvania Ave., NW
Suite 505
Washington, DC 20004
(888) 246-3437

CA Office
1415 L Street
Suite 480
Sacramento, CA 95814
(916) 760-8870

October 28, 2020

Clerk of the Board
California Air Resources Board
P.O. Box 2815
1001 I Street
Sacramento, CA 95814

Re: NBB Comments on Proposed 15-Day Changes to the Alternative Diesel Fuels Regulatory Amendments

Dear Chair Nichols and Members of the Board,

Thank you for the opportunity to comment on the proposed changes, posted by staff of the California Air Resources Board (CARB) for supplemental 15-day public review on October 14, 2020. These proposed changes would modify the amendments to the Alternative Diesel Fuels (ADF) regulation you approved for adoption at the April 2020 hearing. As the national association for 90 percent of the biodiesel, renewable diesel, and sustainable aviation fuel producers in the U.S., the National Biodiesel Board (NBB) offers the following comments to ensure the proposed 15-day changes are consistent with the Board's direction provided at that hearing. We are aware of and support the comments submitted by the California Advanced Biofuels Alliance, which reinforce our comments in this letter. We are encouraged by a number of the proposed changes but remain concerned about other changes that are inconsistent with the Board's delegation of authority, direction to the Executive Officer, and the Executive Officer's commitment to implement that direction and delegation, as discussed below.

As a preliminary matter, we appreciate CARB staff affirming with these proposed changes the basic tenets that are foundational to the ADF regulation. Among these tenets are that the ADF regulation aims to preserve the emission benefits of existing fuel regulations, there are no oxides of nitrogen (NOx) increases from the use of biodiesel in new technology diesel engines (NTDEs), and that NOx reductions from the use of renewable diesel offset NOx increases from biodiesel blends in those limited situations where increases may occur.

Support for the reduction in the RD to BD ratio from 3.75 to 1 to 2.75 to 1 in the "Approved ADF Formulations" provision

We appreciate and support the proposed change that would reduce the renewable diesel to biodiesel ratio (RD to BD ratio) contained in the approved ADF formulation provision¹. As we noted in our testimony and written comments at the April 23rd hearing, the language approved for adoption erroneously reflected a RD to BD ratio of 3.75 to 1, which in turn was translated to a requirement that a minimum of 75% RD be blended with a maximum of 20% biodiesel (R75/B20) in order for a RD/BD blend to be pre-approved as a NOx-neutral ADF formulation. But as we pointed out, the approved language was both mathematically incorrect and not supported by CARB's own testing data as the level needed for NOx-neutrality. Accordingly, the Board directed the Executive Officer to work with stakeholders to revise the ratio to reflect a RD to BD ratio of 2.75 to 1, which would translate to R55/B20 as contained in the proposed 15-day changes.

Unfortunately, the proposed 15-day changes did not simply replace the R75/B20 language with R55/B20. Instead, the proposed changes added R55/B20 as a pre-approved ADF formulation to R75/B20 without clarifying that both options are equally available to fuel providers. As we noted above, CARB's own testing shows that R75/B20 (a 3.75 to 1 ratio) is only one of several blend levels shown to achieve NOx neutrality. Other blend ratios, including 2.75 to 1 RD/BD ratio, were found by CARB to be NOx neutral. Moreover, since both formulations are equally available as a compliance option in the proposed changes, it makes little sense to keep the R75/B20 language since any amount of RD at or above 55% by volume (including but not limited to R75/B20) would meet the provision. Having both blends in the language as equal compliance options provides a potential source of confusion for fuel providers and marketers.

Opposition to the new, 2% NOx reduction requirement

For any formulation containing lower levels of renewable diesel (up to but excluding R55/B20), the proposed 15-day changes provide an opportunity for fuel providers to certify such formulations. We support and appreciate this flexibility to certify blends as NOx-neutral² which have less than 55% renewable diesel, since that has previously been shown as possible by the Renewable Energy Group. The additional flexibility is also consistent with the Board's direction to maintain the ADF regulation as a NOx-neutral measure.

¹ Section (a)(1)(B), Appendix 1, Subarticle 2, 13 CCR 2293 et seq.

² Note that the regulatory language approved by the Board at its April 2020 hearing acknowledges the regulation's NOx-neutrality ("The Executive Officer may...revoke an Executive Order...[for a certified] ADF formulation [that] does not meet the emissions equivalence criteria under (a)(2)(G) of this appendix... ." [Emphasis added.]

Contrary to that clear direction, however, the proposed 15-day changes would now require a new 2% NOx reduction as part of the revised certification procedure³. This effectively would allow the ADF program to take a "second bite at the [NOx] apple," mandating additional NOx reductions in contradiction to the Board's direction with regard to NOx neutrality. As we noted in our April 22nd comment letter, the ADF regulation was never intended to be a NOx reduction control measure; those additional NOx reduction requirements are expected to come from upcoming measures like the Low Emissions Diesel program currently under development.

