

## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS OUTLET REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting amendments to the Clean Fuels Outlet (CFO) Regulation.

DATE: June 27, 2013

TIME: 9:00 a.m.

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

This item may be considered at a two day meeting of the Board, which will commence at 9:00 a.m., June 27, 2013, and may continue at 8:30 a.m., on June 28, 2013. This item may not be considered until June 28, 2013. Please consult the agenda for the hearing, which will be available at least 10 days before June 27, 2013, to determine the day on which this item will be considered.

#### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed amendments to California Code of Regulations, title 13, sections 2300, 2302, 2303, 2303.5, 2304, 2306, 2307, 2308, 2309, 2311, 2311.5, 2313, 2314, 2315, 2316, and 2318, and the deletion of sections 2310 and 2312.

#### **Documents Incorporated by Reference:**

The following documents are incorporated by reference:

Title 13, California Code of Regulations, section 1961 "California Exhaust Emission Standards and Test Procedures for 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," as last amended December 6, 2012.

Title 13, California Code of Regulations, section 1961.2 "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," as last amended December 6, 2012.

Title 13, California Code of Regulations, section 2302 "Society of Automotive Engineers standard SAE TIR J2601, "Fueling Protocols for Light Duty Gaseous Hydrogen Surface Vehicles" dated March 16, 2010

**Background:**

The existing CFO regulation requires that certain owner/lessors of retail gasoline stations equip an appropriate number of their stations with clean alternative fuels. The regulation does not require these retail CFOs until the number of alternative fuel vehicles projected to be certified on that fuel reaches 20,000 in a given year.

Amendments to the CFO regulation were noticed on December 8, 2011; those amendments were approved by the board at its January 27, 2012 hearing following a 45-day comment period. Those CFO amendments were part of the Advanced Clean Cars regulatory proposal presented to the Board, which also included amendments to the Low Emission Vehicle (LEV) and Zero Emission Vehicle (ZEV) program regulations. The Board also approved staff's proposed 15-day change language to incorporate a Memorandum of Agreement (MOA) that, if successfully executed, would have sunsetted the CFO regulation once 100 stations are operating in the State.

Subsequently, ARB did not submit the proposed amended CFO regulation to the Office of Administrative Law (OAL) by the December 7, 2012 statutory deadline. Legislative proposals underway in California's legislature, which would extend incentive funding programs that could provide for a non-regulatory avenue for alternative fuel stations, including hydrogen specifically, would eliminate the need for a CFO regulatory mandate if the legislation passes. However, in order to preserve a regulatory backstop should the legislation fail to pass, ARB is submitting this amended CFO regulatory proposal.

Except for lacking the MOA language described above, this regulatory proposal is largely the same as the amendments approved by the Board in January 2012.

ARB is currently engaging with a stakeholder coalition including environmental groups, local government agencies, technology developers, and relevant industry groups who are collectively supporting a legislative proposal currently being considered by California's legislature to extend incentive funding programs that provide for alternative fuel stations including hydrogen. If the legislation passes and is signed by the Governor, funding for hydrogen infrastructure would be guaranteed and implementation of the provisions of the proposed regulation would not be necessary. In such a case, this proposal may be rescinded.

**Objectives and Benefits:**

Offering hydrogen fuel in commercial settings is critical to the successful launch of hydrogen zero emission vehicles. The proposed amended CFO regulation seeks to ensure that there will be an adequate hydrogen fueling infrastructure to support the introduction and growth of hydrogen fueled vehicles.

The proposed amendments will facilitate development of the needed hydrogen fueling infrastructure and so will assist in achieving California's emission reduction goals. A more detailed discussion of the objectives and benefits of the proposed amendments may be found in the Initial Statement of Reasons.

**Proposed Regulatory Action:** Amendments to the CFO regulation are being proposed to address the gap in hydrogen fueling infrastructure that may occur when government-funded and other hydrogen stations are not adequate to meet fuel demands of growing numbers of fuel cell vehicles (FCV) that automakers are producing to comply with the Zero Emission Vehicle mandate. The proposed amendments to CFO include:

- Changing the types of alternative fuel vehicles (AFV) captured under the regulation from those certified as low emission AFVs to only those certified as zero emission vehicles. As written, the regulation would initially pertain to hydrogen and FCVs Plug-in electric vehicles are addressed in the proposed changes by adding a regulatory review followed by recommendations for further actions.
- Changing the regulated party from owner/lessors of retail gasoline outlets to major refiner/importers of gasoline, and modifying how new CFOs are allocated among the regulated parties.
- Increasing from two to three years the FCV reporting requirements and compliance timeframe to provide regulated parties with more time to plan for and build hydrogen stations.
- Adding language that would allow the Executive Officer to adjust the required number of new CFOs downward if warranted by more recent vehicle projections.
- Adding a 10,000 vehicle activation trigger that would apply to an air basin before the statewide trigger of 20,000 is reached to complement auto manufacturers' early commercialization plans to marketing FCVs in regional clusters.
- Streamlining the compliance requirements so that they are less prescriptive and more like performance standards, giving the regulated party the flexibility to determine how best to meet the minimum requirements.
- Sunsetting the regulation when the number of CFOs equals 5 percent of the total number of retail gasoline outlets (the existing regulation sunsets at 10 percent).

