

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS REGULATIONS REGARDING CLEAN FUEL OUTLETS

The California Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the Clean Fuels Regulations, which require that alternative fuels used to certify significant numbers of low-emission vehicles be made available to the public at specified numbers of clean fuel retail outlets. The amendments would change the way the 20,000 vehicle "trigger" level is determined, revise the calculation of the required number of clean fuel outlets, eliminate obsolete provisions, and make various other changes.

DATE: July 22, 1999

TIME: 9:30 a.m.

LOCATION: Bay Area Air Quality Management District
Board Hearing Room, Seventh Floor
939 Ellis Street
San Francisco, California

This item will be considered at a two-day meeting of the Board, which will commence at 9:30 a.m., July 22, 1999, and may continue at 8:30 a.m., July 23, 1999. This item may not be considered until July 23, 1999. Please consult the agenda for the meeting, which will be available at least 10 days before July 22, 1999, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact Jacqueline Wilson at (916) 327-1493, or TDD (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area by July 8, 1999.

INFORMATIVE DIGEST OF PROPOSED ACTION/ PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2300-2317, and adoption of sections 2303.5 and 2311.5, title 13, California Code of Regulations (CCR).

The Existing Regulations

In 1990-1991, the Board adopted the Low-Emission Vehicle / Clean Fuels Regulations to require that light- and medium-duty vehicles meet increasingly stringent low-emission vehicle (LEV) exhaust emission standards, and that clean alternative fuels used to certify significant numbers of LEVs be made available to the public. The Clean Fuels Regulations require certain owners/lessors of retail gasoline stations to equip an appropriate number of their stations to dispense a designated clean fuel if 20,000 or more vehicles are certified in California to a LEV standard on a clean alternative fuel. When the 20,000 vehicle trigger is met for a specific fuel, the

number of required clean fuel outlets and the affected owners/lessors of retail gasoline stations are determined based on a formula for estimating demand for alternative fuel at retail outlets. Flexible-fueled and dual-fuel LEVs are only counted as alternative fuel vehicles if they are certified to a less stringent emission standard on gasoline than the alternative clean fuel. Only owners/lessors of a large number of retail gasoline stations are affected initially by the regulations.

Affected owners/lessors may comply with their clean fuel outlet requirements in any of three ways. Owners/lessors who own existing fueling facilities that meet the clean fuel outlet criteria may use those facilities to meet their obligation to equip clean fuel outlets. They may also elect to equip new clean fuel outlets. Finally, they may enter into agreements with individuals who own existing qualifying clean fuel facilities to allow those facilities to be used exclusively by the affected party to meet the clean fuel outlet requirements. This is known as “constructive allocation.” All clean fuel outlets must meet specific amenity and public accessibility requirements.

The ARB staff is required to notify affected gasoline retailers 18 months and again 12 months in advance of each year when clean fuel outlets are required. Clean fuel outlets must be installed and operational by January 1 of the year in which they are required.

The Clean Fuels Regulations have applied on a statewide basis starting in 1997. The regulations have applied in the greater Los Angeles area (within the boundaries of the South Coast Air Quality District (SCAQMD)) starting in 1994, when the first LEVs were expected to be introduced. During 1994-1996, major gasoline suppliers were required to equip specified, increasing numbers of their gasoline stations in greater Los Angeles to dispense any clean fuel that met the 20,000 LEV trigger level. However, no clean alternative fuel has to date reached the trigger level, because the great majority of LEVs have been certified using California Phase 2 Reformulated gasoline, the gasoline that is sold throughout the state. Most alternative fuel LEVs that have been produced are currently owned and operated by fleets which utilize central fueling facilities.

The Proposed Amendments

ARB staff is proposing amendments updating the Clean Fuels Regulations to improve implementation of the regulations and to reflect the current state of the alternative fuels vehicle market.

Removal of obsolete sections and streamlining. The proposed amendments would remove obsolete sections of the regulations pertaining to the requirements in the SCAQMD for 1994 through 1996, which have expired and were never used. The proposed amendments would simplify the ARB staff’s notifications to affected parties regarding the requirements for new clean fuel outlets by requiring one rather than two annual notifications, 14 months before the start of

the year in which the outlets will be required. The outlets would need to be operational May 1 rather than January 1. The reporting requirements for retail gasoline outlet owners/lessors, fleet operators, and clean fuel distributors would be delayed until it is likely the trigger level for an alternative fuel will be reached.

Calculation of the 20,000 vehicle trigger. The proposed amendments would modify the method used to count the number of vehicles included towards the 20,000 vehicle trigger, in order to reflect the fact that fleet vehicles are usually fueled at nonretail fleet facilities. This calculation would fully count non-fleet vehicles, and discount the number of fleet-operated vehicles by 75 percent. A fleet would be defined as 15 LEV vehicles operated on the same fuel under common ownership or operation. The ARB Executive Officer would be authorized to reduce the discount, based on information indicating that the discount should be less. In addition, any person or organization may request the ARB Executive Officer to revise the trigger discount or determination based on additional information.

