

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATIONS FOR PORTABLE FUEL CONTAINERS

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the regulations and test procedures for portable fuel containers.

DATE: September 15-16, 2005

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 E. Copley Dr.
Diamond Bar, CA 91765

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 15, 2005, and will continue at 8:30 a.m., September 16, 2005. This item may not be considered until September 16, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before September 15, 2005, 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 title 13, California Code of Regulations, sections 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.7; repeal of section 2467.8, and adoption of new sections 2467.8 and 2467.9. Proposed adoption of the incorporated "Certification Procedure, CP-501 for Portable Fuel Containers and Spill-Proof Spouts," "Test Procedures, TP-501 Determination of Integrity of Spill-Proof Spouts and Spill-Proof Systems," and "TP-502 Determination of Diurnal Emissions from Portable Fuel Containers." Proposed amendments to "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted July 6, 2000, and Repeal of "Test Method 512, Determination of Fuel Flow Rate for Spill Proof Systems and Spill Proof Spouts, adopted July 6, 2000."

Staff is proposing amendments to the regulations controlling emissions from portable fuel containers (PFC). The PFCs or “gas cans” are used to store and dispense fuel into on-road and off-road mobile sources.

The Board adopted regulations to control the emissions from PFCs in September 1999. The current regulations reduce emissions from three main processes: evaporation of fuel vapors through PFC openings, permeation of fuel through PFC container walls, and spillage during fueling events. The current PFC regulations were fully implemented in 2001 and are projected to result in a reduction of about 75 tons per day (tpd) of reactive organic gases (ROG) emissions statewide by 2007.

Shortly after implementation of the PFC regulations, consumers began to express complaints regarding spillage from the new PFCs. The ARB staff researched these complaints and learned that while the regulations have been successful in reducing emissions from evaporation and permeation, emissions from spillage continued to occur. Furthermore, ARB staff received complaints expressing dissatisfaction with the design and functionality of the PFC “spill-proof” spouts.

Other issues that have been identified during implementation of the regulations are poor production quality and the use of non-regulated containers for gasoline storage.

In response to the issues encountered with the current regulations, ARB staff is proposing the following amendments:

- Modify the existing spout regulations to improve spillage control;
- Include a voluntary Consumer Acceptance Program to support and encourage user-friendly PFC designs;
- Establish a certification program for PFCs to improve product quality;
- Clarify the definition of a PFC to include presently non-compliant containers;
- Combine the evaporation and permeation standards into a new diurnal standard to simplify certification and compliance testing; and,
- Adopt new PFC test procedures to streamline testing.

The ARB staff estimates that with the approval of the proposed amendments, ROG emissions will be reduced by 18.4 tpd by the year 2015. These emission reductions result from reducing emissions from spillage by removing the automatic shutoff requirement, adding kerosene containers into the regulations, clarifying the definition of a PFC to include utility jugs, and incorporating a diurnal standard.

The amendments are expected to have little effect on the cost of PFCs meeting current standards. However, ARB staff estimates that consumers will pay about \$8.50 more when purchasing a compliant kerosene container or utility jug in lieu of a non-compliant substitute container. The total cost from the proposed amendments will be about \$17 million over a five-year period, including costs associated with the proposed certification program and new test procedures. The estimated cost-effectiveness for this proposal is about \$.40 to \$.70 per pound of ROG reduced. This cost-effectiveness figure

compares favorably with values for the small off-road engines (SORE) regulations recently adopted by the Board that had a cost-effectiveness range of under \$2.00 to over \$6.00 per pound of hydrocarbons reduced.

The ARB staff conducted five public workshops and had over 60 meetings with manufacturers and other interested parties during development of the proposed amendments. In addition, ARB staff considered alternatives to the proposal including no action, retaining the current requirements and adding a consumer education program, imposing a diurnal standard and certification program, and the current proposal. The ARB staff determined that adopting the proposal is technologically feasible, cost-effective and provides the greatest benefits to the people of California.

COMPARABLE FEDERAL REGULATIONS

The U.S. EPA is considering national standards for portable fuel containers and has attended meetings and public workshops held by the ARB on this topic. Currently, no comparable federal regulations pertaining to portable fuel containers have been adopted.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Initial Statement of Reasons for Proposed Amendments to the Portable Fuel Container Regulations, and includes a summary of the economic and environmental impacts of the proposal.

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 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 September 15, 2005.

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 ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact person, Mr. Dennis Goodenow, at (916) 322-2886 or dgoodeno@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive 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 www.arb.ca.gov/regact/pfc/2005/pfc2005.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 and 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 costs or 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. Designing the automatic shutoff feature has been reported by PFC manufacturers to be one of the most costly aspects of the current PFC regulations. Removing this feature will most likely result in a cost savings. No costs have been attributed to this amendment. To estimate the cost of the proposed certification program ARB staff used data supplied by independent test companies and manufacturers' hourly labor rates. ARB staff estimates that it will cost a typical manufacturer \$4,000 to comply with the program. There are currently eight manufacturers producing PFCs for the California market, thus the cost of adding the certification program is \$32,000. Assuming that eight manufacturers sell about 1.9 million PFCs in the State each year, certification will cost about \$.02 per PFC. These costs would likely be passed on to the consumer. The proposed amendments would potentially increase the cost of a kerosene container or utility jug by \$6.00 to \$11.00, or an average of about \$8.50 per container. The increased cost is attributed to material and production costs associated with adding control technologies for evaporation, permeation, and spillage. In total, this will result in a cost of approximately \$17 million (0.6 million kerosene containers plus 1.4 million utility jugs x \$8.50 per container). This amounts to a price increase of about \$1.70 per container per year over the estimated five-year useful life of the kerosene container. It is expected that the useful life of a utility jug is more than five years, thus the cost per year would be less. The cost of complying with the proposed diurnal emission standard is not expected to be substantially different from complying with the existing permeation standard in the PFC regulations. The total cost from the proposed amendments will be about \$17 million over a five-year period including costs associated with the proposed certification program and new test procedures.

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 have some impact, although not significant, on small business that buy and sell kerosene containers. During the initial years of implementation, the increased cost may lead to a slight drop in demand that could result in lower profits for businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation 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 board 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, September 14, 2005**, 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, CA 95814

Electronic mail is to be sent to: pfc2005@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, September 14, 2005**.

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 September 14, 2005**. 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, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). The action is proposed to implement, interpret and make specific sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018 of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County 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 non substantial 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: July 19, 2005

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.