

Second Notice of Public Availability of Modified Text

Proposed Amendments to the Regulation on the Commercialization of Alternative Diesel Fuels

Public Hearing Date: April 23, 2020
First Public Availability Date: October 14, 2020
First Deadline for Public Comment: October 29, 2020
Second Public Availability Date: January 12, 2021
Deadline for Second Public Comment: January 27, 2021

At its April 23, 2020, public hearing, the California Air Resources Board (CARB or Board) approved for adoption the proposed amendments to sections 2293.2 and Appendix 1 of title 13, division 3, chapter 5, article 3, subarticle 2 of the California Code of Regulations. The amendments will reinforce the emissions certification testing requirements and require biodiesel additives and alternative diesel fuel (ADF) formulations to be certified uniformly according to new certification procedures. The amendments will further ensure that additives or ADF formulations are certified to mitigate potential oxides of nitrogen (NOx) emissions increases from the use of biodiesel compared to conventional diesel, consistent with rigorous and appropriate protocols.

In Resolution 20-2, the Board recognized the importance of improving the rigor and scope of ADF regulation testing procedures, in light of the public health importance of reducing NOx emissions and recent CARB studies casting doubt on the efficacy of the ADF regulation's current procedures. The Board therefore approved the adoption of the proposed amendments, while recognizing the need for appropriate discretion within the strengthened testing procedures to address a range of potential testing scenarios. Therefore, the Board directed the Executive Officer to determine if additional conforming modifications to the regulation are appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board, in particular, directed that these amendments should, as the Vice Chair described, "give the Executive Officer the discretion on both the lab and on the blending issue," (i.e., the number of

laboratories required for certification testing, and lower renewable diesel blend ratios for approved ADF formulations).¹ The Board further directed the Executive Officer to 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, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications.

Consistent with Board direction, staff developed modified regulatory language regarding the number of laboratories required for certification testing and the renewable diesel blend ratios for approved ADF formulations and made the proposed modifications available for public comment on October 14, 2020. Following consideration of the comments received on the proposed modifications, staff is proposing additional modifications, as described in this notice.

The resolution and all other regulatory documents for this rulemaking are available online at the following [CARB website](https://ww2.arb.ca.gov/rulemaking/2020/adf2020):
<https://ww2.arb.ca.gov/rulemaking/2020/adf2020>.

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with the "Notice of Public Availability of Modified Text and Availability of Additional Documents and Information" are shown in ~~double strikethrough~~ and double underline format, respectively. Additional proposed deletions and additions to the originally proposed language that are made public with the "Second Notice of Public Availability of Modified Text" are shown in ~~bold double strikethrough~~ and **bold double underline** format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in Attachment A.

¹ See State of California, Air Resources Board, Board Hearing Transcript. April 23 (2020). Page 116 (16-20), Page 117 (7-17, 23-25), Page 118 (1-8, 23-25). Available at: <https://ww3.arb.ca.gov/board/mt/2020/mt042320.pdf>.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. Modifications to Appendix 1 of Subarticle 2, Subsection (a)(2)(J). Date After which Only Biodiesel Additives and ADF Formulations Approved or Certified According to Amended Certification Procedures May be Used

Appendix 1 of Subarticle 2, Subsection (a)(2)(J) is modified to adjust from April 1, 2021, to August 1, 2021, the date after which only biodiesel additives or ADF formulations approved or certified under the proposed amendments can be used to comply with biodiesel in-use requirements. The proposed modifications address stakeholder comments that an April 1, 2021, effective date for this provision may not allow sufficient time for certification applicants to certify biodiesel additives and ADF formulations consistent with the proposed amendments or to transition to use of other compliance options, including use of the approved ADF formulations.

In addition to the modifications described above, staff made additional modifications correcting grammar, punctuation and spelling throughout the proposed changes. These changes are nonsubstantive.

On April 23, 2020, the Board approved ADF amendments and adopted an associated addendum to an environmental analysis that the Board certified in 2018 (2018 EA) on previous ADF regulation amendments,² in compliance with the California Environmental Quality Act (CEQA). Following this approval, on May 12, 2020, the Board filed a notice of decision with the Secretary of the California Natural Resources Agency to notify the public of this decision. The proposed modifications, while related to the Board's April 23, 2020 final action on the adopted regulations, require a separate action, by the Executive Officer or the Board, to become an effective part of CARB's regulations, as provided under Resolution 20-2.

The proposed modifications to the current amendments to the ADF regulation—the “project” for CEQA purposes—do not require revisions to the 2018 EA because they do not involve new significant effects or a substantial increase in the severity of significant effects previously identified in the 2018 EA. (Title 14 California Code of Regulations, sections 15162, subd. (a)(1) and 15164.) The proposed modifications are procedural, in nature, and do not alter the compliance responses as identified in the

² See State of California, Air Resources Board, Proposed Amendments to the Low Carbon Fuel Standard Regulation and the Alternative Diesel Fuels Regulation, September 17 (2018). https://ww3.arb.ca.gov/regact/2018/lcfs18/finalea.pdf?_ga=2.153489400.1380169015.1569650930-60175395.1569650915.

2018 EA. Rather, the substantive modification for this notice merely alters the date after which only biodiesel additives or ADF formulations that CARB approves or certifies under the proposed ADF amendments can be used to comply with biodiesel in-use requirements. Nor are there substantial changes with respect to the circumstances under which the proposed modifications are undertaken that require major revisions to the 2018 EA, because the underlying regulatory framework for the ADF regulation is the same now as it was in 2018 regarding the biodiesel in-use emission requirements. Additionally, there is no new information of substantial importance related to this modification that shows new significant effects or previously identified significant effects that would be more severe.

Additional Documents Added to the Record

Staff has not added additional documents to the record.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Gavin Hoch, Staff Air Pollution Specialist, Emerging Technology Section, at (916) 324-0839 or Susie Chung, Air Pollution Specialist, Emerging Technology Section, at (916) 327-0647.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

Postal mail: Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

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

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal 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.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB no later than the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: January 12, 2021

Attachment A: Proposed Second 15-Day Modifications

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 [CARB's website](http://www.CARB.ca.gov) at www.CARB.ca.gov.