

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION TITLED: "DEFINITION OF MINOR VIOLATION AND GUIDELINES FOR ISSUANCE OF A NOTICE TO COMPLY"

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider the adoption of a regulation to classify minor violations and to establish a "Notice to Comply" program for minor violations in the areas for which the ARB has direct enforcement authority. These areas include motor vehicle fuels content, consumer products and cargo tank inspections.

DATE: April 23, 1998

TIME: 9:30 a.m.

PLACE: Air Resources Board
Hearing Board Room
2020 L Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board which will commence at 9:30 a.m., April 23, and may continue at 8:30 a.m., April 24, 1998. This item may not be considered until April 24. Please consult the agenda for the meeting, which will be available at least 10 days before April 23, 1998, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board at (916) 327-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls for outside the Sacramento area by April 8, 1998.

INFORMATIVE DIGEST OF PROPOSED ACTION AND "PLAIN ENGLISH" POLICY STATEMENT OVERVIEW

Proposed Actions and Sections Affected

Adoption of the proposed regulation will add new sections 60090 through 60095 to Title 17 of the California Code of Regulations. The purpose of this regulation is to implement the provisions of Chapter 3, Part 1 of Division 26 of the California Health and Safety Code (commencing with section 39150), which define a "minor violation" and establish guidelines for issuing a Notice to Comply.

Background

Assembly Bill 2937 (Brulte; Stats. 1996, Ch. 775) was enacted to limit the enforcement action by specified agencies for minor violations to the writing of a "Notice to Comply." AB 2937 added

sections 39150-39153 to the Health and Safety Code (H&SC) and amended H&SC section 42400.2. It also added similar provisions to the Water Code, which are not addressed in this rulemaking action. AB 2937 requires the ARB, the local air pollution control districts, the State Water Resources Control Board and regional water quality control boards to adopt regulations classifying minor violations and to implement a “Notice to Comply” (NTC) program in accordance with the statutory criteria.

Therefore, the ARB is required to adopt regulations to classify minor violations in the areas over which it has direct enforcement authority. These areas include motor vehicle fuels content, cargo tank inspections, and consumer products (H&SC sections 43830 et seq., 41962, and 41712 respectively).

SUMMARY OF PROPOSED REGULATION

Defining a Minor Violation

The identification of a violation as “minor” is subject to the limitations contained in AB 2937 (H&SC 39150 - 39153). Specifically, AB 2937 prohibits any violation that is knowing or willful, intentional, benefits the violator economically or competitively, or is part of a pattern of neglect or disregard for the law, from being classified as a minor violation.

ARB staff is proposing that emission-related violations that are determined by the Executive Officer or delegated enforcement staff to be of a “de minimis” amount shall be considered minor violations. “De minimis” means a trivial or very small amount of air contaminants. The proposed regulation specifies that violations that result in an increase in emissions of toxic air contaminants shall not be minor violations. Staff also proposes that the determination of which emission-related violations will be de minimis shall be made on a case-by-case basis, rather than by defining and specifying de minimis amounts in the regulation.

ARB staff is also proposing that certain procedural violations be included within the definition of minor violations.

Notice to Comply

AB 2937 specifies that a Notice to Comply (NTC) is to be written in the course of conducting an ARB inspection, except where testing must be conducted to determine the occurrence of the violation. A Notice to Comply is a command to correct a violation of an ARB rule or regulation. The NTC must clearly state the nature of the alleged minor violation, a means by which compliance can be achieved, and a time limit within which to comply, not to exceed thirty days. The main difference between a Notice to Comply and an ARB Notice of Violation (NOV) is that there are no civil, criminal, or administrative penalties associated with a NTC, except as specifically provided in the statute, as long as the violation is corrected in a timely manner.

Enforcement Policy

The current ARB enforcement policy regarding minor violations is that a Notice to Comply, as opposed to a Notice of Violation, may be issued to a source when the violation does not result in emissions of air contaminants beyond legally established limits. The proposed regulation makes this mandatory, except in certain specified situations. While it is current ARB policy that a Notice of Violation must be issued for all emissions-related violations, discretion is exercised in determining settlement terms and conditions, including the amount of any penalties. Further, penalty action need not follow every Notice of Violation issued, depending upon the factors set forth in Health and Safety Code sections 42403 and 43031. The proposed regulation would require ARB to issue a Notice to Comply instead of a Notice of Violation in situations where an emission violation is determined by the Executive Officer to be of such an inconsequential amount that it is de minimis.

Local and regional air pollution control districts and air quality management districts are primarily responsible for the enforcement of rules and regulations pertaining to stationary sources and are in the process of adopting their own NTC programs in accordance with AB 2937. Persons interested in these programs should contact the appropriate air district for more information.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a staff report for the proposed action, which includes the Initial Statement of Reasons for Rulemaking and a summary of the environmental impacts of the proposal, if any. Copies of the staff report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing. The Board staff has compiled a rulemaking record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below.

Further inquiries regarding this matter should be directed to Stephanie Trenck, Chief, Program Assessment and Compliance Data Management Branch, P.O. Box 2815, Sacramento, CA 95812. Ms. Trenck's telephone number is (916) 323-8412.

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 in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as specified in Government Code section 11346.5(a)(6), to any state agency, 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 cost or savings to local agencies, or costs or savings in federal funding to the state.

The Executive Officer has also determined that adoption of the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

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 California, or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

Finally, the Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected by the proposed action.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency 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 persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, April 22, 1998, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. 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 HEARING PROCEDURES

This regulatory action is proposed under the authority granted in sections 39600, 39601, and 39150(c) of the Health and Safety Code. This action is proposed to implement, interpret and make specific Chapter 3 of Part 1 of Division 26 of the California Health and Safety Code (commencing with section 39150) which defines a “minor violation” and establishes guidelines for issuing a Notice to Comply.

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 Board's Public Information Office, 2020 L Street, Sacramento, CA 95814 (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: