

State of California  
AIR RESOURCES BOARD

**Addendum to the Final Statement of Reasons for Rulemaking**

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE  
COMMERCIALIZATION OF ALTERNATIVE DIESEL FUELS**

Public Hearing Date: February 19, 2015 and September 24, 25, 2015

Agenda Items: 15-2-3 and 15-7-1

Addendum Prepared: November 16, 2015

**I. BACKGROUND**

On October 2, 2015, the Air Resources Board (ARB or Board) submitted the Final Statement of Reasons (FSOR) for the “2015 Amendments to the Commercialization of Alternative Diesel Fuels” to the Office of Administrative Law (OAL) for its review and approval. In the course of its review, OAL identified several minor and nonsubstantive clarification issues. Each of these issues is addressed in turn below.

**II. MODIFICATIONS TO THE ORIGINAL SUMMARY AND RESPONSE TO  
COMMENTS AND FINAL STATEMENT OF REASONS**

ADF Supplemental ADF 1 p. 8 para 4

**Summary:**

The comment states that fuels are important to the performance, durability and emission levels of new and existing engines, that the relationship between fuels and engines is interdependent, and that any alternative fuel regulations recognize this importance.

**Agency Response:**

ARB agrees that fuels are important the performance, durability and emission levels of new and existing engines. The ADF Regulation requires the ADF applicant to obtain approval of at least 75 percent of compression ignition engine original equipment manufacturers for which the ADF is expected or intended to be used to complete Stage 2. Please see response to comments **ADF 1-2** second paragraph and **ADF 1-3 response 2**.

ADF Supplemental ADF 9 p. 71, para. 3

**Summary:**

The comment supports the ADF Regulation and recognizes that the ADF Regulation will examine the potential environmental impacts of new fuels being introduced to comply with the Low Carbon Fuel Standard.

**Agency Response:**

ARB staff appreciates the comment in support of adopting the ADF regulation and for supporting the inclusion of the multimedia evaluation required in Stage 2. The proposed ADF regulation will effectively evaluate and mitigate possible environmental impacts from new fuels.

ADF 9-7

**Comment:**

The comment expresses concerns about potential misfueling of vehicles due to improper pump labeling as a result of the ADF proposal. In addition to the labeling requirements, the comment also suggests that the pumps to have a varying flow rate (high and low) as another way of preventing misfueling.

**Agency Response:**

ARB staff agrees with the comment on the issue of pump labeling in Stage 1 and 2 and has responded to this by expanding and clarifying the Stage 1 pump labeling requirements as part of the 15-day changes. Please see the paragraph regarding misfueling in response **ADF 1-3** for additional information on the updated labeling requirements.

Staff understands the potential for benefit from differentiating flow-rate pumps for a fuel such as blended biodiesel that exhibits different emissions levels depends on the LDDV/MDDV or heavier vehicles use. However, the currently existing labeling requirements provide sufficient misfueling prevention. The cost and complexity of regulating the pumps would be high. In addition, with the biodiesel in-use requirements sunset provision in the regulation, these pumps that are designed and marketed for biodiesel use may not be necessary for other fuels dispensing practice post sunset provision and may introduce additional potential fueling issues.

**Comment :**

The comment states that it is important that the ADF regulations have a clearly defined sunset provision and that this end point is reviewed annually so that as soon as this milestone is reached, limits on biodiesel blending are removed.

**Agency Response:**

Section 2293.6(a)(4) of the ADF regulation provides the condition to be met for the sunset provision and the process of notification to affected parties. However, it does not specify how often the program has to be reviewed to determine whether it met the 90 percent heavy-duty NTDE VMT. The biodiesel in-use requirements will be effective January 1, 2018. The ADF regulation section 2293.6(a)(6) includes a program review of biodiesel in-use requirements provision on or before December 31, 2019. As a part of the program review, staff will consider the effects of offsetting factors, in addition to any other factors that may affect NOx emissions stemming from biodiesel use in motor vehicle. Therefore, the first review will include the NTDE VMT as part of the factor that may affect NOx emissions. The first program review will be conducted within 2 years from the in-user requirements effective date.

