

ATTACHMENT F

Staff's Suggested Modifications to the Original Proposal for CFO

PRESENTED AT THE JANUARY 26, 2012 HEARING OF THE
AIR RESOURCES BOARD

The following text contains staff's suggested modifications to the originally proposed regulatory text for sections 2300, 2302, 2304, 2307, 2309, 2312, 2315 and 2318, title 13 of the California Code of Regulations; to the "Clean Fuels Outlets." The text of the originally proposed amendments is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The modified language now proposed by staff is shown in double underline to indicate additions and ~~double-strikeout~~ to indicate deletions. Staff is proposing modifications to limited portions of the original proposal; for some portions for which no modifications are proposed, the text has been omitted and the omission indicated by [No change] or "* * * *".

There are no additional suggested modifications to the originally proposed amendments to sections 2303, 2303.5, 2306, 2306.1, 2308, 2310, 2311, 2311.5, 2313, 2314, 2316, 2317, title 13, CCR.

STAFF'S SUGGESTED MODIFICATIONS TO THE ORIGINAL PROPOSAL

1. Amend title 13, CCR, section 2300 to read as follows:

§ 2300. Definitions.

* * * *

(17) "Market share" is the value that represents the percent of gasoline production and imports made by a major refiner/importer of gasoline as determined pursuant to section 2306.51.

2. Amend title 13, CCR, section 2302 to read as follows:

§ 2302. Equipping Retail Gasoline Outlets or Other Outlets to Dispense Designated Clean Fuels.

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(b) In the case of any designated clean fuel which is in gaseous form, the dispensing equipment required by this section shall be designed for a minimum of four hours of high volume operation per day to satisfy the following minimum criteria:

(1) Dispense gaseous fuel upon request to bring to a full at least 95 percent state of charge in less than seven minutes vehicles designed with 5000 pounds per square inch (350 bar) and 10,000 pounds per square inch (700 bar) storage tanks;

3. Amend title 13, CCR, section 2304 to read as follows:

§ 2304. Determination of Total and Additional Number of Retail Clean Fuel Outlets Required for Each Designated Clean Fuel in Each Year.

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(a) *Determination of total number of retail clean fuel outlets required for each designated clean fuel in each year.*

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(2) *eExecutive eOfficer adjustments to the number of required retail clean fuel outlets.*

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(C) Reducing the number of required retail clean fuel outlets to reflect certain preexisting outlets.

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Preliminary Draft Language - Staff’s suggested modifications to proposed amendments

Insert new §2304 (a)(2)(C)3.

If the terms of a Memorandum of Agreement (MOA) regarding hydrogen clean fuel outlets contain the elements specified in §2304(a)(2)(C)3 (i – v) and if the MOA has been signed by the regulated parties themselves (refiners/importers and automobile manufacturers) or an authorized representative industry and environmental organizations then the obligation to provide hydrogen clean fuel outlets shall hibernate making the required number of hydrogen retail clean fuel outlets under this section zero and shall remain zero until such time that the specified elements are no longer met. All other aspects of the rule remain in full effect. The required elements to be included in the signed MOA are:

- (i) Overarching Goal – achieve 100 operating hydrogen retail clean fuel outlets [additional language to be added describing the inclusion of hydrogen stations already publicly available]
- (ii) How – secure public and voluntary private funding to support installation and operation of hydrogen outlets
- (iii) Timeline – specific milestones identified to measure progress and success or failure
- (iv) Roles and responsibilities that ensure parties will contribute to success
- (v) Feedback and reporting mechanisms that keep the process accountable and transparent

If it is determined that the above criteria are no longer met, the signers of the MOA shall first be given written notice and 30 days to remedy the situation. If the above criteria are not met 30 days after notice, CARB shall provide written notice to the signers as well as public notice that the provisions of 2304 (a)(2)(C)3 no longer apply. [Additional language to be added specifying the minimum time provided to regulated parties to comply with hydrogen retail clean fuel outlet requirements]

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(E) *Requests to revise the eExecutive eOfficer's adjustments.* Any interested party may request in writing that the eExecutive eOfficer revise the adjustments, and may submit any relevant information supporting revised determinations. In order to be considered by the eExecutive eOfficer, the written request and supporting information must be received no more than ~~30~~thirty days after issuance of the notice. The eExecutive eOfficer shall consider any requests that are timely submitted, and shall issue his or her final determinations no less than ~~twenty-six~~twelve months before the start of the year in question. At the same time, the eExecutive eOfficer shall make any resulting modifications to the determinations and notifications made pursuant to sections 2304(b), 2306.5 and 2307.

(F) Adjusting the required number of outlets based on updated auto manufacturer reports. Twenty months before the start of the year in question, the Executive Officer may adjust the final number of required outlets. The basis for this adjustment will be the projected production estimates submitted annually by the motor vehicle manufacturers to the Executive Officer twenty one months prior to the year in question. If an adjustment deemed necessary, the Executive Officer will notify interested parties within no more than thirty days after making the determination.

