

**AIR RESOURCES BOARD**

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State of California  
AIR RESOURCES BOARD

**Notice of Decision and  
Response to Significant Environmental Issues**

Item: PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO REGULATIONS REGARDING THE OXYGEN CONTENT OF GASOLINE, AND REGARDING EXEMPTIONS FROM MOTOR VEHICLE FUELS REQUIREMENTS FOR FUELS USED IN TEST PROGRAMS

Approved by: Executive Order G-871  
Signed: January 28, 1994

and

Executive Order G-94-039  
Signed: July 21, 1994

Agenda Item: 93-11-1


Public Hearing Date: September 9, 1993

Issuing Authority: Air Resources Board

Comment: No comments were received identifying any significant environmental issues pertaining to this item. The staff report identified no adverse environmental effects.

Response: N/A

Certified:

  
Artavia M. Edwards  
Regulations Coordinator

Date: July 21, 1994

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RESOURCES AGENCY OF CALIFORNIA



State of California  
AIR RESOURCES BOARD

Resolution 93-54

September 9, 1993

Agenda Item No.: 93-11-1

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize the Air Resources Board (the 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 section 43018(a), enacted by the California Clean Air Act of 1988, directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date;

WHEREAS, Health and Safety Code section 43018(b) directs the Board to take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, by December 31, 2000, a reduction of reactive organic gases (ROG) of at least 55 percent and a 15 percent reduction in the emission of oxides of nitrogen (NO<sub>x</sub>) from motor vehicles, and the maximum feasible reductions in particulates (PM), carbon monoxide (CO), and toxic air contaminants for vehicular sources;

WHEREAS, Health and Safety Code section 43018(c) provides that in carrying out section 43018, the Board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including but not limited to the specifications of vehicular fuel composition;

WHEREAS, Health and Safety Code section 43013 authorizes the Board to adopt and implement motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the Board has found to be necessary, cost-effective, and technologically feasible to carry out the purpose of Division 26 of the Health and Safety Code;

WHEREAS, section 211(m) of the federal Clean Air Act as amended in 1990 requires states containing specified CO nonattainment areas to submit revisions to their State Implementation Plans (SIPs) requiring that gasoline sold for use in the CO nonattainment areas contain no less than 2.7 percent oxygen by weight during the high CO winter period specified by the Administrator of the U.S. Environmental Protection Agency (U.S. EPA) starting November 1, 1992, or such other date in 1992 established by the

Administrator, and eight areas in California are among those for which such SIP revisions must be submitted;

WHEREAS, section 211(m)(3)(A) of the federal Clean Air Act directs the U.S. EPA Administrator to waive, in whole or part, the SIP revision requirements pertaining to the minimum oxygen content of gasoline upon a demonstration by a state to the Administrator's satisfaction that the use of oxygenated gasoline would prevent or interfere with the attainment by the areas of a national primary ambient air quality standard, or a state ambient air quality standard, for any pollutant other than CO;

WHEREAS, on December 12, 1991, by Resolution 91-57, the Board approved sections 2258 and 2298 of Title 13, California Code of Regulations (the wintertime oxygenates regulations), requiring motor vehicle gasoline to have an oxygen content of not less than 1.8 percent and not more than 2.2 percent by weight during specified periods in the wintertime starting November 1, 1992; these regulations were subsequently adopted by Executive Order G-720 and became effective on October 14, 1992;

WHEREAS, the Board has requested that the U.S. EPA partially waive the federal 2.7 weight percent oxygen content for California because gasoline containing an oxygen content exceeding 2.2 weight percent would increase wintertime emissions of oxides of nitrogen (NOx) and interfere with attainment of state and federal ambient air quality standards for PM10, nitrogen dioxide (NO<sub>2</sub>) and ozone;

WHEREAS, the Board has submitted the wintertime oxygenate regulations to the U.S. EPA as a revision to the California SIP;

WHEREAS, during the first implementation period of the wintertime oxygenates regulations, the Board's staff became aware of concerns regarding applications of the regulations;

WHEREAS, during the first implementation period of the wintertime oxygenates regulations the staff received comments and suggestions regarding application of the regulations;

WHEREAS, the staff conducted a public workshop on April 15, 1993, regarding the effectiveness of the wintertime oxygenates regulations;

WHEREAS, The Air Pollution Control Officer of the San Luis Obispo County Air Pollution Control District has requested that the Board revise the oxygenate control period applicable in the San Luis Obispo County;

