

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED 2004 AMENDMENTS REFINING THE CALIFORNIA PHASE 3 REFORMULATED GASOLINE REGULATIONS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider proposed 2004 amendments refining the California Phase 3 Reformulated Gasoline (CaRFG3) regulations. The proposed amendments include clarifications, corrections, and improvements in compliance flexibility and enforceability.

Date	November 18, 2004
Time	9:00 a.m.
Place	California Environmental Protection Agency Air Resources Board Central Valley Auditorium, Second Floor 1001 I Street Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on Thursday, November 18, 2004, and may continue at 8:30 a.m. on Friday, November 19, 2004. This item may not be considered until Friday, November 19, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before November 18, 2004, and posted on the ARB's website, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2260, 2262, 2262.4, 2262.5, 2262.6, 2262.9, 2263, 2265 (and the incorporated "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model"), and 2266.5 of title 13, California Code of Regulations (CCR).

Background:

The Existing CaRFG3 Regulations

The ARB administers the CaRFG3 regulations, which were adopted in June 2000 following a December 1999 Board hearing. As subsequently amended, the CaRFG3 regulations prohibit California gasoline produced with the oxygenate methyl tertiary-butyl ether (MTBE) or other specified oxygenates other than ethanol starting December 31, 2003. The regulations establish CaRFG3 standards applicable the same date for the following eight gasoline properties – sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen contents, the 50 percent distillation temperature, (T50), the 90 percent distillation temperature, (T90), and summertime Reid vapor pressure (RVP). In addition, the regulations establish standards for denatured ethanol sold for use in California gasoline.

The CaRFG regulations allow refiners to use a “Predictive Model” to specify alternative formulations. The Predictive Model is a set of mathematical equations that relate emissions rates of exhaust hydrocarbons, oxides of nitrogen (NO_x), and potency weighted toxics for four toxic air contaminants (benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) to the values of the eight regulated gasoline properties. An alternative gasoline formulation is acceptable if emissions of hydrocarbons, NO_x, and potency-weighted toxics resulting from this formulation are no greater than emissions from gasoline having the specifications set forth in the CaRFG3 standards. Currently, most of the gasoline sold in California complies with the CaRFG3 regulations through the use of the Predictive Model.

When gasoline is oxygenated with ethanol, certain characteristics of the resulting blend make it generally infeasible to be transported through pipeline systems. Because of this, ethanol is typically added to gasoline at the terminal or in the delivery truck. The CaRFG regulations allow a refiner to ship non-oxygenated gasoline from the refinery without complying with the CaRFG standards if it is specially formulated to be combined with oxygenate “downstream” from the refinery and the resulting blend will meet all of the CaRFG standards. This allows entities adding oxygen downstream from the refinery to take advantage of the contribution the oxygenate can make to complying with the CaRFG standards, particularly by diluting the concentration of compounds like benzene. The nonoxygenated blend is called “California reformulated gasoline blendstock for oxygenate blending,” or “CARBOB.”

The Proposed Amendments

The staff is proposing a series of relatively minor amendments to the CaRFG3 regulations that would clarify current requirements, provide additional flexibility, correct errors, and generally improve enforceability of the regulations.

- Revising restrictions on blending CARBOB with other products downstream of the production or import facility. A CARBOB supplier would be allowed to enter into a

protocol with the ARB's Executive Officer permitting the blending of small amounts of transmix into CARBOB that is downstream from its production or import facility. Protocols covering the blending of small amounts of transmix into downstream gasoline are permitted under the existing regulations, subject to conditions that are identical to those proposed regarding transmix blending into CARBOB. A CARBOB supplier would also be permitted to blend limited amounts of California gasoline containing ethanol under specific conditions so long as the resulting CARBOB does not contain more than 0.1 percent by weight oxygen; the gasoline would have to meet the applicable cap limits for all other properties other than oxygen content. In addition, the Executive Officer would be allowed to develop protocols for the blending of California gasoline or other CARBOB into CARBOB for other situations.

- Changing the documentation requirements for denatured ethanol being supplied from one party to another. The amendments would give an importer of denatured ethanol an option to having to provide documentation identifying the name, location and operator of the facility or facilities at which the ethanol was produced and at which the denaturant was added to the ethanol. Under the option, the documentation would have to identify the date and time the ethanol was supplied and state that the supplier maintains a list of all the facilities at which the ethanol was produced and at which the denaturant was added to the ethanol.
- Eliminating a requirement that CARBOB importers sample and test each batch of imported CARBOB. A requirement that CARBOB producers sample and test each batch was eliminated in 2000, and staff believes a blanket requirement for importers of CARBOB is no longer necessary. Importers of either CARBOB or California gasoline would still have to sample and test for any properties for which an averaging compliance option is being used.
- Revising a provision designed to make gasoline produced in the Bay Area and received at a Southern California marine terminal in March subject to the Southern California March 1 start of the RVP season rather than the April 1 start date for Bay Area production and import facilities. Under the amendments, such gasoline would no longer be characterized as imported.
- Correcting the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the Predictive Model," which is incorporated by reference in the regulations, to reflect the Board's original intent that gasoline with an oxygen content within the range of 3.3 to 3.7 weight percent will be evaluated at a single oxygen content of 3.5 weight percent.
- Making various other minor clarifications of and improvements to the CaRFG3 regulations.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) administers the federal RFG regulations, which currently apply to about 80 percent of California's gasoline and are contained in 40 CFR §§ 80.40 and following. One of the requirements for federal RFG is that it contain at least 2.0 weight % oxygen year-round. California, on the other hand, requires a minimum oxygen content of 1.8 wt.% only during the wintertime in Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial counties. The use of oxygen in gasoline reduces emissions of carbon monoxide (CO) from the existing vehicle fleet, and ambient CO concentrations are the highest in the winter. Unhealthy levels of CO are no longer experienced in California outside the wintertime oxygenate areas. Except for the wintertime requirements, producers and importers of California gasoline may use the Predictive Model to reduce or eliminate oxygen as long as the combined specifications for the gasoline achieve an equivalent emissions performance for hydrocarbons, NOx, and potency-weighted toxics.

California has asked U.S. EPA to exercise its authority to waive the minimum oxygen requirement, but in June 2001 the agency denied the state's request. The State of California subsequently challenged the U.S. EPA's denial of the waiver request; and in July 2003, the Ninth Circuit Court of Appeals vacated this denial and directed U.S. EPA to reconsider California's waiver request giving with full consideration of the impacts on California's ability to meet federal standards for ozone and particulate matter. The federal agency has taken no action to date.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the environmental and economic impacts of the proposal. The report is entitled "Proposed 2004 Amendments Refining the California Phase 3 Reformulated Gasoline Regulations."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (November 18, 2004).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons, Mr. Steven Brisby, Manager, Fuels Section,

(916) 322-6019, or Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/carfg304/carfg304.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. The proposed amendments would provide clarification and compliance flexibility and would improve the way the regulations are administered. No negative economic impacts on small businesses are expected.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the CaRFG regulations which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, November 17, 2004**, and addressed to the following:

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: carfg304@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, November 17, 2004**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, November 17, 2004**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43013.1, 43018, and 43101, 43830 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). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43021, 43101, 43830, and 43830.8, 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).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon
Executive Officer

Date: September 21, 2004

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at www.arb.ca.gov.