Determining the number of clean fuel outlets required in a year. The proposed amendments would make several changes to the way in which the number of required clean fuel outlets is determined for each year. The estimated clean fuel would no longer be adjusted downward by 10 percent to account for flexible and dual fuel vehicles. Instead of determining the clean fuel volume for LEVs at nonretail facilities and subtracting that from the projected maximum clean fuel volume, the amendments would have the Executive Officer subtract the total volume of the clean fuel used in fleet vehicles, multiplied by the discount factor identified for the trigger determination.

The current regulations based the total number of clean fuel outlets for liquid fuels on an average annual outlet throughput of 300,000 gasoline equivalent gallons (geg) for 1994-1996, and a 600,000 geg annual throughput starting in 1997. The amendments would reinstitute the 300,000 geg annual throughput value to provide more clean fuel outlets during the early years of the program. Once 5 percent of the state's retail gasoline stations in the State have been equipped to dispense the clean fuel, the average annual outlet throughput volume for additional outlets would increase to 600,000 geg, slowing the rate of new clean fuel outlets after the program has matured. In addition, the number of required clean fuel outlets would be reduced by subtracting existing clean fuel retail outlets where gasoline is not marketed, if the outlets meet amenities requirements.

The Executive Officer would be allowed to adjust the calculated number of clean fuel outlets up or down, within a maximum and a minimum level, based on evidence that the adjusted number of outlets would better reflect fueling demand. The maximum level would be based on the LEV clean fuel demand for all LEVs operating on the clean fuel without discounting the fleet vehicles. The minimum level would be based on the LEV fuel demand for only dedicated clean fuel vehicles

in non-fleet use. In addition, interested parties would be authorized to request a revised adjustment, based on additional information, within the maximum and minimum levels.

Compliance by maintaining separate clean fuel outlets. Under the existing regulations, only clean fuel dispensing facilities at retail gasoline outlets will count towards an owner/lessor's required number of clean fuel outlets. The amendments would count clean fuel outlets where gasoline is not marketed, if modified amenity requirements applicable to such outlets are met. The clean fuel at such outlets would have to be available to the public without the use of a key or cardkey.

Revisions to amenity requirements. Some separate amenity provisions would be established for clean fuel outlets that do not market gasoline, and some amenity requirements would be simplified.

Sunset provision. Finally, the proposed amendments would add a sunset provision that would remove the requirements to install clean fuel outlets for a specific clean fuel when 10 percent of the retail gasoline stations in the State have made that clean fuel available for purchase.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a staff report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the staff report and the express terms of the proposed amendments are available from the Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990. To obtain the staff report in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 322-4505, TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the staff report, and all subsequent regulatory documents are being made available on the ARB Internet site on this rulemaking, <http://www.arb.ca.gov/regact/clnfuels/clnfuels.htm>.

The Board staff has compiled a record which includes all of the information upon which the proposal is based. This material is available for inspection upon request to the contact person identified below. The ARB staff has determined that it is not feasible to draft the regulation amendments in plain English due to the technical nature of the regulation; however, a plain English summary of the proposed amendments is available from the agency contact person named in this notice, and is also contained in the staff report for this regulatory action.

Further inquiries related to the proposed amendments should be directed to Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, P.O. Box 2815, Sacramento, CA 95812, (916) 322-6020.

COST TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed actions are presented below.

The Board's Executive Officer has determined that the proposed action will not create costs or savings, as defined in accordance with Government Code section 11346.5(a)(6), 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 Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

The Executive Officer has also determined that adoption of the proposed regulatory action will not have a significant adverse economic impact on large or small businesses, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the Executive Officer has determined that adoption of the proposed regulatory action will not affect the creation or elimination of jobs within California, the creation of new businesses or the elimination of existing businesses in California, or the expansion of businesses currently doing business in California. An assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

The Executive Officer has also determined, pursuant to Government Code section 11343.2, that the proposed regulatory action will affect small business.

The Executive Officer has also determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected resulting from the proposed action.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is being proposed or would be as effective and less burdensome to the affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

Members of the public may present comments regarding this proposal orally or in writing. To be considered by the Board, written comments must be addressed to, and received by, the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than 12:00 noon, July 21, 1999, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. 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.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39667, 43013, 43018, and 43101 of the 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, 39500, 39515, 39516, 39667, 41511, 43000, 43013, 43016, 43018, and 43101 of the 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).

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial 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 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 the Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: May 25, 1999