WHEREAS, The Western Petroleum Association (WSPA) has petitioned the Board to amend the wintertime oxygenates regulations to replace American Society for Testing and Materials (ASTM) Method 4815-89 with ASTM Method D 4815-93;

WHEREAS, in response to comments received in connection with the public workshop, the staff has proposed amendments to the wintertime oxygenates

regulations to enhance the effectiveness of the regulations and to make implementation more practical; these amendments include the following elements:

Revising the wintertime oxygenates control period for San Luis Obispo County from November 1 through February 29, to October 1 through January 31;

Exempting gasoline sold by a small gasoline retailer that meets the following criteria: the retailer receives its gasoline supply from a final distribution facility outside of California, the retail facility is located outside of CO nonattainment areas and is within one of the counties bordering Nevada, the retail facility's storage tank has a volume of 2,500 gallons or less, the gasoline is delivered by cargo tank trucks having a total capacity of 4,000 gallons or less, and the monthly output of the retail station is 10,000 gallons or less;

Allowing a distributor to deliver to a retail outlet gasoline with an oxygen content exceeding 2.2 weight percent during the first 15 days of a control period upon a demonstration that the delivery is being made pursuant to a prior agreement to bring the outlet's gasoline into compliance by the end of the 15 days;

Imposing a less stringent 8.8 pound per square inch (psi) Reid vapor pressure (RVP) standard in place of the otherwise applicable 7.8 psi standard for gasoline which contains at least 4.9 volume percent ethanol, if the gasoline is supplied due to calibration of ethanol blending equipment during the 15-days prior to the start of a control period;

Identifying ASTM Method D 4815-93 in place of ASTM Method D 4815-89 for determining gasoline oxygen content, and repealing the section 2298 table for converting the volume percent of oxygenates to the weight percent of oxygen;

WHEREAS, the Board's regulation on the RVP of gasoline sold before 1996 and the Phase 2 reformulated gasoline regulations contain provisions authorizing the Executive Officer to exempt up to 5000 gallons of gasoline used in certain research programs;

WHEREAS, the staff has proposed the deletion of the provisions in the RVP and Phase 2 reformulated gasoline regulations that exempt gasoline used in research programs, and the adoption of a regulation which will establish a mechanism for a person to obtain an exemption from any of the Board's motor vehicle fuel standards if the applicant can demonstrate the following:

The proposed test program is being conducted for the purpose of research or emissions certification;

For each specific fuel requirement that would be violated by the test program, a demonstration that the stated purpose of the test program could not be achieved in a practical manner without violating the identified fuel requirement(s);

The proposed test program has a duration of reasonable length, affects a reasonable number of vehicles or engines, and utilizes a reasonable amount of noncomplying fuel; and

The proposed test program exhibits a degree of control consistent with the purpose of the program and the ARB's monitoring requirements;

WHEREAS, the staff's regulatory proposal would be effected by the amendment of Title 13, California Code of Regulations, sections 2251.5, 2258, 2263, and 2267, the adoption of Title 13, California Code of Regulations, sections 2259, 2283, and 2293.5, and the repeal of Title 13, California Code of Regulations, section 2298 as set forth in Attachment A;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the impact of the proposed regulatory action on the economy of the state;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the Board finds that:

Changing the wintertime oxygenates control period for San Luis Obispo County from November 1 through February 29 to October 1 through January 31, will make it more closely aligned with the existing gasoline distribution network in the area;

The amendments approved herein regarding sales of gasoline during the wintertime control period by small retailers supplied from distribution facilities outside California in narrowly-defined circumstances will eliminate the potentially excessive compliance costs that may occur in those circumstances;

The amendments approved herein regarding deliveries of gasoline containing greater than 2.2 weight percent oxygen to retailers during the first 15 days of the wintertime oxygenate season will provide greater flexibility to distributors and retailers coming into compliance at the beginning of each season;

ASTM Method D 4815-93 is more precise than ASTM Method D 4815-89 and will permit enforcement of the wintertime oxygenates regulations to tighter tolerances;

The amendments approved herein regarding the RVP limits for gasoline supplied during the calibration of ethanol blending equipment will make it more practical for gasoline oxygenated with ethanol to be supplied at the beginning of the wintertime season;

The other amendments to the wintertime oxygenates and related regulations approved herein will enhance their effectiveness and make their implementation more practical;

The amendments to the wintertime oxygenates regulations approved herein will not reduce the minimum oxygen content requirements for federal CO nonattainment areas in the existing regulations, and accordingly will not affect California's qualification for a waiver under section 211(m)(3)(A) of the federal Clean Air Act;

The regulatory actions approved herein pertaining to exemptions from the Board's motor vehicle fuels regulations for fuel used in research or emissions certification programs are closely patterned after a recently enacted U.S. EPA regulation, 40 C.F.R. section 80.27(e), and will help avoid undue constraints on research and other test programs while assuring that exemptions apply only where they are necessary and appropriate.

