

State of California
Air Resources Board

Second Notice of Public Availability of Modified Text

PUBLIC HEARING TO CONSIDER REGULATORY AMENDMENTS EXTENDING THE CALIFORNIA STANDARDS FOR MOTOR VEHICLE DIESEL FUEL TO DIESEL FUEL USED IN HARBORCRAFT AND INTRASTATE LOCOMOTIVES

Public Hearing Date: November 18, 2004

Internet Posting Date: April 19, 2005

Public Availability Date of Second Supplemental Notice: April 19, 2005

Last Day for Supplemental Public Comment: May 4, 2005

This notice announces a second supplemental period in which the public may comment on additional modifications being proposed to correct a drafting error in the approved amendments extending the California standards for motor vehicle diesel fuel to diesel fuel used in harborcraft and intrastate locomotives.

At a public hearing held November 18, 2004, the Air Resources Board (the Board or ARB) approved adoption of a fuels regulation and an airborne toxics control measure (ATCM) that extends the applicability of the California standards for motor vehicle diesel fuel regulations to diesel fuel used in commercial and recreational harborcraft and intrastate diesel-electric locomotives. The new regulations would apply to diesel fuel sold for use in commercial and recreational harborcraft within the boundaries of the South Coast Air Quality Management District (SCAQMD) beginning January 1, 2006. They would apply statewide to diesel fuel sold for use in commercial and recreational harborcraft and intrastate diesel-electric locomotives beginning January 1, 2007. Operators of intrastate diesel-electric locomotives would be permitted to use an Alternative Emission Control Plan if approved by the ARB's Executive Officer. The proposed amendments were described in detail in the Staff Report: Initial Statement of Reasons for Proposed Rulemaking (ISOR) released on October 1, 2004.

The Board's action. At the conclusion of the hearing, the Board adopted Resolution 04-38, in which it approved the originally proposed amendments with one minor modification. The modification was suggested by staff in response to public comments received after issuance of the original proposal. The modification provided an exemption from the ARB's diesel fuel requirements for military specification fuel used in military vessels. The Resolution directed the Executive Officer to incorporate the modification into the proposed amendments with such other conforming modifications as may be appropriate, and to make the modified text available for supplemental comment prior to final adoption. The modification was made available to the public for a 15-day comment period (February 16, 2005-March 3, 2005) and no comments were received. This modification, with the originally approved regulations, will be submitted to the California Office of Administrative Law for approval.

The staff has now determined that an additional conforming modification to the regulatory language is necessary to correct a drafting error in the definition of “intrastate diesel-electric locomotive.” The ISOR indicated at p. 62 that the proposed definition included “a diesel-electric locomotive that operates principally within California, where at least 90 percent of [the] locomotive’s fuel consumption, hours of operation, or annual rail miles traveled occur within the boundaries of the state of California.” The staff presentation at the hearing and the language in Resolution 04-38 similarly indicated that a locomotive would be covered if 90 percent of any of the three measures occurred in the State. However, the actual regulatory language in the Proposed Regulation Order incorrectly used “and” rather than “or,” so that 90 percent of all three measures would technically be required. The conforming modification replacing the “and” with the intended “or” is appropriate given the high 90 percent threshold requirement.

Modified text being made available. Attachment I to this notice contains excerpts of the proposed regulatory text showing the modification in proposed new section 2299(b)(5)(A), title 13, California Code of Regulations (CCR), and section 93116(b)(5)(A), title 17, CCR. Resolution 04-38, the ISOR, and the complete text of the proposed regulatory action with the modification to the original proposal clearly indicated are available at the ARB’s Internet site for this rulemaking at <http://www.arb.ca.gov/regact/carblohc/carblohc.htm>. Printed copies are available from Mr. Valentine Montoya, Stationary Source Division, telephone (916) 327-1493 or fax (916) 322-6088.

Comments and subsequent action. In accordance with section 11346.8 of the Government Code, the Board’s Resolution directed the Executive Officer to make any modified regulatory text available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments regarding the modified text that may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

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

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 “I” Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: carblohc@listserv.arb.ca.gov

Facsimile submissions are to be transmitted to: (916) 322-3928.

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. on the last day for supplemental comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulations and additional information made available by this notice will be considered by the Executive Officer.

Peter Venturini, Chief
Stationary Source Division

Attachment