

CALIFORNIA AIR RESOURCES BOARD

**THE CALIFORNIA REFORMULATED GASOLINE
REGULATIONS**

Title 13, California Code of Regulations, Sections 2250-2273.5
Reflecting Amendments Effective August 29, 2008

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As of August 29, 2008

NOTE: This is a compilation of California Air Resources Board (ARB) motor vehicle gasoline regulations as of August 29, 2008 (resulting from the June 14, 2007 Board Hearing and subsequent 15-day changes). It includes all amendments effective August 29, 2008 and earlier. They are collectively referred to as the California reformulated gasoline (CaRFG) or cleaner burning gasoline regulations.

Title 13, California Code of Regulations, Division 3, Chapter 5 (Standards for Motor Vehicle Fuels), Article 1 (Standards for Gasoline) consists of two Subarticles. Subarticle 1 (starting with section 2250) contains standards that became applicable before 1996. Subarticle 2 (starting with section 2260) contains the Phase 2 CaRFG regulations that became applicable in 1996, the Phase 3 CaRFG regulations that became effective on December 31, 2002, and the Phase 3 amendments that became effective on August 29, 2008. Section 2261(c) identifies the preexisting subarticle 1 regulations that continue to apply to all California gasoline after April 1, 1996, and which are contained in this compilation: section 2253.4 (Lead/Phosphorus in Gasoline), section 2254 (Manganese Additive Content), and section 2257 (Required Additives in Gasoline). Section 2267 continues the preexisting subarticle 1, section 2259 regulation (Exemptions for Motor Vehicle Fuels Used in Test Programs) after April 1, 1996.

This compilation omits the Subarticle 1 regulations that previously sunsetted: section 2251.5 (Reid Vapor Pressure of Gasoline Sold After January 1, 1992 and Before March 1, 1996 [sunsetted on March 1, 1996]), and section 2258 (Oxygen Content of Gasoline in the Wintertime [sunsetted on February 29, 1996]). It also omits the subarticle 1 regulations – section 2250 (Degree of Unsaturation of Gasoline) and section 2252 (Sulfur Content of Gasoline) – that applied from March 1996 through February 1998 only to small refiners that qualified under section 2272 for a temporary exemption from the CaRFG standards for sulfur content, olefin content, T50 and T90. The temporary exemptions for small refiners ended March 1, 1998. Finally, this compilation does not include sections 2296 (Motor Fuel Sampling Procedures) and 2297 (Test Method for the Determination of RVP Equivalent), which continue to apply.

The Authority and References, which appear at the end of each section, have also been excluded from this compilation in an attempt to shorten this document.

Most Recent Amendments

Rather than listing in detail each of the changes to the CaRFG3 regulations, the reader should review the Final Regulation Order (resulting from the June 14, 2007 Board Hearing and subsequent 15-day changes) that contains text shown in underline to indicate additions and strikeout to indicate deletions. The Final Regulation Order may be found at <http://www.arb.ca.gov/regact/2007/carfg07/finalreg07.pdf>.

The following is a brief description of the major changes.

- Amend the California Predictive Model to ensure that emissions associated with permeation caused by ethanol use are mitigated and incorporate new data;

- Decrease the sulfur cap limit from 30 parts per million by weight (ppmw) to 20 ppmw (21 ppmw for California reformulated gasoline blendstock for oxygenate blending [CARBOB]) to improve enforceability and facilitate new motor vehicle emissions control technology;
- Allow emissions averaging beginning December 31, 2009, for low level sulfur blends to provide additional flexibility for producers and importers that produce gasoline;
- Apply the 7.00 pounds per square inch (psi) Reid vapor pressure (RVP) limit to oxygenated gasoline when the evaporative emissions portion of the Predictive Model is used to certify ethanol blends to reflect that virtually all gasoline will be oxygenated and commingling emissions are not a problem for these fuels;
- Retain the 6.90 RVP limit for non-oxygenated gasoline to ensure that no increase in hydrocarbon emissions from commingling with oxygenated gasoline will occur;
- Allow flexibility in setting the oxygen content in the Predictive Model to account for variability in test methods;
- Increase the maximum allowable amount of denaturant in ethanol to be consistent with the current standards of the American Society of Testing and Materials (ASTM);
- Update the test method for oxygenate content of gasoline;
- Require producers to use the revised Predictive Model starting December 31, 2009;
- Add an option to use an alternative emissions reduction plan (AERP) beginning December 31, 2009 through December 31, 2011 to help mitigate emissions associated with permeation; and
- Require the production of CaRFG compliant with the revised Predictive Model after December 31, 2011.

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DISCLAIMER

This compilation of the 2007 CaRFG3 Amendments is intended solely to help regulated entities comply with the regulations. The preamble, hyperlinks, text and paragraph formatting, and Table of Contents contained in this document are for convenience only. This compilation is not meant to be a substitute for the actual text of the regulations. The ARB shall not be responsible for any errors or omissions in the information provided, and reserves the right to make corrections without notice. The Office of Administrative Law (OAL) maintains the **official** California Code of Regulations, which is available in looseleaf printed format from Thomson - West / Barclays (1-800-888-3600). An internet version, which is maintained and updated weekly by OAL through a contract with Thomson - West / Barclays, may be found at <http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome>. A certified copy of the regulation filing may be obtained from the Secretary of State Archives (916-653-7715).

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TITLE 13. MOTOR VEHICLES
DIVISION 3. AIR RESOURCES BOARD
CHAPTER 5. STANDARDS FOR MOTOR VEHICLE FUELS
ARTICLE 1. STANDARDS FOR GASOLINE

SUBARTICLE 1. GASOLINE STANDARDS THAT BECAME APPLICABLE BEFORE 1996.....1

 § 2253.4. Lead in Gasoline.....1

 § 2257. Required Additives in Gasoline.3

 (a) *Regulatory Standard.*3

 (b) *Definitions.*4

 (c) *Certification Requirements.*6

 (d) *Recordkeeping.*8

 § 2258. Oxygen Content of Gasoline in the Wintertime.9

 (a) *Regulatory Standard.*9

 (b) *Definitions.*11

 (c) *Sampling Procedures and Test Methods.*13

 (d) *Inability to Produce Conforming Gasoline in Extraordinary Circumstances.*13

 (e) *Effect of Supply Waiver Under Federal Clean Air Act.*13

 § 2259. Exemptions for Motor Vehicle Fuels Used in Test Programs.14

SUBARTICLE 2. STANDARDS FOR GASOLINE SOLD BEGINNING MARCH 1, 199618

 § 2260. Definitions.....18

 § 2261. Applicability of Standards; Additional Standards.....26

 (a) *Applicability of the CaRFG Phase 2 Standards.*26

 (b) *Applicability of the CaRFG Phase 3 Standards.*27

 § 2262.3. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene,
Aromatic Hydrocarbons, Olefins, T50 and T90.56

 (a) *Compliance with cap limits.*56

 (b) *Compliance by producers and importers with the flat limits.*56

 (c) *Optional compliance by producers and importers with the averaging limits.*56

 (d) *Optional compliance by producers or importers that produce gasoline with the PM emissions offsetting
compliance option.*57

 § 2262.4. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure.
.....58

 (a) *Compliance with the cap limits for Reid vapor pressure.*58

 (b) *Compliance by producers and importers with the flat limit for Reid vapor pressure.*58

(c) *Applicability.*60

§ 2262.5. Compliance With the Standards for Oxygen Content.61

(a) *Compliance with the minimum oxygen content cap limit standard in specified areas in the wintertime.* 61

(b) *Compliance with the maximum oxygen content cap limit standard.*61

(c) *Compliance by producers and importers with the flat limits for oxygen content.*61

(d) *Restrictions on adding oxygenates to California gasoline after it has been supplied from the production or import facility.*.....61

(e) *Application of prohibitions.*62

§ 2262.6. Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003......63

(a) *Basic MTBE prohibitions.*63

(b) *Phase-in of MTBE prohibitions.*63

(c) *Use of oxygenates other than ethanol or MTBE in California gasoline on or after December 31, 2003.*64

§ 2262.9. Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline......66

(a) *Standards.*66

(b) *Test Methods.*.....69

(c) *Documentation required for the transfer of denatured ethanol intended for use as a blend component in California gasoline.*69

§ 2263. Sampling Procedures and Test Methods......70

§ 2263.7. Multiple Notification Requirements......73

(a) *Assignment of a designated alternative limit.*73

(b) *Additional prohibitions regarding gasoline to which a designated alternative limit has been assigned.* 74

(c) *Offsetting exceedances of an applicable averaging limit.*75

(d) *Designated alternative limits for PM alternative gasoline formulations.*76

§ 2264.2. Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility......76

(a) *Election of the averaging compliance option.*.....76

(b) *Election of flat limit compliance option.*77

(c) *Inapplicability to elections for PM alternative gasoline formulations.*77

(d) *Election of the PM emissions offsetting compliance option.*78

§ 2265. Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model......79

(a) *Election to sell or supply a final blend as a PM alternative gasoline formulation.*79

(b) *Prohibited activities regarding PM alternative gasoline formulations.*80

(c) *Restrictions associated with elections to sell or supply final blends as PM alternative gasoline formulations.*81

§ 2265.1. Offsetting Emissions Associated with Higher Sulfur Levels.82

(a) *Assignment of designated emissions offsetting limits and percent change in emissions values for batches of gasoline for which the emissions associated with higher sulfur levels are being offset.*82

(b) *Additional prohibitions regarding gasoline with designated emissions offsetting limits and final blend credits or deficits.*86

(c) *Offsetting a final blend deficit.*86

(d) *Automatic termination of the producer's or importer's use of the PM emissions offsetting compliance option.*87

§ 2265.5. Alternative Emission Reduction Plan (AERP).87

(a) *Applicability.*87

(b) *Requirements.*88

(c) *Application Process.*.....91

(d) *Revocation or Modification of an Approved AERP or third party AERP.*92

(e) *Additional prohibitions.*93

(f) A cause of action against the producer, importer, or third party under this section shall be deemed to accrue on the date(s) when the records establishing a violation of the AERP or third party AERP are received by the Executive Officer.94

(g) *Transferability.*94

(h) *Notification of final blends associated with an AERP or third party AERP*95

(i) *Notification of permeation offsets*.....96

§ 2266. Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing.96

(a) *Application of the California gasoline standards to CARBOB.*98

(b) *Notification to ARB regarding the supply of CARBOB from the facility at which it was produced or imported.*105

(c) [Reserved].....107

(d) *Documentation required when CARBOB is transferred.*.....107

(e) *Restrictions on transferring CARBOB.*.....108

(f) *Restrictions on blending CARBOB with other products.*.....108

(g) *Requirements for oxygenate blenders.*112

(h) *Downstream blending of California gasoline with nonoxygenate blendstocks.*113

(i) *Restrictions during the RVP season on blending gasoline containing ethanol with California gasoline not containing ethanol.*114

§ 2267. Exemptions for Gasoline Used in Test Programs......114

§ 2268. Liability of Persons Who Commit Violations Involving Gasoline That Has Not Yet Been Sold or Supplied to a Motor Vehicle......114

§ 2269. Submittal of Compliance Plans......115

§ 2270. Testing and Recordkeeping..... 115

§ 2271. Variances. 118

 (a) *Applications for variances.* 118

 (b)(1) *Notices and public hearings for variances.* 118

 (c) *Public participation in the variance process.* 119

 (d) *Necessary findings for granting variances.* 119

 (e) *Factors to be considered in making the necessary findings for granting variances.* 119

 (f) *Conditions and fees in variance orders.* 121

 (g) *Duration of variances.* 123

 (h) *Emergency variances.* 123

 (i) *Situations in which variances shall cease to be effective.* 124

 (j) *Modification and revocation of variances.* 124

§ 2272. CaRFG Phase 3 Standards for Qualifying Small Refiners..... 124

 (a) *CaRFG Phase 3 standards for qualifying small refiners.* 124

 (b) *Certification of small refiners.* 124

 (c) *Criteria for qualifying gasoline.* 125

 (d) *Compliance with applicable federal RFG requirements.* 125

 (e) *Additional reporting requirements for small refiners.* 126

§ 2273. Labeling of Equipment Dispensing Gasoline Containing MTBE..... 127

 (a) *MTBE labeling requirement.*..... 127

 (b) *Residual levels of MTBE.* 127

 (c) *Responsibility for compliance.*..... 129

 (d) *Deliveries of gasoline to retail outlets.* 130

§ 2273.5. Documentation Provided with Delivery of Gasoline to Retail Outlets. 130

SUBARTICLE 1. GASOLINE STANDARDS THAT BECAME APPLICABLE BEFORE 1996

§ 2253.4. Lead in Gasoline.

(a) *Regulatory Standard.*

- (1) [Reserved]
- (2) [Reserved]
- (3) Starting January 1, 1994, no person shall sell, offer for sale, supply, or offer for supply any California gasoline:
 - (A) which is not represented as unleaded, or
 - (B) which has been produced with the use of any lead additive, or
 - (C) which contains more than 0.050 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon, except as provided in [subsection \(d\)](#).
- (4) Starting January 1, 1992, no person shall transfer a consumer gasoline additive containing lead into the fuel tank of a motor vehicle, other than an exempt off-road motor vehicle.
- (5) Starting January 1, 1992, no person shall sell or offer for sale a consumer gasoline additive containing lead unless the additive container bears a conspicuous legend that use of the additive in passenger cars and other on-road vehicles is unlawful and can result in substantial penalties, and unless the marketing of the additive is directed exclusively towards use in exempt off-road motor vehicles and nonvehicular sources.

(b) *Definitions.*

For the purposes of this section:

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

- (2) "Consumer gasoline additive" means any gasoline additive which is designed or marketed to be dispensed into the gasoline tank used to fuel a gasoline engine.
- (3) "Exempt off-road vehicle" means any special construction equipment as defined in sections 565 and 570 of the Vehicle Code, and any implement of husbandry as defined in sections 36000 et seq. of the Vehicle Code.
- (4) "Gasoline" means any fuel which is commonly or commercially known or sold as gasoline, or which is a mixture of any fuel commonly known or sold as gasoline and alcohol.
- (5) "Lead additive" means any substance containing lead or lead compounds.
- (6) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.
- (7) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the general public for use in motor vehicles other than exempt off-road vehicles.
- (8) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(c) ***Test Methods.***

The lead content of gasoline shall be determined in accordance with American Society of Testing and Materials (ASTM) Method D3237-79, which is incorporated herein by reference. The phosphorous content of gasoline shall be determined in accordance with ASTM Method D3231-73, which is incorporated herein by reference.

(d) ***Exemptions.***

Subsections (a)(1) and (3) shall not apply to California gasoline sold, offered from sale, supplied, or offered for supply by a person who demonstrates that:

- (i) The gasoline is conspicuously identified as a fuel which may not lawfully be dispensed to motor vehicles other than exempt off-road vehicles; and
- (ii) He or she has taken reasonable precautions to assure that the gasoline will not be sold or offered for sale at a retail outlet; and

- (iii) Either the gasoline is being directly dispensed into the fuel tank of an exempt off-road vehicle, or the gasoline is the subject of a declaration under penalty of perjury by the purchaser, offeree or recipient stating that he or she will not sell, offer for sale, supply, or offer for supply the gasoline for use in motor vehicles other than exempt off-road vehicles.

§ 2254. Manganese Additive Content.

- (a) Except as provided in subparagraph (b), no person shall add manganese or any manganese compound, including the compound methylcyclopentadienyl manganese tricarbonyl (MMT), to gasoline represented as unleaded intended to be sold, offered for sale, or delivered for sale at retail in the State of California.
- (b) The prohibitions set forth in subparagraph (a) shall not apply to any person who has applied for and received from the Executive Officer written approval to add manganese or any manganese compound, including MMT, to gasoline represented as unleaded for the purpose of conducting tests or research into the effect thereof on vehicle emissions, fuel economy, performance, or for other related research objectives.

§ 2257. Required Additives in Gasoline.

(a) ***Regulatory Standard.***

- (1) On or after January 1, 1992, no person shall sell, offer for sale, supply, or offer for supply any California gasoline unless at the time of the transaction:

- [i] the producer, importer, or distributor of the gasoline has been issued a currently effective certification for California gasoline pursuant to [subsection \(c\)](#), originally dated no earlier than July 1, 1996. Existing certifications dated between July 1, 1996 and July 16, 1999 that meet the standards described in [subsection \(c\)\(1\)\(A\)\(i\)](#) and [\(c\)\(1\)\(A\)\(ii\)](#) [including those which used test method ASTM D 5500-94] are exempted from [subsection \(c\)\(1\)\(A\)\(iii\)](#), and

- [ii] the gasoline contains at least the minimum concentration of the additive or additives identified in the final application for certification.

- (2) [Subsection \(a\)\(1\)](#) shall not apply to transactions where the person selling, supplying, or offering the gasoline demonstrates that:
- [i] the gasoline has not yet been sold, offered, or supplied from the final distribution facility, and either
 - [ii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline into satisfaction with the requirements of [subsection \(a\)\(1\)](#) before it is sold, supplied or offered from the final distribution facility, or
 - [iii] 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 is a distributor who has been issued a currently effective certification pursuant to [subsection \(c\)](#), and will cause the gasoline to satisfy the requirements of [subsection \(a\)\(1\)](#) before it is sold, supplied or offered from the final distribution facility.
- (3) [Subsection \(a\)\(1\)\[ii\]](#) shall not apply to the sale, supply, or offer of gasoline from a final distribution facility where the person selling, supplying, or offering the gasoline demonstrates that the gasoline will be corrected to comply with [section \(a\)\(1\)\[ii\]](#) prior to the sale of gasoline from the retail outlet to be dispensed into motor vehicles. If such corrective action is taken, the producer, importer, or distributor of the gasoline must notify the Compliance Division of the Air Resources Board by telephone or in writing within 2 business days of the correction and must maintain records to document each occurrence in accordance with [subsection \(d\)](#).
- (4) For the purposes of [subsection \(a\)\(1\)](#), each sale of gasoline at retail for use in a motor vehicle, and each supply of 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 [subsection \(a\)\(1\)](#).

(b) **Definitions.**

For the purposes of this section:

- (1) "Additive" means any substance or mixture of substances that is intentionally added to gasoline for the purpose of reducing or preventing fuel injection system or intake valve deposits, and that is not intentionally removed prior to the gasoline's sale or use.
- (2) "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.

- (3) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.
- (4) "Chemical composition" means the name, percentage by weight, and chemical identification of each compound in an additive.
- (5) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline, produced or imported by another person, at any point between any producer's or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.
- (6) "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.
- (7) "Gasoline" means any fuel which is sold or intended for sale as a California motor vehicle fuel and is either: (a) commonly or commercially known or sold as gasoline, or (b) any fuel blend of gasoline as defined in (a) and alcohol in which the portion of gasoline is more than 50 percent of the total blend.
- (8) "Gasoline production facility" means a facility in California at which gasoline is produced; it does not include a facility whose sole operation is to transfer gasoline or to blend additives into gasoline.
- (9) "Importer" means any person who first accepts delivery of gasoline in California.
- (10) "Import facility" means the facility at which imported gasoline is first received in California, including, in the case of gasoline imported by cargo tank and delivered directly to a facility for dispensing gasoline into motor vehicles, the cargo tank in which the gasoline is imported.
- (11) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.
- (12) "Produce" means to convert liquid compounds which are not gasoline into gasoline.
- (13) "Producer" means any person who produces California gasoline in California.
- (14) "Retail outlet" means any establishment at which gasoline is sold or offered for sale for use in motor vehicles.

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

(c) *Certification Requirements.*

(1)(A) No gasoline formulation shall be certified under this subsection (c) unless the applicant for certification demonstrates each of the following to the executive officer's satisfaction:

(i) The gasoline formulation meets a maximum of 50 milligrams averaged over all intake valves when tested in accordance with ASTM D 5500-98, which is incorporated herein by reference. As an alternative, intake valve deposits may be tested in accordance with subsection (c)(1)(A)(iii).

(ii) The gasoline formulation does not result in a flow loss of more than five percent for any fuel injector when tested in accordance with ASTM D 5598-95a, which is incorporated herein by reference.

(iii) The gasoline formulation meeting the requirements of (c)(1)(A)(i), does not result in more than 1300 milligrams total deposit weight, averaged over all four combustion chambers, or, does not result in more than 140 percent total deposit weight from all four combustion chambers, relative to the gasoline formulation containing no additive, when tested in accordance with the Stationary Source Division's Test Method for Evaluating Intake Valve and Combustion Chamber Deposits in Vehicle Engines, dated March 12, 1999, which is incorporated herein by reference.

(B) The executive officer may approve alternative test procedures for demonstrating satisfaction with any of the performance criteria set forth in [subsection \(c\)\(1\)\(A\)](#) if an applicant or potential applicant demonstrates to the executive officer's satisfaction that a gasoline formulation which meets the performance criteria of the alternative test procedure would also meet the performance criteria specified in [subsection \(c\)\(1\)\(A\)](#).

(2) Any producer, importer, or distributor may apply to the executive officer for certification of a gasoline formulation in accordance with this subsection (c). The application shall be in writing and shall include, at a minimum, the following:

(A) The name and chemical composition of the additive or additives in the gasoline formulation, except that if the chemical composition is not known to either the applicant or to the manufacturer of the additive (if other than the applicant), the applicant may provide a full disclosure of the chemical process of manufacture of the

- additive in lieu of its chemical composition.
- (B) The minimum concentration of each additive in the gasoline formulation in terms of gallons of additive per thousand gallons of gasoline.
 - (C) The results of tests conducted on the gasoline formulation pursuant to the test procedures set forth in [subsection \(c\)\(1\)](#), all data generated by the tests, the identity of the entity which conducted each test, and a description of the quality assurance and quality control procedures used during the testing.
 - (D) Data demonstrating that the fuel used for certification testing ("certification test fuel") is representative of the gasoline formulation for which certification is requested. Properties of the certification test fuel must be at least 80 percent of the maximum properties of the gasoline formulation to be certified for the following: aromatic hydrocarbon content, olefin content, sulfur content, and oxygen content. The T90 distillation temperature of the certification test fuel cannot be less than 40° F below the gasoline formulation for which certification is requested. All other certification test fuel properties must be representative of typical commercial gasoline.
 - (E) Data demonstrating how the certification test fuel was produced including a list of blend stocks, such as reformat, oxygenates, cracked stocks, alkylate, isomerate, straight run stocks and any other blend stocks, along with the percentage of the total which each blend stock comprises. Data may also be requested which demonstrates that the certification test fuel blend stocks are representative of typical California refinery blend stocks used for the production of California gasoline.
 - (F) The theoretical mechanism of action (if known) of the additive in meeting any of the performance criteria set forth in [subsection \(c\)\(1\)\(A\)](#).
 - (G) Copies of all material pertaining to the additive or additives in the gasoline formulation, submitted by the applicant to the U.S. Environmental Protection Agency pursuant to 40 CFR sections 79.6, 79.10 and 79.11. If the applicant has submitted no such material, copies of all material pertaining to the additive or additives in the gasoline formulation, submitted by the additive manufacturer to the U. S. Environmental Protection Agency pursuant to 40 CFR sections 79.6, 79.20 and 79.21.
 - (H) A test method reasonably adequate for determining the presence and concentration of each additive in the gasoline, including test method reproducibility. The test method may involve identification of the presence of a surrogate marker substance if the applicant demonstrates that such test method will adequately demonstrate the

presence and concentration of the additive.

- (3) Within 30 days of receipt of an application, the executive officer shall advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of submittal of additional information, the executive officer shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.
- (4) If the executive officer finds that an application meets the requirements of this section and determines that the applicant has satisfactorily made the demonstrations identified in [subsection \(c\)\(1\)](#), then he or she shall issue an Executive Order certifying the gasoline fuel formulation. The executive officer shall act on a complete application within 30 days after the application is deemed complete.
- (5) If the executive officer determines that the gasoline sold by a producer, importer or distributor contains the minimum concentration of additives identified in an applicable certification, but substantially fails to meet the performance criteria set forth in [subsection \(c\)\(1\)](#), the executive officer shall revoke or modify the prior certification as is necessary to assure that gasoline sold by the producer, importer or distributor meets the performance criteria set forth in [subsection \(c\)\(1\)](#). The executive officer shall not revoke or modify a prior certification order without first affording the applicant for the certification an opportunity for a hearing in accordance with title 17, California Code of Regulations, part III, chapter 1, subchapter 1, article 4 (commencing with section 60040). If the executive officer determines that a producer, importer or distributor would be unable to comply with this regulation as a direct result of a certification revocation or modification pursuant to this subsection, the executive officer may delay the effective date of such revocation or modification for such period of time as is necessary to permit the person to come into compliance in the exercise of all reasonable diligence.

(d) ***Recordkeeping.***

- (1) Each producer, importer, and distributor who has been issued a certification pursuant to [subsection \(c\)](#) must maintain records identifying each facility at which he or she adds an additive to California gasoline in order to comply with [subsection \(a\)\(1\)](#). For each such facility, the producer, importer or distributor must compile records showing on a monthly basis for each grade of gasoline:

[i] the volume of California gasoline supplied from the facility by the producer, importer or distributor,

[ii] the volume of California gasoline to which the producer, importer or distributor added the additive to comply with [subsection \(a\)\(1\)](#), and

[iii] the name and volume of each additive (or additive package) added to the California gasoline fuel. Records covering a month must be compiled no later than 30 days after the end of the month, and must be retained for at least two years after the end of the month.

(2) Any person required by [subsection \(d\)\(1\)](#) to compile and retain records must provide to the executive officer any such records within 20 days of a written request received from the executive officer or his/her designee before expiration of the period during which the records are required to be retained. Whenever such a person fails to provide records regarding a volume of California gasoline in accordance with this subsection (d)(2), the volume of California gasoline will be presumed to have been sold by the person in violation of [subsection \(a\)\(1\)](#).

§ 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
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 is 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 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 the 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 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 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.
- (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:
 - a. the first 15 days of any October regulatory control period.
 - b. November 1 to November 15, 1992, and

c. November 1 through November 15 of 1993, 1994, or 1995 in the San Diego Air Basin, the Southeast Desert Air Basin, and Santa Barbara County.

(c) *Sampling Procedures and Test Methods.*

Compliance with the oxygen content standards in this regulation shall be determined by use of an applicable sampling methodology set forth in Title 13, California Code of Regulations, section 2296, and use of American Society for Testing and Materials Test Method ASTM D 4815-94, which is incorporated herein by reference. 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 4815-94.

(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.

§ 2259. Exemptions for Motor Vehicle Fuels 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, "fuel 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 fuel requirements that is granted by the executive officer for the purpose of research, motor vehicle or engine emissions certification, fuel certification or registration, or fuel additive certification or registration.
- (4) For the purpose of this section, "test track" means a roadway that is closed to the general public, is used to test motor vehicles or motor vehicle fuels, and is not used to transport persons or property.

- (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 test 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 \(b\)\(1\)\(A\) through \(D\)](#) of this section.
- (3) Within 20 days of receipt of an application for an exemption, the executive officer shall advise the applicant in writing either that the application is complete or that specified additional information is required to make it complete. Within 15 days of submittal of additional information, the executive officer shall advise the applicant in writing either that the information submitted makes the application complete or that specified additional information is still required to make it complete. Within 20 days after the application is deemed complete, the executive officer shall grant or deny the application. Any denial shall be accompanied by a written statement of the reasons for denial.
- (c) An appropriate purpose is limited to research, motor vehicle or engine emissions certification, fuel certification or registration, or fuel additive certification or registration. The exemption application must include a concise statement of the purpose(s) of the proposed test 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 is classified as a nonattainment area for purposes of a state or federal ambient air quality standard, and the fuel requirement that would be violated is designed to reduce emissions of the pollutant, or a precursor of the pollutant, for which the area is classified as a nonattainment area, the applicant must also demonstrate a practical inability to perform the test program in an area that is in attainment with respect to that pollutant.

- (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
 - (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 this section. Any violation of such term or condition shall cause the exemption to be void.
- (h) No fuel requirement shall apply to fuel used for an engine or vehicle dynamometer test, or to fuel used in the testing of motor vehicles or motor vehicle fuels on a test track.

TITLE 13. MOTOR VEHICLES
DIVISION 3. AIR RESOURCES BOARD
CHAPTER 5. STANDARDS FOR MOTOR VEHICLE FUELS
ARTICLE 1. STANDARDS FOR GASOLINE

SUBARTICLE 2. STANDARDS FOR GASOLINE SOLD BEGINNING MARCH 1, 1996

§ 2260. Definitions.

(a) For the purposes of this subarticle, the following definitions apply:

(0.5) "Air basin" has the same meaning as defined in section 39012 of the Health and Safety Code.

(0.7) "Alternative emission reduction plan" means with respect to a specific gasoline property, the compliance option set forth in [section 2265.5](#).

(1) "Alternative gasoline formulation" means a final blend of gasoline that is either a PM alternative gasoline formulation or a test-certified alternative gasoline formulation.

(2) "Averaging compliance option" means, with respect to a specific gasoline property, the compliance option set forth in [section 2262.3\(c\)](#).

(3) "ASTM" means the American Society of Testing and Materials.

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

(5) "Bulk plant" means an intermediate gasoline distribution facility where delivery of gasoline to and from the facility is solely by truck.

(6) "California gasoline" means:

(A) Gasoline sold, intended for sale, or made available for sale as a motor vehicle fuel in California; and

- (B) Gasoline that is produced in California, and that the producer knows or reasonably should know will be offered for sale or supply at an out-of-state terminal or bulk plant at which it will be identified as gasoline produced in California and suitable for sale as a motor vehicle fuel in California.
- (6.5) "California reformulated gasoline blendstock for oxygenate blending, or 'CARBOB,'" means a petroleum-derived liquid which is intended to be, or is represented as, a product that will constitute California gasoline upon the addition of a specified type and percentage (or range of percentages) of oxygenate to the product after the product has been supplied from the production or import facility at which it was produced or imported.
- (6.6) "CaRFG Phase 2" means California Phase 2 reformulated gasoline.
- (6.7) "CaRFG Phase 3" means California Phase 3 reformulated gasoline.
- (6.8) "CARBOB limits" means, for a final blend of CARBOB, CARBOB specifications for maximum Reid vapor pressure, sulfur content, benzene content, olefin content, aromatic hydrocarbon content, T50 and T90, and maximum and minimum oxygen content, expressed to the number of significant figures identified for each property in the [section 2262 standards table](#), and for any other property identified in a certification order issued by the Executive Officer pursuant to the "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," incorporated by reference in [section 2266\(a\)](#), if applicable.
- (6.9) "Common carrier pipeline" means a pipeline operating under Public Utilities Commission tariffs which offers refined petroleum product transportation services to any qualified shipper.
- (7) "Designated alternative limit" means an alternative gasoline specification limit, expressed in the nearest part per million by weight for sulfur content, nearest hundredth percent by volume for benzene content, nearest tenth percent by volume for aromatic hydrocarbon content, nearest tenth percent for olefin content, and nearest degree Fahrenheit for T90 and T50, which is assigned by a producer or importer to a final blend of California gasoline pursuant to [section 2264](#).
- (7.5) "Designated emissions offsetting limit" means an alternative gasoline specification limit, expressed in the nearest hundredth pound per square inch for RVP, nearest tenth percent by weight for oxygen, nearest part per million by weight for sulfur content, nearest hundredth percent by volume for benzene content, nearest tenth percent by volume for aromatic hydrocarbon content, nearest tenth percent for olefin content, and

nearest degree Fahrenheit for T90 and T50, which is assigned by a producer or importer that produces gasoline to a final blend of California gasoline pursuant to [section 2265.1](#).

(8) "Ethanol" means ethyl alcohol which meets any additional requirements for ethanol or ethyl alcohol in Health and Safety Code section 43830.

(8.5) "Emissions associated with permeation" means the incremental increase in emissions because of permeation which is calculated as the difference between the emissions from the producer's or importer's final blend formulation and the flat limits without ethanol. The Phase 3 reformulated gasoline Predictive Model, as described in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, which is incorporated herein by reference, shall be used to calculate emissions associated with permeation.

Emissions are calculated as follows:

Ozone Forming Potential (tons per day) = 18.4 (tons per day) * (PCE(OFP)/ 2.39) * 2.80 * percent share of California gasoline sales covered by the AERP, and

NOx (tons per day) = 427.8 (tons per day) * PCE(NOx) * percent share of California gasoline sales covered by the AERP, where

PCE(OFP) and PCE(NOx) = Percent change in emissions, as predicted by the CaRFG3 Predictive Model for Ozone Forming Potential (OFP) and Oxides of Nitrogen (NOx), respectively, as described in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, which is incorporated herein by reference.

(9) "Executive Officer" means the executive officer of the Air Resources Board, or his or her designee.

(10) "Final blend" means a distinct quantity of gasoline or CARBOB which is introduced into commerce in California without further alteration which would tend to affect a regulated gasoline specification of the fuel.

(10.5) "Final blend credit" means the credit from a final blend of gasoline that may be used to offset a producer's or importer's final blend deficit. The amount of final blend credit shall be calculated as follows:

Final Blend Credit = (PCE - PCEt) * V_c, where

PCE = Percent change in emissions values as reported by the producer or importer pursuant to [section 2265\(a\)\(2\)\(C\)](#).

PCEt= Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for the PM alternative specifications that the producer or importer was intending to produce and which would have met the criteria for approval in the applicable Predictive Model Procedures but for the elevated sulfur content.

V_c = volume, in barrels, of the final blend that has a final blend credit.

- (10.7) "Final blend deficit" means the deficit from a final blend of gasoline that a producer or importer must offset. The amount of final blend deficit shall be calculated as follows:

Final Blend Deficit = $(PCE - 0.04) * V_d$, where

PCE = Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, which are greater than 0.04%. If the percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, are all less than 0.04%, there is no final blend deficit.

V_d = volume, in barrels, of the final blend that has a final blend deficit.

- (11) "Final distribution facility" means the stationary gasoline transfer point from which gasoline or CARBOB 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 CARBOB and gasoline and carries written documentation demonstrating that the designated type and amount or range of amounts of oxygenates designated by the producer or importer will be or have been blended directly into the cargo tank truck prior to delivery of the resulting gasoline from the cargo tank truck to the facility at which the gasoline will be dispensed into motor vehicles.
- (12) "Flat limit compliance option" means, with respect to a specific gasoline property, the compliance option set forth in [section 2262.3\(b\)](#), [section 2262.4\(b\)\(1\)](#), or [section 2262.5\(c\)](#).
- (13) "Further process" means to perform any activity on gasoline, including distillation, treating with hydrogen, or blending, for the purpose of bringing the gasoline into compliance with the standards in this subarticle.

- (14) "Gasoline" means any fuel that is commonly or commercially known, sold or represented as gasoline, including any volatile mixture of predominantly liquid hydrocarbons that is sold or represented as suitable for use in an automotive spark-ignition engine.
- (15) "Imported California gasoline" means California gasoline which is transported into California and does not meet the definition in [section 2260\(a\)\(6\)\(B\)](#).
- (16) "Import facility" means the storage tank to which imported California gasoline or CARBOB is first delivered in California, including, in the case of gasoline or CARBOB imported by cargo tank and delivered directly to a facility for dispensing gasoline into motor vehicles, the cargo tank in which the gasoline or CARBOB is imported.
- (17) "Importer" means any person who first accepts delivery in California of imported California gasoline.
- (18) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.
- (19) "Oxygenate" is any oxygen-containing, ashless, organic compound, such as an alcohol or ether, which, when added to gasoline increases the amount of oxygen in gasoline.
- (19.3) "Oxygenate blending facility" means any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives or other similar additives.
- (19.6) "Oxygenate blender" means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility.
- (19.7) "Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option" means values calculated, each for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics, from the Phase 3 Predictive Model using the designated emissions offsetting limits for the candidate fuel and the flat limits in [section 2262](#) for the reference fuel, as described in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, which is incorporated herein by reference.
- (19.8) "Pipeline tender" means a specific volume of product having a unique name or designation which is offered to a pipeline for transportation.

- (20) "PM alternative gasoline formulation" means a final blend of gasoline that is subject to a set of PM alternative specifications assigned pursuant to [section 2265\(a\)](#).
- (21) "PM alternative specifications" means the specifications for the following gasoline properties, as determined in accordance with [section 2263](#) and expressed to the number of significant figures identified for each property in the [section 2262 standards table](#): maximum Reid vapor pressure, maximum sulfur content, maximum benzene content, maximum olefin content, minimum and maximum oxygen content, maximum T50, maximum T90, and maximum aromatic hydrocarbon content.
- (22) "PM averaging compliance option" means, with reference to a specific gasoline property, the compliance option for PM alternative gasoline formulations under which final blends of gasoline are assigned designated alternative limits in accordance with [section 2264](#).
- (23) "PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.
- (23.5) "PM emissions offsetting compliance option" means, with respect to a specific gasoline property, the compliance option set forth in [section 2265.1\(a\)](#).
- (23.7) "PM emissions offsetting formulation" means a final blend of gasoline that is subject to a set of designated emissions offsetting limits assigned pursuant to [section 2265.1\(a\)](#).
- (24) "PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.
- (25) "PM flat limit compliance option" means, with reference to a specific gasoline property, the compliance option under which each gallon of gasoline must meet the specification for the property contained in the PM alternative specifications.
- (26)(A) "Produce" means, except as otherwise provided in section (a)(26)(B) or (a)(26)(C), to convert liquid compounds which are not gasoline into gasoline or CARBOB. When a person blends volumes of blendstocks which are not gasoline with volumes of gasoline acquired from another person, and the resulting blend is gasoline, the person conducting such blending has produced only the portion of the blend which was not previously gasoline. When a person blends gasoline with other volumes of gasoline, without the addition of blendstocks which are not gasoline, the person does not produce gasoline.
- (B) Where a person supplies gasoline to a refiner who agrees in writing to further process the gasoline at the refiner's refinery and to be treated as the producer of the gasoline,

the refiner shall be deemed for all purposes under this article to be the producer of the gasoline.

(C) Where an oxygenate blender blends oxygenates into CARBOB which has already been supplied from a gasoline production facility or import facility, and does not alter the quality or quantity of the CARBOB or the resulting gasoline in any other manner except for the addition of deposit control additives or other similar additives, the oxygenate blender is not producing any portion of the resulting gasoline, and the producer or importer of the CARBOB is treated as the producer or importer of the full volume of the resulting gasoline.

(26.5) "Produced at a California production facility with the use of any oxygenate other than ethanol or MTBE" means produced at a California production facility in part by either (i) adding at the California production facility any oxygenate, other than ethanol or MTBE, in neat form to the California gasoline or to a blending component used in the gasoline; or (ii) using a blending component that contained greater than 0.10 weight percent total oxygen from oxygenates other than ethanol or MTBE when it was supplied to the California production facility.

(27) "Producer" means any person who owns, leases, operates, controls or supervises a California production facility.

(28) "Production facility" means a facility in California at which gasoline or CARBOB is produced. Upon request of a producer, the executive officer may designate, as part of the producer's production facility, a physically separate bulk storage facility which (A) is owned or leased by the producer, and (B) is operated by or at the direction of the producer, and (C) is not used to store or distribute gasoline or CARBOB that is not supplied from the production facility.

(28.5) "Qualifying small refiner" means a small refiner whose California refinery was used in 1998 and 1999 to produce and supply California gasoline meeting the CaRFG Phase 2 standards.

(29) "Qualifying volume" means, for each small refiner, a volume of gasoline determined in accordance with the following four steps, provided that the qualifying volume for Kern Oil & Refining Co.'s Bakersfield refinery shall not exceed 2,920,000 barrels per year (equal to 8000 barrels per day; 2,928,000 barrels per year in leap years):

(A) First, the barrel per calendar day "operating crude oil capacity" of the small refiner's refinery in March 1999 is identified, based on data which are reported to the executive officer from the California Energy Commission (CEC) and are derived

from "Monthly Refinery Reports" (EIA 810) submitted to the CEC no later than June 30, 1999. If the CEC is unable to derive such data from the Monthly Refinery Reports for a particular small refiner, the executive officer shall determine the small refiner's operating crude oil capacity in March 1999 based on other publicly available and generally recognized sources.

(B) Second, this operating crude oil capacity is multiplied by 0.9794, representing the highest monthly refinery operating utilization rate in the California refining industry for January 1998 through March 1999, as compiled in the "Monthly Refinery Capacity Data Statewide" report of the CEC.

(C) Third, the resulting crude throughput volume is multiplied by the refinery's highest monthly ratio of gasoline produced to crude oil distilled in January 1998 through March 1999, based on data derived by the CEC from the Monthly Refinery Reports submitted to the CEC no later than June 30, 1999.

(D) Fourth, the resulting gasoline volume is multiplied by 365 to identify an annualized value. In the case of leap years, the gasoline volume is multiplied by 366 to identify the annualized value.

(29.5) "Racing vehicle" means a competition vehicle not used on public highways.

(30) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.

(31) "Refinery" means a facility that produces liquid fuels by distilling petroleum.

(32) "Small refiner" means any refiner who owns or operates a refinery in California that:

(A) Has and at all times had since January 1, 1978, a crude oil capacity of not more than 55,000 barrels per stream day;

(B) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in California with a total combined crude oil capacity of more than 55,000 barrels per stream day; and

(C) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day.

- (32.5) "South Coast Area" means the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.
- (33) "Stream day" means 24 consecutive hours of actual operation of a refinery.
- (34) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.
- (35) "TC limits" means the set of specifications identified in a certification issued by the Executive Officer pursuant to the "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," incorporated by reference in [section 2266\(a\)](#).
- (36) "Test-certified alternative gasoline formulation" means a final blend of gasoline that is subject to a set of specifications identified in a certification issued by the Executive Officer pursuant to the "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," incorporated by reference in [section 2266\(a\)](#).
- (37) "Third party" means any person who applies for, or has a, third party AERP or a third party EERP.
- (38) "Third party AERP" means an AERP whose application was submitted by a third party and approved by the Executive Officer.
- (39) "Third party EERP" means an EERP whose application was submitted by a third party and approved by the Executive Officer.

§ 2261. Applicability of Standards; Additional Standards.

(a) Applicability of the CaRFG Phase 2 Standards.

- (1)(A) Unless otherwise specifically provided, the CaRFG Phase 2 cap limit standards set forth in [section 2262](#), and the CaRFG Phase 2 cap limit compliance requirements in sections [2262.3\(a\)](#), [2262.4\(a\)](#), and [2262.5\(a\)](#) and [\(b\)](#), shall apply:

1. starting April 15, 1996 to all sales, supplies, offers or movements of California gasoline except for transactions directly involving:
 - a. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
 - b. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility, and
2. starting June 1, 1996 to all sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

(B) The remaining CaRFG Phase 2 standards and requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after March 1, 1996.

- (2) The CaRFG Phase 2 cap limit standards in [section 2262](#) shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to April 15, 1996, or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to June 1, 1996.

(b) *Applicability of the CaRFG Phase 3 Standards.*

(1)(A) Unless otherwise specifically provided, the CaRFG Phase 3 cap limit standards set forth in [section 2262](#), and the CaRFG Phase 3 cap limit compliance requirements in [2262.3\(a\)](#), [2262.4\(a\)](#), and [2262.5\(a\)](#) and [\(b\)](#), shall apply starting December 31, 2003. The CaRFG Phase 3 benzene and sulfur content cap limit standards in [section 2262](#), and the CaRFG Phase 3 benzene and sulfur content cap limit compliance requirements in [2262.3\(a\)](#), shall apply:

1. starting December 31, 2003 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), December 31, 2005 (for the 30 parts per million sulfur content cap limit), and December 31, 2011 (for the 20 parts per million sulfur content cap limit) to all sales, supplies or offers of California gasoline from the production facility or import facility at which it was produced or imported.
2. starting February 14, 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), February 14, 2006 (for the 30 parts per million

sulfur content cap limit), and February 14, 2012 (for the 20 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline except for transactions directly involving:

a. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or

b. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility, and

3. starting March 31, 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), March 31, 2006 (for the 30 parts per million sulfur content cap limit), and March 31, 2012 (for the 20 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

(B) The remaining CaRFG Phase 3 standards and compliance requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after December 31, 2003.

(2) The CaRFG Phase 3 benzene and sulfur content cap limit standards in [section 2262](#) shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to February 14, 2004 (for the benzene content limit and the 60 parts per million sulfur content limit), February 14, 2006 (for the 30 parts per million sulfur content limit), or February 14, 2012 (for the 20 parts per million sulfur content limit) or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to March 31, 2004 (for the benzene content limit and the 60 parts per million sulfur content limit), March 31, 2006 (for the 30 parts per million sulfur content limit), or March 31, 2012 (for the 20 parts per million sulfur content limit).

(3) Early Compliance with the CaRFG Phase 3 Standards Before December 31, 2003.

(A) Any producer or importer wishing to supply from its production or import facility, before December 31, 2003, any final blends of gasoline subject to the CaRFG Phase 3 standards instead of the CaRFG Phase 2 standards may notify the executive officer of its wish to do so. The notification shall include all of the following:

1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with the CaRFG Phase 3 standards if permitted to do so;
 2. A reasonably detailed demonstration of the producer's or importer's ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline meeting the CaRFG Phase 3 standards on or after the date specified;
- (B)1. Within 15 days of receipt of a request under [section 2261\(b\)\(3\)\(A\)](#), the executive officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.
2. Within 15 days of notifying the producer or importer that the request is complete, the executive officer shall either grant or deny the request. If the request is granted the executive officer shall specify the date on which producers and importers may start to supply from their production or import facilities final blends that comply with the CaRFG Phase 3 standards. The executive officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline complying with the CaRFG Phase 3 standards reasonably soon after the date specified. If the executive officer denies the request, he or she shall provide the producer or importer with a written statement explaining the reason for denial.
 3. Upon granting a request made under [section 2261\(b\)\(3\)\(A\)](#), the executive officer shall notify interested parties of the date on which (i) producers and importers will be permitted to start supplying final blends of gasoline complying with the CaRFG Phase 3 standards, and (ii) the CaRFG Phase 2 cap limits for RVP and aromatics will become 7.20 psi and 35.0 volume percent respectively for gasoline downstream of the production or import facility. This notification shall be made by posting the pertinent information on the state board's Internet site, providing electronic mail notification to all persons subscribing to the state board's Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
 4. With respect to all final blends supplied from a production or import facility from the day specified by the executive officer in granting a request made under [section 2261\(b\)\(3\)\(A\)](#) through December 30, 2003, any producer or importer may comply with the CaRFG Phase 3 standards that apply starting December 31, 2003 as an alternative to the CaRFG Phase 2 standards. Whenever a producer or importer is supplying a final blend subject to the CaRFG Phase 3 standards pursuant to this

section 2261(b)(3)(B)4., any notification required by [sections 2264.2](#) or [2265\(a\)](#) shall indicate that the final blend is subject to the CaRFG Phase 3 standards. When it is sold or supplied from the production or import facility, no such final blend may contain MTBE in concentrations greater than 0.60 volume percent, or contain a total of more than 0.10 weight percent oxygen collectively from all of the oxygenates identified in [section 2262.6\(c\)\(4\)](#) that have not received a determination by the California Environmental Council as described in [section 2262.6\(c\)\(1\)](#).

(4) Early compliance with the CaRFG Phase 3 Amendments (Emissions Associated with Permeation) Before December 31, 2009.

- (A) Any producer or importer that produces gasoline electing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in [section 2261\(b\)\(4\)\(E\)](#).
- (B) Any producer or importer that produces gasoline electing to supply from its production or import facility, before December 31, 2009, any final blends of CARBOB subject to the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in [section 2261\(b\)\(4\)\(E\)](#).
- (C) Any producer or importer electing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, or to the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, may elect to use either one of the two compliance options (exhaust + evaporative emissions model elements or the exhaust emissions model element only) as defined in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model" to certify alternative blends of gasoline. Beginning December 31, 2009, only the first compliance option (exhaust + evaporative emissions model elements) shall be used during the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#) and only the second compliance option (exhaust emissions model element only) shall be used outside of the RVP regulatory

control period.

(D) Any producer or importer electing to use an alternative emission reduction plan or third party electing to use a third party alternative emissions reduction plan, before December 31, 2009, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in [section 2265.5](#).

(E) Notification.

1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008 or the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, referred to as the amended Procedures Guides, if permitted to do so;
2. A reasonably detailed demonstration of the producer's or importer's ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline or CARBOB meeting the amended Procedures Guides on or after the date specified;
3. All of the information required pursuant to [section 2265.5\(b\)\(2\)](#).

- (F)1. Within 15 days of receipt of a request under [section 2261\(b\)\(4\)\(A\)](#) or [\(B\)](#), the Executive Officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.
2. Within 15 days of notifying the producer or importer that the request is complete, the Executive Officer shall either grant or deny the request. If the request is granted the Executive Officer shall specify the date on which producers and importers that produce gasoline may start to supply from their production or import facilities final blends that comply with the amended Procedures Guides. The Executive Officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline or CARBOB complying with the amended Procedures Guides reasonably soon after the date specified. If the Executive Officer denies the request, he or she shall provide the producer or importer with a written statement explaining the reason for denial.