Beyond the substantive issues with the new 2% NOx reduction, this new requirement also presents an important procedural issue. This new proposed requirement is a substantial change that is not sufficiently related to the original proposal (i.e. not reasonably foreseeable based on the notice of proposed action). As noted, a 2% additional NOx reduction is inconsistent with the NOx neutrality basis for the ADF regulation, and it was never discussed in the notice of proposed action for this rulemaking. Introducing this requirement as a 15-day change therefore conflicts with the California Administrative Procedure Act and the regulations adopted by the Office of Administrative Law (OAL) to implement that statute.⁴

Continued opposition to the three-engine/three-lab screening and one-engine/one-lab certification testing procedure, as a whole, because it is inconsistent with the Executive Officer's commitment pursuant to the Board's direction

For brevity, we incorporate by reference the concerns expressed in our April 22nd and June 15th letters⁵ with regard to the original amendments' 2-engine/2-lab certification and, for similar reasons, would apply those comments to the proposed 15-day changes that would institute an even more complex and onerous certification procedure. Both options are excessive in costs, complexity, and time required to implement; are "brute force" remedies applied to the entire biomass-based diesel industry (including producers with non-additized RD/BD blends proven without issue to achieve NOx neutrality) instead of being tailored to address a specific, narrow issue (i.e. the NOx neutralizing ability of additives); and are contradictory to the Board's clear direction to simplify the procedure, not make it more complicated and confusing.

³ See sec. (a)(2)(F)2.a.iii, (a)(2)(G)1., and (a)(2)(G)5, Appendix 1 of Subarticle 2, 13 CCR 2293 et seq.

⁴ See Government Code, Chapter 3.5, section 11340 et seq. and Title 1, California Code of Regulations, sections 1-280.

⁵ See <https://www.arb.ca.gov/lists/com-attach/17-adf2020-UD5TNwRnVloHYghn.pdf> (submitted for the April 23, 2020 hearing) and https://ww3.arb.ca.gov/fuels/diesel/altdiesel/meetings/nbb_caba_6-15-20.pdf?_ga=2.182789475.490038537.1603730010-1675909722.1574251947 (submitted for the June 4, 2020 workshop/webinar to discuss potential changes to the amendments), respectively.

Support for a longer phaseout of certified formulations and additives to a minimum of six months to ensure an orderly transition to the recently adopted amendments.

We also incorporate by reference our comments in the April 22nd and June 15th letters regarding a requested delay in the amendments' effective date. We note the proposed 15-day changes would apply the modified amendments on April 1, 2021, a delay of three months from the start of 2021 and just over four months from now. While we appreciate the proposed delay, it is patently inadequate for the industry to transition in an orderly way to the new requirements. Allowing the amendments to enter into effect on April 1, 2021 will almost certainly result in significant market disruptions for biomass-based diesel, which for the past several years have provided nearly half of all LCFS carbon reductions and credits and over 41% of the program's GHG reductions since the start of that program.

As noted previously, it takes many months for a producer to secure the testing lab, engines, test fuels, and other items needed to conduct the emissions testing; conduct the testing itself; review the results; submit and receive approval of an application for certification; and make operational modifications to effectuate necessary changes to product inventory, supply chains, product transfer documentation, and related steps. It is unreasonable for CARB to expect the industry to develop, secure, and execute with two or three testing labs a complex, expensive, and comprehensive test protocol by April 1, 2021 since the final details of the test procedure remains subject to change and will not be known until sometime in December 2020, at the earliest. The rulemaking is still in the middle of a supplemental comment period (with the possibility of one or more additional supplemental comment periods that can further change the test procedure or other requirements); it will be very challenging for CARB to even complete the rulemaking within the APA requirements by the end of December 2020, especially given the 30 working days OAL has to review rulemaking packages.

We previously requested a six month delay in the effective date of the ADF amendments. But that was when the amendments were approved for adoption in April 2020 and the rulemaking was expected to be completed within several months afterward. If the rulemaking had been completed as expected within a few months of that hearing, the industry would have had approximately eight to twelve months for an orderly transition to the new requirements. Instead, it is nearly November 2020, we do not yet have a finalized version of the regulation, and the industry is expected to complete in three months what was going to take eight to twelve months or more to accomplish at high cost and difficulty.

Accordingly, the three month delay is simply inadequate for avoiding significant market disruptions in the supply of biomass-based diesel to serve California's needs.

Recommendations

Consistent with the above comments, we recommend the following changes to the proposed 15-day modifications to the amendments approved for adoption by the Board at its April 2020 hearing:

- 1) Simplify the Approved ADF Formulations provision by eliminating the superfluous R75/B20 language in Appendix 1, section (a)(1)(B)1. and including only the new language for R55/B20 language in section (a)(1)(B)2.
- 2) Eliminate the new 2% NOx reduction requirement in Appendix 1, Subarticle 2, section (a)(2)(F) and (G) (and any other provision where it is expressed or implied).
- 3) Revise the proposed changes to the test protocol to replace the screening procedure with a simplified, single-lab/engine/fuel standardized certification procedure that can be applied by anyone seeking certification for their blend/formulation, particularly for blends and formulations for which CARB had not previously identified any issues.
- 4) Work with NBB and other stakeholders to develop and implement a scientifically valid, round-robin testing program to replace the recently-approved 2-lab procedure and the proposed new 3-lab screening process.
- 5) Extend the phase out date for currently certified NOx additives and formulations **to no earlier than July 31, 2021** to provide a more orderly transition for producers to secure the necessary testing and adjust their operations.

Conclusions

We appreciate the good working relationship we have developed with CARB over many years and look forward to working cooperatively and productively to address the concerns we raised above. Adoption of these recommendations will help ensure that biomass-diesel fuels will continue to play the strong role they have played historically and must continue to play while California works toward a much lower carbon future.

Sincerely,

Matt Herman

Matt Herman
Director of Environmental Science

Scott R Fenwick

Scott Fenwick
Technical Director