ADF Supplemental ADF 13, p 106, para. 2

**Summary:**

The comment states that they agree with the ADF proposal's pollutant control levels for higher biodiesel blends but they have concerns about the strength of the data for low biodiesel blends (B5).

**Agency Response:**

ARB appreciates the support for the set pollutant control levels and the approach utilizing NTDEs and renewable diesel. The statistical methods of staff's analysis are described in Chapter 6 of the ADF staff report. Additionally, an independent statistical analysis of the same data was conducted, and is included as Appendix G of the ADF staff report. These analyses capture the emissions effects of each particular blend level. Staff's analysis relied on basic statistical principles, used few assumptions, and is protective in controlling emissions down to low biodiesel levels. For more information on staff's analysis to determine control levels, please see response **ADF 8-1**, in "Responses to Comments on the Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations."

ADF Supplemental ADF 13, p 106, para. 3

**Summary:**

The comment supports the inclusion of the sunset provision in the ADF proposal and agrees that emissions control technology in newer heavy duty engines will eliminate the need for continuing biodiesel blend NOx mitigation controls.

**Agency Response:**

ARB staff appreciates the comment in support of adopting the ADF regulation, using VMT percentage to determine the program sunset.

ADF Supplemental ADF 13 p. 116, para. 4

**Summary:**

The comment supports ARB staff's efforts to keep the reporting and recordkeeping requirements for biodiesel simple and states that the reporting and recordkeeping burden should be minimized.

**Agency Response:**

ARB staff agrees that the reporting and recordkeeping burden should be kept to a minimum as much as possible. Reporting requirements must also be balanced with the staff's ability to obtain enough information to provide accurate recording of fuel blending and use under the ADF proposal to ensure successful implementation of the program's goals. Staff believes the current ADF proposal appropriately balances both of these needs and appreciates the comment's support of our efforts.

ADF 13-10

**Summary:**

The commenter is correct in stating that an environment review document must consider a reasonable range of alternatives to the project.

**Agency Response:**

The complete response to this comment is in the FSOR.

ADF 13-11

**Summary:**

The commenter states that the Draft EA only analyzed a no project alternative.

**Agency Response:**

As stated on page 129 of the Draft EA, ARB "by virtue of its certified program, is exempt from Chapters 3 and 4 of CEQA and corresponding sections of the CEQA Guidelines, the Guidelines nevertheless provide useful information for preparation of a thorough and

meaningful alternatives analysis.” Nevertheless, Section 7.C, “Description of Alternatives” presents three alternatives to the No Project Alternative as well as three alternatives that were considered but reject from detailed consideration (Section 7.C.4 of the Draft EA). These alternative discussions comply with the rule of reason, which considers no project alternatives and the Gasoline-Only Compliance Curve Alternative, which would lessen the extent to which potentially significant environmental impacts could occur.”

ADF 13-45

**Comment:**

The impact from releases of associated additives and production chemicals not yet characterized could be of concern unless state guidelines restrict additives to those already in use and/or already characterized.

**Agency Response:**

This comment excerpts text verbatim from the final Tier III MME Executive Summary. Appendix 1 to WSPA’s comment letter acknowledges that these statements were excerpted from the Biodiesel MME Reports. Appendix 1 was attached and specifically referenced in comment **ADF 13-5**. Please see our direct response to **ADF 13-5** and to **ADF 13-44**. Regarding potential impacts from releases of associated additives and production chemicals, California’s air quality program has long supported new, innovative advances in order to make progress in achieving our goals. That cannot be accomplished by placing a prohibition on all new products, whether they are additives, chemicals, engines, or other technologies. Instead, ARB works with our other partners, such as US EPA, to provide appropriate testing and certification safeguards. The entire ADF regulation is an example of such a safeguard in that it requires successful testing and analysis of any potential fuel, in stages. The potential public use that is permitted is commensurate with the successful testing completed. Specific to motor vehicle fuel additives (chemicals), the US EPA requires that gasoline and diesel additives be registered under 40 Code of Federal Regulations, Part 79. While fuel additive registration applies to gasoline and diesel specifically, additives used in ADFs can be anticipated to be the same. For example, cetane improvers registered for use in diesel fuel are also used in biodiesel blends.