The amendments approved herein will not result in a significant adverse environmental impact.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 2251.5, 2258, 2263 and 2267, Title 13, California Code of Regulations, the adoption of section 2259, 2283, 2293.5, California Code of Regulations, and the repeal of section 2298, Title 13, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the regulations as set forth in Attachment A hereto with the modifications set forth in Attachment B hereto, after making the modifications available to the public for a supplemental written comment period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as 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 he determines that this is warranted.

BE IT FURTHER RESOLVED that, following approval by the Office of Administrative Law of the amendments to the wintertime oxygenates regulations adopted herein, the Executive Officer is directed, as appropriate, to adopt the amendments as part of the California SIP and to submit to the U.S. Environmental Protection Agency as a revision to the California SIP.

I hereby certify that the above is a true and correct copy of Resolution 93-54 as adopted by the Air Resources Board.

  
Pat Hutchens, Board Secretary

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RESOURCES AGENCY OF CALIFORNIA

State of California  
AIR RESOURCES BOARD

Executive Order G-871

WHEREAS, on September 9, 1993, the Air Resources Board (ARB/Board) conducted a public hearing to consider the adoption of regulatory amendments regarding the required oxygen content of gasoline;

WHEREAS, following the public hearing on September 9, 1993, the Board adopted Resolution 93-54, in which the Board approved the amendments to sections 2251.5, 2258, and 2263, Title 13, California Code of Regulations, and the repeal of section 2298, Title 13, California Code of Regulations, as set forth in Attachment A thereto, with the modifications to section 2258 set forth in Attachment B thereto;

WHEREAS, Resolution 93-54 directed the Executive Officer to adopt the regulations as set forth in Attachment A thereto with the modifications set forth in Attachment B thereto, after making the modifications available to the public for a supplemental written comment period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as 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 he determines that this is warranted;

WHEREAS, the text of section 2258, Title 13, California Code of Regulations, with the Board-approved modifications to the originally proposed text clearly indicated, was made available to the public for a 15-day comment period;

WHEREAS, no written comments were received during the 15-day comment period; and

WHEREAS, Attachment A hereto contains the amendments to sections 2251.5, 2258, and 2263, Title 13, California Code of Regulations, and the repeal of section 2298, Title 13, California Code of Regulations, as modified and approved by the Board.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 93-54 are incorporated herein.

IT IS FURTHER ORDERED, in accordance with Resolution 93-54 and Health and Safety Code sections 39515 and 39516, the amendments to sections 2251.5, 2258, and 2263, Title 13, California Code of Regulations, and the repeal of section 2298, Title 13, California Code of Regulations, are hereby adopted as set forth in Attachment A hereto.

IT IS FURTHER ORDERED, that the regulatory amendments approved by the Board in Resolution 93-54 pertaining to test program exemptions from the Board's



State of California  
AIR RESOURCES BOARD

Executive Order G-94-039

WHEREAS, on September 9, 1993, the Air Resources Board (ARB) conducted a public hearing to consider the adoption of regulatory amendments regarding exemptions from ARB motor vehicle fuels requirements for fuels used in test programs, and regarding the required oxygen content of gasoline;

WHEREAS, following the public hearing on September 9, 1993, the Board adopted Resolution 93-54, in which the Board approved the amendments to sections 2251.5, 2258, 2263 and 2267, the adoption of sections 2259, 2283, and 2293.5, and the repeal of section 2298 of Title 13, California Code of Regulations, as set forth in Attachment A thereto, with the modifications to section 2258 and 2259 set forth in Attachment B thereto;

WHEREAS, Resolution 93-54 directed the Executive Officer to adopt the regulations as set forth in Attachment A thereto with the modifications set forth in Attachment B thereto, after making the modifications available to the public for a supplemental written comment period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as 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 he determines that this is warranted;

WHEREAS, the text of sections 2258 and 2259, Title 13, California Code of Regulations, with the Board-approved modifications to the originally proposed text clearly indicated, was made available to the public for a 15-day comment period;

WHEREAS, no written comments were received during the 15-day comment period; and

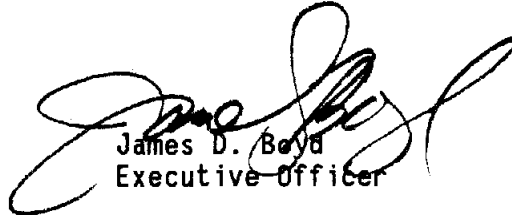
WHEREAS, in Executive Order G-871, issued January 28, 1994, the Executive Officer adopted the regulatory changes pertaining to the required oxygen content of gasoline, namely the amendments to sections 2251.5(a) and (c), 2258, and 2263, Title 13, California Code of Regulations, and the repeal of section 2298, Title 13, California Code of Regulations, as set forth in Attachment A hereto.

