State of California
AIR RESOURCES BOARD

REGULATION ON THE COMMERCIALIZATION OF ALTERNATIVE DIESEL FUELS

Resolution 15-41

September 25, 2015

Agenda Item No.: 15-7-1

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Health and Safety Code sections 39667, 43013, and 43018 authorize the ARB to adopt regulations on vehicle fuel specifications;

WHEREAS, the Board adopted standards for motor vehicle diesel fuel (i.e. CARB diesel) in California Code of Regulations, title 13, section 2281 et seq.;

WHEREAS, the Board recognizes that there is a general lack of regulatory guidance on new emerging motor vehicle diesel fuel substitutes and also recognizes a need for streamlined and consolidated requirements for new emerging alternative diesel fuels;

WHEREAS, ARB seeks to ensure that the use of biodiesel and other alternative diesel fuels, in addition to reducing greenhouse gas (GHG) emissions, does not increase vehicular emissions of criteria pollutants or toxic air contaminants, and that their use also supports California's continuing efforts to improve ambient air quality;

WHEREAS, staff proposed the Regulation on the Commercialization of Alternative Diesel Fuels (ADF), as set forth in Appendix A to the Initial Statement of Reasons (ISOR) released to the public on December 30, 2014;

WHEREAS, staff closely coordinated with local air quality agencies to ensure the protection of local air quality as a result of the proposal;

WHEREAS, staff conducted seven public workshops on the proposal which were attended by representatives of other State and local agencies, academics, industry groups, and non-governmental organizations;

WHEREAS, Health and Safety Code section 43830.8 requires that ARB, when adopting a regulation that establishes a specification for motor vehicle fuel, subject the proposed specification to a multimedia evaluation and review process specified in the statute;

WHEREAS, the scientific basis of the proposed ADF regulation has been peer reviewed pursuant to Health and Safety Code section 57004 and Health and Safety Code section 43830.8;

WHEREAS, the California Environmental Policy Council (Council) held a public meeting on June 23, 2015 and, after reviewing the biodiesel multimedia evaluation prepared under Health and Safety Code section 43830.8 and the proposed ADF and considering public comments received, determined that the use of biodiesel in California under the proposed ADF regulation will not pose a significant adverse impact on public health or the environment compared to CARB diesel;

WHEREAS, ARB prepared an environmental analysis for the proposed ADF regulation and the proposed Low Carbon Fuel Standard regulation for purposes of the California Environmental Quality Act under its certified regulatory program (Public Resources Code section 21080.5) in a document entitled *Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Draft EA), included as Appendix D to each of the regulations ISORs circulated for public review;

WHEREAS, having considered the effect of the proposed LCFS and ADF on the state's economy, including motor vehicle fuel efficiency, and having conducted the analyses required by Government Code sections 11346.3 and 11346.5, as summarized in the Notice of Public Hearing to Consider a Low Carbon Fuel Standard, dated December 16, 2014, the Notice of Public Hearing to Consider the Proposed Regulation on the Commercialization of Alternative Diesel Fuels, dated December 16, 2014, and the Staff Report: Initial Statement of Reasons accompanying those Notices, the Board finds that the economic impacts of the proposed LCFS and ADF on the California economy are negligible, considering the size and diversity of California's economy.

WHEREAS, on February 19, 2015, the Board conducted a public hearing on the proposed ADF regulation;

WHEREAS, following the public hearing, the Board approved Resolution 15-5 directing the Executive Officer to make modifications to the proposed regulatory language, including as appropriate, those modifications generally described in Attachment A to that resolution, along with any additional supporting documents and information, for a period of at least 15 days; to consider written comments submitted during the public review period and make any additional appropriate conforming modifications available for public comment for at least 15 days, evaluate all comments received during the public comment periods, including comments on the Draft EA, and prepare written responses to EA comments as required by ARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a); and to present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments on the Draft EA, along with the Final Environmental Analysis For The Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations (final EA), for consideration for approval, and the final proposed ADF regulation for consideration for adoption;

WHEREAS, following the Board hearing, modified regulatory language and supporting documentation were made available for a 15-day public comment period, with the changes to the originally proposed text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44 and Government Code section 11340.85, from May 22, 2015, through June 8, 2015;