ADF 13-48

**Comment:**

The comment reproduces text from the final Tier III MME Executive Summary.

**Agency Response:**

The comment reproduces text from the final Tier III MME Executive Summary. As stated at the beginning of Appendix 1, these statements are in fact excerpts from the Biodiesel MME Reports. In June 2015, the CEPC reviewed the biodiesel multimedia

evaluation and proposed ADF Regulation, and determined at its June 23, 2015 meeting, that the use of biodiesel in California consistent with the proposed ADF Regulation would not pose a significant adverse impact on public health or the environment compared to CARB diesel fuel. Appendix 1 was attached and specifically referenced in comment **ADF 13-5**. Please see response to **ADF 13-5** and **ADF 13-44**.

ADF 13-49

**Comment:**

The comment reproduces text from the final Tier II MME Executive Summary.

**Agency Response:**

The comment reproduces text from the final Tier III MME Executive Summary. As stated at the beginning of Appendix 1, these statements are in fact excerpts from the Biodiesel MME Reports. In June 2015, the CEPC reviewed the biodiesel multimedia evaluation and proposed ADF Regulation, and determined at its June 23, 2015 meeting, that the use of biodiesel in California consistent with the proposed ADF Regulation would not pose a significant adverse impact on public health or the environment compared to CARB diesel fuel. Appendix 1 was attached and specifically referenced in comment **ADF 13-5**. Please see response to **ADF 13-5** and **ADF 13-44**.

ADF 13-50

**Comment:**

The comment reproduces text from the final Tier II MME Executive Summary.

**Agency Response:**

The comment reproduces text from the final Tier III MME Executive Summary. As stated at the beginning of Appendix 1, these statements are in fact excerpts from the Biodiesel MME Reports. In June 2015, the CEPC reviewed the biodiesel multimedia evaluation and proposed ADF Regulation, and determined at its June 23, 2015 meeting, that the use of biodiesel in California consistent with the proposed ADF Regulation would not pose a significant adverse impact on public health or the environment compared to CARB diesel fuel. Appendix 1 was attached and specifically referenced in comment **ADF 13-5**. Please see response to **ADF 13-5** and **ADF 13-44**.

ADF 13-51

**Comment:**

The comment reproduces text from the final Tier II MME Executive Summary.

**Agency Response:**

The comment reproduces text from the final Tier III MME Executive Summary. As

stated at the beginning of Appendix 1, these statements are in fact excerpts from the Biodiesel MME Reports. In June 2015, the CEPC reviewed the biodiesel multimedia evaluation and proposed ADF Regulation, and determined at its June 23, 2015 meeting, that the use of biodiesel in California consistent with the proposed ADF Regulation would not pose a significant adverse impact on public health or the environment compared to CARB diesel fuel. Appendix 1 was attached and specifically referenced in comment **ADF 13-5**. Please see response to **ADF 13-5** and **ADF 13-44**.

ADF comment letter 17/LCFS comment letter 46

**Comment: ADF 17 (portion marked as LCFS 46-8)**

The commenter paraphrases a number of provisions of the Government Code, adding its own summary and interpretation in places. The letter goes on to summarize “Part IV of these comments” as raising “questions concerning the Executive Officer’s compliance with section” 11347.3 of the Government Code and section 39601.5 of the Health & Safety Code.

**Agency Response:** Those paraphrases, regardless whether correct, are not objections or recommendations regarding the proposal. To the extent the commenter asserts that the Executive Officer did not follow the two cited statutes, we note that Government Code section 11347.3 lists of documents and types of information that must be made part of the rulemaking record. Given the large scope of the rulemaking record prepared and submitted, the comment is too general; without knowing what document or information the commenter believes to be missing, ARB cannot respond other than to direct the commenter to the Notice, the exhaustive Staff Report, the nine Appendices, the 700+ references, and indeed the record as a whole. ARB fully complied with Government Code section 11347.3

ARB also complied with section 39601.5 of the Health & Safety Code, which requires making a range of information publicly available prior to the formal comment period as it usually does. ARB made the Notice of Proposed Rulemaking and the entire rulemaking file available to the public prior to the start of the 45-day public comment period.