3. Upon granting a request made under [section 2261\(b\)\(4\)\(A\)](#) or [\(B\)](#), the Executive Officer shall notify interested parties of the date on which producers and importers that produce gasoline will be permitted to start supplying final blends of gasoline complying with the amended Procedures Guides. This notification shall be made by posting the pertinent information on ARB's Internet site, providing electronic mail notification to all persons subscribing to ARB's Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
4. With respect to all final blends supplied from a production or import facility from the day specified by the Executive Officer in granting a request made under [section 2261\(b\)\(4\)\(A\)](#) or [\(B\)](#) through December 30, 2009, any producer or importer that produces gasoline may comply with the amended Procedures Guides that apply starting December 31, 2009. Whenever a producer or importer that produces gasoline is supplying a final blend subject to the amended Procedures Guides pursuant to this [section 2261\(b\)\(4\)\(F\)4.](#), any notification required by [sections 2264.2](#) or [2265\(a\)](#) shall indicate that the final blend is subject to the amended Procedures Guides. When it is sold or supplied from the production or import facility, no such final blend may result in emissions associated with permeation unless those emissions are offset through the Predictive Model or a valid AERP or third party AERP.
 - (G) AERPs and third party AERPs approved under this section are subject to [sections 2265.5\(d\)-\(i\)](#).
- (5) Early compliance with the CaRFG Phase 3 Amendments (PM Emissions Offsetting) Before December 31, 2009.
 - (A) Any producer or importer that produces gasoline wishing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to [section 2264.2\(d\)](#), shall notify the Executive Officer of its wish to do so. The notification shall include all of the following:
 1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with [section 2264.2\(d\)](#), if permitted to do so;
 2. A reasonably detailed demonstration of the producer's or importer's ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline meeting [section 2264.2\(d\)](#) on or after the date specified;

3. All of the information required pursuant to [section 2265.1\(a\)\(2\)\(A\)](#).
- (B)1. Within 15 days of receipt of a request under [section 2261\(b\)\(5\)\(A\)](#), the Executive Officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.
2. Within 15 days of notifying the producer or importer that the request is complete, the Executive Officer shall either grant or deny the request. If the request is granted the Executive Officer shall specify the date on which producers and importers that produce gasoline may start to supply from their production or import facilities final blends that comply with [section 2264.2\(d\)](#). The Executive Officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline complying with [section 2264.2\(d\)](#) reasonably soon after the date specified. If the Executive Officer denies the request, he or she shall provide the producer or importer with a written statement explaining the reason for denial.
 3. Upon granting a request made under [section 2261\(b\)\(5\)\(A\)](#), the Executive Officer shall notify interested parties of the date on which producers and importers that produce gasoline will be permitted to start supplying final blends of gasoline complying with [section 2264.2\(d\)](#). This notification shall be made by posting the pertinent information on ARB's Internet site, providing electronic mail notification to all persons subscribing to ARB's Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
 4. With respect to all final blends supplied from a production or import facility from the day specified by the Executive Officer in granting a request made under [section 2261\(b\)\(5\)\(A\)](#) through December 30, 2009, any producer or importer that produces gasoline may comply with [section 2264.2\(d\)](#) that applies starting December 31, 2009. Whenever a producer or importer that produces gasoline is supplying a final blend subject to [section 2264.2\(d\)](#) pursuant to this section 2261(b)(5)(B)4., any notification required by [sections 2264.2](#) or [2265\(a\)](#) shall indicate that the final blend is subject to the PM emissions offsetting provisions. When it is sold or supplied from the production or import facility, no such final blend may result in sulfur levels above the applicable standards unless those sulfur emissions are fully offset as provided in [section 2265.1](#).
- (C) Any producer or importer that produces gasoline that supplies from its production or import facility, before December 31, 2009, any final blends of gasoline subject to

[section 2264.2\(d\)](#), shall comply with [section 2265.1](#).

(6) Ethanol Emission Reduction Plan (EERP)

(A) Applicability. This section shall apply to a producer or importer that produces gasoline that elects to use an EERP or to a third party that elects to use a third party EERP when all of the following conditions are satisfied:

1. In the case of a third party EERP, the third party has a contract or agreement to offset, in whole or in part, the elevated emissions associated with increased ethanol blending from the producer's or importer's gasoline.
2. With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing or importing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#),
3. But for the elevated emissions associated with increased ethanol blending, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,
4. All measures to correct the emissions associated with increased ethanol blending would result in an economic hardship to the producer or importer and the benefit in allowing the producer or importer to use an EERP is not outweighed by the public interest in enforcing the applicable Predictive Model Procedures,
5. The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to [section 2264\(c\)](#), and
6. The amount of ethanol blended into the final blend may not exceed 10.0 volume percent denatured ethanol.
7. All EERPs and third party EERPs sunset on December 30, 2009.

(B) Requirements.

1. Where the producer or importer that produces gasoline has reported its final blend of gasoline as a flat limit formulation pursuant to [section 2264.2\(b\)](#), averaging limit formulation pursuant to [section 2264.2\(a\)](#), PM alternative gasoline

formulation pursuant to [section 2265\(a\)](#), or test-certified alternative gasoline formulation pursuant to [section 2266\(c\)](#), compliance with a valid EERP or third party EERP shall constitute compliance with the requirements of [section 2262.3\(b\)](#), [2262.3\(c\)](#), [2265](#), or [2266](#), respectively.

2. An EERP or third party EERP application demonstrating compliance with this subsection shall contain at a minimum all of the following information:
 - a. The company name, address, phone number, and contact information,
 - b. The producer's or importer's name, batch name, number or other identification, grade of California gasoline, and other information that uniquely identify the California gasoline subject to the EERP or third party EERP,
 - c. An explanation describing why the producer or importer cannot eliminate the emissions associated with increased ethanol blending by reformulation or reprocessing its gasoline,
 - d. The total emissions of oxides of nitrogen (NO_x), total ozone forming potential, and potency-weighted toxics that would be associated with the use of California gasoline were the producer or importer to eliminate the emissions associated with increased ethanol blending from its gasoline,
 - e. Documentation, calculations, emissions test data, or other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the producer's or importer's gasoline,
 - f. The emission reduction strategy(ies) for the EERP or third party EERP and the date(s) that the offsets will accrue and expire for each strategy,
 - g. The producer or importer's market share for the fuel produced under the EERP or third party EERP,
 - h. Demonstration that the emission reduction strategy(ies) in the EERP or third party EERP will result in equivalent or better emission benefits for NO_x, total ozone forming potential, and potency-weighted toxics than would be achieved through elimination of emissions associated with increased ethanol blending from the gasoline for the same affected region and for the period the EERP or third party EERP will be in effect, during and outside the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#),

- i. Demonstration that the emission reductions are achieved in the general region where the fuel is sold,
- j. The proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the EERP or third party EERP and achievement of each increment of progress toward compliance,
- k. Adequate enforcement provisions,
- l. The projected volume of each final blend of California gasoline subject to the EERP or third party EERP during the period the EERP or third party EERP will be in effect,
- m. The period that the EERP or third party EERP will be in effect,
- n. A compliance plan that includes increments of progress (specific events and dates) that describe periodic, measurable steps toward compliance during the proposed period of the EERP or third party EERP,
- o. The date by which the producer or importer plans to discontinue using the EERP or third party EERP,
- p. A statement, signed by a legal representative for the producer or importer that all information submitted with the EERP or third party EERP application is true and correct, and
- q. The producer's or importer's agreement to be bound by the terms of the EERP or third party EERP.
- r. In the case of a third party EERP, all of the above including all of the following:
 - i. The third party's name, address, phone number, and contact information,
 - ii. Documentation of the contract or agreement between the third party and the producer or importer,
 - iii. Documentation of the amount of NO_x, total ozone forming potential, and potency-weighted toxics (reported as tons/day and percentage of the total tons/day) from the producer's or importer's gasoline that will be offset by

the third party EERP,

- iv. A list of all EERPs and third party EERPs that currently apply to the producer or importer,
- v. A statement, signed by a legal representative for the third party that all information submitted with the third party EERP application is true and correct, and
- vi. The third party's agreement to be bound by the terms of the third party EERP.

- 3. Emission reduction calculations demonstrating equivalence between the EERP or third party EERP and elimination of the emissions associated with increased ethanol blending from the gasoline shall only include NOx, total ozone forming potential, and potency-weighted toxics emissions from California gasoline sold or supplied in California.
- 4. A producer or importer wishing to participate in an EERP may include one or more production facilities or import facilities, but the producer or importer shall only include such facilities that the producer or importer owns or operates under their direct control. A third party wishing to participate in a third party EERP may include one or more production facilities or import facilities, but the third party shall only include such facilities with which the third party has a contract or agreement to offset emissions associated with permeation.
- 5. The emission reduction associated with the EERP or third party EERP must be from combustion related sources or gasoline related sources.
- 6. EERPs and third party EERPs may include, but are not limited to:
 - a. Vehicle scrappage,
 - b. Offsetting emissions with lower emitting diesel fuel batches,
 - c. Incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.
- 7. Emission reductions included in an EERP or third party EERP shall not include reductions that are otherwise required by any local, State, or federal rule,

regulation, or statute, or that are achieved or estimated from equipment not located within the region associated with the EERP or third party EERP, or that are claimed under [section 2265.1](#), or that are claimed under another program, such as the Voluntary Accelerated Vehicle Retirement or Carl Moyer program, or the result of standard business practices that the producer or importer would have done without the EERP or third party EERP.

8. The producer or importer subject to an approved EERP or third party EERP shall maintain all records required to verify compliance with the provisions of the EERP or third party EERP in a manner and form specified by the Executive Officer in the approved EERP or third party EERP. Required records may include, but are not limited to, volume of California gasoline sold, offered, or supplied to which the EERP or third party EERP applies, and/or emissions test results. Such records shall be retained for a period of not less than five (5) years and shall be submitted to the Executive Officer within 20 days in the manner specified in the approved EERP or third party EERP and upon request by the Executive Officer.
9. Prior to selling, offering, or supplying a batch of California gasoline with increased ethanol blending, the producer or importer shall first have established sufficient offsets for the applicable emissions associated with permeation. With the exception of offsets from vehicle scrappage and incentive grants for cleaner-than-required engines, equipment, and other sources of pollution, offsets shall expire at midnight on the day they accrued.

(C) Application Process.

1. Applications for an EERP or third party EERP shall be submitted in writing to the Executive Officer for evaluation.
2. The application shall be accompanied by a fee of \$6,700.00 to cover the costs of processing the EERP or third party EERP application. If the producer or importer withdraws the application before the 30-day comment period, \$4,100.00 of the fee shall be refunded.
3. The Executive Officer shall make available for public review all documents pertaining to an EERP or third party EERP application.
4. The Executive Officer will send a notice to subscribers of the Fuels listserv that a person has requested the Executive Officer consider a request for an EERP or third party EERP. The Executive Officer shall also provide a copy of all such documents to each person who has requested copies of the documents.

Collectively, those persons on the Fuels listserv and those persons who have requested copies of the documents shall be treated as interested parties.

5. After an EERP or third party EERP application has been received and deemed complete, the Executive Officer shall provide a 30-day public comment period to receive comments on any element of the EERP or third party EERP application. Any public comment addressing whether the Executive Officer should approve or disapprove the EERP or third party EERP application shall be based on the contents and merits of the application. No comment received by the Executive Officer after the 30-day period will be considered. The Executive Officer shall send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, the following:

a. The identity of the applicant producer(s) or importer(s);

b. The start and end dates for the 30-day comment period;

c. The address of the EERP internet site where the application is posted; and,

d. Where and how to submit comments.

The Executive Officer shall post on the EERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, notification of public comments received during the 30-day comment period.

6. The Executive Officer may hold a public hearing to accept public comments or decide the merits of the application.

7. Final Action.

After the public comment period ends, the Executive Officer may take final action to either approve or deny the EERP or third party EERP application. The Executive Officer shall notify the producer or importer, post on the ARB internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the final action.

8. Notification to the Executive Officer of Changes to information in the EERP or third party EERP application. The producer or importer shall notify the Executive Officer in writing within 30 days upon learning of any information that would

alter any information provided in the EERP or third party EERP application.

(D) Revocation or Modification of an Approved EERP or third party EERP.

1. With 30-days written notice to the producer or importer, the Executive Officer may revoke or modify, as needed, an approved EERP in any of the following situations:
 - a. There has been more than one violation of the approved EERP or third party EERP,
 - b. The Executive Officer has reason to believe that an approved EERP or third party EERP has been granted that no longer meets the criteria or requirements for an EERP or third party EERP,
 - c. The producer or importer demonstrates that it can no longer comply with the requirements of the approved EERP or third party EERP in its current form,
 - d. The producer or importer demonstrates to the satisfaction of the Executive Officer that the continuation of the EERP or third party EERP will result in economic hardship to the producer or importer, the producer or importer submits a substitute plan in accordance with [section 2265.5\(c\)](#) to offset any emissions not otherwise offset by the EERP or third party EERP, and the Executive Officer approves the substitute plan, or
 - e. The producer or importer's facility modifications and/or other means of eliminating emissions associated with increased ethanol blending from its gasoline have been completed.
2. The Executive Officer shall notify the producer or importer, post on the EERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of a revocation or modification of an approved EERP or third party EERP.
3. Any violations incurred pursuant to [subsection \(E\)](#) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an EERP or third party EERP.

(E) Additional prohibitions.

1. No person may sell, offer, or supply California gasoline that creates emissions associated with increased ethanol blending unless the producer or importer, or in the case of a third party EERP, the third party has first been notified in writing by the Executive Officer that the EERP or third party EERP application has been approved.
2. Failure to meet any requirement of this section or any condition of an approved EERP or third party EERP shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied.
3. False reporting of any information contained in an EERP or third party EERP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this article for each day that the approved EERP or third party EERP is in effect.
4. Any net exceedance at any given time, taking into consideration the amount of offsets and the gasoline produced under the EERP or third party EERP, of NO_x, total ozone forming potential, or potency-weighted toxics during the period the EERP or third party EERP is in effect shall constitute a single, separate violation of the requirements of this article for each day the California gasoline subject to the EERP or third party EERP is sold, supplied, or offered in California.
5. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement or condition is satisfied:
 - a. Failure to report data or failure to report data accurately in writing to the Executive Officer when required by this section or the approved EERP or third party EERP;
 - b. False reporting of any information submitted to the Executive Officer for determining compliance with the EERP or third party EERP;
 - c. Failure to completely offset emissions, pursuant to any offset reconciliation requirements in the EERP or third party EERP, during the period the EERP or third party EERP is in effect;
 - d. Sale, supply, or offer of volumes of California gasoline which purportedly complies with the EERP or third party EERP in excess of the approved EERP or third party EERP.

6. Offsets shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced in the same air basin as the gasoline associated with the EERP or third party EERP, or that are claimed under [section 2265.1](#).
- (F) A cause of action against the producer or importer or third party under this section shall be deemed to accrue on the date(s) when the records establishing a violation of the EERP or third party EERP are received by the Executive Officer.
- (G) Transferability. Rights to use, or protection under, the EERP or third party EERP are non-transferable, unless such transfer is approved in writing by the Executive Officer.
- (H) Notification of final blends associated with an EERP or third party EERP
1. Except as otherwise provided, for each final blend, the producer or importer shall notify the Executive Officer in writing, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend, with the following information:
 - a. The company name, address, phone number, and contact information,
 - b. The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the EERP or third party EERP,
 - c. The estimated volume (in barrels),
 - d. The identity of the EERP or third party EERP, which was approved by the Executive Officer and the NO_x, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan,
 - e. The PM alternative specifications for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content,

- f. Documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the final blend of California gasoline to which the EERP or third party EERP applies,
 - g. A statement, signed by a legal representative for the producer or importer that all information submitted with the notification is true and correct, and
 - h. Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.
2. A producer or importer may report an actual volume that is less than the estimated volume, as long as notification of the actual volume is received by the Executive Officer no later than 48 hours after completion of the physical transfer of the final blend from the production facility or import facility. If notification of the actual volume is not timely received by the Executive Officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is larger than initially estimated, the producer or importer shall revise the reported estimated volume by notifying the Executive Officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(I) Notification of Increased Ethanol Blending Offsets

1. Vehicle scrappage. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the vehicle scrappage and the date(s) the offsets accrued.
2. Fuels. Except as otherwise provided, the producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend, with the information in [subsection \(H\)1](#), as they relate to other batches of California gasoline or diesel fuel used to offset the emissions associated with increased ethanol blending.
3. Incentive grants. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the

amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions and the date(s) the offsets accrued.

4. Other reduction strategies. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the reduction strategy and the date(s) the offsets accrued.
- (7) Election allowing a producer or importer that produces gasoline to blend percentages of denatured ethanol into CARBOB that are higher than the common carrier pipeline specifications for oxygen and denatured ethanol until December 30, 2009.
- (A) A producer or importer that produces gasoline may elect to blend a higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification. The producer or importer that produces gasoline may elect to do such blending after it supplies from its production or import facility a CARBOB that concurrently meets the common carrier pipeline CARBOB specification and a CARBOB PM formulation having oxygen and denatured ethanol ranges greater than the common carrier pipeline specification. A producer or importer that produces gasoline may elect to do such blending before December 31, 2009. A person may not elect to blend a higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification after December 30, 2009.
- (B) In order to elect to blend higher volumes of denatured ethanol, the producer or importer must satisfy the following requirements:
1. Notification for each elected final blend by the producer or importer. For each final blend that the producer or importer elects to blend higher volumes of denatured ethanol, the producer or importer must notify the Executive Officer. The notification must be consistent with the requirements specified in [section 2266.5](#) and must include the following additional information:
 - a. Statement of election. A statement that the producer or importer is electing to have the final blend subject to the requirements of [section 2261\(b\)\(7\)](#);
 - b. CARBOB certification for pipeline specifications. Information set forth in [section 2266.5\(b\)](#) demonstrating that the CARBOB meets the current common

carrier pipeline specifications;

- c. CARBOB certification for a wider range of oxygen and oxygenate. Information set forth in [section 2266.5\(b\)](#) demonstrating that the same CARBOB identified in (B)1.b. meets a CARBOB PM formulation with a wider range of oxygen and denatured ethanol. The wider ranges must encompass the oxygen and denatured ethanol ranges specified by the common carrier pipeline specifications;
 - d. Volume of the final blend. The volume (gallons) of CARBOB of the final blend. This information will be replaced with the actual volume upon receipt of the producer's or importer's month end reconciliation report;
 - e. Final blend identification. The final blend identification number (batch number), grade of CARBOB, production tank number, tank location, name of producer or importer, name and phone number of contact person;
 - f. Start of transfer. The estimated date that transfers of the final blend from the production or import facility will begin;
 - g. Bulk terminals. The name, address, and contact person's name and phone number of oxygenate blending facilities that the producer or importer has arranged for blending at higher volumes of denatured ethanol.
2. Agreement with an oxygenate blender. Before a producer or importer notifies an oxygenate blender to blend higher volumes of denatured ethanol into CARBOB, the producer or importer must enter into a contractual agreement with the oxygenate blender stating that the oxygenate blender agrees to be obligated by the requirements in [section \(C\)](#) regarding the blending of denatured ethanol into CARBOB, record keeping and retention, and month end reconciliation notification to CARB. The producer or importer must submit a copy of the contractual agreement to the Executive Officer for each oxygenate blending facility before notifying an oxygenate blender to blend higher volumes of denatured ethanol into CARBOB.
 3. Notification to the oxygenate blender. After the producer or importer notifies the Executive Officer of its election in [\(B\)1.](#), the producer or importer may notify the oxygenate blender of the maximum volume percent of denatured ethanol to blend into CARBOB, the maximum number of gallons of CARBOB that may be blended with higher volumes of denatured ethanol, and the start of blending date which blending higher volumes of denatured ethanol may begin. The notification must include a statement that permission for blending higher volumes of

denatured ethanol is in accordance with the producer's or importer's election in [section 2261\(b\)\(7\)](#). The notification must also include a statement that the oxygenate blender must not exceed the volume percent of denatured ethanol, not exceed the volume of CARBOB, not start blending higher volumes of denatured ethanol before the start date, and not blend higher volumes of denatured ethanol after December 30, 2009. The producer or importer may notify only oxygenate blenders located in the geographical area normally supplied by its production or import facility.

4. Month end reconciliation by the producer or importer. The producer or importer must notify the Executive Officer of the following. The notification shall be received by the Executive Officer by the twentieth of the month for all final blends elected by the producer or importer in accordance with [section 2261\(b\)\(7\)\(B\)1.](#), which completed physical transfer of at least one pipeline tender from the production or import facility during the preceding calendar month. If the twentieth occurs on a weekend or holiday, the notification shall be received by the Executive Officer by the first business day after the twentieth of the month. The notification must include:
 - a. The final blend identification number;
 - b. With reference to each final blend identification number:
 - i. The grade of CARBOB;
 - ii. The estimated volume (gallons) of CARBOB as reported in [\(B\)1.d.](#);
 - iii. For each discrete sale or supply of CARBOB:
 - I. The pipeline tender identification number;
 - II. The volume (gallons) of the pipeline tender;
 - III. The date that the pipeline tender started and ended delivery from the production tank to the pipeline;
 - IV. The identification of the pipeline; and
 - V. The identification of the oxygenate blending facility that receive the pipeline tender;

- iv. Actual volume (gallons) of CARBOB supplied from the final blend; and
 - v. Date of completion of physical transfer of the last pipeline tender of CARBOB from the final blend;
- c. The sum of the volume (gallons) CARBOB listed in [section \(B\)4.b.iv.](#) for each final blend identified in [section \(B\)4.a.](#);
- d. Copies of each notification specified in [section \(B\)3.](#);
- e. The volume (gallons) of CARBOB blended at a higher volume of denatured ethanol than the amount specified by the common carrier pipeline specifications listed by each individual oxygenate blending facility. The sum of the volume (gallons) from all oxygenate blending facilities;
- f. The opening balance at the beginning of the month. The volume (gallons) of CARBOB qualified under this [section 2261\(b\)\(7\)](#) that was not blended at a rate higher than common carrier pipeline specifications carried over from the previous calendar month. This volume is available for blending at the higher rate; and
- g. The ending balance at the end of the month. The volume (gallons) calculated as follows:

The volume listed in [section \(B\)4.f.](#) plus the volume listed in [section \(B\)4.c.](#) minus the sum of the volumes in [section \(B\)4.e.](#).

This volume is available to carry over to the next calendar month.

5. Whenever a producer or importer fails to provide the notification in [section \(B\)4.](#), regarding a volume of California gasoline or CARBOB in accordance with this [section \(B\)4.](#), the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of [section \(B\)8.](#).
6. Averaging. A producer or importer may not elect the provisions in [section 2261\(b\)\(7\)](#) if the producer or importer is using the provisions of [section 2264](#) for Designated Alternative Limits or the provisions of [section 2266.5\(a\)\(5\)](#) for averaging. If the producer or importer is using the provisions in [section 2261\(b\)\(7\)](#) and notifies the Executive Officer that it elects to use the provisions of [section 2264](#) or [section 2266.5\(a\)\(5\)](#), the election of the provisions of [section 2261\(b\)\(7\)](#) shall terminate and no further blending of higher volumes of denatured

ethanol into CARBOB may occur beyond the date of such election. Any remaining volume (gallons) that otherwise may be blended with higher volumes of denatured ethanol are forfeited.