WHEREAS, staff prepared written responses to comments received on the Draft EA during all comment periods in a document entitled *Responses to Comments on the Draft Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* (Response to EA Comments);

WHEREAS, staff prepared written response to other comments received during all the comment periods in a document entitled *Responses to Comments on the Alternative Diesel Fuel Regulation,* included as Attachment B to this resolution, and presented it to the Board for consideration;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, a public hearing for the proposed ADF regulation was held on September 24, 2015, and the public comment period was closed on September 24 and the meeting was continued to September 25, 2015;

WHEREAS, staff prepared written response to additional comments received at the September 24, 2015, hearing in a document entitled *Supplemental Responses to Comments on the Alternative Diesel Fuel Regulation,* which was presented to the Board for its consideration, as set forth in Attachment C to this resolution;

WHEREAS, in consideration of the ISOR, written comments, public testimony, the *Responses to Comments on the Alternative Diesel Fuel Regulation,* the *Supplemental Responses to Comments on the Alternative Diesel Fuel Regulation*, the Final EA, the Response to EA Comments, and the entirety of the record, the Board finds that:

> The use of biodiesel in the State has the potential to reduce emissions of GHGs, particulate matter and other toxic exhaust emissions and can contribute to ARB's air quality goals;
>
> The use of biodiesel in some engines can increase emissions of nitrogen oxides, depending in part on the concentration and feedstocks of the biodiesel;
>
> The proposed ADF regulation, through the in-use requirements, will decrease the nitrogen oxides emissions from use of biodiesel over time until it reaches a negligible level when compared to emissions of CARB diesel, which biodiesel replaces, and compared to a 2014 baseline of existing conditions when offsetting

factors such as the use of renewable diesel and new technology heavy-duty diesel engines are considered;

New alternative diesel fuels incentivized by State and federal programs may provide environmental and economic benefits to the State, and a clear process for evaluating these fuels for commercial use in California and ensuring they will not adversely affect public health or the environment is necessary to realize those benefits;

The proposed ADF regulation will ensure that as a new ADF is introduced for commercial use in California, its use is phased in and monitored in a manner that provides the opportunity to assess potential adverse effects, including fuel-specific multimedia evaluations, and appropriate measures to eliminate or reduce any potentially significant adverse effects on public health or the environment before wide-spread use of the fuel occurs;

The proposed ADF regulation was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue as the regulation is implemented and as future revisions to it are considered;

No reasonable alternatives to the proposed ADF regulation considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

The proposed ADF regulation is consistent with ARB's environmental justice policies and does not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that in consideration of the Final EA certified in Resolution 15-51 and the Response to EA Comments approved in Resolution 15-51, and the entirety of the record, the Board adopts the Findings and Statement of Overriding Considerations set forth in Attachment D to this resolution.

BE IT FURTHER RESOLVED that the Board hereby adopts new sections 2293, 2293.1, 2293.2, 2293.3, 2293.4, 2293.5, 2293.6, 2293.7, 2293.8, 2293.9, and Appendix 1; amends sections 2290, 2291, and 2293; renumbers sections 2293 and 2293.5; and creates new sub articles 1, 2, and 3, in title 13, chapter 5, article 3, California Code of Regulations, as set forth in the Final Regulation Order in Attachment A.

BE IT FURTHER RESOLVED that the Executive Officer may further revise the adopted regulatory text with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to complete the Final Statement of Reasons, to submit the completed rulemaking package to the Office of Administrative Law, and at that time to transmit the Notice of Decision to the Secretary of the Natural Resources Agency and State Clearinghouse for posting.

I hereby certify that the above is a true and correct copy of Resolution 15-41 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 15-41

September 25, 2015

Identification of Attachments to the Board Resolution

Attachment A: Final Regulation Order

Attachment B: *Responses to Comments on the Alternative Diesel Fuel Regulation*

Attachment C: *Supplemental Responses to Comments on the Alternative Diesel Fuel Regulation*

Attachment D: Findings and Statement of Overriding Considerations