ADF 17-11/LCFS 46-75

**Comment:**

The commenter expresses its concern about the completeness of the rulemaking files in the ADF and LCFS rulemakings.

**Agency Response:**

The commenter expresses its concern about the completeness of the rulemaking files in the ADF and LCFS rulemakings. Only ARB can determine what ARB did rely upon in creating a proposal, and conversely what information, data or theories ARB did not rely on for any number of reasons. Such is the very essence of the discretion invested in an expert agency charged by the Legislature to address important, complex problems such

as air pollution. While the commenter and any other member of the public are entitled to participate in the rulemaking process, it is manifestly ARB's province to determine what constitutes the relevant, credible, necessary foundation for any proposal.

The commenter goes on to propound a series of *questions* that "CARB legal staff" should respond to. Absent knowing what answers the commenter believes to be correct, the questions do not constitute "an objection or recommendation regarding the specific adoption . . . proposed" within the meaning of Government Code section 11346.9(a)(3).

Some of the commenter's questions are not legal in nature, but requests that CARB perform detailed clerical and paralegal tasks to assist the commenter's attorneys in pursuing litigation against CARB. For example, the commenter requests that "CARB legal staff" explain various matters and identify:

- [1] "each document or other file made available to the public under section 39601.5 prior to January 2, 2015, in connection with these two rulemakings;"
- [2] provide "the date it was made available;" and
- [3] provide "the method by which it was made available."

While the Administrative Procedure Act (APA) requires much, it does not require an agency to catalogue tens of thousands of documents for a commenter's convenience. ARB staff notes that over a period of several years there were 21 LCFS public workshops, and 26 ADF public workgroup or workshop meetings as part of developing these two related regulations. Along the way, ARB staff posted, as is its practice, a wide range of materials on the program web pages ARB maintains. Such materials have long been public.

ADF 17-15

**Comment:**

The comment states that the SRIA provided conflicting statements regarding the GE alternative.

**Agency Response:**

The SRIA stated the following: the GE alternative "may achieve marginally more emissions benefits if biodiesel were to be widely used as an additive" but that under the current conditions "the GE alternative does not result in any more emission reductions". These statements are not conflicting, ARB's analysis showed that the GE alternative only achieved marginal benefits under certain circumstances (i.e., widely blended into diesel), but under existing conditions no additional emission reductions would occur.

ADF 17-16

**Comment:**

The threshold question is whether the Growth Energy proposal would or would not result in greater emissions reductions than the ARB proposal. Also, the commenter refers to ARBs use of the word “additive” as describing biodiesel and states that biodiesel will be “widely” used.

**Agency Response:**

Many aspects of the Growth Energy proposal result in additional costs without any additional benefits. For example, available data indicates that biodiesel would have no adverse impact on the emissions of heavy-duty NTDEs and light-duty cars and trucks. It is likely that an additive such as DTBP would add a cost with no additional benefit. The ARB, however, cannot say that the Growth Energy proposal might not achieve marginally more emissions benefits in some conditions, especially if biodiesel is “widely” used, i.e., used in significantly greater quantities than staff projections in the illustrative compliance scenario, or if renewable diesel is used significantly less. Even in such unlikely theoretical situations, however, the cost of the Growth Energy proposal makes it unreasonable.

Regarding the term “additive” that was used in regard to biodiesel, that was used in the colloquial sense as biodiesel is “added” to diesel and is functionally equivalent to the term “blend” in this case.

Also see response to **ADF 17-15**. Additionally, ARB staff projections are cited on page E-36 of the ADF Staff Report.

ADF 17-17

**Comment:**

ARB should acknowledge whether the Growth Energy proposal has greater emissions benefits than the ARB proposal and also indicate how the staff has quantified that increment.

**Agency Response:**

See response to ADF 17-16 supplemental and ADF 17-15. Also see ARB’s Technology Assessment in Chapter 6 of the ADF Staff Report for an analysis of the potential emissions impact (or lack of impact) of biodiesel with various vehicles and technologies.

