

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

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

Public Hearing Date: July 22, 1999
Public Availability Date: October 16, 2000
Deadline for Public Comment: October 31, 2000

This notice provides an opportunity for public comment on modifications the Air Resources Board (ARB or Board) proposes to make to amendments to the California Clean Fuels Regulations. The modifications result from the disapproval of the amendments by the Office of Administrative Law (OAL) on July 13, 2000.

At a public hearing held July 22, 1999, the Board adopted amendments to the California 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 change the way the 20,000 vehicle "trigger" level is determined, revise how the number of clean fuel outlets required each year would be determined, allow the Executive Officer to adjust the calculated number of clean fuels outlets up or down, revise the schedule for siting new clean fuel outlets, delay reporting requirements until needed, and make various other changes. The amendments were subsequently submitted to OAL on June 1, 2000.

OAL disapproved the amendments because it concluded one provision was inconsistent with the California Administrative Procedure Act (APA). The amendments included section 2304, title 13, California Code of Regulations (CCR), which governs how the ARB Executive Officer is to determine the number of retail clean fuel outlets to be required each year once there are at least 20,000 low-emission vehicles using a particular clean alternative fuel. The amendments retained a formula for determining the required number of clean fuel outlets. They then established two mechanisms for the ARB's Executive Officer to adjust the required number of outlets. One mechanism directed the Executive Officer to reduce the number of required outlets to reflect certain preexisting outlets. The second mechanism more broadly authorized the Executive Officer to adjust the required number of outlets based on the likelihood of vehicles to use the particular fuel, the fueling patterns of fleet vehicles, the potential for the operational range of fleet vehicles to be expanded by use of retail clean fuel outlets, and related factors. OAL concluded that the second mechanism violated the APA because, in adjusting the required number of stations based on these factors, the Executive Officer would effectively be establishing a standard without following the procedural rulemaking requirements. However, OAL implicitly recognized that the

regulations are not prohibited from authorizing the Executive Officer to adjust the number of outlets as long as they lay out clear and limiting standards for the Executive Officer to apply. Thus OAL did not find the first adjustment mechanism – reducing the number of outlets to reflect certain existing outlets – to be inconsistent with the APA.

The proposed modifications. ARB staff has drafted modifications to section 2304 to eliminate any inconsistency with the APA. The modifications combine the two adjustment mechanisms described above. As modified, the regulation would direct the Executive Officer to make three sets of determinations and potential resulting adjustments, based on more narrowly drawn standards set forth in the regulation. In addition, ARB staff has drafted minor modifications to section 2313 to support the determinations and adjustments made by the Executive Officer in proposed modified section 2304.

First, the Executive Officer would be directed to determine the anticipated percentage of low-emission alternative fuel vehicles that will be dual-fuel or flexible fuel vehicles in the relevant year (under section 2303(d), the only dual-fuel or flexible fuel vehicles counted in these determinations are those vehicles that are “step-certified,” that is certified to a less stringent standard on gasoline compared to the alternative fuel). The Executive Officer would then be directed to determine the approximate percentage of the fuel used in these vehicles that will be gasoline, multiply that percentage by 0.85, and discount the total clean fuel attributed to the vehicles in the formula by the resultant adjusted percentage.

ARB staff believes that the actual amount of a designated clean fuel used in dual-fuel and flexible fuel vehicles will vary due to market conditions that will be unique to each clean fuel. Therefore, it is necessary to provide the Executive Officer the authority to evaluate the amount of a designated clean fuel that these vehicles will use. As such, the modifications are intended to account for the usage of the designated clean fuel in dual-fuel and flexible fuel vehicles for the year in which the determination of the number of clean fuel outlets is being made. In addition, since dual-fuel or flexible fuel vehicles must be step-certified in order to be included in the Clean Fuels Regulations, these vehicles will have higher exhaust emissions when operated on gasoline than the designated clean fuel. The modifications are also intended to promote new clean fuel outlets by reducing by 15 percent the quantity of gasoline consumed by these vehicles in the calculation of the required number of clean fuel outlets. This may result in a greater number of clean fuel outlets being required in the year for which the determination of the number of clean fuel outlets is being made.

Second, the Executive Officer would be required to determine whether there should be an upward or downward adjustment to the fleet vehicle discount factor used in one of the terms in the formula. That discount factor is initially based on the percentage of fleet vehicle clean fuel that will come from nonretail outlets in the first year the 20,000 vehicle trigger level is reached. The Executive Officer would be required to make

adjustments necessary for the discount factor to reflect fleet fueling patterns, including the potential that fleet operations using the clean fuel may be expanded during the 18 months from the start of the year for which the determination is being made due to increased availability of a designated clean fuel at retail clean fuel outlets.

Similar to the adjustment for dual-fuel and flexible fuel vehicles, ARB staff believes that it is impractical to predict at this time the future fueling patterns of alternative fuel fleet-operated vehicles. Therefore, it is necessary to provide the Executive Officer the ability to evaluate the frequency that these vehicles are expected to utilize retail clean fuel outlets in their operations. In performing this evaluation, it is also appropriate to evaluate the potential of these vehicles to increase their utilization of these facilities as greater numbers of retail clean fuel outlets are being sited. To assist the Executive Officer in his or her evaluation, ARB staff is proposing that information already collected under section 2313 be used, and that a new provision be added to section 2313 requiring fleet operators to provide information on their potential increased use of retail clean fuel outlets.

Third, the Executive Officer would continue to be required to reduce the number of clean fuel outlets to reflect certain preexisting outlets.

For all three of these potential adjustments, the modifications require the Executive Officer to give notice of the intended adjustment to interested parties and allow the public to submit additional relevant information. Such a mechanism had applied to the adjustments that OAL had found inconsistent with the APA, and had also applied to the trigger level adjustment provisions in section 2303.5 that were not questioned by OAL.

The original amendments provided that the maximum permitted upward adjustment under the mechanism questioned by OAL would require the number of outlets resulting from the formula in the regulations without subtracting the discounted clean fuel volume for fleet vehicles. The maximum permitted downward adjustment under the mechanism would require the number of stations equal to the total projected clean fuel volume for dedicated non-fleet vehicles only. These express limits are not included in the modified provisions because they are built in to the standards applicable to the Executive Officer's determinations.

Opportunity for public comment. The proposed modified text of sections 2304 and 2313 is being made available for public comment as an attachment to this notice, with the modifications clearly indicated. To avoid an unnecessarily bulky mailing, the complete 35-page text of all of the amendments clean fuels regulations is not attached. However, the full modified text of the regulations (also reflecting various nonsubstantive conforming modifications prepared by staff) is available at the ARB's Internet site for this rulemaking – <http://www.arb.ca.gov/regact/clnfuels/clnfuels.htm>. Printed copies are available from Mr. Valentine Montoya, Stationary Source Control Division, telephone (916) 445-5605 or fax (916) 327-7212.

Written comments on the proposed modifications must be submitted to the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than the deadline for public comment identified above, for consideration by the Executive Officer prior to final action. Only comments relating to the modifications will be considered by the Executive Officer.

Peter D. Venturini, Chief
Stationary Source Control Division

Attachments