7. Start of oxygenate blending date. The start of oxygenate blending date is the date on which at least one pipeline tender has completed physical transfer from the production or import facility.
8. Producer's or importer's responsibilities. A producer or importer electing final blends in accordance with [section 2261\(b\)\(7\)](#) is responsible for the activities at the oxygenate blending facility involving blend a higher volume of denatured ethanol. A producer or importer may not blend or allow the blending of denatured ethanol at the oxygenate blending facility that:
 - a. Exceeds the volume available for blending at higher rates as determined by the notifications identified in [section \(B\)1.](#);
 - b. Exceeds the denatured ethanol volume percent designated by the producer or importer; or
 - c. Precedes the start of oxygenate blending date.
9. Producer or importer must specify denatured ethanol that meets the requirements in [section 2262.9\(a\)\(1\)](#).
10. Recordkeeping by producers and importers. Each producer or importer must compile and maintain records that affirmatively demonstrate the production or import and the sale or supply of all final blends elected under [section \(B\)](#). The records must show, at a minimum:
 - a. Information regarding the production or import of the final blend;
 - i. The final blend identification number;
 - ii. The grade of CARBOB;
 - iii. The CARBOB PM formulation that shows compliance with the common carrier pipeline specifications;

- iv. The CARBOB PM formulation having oxygen and denatured ethanol ranges greater than, and encompasses, the common carrier pipeline specification for oxygen and denatured ethanol;
 - v. Volume of the blend;
 - vi. Tank number, location; and
 - vii. Date of notification to CARB of the final blend.
- b. Information regarding sales or supply of the final pipeline tender;
- i. Pipeline tender identification number;
 - ii. Start and end date and time;
 - iii. Volume of the pipeline tender;
 - iv. Destination of the pipeline tender; and
 - v. Pipeline company name.
- c. Copies of the notifications specified in [section \(B\)3](#), that the producer or importer sent to the oxygenate blender regarding oxygenate blending; and
- d. Information regarding the reconciliation of gallons of CARBOB certified for a wider range at the production or import facility and the gallons of CARBOB blended with higher volumes of denatured ethanol at the oxygenate blending facility.
11. Each producer or importer must provide to the Executive Officer any such records within 20 days of written request received from the Executive Officer or his or her designee. Whenever a producer or importer fails to provide records regarding a volume of California gasoline or CARBOB in accordance with this section (B)11., the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of [section \(A\)](#).
12. Nothing in [section 2261\(b\)\(7\)](#) shall be construed to allow monthly averaging of volumes of CARBOB blended at higher volumes of denatured ethanol at the

oxygenate blending facility.

(C) Oxygenate blender. An oxygenate blender that has entered into a contractual agreement in accordance with [section \(B\)2.](#) with a producer or importer may blend higher volumes of denatured ethanol into CARBOB at its oxygenate blending facility provided that:

1. The oxygenate blender complies with the instructions specified in [section \(B\)3.](#) from the producer or importer. The oxygenate blender must not exceed the maximum volume percent of denatured ethanol to blend into CARBOB, the maximum volume (gallons) of CARBOB that may be blend with higher volumes of denatured ethanol, and must not begin such blending before the start of oxygenate blending date.
2. Month end reconciliation by the oxygenate blender. The oxygenate blender notifies the Executive Officer of the following. The notification shall be received by the Executive Officer by the twentieth of the month for all oxygenate blending related activities occurring at its facility during the preceding calendar month. If the twentieth occurs on a weekend or holiday, the notification shall be received by the Executive Officer by the first business day after the twentieth of the month. If the oxygenate blender operates more than one oxygenate blending facility, the information in the notification must be presented per facility. The notification must include:
 - a. Information regarding the receipts of CARBOB. The pipeline tender identification number of each receipt of CARBOB to the oxygenate blending facility by pipeline or identification number of any receipt other than pipeline. With reference to each receipt:
 - i. Grade of CARBOB;
 - ii. The volume (gallons) of the CARBOB pipeline tender;
 - iii. The date the oxygenate facility began receiving the CARBOB pipeline tender;
 - iv. Name of the supplier of the CARBOB; and
 - v. Identification number of the storage tank that received the CARBOB pipeline tender;

- b. Information regarding the receipts of denatured ethanol. The identification number or bill of lading number of each receipt of denatured ethanol to the oxygenate blending facility. With reference to each receipt:
 - i. The volume (gallons) of denatured ethanol;
 - ii. The means by which the denatured ethanol was delivered to the oxygenate blending facility (by truck, rail car, etc.);
 - iii. The name of the supplier of the denatured ethanol;
 - iv. The date the denatured ethanol was received; and
 - v. Identification number of the storage tank that received the denatured ethanol;
- c. Information regarding oxygenate blending. For each day of the calendar month at the oxygenate blending facility (if the oxygenate blender is oxygenate blending for more than one producer or importer, the information must be listed for each producer or importer):
 - i. The volume (gallons) of CARBOB that was blended with higher volumes of denatured ethanol (if more than one producer or importer, identify the producer or importer);
 - ii. The volume (gallons) of denatured ethanol that was blended at the higher rate (if more than one producer or importer, identify the producer or importer);
 - iii. If blending denatured ethanol at two rates that are higher than the common carrier pipeline specifications, list the CARBOB volumes and the denatured ethanol volumes for section c.i. and c.ii. separately for the two rates;
 - iv. The volume (gallons) of CARBOB that was blended with denatured ethanol according to common carrier pipeline specifications;
 - v. The volume (gallons) of denatured ethanol that was blended according to common carrier pipeline specifications;

- d. Summary. Sums of the daily volumes (gallons) listed in c.i, c.ii., c.iv., and c.v. for the calendar month.
3. Whenever the oxygenate blender fails to provide the notification in [section \(C\)2.](#), regarding a volume of California gasoline or CARBOB in accordance with [section \(C\)2.](#), the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of [section \(C\)1.](#)
4. Recordkeeping by the oxygenate blender. The oxygenate blender compiles and maintains records that affirmatively demonstrate the denatured ethanol blending activities at its oxygenate blending facility. The must records show, at a minimum:
 - a. All information regarding the receipt of each pipeline tender of CARBOB;
 - b. All information regarding the receipt of each delivery of denatured ethanol;
 - c. All information regarding the daily oxygenate blending activities at the rack. If the oxygenate blender is oxygenate blending for more than one producer or importer, the information must be listed for each producer or importer;
 - d. All notifications specified in [section \(B\)3.](#) from the producer or importer to the oxygenate blender regarding oxygenate blending and any responses from the oxygenate blender to the producer or importer;
 - e. The oxygenate blender shall provide to the Executive Officer any such records within 20 days of written request received from the Executive Officer or his or her designee. Whenever the oxygenate blender fails to provide records regarding a volume of California gasoline or CARBOB in accordance with this [section \(C\)4.](#), the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of [section \(C\)1.](#)

(D) Protocols.

1. Recordkeeping or reporting for producers or importers. The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying alternative recordkeeping or reporting requirements to satisfy the requirements of [sections \(B\)1., \(B\)2., \(B\)3., \(B\)4., \(B\)10., and \(B\)11.](#) The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of [sections \(B\)1., \(B\)2., \(B\)3., \(B\)4., \(B\)10., and \(B\)11.](#) Any such protocol shall include the

producer's or importer's agreement to be bound by the terms of the protocol.

2. Recordkeeping or reporting for oxygenate blenders. The Executive Officer may enter into a written protocol with any oxygenate blender for the purpose of specifying alternative recordkeeping or reporting requirements to satisfy the requirements of [sections \(C\)2.](#), and [\(C\)4.](#) The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of [sections \(C\)2.](#) and [\(C\)4.](#) Any such protocol shall include the oxygenate blender's agreement to be bound by the terms of the protocol.
 3. Notifications from producers or importers to oxygenate blenders. The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying alternative notification requirements from the producer or importer to the oxygenate blender to satisfy the requirements of [section \(B\)3.](#) The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of [section \(B\)3.](#) Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.
 4. Number of ethanol ranges for producers or importers. The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying a different number of denatured ethanol ranges to satisfy the requirements of [section \(H\).](#) The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of [section \(H\).](#) Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.
- (E) Proprietary pipeline. Nothing in this regulation prohibits the use of this election in a producer's or importer's proprietary pipeline and terminaling system.
- (F) Electing to use [section 2261\(b\)\(7\)](#) will not be considered an act of changing from an initial to a new type of CARBOB as described in [section 2266.5\(f\)\(1\)\(C\).](#)
- (G) The provisions in this [section 2261\(b\)\(7\)](#) are not specific or limited to the grade of CARBOB.
- (H) Maximum of two ethanol blending levels. Producers or importers of each production or import facility electing to use [section 2261\(b\)\(7\)](#) may designate up to two levels of

denatured ethanol when certifying its CARBOB. For example, one mid-level of at about 7.7 v% and another level at about 10.0 v%.

- (I) Use the same version of the Predictive Model. If the producer or importer elects to have two levels of denatured ethanol, the producer or importer must use the same version of the Predictive Model when evaluating and reporting PM formulations to ARB.
- (c) California gasoline sold or supplied on or after March 1, 1996, is also subject to [section 2253.4](#) (Lead/Phosphorus in Gasoline), [section 2254](#) (Manganese Additive Content), and [section 2257](#) (Required Additives in Gasoline). California gasoline that is supplied from a small refiner's California refinery prior to March 1, 1998, and that qualifies for treatment under [section 2272\(a\)](#), shall also be subject to [section 2250](#) (Degree of Unsaturation of Gasoline) and [section 2252](#) (Sulfur Content of Gasoline).
- (d) The standards contained in this subarticle shall not apply to a sale, offer for sale, or supply of California gasoline to a refiner if: (1) the refiner further processes the gasoline at the refiner's refinery prior to any subsequent sale, offer for sale, or supply of the gasoline, and (2) in the case of standards applicable only to producers or importers, the refiner to whom the gasoline is sold or supplied is the producer of the gasoline pursuant to [section 2260\(a\)\(26\)\(B\)](#).
- (e) The prohibitions in [sections 2262.3\(b\)](#) and [\(c\)](#), [2262.4\(b\)](#), and [2262.5\(c\)](#) shall not apply to gasoline which a producer or importer demonstrates was neither produced nor imported by the producer or importer.
- (f) This subarticle 2, [section 2253.4](#) (Lead/Phosphorus in Gasoline), [section 2254](#) (Manganese Additive Content), and [section 2257](#) (Required Additives in Gasoline) shall not apply to gasoline where the person selling, offering or supplying the gasoline demonstrates as an affirmative defense that the person has taken reasonably prudent precautions to assure that the gasoline is used only in racing vehicles.

§ 2262. The California Reformulated Gasoline Phase 2 and Phase 3 Standards.

The CaRFG Phase 2 and CaRFG Phase 3 standards are set forth in the following table. For all properties but Reid vapor pressure (cap limit only) and oxygen content, the value of the regulated property must be less than or equal to the specified limit. With respect to the Reid vapor pressure cap limit and the oxygen content flat and cap limit, the limits are expressed as a range, and the Reid vapor pressure and oxygen content must be less than or equal to the upper limit, and more than or equal to the lower limit. A qualifying small refiner may comply with the small refiner

CaRFG Phase 3 standards, in place of the CaRFG Phase 3 standards in this section, in accordance with [section 2272](#).

The California Reformulated Gasoline Phase 2 and Phase 3 Standards

<i>Property</i>	<i>Flat Limits</i>		<i>Averaging Limits</i>		<i>Cap Limits</i>	
	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>
Reid Vapor Pressure ¹ (pounds per square inch)	7.00	7.00 or 6.90 ²	Not Applicable	Not Applicable	7.00 ³	6.40 - 7.20
Sulfur Content (parts per million by weight)	40	20	30	15	80	60 ⁴
						30 ⁴
						20 ⁴
Benzene Content (percent by volume)	1.00	0.80	0.80	0.70	1.20	1.10
Aromatics Content (percent by volume)	25.0	25.0	22.0	22.0	30.0 ³	35.0
Olefins Content (percent by volume)	6.0	6.0	4.0	4.0	10.0	10.0
T50 (degrees Fahrenheit)	210	213	200	203	220	220
T90 (degrees Fahrenheit)	300	305	290 ⁵	295	330	330
Oxygen Content (percent by weight)	1.8 - 2.2	1.8 - 2.2	Not Applicable	Not Applicable	1.8 ⁶ - 3.5	1.8 ⁶ -3.5 ⁷
					0 ⁶ - 3.5	0 ⁶ - 3.5 ⁷
Methyl tertiary-butyl ether (MTBE) and oxygenates other than ethanol	Not Applicable	Prohibited as provided in § 2262.6	Not Applicable	Not Applicable	Not Applicable	Prohibited as provided in § 2262.6

¹ The Reid vapor pressure (RVP) standards apply only during the warmer weather months identified in [section 2262.4](#).

² The 6.90 pounds per square inch (psi) flat limit applies when a producer or importer is using the CaRFG Phase 3 Predictive Model to certify a final blend not containing ethanol. Otherwise, the 7.0 psi limit applies.

³ For sales, supplies, or offers of California gasoline downstream of the production or import facility starting on the

date on which early compliance with the CaRFG Phase 3 standards is permitted by the Executive Officer under [section 2261\(b\)\(3\)](#), the CaRFG Phase 2 cap limits for Reid vapor pressure and aromatics content shall be 7.20 psi and 35.0 percent by volume respectively.

⁴ The CaRFG Phase 3 sulfur content cap limits of 60, 30, and 20 parts per million are phased in starting December 31, 2003, December 31, 2005, and December 31, 2011, respectively, in accordance with [section 2261\(b\)\(1\)\(A\)](#).

⁵ Designated alternative limit may not exceed 310.

⁶ The 1.8 percent by weight minimum oxygen content cap only applies during specified winter months in the areas identified in [section 2262.5\(a\)](#).

⁷ If the gasoline contains more than 3.5 percent by weight oxygen from ethanol but no more than 10.0 volume percent ethanol, the maximum oxygen content cap is 3.7 percent by weight.

§ 2262.3. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90.

(a) *Compliance with cap limits.*

No person shall sell, offer for sale, supply, offer for supply, or transport California gasoline which exceeds an applicable cap limit for sulfur, benzene, aromatic hydrocarbons, olefins, T50 or T90 set forth in [section 2262](#).

(b) *Compliance by producers and importers with the flat limits.*

No producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which exceeds an applicable flat limit for the properties of sulfur, benzene, aromatic hydrocarbons, olefins, T50, or T90 set forth in [section 2262](#), unless the gasoline (1) is subject to the averaging compliance option for the property in accordance with [section 2264.2\(a\)](#), (2) has been reported as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#), (3) has been reported as a test-certified alternative gasoline formulation pursuant to [section 2266\(c\)](#), (4) has been reported as a PM emissions offsetting formulation pursuant to [section 2265.1](#) (applicable only to producers and importers that produce gasoline), or (5) is subject to an alternative emission reduction plan pursuant to [section 2265.5](#) (applicable only to producers and importers that produce gasoline). Notwithstanding [section 2265.5\(a\)](#), a producer or an importer that produces gasoline and that has elected to be subject to the flat limits specified in [section 2262](#) shall offset its emissions associated with permeation by complying with [sections 2265.5\(b\)-\(i\)](#). An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

(c) *Optional compliance by producers and importers with the averaging limits.*

No producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which is subject to the averaging compliance option for the properties of sulfur, benzene, aromatic hydrocarbons, olefins, T50 or T90 in accordance with [section 2264.2\(a\)](#) if any of the following occurs. Notwithstanding [section 2265.5\(a\)](#), a producer or an importer that produces gasoline and that has elected to be

subject to an averaging limit specified in [section 2262](#) shall offset its emissions associated with permeation by complying with [sections 2265.5\(b\)-\(i\)](#). An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

- (1) The gasoline exceeds the applicable averaging limit for the property set forth in [section 2262](#) and no designated alternative limit for the property has been established for the gasoline in accordance with the requirements of [section 2264\(a\)](#); or
- (2) A designated alternative limit for the property has been established for the gasoline in accordance with the requirements of [section 2264\(a\)](#), and the gasoline exceeds the designated alternative limit for that property; or
- (3) Where the designated alternative limit exceeds the averaging limit for the property, the exceedance is not fully offset in accordance with [section 2264\(c\)](#).

(d) *Optional compliance by producers or importers that produce gasoline with the PM emissions offsetting compliance option.*

No producer or importer that produces gasoline shall sell, offer for sale, supply, or offer for supply from its production facility or import facility a final blend of California gasoline as a PM emissions offsetting formulation subject to the designated emissions offsetting limits if any of the following occurs:

- (1) The gasoline exceeds any of the designated emissions offsetting limits for sulfur, benzene, aromatic hydrocarbons, olefins, oxygen, T50, or T90 for the final blend; or
- (2) The gasoline exceeds the designated emissions offsetting limit for the final blend for RVP during any of the regulatory control periods in [section 2262.4\(b\)\(2\)](#).
- (3) The excess emissions of oxides of nitrogen, total ozone forming potential, or the potency-weighted toxics associated with excess sulfur in a final blend of gasoline is not fully and timely offset in accordance with [section 2265.1\(c\)](#).
- (4) The gasoline required to be offset and the offsetting gasoline are sold, offered, or supplied in different regions where the gasoline is normally offered for sale.

§ 2262.4. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure.

(a) *Compliance with the cap limits for Reid vapor pressure.*

(1) No person shall sell, offer for sale, supply, offer for supply, or transport California gasoline which exceeds the applicable cap limit for Reid vapor pressure within each of the air basins during the regulatory period set forth in [section \(a\)\(2\)](#).

(2) Regulatory Control Periods.

(A) April 1 through October 31 (May 1 through October 31 in 2003 and 2004):

South Coast Air Basin and Ventura County
San Diego Air Basin
Mojave Desert Air Basin
Salton Sea Air Basin

(B) May 1 through September 30:

Great Basin Valley Air Basin

(C) May 1 through October 31:

San Francisco Bay Area Air Basin
San Joaquin Valley Air Basin
Sacramento Valley Air Basin
Mountain Counties Air Basin
Lake Tahoe Air Basin

(D) June 1 through September 30:

North Coast Air Basin
Lake County Air Basin
Northeast Plateau Air Basin

(E) June 1 through October 31:

North Central Coast Air Basin
South Central Coast Air Basin (Excluding Ventura County)

(b) *Compliance by producers and importers with the flat limit for Reid vapor pressure.*

(1) Reid vapor pressure standard for producers and importers.

(A) In an air basin during the regulatory control periods specified in [section \(b\)\(2\)](#), no producer or importer shall sell, offer for sale, supply, or offer for supply from its

production facility or import facility California gasoline which has a Reid vapor pressure exceeding the applicable flat limit set forth in [section 2262](#) unless the gasoline has been reported as either a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#) or a PM emissions offsetting formulation pursuant to [section 2265.1](#) (applicable only to producers and importers that produce gasoline) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model.

- (B) In an air basin during the regulatory control periods specified in [section \(b\)\(2\)](#), no producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which has been reported either as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#) or a PM emissions offsetting formulation pursuant to [section 2265.1](#) (applicable only to producers and importers that produce gasoline) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model if the gasoline has a Reid vapor pressure exceeding the PM flat limit for Reid vapor pressure in the identified PM alternative specifications or the designated emissions offsetting limits, as applicable.

(2) Regulatory control periods for production and import facilities.

- (A) 1. March 1 through October 31 (Except as otherwise provided in (A)2. and (A)3. below):
 South Coast Air Basin and Ventura County
 San Diego Air Basin
 Mojave Desert Air Basin
 Salton Sea Air Basin
2. In the areas identified in [section 2262.4\(b\)\(2\)\(A\)1.](#), California gasoline that is supplied March 1 through March 31, 2003 from a production or import facility that is qualified under this subsection is not subject to the prohibitions of [section 2262.4\(b\)\(1\)](#), as long as the gasoline either is designated as subject to the CaRFG Phase 3 standards, or is subject to the CaRFG Phase 2 standards and also meets the prohibitions in [sections 2262.6\(a\)\(1\)](#) and [2262.6\(c\)](#) regarding the use of oxygenates. In order for a production or import facility to be qualified, the producer or importer must notify the Executive Officer in writing by February 14, 2003 that it has elected to have the facility be subject to this subsection during March 2003.
3. In the areas identified in [section 2262.4\(b\)\(2\)\(A\)1.](#), California gasoline that is supplied March 1 through March 31, 2004 from a production or import facility that was not qualified under [section 2262.4\(b\)\(2\)\(A\)2.](#) is not subject to the prohibitions of [section 2262.4\(b\)\(1\)](#).

(B) April 1 through September 30:
Great Basin Valley Air Basin

(C) April 1 through October 31:
San Francisco Bay Area Air Basin
San Joaquin Valley Air Basin
Sacramento Valley Air Basin
Mountain Counties Air Basin
Lake Tahoe Air Basin

(D) May 1 through September 30:
North Coast Air Basin
Lake County Air Basin
Northeast Plateau Air Basin

(E) May 1 through October 31:
North Central Coast Air Basin
South Central Coast Air Basin (Excluding Ventura County)

(c) ***Applicability.***

- (1) [Section \(a\)\(1\)](#) shall not apply to a transaction occurring in an air basin during a regulatory control period in [section \(a\)\(2\)](#) 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 regulatory control period in [section \(a\)\(2\)](#).
- (2) [Section \(b\)](#) shall not apply to a transaction occurring in an air basin during the applicable regulatory control period for producers and importers where the person selling, supplying, offering or transporting 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 located in an air basin not then subject to the regulatory control period for producers and importers set forth in [section \(b\)\(2\)](#).
- (3) [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 gasoline to the stationary storage tank occurred more than fourteen days before the start of the regulatory control period.

- (4) Gasoline that is produced in California, and is then transported to the South Coast Air Basin, Ventura County, or the San Diego Air Basin by marine vessel shall be subject to the regulatory control periods for production and import facilities identified in [section 2262.4\(b\)\(2\)\(A\)](#).

§ 2262.5. Compliance With the Standards for Oxygen Content.

(a) *Compliance with the minimum oxygen content cap limit standard in specified areas in the wintertime.*

- (1) Within the areas and periods set forth in [section \(a\)\(2\)](#), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless it has an oxygen content of not less than the minimum oxygen content cap limit in [section 2262](#).

- (2)(A) November 1 through February 29:

South Coast Area
Imperial County

- (B) October 1 through October 31, (1996 through 2002 only):

South Coast Area

(b) *Compliance with the maximum oxygen content cap limit standard.*

No person shall sell, offer for sale, supply, or transport California gasoline which has an oxygen content exceeding the maximum oxygen content cap limit in [section 2262](#), or which has an ethanol content exceeding 10.0 percent by volume.

(c) *Compliance by producers and importers with the flat limits for oxygen content.*

No producer or importer shall sell, offer for sale, supply, or offer for supply from its production or import facility California gasoline which has an oxygen content less than flat limit for minimum oxygen content, or more than flat limit for maximum oxygen content, unless the gasoline has been (1) reported as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#), or as a PM emissions offsetting formulation pursuant to [section 2265.1](#) (applicable only to producers and importers that produce gasoline), or as an alternative gasoline formulation pursuant to [section 2266\(c\)](#), and (2) complies with the standards contained in [sections \(a\)](#) and [\(b\)](#).

(d) *Restrictions on adding oxygenates to California gasoline after it has been supplied from the production or import facility.*

- (1) **Basic Restriction.** No person may add oxygenates to California gasoline after it has been supplied from the production or import facility at which it was produced or imported, except where the person adding the oxygenates demonstrates that: (A) the gasoline to which the oxygenates are added has been reported as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#), or as a PM emissions offsetting formulation pursuant to [section 2265.1](#) (applicable only to producers and importers that produce gasoline), or as an alternative gasoline formulation pursuant to [section 2266\(c\)](#), and has not been commingled with other gasoline, and (B) both before and after the person adds the oxygenate to the gasoline, the gasoline has an oxygen content within the oxygen content specifications of the applicable PM alternative gasoline formulation, PM emissions offsetting formulation, or alternative gasoline formulation. Nothing in this [section \(d\)](#) prohibits adding oxygenates to CARBOB.
- (2) **Bringing gasoline into compliance with the minimum oxygen content cap limit.** Notwithstanding [section \(d\)\(1\)](#), a person may add an oxygenate that is not prohibited under [section 2262.6](#) to California gasoline that does not comply with an applicable minimum oxygen content cap limit under [sections 2262](#) and [2262.5\(a\)](#), where the person obtains the prior approval of the executive officer based on a demonstration that adding the oxygenate is necessary to bring the gasoline into compliance with the minimum oxygen content cap limit.

(e) *Application of prohibitions.*

- (1) [Section \(a\)](#) shall not apply to a transaction occurring in the areas and periods shown in [\(a\)\(2\)](#) 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 not be delivered to a retail service station or bulk purchaser-consumer's fueling facility in the areas and periods shown in [\(a\)\(2\)](#).
- (2)(A) [Section \(a\)](#) shall not apply to a transaction occurring in the South Coast Area in October 2000, 2001, 2002, or 2003, 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 gasoline to the stationary storage tank occurred no later than September 16 of that year.
- (B) [Section \(a\)](#) shall not apply to a transaction occurring in November either in Imperial County or, starting in 2004, in the South Coast Area, 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 gasoline to the stationary storage tank occurred no later than October 17 of that year.

§ 2262.6. Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003.