4. Amend title 13, CCR, section 2307 to read as follows:

§ 2307. Determination of Total and Additional Number of Retail Clean Fuel Outlets Required for Each Designated Clean Fuel in Each Year.

(a) Allocation among affected ~~owner/lessor~~major refiner/importer of gasoline of the number of additional retail clean fuel outlets for each year.

For each year, the eExecutive eOfficer shall determine the number of additional retail clean fuel outlets that each major refiner/importer of gasoline ~~affected owner/lessor of retail gasoline outlets~~ is required for the first time to have in place ~~in the state~~. This number shall be calculated, for each designated clean fuel, by multiplying the ~~owner/lessor's~~refiner/importer's market share ~~number of non-clean fuel retail gasoline outlets~~ (determined in accordance with section ~~2306.5~~2307(b)) by the ~~clean fuel fraction~~number of new clean fuel outlets (determined in accordance with section ~~2304(b)7(c)~~), rounded to the nearest integer using conventional rounding. If the resulting number is less than 0.5~~zero~~, the number shall be adjusted to zero.

* * * *

(f) If the total number of required additional outlets is adjusted and reduced pursuant to section 2304(a)(2)(F), twenty months prior to each year, the Executive Officer shall notify each affected refiner/importer in writing of their adjusted required minimum number of clean fuel outlets for the year. The written notification shall include a detailed analysis of how the number was derived.

5. Amend title 13, CCR, section 2309 to read as follows:

§ 2309. Responsibilities of ~~Owner/Lessors~~Refiner/Importers of Selected Retail Clean Fuel Outlets.

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(a) *Locations of required clean fuel outlets.*

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(3) The ~~owner/lessor~~refiner/importer shall notify the ~~eExecutive eOfficer~~ of the final locations of all new retail clean fuel outlets for the year, no later than nineteen~~five~~ months before the start of the year (by ~~July 31~~June 1). This notification may include adjustments made pursuant to sections 2304(a)(2)(F) and 2307(f).

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6. Amend title 13, CCR, section 2312 to read as follows:

§ 2312. ~~[RESERVED] Reports by Major Refiner/Importers of Gasoline~~Owner/Lessors of Retail Gasoline Outlets.

~~(a) Once the eExecutive eOfficer has identified a designated clean fuel under section 2311.5, by July 31 of the year the identification was made and by July 31 of every year thereafter, each refiner/importer owner/lessor of a retail gasoline outlet shall report to the eExecutive eOfficer the total number of retail gasoline outlets in the state of which the person is affiliated, either as the owner, distributor, franchisor, or as the refiner/importer affiliated by name with the branded fuel the owner/lessor, the street addresses of the retail gasoline outlets, and the refiner/importer's owner/lessor's business interest in each the outlets.~~

7. Amend title 13, CCR, section 2312 to read as follows:

§ 2315. Determination of Violations.

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(d) Violations of section 2303(b)(2).
Whenever a motor vehicle manufacturer fails to deliver for sale or lease the projected number of designated clean fuel vehicles it submitted to the Executive Officer pursuant

to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles " as incorporated by reference in Title 13, California Code of Regulations, section 1961, that motor vehicle manufacturer will be deemed to have ~~knowingly submitted falsified documentation within the meaning of~~ violated Health and Safety Code section 42402.4 upon the requisite showing of the manufacturer's knowledge of the falsity of the information submitted and intent to deceive. The penalty as described in Health and Safety Code section 42402.4 will be assessed during the first quarter of the calendar year following the year for which the Executive Officer made the determination pursuant to sections 2304 and 2307 and motor vehicle manufacturer projections, that additional retail clean fuel outlets were required. No penalty will be assessed under Health and Safety Code section 42402.4 if the motor vehicle manufacturer delivers for sale or lease at least 80 percent of their projected number of vehicles during the calendar year the following year for which the Executive Officer made the determination pursuant to sections 2304 and 2307 that additional retail clean fuel outlets were required.

8. Amend title 13, CCR, section 2318 to read as follows:

§2318. Sunset for Particular Designated Clean Fuels.

Preliminary Draft Language - Staff's suggested modifications to proposed amendments

This Chapter 8, shall cease to apply to a particular designated clean fuel once the number of retail clean fuel outlets offering the designated clean fuel represent at least ~~ten~~five percent of all retail gasoline outlets. If the terms of the MOA described in §2304(a)(2)(C)3 are met for hydrogen as the designated clean fuel, this Chapter 8 shall cease to apply to that designated clean fuel once at least 100 publically accessible designated clean fuel outlets meeting the performance requirements outlined in sections 2302(b) and 2309(b) have been established and are operating independent of financial incentives.