WHEREAS, Attachment A hereto also contains the regulatory changes approved by the Board pertaining to exemptions from motor vehicle fuels requirements for fuels used in test programs, namely the amendments to sections 2251.5(e) and 2267, Title 13, California Code of Regulations, and the adoption of sections 2259, 2283 and 2293.5, Title 13, California Code of Regulations;

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 93-54 are incorporated herein.

IT IS FURTHER ORDERED, in accordance with Resolution 93-54 and Health and Safety Code sections 39515 and 39516, that the amendments to sections 2251.5(e) and 2267, Title 13, California Code of Regulations, and new sections 2259, 2283 and 2293.5, Title 13, California Code of Regulations, are hereby adopted as set forth in Attachment A hereto.

Executed this 21st day of July, 1994, at Sacramento, California.



James D. Boyd  
Executive Officer

Attachments

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RESOURCES AGENCY OF CALIFORNIA

ATTACHMENT B

PROPOSED REGULATORY MODIFICATIONS

Title 13, California Code of Regulations, Sections 2258 and 2259

NOTE: The originally proposed regulatory text is shown in underline to indicate new language and ~~strikeout~~ to indicate deletions. The modifications to the originally proposed text is shown by ***bold italics*** to indicate additions and ~~slashes~~ to indicate deletions.

The only modifications are in sections 2258(a)(6) and (7), 2258(b)(10), and 2259(a)(3), (d) and (h).

Amend section 2258, Title 13, California Code of Regulations, to read as follows:

Section 2258. **Oxygen Content of Gasoline in the Wintertime**

(a) **Regulatory Standard.**

(1) Starting November 1, 1992, within each of the air basins during the regulatory control period set forth in section (a)(2), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless the gasoline has an oxygen content of not less than 1.8 percent by weight and not more than 2.2 percent by weight.

(2) **Regulatory Control Periods.**

(A) **October 1 through February 29**  
South Coast Air Basin and Ventura County

(B) **October 1 through January 31**  
Sacramento Valley Air Basin  
San Joaquin Valley Air Basin  
San Francisco Bay Area Air Basin  
Lake Tahoe Air Basin  
Great Basin Valley Air Basin  
Mountain Counties Air Basin  
North Coast Air Basin  
Lake County Air Basin  
Northeast Plateau Air Basin

North Central Coast Air Basin

San Luis Obispo County

(C) November 1 through February 29

San Diego Air Basin

South Central Coast Air Basin (Excluding Ventura County)

Southeast Desert Air Basin

Santa Barbara County

(3) Section (a)(1) shall not apply to transactions involving gasoline not meeting the minimum oxygen content standard where the person selling, supplying, or offering the gasoline demonstrates by affirmative defense that: [i] the gasoline has not yet been supplied from the final distribution facility, and [ii] the documents accompanying such gasoline clearly state that it does not comply with the minimum oxygen content standard in section (a)(1), and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline within the standards in section (a)(1) before it is supplied from the final distribution facility, or [iv] at or before the time of the transaction the person has obtained a written statement from the purchaser, recipient, or offeree of the gasoline stating that he or she will take reasonably prudent precautions to assure that the gasoline brought within the standards of section (a)(1) before it is supplied from the final distribution facility.

(4) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser-consumer's fueling facility when the station or facility is not subject to a basic regulatory control period.

(5) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the last delivery of

officer for the purpose of research, of motor vehicle or engine emissions certification, or fuels certification.

(b) (1) In order for an exemption to be granted, the applicant must demonstrate the following:

(A) The proposed test program has a purpose that constitutes an appropriate basis for exemption;

(B) The proposed program necessitates the granting of an exemption;

(C) The proposed test program exhibits reasonableness in scope; and

(D) The proposed test program exhibits a degree of control consistent with the purpose of the program and the state board's monitoring requirements.