(a) *Basic MTBE prohibitions.*

- (1) Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply California gasoline which has been produced at a California production facility in part by either (i) adding at the California production facility any methyl tertiary-butyl ether (MTBE) in neat form to the California gasoline or to a blending component used in the gasoline; or (ii) using a blending component that contained greater than 0.60 volume percent MTBE when it was supplied to the California production facility.
- (2) No person shall sell, offer for sale, supply or offer for supply California gasoline which contains MTBE in concentrations greater than: 0.60 volume percent starting December 31, 2003, 0.30 volume percent starting July 1, 2004, 0.15 volume percent starting December 31, 2005, and 0.05 volume percent starting July 1, 2007.

(b) *Phase-in of MTBE prohibitions.*

- (1) Phase-in of MTBE prohibitions starting December 31, 2003, and 2005. In the first year in which a prohibition applies under [section 2262.6\(a\)](#) starting on December 31, the prohibition shall be phased in as follows:
 - (A) Starting December 31, for all sales, supplies, or offers of California gasoline by a producer or importer from its production facility or import facility.
 - (B) Starting the following February 14, for all other sales, supplies, offers or movements of California gasoline except for transactions directly involving:
 1. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
 2. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility.
 - (C) Starting the following March 31, for all remaining sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.
- (2) Phase-in of MTBE prohibitions starting July 1, 2004 and 2007. In the first year in which a prohibition applies under [section 2262.6\(a\)](#) starting on July 1, the prohibition shall be

phased in as follows

- (A) Starting July 1, for all sales, supplies, or offers of California gasoline by a producer or importer from its production facility or import facility.
- (B) Starting the following August 15, for all other sales, supplies, offers or movements of California gasoline except for transactions directly involving:

- 1. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility,
or
- 2. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility.

- (C) Starting the following October 1, for all remaining sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

- (3) Phase-in for low-throughput fueling facilities. The prohibitions in [section \(a\)](#) starting respectively on December 31, 2003, July 1, 2004, December 31, 2005, and July 1, 2007, shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to the date on which the delivery became subject to the prohibition pursuant to the phase-in provisions in [section \(b\)](#).

(c) Use of oxygenates other than ethanol or MTBE in California gasoline on or after December 31, 2003.

- (1) Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply California gasoline which has been produced at a California production facility with the use of any oxygenate other than ethanol or MTBE unless a multimedia evaluation of use of the oxygenate in California gasoline has been conducted and the California Environmental Policy Council established by Public Resources Code section 71017 has determined that such use will not cause a significant adverse impact on the public health or the environment.
- (2) Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply California gasoline which contains a total of more than 0.10 weight percent oxygen collectively from all of the oxygenates identified in [section \(c\)\(4\)](#), other than oxygenates

not prohibited by [section \(c\)\(1\)](#).

(3) Starting July 1, 2004, no person shall sell, offer for sale, supply or offer for supply California gasoline which contains a total of more than 0.06 weight percent oxygen collectively from all of the oxygenates identified in [section \(c\)\(4\)](#), other than oxygenates not prohibited by [section \(c\)\(1\)](#).

(4) Covered oxygenates. Oxygen from the following oxygenates is covered by the prohibitions in [section 2262.6\(c\)\(1\)](#), [\(2\)](#) and [\(3\)](#):

Methanol
 Isopropanol
 n-Propanol
 n-Butanol
 iso-Butanol
 sec-Butanol
 tert-Butanol
 Tert-pentanol (tert-amylalcohol)
 Ethyltert-butylether (ETBE)
 Diisopropylether (DIPE)
 Tert-amylmethylether (TAME)

(5) The prohibitions in [section 2262.6\(c\)\(1\)](#) and [\(2\)](#), and in [section 2262.6\(c\)\(3\)](#), shall be phased in respectively as follows:

(A) Starting December 31, 2003 and July 1, 2004 respectively for all sales, supplies, or offers of California gasoline by a producer or importer from its production facility or import facility.

(B) Starting February 14, 2004 and August 15, 2004 respectively for all other sales, supplies, offers or movements of California gasoline except for transactions directly involving:

1. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility,
or
2. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility.

(C) Starting March 31, 2004 and September 30, 2004 respectively for all remaining sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer

facility.

- (6) Phase-in for low-throughput fueling facilities. The prohibitions in [section 2262.6\(c\)\(1\)](#) and [\(2\)](#), and in [section 2262.6\(c\)\(3\)](#), starting respectively on December 31, 2003 and July 1, 2004, shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to the date on which the delivery became subject to the prohibition pursuant to the phase-in provisions in [section 2262.6\(c\)\(5\)](#).

§ 2262.9. Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline.

(a) Standards.

- (1) Standards for denatured ethanol. Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply denatured ethanol intended for blending with CARBOB or California gasoline that fails to comply with any of the following standards:
- (A) Standards for properties regulated by the CaRFG Phase 3 standards.
1. A sulfur content not exceeding 10 parts per million;
 2. A benzene content not exceeding 0.06 percent by volume; and
 3. An olefins content not exceeding 0.5 percent by volume; and
 4. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.
- (B) Standards based on ASTM D 4806-99. All test methods and standards identified in the title and the table below are incorporated herein by reference.

<i>Specification</i>	<i>Value</i>	<i>Test method</i>
Ethanol, vol.%, min.	92.1	ASTM D 5501-94(1998) ε1
Methanol, vol.%, max.	0.5	
Solvent-washed gum, mg/100 ml, max.	5.0	ASTM D 381-00, air jet apparatus
Water content, vol.%, max.	1	ASTM E 203-96 or E 1064-00
Denaturant content, vol.%, min. vol.% max. The only denaturants shall be natural gasoline, gasoline components, or unleaded gasoline.	1.96 5.00 ^a	
Inorganic Chloride content, mass ppm (mg/l), max.	40 (32)	Modification of ASTM D512-89(1999), Procedure C ^b
Copper content, mg/kg, max.	0.1	Modification of ASTM D1688-95, Test Method A ^c
Acidity (as acetic acid), mass % (mg/l), max.	0.007 (56)	ASTM D 1613-96 (1999)
pHe	6.5 - 9.0	ASTM D 6423-99
Appearance	Visibly free of suspended or precipitated contaminants (clean and bright)	Determined at indoor ambient temperature unless otherwise agreed upon between the supplier and purchaser

Note a: The maximum denaturant content limit is changed from 4.76 v% to 5.00 v% to be consistent with ASTM 4806-06c

Note b: The modification of ASTM D 512-89(1999), Procedure C consists of using 5 ml of sample diluted with 20 ml of water in place of the 25 ml sample specified in the standard procedure. The water shall meet ASTM D 1193-99, Type II. The volume of the sample prepared by this modification will be slightly larger than 25 ml. To allow for the dilution factor, report the chloride ion present in the fuel ethanol sample as the chloride ion present in the diluted sample multiplied by five.

Note c: The modification of ASTM D 1688-95, Test Method A (atomic absorption) consists of mixing reagent grade ethanol (which may be denatured according to the U.S. Bureau of Alcohol, Tobacco, and Firearms (BATF) of the

U.S. Treasury Department Formula 3A or 30, as set forth in 27 CFR sections 21.35 and 21.57, as in effect April 1, 2001) in place of water as the solvent or diluent for the preparation of reagents and standard solutions. However, this must not be done to prepare the stock copper solution described in 11.1 of ASTM D 1688-95. Because a violent reaction may occur between the acid and the ethanol, use water, as specified, in the acid solution part of the procedure to prepare the stock copper solution. Use ethanol for the rinse and dilution only.

(2) Exemption.

(A) Inapplicability of basic standards. The standards in [section \(a\)\(1\)\(A\)](#) do not apply to a quantity of denatured ethanol sold, offered for sale, supplied, or offered for supply by a person who demonstrates as an affirmative defense that:

1. The person has complied with [section \(c\)\(1\)\(B\)](#); and
2. He or she has taken reasonably prudent precautions to assure that the denatured ethanol will only be added to CARBOB which has been designed to be lawfully oxygenated with denatured ethanol having the properties identified in the document provided pursuant to [section \(c\)\(1\)\(B\)](#).

(B) Substitute standards. Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply denatured ethanol that is intended for blending with CARBOB or California gasoline and is exempt pursuant to [section \(a\)\(2\)\(A\)](#), if the denatured ethanol fails to comply with any of the properties identified in the document provided pursuant to [section \(c\)\(1\)\(B\)](#).

(3) Standards for products represented as appropriate for use as a denaturant in ethanol.

(A) Except as otherwise provided in [section \(a\)\(3\)\(B\)](#), starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply a product represented as appropriate for use as a denaturant in ethanol intended for blending with CARBOB or California gasoline, if the denaturant has:

1. A benzene content exceeding 1.10 percent by volume; or
2. An olefins content exceeding 10.0 percent by volume; or
3. An aromatic hydrocarbon content exceeding 35.0 percent by volume.

(B) A person may sell, offer for sale, supply or offer for supply a product that is represented as only suitable for use as an ethanol denaturant in ethanol intended for blending with CARBOB or California gasoline if the denatured ethanol contains no more than a specified percentage of the denaturant that is less than 5.00 percent. In this case, the product must be prominently labeled as only lawful for use as a

denaturant where the denatured ethanol contains no more than the specified percentage of the denaturant, and the seller, supplier or offeror must take reasonably prudent precautions to assure that the denaturant will not be used in concentrations greater than the specified percentage in ethanol intended for blending with CARBOB or California gasoline. If these conditions are met, the standards in [section \(a\)\(3\)\(A\)](#) for the denaturant will be adjusted by multiplying the stated values by $(5.00 \div \text{max.\%})$, where "max.%" is the maximum percentage by volume of denaturant specified for the denatured ethanol.

(b) ***Test Methods.***

(1) In determining compliance with the denatured ethanol standards in [section \(a\)\(1\)\(A\)](#):

- (A) The sulfur content of denatured ethanol shall be determined by ASTM D 5453- 93, which is incorporated herein by reference.
 - (B) The aromatic hydrocarbon, benzene and olefins content of denatured ethanol shall be determined by sampling the denaturant and using the methods specified in [section 2263](#) to determine the content of those compounds in the denaturant. The result will then be multiplied by 0.0500, except that where it is demonstrated that the denatured ethanol contains less than 5.00 percent denaturant, the result will be multiplied by the decimal fraction representing the percent denaturant.
- (2) In determining compliance with the denaturant standards in [section \(a\)\(3\)](#), the aromatic hydrocarbon, benzene and olefins content of the denaturant shall be determined by the methods specified in [section 2263](#) for determining the content of those compounds in gasoline.

(c) ***Documentation required for the transfer of denatured ethanol intended for use as a blend component in California gasoline.***

- (1)(A) Starting December 31, 2003, and except as provided in [section \(c\)\(1\)\(B\)](#), on each occasion that any person transfers custody or title of denatured ethanol intended for use as a blend component in California gasoline, the transferor shall provide the transferee a document that prominently states that the denatured ethanol complies with the standards for denatured ethanol intended for use as a blend component in California gasoline.
- (B) Starting December 31, 2003, on each occasion that any person transfers custody or title of denatured ethanol that is intended to be added to CARBOB designated for blending with denatured ethanol exceeding any of the standards in [section \(a\)\(1\)\(A\)](#), the transferor shall provide the transferee a document that prominently identifies the maximum sulfur, benzene, olefin and aromatic hydrocarbon content of the denatured

ethanol, and states that the denatured ethanol may only be lawfully added to CARBOB that is designated for blending with denatured ethanol having such properties.

- (2) Starting December 31, 2003, any person who sells or supplies denatured ethanol intended for use as a blend component in California gasoline from the California facility at which it was imported or produced shall provide the purchaser or recipient a document that identifies:
- (A) The name and address of the person selling or supplying the denatured ethanol, and identification of the person as the producer or importer of the denatured ethanol; and
 - (B) With respect to imported denatured ethanol, the name, location and operator of the facility(ies) at which the ethanol was produced and at which the denaturant was added to the ethanol. As an alternative, the document provided to the purchaser or recipient may identify the date and time the ethanol was supplied from its import or production facility, and state that the person selling or supplying the denatured ethanol from the California facility at which it was imported or produced maintains at the facility a list of the name, location, and operator of all of the facilit(ies) at which the ethanol was produced and at which the denaturant was added to the ethanol. In this case, the person shall for at least two years maintain such information, and records identifying the entities that produced the ethanol and added the denaturant in each batch of denatured ethanol imported to the facility; during that two year period, the person shall make the information and records, available to the Executive Officer within five days after a request for the material.

§ 2263. Sampling Procedures and Test Methods.

- (a) **Sampling Procedures.** In determining compliance with the standards set forth in this subarticle 2, an applicable sampling methodology set forth in 13 C.C.R. section 2296 shall be used.
- (b) **Test Methods.**
 - (1) In determining compliance with the gasoline standards set forth in this subarticle 2, including those in the sections identified in Table 1, the test methods presented in Table 1 shall be used. All identified test methods are incorporated herein by reference.

Table 1

<i>Section</i>	<i>Gasoline Specification</i>	<i>Test Method</i> ^a
2262	Reid Vapor Pressure	ASTM D 323-58 ^b or 13 C.C.R. Section 2297
2262	Sulfur Content	ASTM D 2622-94 ^{c, d} or ASTM D 5453-93
2262	Benzene Content	ASTM D 5580-00 ^e
2262	Olefin Content	ASTM D 1319-95a ^f (Through December 31, 2001) ASTM D 6550-00 ^{g, h, i} (Starting January 1, 2002)
2262	Oxygen Content	ASTM D 4815-04
2262	T90 and T50	ASTM D 86-99aε1
2262	Aromatic Hydrocarbon Content	ASTM D 5580-00 ^j
2262.5(b)	Ethanol Content	ASTM D 4815-04
2262.6	MTBE Content	ASTM D 4815-04
2262.6(c)	Oxygen from oxygenates identified in section 2262.6(c)(4)	ASTM D 4815-04

^a Do not report values below the limit of detection (LOD) specified in the test method. Where a test method does not specify a LOD, do not report values below the lower limit of the scope of the test method.

^b Delete paragraph 4(b) concerning sampling.

^c Make the following modifications to paragraph 9.1:

Low Level Sulfur Calibration Procedure

Reagents Thiophene, at least 99% purity 2-Methylthiophene, at least 98% purity Toluene, reagent grade
2,2,4-Trimethylpentane, reagent grade

Preparation of Stock Standard Weigh standard materials thiophene (~ 0.7290 gm) and 2-methylthiophene (~ 0.7031 gm) separately into a tared volumetric flask and record the individual mass to 0.1 mg. Add "mixed solvent" containing 25% toluene and 75% iso-octane (by volume) into the flask to a net weight of

approximately 50 gm and record the weight. This "Stock Standard" contains approximately 10 mg/gm sulfur. The actual sulfur concentration can be calculated as follows:

$$\text{Sulfur from thiophene (gm)} = \text{Weight of thiophene} * 32.06 * \text{purity} / 84.14$$

$$\text{Sulfur from 2-methylthiophene (gm)} = \text{Weight of 2-methylthiophene} * 32.06 * \text{purity} / 98.17$$

$$\text{Sulfur concentration of Stock Standard (gm/gm)} = (\text{sulfur from thiophene} + \text{sulfur from 2-methylthiophene}) / \text{net weight of the stock standard}$$

Multiply the sulfur concentration by 1000 to convert the unit to mg/gm.

Preparation of Calibration Standards Pipet 2.5 ml of the Stock Standard to 250 ml flask and dilute with the "mixed solvent" to the mark. The "Diluted Standard" contains approximately 100 mg/kg sulfur. Prepare 5, 10, 20, 30, 50, 75 ppm calibration standards by pipetting 5, 10, 20, 30, 50, 75 ml of the Diluted Standard into a 100 ml flask, respectively, and diluting with the "mixed solvent" to the mark. The actual concentration of the calibration standard should be determined from the stock standard. The standards with concentration ranging from 5 to 100 ppm and the "mixed solvent" are to be used for calibrating the instrument.

^d Replace ASTM D 2622-94 reproducibility values with the following:

<i>Sulfur Content, ppm</i>	<i>Reproducibility</i>
10 to 30	40.5% x Sulfur Content (ppm)
>30	19.2% x Sulfur Content (ppm)

^e The reproducibility of benzene is as follows:

$$\text{Reproducibility} = 0.1409 (X^{1.133}), \text{ where } X = \text{vol } \%$$

^f Add the following reproducibility statement for oxygenate-containing samples:

	<i>Range</i>	<i>Reproducibility</i>
Olefins	0.3 - 33	0.819(X) ^{0.6}

X = Volume %

^g Replace ASTM D6550-00 reproducibility equation with the following:

$$\text{Reproducibility} = 0.32 X^{0.5}$$

where X is between 0.3 and 25 mass % olefin

^h The conversion from mass % olefin to volume % olefin is defined as follows:

volume % olefin = 0.857 * mass % olefin

ⁱ Replace the last sentence in ASTM D6550-00 section 1.1 with the following:

The application range is from 0.3 to 25 mass % total olefins.

^j The reproducibility of total aromatic hydrocarbon is as follows:

Reproducibility = 1.4 volume%

(c) ***Equivalent Test Methods.*** Whenever this section provides for the use of a specified test method, another test method may be used following a determination by the executive officer that the other method produces results equivalent to the results with the specified method.

§ 2263.7. Multiple Notification Requirements.

Where a producer or importer is subject to multiple notification requirements pursuant to [sections 2264\(a\)\(2\)\(A\), 2265.1](#) (applicable only to producers and importers that produce gasoline), [2265.5](#) (applicable only to producers and importers that produce gasoline), [2264.2\(a\)\(2\), 2264.2\(b\)\(2\), 2265\(a\)\(2\), 2266\(c\)](#) or [2266.5\(b\)](#), the producer or importer shall combine the notifications to the extent practicable.

§ 2264. Designated Alternative Limits.

(a) ***Assignment of a designated alternative limit.***

(1) A producer or importer that has elected to be subject to an averaging limit specified in [section 2262](#) may assign a designated alternative limit to a final blend of California gasoline produced or imported by the producer or importer by satisfying the notification requirements in this section (a). In no case shall a designated alternative limit be less than the sulfur, benzene, olefin or aromatic hydrocarbon content, or T90 or T50, of the final blend shown by the sample and test conducted pursuant to [section 2270](#), or [section 2266.5\(a\)](#), as applicable. If a producer or importer intends to assign designated alternative limits for more than one gasoline specification to a given quantity of gasoline, the party shall identify the same final blend for all designated alternative limits for the gasoline.

(2)(A) The producer or importer shall notify the executive officer of the estimated volume (in gallons), the designated alternative limit, the blend identity, and the location of each final blend receiving a designated alternative limit. This notification shall be received by the executive officer before the start of physical transfer of the gasoline from the production or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend. A producer or importer may revise the reported estimated volume, as long as notification of the

revised volume is received by the executive officer no later than 48 hours after completion of the physical transfer of the final blend from the production or import facility. If notification of the revised volume is not timely received by the executive officer, the reported estimated volume shall be deemed the reported actual volume.

- (B) For each final blend receiving a designated alternative limit exceeding an applicable averaging limit in [section 2262](#), the producer or importer shall notify the executive officer of the date and time of the start of physical transfer from the production or import facility, within 24 hours after the start of such physical transfer. For each final blend receiving a designated alternative limit less than an applicable averaging limit in [section 2262](#), the producer or importer shall notify the executive officer of the date and time of the completion of physical transfer from the production or import facility, within 24 hours after the completion of such physical transfer.
- (3) If, through no intentional or negligent conduct, a producer or importer cannot report within the time period specified in [\(a\)\(2\)](#) above, the producer or importer may notify the executive officer of the required data as soon as reasonably possible and may provide a written explanation of the cause of the delay in reporting. If, based on the written explanation and the surrounding circumstances, the executive officer determines that the conditions of this section [\(a\)\(3\)](#) have been met, timely notification shall be deemed to have occurred.
- (4) The executive officer may enter into a written protocol with any individual producer or importer for the purposes of specifying how the requirements in [section \(a\)\(2\)](#) and [\(c\)](#) shall be applied to the producer's or importer's particular operations, as long as the executive officer reasonably determines that application of the regulatory requirements under the protocol is not less stringent or enforceable than application of the express terms of [section \(a\)\(2\)](#) and [\(c\)](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.
- (5) Whenever the final blend of a producer or importer includes volumes of gasoline the party has produced or imported and volumes the party has neither produced nor imported, the producer's or importer's designated alternative limit shall be assigned and applied only to the volume of gasoline the party has produced or imported. In such a case, the producer or importer shall report to the executive officer in accordance with [section \(a\)](#) both the volume of gasoline produced and imported by the party, and the total volume of the final blend. The party shall also additionally report the sulfur content, benzene content, olefin content, aromatic hydrocarbon content, T90, and T50, as applicable, of the portion of the final blend neither produced nor imported by the party, determined as set forth in [section 2270\(b\)](#), or [section 2266.5\(a\)\(2\)](#), as applicable.

(b) Additional prohibitions regarding gasoline to which a designated alternative limit has been assigned.

- (1) No producer or importer shall sell, offer for sale, or supply California gasoline in a final blend to which the producer or importer has assigned a designated alternative limit exceeding an applicable averaging limit in [section 2262](#), where the total volume of the final blend sold, offered for sale, or supplied exceeds the volume reported to the executive officer pursuant to [section \(a\)](#).
- (2) No producer or importer shall sell, offer for sale or supply California gasoline in a final blend to which the producer or importer has assigned a designated alternative limit less than an applicable averaging limit in [section 2262](#), where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive officer pursuant to [section \(a\)](#).

(c) *Offsetting exceedances of an applicable averaging limit.*

- (1) With respect to each property for which a producer or importer has elected to be subject to the averaging limit in [section 2262](#), within 90 days before or after the start of physical transfer from a production or import facility of any final blend of California gasoline to which a producer has assigned a designated alternative limit for the property exceeding the applicable averaging limit in [section 2262](#), the producer or importer shall complete physical transfer from the same production or import facility of California gasoline in sufficient quantity and with a designated alternative limit sufficiently below the applicable averaging limit in [section 2262](#) to fully offset the extent to which the gasoline exceeded the applicable averaging limit in [section 2262](#). In the case of benzene, olefins, or aromatic hydrocarbons, the total volume of benzene, olefins, or aromatic hydrocarbons in excess of the averaging limit must be offset within the specified time period; the total mass of sulfur and the degree gallons of T50 and T90 in excess of the averaging limit must be similarly offset.

For example, within 90 days before or after the start of physical transfer from a production or import facility of any final blend of California gasoline to which a producer has assigned a designated alternative limit for olefin exceeding 4.0 percent by volume, the producer or importer shall complete physical transfer from the same production or import facility of California gasoline in sufficient quantity and with a designated alternative limit sufficiently below 4.0 percent by volume to offset the volume of the olefins in excess of a limit of 4.0 percent by volume.

- (2) A producer or importer may enter into a protocol with the Executive Officer under which the producer or importer is allowed to have up to six separate averaging banks at a single production or import facility, applicable to operationally distinct products (e.g. different grades of gasoline or oxygenated and nonoxygenated). The offset requirements will apply independently for each separate averaging bank. Once averaging is selected for a particular product, the compliance scheme for that product may only be changed if the change meets the applicable criteria and conditions in [sections 2264.2](#) and [2265\(c\)](#) with respect to that product. The protocol shall specify how the requirements in [section \(a\)\(2\)](#)

and [\(c\)\(1\)](#) will be applied to the producer's or importer's particular operations and the separate averaging banks. In order to enter into the protocol, the Executive Officer must determine that application of the requirements under the protocol will not be less stringent or enforceable than application of the express terms of [sections \(a\)\(2\)](#) and [\(c\)](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(d) *Designated alternative limits for PM alternative gasoline formulations.*

The producer or importer of a final blend of California gasoline that is subject to the PM averaging compliance option for one or more properties may assign a designated alternative limit to the final blend by satisfying the notification requirements of [section 2264\(a\)](#). The producer or importer of such a final blend shall be subject to all of the provisions of this [section 2264](#), except that, with respect to that final blend, the PM averaging limit (if any) for each property subject to the PM averaging compliance option shall replace any reference in this [section 2264](#) to the averaging limit specified in [section 2262](#).

§ 2264.2. Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility.