ADF 17-22

**Comment:**

The ADF regulations contain inconsistent and conflicting definitions and lack provisions requiring the determination through testing of the biodiesel content of commercial

blendstocks, allowing for the potential for as much as 5% more biodiesel by volume and a corresponding increase in NOx emissions.

**Agency Response:**

Regarding the definitions, ARB has harmonized these definitions where it was deemed appropriate and made changes to section 2293.2 in the 15-day change for the ADF regulation and to section 95481 (a) in the 15-day changes to the LCFS regulation. However, these regulations serve differing but complementary purposes so the original proposed definitions are maintained where a change was not appropriate.

The comment suggests the definitions could result in biodiesel blenders intentionally or unintentionally blending biodiesel that exceeds 5%. ARB believes the proposed regulation is sufficiently rigorous in this regard. In addition to the harmonized definitions as described above, the proposed ADF Regulation includes provisions to ensure that whenever a biodiesel fuel is blended, the blender report the blending event, to what blend level the biodiesel was blended, and what NO<sub>x</sub> controls were used, if required. Staff made 15-day changes to the reporting and recordkeeping provisions of the proposed ADF Regulation to clarify these reporting requirements.

In addition, under the proposed ADF Regulation, it is the responsibility of blenders to ensure that biodiesel is accurately blended and reported. Accurate blending practices are required by both ARB, for the purposes of this proposal and the California Department of Food and Agriculture for compliance with ASTM quality standards. ARB has the authority (e.g. HSC 41510) to sample and test biodiesel blends and other ADFs to ensure that they are properly mitigated based on their blend level.

See response to **ADF 17-46**.

ADF 17-36 through ADF 17-44

**Comment:**

**Agency Response:**

The responses to these comments are in “Responses to Comments on the Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations.”

Regarding Comment ADF 17-39, this comment sets forth the commenter’s version of the “History of the ADF Regulation,” beginning in 2002, and ending in March 2014, well before the notice of this ADF rulemaking was made public on December 30, 2014. The comment may imply that ARB should have adopted a regulation addressing alternative diesel fuels in some earlier year.

The history is not a comment or recommendation pertaining to this rulemaking process or the procedure by which this rulemaking process was conducted, and needs no response. To the extent that the commenter’s implied point is that ARB should have

adopted a regulation earlier, the appropriate remedy would have been for the commenter to have petitioned for a rulemaking in the unstated earlier year. At this time, ARB cannot, in practice, enact and enforce an alternative diesel regulation beginning in 2002 or any other prior year that commenter believes was the appropriate time to promulgate the ADF.

ADF 17-36

**Comment:**

In developing the proposed Alternative Diesel Fuel (ADF) regulation, CARB staff has performed an environmental analysis and included mitigation requirements intended to eliminate the adverse environmental impacts associated with increased NOx emissions resulting from the use of biodiesel under the ADF.

**Response:**

The comment states that the analysis ARB conducted for the EA included mitigation for NOx increases from biodiesel resulting from implementation of the ADF Regulation. The ADF regulation does not increase NOx emissions. See response to comment **LCFS 46-276**.

ADF 24-2

**Comment:**

The comment states that ARB should include additional language into the definition of “renewable hydrocarbon diesel” to specify that the fuel must comply with ASTM D975-14a (2014)

**Agency Response:**

ARB’s definition for “renewable hydrocarbon diesel” states that the fuel must be registered as a motor vehicle fuel or fuel additive under 40 Code of Federal Regulations part 79 ensuring consistency between ARB and federal regulations. 40 Code of Federal Regulations part 79 incorporates by reference ASTM standard D 975-93, “Standard Specification for Diesel Fuel Oils”, when the ASTM is updated in the federal regulations that update will be reflected in the ADF Regulation.

ADF B1-2

**Comment:**

The comment requests a regulatory revision that ensures the ADF regulation clearly enables certification of biodiesel blends that are NOx neutral.

**Agency Response:**

ARB staff agrees with the comment and has modified the regulation accordingly.

