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 adoption of amendments to the Clean Fuels Outlet Regulation.

DATE: January 26, 2012

TIME: 9:00 a.m.

PLACE: Metropolitan Water District Offices
700 North Alameda Street
Los Angeles, California 90012-2944

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 26, 2012, and will continue at 8:30 a.m., on January 27, 2012. This item may not be considered until January 27, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before January 26, 2012, 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, 2307, 2308, 2309, 2311, 2311.5, 2312, 2313, 2314, 2315 and 2318; repeal of sections 2306, 2310, 2316 and 2317; and proposed adoption of section 2306.1., and the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999, as last amended September 27, 2010, which are undergoing amendments pursuant to the LEV III regulatory amendments being considered at the January 26, 2012 hearing.

Background:

The existing Clean Fuels Outlet (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 retail CFOs until the number of alternative fuel vehicles projected to be certified on that fuel reaches 20,000 statewide in a given year.

Proposed Regulatory Action: Amendments to the CFO regulation are being proposed to address the gap in hydrogen fueling infrastructure that may occur when the number of 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 the CFO Regulation 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. At first the regulation as amended would only 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 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 market FCVs in regional clusters.

- Streamlining the compliance requirements so that they are less prescriptive and more like performance standards, giving regulated parties the flexibility to determine how best to meet the minimum requirements.

- Adding a penalty provision for auto manufacturers if they deliver less than 80 percent of their projected number of FCVs.

- 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.

ARB is currently engaging with energy companies, fuel providers and auto manufacturers in the development of a memorandum of agreement (MOA) to secure the resources needed to ensure that hydrogen fueling stations are built and operated when

and where they are needed to support early fuel cell vehicle deployments. If the resources are committed in a timely manner, implementation of the provisions of the proposed regulation may not be necessary.

These amendments, part of the Advanced Clean Cars regulatory proposals to be heard as a package on the same day, thus address multiple pollutant types in the context of California's passenger motor vehicle program as a whole.

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: 2012 Proposed Amendments to the Clean Fuels Outlet Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout 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 **December 7, 2012.**

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.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Leslie Goodbody, Air Pollution Specialist, ZEV Infrastructure Section, (916) 323-2961 and Mr. Gerhard Achtelik, Manager, ZEV Infrastructure Section, (916) 323-8973.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive 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.

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/2012/cfo2012/cfo2012.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.

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, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

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, and major automobile manufacturers 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.

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.

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, 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.

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 has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in Appendix B of the ISOR.

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 **December 12, 2011**. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after **December 12, 2011**, and received no later than **12:00 noon on January 25, 2012**, 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; or
- 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 alterno 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

James N. Goldstene
Executive Officer

Date: November 29, 2011

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.