(a) *Election of the averaging compliance option.*

- (1) A producer or importer selling or supplying a final blend of gasoline from its production or import facility may elect pursuant to this section 2264.2(a) to have the final blend subject to the averaging compliance option for one or more of the following properties: sulfur, benzene, olefins, aromatic hydrocarbons, T90 or T50. Once a producer or importer has made such an election for a gasoline property, all final blends subsequently sold or supplied from the production or import facility shall be subject to the averaging compliance option for that property until the producer or importer either (A) elects in accordance with [section 2264.2\(b\)](#) to have a final blend at the facility subject to the flat limit compliance option for that property, or (B) elects in accordance with [section 2265\(a\)](#) to sell or supply a final blend at the facility as a PM alternative gasoline formulation, or (C) elects in accordance with [section 2266\(c\)](#) to sell or supply a final blend at the facility as an alternative gasoline formulation.
- (2) In order to elect to have a final blend subject to the averaging option for a gasoline property, the producer or importer shall notify the executive officer of such election and of the information identified in [section 2264\(a\)\(2\)\(A\)](#), within the time limits set forth in [section 2264\(a\)\(2\)\(A\)](#) and subject to [section 2264\(a\)\(3\)](#) and [\(4\)](#).
- (3) A producer or importer may not elect to sell, offer, or supply from its production facility or import facility a final blend of California gasoline subject to the averaging compliance option in [section 2264](#) if the producer or importer is subject to any outstanding

requirements to provide PM emissions offsets pursuant to [section 2265.1\(c\)](#) or emission reductions pursuant to [section 2265.5](#) at the same production facility or import facility.

(b) *Election of flat limit compliance option.*

- (1) A producer or importer selling or supplying a final blend of gasoline from its production or import facility may elect to have the final blend subject to the flat limit compliance option in accordance with this [section 2264.2\(b\)](#). No such election may be made if there are outstanding requirements to provide offsets for the gasoline property at the facility pursuant to [section 2264\(c\)](#).
- (2) In order to elect to have a final blend subject to the flat limit compliance option for a gasoline property, the producer or importer shall notify the executive officer of such election and of the blend identity and the location of the final blend, within the time limits set forth in [section 2264\(a\)\(2\)\(A\)](#) and subject to [section 2264\(a\)\(3\)](#) and [\(4\)](#).
- (3) Once a producer or importer has made an election under this [section 2264.2\(b\)](#) with respect to a gasoline property, all final blends subsequently sold or supplied from the production or import facility shall be subject to the flat limit compliance option for that property until the producer or importer either (A) elects in accordance with [section 2264.2\(a\)](#) to have a final blend at the facility subject to the averaging compliance option for that property, or (B) elects in accordance with [section 2265\(a\)](#) to sell or supply a final blend at the facility as a PM alternative gasoline formulation, or (C) elects in accordance with [section 2264.2\(d\)](#) to sell or supply a final blend at the facility as a PM emissions offsetting formulation (applicable only to producers and importers that produce gasoline), or (D) elects in accordance with [section 2265.5](#) to have a final blend at the facility subject to a PM alternate emissions reduction plan (applicable only to producers and importers that produce gasoline), or (E) elects in accordance with [section 2266\(c\)](#) to sell or supply a final blend at the facility as an alternative gasoline formulation.
- (4) Once a producer or importer has made an election under this [section 2264.2\(b\)](#) with respect to a gasoline property of a final blend at a production or import facility, the producer or importer may not use any previously assigned designated alternative limit for that property to provide offsets pursuant to [section 2264\(c\)](#) for any final blend sold or supplied from the production or import facility subsequently to the election.
- (5) A producer or importer may not elect to sell, offer, or supply from its production facility or import facility a final blend of California gasoline subject to the flat limit compliance option if the producer or importer is subject to any outstanding requirements to provide PM emissions offsets pursuant to [section 2265.1\(c\)](#) or emission reductions pursuant to [section 2265.5](#) at the same production facility or import facility.

(c) *Inapplicability to elections for PM alternative gasoline formulations.*

Any election for a final blend to be subject to a PM averaging compliance option or a PM flat limit compliance option shall be made in accordance with [section 2265](#) rather than this [section 2264.2](#).

(d) *Election of the PM emissions offsetting compliance option.*

- (1) Applicability. A producer or importer that produces gasoline and is selling, offering, or supplying a final blend of gasoline from its production facility or import facility may elect pursuant to this section 2264.2(d) to have the final blend subject to the PM emissions offsetting compliance option when all of the following conditions are satisfied:
 - (A) With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#),
 - (B) The actual sulfur content in the PM alternative gasoline formulation exceeds the PM alternative specification,
 - (C) But for the elevated sulfur content, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,
 - (D) The gasoline reported as a PM alternative gasoline formulation has a percent change in emissions value either for oxides of nitrogen, total ozone forming potential, or potency-weighted toxics that results in a final blend deficit, and
 - (E) The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to [section 2264\(c\)](#).
- (2) Once a producer or importer has made such an election for a final blend of gasoline, all final blends subsequently sold or supplied from the production facility or import facility, whether associated with a final blend deficit or a final blend credit, shall be subject to the PM emissions offsetting compliance option until the producer or importer either (A) elects in accordance with [section 2264.2\(a\)](#) to have a final blend at the facility subject to the averaging compliance option, or (B) elects in accordance with [section 2264.2\(b\)](#) to have a final blend at the facility subject to the flat limit compliance option for all fuel properties, or (C) elects in accordance with [section 2265\(a\)](#) to sell or supply a final blend at the facility as a PM alternative gasoline formulation, or (D) elects in accordance with [section 2266\(c\)](#) to sell or supply a final blend at the facility as an alternative gasoline formulation.

- (3) In order to elect to have a final blend subject to the PM emissions offsetting compliance option for a final blend, the producer or importer shall notify the Executive Officer of such election and of the information identified in [section 2265.1\(a\)\(2\)\(A\)](#), within the time limits set forth in [section 2265.1\(a\)\(2\)\(A\)](#) and subject to [section 2265.1\(a\)\(3\)](#) and [\(4\)](#).
- (4) Once a producer or importer has made an election under this [section 2264.2\(d\)](#) with respect to the PM emissions offsetting compliance option, the producer or importer may not use any previously assigned designated alternative limit for any fuel property to provide offsets pursuant to [section 2264\(c\)](#) for any final blend sold or supplied from the production facility or import facility subsequent to the election.

§ 2265. Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model.

(a) Election to sell or supply a final blend as a PM alternative gasoline formulation.

- (1) In order to sell or supply from its production facility or import facility a final blend of California gasoline as a PM alternative gasoline formulation subject to PM alternative specifications, a producer or importer shall satisfy the requirements of this section (a).
- (2) The producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 2 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995 and last amended December 11, 1998, which is incorporated herein by reference. The producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 3 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004, which is incorporated herein by reference. Starting December 31, 2009, the producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 3 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended August 7, 2008, which is incorporated herein by reference. The three documents incorporated by reference in this section 2265(a)(2) are collectively referred to as the "Predictive Model Procedures." If the PM alternative specifications meet the criteria for approval in the applicable Predictive Model Procedures, the producer shall notify the executive officer of: (A) The identity and location of the final blend; (B) the PM alternative specifications that will apply to the final blend, including for each specification whether it applies as a PM flat limit or a PM averaging limit; and (C) the numerical values for percent change in emissions for oxides of nitrogen, total ozone forming potential, and potency-weighted toxic air contaminants as determined in

accordance with the applicable Predictive Model Procedures. The notification shall be received by the executive officer before the start of physical transfer of the gasoline from the production or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend.

- (3) Once a producer or importer has notified the executive officer pursuant to this [section 2265\(a\)](#) that a final blend of California gasoline is being sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of California gasoline subsequently sold or supplied from that production or import facility shall be subject to the same PM alternative specifications until the producer or importer either (A) designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications, (B) elects in accordance with [section 2264.2](#) to have a final blend at that facility subject to flat limit compliance options and/or averaging compliance options, or (C) elects in accordance with [section 2266\(c\)](#) to sell a final blend at that facility as an alternative gasoline formulation, or (D) elects in accordance with [section 2264.2\(d\)](#) to sell or supply a final blend at that facility as a PM emissions offsetting formulation (applicable only to producers and importers that produce gasoline), or (E) elects in accordance with [section 2265.5](#) to have a final blend at that facility subject to a PM alternative emissions reduction plan (applicable only to producers and importers that produce gasoline).
- (4) The executive officer may enter into a written protocol with any individual producer or importer for the purposes of specifying how the requirements in [section \(a\)\(2\)](#) shall be applied to the producer's or importer's particular operations, as long as the executive officer reasonably determines that application of the regulatory requirements under the protocol is not less stringent or enforceable than application of the express terms of [section \(a\)\(2\)](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.
- (5) If, through no intentional or negligent conduct, a producer or importer cannot report within the time period specified in [section \(a\)\(2\)](#) above, the producer or importer may notify the executive officer of the required data as soon as reasonably possible and may provide a written explanation of the cause of the delay in reporting. If, based on the written explanation and the surrounding circumstances, the executive officer determines that the conditions of this section (a)(5) have been met, timely notification shall be deemed to have occurred.

(b) *Prohibited activities regarding PM alternative gasoline formulations.*

- (1) No producer or importer shall sell, offer for sale, supply, or offer for supply from its production or import facility California gasoline which is reported pursuant to [section 2265\(a\)](#) as a PM alternative gasoline formulation subject to PM alternative specifications if any of the following occur:

- (A) The identified PM alternative specifications do not meet the criteria for approval in the applicable Predictive Model Procedures; or
- (B) The producer was prohibited by [section 2265\(c\)](#) from electing to sell or supply the gasoline as a PM alternative gasoline formulation; or
- (C) The gasoline fails to conform with any PM flat limit in the identified PM alternative specifications (see [section 2262.4\(b\)](#) in the case of specifications for Reid vapor pressure); or
- (D) With respect to any property for which the producer or importer has identified a PM averaging limit.
 - 1. the gasoline exceeds the applicable PM average limit, and no designated alternative limit for the property has been established for the gasoline in accordance with [section 2264\(a\)](#); or
 - 2. a designated alternative limit for the property has been established for the gasoline in accordance with [section 2264\(a\)](#), and either of the following occur:
 - a. The gasoline exceeds the designated alternative limit for the property, or
 - b. Where the designated alternative limit for the property exceeds the PM averaging limit, the exceedance is not fully offset in accordance with the applicable provisions in [section 2264\(c\)](#).
- (2) Where a producer or importer has elected to sell or supply a final blend of California gasoline as a PM alternative gasoline formulation in accordance with this [section 2265](#), the final blend shall not be subject to [section 2262.3\(b\)](#) and (c), [section 2262.4\(b\)](#), and [section 2262.5\(c\)](#).

(c) *Restrictions associated with elections to sell or supply final blends as PM alternative gasoline formulations.*

- (1) A producer or importer may not elect to sell or supply from its production or import facility a final blend of California gasoline as a PM alternative gasoline formulation if the producer or importer is subject to any outstanding requirements to provide offsets at the same production or import facility pursuant to [section 2264\(c\)](#).
- (2) Once a producer or importer has elected to sell or supply from its production or import facility a final blend of California gasoline as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more properties, the producer or

importer may not elect any other compliance option, including another PM alternative gasoline formulation, if there are outstanding requirements to provide offsets for such property or properties pursuant to [section 2264\(c\)](#). However, this section (c)(2) shall not preclude a producer or importer under the circumstances described above from electing another PM alternative gasoline formulation where:

(A) the only changes are that either:

1. PM flat limits for one or more properties are changed to PM averaging limits, or
2. a single PM averaging limit for which there are no outstanding requirements to provide offsets is changed to a PM flat limit, and

(B) there are no changes to the PM alternative specifications for the remaining properties, and

(C) the new PM alternative formulation meets the criteria for approval in the applicable Predictive Model Procedures.

(3) Once a producer or importer has elected to sell or supply from its production or import facility a final blend of California gasoline as a PM alternative gasoline formulation, the producer or importer may not use any previously assigned designated alternative limit for a property to provide offsets pursuant to [section 2264\(c\)](#) for any final blend sold or supplied from the production or import facility subsequent to the election.

(4) A producer or importer may not elect to sell or supply from its production facility or import facility a final blend of California gasoline as a PM alternative gasoline formulation if the producer or importer is subject to any outstanding requirements to provide offsets pursuant to [section 2265.1\(c\)](#) or emission reductions pursuant to [section 2265.5](#) at the same production facility or import facility.

§ 2265.1. Offsetting Emissions Associated with Higher Sulfur Levels.

(a) *Assignment of designated emissions offsetting limits and percent change in emissions values for batches of gasoline for which the emissions associated with higher sulfur levels are being offset.*

(1) A producer or an importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option must assign a designated emissions offsetting limit for the sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen (maximum and minimum) contents, and for the T90, T50, and RVP (during the RVP regulatory control

period in [section 2262.4\(b\)\(2\)](#)) for each final blend of California gasoline produced by the producer or the importer and satisfying the notification requirements in this section (a). In no case shall a designated emissions offsetting limit be less than the sulfur, benzene, olefin, or aromatic hydrocarbon contents, T90, T50, or RVP, or less than the maximum oxygen content or greater than the minimum oxygen content of the final blend shown by the sample and test conducted pursuant to [section 2270](#). For each final blend, the producer or the importer that produces gasoline shall also assign the percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics.

(2) Notification of final blends associated with a final blend deficit

(A) Except as otherwise provided, for each final blend that has a percent change in emissions value greater than 0.04 percent for oxides of nitrogen, total ozone forming potential, or potency-weighted toxics (referred to as the deficit final blend), the producer or the importer that produces gasoline shall notify the executive officer in writing, for receipt by the executive officer before the start of physical transfer of the gasoline from the production facility or the import facility, and in no case less than 12 hours before the producer or the importer that produces gasoline either completes physical transfer or commingles the final blend, with the following information:

1. Justification for using the PM emissions offsetting compliance option, including but not limited to, an explanation for the elevated sulfur level in the final blend and why the batch will not be re-blended or a different predictive model formulation will not be developed,
2. The targeted PM alternative specifications that the producer or the importer that produces gasoline was intending to produce and which would have resulted in a passing PM formulation but for the actual sulfur content of the blend,
3. The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the targeted PM alternative specifications,
4. The company name, address, phone number, and contact information,
5. The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the PM emissions offsetting compliance option,

6. The estimated volume (in barrels),
 7. The designated emissions offsetting limit for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content for the final blend,
 8. The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the final blend,
 9. A statement, signed by a legal representative for the producer or the importer that produces gasoline that all information submitted with the notification is true and correct, and
 10. Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.
- (B) A producer or importer that produces gasoline may report an actual volume that is less than the estimated volume, as long as notification of the actual volume is received by the executive officer no later than 48 hours after completion of the physical transfer of the final blend from the production facility or import facility. If notification of the actual volume is not timely received by the executive officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is larger than initially estimated, the producer or the importer that produces gasoline shall revise the reported estimated volume by notifying the executive officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.
- (3) Notification of final blends associated with a final blend credit.
- (A) For each final blend associated with a final blend credit, the producer or the importer that produces gasoline shall notify the executive officer in writing for receipt by the executive officer before the start of physical transfer of the gasoline from the production facility or the import facility, and in no case less than 12 hours before the producer or the importer that produces gasoline either completes physical transfer or commingles the final blend, with the following information:
- (1) The company name, address, phone number, and contact information,
 - (2) The production facility or the import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and

identification of the tank), and other information that uniquely identifies the California gasoline associated with a final blend credit,

- (3) The estimated volume (in barrels),
 - (4) The designated emissions offsetting limits for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content for the final blend,
 - (5) The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the final blend,
 - (6) A statement, signed by a legal representative for the producer or the importer that produces gasoline that all information submitted with the notification is true and correct, and
 - (7) Within 24 hours after the completion of the physical transfer, the date and time of the completion of physical transfer from the production facility or the import facility.
- (B) A producer or importer that produces gasoline may report an actual volume that is more than the estimated volume, as long as notification of the actual volume is received by the executive officer no later than 48 hours after completion of the physical transfer of the final blend from the production facility or the import facility. If notification of the actual volume is not timely received by the executive officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is less than initially estimated, the producer or the importer that produces gasoline shall revise the reported estimated volume by notifying the executive officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.
- (4) If, through no intentional or negligent conduct, a producer or importer that produces gasoline cannot report within the time period specified in [\(a\)\(2\)](#) or [\(a\)\(3\)](#) above, the producer or importer that produces gasoline may notify the executive officer of the required data as soon as reasonably possible and may provide a written explanation of the cause of the delay in reporting. If, based on the written explanation and the surrounding circumstances, the executive officer determines that the conditions of this section [\(a\)\(4\)](#) have been met, timely notification shall be deemed to have occurred.
 - (5) The executive officer may enter into a written protocol with any individual producer or importer that produces gasoline for the purposes of specifying how the requirements in sections [\(a\)\(2\)](#) and [\(c\)](#) shall be applied to the producer's or importer's particular

operations, as long as the executive officer reasonably determines that application of the regulatory requirements under the protocol is not less stringent or enforceable than application of the express terms of sections (a)(2) and (c). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(b) *Additional prohibitions regarding gasoline with designated emissions offsetting limits and final blend credits or deficits.*

- (1) No producer or importer that produces gasoline shall sell, offer for sale, or supply California gasoline with a final blend deficit, where the total volume of the final blend sold, offered for sale, or supplied exceeds the volume reported to the executive officer pursuant to [section \(a\)](#).
- (2) No producer or importer that produces gasoline shall sell, offer for sale or supply California gasoline with a final blend credit, where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive officer pursuant to [section \(a\)](#).
- (3) Final blend credits shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced or imported in the same air basin as the gasoline with a final blend deficit, or that are claimed under any alternative emission reduction plan.

(c) *Offsetting a final blend deficit.*

With respect to each final blend for which a producer or importer that produces gasoline has elected to be subject to the PM emissions offsetting compliance option, within 90 days after the start of physical transfer from a production facility or import facility of any final blend of California gasoline with a final blend deficit, the producer or importer shall complete physical transfer from the same production facility or import facility of California gasoline with a final blend credit in sufficient quantity and for the same emissions parameter (oxides of nitrogen, total ozone forming potential, or potency-weighted toxics) to fully offset the final blend deficit.

For example, within 90 days after the start of physical transfer from a production facility or import facility of 100 barrels of any final blend of California gasoline to which a producer or importer that produces gasoline has assigned a designated emissions offsetting limit which results in a 0.10 percent increase in oxides of nitrogen, the producer or importer that produces gasoline shall complete physical transfer from the same production facility or import facility of California gasoline in sufficient quantity and quality to offset the 6 deficit points for oxides of nitrogen. The final blend deficit is calculated as:

$$\text{Final Blend Deficit} = (0.10 - 0.04) \times 100 = 6$$

(d) ***Automatic termination of the producer's or importer's use of the PM emissions offsetting compliance option.***

When a producer or importer that produces gasoline has fully offset the final blend deficit, the producer's or importer's use of the PM emissions offsetting compliance option automatically terminates. Prior to selling, supplying, or offering California gasoline after the termination, the producer or importer that produces gasoline must elect to use the flat limits, designated alternative limits, PM alternative specifications, or TC limits for its next final blend. The producer or importer that produces gasoline may not use any remaining final blend credits to provide offsets pursuant to [section 2265.1\(c\)](#) for any final blend sold, offered, or supplied from the production facility or import facility subsequent to the election.

§ 2265.5. Alternative Emission Reduction Plan (AERP).

(a) ***Applicability.***

This section shall apply to a producer or importer that produces gasoline that elects to use an AERP or to a third party that elects to use a third party AERP when all of the following conditions are satisfied:

- (1) In the case of a third party AERP, the third party has a contract or agreement to offset, in whole or in part, the elevated emissions associated with permeation from the producer's or importer's gasoline.
- (2) With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing or importing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to [section 2265\(a\)](#),
- (3) But for the elevated emissions associated with permeation, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,
- (4) All measures to correct the emissions associated with permeation would result in an economic hardship to the producer or importer and the benefit in allowing the producer or importer to use an alternative emission reduction plan is not outweighed by the public interest in enforcing the applicable Predictive Model Procedures,
- (5) The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to [section 2264\(c\)](#), and

- (6) All AERPs and third party AERPs sunset on December 31, 2011, unless the producer or importer, or the third party in the case of a third party AERP, requests in writing, and the Executive Officer approves in advance, an extension of the AERP or third party AERP for up to one additional year.

(b) **Requirements.**

- (1) Where the producer or importer that produces gasoline has reported its final blend of gasoline as a flat limit formulation pursuant to [section 2264.2\(b\)](#), averaging limit formulation pursuant to [section 2264.2\(a\)](#), PM alternative gasoline formulation pursuant to [section 2265\(a\)](#), or test-certified alternative gasoline formulation pursuant to [section 2266\(c\)](#), compliance with a valid AERP or third party AERP shall constitute compliance with the requirements of section [2262.3\(b\)](#), [2262.3\(c\)](#), [2265](#), or [2266](#), respectively.
- (2) An AERP or third party AERP application demonstrating compliance with this subsection shall contain at a minimum all of the following information:
- (A) The company name, address, phone number, and contact information,
 - (B) The producer's or importer's name, batch name, number or other identification, grade of California gasoline, and other information that uniquely identify the California gasoline subject to the AERP or third party AERP,
 - (C) An explanation describing why the producer or importer cannot eliminate the emissions associated with permeation by reformulation or reprocessing its gasoline,
 - (D) The total emissions of oxides of nitrogen (NO_x), total ozone forming potential, and potency-weighted toxics that would be associated with the use of California gasoline were the producer or importer to eliminate the emissions associated with permeation from its gasoline,
 - (E) Documentation, calculations, emissions test data, or other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the producer's or importer's gasoline,
 - (F) The emission reduction strategy(ies) for the AERP or third party AERP and the date(s) that the offsets will accrue and expire for each strategy,
 - (G) The producer's or importer's market share for the fuel produced under the AERP or third party AERP,

- (H) Demonstration that the emission reduction strategy(ies) in the AERP or third party AERP will result in equivalent or better emission benefits for NOx, total ozone forming potential, and potency-weighted toxics than would be achieved through elimination of emissions associated with permeation from the gasoline for the same affected region and for the period the AERP or third party AERP will be in effect, during and outside the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#),
- (I) Demonstration that the emission reductions are achieved in the general region where the fuel is sold,
- (J) The proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the AERP or third party AERP and achievement of each increment of progress toward compliance,
- (K) Adequate enforcement provisions,
- (L) The projected volume of each final blend of California gasoline subject to the AERP or third party AERP during the period the AERP or third party AERP will be in effect,
- (M) The period that the AERP or third party AERP will be in effect,
- (N) A compliance plan that includes increments of progress (specific events and dates) that describe periodic, measurable steps toward compliance during the proposed period of the AERP or third party AERP,
- (O) The date by which the producer or importer plans to discontinue using the AERP or third party AERP,
- (P) A statement, signed by a legal representative for the producer or importer that all information submitted with the AERP or third party AERP application is true and correct,
- (Q) The producer's or importer's agreement to be bound by the terms of the AERP or third party AERP, and
- (R) In the case of a third party AERP, all of the above including all of the following:
 1. The third party's name, address, phone number, and contact information,

2. Documentation of the contract or agreement between the third party and the producer or importer,
 3. Documentation of the amount of NO_x, total ozone forming potential, and potency-weighted toxics (reported as tons/day and percentage of the total tons/day) from the producer's or importer's gasoline that will be offset by the third party AERP,
 4. A list of all AERPs and third party AERPs that currently apply to the producer or importer,
 5. A statement, signed by a legal representative for the third party that all information submitted with the third party AERP application is true and correct, and
 6. The third party's agreement to be bound by the terms of the third party AERP.
- (3) Emission reduction calculations demonstrating equivalence between the AERP or third party AERP and elimination of the emissions associated with permeation from the gasoline shall only include NO_x, total ozone forming potential, and potency-weighted toxics emissions from California gasoline sold or supplied in California.
- (4) A producer or importer wishing to participate in an AERP may include one or more production facilities or import facilities, but the producer or importer shall only include such facilities that the producer or importer owns or operates under their direct control. A third party wishing to participate in a third party AERP may include one or more production facilities or import facilities, but the third party shall only include such facilities with which the third party has a contract or agreement to offset emissions associated with permeation.
- (5) The emission reduction associated with the AERP or third party AERP must be from combustion related sources or gasoline related sources.
- (6) AERPs and third party AERPs may include, but are not limited to:
- (A) Vehicle scrappage,
 - (B) Offsetting emissions with lower emitting diesel fuel batches,
 - (C) Incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.
- (7) Emission reductions included in an AERP or third party AERP shall not include reductions that are otherwise required by any local, State, or federal rule, regulation, or

statute, or that are achieved or estimated from equipment not located within the region associated with the AERP or third party AERP, or that are claimed under [section 2265.1](#), or that are claimed under another program, such as the Voluntary Accelerated Vehicle Retirement or Carl Moyer program, or the result of standard business practices that the producer or importer would have done without the AERP or third party AERP.