Specifically, ARB modified language in Appendix 1 of Subarticle 2 (a)(2)(B)1 to clarify that certification of ADF formulations may account for production processes as well as the use of different feedstocks or other innovative processes.

ADF B1-3

**Comment:**

The comment provides suggested language for a revision to the ADF proposal that will allow production technology solutions to be integrated into the certification of a fuel.

**Agency Response:**

ARB staff agrees with the comment and has modified the regulation accordingly. Specifically, ARB modified language in Appendix 1 of Subarticle 2 (a)(2)(B)1 with the language suggested by the commenter to clarify that certification of ADF formulations may account for production processes as well as the use of different feedstocks or other innovative processes.

ADF B3-6

**Comment:**

The comment states that failure by staff to require accurate measurement and reporting of the biodiesel content of biodiesel blends would lead to unmitigated increases in NO<sub>x</sub> emissions, violations of pump labeling, and violations of vehicle manufacture requirements. The comment also states that ARB staff must modify the ADF proposal to ensure that the actual biodiesel content of blends is accurately known and that appropriate NO<sub>x</sub> mitigation requirements are imposed.

**Agency Response:**

Under section 2293.8(c)(3), the proposed ADF Regulation includes provisions to ensure that, whenever a biodiesel fuel is blended, the blender reports what blending occurred, to what blend level the biodiesel was blended, and what NO<sub>x</sub> controls were used, if required. Staff made 15-day changes to the reporting and recordkeeping provisions of the proposed ADF Regulation to clarify these reporting requirements. Staff made additional 15-day changes to clarify that the Stage 3A in-use requirements for biodiesel only apply to blends of B20 and below; blends above B20 are not allowed to be sold in California under the Stage 3A provisions.

Implementation of additional reporting requirements, such as the comment's suggestion to either require that blenders test their CARB diesel for biodiesel content levels before blending occurs or requiring blenders use only CARB diesel fuels that have been certified as containing no biodiesel, would create a prohibitive economic burden on industry.

Ultimately, under the proposed ADF Regulation, it is the responsibility of blenders to ensure that biodiesel is accurately blended and reported. For example, if a blender were to purchase a diesel fuel for biodiesel blending, the blender would need to ascertain what the biodiesel content of the diesel is, or take into account that the diesel may contain up to 5 percent biodiesel and blend conservatively to ensure they do not create a blend that has a higher biodiesel content than intended. Accurate blending practices are required by both ARB, for the purposes of this proposal, and the California Department of Food and Agriculture (CDFA) for compliance with American Society for Testing and Materials (ASTM) quality standards. Additionally ARB has the authority (e.g. HSC 41510) to sample and test biodiesel blends and other ADFs to ensure that they are properly mitigated based on their blend level.

ADF B3-7

**Comment:**

The comment states that ARB must include mitigation in the ADF for NOx increases from biodiesel as soon as the amended LCFS is effective.

**Agency Response:**

Please see response LCFS 46-276.

ADF B3-48

**Comment:**

The 2013 comment states that there is no evidence supporting that NOx emissions do not increase until the B10 level is reached.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigate NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, and ADF 17-9**.

ADF B3-49

**Comment:**

The 2013 comment states that there is clear and statistically significant evidence that biodiesel increases NOx emissions at the B5 level in at least some engines.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigate NOx emissions from biodiesel. ARB

has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, ADF 17-9, and ADF B3-74.**

ADF B3-50

**Comment:**

The 2013 comment states that because the literature review studies contained no data on B5 blends that there is no evidence that NOx emission are not increased below the B10 blend level.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, and ADF 17-9.**

ADF B3-51

**Comment:**

The 2013 comment states that there is no evidence that biodiesel blends below B10 do not increase NOx emissions; therefore, there is no validity in the Staff's Threshold Model.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, and ADF 17-9.**

ADF B3-52

**Comment:**

The 2013 comment states that two of the studies in the literature review present evidence that NOx impact from biodiesel are a continuous effect present at even low blending levels.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB

has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model.