(2) Paragraphs (c), (d), (e), and (f) of this section describe what constitutes a sufficient demonstration for each of the four elements in paragraphs (b)(2)(A) through (D) of this section.

(c) An appropriate purpose is limited to research or emissions certification. The exemption application must include a concise statement of the purpose(s) of the program.

(d) With respect to the necessity for an exemption, the applicant must identify each specific fuel requirement that would be violated by the test program, and demonstrate an inability to achieve the stated purpose in a practical manner without violating the identified fuel requirement(s). If any site of the proposed test program is located in an area that has been classified as a nonattainment area for purpose of the state's ambient air quality standards, the applicant must also demonstrate *in a practical* inability to perform the test program in an area that is in attainment.

(e) With respect to reasonableness, a test program must exhibit a duration of reasonable length, affect a reasonable number of vehicles or engines, and utilize a reasonable amount of noncomplying fuel. In this regard, the application for exemption must include:

(1) An estimate of the program's duration;

(2) An estimate of the maximum number of vehicles or engines involved in the program;

(3) The time or mileage duration of the test program;

(4) The range of the noncomplying properties of the fuel expected to be used in the program, and

gasoline to the stationary storage tank occurred more than fourteen days before the start of the regulatory control period.

(6)(A) The regulatory standards in section (a)(1) shall not apply to a transaction occurring in an air basin during a transition period, where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that he or she has made, prior to the transaction, specific arrangements with a gasoline distributor for the delivery of an oxygenated or nonoxygenated gasoline blend containing oxygenates in quantities that will result in gasoline in the stationary storage tanks at the facility having an oxygen content of from 1.8 percent to 2.2 percent by weight by the end of the transition period.

(B) The ~~minimum oxygen content~~ regulatory standards in section (a)(1) shall not apply to a transaction occurring in an air basin during a transition period, where the transaction involves the sale, offer for sale, supply, offer for supply, or transport of gasoline to a retail gasoline outlet or bulk purchaser-consumer's facility and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the gasoline is being distributed pursuant to a prior arrangement to deliver *oxygenated or* nonoxygenated gasoline to bring the retail gasoline outlet or bulk purchaser-consumer's facility into compliance with the regulatory standards in section (a)(1) by the end of the transition period.

(7) Section (a)(1) shall not apply to a transaction involving the sale, offer for sale, supply, or offer for supply of gasoline to a stationary storage tank at a retail gasoline outlet, or the transfer of gasoline from a stationary storage tank at a retail gasoline outlet to a motor vehicle fuel tank, if the person selling, offering, or supplying the gasoline demonstrates by affirmative defense all of the following:

(A) The retail gasoline outlet is within Modoc, Lassen, Sierra, Nevada, Placer, El Dorado, Alpine, Mono, Inyo, or San Bernardino counties, and is not within the Lake Tahoe or Sacramento Valley Air Basins.

(B) The final distribution facility from which the gasoline is being or has been delivered is outside California.

(C) The gasoline is being or has been delivered to the stationary storage tank by a tank truck having a total capacity not exceeding 4000 4500 gallons.

(D) The stationary storage tank at the retail gasoline outlet has a total capacity not exceeding 2500 gallons, and

(E) The retail gasoline outlet has a monthly throughput not exceeding 10,000 gallons.

~~(7)~~(8) For the purposes of section (a)(1), each sale of California gasoline at retail, and each dispensing of California gasoline into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of section (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Bulk purchaser-consumer" means a person who purchases or otherwise obtains gasoline in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(2) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.

(3) "Distributor" means any person engaged in the business of transporting and delivering gasoline to a retail gasoline outlet or bulk purchaser-consumer's facility.

(4) "Final distribution facility" means the stationary gasoline transfer point from which gasoline is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the gasoline will be delivered to the facility at which the gasoline will be dispensed into motor vehicles; except that a cargo tank truck is the final distribution facility where the cargo tank truck is used to transport gasoline and carries written documentation demonstrating that oxygenates, in quantities that will bring the gasoline into compliance with section 2258(a)(1), will be or have been blended directly into the cargo tank truck prior to delivery of the gasoline from the cargo tank truck to the facility at which the gasoline will be dispensed into motor vehicles.

(5) "Gasoline" means any fuel which is commonly or commercially known or sold as gasoline.

(6) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(7) "Northern California" means the area of California not contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(8) "Southern California" means the area of California contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(9) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(10) "Transition period" means:

[i] the first 15 days of any October regulatory control period,

[ii] November 1 to November 15, 1992, and

[iii] November 1 through November 15 of 1993, 1994, or 1995 in the San Diego Air Basin, the Southeast Desert Air Basin, and ~~THE SOUTH CENTRAL COAST AIR BASIN (EXCLUDING VENTURA COUNTY)~~ Santa Barbara County.