- (8) The producer or importer subject to an approved AERP or third party AERP shall maintain all records required to verify compliance with the provisions of the AERP or third party AERP in a manner and form specified by the Executive Officer in the approved AERP or third party AERP. Required records may include, but are not limited to, volume of California gasoline sold, offered, or supplied to which the AERP or third party AERP applies, and/or emissions test results. Such records shall be retained for a period of not less than five (5) years and shall be submitted to the Executive Officer within 20 days in the manner specified in the approved AERP or third party AERP and upon request by the Executive Officer.
- (9) Prior to selling, offering, or supplying a batch of California gasoline with emissions associated with permeation, the producer or importer shall first have established sufficient offsets for the applicable emissions associated with permeation. With the exception of offsets from vehicle scrappage and incentive grants for cleaner-than-required engines, equipment and other sources of pollution, offsets shall expire at midnight on the day they accrued.

(c) ***Application Process.***

- (1) Applications for an AERP or third party AERP shall be submitted in writing to the Executive Officer for evaluation.
- (2) The application shall be accompanied by a fee of \$6,700.00 to cover the costs of processing the AERP or third party AERP application. If the applicant withdraws the application before the 30-day first comment period, \$4,100.00 of the fee shall be refunded.
- (3) The Executive Officer shall make available for public review all documents pertaining to an AERP or third party AERP application.
- (4) The Executive Officer will send a notice to subscribers of the Fuels listserv that a person has requested the Executive Officer consider a request for an AERP or third party AERP. The Executive Officer shall also provide a copy of all such documents to each person who has requested copies of the documents. Collectively, those persons on the Fuels listserv and those persons who have requested copies of the documents shall be treated as interested parties.

(5) After an AERP or third party AERP application has been received and deemed complete, the Executive Officer shall provide a 30-day public comment period to receive comments on any element of the AERP or third party AERP application. Any public comment addressing whether the Executive Officer should approve or disapprove the AERP or third party AERP application shall be based on the contents and merits of the application. No comment received by the Executive Officer after the 30-day period will be considered. The Executive Officer shall send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the following:

(A) The identity of the applicant producer(s) or importer(s);

(B) The start and end dates for the 30-day comment period;

(C) The address of the AERP internet site where the application is posted; and.

(D) Where and how to submit comments.

The Executive Officer shall post on the AERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, notification of public comments received during the 30-day comment period.

(6) The Executive Officer may hold a public hearing to accept public comments or decide the merits of the application.

(7) Final Action.

After the public comment period ends, the Executive Officer may take final action to either approve or deny the AERP or third party AERP application. The Executive Officer shall notify the applicant, post on the ARB internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the final action.

(8) Notification to the Executive Officer of Changes to information in the AERP or third party AERP application. The applicant shall notify the Executive Officer in writing within 30 days upon learning of any information that would alter any information provided in the AERP or third party AERP application.

(d) *Revocation or Modification of an Approved AERP or third party AERP.*

(1) With 30-days written notice to the producer or importer, or in the case of a third party AERP, the third party, the Executive Officer may revoke or modify, as needed, an

approved AERP or third party AERP in any of the following situations:

- (A) There has been more than one violation of the approved AERP or third party AERP,
 - (B) The Executive Officer has reason to believe that an approved AERP or third party AERP has been granted that no longer meets the criteria or requirements for an AERP or third party AERP,
 - (C) The producer or importer, or in the case of a third party AERP the third party, demonstrates that it can no longer comply with the requirements of the approved AERP or third party AERP in its current form,
 - (D) The producer or importer, or in the case of a third party AERP the third party, demonstrates to the satisfaction of the Executive Officer that 1. the continuation of the AERP or third party AERP will result in economic hardship to the producer or importer, or in the case of a third party AERP, the third party, 2. the producer or importer, or in the case of a third party AERP the third party, submits a substitute plan in accordance with [section 2265.5\(c\)](#) to offset any emissions not otherwise offset by the AERP or third party AERP, and 3. the Executive Officer approves the substitute plan, or
 - (E) The producer's or importer's facility modifications and/or other means of eliminating emissions associated with permeation from its gasoline have been completed.
- (2) The Executive Officer shall notify the applicant, post on the AERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of a revocation or modification of an approved AERP or third party AERP.
 - (3) Any violations incurred pursuant to [subsection \(e\)](#) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an AERP or third party AERP.

(e) ***Additional prohibitions.***

- (1) No person may sell, offer, or supply California gasoline that creates emissions associated with permeation unless the producer or importer, or in the case of a third party AERP, the third party has first been notified in writing by the Executive Officer that the AERP or third party AERP application has been approved.
- (2) Failure to meet any requirement of this section or any condition of an approved AERP or third party AERP shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied.

- (3) False reporting of any information contained in an AERP or third party AERP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this article for each day that the approved AERP or third party AERP is in effect.
- (4) Any net exceedance at any given time, taking into consideration the amount of offsets and the gasoline produced under the AERP or third party AERP, of NO_x, total ozone forming potential, or potency-weighted toxics during the period the AERP or third party AERP is in effect shall constitute a single, separate violation of the requirements of this article for each day the California gasoline subject to the AERP or third party AERP is sold, supplied, or offered in California.
- (5) Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement or condition is satisfied:
- (A) Failure to report data or failure to report data accurately in writing to the Executive Officer when required by this section or the approved AERP or third party AERP;
 - (B) False reporting of any information submitted to the Executive Officer for determining compliance with the AERP or third party AERP;
 - (C) Failure to completely offset emissions, pursuant to any offset reconciliation requirements in the AERP or third party AERP, during the period the AERP or third party AERP is in effect;
 - (D) Sale, supply, or offer of volumes of California gasoline which purportedly complies with the AERP or third party AERP in excess of the approved AERP or third party AERP.
- (6) Offsets shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced in the same air basin as the gasoline associated with the AERP or third party AERP, or that are claimed under [section 2265.1](#).
- (f) A cause of action against the producer, importer, or third party under this section shall be deemed to accrue on the date(s) when the records establishing a violation of the AERP or third party AERP are received by the Executive Officer.
- (g) ***Transferability.***
Rights to use, or protection under, the AERP or third party AERP are nontransferable, unless such transfer is approved in writing by the Executive Officer.

(h) ***Notification of final blends associated with an AERP or third party AERP***

- (1) Except as otherwise provided, for each final blend, the producer or importer shall notify the Executive Officer in writing, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend, with the following information:
 - (A) The company name, address, phone number, and contact information,
 - (B) The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the AERP or third party AERP,
 - (C) The estimated volume (in barrels),
 - (D) The identity of the AERP or third party AERP, which was approved by the Executive Officer and the NO_x, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan,
 - (E) The PM alternative specifications for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content,
 - (F) Documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the final blend of California gasoline to which the AERP or third party AERP applies,
 - (G) A statement, signed by a legal representative for the producer or importer that all information submitted with the notification is true and correct, and
 - (H) Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.
- (2) A producer or importer may report an actual volume that is less than the estimated volume, as long as notification of the actual volume is received by the Executive Officer no later than 48 hours after completion of the physical transfer of the final blend from the production facility or import facility. If notification of the actual volume is not timely received by the Executive Officer, the reported estimated volume shall be deemed the

reported actual volume. If the actual volume is larger than initially estimated, the producer or importer shall revise the reported estimated volume by notifying the Executive Officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(i) ***Notification of permeation offsets***

- (1) Vehicle scrappage. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the vehicle scrappage and the date(s) the offsets accrued.
- (2) Fuels. Except as otherwise provided, the producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend, with the information in [subsection \(h\)\(1\)](#) as they relate to other batches of California gasoline or diesel fuel used to offset the emissions associated with permeation.
- (3) Incentive grants. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions and the date(s) the offsets accrued.
- (4) Other reduction strategies. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the reduction strategy and the date(s) the offsets accrued.

§ 2266. Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing.

- (a) ***Certification of test-certified alternative gasoline formulations.*** Following application by a producer or importer, the executive officer may certify, and identify alternative specifications for, a test-certified alternative gasoline formulation pursuant to the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," as last amended April 25, 2001, which is incorporated herein by

reference. Notwithstanding [section 2265.5\(a\)](#), a producer or an importer that produces gasoline that has elected to be subject to a test-certified alternative gasoline formulation pursuant to [section 2266](#) shall offset its emissions associated with permeation by complying with [sections 2265.5\(b\)-\(i\)](#).

(b) *Prohibited activities regarding test-certified alternative gasoline formulations.*

- (1) No producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which has been reported pursuant to [section \(c\)](#) as a test-certified alternative gasoline formulation, if it fails to conform with any of the alternative specifications identified in the certification order for the formulation, as determined in accordance with the test methods identified in the certification order.
- (2) A producer or importer who has reported a final blend of gasoline as a test-certified alternative gasoline formulation shall not be subject to [section 2262.3\(b\)](#) or [\(c\)](#), [section 2262.4\(b\)](#), and [section 2262.5\(c\)](#).
- (3) A producer or importer may not elect to sell or supply from its production or import facility a final blend of California gasoline as a test-certified alternative gasoline formulation if the producer or importer is subject to any outstanding requirements to provide offsets at the same production or import facility pursuant to [section 2264\(c\)](#).
- (4) A producer or importer that produces gasoline may not elect to sell or supply from its production facility or import facility a final blend of California gasoline as a test-certified alternative gasoline formulation if the producer or importer is subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to [section 2265.1\(c\)](#) or [2265.5](#).
- (5) An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

(c) *Notification regarding sales and supplies of a test-certified alternative gasoline formulation.* A producer or importer intending to sell or supply a final blend of California gasoline from its production facility or import facility as a test-certified alternative gasoline formulation shall notify the executive officer in accordance with this section (c). The notification shall identify the final blend and the identification name of the test-certified alternative gasoline formulation. The notification shall be received by the executive officer at least 12 hours before start of physical transfer of the final blend from the production or import facility. A producer or importer intending to have a series of its final blends be a specific test-certified alternative gasoline formulation may enter into a protocol with the executive officer for reporting such blends as long as the executive officer reasonably determines the reporting under the protocol would provide at least as much notice to the executive officer as notification pursuant to the express terms of this

section (c).

§ 2266.5. Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending.

(a) *Application of the California gasoline standards to CARBOB.*

(1) Applicability of standards and requirements to CARBOB. All of the standards and requirements in [sections 2261](#), [2262](#), [2262.3](#), [2262.4](#), [2262.5\(a\)](#), [\(b\)](#), [\(c\)](#) and [\(e\)](#), [2262.6](#), [2264](#), [2264.2](#), [2265](#), [2266](#), [2267](#), [2268](#), [2270](#), [2271](#) and [2272](#) pertaining to California gasoline or transactions involving California gasoline also apply to CARBOB or transactions involving CARBOB. Whenever the term "California gasoline" is used in the sections identified in the preceding sentence, the term means "California gasoline or CARBOB." Whenever the term "gasoline" is used in [section 2265\(b\)\(1\)](#), the term means "California gasoline or CARBOB."

(2) Determining whether a final blend of CARBOB complies with the standards for California gasoline.

(A) General.

1. Applicability. This section (a)(2) governs the determination of whether a final blend of CARBOB complies with the standards for California gasoline that apply when the gasoline is sold or supplied from the production or import facility at which it was produced or imported. [Section \(a\)\(6\)](#) governs the determination of whether downstream CARBOB that has already been supplied from its production or import facility complies with the applicable cap limits for California gasoline.
2. Where a producer or importer has designated a final blend as CARBOB and has complied with all applicable provisions of this [section 2266.5](#), the properties of the final blend for purposes of compliance with [sections 2262](#), [2262.3](#), [2262.4](#), [2262.5](#), [2262.6](#), [2265](#) and [2266](#) shall be determined in accordance with [section \(a\)\(2\)\(B\)](#) or [\(a\)\(2\)\(C\)](#) as applicable.
3. If the producer or importer has not complied with all applicable provisions of this [section 2266.5](#), the properties of the final blend for purposes of the producer's or importer's compliance with the limits for sulfur, benzene, aromatic hydrocarbons, olefins, T50, T90, and oxygen required by [sections 2262.3](#), [2262.5](#), [2265](#) and [2266](#) shall be determined without using the CARBOB Model or adding oxygenate to the gasoline, and compliance with the flat limits for Reid vapor pressure and oxygenates required by [sections 2262.4](#), [2262.6](#), [2265](#) and [2266](#) shall be

determined in accordance with [section \(a\)\(2\)\(B\)](#) or [\(a\)\(2\)\(C\)](#) as applicable.

- (B) Determining whether a final blend of CARBOB complies with the standards for California gasoline by use of the CARBOB Model.
1. A producer or importer may elect to have the CARBOB model used in determining whether a final blend designated as CARBOB complies with the standards applicable to California gasoline, by providing the notice in [section \(b\)\(1\)\(C\)](#). In this case, the CARBOB limits for the final blend shall be determined in accordance with the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, which is incorporated by reference herein. The CARBOB's compliance with the assigned CARBOB limit for a property shall constitute compliance with the corresponding finished gasoline limit - be it a [section 2262](#) flat limit, PM flat limit, TC limit, or (if no designated alternative limit has been established) [section 2262](#) or PM averaging limit. In addition, where the producer or importer has elected to use the CARBOB model for a given final blend that is not being transferred from its production or import facility during the Reid vapor pressure control period for that facility set forth in [section 2262.4\(a\)](#), the final blend must have a Reid vapor pressure no lower than the value used in the T50 CARBOB model.
 2. Notwithstanding [section \(a\)\(2\)\(B\)1.](#), where a final blend of CARBOB is sampled and analyzed by a state board inspector in accordance with [section 2263](#) using the methodology in [\(a\)\(2\)\(C\)](#), the results may be used to establish a violation of applicable standards for California gasoline.
- (C) Determining whether a final blend of CARBOB complies with the standards for California gasoline by oxygenate blending and testing. Except as otherwise provided in [section \(a\)\(2\)\(B\)](#), the properties of a final blend of CARBOB shall be determined for purposes of compliance with [sections 2262, 2262.3, 2262.4, 2262.5, 2262.6, 2265,](#) and [2266](#) by adding the specified type and amount of oxygenate to a representative sample of the CARBOB and determining the properties and characteristics of the resulting gasoline in accordance with an applicable test method identified in [section 2263\(b\)](#) or permitted under [section 2263\(c\)](#). Where the producer or importer has in accordance with [section \(b\)\(1\)\(E\)](#) designated a range for oxygen from denatured ethanol of 1.8 wt.% to 2.2 wt.% (or a range that is within 1.8 wt.% and 2.2 wt.% and includes 2.0 wt.%), denatured ethanol equal to 5.7 vol. % of the blended volume shall be added; where the designated range for oxygen from denatured ethanol is 2.5 wt.% to 2.9 wt.% (or is within 2.5 wt.% and 2.9% and includes 2.7 wt.%), denatured ethanol equal to 7.7 vol.% of the blended volume shall be added; and where the designated range for oxygen from denatured ethanol is 3.3 wt.% to 3.7 wt.% (or is within 3.3 wt.% and 3.7 wt.% and includes 3.5 wt.%), denatured ethanol equal to 10.0 vol.% of the blended volume shall be added. In all other cases where the designated range for oxygen from denatured ethanol is no greater than 0.4 wt.%, the amount of

denatured ethanol added shall be the volume percent that results in an oxygen content at the midpoint of the range of oxygen, based on the following equation:

$$\text{Vol.\% Denatured Ethanol} = 620 \div [(218.8 \div \text{wt.\% oxygen}) - 0.40]$$

Where the producer or importer has in accordance with [section \(b\)\(1\)\(E\)](#) designated a range of amounts of oxygen that is greater than 0.4 wt.%, or an oxygenate other than denatured ethanol, the oxygenate shall be added in an amount that results in an oxygen content within 0.2 wt.% of the designated minimum oxygen level.

(D) Characteristics of denatured ethanol used in determining whether a final blend of CARBOB complies with the standards for California gasoline.

1. Default denatured ethanol characteristics on or after December 31, 2003 when the CARBOB Model is used. Except as provided in [section \(a\)\(2\)\(D\)3.](#), where a producer or importer has elected to use the CARBOB Model for a final blend of CARBOB supplied from its production or import facility on or after December 31, 2003, the following default denatured ethanol specifications shall be specified for the CARBOB Model:

Sulfur content: 10 parts per million
 Benzene content: 0.06 volume percent
 Olefin content: 0.5 volume percent
 Aromatic hydrocarbon content: 1.7 volume percent

2. Default denatured ethanol characteristics on or after December 31, 2003 when the CARBOB Model is not used. Except as provided in [section \(a\)\(2\)\(D\)3.](#), where a producer or importer has not elected to use the CARBOB Model, denatured ethanol used as the oxygenate must have the following properties in determining whether CARBOB complies with the standards applicable to California gasoline when it is supplied from the production facility or import facility on or after December 31, 2003:

Sulfur content: 3-10 parts per million
 Benzene content: 0-0.06 volume percent
 Olefin content: 0-0.5 volume percent
 Aromatic hydrocarbon content: 0-1.7 volume percent

3. Producer- or importer-specified characteristics of denatured ethanol used in determining whether a final blend of CARBOB complies with the standards for

California gasoline.

- a. With respect to a final blend of CARBOB supplied from its production or import facility prior to December 31, 2003, the producer or importer must specify the properties of the oxygenate used in determining whether the final blend of CARBOB complies with the applicable California gasoline standards, by providing the notice in [section \(b\)\(1\)\(D\)](#). With respect to a final blend of CARBOB supplied from its production or import facility on or after December 31, 2003, the producer or importer may elect to specify the properties of the oxygenate in accordance with the preceding sentence. Where the producer or importer has elected to use the CARBOB model in connection with the final blend, the maximum value for each property identified in the [section \(b\)\(1\)\(D\)](#) notification shall be used for the CARBOB Model. Where the producer or importer has not elected to use the CARBOB model in connection with the final blend, the oxygenate used in oxygenate blending and testing in accordance with [section \(a\)\(2\)\(C\)1.](#) must not exceed the maximum value for each property identified in the [section \(b\)\(1\)\(D\)](#) notification; that oxygenate's specifications for each property may be under the maximum value for each property identified in the [section \(b\)\(1\)\(D\)](#) notification by no more than the following:

Sulfur content: 5 parts per million
 Benzene content: 0.06 volume percent
 Olefin content: 0.1 volume percent
 Aromatic hydrocarbon content: 1.0 volume percent

- b. Maintaining oxygenate samples for use in compliance testing. A producer or importer who is specifying the properties of the oxygenate used in a final blend of CARBOB in accordance with the preceding [section \(a\)\(2\)\(D\)3.a.](#) must maintain at the production or import facility, while the final blend is at the facility, oxygenate meeting the required specifications in quantities that are sufficient to enable state board inspectors to use the oxygenate in compliance determinations.

- (E) Protocol for determining whether a final blend of CARBOB complies with the standards for California gasoline. The executive officer may enter into a written protocol with any individual producer or importer for the purpose of specifying an alternative method for determining whether a final blend of CARBOB complies with the standards for California gasoline, as long as the executive officer reasonably determines that application of the protocol is not less stringent or enforceable than application of the express terms of [section \(a\)\(2\)\(A\)-\(D\)](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the

protocol.

- (3) Calculating the volume of a final blend of CARBOB. Where a producer or importer has designated a final blend as CARBOB and has complied with all applicable provisions of this [section 2266.5](#), the volume of the final blend shall be calculated for all purposes under [section 2264](#) by adding the minimum designated amount of the oxygenate having the smallest volume designated by the producer or importer. If the producer or importer has not complied with any applicable provisions of this [section 2266.5](#), the volume of the final blend for purposes of the refiner or producer's compliance with [sections 2262, 2262.3, 2262.4, 2262.5, 2262.6, 2265](#) and [2266](#) shall be calculated without adding the amount of oxygenate to the CARBOB.
- (4) Specifications for a final blend of CARBOB when the CARBOB model is not being used. A producer or importer who has not elected to use the CARBOB model pursuant to [section \(a\)\(2\)\(B\)](#) with regard to a final blend of CARBOB may not sell, offer for sale, supply or offer for sale that final blend of CARBOB from its production facility or import facility where the sulfur, benzene, olefin or aromatic hydrocarbon content of the CARBOB, when multiplied by (1 minus the designated maximum volume percent, expressed as a decimal fraction, that the oxygenate will represent after it is added to the CARBOB), results in a sulfur, benzene, olefin or aromatic hydrocarbon content value exceeding the applicable limit for that property.
- (5) Assignment of designated alternative limits for CARBOB and for the oxygenated California gasoline where the producer or importer has elected to use the CARBOB model.
 - (A) Applicability. This section (a)(5) applies where a producer or importer has elected to have the CARBOB model apply in connection with a final blend of CARBOB which is also subject to an averaging compliance option or a PM averaging compliance option for one or more properties.
 - (B) Assignment of CARBOB designated alternative limit. The producer or importer may assign a CARBOB designated alternative limit for the final blend of CARBOB by satisfying the notification requirements of [section \(a\)\(5\)\(D\)](#). In no case shall a CARBOB designated alternative limit be less than the sulfur, benzene, olefin or aromatic hydrocarbon content, or T90 or T50, of the final blend shown by the sample and test of the CARBOB conducted pursuant to [section 2270](#). The CARBOB designated alternative limit shall be treated as the designated alternative limit under [section 2262.3\(c\)\(2\)](#), and a violation of [section 2262.3\(c\)\(2\)](#) will exist when the CARBOB exceeds the CARBOB designated alternative limit.
 - (C) Determining the designated alternative limit for the final blend after the CARBOB is oxygenated. Whenever a producer or importer has assigned a designated alternative limit for a final blend of CARBOB, the designated alternative limit for the final blend

- after the CARBOB is oxygenated shall be determined in accordance with the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, which is incorporated by reference herein. This will be the final blend's designated alternative limit for purposes of compliance with [sections 2262.3\(c\)\(3\)](#) and [2264\(b\)](#) and [\(c\)](#).
- (D) Notification. The producer or importer shall notify the executive officer of the CARBOB designated alternative limit, the designated alternative limit for the final blend after it is oxygenated, and all other information identified in [section 2264\(a\)\(2\)\(A\)](#), within the time limits set forth in [section 2264\(a\)\(2\)\(A\)](#) and subject to [section 2264\(a\)\(3\)](#) and [\(4\)](#).
- (6) Determining whether downstream CARBOB complies with the cap limits for California gasoline.
- (A) Determining whether downstream CARBOB complies with the cap limits for California gasoline through the use of CARBOB cap limits derived from the CARBOB Model. Whenever downstream CARBOB designated for ethanol blending has already been supplied from its production or import facility, the CARBOB's compliance with the cap limits for California gasoline may be determined by applying the CARBOB cap limits in the following table:

<i>Property</i>	<i>CARBOB Cap Limits</i>	
	<i>CaRFG2</i>	<i>CaRFG3</i>
Reid Vapor Pressure ¹ (pounds per square inch)	5.78	5.99
Sulfur Content (parts per million by weight)	89	66 ²
		32 ²
		21 ²
Benzene Content (percent by volume)	1.33	1.22
Aromatics Content (percent by volume)	33.1	38.7
Olefins Content (percent by volume)	11.1	11.1
T50 (degrees Fahrenheit)	232 ³	232 ³
	237 ³	237 ³
T90 (degrees Fahrenheit)	335	335

¹ The Reid vapor pressure standards apply only during the warmer weather months identified in [section 2262.4](#).

² The CaRFG Phase 3 CARBOB cap limits for sulfur are phased in starting December 31, 2003, December 31, 2005, and December 31, 2011, in accordance with [section 2261\(b\)\(1\)\(A\)](#).

³ The first number applies to CARBOB that is subject to the Reid vapor pressure standard pursuant to [section 2262.4](#), and the second number applies to CARBOB that is not subject to the Reid vapor pressure standard.