The proposed changes would have the effect of requiring the construction of public hydrogen stations in geographic areas where automakers are marketing their FCVs.

### **CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

The proposed amendments are neither inconsistent nor incompatible with existing state regulations.

## **COMPARABLE FEDERAL REGULATIONS**

There are no comparable federal regulations.

## **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB 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: Proposed Amendments to the Clean Fuels Outlet Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Wednesday, June 13, 2013.

### **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 ARB's website listed below.

### **Agency Contact Persons**

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Leslie Goodbody at (916) 323-2961 and Mr. Gerhard Achtelik at (916) 323-8973.

Further, the Agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, 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.

### **Internet Access**

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2013/cfo2013/cfo2013.htm>

ARB maintains a website pertaining to the CFO regulation where people can obtain information on activities and workshops, as well as copies of notices, presentations, and other written materials and electronic files.

<http://www.arb.ca.gov/fuels/altfuels/cf-outlets/cf-outlets.htm>

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

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

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

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. As detailed in the ISOR and Form 399, ARB staff believes businesses required to comply with this regulation would incur costs associated with installing and operating hydrogen fueling stations but would likely recoup any costs through the sale of fuel to drivers of hydrogen fuel cell vehicles. Additionally, a private person who owns or leases a FCV and purchases hydrogen fuel may be impacted positively or negatively depending on hydrogen price. If hydrogen is priced higher on a miles-per-gallon gasoline-equivalent basis, private persons would pay more for fuel compared to gasoline. Alternatively, if hydrogen is priced lower, private persons would pay less compared to gasoline.

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. Staff expects the proposed amendments to increase jobs associated with station construction, hydrogen production, hydrogen delivery, station operation and maintenance. However, job losses may include those associated with the production, delivery and retail sale of gasoline. ARB analysis indicates job increases will more than offset job losses.

## **STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SEC. 11346.3(b)**

### *Effect on Jobs/Businesses:*

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California and the expansion of businesses currently doing business within the State of California; however, the Executive Officer has determined that the proposed regulatory action would not likely affect the creation of new businesses or elimination of existing businesses within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

### Benefits of the Proposed Regulation:

The proposed amendments will facilitate development of the needed hydrogen fueling infrastructure and so will assist in achieving California's emission reduction goals. A more detailed discussion of the benefits of the proposed amendments may be found in the Initial Statement of Reasons

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the regulated parties, major refiner/importers of gasoline, do not fall under the category of "small business." However, small businesses engaged in station construction, operation and maintenance, and fuel delivery would benefit from this regulation as discussed above.

### HOUSING COSTS

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

### BUSINESS REPORT

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

### ALTERNATIVES

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 (which includes during preliminary workshop activities), would be more effective in carrying out the purpose for which the action is proposed, or 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

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB prepared an environmental analysis for the Advanced Clean Car Program (ACC EA). The ACC EA included comprehensive analysis of the CFO regulation; the current proposed regulatory action is essentially the same regulation. The ACC EA was certified when the ACC Program was adopted in March 2012. Appendix B of the ISOR provides staff's determination that no supplemental analysis is required. Appendix B also provides some additional information about air quality and hazards.

## **SUBMITTAL OF COMMENTS**

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **Monday, February 18, 2013**. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after **Monday, February 18, 2013**, and received no later than **12:00 noon on Wednesday, June 26, 2013**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

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

**You can sign up online in advance to speak at the Board meeting** when you submit an electronic board item comment. For more information go to:  
<http://www.arb.ca.gov/board/online-signup.htm>.

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.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board 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.

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.

## **STATUTORY AUTHORITY AND REFERENCES**

**This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 39667, 43013, 43018 and 43101; 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, 39500, 39515, 39516, 39667, 43000, 43013, 43018 and 43101; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).**

## **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 adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt 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; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## **SPECIAL ACCOMMODATION REQUEST**

Special accommodation or language needs can 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;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing.

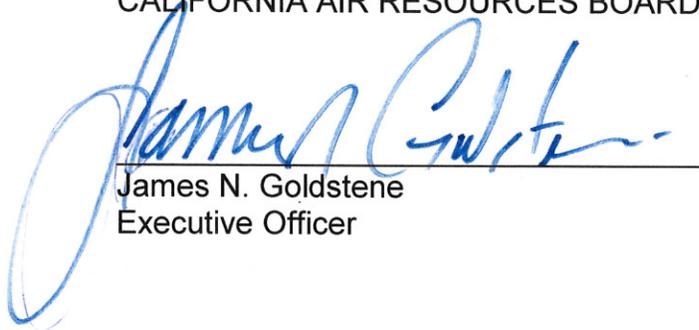
TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alternativo u otro idioma.
- 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 audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD



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James N. Goldstene  
Executive Officer

Date: February 5, 2013

*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](http://www.arb.ca.gov).*