

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 6. A new Article 8 would be created to establish quality standards for hydrogen fuel used in fuel cell and internal combustion motor vehicles.

The California Business and Professions Code, Section 13446 charges the Department, with the concurrence of the State Air Resources Board, to establish standards for hydrogen motor vehicle fuels by January 1, 2008. The Department is required to adopt by reference the latest standard established by an American National Standards Institute (ANSI) accredited standards development organization for hydrogen. If such a standard has not been developed, the Department is required to establish interim standards.

The Department has determined that no ANSI accredited standards development organization has established standards for hydrogen fuel used in fuel cell or internal combustion motor vehicles. Therefore, the Department proposes to establish interim standards for hydrogen fuel.

PUBLIC HEARING

The Department has scheduled a public hearing on this proposed action. The hearing will be held at 1001 I Street, Sacramento, California 95812, at 1:00 p.m. on December 17, 2007. At this hearing, any person may present statements of arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the time of the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on December 17, 2007. The Department will consider only comments received at the Department offices by that time. Submit comments to: Department of Food and Agriculture, Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by email at DMS@cdfa.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On July 21, 2005, Governor Schwarzenegger signed into law Senate Bill 76 (Chapter 91, Statute of 2005). The goal of this new law is to support the development of a network of hydrogen refueling locations in California, thereby reducing California's dependency upon oil and supporting the use of alternative fuels. The new law also recognized the importance of a consistent high quality fuel to prevent the fouling or failure of fuel cells or internal combustion engines. The Department, in concurrence with the California Air Resources Board is mandated by January 1, 2008 to establish standards for hydrogen for use in fuel cells and internal combustion engines.

The Department recognizes that additional research and product development is required before fuel cell vehicles will be offered to the general public. It is also recognized that this proposed interim standard is only required because not all of the quality and testing issues have been fully addressed by SAE, ASTM or other consensus groups. It is the intention of this proposed regulation to promote and assist in the development process.

The latest SAE technical information report on hydrogen indicates a desire to have one standard to address hydrogen used for both fuel cells and internal combustion engines. The Department recognizes that the proposed standard may be overly restrictive for internal combustion engine fuel applications. As new technical and economic information become available regarding this issue; the Department will consider adopting by regulation a separate standard for hydrogen used in internal combustion engines.

Article 8. Specifications for Hydrogen Used in Internal Combustion Engines and Fuel Cells

Section 4180. Definitions Used in this Article

This section as proposed defines the terms "Fuel Cell", "Internal Combustion Engine" and "Hydrogen Fuel".

Section 4181. Hydrogen Used in Fuel Cells and Internal Combustion Engines

This section as proposed establishes standards for hydrogen fuel used in fuel cell and internal combustion motor vehicles. It also delays enforcement of the proposed standards by the Department until sampling and test procedures are adopted by regulation.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Secretary has determined that this proposal does not impose a mandate on local agencies or school districts.

The Secretary also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department is not aware of any statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT REGARDING EFFECT ON JOB/BUSINESSES

The Department has made an assessment that the proposed regulation may: (1) create jobs within California; (2) create new businesses within California; or (3) affect the expansion of businesses currently doing business in California; and (4) will not eliminate jobs or businesses within California.

ALTERNATIVES CONSIDERED

The Department could seek legislative relief from the January 1, 2008 deadline to establish standards for hydrogen motor vehicle fuels. The date of implementation could be extended to January 1, 2011. This delay would provide time for a consensus standard to be developed. Such legislation should

authorize the Department to monitor the interim hydrogen fuel quality in California and require the Department to work with ASTM, SAE and other consensus organizations in the development of a standard.

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

AUTHORITY

Pursuant to Business and Professions Code, Division 5, Sections 12027 and 13446.

REFERENCE

The Department proposes to amend the current regulations to implement, interpret, and make specific the provisions of the Business and Professions Code, Section 13446.

CONTACT PERSON

Inquiries about this notice may be directed to Kristin Macey, Branch Chief, Division of Measurement Standards at (916) 229-3044 or kmacey@cdfa.ca.gov. The back-up contact person is Al Hebert, Supervising Chemist, Division of Measurement Standards at (916) 229-3030 or ahebert@cdfa.ca.gov.

EFFECT ON SMALL BUSINESS

The cost of equipment needed to produce hydrogen is beyond the scope of a small business. Therefore, the Department has made an assessment that the proposed regulations will not have an affect on small business.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file, and all information on which the

proposal is based is located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's web site located at www.cdfa.ca.gov/dms/.

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulation adopted by the Department differs from but is sufficiently related to the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Kristin Macey, Branch Chief, Division of Measurement Standards, at (916) 229-3044 or kmacey@cdfa.ca.gov.

DEPARTMENT OF FOOD AND AGRICULTURE

9/27/07

Date

Original signed by Dennis Johannes

Director