

State of California
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text and
Availability of Additional Documents**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AB 118 AIR QUALITY GUIDELINES FOR THE AIR QUALITY IMPROVEMENT PROGRAM AND THE ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE AND TECHNOLOGY PROGRAM

Public Hearing Date: September 25, 2008
First Public Availability Dates: October 27, 2008 – November 12, 2008
Second Public Availability Date: April 15, 2009
Deadline for Public Comment: April 30, 2009

At its September 25, 2008, public hearing, the Air Resources Board (ARB or Board) approved new sections 2340, 2341, 2342, 2343, 2344, and 2345, title 13, California Code of Regulations (CCR), to fulfill the requirements of Health and Safety Code section 44271(b), which is part of the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 (Assembly Bill 118; statutes of 2007, chapter 750; Health and Safety Code sections 44270-44274). Section 44271(b) requires ARB to develop guidelines which ensure that both the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program complement, and do not interfere with, California's existing air quality programs, and maintain or improve upon the emission benefits achieved through these programs.

The Board's Action

At the hearing, the staff presented, and the Board approved three modifications to the regulations originally proposed in the Staff Report released on August 8, 2008, in response to comments received since the Staff Report was published. In the First Notice of Public Availability of Modified Text (First Notice), which was released on October 27, 2008, staff made all the changes approved by the Board. The comment period for the First Notice closed on November 12, 2008. After November 12, 2008, ARB staff identified additional conforming modifications, based on concerns raised by the Office of Administrative Law (OAL), that are appropriate to make to clarify the amended regulations. Staff is providing this Second Notice of Public Availability of Modified Text and Availability of Additional Documents to further modify the regulatory text and to solicit public comment on these latest proposed modifications.

Board Resolution 08-40, which approved new sections 2340, 2341, 2342, 2343, 2344, and 2345, title 13, CCR, as modified, as well as other regulatory documents for this rulemaking, are available online at the following ARB Internet site:

<http://www.arb.ca.gov/regact/2008/aqipfuels08/aqipfuels08.htm>

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 2340, 2341, 2342, 2343, 2344, and 2345, title 13, California Code of Regulations, after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Summary of Proposed Modifications

Staff has prepared regulatory text that includes the modifications approved by the Board and other conforming modifications needed to clarify the regulatory requirements. The approved regulations include a two part process for determining which tool to use for the full fuel cycle analysis described in section 2343 of the regulations. The first step is to conduct the analysis using tools that are being developed through the Low Carbon Fuel Standard (LCFS) regulatory process. In the event that the LCFS had not been adopted and become legally effective when selecting projects for funding, the August 2007 Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-004-REV (2007 Full Fuel Cycle Assessment) would be used in the interim. OAL raised concerns about the clarity of this process and the uncertainty of specifying a regulation that does not yet exist.

Based on the concerns raised by OAL, staff is now proposing to modify the approved regulatory text to remove all references to the LCFS. In place of the LCFS, staff has modified the requirements of the full fuel cycle analysis to be conducted using Appendix A of the 2007 Full Fuel Cycle Assessment and have specified appropriate baseline fuel pathways. Once the LCFS is approved and becomes legally effective, staff intends to conduct a second rulemaking to amend the proposed regulations to incorporate the appropriate tools from the LCFS. A description of the proposed modifications is provided below. Attachment A includes staff's additional proposed modifications to the regulatory text. A note in Attachment A explains how the texts of both the initial and the additional modifications are shown. Attachment B includes Appendix A of the 2007 Full Fuel Cycle Assessment.

Section 2342. Definitions

Staff added a definition for *Fuel Pathway* and deleted the definition for the *Low Carbon Fuel Standard*.

Section 2343. Requirements

(b) Full Fuel Cycle Analysis

Staff incorporated by reference Appendix A of the 2007 Full Fuel Cycle Assessment, as the tool for conducting the full fuel cycle analysis. All references to the LCFS have been deleted. Staff has also included a description for determining the appropriate baseline fuel pathways and has included a corresponding table for clarity.

(c) Permitting, licensing, and environmental review

OAL raised concerns about the clarity of this provision; specifically that the requirement for including environmental justice criteria was unclear when the adopted regulatory text clearly defined a process that must be completed for consideration of environmental justice. Staff has clarified that the requirements for localized health impacts must be consistent with State law and that the funding agency must complete the process described in the initial text.

(f) Special provision for the LCFS

Staff has deleted this reference to the LCFS.

Document Incorporated by Reference

Staff is incorporating by reference in the regulation Appendix A of the August 2007 Full Fuel Cycle Assessment: Well-to-Wheels Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-004-REV (Attachment B). The August 2007 Full Fuel Cycle Assessment: Well-to-wheels Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-004-REV document was included as a reference in the rulemaking file and was available to the public, but was not specifically incorporated by reference in the proposed regulation.

Comments and Subsequent Action

Written comments will be accepted on the proposed modifications and may be submitted by postal mail, electronic mail, or facsimile as follows:

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>

Facsimile submittal: (916) 322-3928

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. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by 5:00 p.m. (Pacific Standard Time), on 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.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact the Clerk of the Board at (916) 322-5594 or by Fax at (916) 322-3928 as soon as possible.

Attachments (2)