Please see response **ADF 17-4, ADF 17-7, ADF 17-9, and ADF B3-74.**

ADF B3-53

**Comment:**

The 2013 comment states that for the three engines where ARB has published emissions values, all the data demonstrate a significant increase in NOx emissions for both soy- and animal- based fuels.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, ADF 17-9, and ADF B3-74.**

ADF B3-54

**Comment:**

The 2013 comment states that for the B5 fuels tested by ARB NOx emissions were observed to increase.

**Agency Response:**

Therefore, the comment adds, the results are sufficient to disprove ARB's contention that blends at the B5 level would not increase NOX emissions. This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, ADF 17-9 and ADF B3-74.**

ADF B3-55

**Comment:**

The 2013 comment states that ARB's own test data demonstrate that B5 would significantly increase NOx emissions in at least some engines.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigated NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer

includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, ADF 17-9, and ADF B3-74.**

ADF B3-56

**Comment:**

The 2013 comment states that all available research provides evidence that NOX increases are real and mitigation measures would be necessary to prevent the increases in NOx emissions due to biodiesel.

**Agency Response:**

This comment was made in reference to the 2013 proposal specifically with regards to a Threshold Model that was proposed to mitigate NOx emissions from biodiesel. ARB has since modified the proposal based on additional data and analysis and no longer includes the Threshold Model. Please see response **ADF 17-4, ADF 17-7, and ADF 17-9.**

ADF B3-95

**Comment:**

The comment summarizes the commenter's analysis and results based on the data as of early 2014; specifically that there is a NOx emissions increase at the previously proposed B10 significance threshold.

**Agency Response:**

The comment does not constitute an objection or recommendation regarding the current 2015 ADF regulation. The proposed ADF regulation acknowledges and appropriately mitigates the emissions impact of B10 for certain vehicle technologies that are described in Chapter 6 of the ADF Staff Report.

ADF B3-173

**Comment:**

The comment describes the data used in staff's analysis and lists the specific data files discussed and shared during the July 1, 2014 webinar.

**Agency Response:**

The comment does not constitute an objection or recommendation regarding the proposal released in December 2014.

## LCFS RTCs

LCFS 46-35 – comment referred to LCFS 46-301. This was a typo and should be corrected to LCFS 46-299.

**The following summary and response did not appear in the FSOR.**

LCFS 46-76

### **Comment:**

The comment seeks clarifications on the inclusion of external communications in the rulemaking file and asks whether ARB has written guidelines regarding inclusion of pre-rulemaking communications in the rulemaking file.

**Agency Response:** See response to **LCFS 46-75**. Public feedback from the informal pre-rulemaking phase is not generally included in the rulemaking file. ARB's Notice of Proposed Rulemaking contained the following statement (*emphasis added*), which gave commenters the option of submitting their workshop feedback letters for inclusion in the rulemaking file:

All written comments, data, factual information, studies, and reports submitted to ARB during the public comment period or at the Board hearing will be included in the rulemaking file for the proposed regulation. *Any person who provided ARB with written feedback or other materials prior to the opening of the public comment period must submit the feedback or materials during the public comment period or at the hearing to have them included in the rulemaking file.*

In addition, workshop feedback letters were posted on ARB's website, and remain available on the website. ARB does not have internal guidelines on what constitutes records that should be added to the rulemaking file; it follows the requirements of the Administrative Procedure Act in compiling the rulemaking file.

**The following summary and response did not appear in the FSOR.**

LCFS 46-186

**Comment:**

The commenter asks if 1 CCR sections 2002 and 2003 are mandatory for all major rulemakings.

**Agency Response:** As noted in the Final Statement of Reasons for the LCFS re-adoption, **LCFS 46-186** to **LCFS 46-190** are not objections or recommendations to the regulatory proposal. Instead, the pre-rulemaking letter “suggests that the Department of Finance and ARB Chief Counsel’s Office consider and respond” to five separate legal questions. Many of these questions appear to be targeted at Department of Finance, and, in any event, ARB declines to offer the legal advice or opinions sought by the commenter.

ARB believes it complied with the Department of Finance regulations cited by the commenter in preparing the SRIA for the ADF and LCFS regulations. Other questions regarding interpretation of the Department of Finance’s regulations should be addressed to the Department of Finance.

