

State of California
AIR RESOURCES BOARD

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

Resolution 20-2

April 23, 2020

Agenda Item No.: 20-4-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39667, 43013, and 43018 of the Health and Safety Code authorize CARB to adopt regulations on vehicle fuel specifications;

WHEREAS, the Board adopted standards for motor vehicle diesel fuel (i.e., CARB diesel) in California Code of Regulations, title 13, section 2281 et seq.;

WHEREAS, section 41510 of the Health and Safety Code authorizes the CARB representatives to have a right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions, or any records required to be maintained in connection therewith;

WHEREAS, section 41511 of the Health and Safety Code authorizes CARB to adopt rules and regulations to require the owner or operator of any air pollution emission source to take reasonable actions for the determination of the amount of such emission from such source;

WHEREAS, CARB seeks to ensure that the use of biodiesel and other alternative diesel fuels, in addition to reducing greenhouse gas (GHG) emissions, does not increase vehicular emissions of criteria pollutants or toxic air contaminants, and that their use also supports California's continuing efforts to improve ambient air quality;

WHEREAS, after Board adoption through Resolution 15-41, the Regulation on Commercialization of Alternative Diesel Fuels (ADF regulation) became effective January 1, 2016, published at sections 2293, 2293.1, 2293.2, 2293.3, 2293.4, 2293.5, 2293.6, 2293.7, 2293.8, 2293.9, and Appendix 1 of title 13, chapter 5, article 3, California Code of Regulations;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-51, thereby certifying the Final Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations and approving the responses to comments;

WHEREAS, in September 2018 with Resolution 18-34, the Board adopted amendments to the Low Carbon Fuel Standard (LCFS) Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels in-use oxides of nitrogen (NOx) mitigation sunset provisions and certification requirements to ensure long term NOx mitigation;

WHEREAS, staff has proposed Amendments to the Regulation on Commercialization of Alternative Diesel Fuels, as set forth in Appendix A to the Initial Statement of Reasons (ISOR) released to the public on January 7, 2020;

WHEREAS, CARB-contracted 2019 emissions testing of three certified biodiesel additive formulations found those formulations to be ineffective at mitigating the NOx emissions increase caused by blending biodiesel at twenty percent by volume with California diesel fuel to CARB diesel equivalence;

WHEREAS, across all CARB regulatory and incentive programs, California has reduced NOx emissions from diesel-fueled and gasoline-fueled mobile sources by over 560,000 tons from 2006 through 2019, including about 390,000 tons from diesel-fueled mobile sources;

WHEREAS, NOx emissions reductions are critical to California achieving its air pollution reduction implementation goals, and CARB will continue to explore all possible actions, including through program design and enforcement, to drive such reductions;

WHEREAS, the ADF regulation includes specific provisions designed to control potential increases in NOx emissions that could otherwise be caused by the use of biodiesel. These provisions include a process for the certification of additives or alternative diesel fuel formulations that have been shown through emissions testing to mitigate potential NOx increases from the use of biodiesel;

WHEREAS, these proposed amendments are designed to ensure that those additives or formulations that pass the emissions testing are effective at mitigating the potential NOx emissions increases from the use of biodiesel blended with California diesel fuel;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title

14, section 15251 (d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60008);

WHEREAS, in accordance with CARB's certified regulatory program, and the policy and substantive requirements of CEQA, CARB prepared an environmental analysis as part of the ISOR that serves as a substitute document equivalent to an addendum to the prior September 17, 2018, final Environmental Analysis (EA) prepared for the Amendments to the Low Carbon Fuel Standard and Alternative Diesel Fuels Regulation (2018 EA) that assessed the potential for significant long- or short-term adverse and beneficial environmental impacts associated with the proposed action (title 17, California Code of Regulations, section 60005(b));

WHEREAS, the environmental analysis in the ISOR explains CARB's determination that no additional environmental analysis is required for the proposed amendments because the proposed amendments do not involve any changes that result in any new significant adverse environmental impacts or a substantial increase in the severity of the significant adverse impacts previously disclosed in the 2018 EA;

WHEREAS, staff determined that, for the proposed amendments, CARB can rely on the 2018 EA and no additional environmental review is required because the record evidence shows that the amendments will not result in new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts, as described in Chapter VI of the ISOR;

WHEREAS, the Board has reviewed and considered the addendum-equivalent EA;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, the Board finds that:

The use of biodiesel in the State has the potential to reduce emissions of GHGs, particulate matter and other toxic exhaust emissions and can contribute to CARB's air quality goals;

The proposed Amendments to the Regulation on Commercialization of Alternative Diesel Fuels meet the statutory requirements to adopt regulations on vehicle fuels specifications identified in sections 39667, 43013, and 43018 of the Health and Safety Code;

The proposed amendments were developed in an open public process, in consultation with affected parties, a public workshop, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed amendments are covered by the prior environmental analysis prepared to comply with CEQA (i.e., the 2018 EA), and no additional environmental review, or revisions to the prior environmental analysis, are required because substantial evidence in the records shows there are no changes that will result in new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts.

NOW, THEREFORE, BE IT RESOLVED that the proposed amendments are covered by the prior environmental analysis prepared to comply with CEQA, as identified above in the recitals, and no additional environmental review, or revisions to the prior environmental analysis, are required because substantial evidence in the records shows that the proposed amendments do not change the regulation evaluated in the prior environmental analysis in such a manner that will result in new significant adverse environmental impacts or a substantial increase in the severity of previously identified significant adverse impacts.

BE IT FURTHER RESOLVED that the Board hereby approves for adoption amendments to section 2293.3 and Appendix 1 of Subarticle 2, title 13, California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment A. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California motor vehicle or off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Executive Officer may further revise the adopted regulatory text with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons and submit the completed rulemaking package to the Office of Administrative Law.

I hereby certify that the above is a true and correct copy of Resolution 20-2 as adopted by the California Air Resources Board.

/s/

Ryan Sakazaki, Board Clerk

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Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Regulation on Commercialization of Alternative Diesel Fuels, section 2293.2 and Appendix 1, as set forth in Appendix A to the Initial Statement of Reasons, released January 7, 2020.