(c) Sampling, Procedures and Test Methods, and Oxygen Content Calculations.

In determining compliance with the oxygen content standards in this regulation, the oxygen content of gasoline by weight shall be determined by:

(1) Use of an applicable sampling methodology set forth in Title 13, California Code of Regulations, section 2296, and

(2) Use of American Society for Testing and Materials Method ASTM D 4815-89 4815-93, which is incorporated herein by reference. This method is used to determine the volume percent of each oxygenate in the gasoline sampled. Another test method may be used following a determination by the executive officer that the other method produces results equivalent to the results obtained with ASTM D ~~4815-89~~-4815-93.

(3) Use of the tables in section 2298 to determine the gasoline oxygen content attributable to the volume percent of each oxygenate present in the gasoline sampled, and adding the oxygen contents attributable to each such oxygenate.



(4) All volume measurements shall be adjusted to 60 degrees Fahrenheit.

**(d) Inability to Produce Conforming Gasoline in Extraordinary Circumstances.**

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner, importer, or oxygenate blender and which could not have been avoided by the exercise of prudence, diligence, and due care, the executive officer may permit a refiner, importer, or oxygenate blender, for a brief period, to distribute gasoline which does not meet the requirements in section (a)(1) if:

(1) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls which cannot otherwise be compensated for);

(2) The refiner, importer, or oxygenate blender exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(3) The refiner, importer, or oxygenate blender can show how the requirements for oxygenated gasoline will be expeditiously achieved;

(4) The refiner, importer, or oxygenate blender agrees to make up air quality detriment associated with the nonconforming gasoline, where practical; and

(5) The refiner, importer, or oxygenate blender pays to the Air Pollution Control Fund an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to section (d)(4), in making up the air quality detriment.

**(e) Effect of Supply Waiver Under Federal Clean Air Act.**

(1) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas of California, the requirements of section (a)(1) shall not apply in any air basin containing an area covered by the waiver, during the effective period of the waiver.

(2) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the

requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Southern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Southern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.

(3) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Northern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Northern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.

(f) **Sunset.**

This section shall not apply to gasoline sold or supplied after February 29, 1996.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

Adopt new section 2259 Title 13, California Code of Regulations, to read as follows:

Section 2259. Exemptions for Motor Vehicle Fuel Used in Test Programs

(a) (1) Any person may request an exemption for fuel used in a test program by submitting an application to the executive officer that includes all the information listed in paragraphs (c)(d),(e),and (f) of this section.

(2) For the purpose of this section, "fuels requirement" means any requirement for a motor vehicle fuel established in Chapter 5 (Standards for Motor Vehicle Fuels) of Division 3, Title 13, California Code of Regulations.

(3) For the purpose of this section, "exemption" means an exemption from one or more fuels requirements that is granted by the executive

(5) The quantity of fuel which exceeds the applicable standard that is expected to be used in the program.

(f) With respect to control, a program must be capable of affording the executive officer a monitoring capability. At a minimum, the application for exemption must also include:

(1) The technical nature of the test program;

(2) The site(s) of the program (including the street address, city, county, and zip code);

(3) The manner in which information on vehicles and engines used in the program will be recorded and made available to the executive officer;

(4) The manner in which results of the program will be recorded and made available to the executive officer;

(5) The manner in which information on the fuel used in the test program (including noncomplying properties, name, address, telephone number, and contact person of supplier, quantity, date received from the supplier) will be recorded and made available to the executive officer;

(6) The manner in which the distribution pumps will be labeled to insure proper use of the test fuel;

(7) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the request may be obtained; and

(8) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who will be responsible for recording and making the information specified in paragraphs (f)(3),(4), and (5) of this section available to the executive officer and the location in which such information will be maintained.

(g) An exemption shall be granted by the executive officer upon a demonstration that the requirements of paragraphs (b),(c),(d),(e) and (f) of this section have been met. The exemption will be granted in the form of memorandum of exemption signed by the applicant and the executive officer (or his delegate), which shall include such terms and conditions as the executive officer determines necessary to monitor the exemption and to carry out the purpose of the section. Any violation of such term or condition shall cause the exemption to be void.

*(h) The fuels requirements do not apply to fuel used for an engine or vehicle dynamometer test.*

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).  
Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).