**The following summary and response did not appear in the FSOR.**

LCFS 46-187

**Comment:**

The commenter asks whether the Department of Finance’s regulations allow for two levels of review in considering alternatives to a proposed regulation.

**Agency Response:** As noted in response to **LCFS 46-186**, ARB does not believe it is appropriate to offer its own general interpretation of another agency’s regulations as part of the rulemaking process, and does not believe the Administrative Procedure Act requires ARB to make pronouncements. To the extent the comment is intended to assert that ARB did not comply with the Department of Finance’s requirements in its economic analysis, ARB disagrees and notes that the Department of Finance approved the SRIA for the ADF and LCFS proposals.

**The following summary and response did not appear in the FSOR.**

LCFS 46-188

**Comment:**

The commenter asks if the Department of Finance has the authority or duty to reject or refuse to comment on a SRIA that does not comply with 1 CCR 2002 and 2003.

**Agency Response:** See response to **LCFS 46-186**. As noted above, it is not appropriate for ARB to take a public position as to another agency's legal authority or duty, and does not believe a response to this question is required by the Administrative Procedure Act. This question would be better addressed to the Department of Finance.

**The following summary and response did not appear in the FSOR.**

LCFS 46-189

**Comment:**

The commenter asks whether the SRIA's "speculative and unquantified" estimate of cost savings meets the requirements of the Department of Finance's regulations.

**Agency Response:** ARB provided estimates consistent with requirements for SRIA and addressed the Department of Finance's comments in the Initial Statement of Reasons. ARB believes the SRIA met statutory and regulatory requirements.

**The following summary and response did not appear in the FSOR.**

LCFS 46-190

**Comment:**

The commenter asks that if the LCFS SRIA meets the requirements of the Department of Finance's regulations, should the Department of Finance amend its regulations to more effectively permit the evaluation of alternatives that the commenter believes is required by the Administrative Procedure Act.

**Agency Response:**

As noted above, ARB believes the SRIA meets both statutory and regulatory requirements. The question of whether the Department of Finance's regulations should be amended is better addressed to the Department of Finance.

LCFS 46-239

**Comment:**

On December 30, 2014, CARB staff released the proposed LCFS regulation language and the accompanying Initial Statement of Reasons (ISOR), Draft Environmental Analysis, and other supporting documents. Staff's analysis of the impact of the LCFS proposed for re-adoption is contained in Chapter IV of the ISOR as well as in Chapter 4.3. of the Draft Environmental Analysis.

**Agency Response:**

The statement of fact is not a comment or recommendation pertaining to this rulemaking process or the procedure by which this rulemaking process was conducted, and needs no response.

LCFS 46-253

**Comment:**

Comments LCFS 46-253 and 46-254 overlap and ARB staff responded to both issues. The "construction emissions" of biofuel production facilities related question is responded to in the EA responses as LCFS 46-253. The "tanker visits" issue is responded to as LCFS 46-254.

**Agency Response:**

Please see response LCFS 46-254 for the "tanker visits" issue response.

LCFS 46-299

**Comment:**

Commenter notes slightly different definitions for biodiesel exist between the LCFS and ADF regulations.

**Agency Response:**

Regarding the definitions, ARB has harmonized these definitions where it was deemed appropriate and made changes to section 2293.2 in the 15-day change for the ADF regulation and to section 95481 (a) in the 15-day changes to the LCFS regulation. However, these regulations serve differing but complementary purposes so the original proposed definitions are maintained where a change was not appropriate. 17-46 is a good reference if you want it.

**III. DOCUMENTS INCORPORATED BY REFERENCE**

The following public comment summaries and ARB responses to comments are incorporated into the FSOR for the Alternative Diesel Fuel Regulation (OAL file number 2015-1002-03S):

Response to Comments on the Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations, including Supplement to the Responses to Comments on the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations

Response to Comments on the Low Carbon Fuel Standard Regulation, including the Supplemental Response to Comments on the Alternative Diesel Fuel Regulation (OAL file number 2015-1002-04S)