(B) Determining whether downstream CARBOB complies with the cap limits for California gasoline by oxygenate blending and testing. Whenever downstream CARBOB designated for oxygenate blending has already been supplied from its production or import facility, the CARBOB's compliance with the cap limits for California gasoline may be determined by adding the specified type and amount of oxygenate to a representative sample of the CARBOB and determining the properties and characteristics of the resulting gasoline in accordance with an applicable test method identified in [section 2263\(b\)](#) or permitted under [section 2263\(c\)](#). Denatured ethanol used as the oxygenate must have the properties set forth in [section \(a\)\(2\)\(D\)2](#). Where the designated range for oxygen from denatured ethanol is 1.8 wt.% and 2.2 wt.% (or is within 1.8 wt.% and 2.2 wt.% and includes 2.0 wt.%), denatured ethanol equal to 5.7 vol.% of the blended volume shall be added; where the designated range

for oxygen from denatured ethanol is 2.5 wt.% and 2.9 wt.% (or is within 2.5 wt.% and 2.9 wt.% and includes 2.7 wt.%), denatured ethanol equal to 7.7 vol.% of the blended volume shall be added; and where the designated range for oxygen from denatured ethanol is 3.3 wt.% to 3.7 wt.% (or is within 3.3 wt.% and 3.7 wt.% and includes 3/5 wt.%), denatured ethanol equal to 10.0 vol.% of the blended volume shall be added. In all other cases where the designated range for oxygen from denatured ethanol is no greater than 0.4 wt.%, the amount of denatured ethanol added shall be the volume percent that results in an oxygen content at the midpoint of the range of oxygen, based on the following equation:

$$\text{Vol.\% Denatured Ethanol} = 620 \div [(218.8 \div \text{wt.\% oxygen}) - 0.40]$$

Where the designated a range of amounts of oxygen is greater than 0.4 wt.%, or an oxygenate other than denatured ethanol is designated, the oxygenate shall be added in an amount that results in an oxygen content within 0.2 wt.% of the designated minimum oxygen level.

- (C) Protocols. A person may enter into a protocol with the executive officer for the purpose of identifying more stringent specifications for the denatured ethanol used pursuant to [section \(a\)\(6\)\(B\)](#), or different CARBOB cap limits under [section \(a\)\(6\)\(A\)](#), if the executive officer reasonably determines that the specifications or cap limits are reasonably premised on the person's program to assure that the denatured ethanol added to the CARBOB by oxygenate blenders will meet the more stringent specifications.

(b) *Notification to ARB regarding the supply of CARBOB from the facility at which it was produced or imported.*

- (1) A producer or importer supplying a final blend of CARBOB from the facility at which the producer or importer produced or imported the CARBOB must notify the executive officer of the information set forth below, along with any information required under [section 2265\(a\)\(2\)](#) (for a PM alternative gasoline formulation), [section 2265.1](#) (for a PM emissions offsetting formulation, applicable only to producers and importers that produce gasoline), [section 2265.5](#) (for an alternative emission reduction plan, applicable only to producers and importers that produce gasoline), or [2266\(c\)](#) (for a test-certified alternative gasoline formulation). The notification must be received by the executive officer before the start of physical transfer of the final blend of CARBOB from the production or import facility, and in no case less than 12 hours before the producer or importer either completes physical transfer or commingles the final blend.

(A) The identity and location of the final blend;

(B) The designation of the final blend as CARBOB;

(C) If the producer or importer is electing to use the CARBOB model to determine whether the final blend complies with the standards applicable to California gasoline when it is supplied from the production facility or import facility, a statement of that election and

1. Each of the CARBOB limits that will apply to the final blend for properties not subject to the averaging compliance option or the PM averaging compliance option; and
2. For any property subject to the averaging compliance option or the PM averaging compliance option, the averaging or PM averaging limit for the CARBOB (the CARBOB is subject to this limit only if no designated alternative limit is assigned to the CARBOB pursuant to [section 2266.5\(a\)\(5\)\(B\)](#));

(D) If the producer or importer is specifying, pursuant to [section \(a\)\(2\)\(D\)3](#), the properties of the oxygenate to be added downstream by the oxygenate blender, a statement of that election, the type of oxygenate, and the oxygenate's specifications for the following properties:

Maximum sulfur content (nearest part per million by weight)

Maximum benzene content (nearest hundredth of a percent by volume)

Maximum olefin content (nearest tenth of a percent by volume)

Maximum aromatic hydrocarbon content (nearest tenth of a percent by volume)

(E) The designation of each oxygenate type or types and amount or range of amounts to be added to the CARBOB, and the applicable flat limit, PM alternative specification, designated emissions offsetting limit, or TC alternative specification for oxygen. The amount or range of amounts of oxygenate to be added shall be expressed as a volume percent of the gasoline after the oxygenate is added, in the nearest tenth of a percent. For any final blend of CARBOB except one that is subject to PM alternative specifications, designated emissions offsetting limits, alternative emission reduction plan, or TC alternative specifications, the amount of oxygenate to be added must be such that the resulting California gasoline will have a minimum oxygen content no lower than 1.8 percent by weight and a maximum oxygen content no greater than 2.2 percent by weight. For a final blend of CARBOB that is subject to PM alternative specifications or designated emissions offsetting limits, the amount or range of amounts of oxygenate to be added must be such that the resulting California gasoline has an oxygen content that meets the oxygen content PM alternative specification or designated emissions offsetting limits for the final blend. For a final blend of CARBOB that is subject to TC alternative specifications, the amount or range of

amounts of oxygenate to be added must be such that the resulting California gasoline has an oxygen content that meets the oxygen content alternative specification for the final blend.

- (2) Applicability of notification to subsequent final blends. The notification a producer or importer provides pursuant to [section \(b\)\(1\)\(B\)](#), [\(C\)](#), [\(D\)](#) and [\(E\)](#) for a final blend of CARBOB shall apply to all subsequent final blends of CARBOB or California gasoline supplied by the producer or importer from the same production or import facility until the producer or importer designates a final blend at that facility as either (i) California gasoline rather than CARBOB, or (ii) CARBOB subject to a new notification made pursuant to [section \(b\)\(1\)](#).
- (3) Allowance of late notifications. If, through no intentional or negligent conduct, a producer or importer cannot report within the time period specified in [\(b\)\(1\)](#) above, the producer or importer may notify the executive officer of the required data as soon as reasonably possible and may provide a written explanation of the cause of the delay in reporting. If, based on the written explanation and the surrounding circumstances, the executive officer determines that the conditions of this section (b)(3) have been met, timely notification shall be deemed to have occurred.
- (4) Protocols. The executive officer may enter into a written protocol with any individual producer or importer for the purpose of specifying how the requirements in [section \(b\)\(1\)](#) shall be applied to the producer's or importer's particular operations, as long as the executive officer reasonably determines that application of the regulatory requirements under the protocol is not less stringent or enforceable than application of the express terms of [section \(b\)\(1\)](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(c) [Reserved]

(d) *Documentation required when CARBOB is transferred.*

- (1) Required Documentation. On each occasion when any person transfers custody or title of CARBOB, the transferor shall provide the transferee a document that prominently:
- (A) States that the CARBOB does not comply with the standards for California gasoline without the addition of oxygenate,
- (B) Identifies the applicable flat limit, PM alternative specification, designated emissions offsetting limit, or TC alternative specification for oxygen, and
- (C) Identifies, consistent with the notification made pursuant to [section \(b\)](#), the oxygenate type or types and amount or range of amounts that must be added to the CARBOB to

make it comply with the standards for California gasoline. Where the producer or importer of the CARBOB has elected to specify the properties of the oxygenate pursuant to [section \(b\)\(1\)\(D\)](#), the document must also prominently identify the maximum permitted sulfur, benzene, olefin and aromatic hydrocarbon contents - not to exceed the maximum levels in the [section \(b\)\(1\)\(D\)](#) notification - of the oxygenate to be added to the CARBOB.

- (2) Compliance by pipeline operator. A pipeline operator may comply with this requirement by the use of standardized product codes on pipeline tickets, where the code(s) specified for the CARBOB is identified in a manual that is distributed to transferees of the CARBOB and that sets forth all of the required information for the CARBOB.

(e) *Restrictions on transferring CARBOB.*

- (1) Required agreement by transferee. No person may transfer ownership or custody of CARBOB to any other person unless the transferee has agreed in writing with the transferor that either:
- (A) The transferee is a registered oxygenate blender and will add oxygenate of the type(s) and amount (or within the range of amounts) designated in accordance with [section \(b\)](#) before the CARBOB is transferred from a final distribution facility, or
 - (B) The transferee will take all reasonably prudent steps necessary to assure that the CARBOB is transferred to a registered oxygen blender who adds the type and amount (or within the range of amounts) of oxygenate designated in accordance with [section \(b\)](#) to the CARBOB before the CARBOB is transferred from a final distribution facility.
- (2) Prohibited sales of CARBOB from a final distribution facility . No person may sell or supply CARBOB from a final distribution facility where the type and amount or range of amounts of oxygenate designated in accordance with [section \(b\)](#) has not been added to the CARBOB.

(f) *Restrictions on blending CARBOB with other products.*

- (1) Basic prohibition. No person may combine any CARBOB that has been supplied from the facility at which it was produced or imported with any other CARBOB, gasoline, blendstock or oxygenate, except:
- (A) The specified oxygenate.
 1. The CARBOB may be blended with oxygenate of the type and amount (or within the range of amounts) specified by the producer or importer at the time the

CARBOB was supplied from the production or import facility.

2. Where ethanol is the specified oxygenate and specifications for the ethanol are identified in the product transfer document for the CARBOB pursuant to [section 2266.5\(d\)\(1\)\(C\)](#), only ethanol meeting those specifications may be combined with the CARBOB.
 3. Where ethanol is the specified oxygenate and specifications for the ethanol are not identified, only ethanol meeting the standards in [section 2262.9\(a\)](#) may be combined with the CARBOB.
- (B) Identically-specified CARBOB. The CARBOB may be blended with other CARBOB for which the same oxygenate type, and the same amount (or range of amounts) of oxygen, was specified by the producer or importer at the time the CARBOB was supplied from the production or import facility. However, where specifications for the denatured ethanol to be added to the CARBOB have been established pursuant to [section 2266.5\(a\)\(2\)\(D\)3](#), it may only be blended with other CARBOB for which the same denatured ethanol specifications have been set.
- (C) CARBOB specified for different oxygen level. Where a person is changing from an initial to a new type of CARBOB stored in a storage tank at a terminal or bulk plant, and the conditions below are met; in this case, the CARBOB in the tank after the new type of CARBOB is added will be treated as that new type of CARBOB.
1. The change in service is for legitimate operational reasons and is not for the purpose of combining the different types of CARBOB;
 2. The initial and new CARBOBs are designated for blending with different amounts (or ranges of amounts) of oxygen, and the change in oxygen content will not exceed 1.1 weight percent of the oxygenated gasoline blend;
 3. The volume of the new CARBOB that is added to the tank is at least four times as large as the volume of the initial CARBOB in the tank, and
 4. The sulfur content of the new CARBOB added to the tank is no more than 12 parts per million.
- (D) California gasoline not subject to RVP standard. Where a person is changing from California gasoline to CARBOB as the product stored in a storage tank at a terminal or bulk plant and the conditions below are met; in this case the product in the tank, pipe or manifold after the new product is added will be treated as the new type of product.

1. The change in service is for legitimate operational reasons and is not for the purpose of combining the California gasoline and CARBOB and
2. The resulting blend of product in the tank is supplied from the terminal or bulk plant during a time that it is not subject to the standards for Reid vapor pressure under [section 2262.4](#).

(E) Limited amounts of California gasoline containing ethanol. A person may add California gasoline containing ethanol to CARBOB at a terminal or bulk plant if all of the following conditions are met, in which case the resulting mixture will continue to be treated as CARBOB.

1. The gasoline is added to the CARBOB for one of the following operational reasons:
 - a. The gasoline resulted from oxygenating CARBOB at the terminal or bulk plant during calibration of oxygenate blending equipment; or
 - b. The gasoline resulted from the unintentional over- or under-oxygenation of CARBOB during the loading of a cargo tank truck at the terminal or bulk plant; or
 - c. The gasoline was pumped out of a gasoline storage tank at a motor vehicle fueling facility for legitimate operational reasons.
2. The non-oxygenate portion of the gasoline complies with the applicable cap limits for CARBOB in [section 2266.5\(a\)\(6\)](#).
3. The resulting mixture of CARBOB has an oxygen content not exceeding 0.1 percent by weight.
 - a. The oxygen content of the mixture may be determined arithmetically by [i] using the volume of the CARBOB prior to mixing based on calibrated tank readings, [ii] using the volume of the gasoline added based on calibrated meter readings, [iii] using the volume of the denatured ethanol in the gasoline being added based on direct calibrated meter readings of the denatured ethanol if available, [iv] calculating weight percent oxygen of the gasoline being added from volume percent denatured ethanol based on the following formula:

$$(\text{wt.\% oxygen}) \approx 218.8 / \{ [620 / (\text{vol.\% deEtOH})] + 0.40 \},$$

and [v] accounting for any oxygen in the CARBOB tank due to previous additions of gasoline to the tank.

b. If the meter readings described in [section 2266.5\(f\)\(1\)\(E\)3.a.iii](#) are not available, the oxygen content of the mixture may be determined arithmetically by [i] using the volume of the CARBOB prior to mixing based on calibrated tank readings, [ii] using the volume of the gasoline added based on calibrated meter readings, [iii] using the oxygen content of the gasoline in weight percent based on sampling and testing of the gasoline for denatured ethanol content in accordance with methods specified in [section 2263](#), and [iv] accounting for any oxygen in the CARBOB tank due to previous additions of gasoline to the tank.

c. In making the determination described in [section 2266.5\(f\)\(1\)\(E\)3.a.](#) or [b.](#), the oxygen content of the mixture shall be calculated based on the following formula:

$$(\text{wt.}\% \text{ oxygen}) \approx [(\text{volume CARBOB}) * (\text{wt.}\% \text{ oxygen in CARBOB}) + (\text{volume gasoline}) * (\text{wt.}\% \text{ oxygen in gasoline})] / [(\text{volume CARBOB}) + (\text{volume gasoline})].$$

4. Prior to the mixing, the operator of the terminal or bulk plant notifies the executive officer of the following:

a. The identity and location of the facility at which the mixing will take place;

b. The operational reason for adding the gasoline into the CARBOB;

c. The projected percentage oxygen content of the mixture.

5. The terminal or bulk plant operator maintains for two years records documenting the information identified in [section 2266.5\(f\)\(1\)\(E\)4](#), and makes them available to the executive officer upon request.

(2) Protocols.

(A) Protocols covering the changeover in service of a storage tank. Notwithstanding [section \(f\)\(1\)](#), the executive officer may enter into a written protocol with any person to identify conditions under which the person may lawfully combine CARBOB with California gasoline or other CARBOB during a changeover in service of a storage tank for a legitimate operational business reason. The executive officer may only enter into such a protocol if he or she reasonably determines that commingling of the two products will be minimized as much as is reasonably practical. Any such protocol

shall include the person's agreement to be bound by the terms of the protocol.

- (B) Protocols for blending transmix into CARBOB. Notwithstanding [section \(f\)\(1\)](#), the executive officer may enter into a written protocol with any person to identify conditions under which the person may lawfully blend transmix into CARBOB which has been supplied from its production or import facility. The executive officer may enter into such a protocol only if he or she reasonably determines that alternatives to the blending are not practical and the blending will not significantly affect the properties of the CARBOB gasoline into which the transmix is added. Any such protocol shall include the person's agreement to be bound by the terms of the protocol.
- (C) Protocols In Other Situations. Notwithstanding [section \(f\)\(1\)](#), the executive officer may enter into a written protocol with any person to identify conditions under which the person may lawfully add California gasoline or other CARBOB to CARBOB in a storage tank at a terminal or bulk plant in situations other than those identified in [sections 2266.5\(f\)\(1\)\(C\)](#), [\(D\)](#), or [\(E\)](#), or [\(f\)\(2\)\(A\)](#) or [\(B\)](#). The executive officer may enter into such a protocol only if he or she reasonably determines that alternatives to the activity are not practical and the blending will not significantly affect the properties of the CARBOB into which the gasoline or CARBOB is added. The protocol shall include any of the conditions in [section 2266.5\(f\)\(1\)\(E\)](#) that the executive officer determines are necessary and appropriate. Any such protocol shall include the person's agreement to be bound by the terms of the protocol.

(g) *Requirements for oxygenate blenders.*

(1) Registration and Certification.

- (A) Registration. Any oxygen blender must register with the executive officer by March 1, 1996, or at least 20 days before blending oxygenates with CARBOB, whichever occurs later. Thereafter, an oxygenate blender must register with the executive officer annually by January 1. The registration must be addressed to the attention of the Chief, Compliance Division, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.
- (B) Required contents of registration. The registration must include the following:
1. The oxygen blender's contact name, telephone number, principal place of business which shall be a physical address and not a post office box, and any other place of business at which company records are maintained.
 2. For each of the oxygen blender's oxygenate blending facilities, the facility name, physical location, contact name, and telephone number.

(C) Issuance of certificate. The executive officer shall provide each complying oxygen blender with a certificate of registration compliance no later than June 30. The certification shall be effective from no later than July 1, through June 30 of the following year. The certification shall constitute the oxygen blender's certification pursuant to Health and Safety Code section 43026.

(D) Submittal of updated information. Any oxygen blender must submit updated registration information to the executive officer at the address identified in [section \(g\)\(1\)\(A\)](#) within 30 days of any occasion when the registration information previously supplied becomes incomplete or inaccurate.

(2) Requirement to add oxygenate to CARBOB. Whenever an oxygenate blender receives CARBOB from a transferor to whom the oxygenate blender has represented that he/she will add oxygenate to the CARBOB, the oxygenate blender must add to the CARBOB oxygenate of the type(s) and amount (or within the range of amounts) identified in the documentation accompanying the CARBOB. If the documentation identifies the permitted maximum sulfur, benzene, olefin and aromatic hydrocarbon contents of the oxygenate, the oxygenate blender must add an oxygenate that does not exceed the maximum permitted levels.

(3) Additional requirements for terminal blending. Any oxygenate blender who makes a final blend of California reformulated gasoline by blending any oxygenate with any CARBOB in any gasoline storage tank, other than a truck used for delivering gasoline to retail outlets or bulk purchaser-consumer facilities, shall, for each such final blend, determine the oxygen content and volume of the final blend prior to its leaving the oxygen blending facility, by collecting and analyzing a representative sample of gasoline taken from the final blend, using methodology set forth in [section 2263](#).

(h) *Downstream blending of California gasoline with nonoxygenate blendstocks.*

(1) Basic prohibition. No person may combine California gasoline which has been supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person can affirmatively demonstrate that (1) the blendstock that is added to the California gasoline meets all of the California gasoline standards without regard to the properties of the gasoline to which the blendstock is added, and (2) the person meets with regard to the blendstock all requirements in this subarticle applicable to producers of California gasoline.

(2) Exceptions.

(A) Protocols. Notwithstanding [section \(h\)\(1\)](#), the executive officer may enter into a written protocol with any person to identify conditions under which the person may lawfully blend transmix into California gasoline which has been supplied from its production or import facility. The executive officer may only enter into such a

protocol if he or she reasonably determines that alternatives to the blending are not practical and the blending will not significantly affect the properties of the California gasoline into which the transmix is added. Any such protocol shall include the person's agreement to be bound by the terms of the protocol.

- (B) Blending to meet a cap limit. Notwithstanding, [section \(h\)\(1\)](#) or [2262.5\(d\)](#), a person may add nonoxygenate or oxygenated blendstock to California gasoline that does not comply with one or more of the applicable cap limits contained in [section 2262](#), where the person obtains the prior approval of the executive officer based on a demonstration that adding the blendstock is a reasonable means of bringing the gasoline into compliance with the cap limits.

(i) *Restrictions during the RVP season on blending gasoline containing ethanol with California gasoline not containing ethanol.*

- (1) Basic prohibition. Within each air basin during the Reid vapor pressure cap limit periods specified in [section 2262.4\(a\)\(2\)](#), no person may combine California gasoline produced using ethanol with California gasoline produced without using ethanol, unless the person can affirmatively demonstrate that: (A) the resulting blend complies with the cap limit for Reid vapor pressure set forth in [section 2262](#), or (B) the person has taken reasonably prudent precautions to assure that the gasoline is not subject to the Reid vapor pressure cap limit either because of [sections 2261\(d\)](#) or [\(f\)](#) or [2262.4\(c\)\(1\)](#) or [\(c\)\(3\)](#), or because the gasoline is no longer California gasoline.
- (2) Exception. [Section 2266.5\(i\)\(1\)](#) does not apply to combining California gasolines that are in a motor vehicle's fuel tank.

§ 2267. Exemptions for Gasoline Used in Test Programs.

The executive officer shall consider and grant test program exemptions from the requirements of this subarticle in accordance with [section 2259](#).

§ 2268. Liability of Persons Who Commit Violations Involving Gasoline That Has Not Yet Been Sold or Supplied to a Motor Vehicle.

- (a) For the purposes of this subarticle, 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 any applicable section of this subarticle.

§ 2269. Submittal of Compliance Plans.

- (a) Each producer shall, by September 1, 2000, submit to the executive officer a plan showing the producer's schedule for achieving compliance with the CaRFG Phase 3 standards set forth in this subarticle. Each producer shall, by September 1, 2001, September 1, 2002, and September 1, 2003 submit an update of the plan. Each compliance plan and update shall include the projected sequence and dates of all key events pertaining to planning, financing, and construction of necessary refinery modifications.

§ 2270. Testing and Recordkeeping.

- (a)(1) The requirements of this section (a) shall apply to each producer and importer that has elected to be subject to an averaging limit in [section 2262](#), or to a PM averaging limit, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to sulfur content shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for sulfur, or to a PM averaging limit for sulfur, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to benzene content shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for benzene, or to a PM averaging limit for benzene, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to olefin content shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for olefin content, or to a PM averaging limit for olefin content, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The reference to T90 shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for T90, or to a PM averaging limit for T90, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to T50 shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for T50, or to a PM averaging limit for T50, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to aromatic hydrocarbon content shall apply to each producer or importer that has elected to be subject to the [section 2262](#) averaging limit for aromatic hydrocarbon content, or to a PM averaging limit for aromatic hydrocarbon content, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to [section 2264.2\(d\)](#). The references to oxygen content and RVP shall apply to each producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to

[section 2264.2\(d\)](#).

- (2) Each producer shall sample and test for the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#)), T50 and T90 in each final blend of California gasoline which the producer has produced, by collecting and analyzing a representative sample of gasoline taken from the final blend, using the methodologies specified in [section 2263](#). If a producer blends gasoline components directly to pipelines, tankships, railway tankcars or trucks and trailers, the loading(s) shall be sampled and tested for the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#)), T50 and T90 by the producer or authorized contractor. The producer shall maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, sulfur, aromatic hydrocarbon olefin, oxygen, and benzene content, RVP, T50 and T90. All gasoline produced by the producer and not tested as California gasoline by the producer as required by this section shall be deemed to have a sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in [section 2262.4\(b\)\(2\)](#)), T50 and T90 exceeding the applicable averaging limit standards specified in [section 2262](#), or exceeding the comparable PM averaging limits if applicable, or exceeding the designated emissions offsetting limits, unless the importer demonstrates that the gasoline meets those standards and limits.
- (3) Each importer shall sample and test for the sulfur, aromatic hydrocarbon, olefin and benzene content, T50 and T90 in each final blend of California gasoline which the importer has imported by tankship, pipeline, railway tankcars, trucks and trailers, or other means, by collecting and analyzing a representative sample of the gasoline, using the methodologies specified in [section 2263](#). The importer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, the volume of the final blend, sulfur content, aromatic hydrocarbon, olefin and benzene content, T50 and T90. All gasoline imported by the importer and not tested as California gasoline by the importer as required by this section shall be deemed to have a sulfur, aromatic hydrocarbon, olefin and benzene content, T50 and T90 exceeding the applicable averaging limits standards specified in [section 2262](#), or exceeding the comparable PM averaging limit(s) if applicable, or exceeding the designated emissions offsetting limits, unless the importer demonstrates that the gasoline meets those standards and limit(s).
- (4) A producer or importer shall provide to the executive officer any records required to be maintained by the producer or importer pursuant to this section within 20 days of a written request from the executive officer if the request is received before expiration of the period during which the records are required to be maintained. Whenever a producer or importer fails to provide records regarding a final blend of California gasoline in accordance with the requirements of this section, the final blend of gasoline shall be presumed to have been sold by the producer or importer in violation of the applicable

averaging limit standards in [section 2262](#), or the PM averaging limit(s), or exceeding the designated emissions offsetting limits, to which the producer or importer has elected to be subject.

(5) The executive officer may enter into a protocol with any producer or importer for the purpose of specifying alternative sampling, testing, recordkeeping, or reporting requirements which shall satisfy the provisions of [sections \(a\)\(2\)](#) or [\(a\)\(3\)](#). The executive officer may only enter into such a protocol if s/he reasonably determines that application of the regulatory requirements under the protocol will be consistent with the state board's ability effectively to enforce the averaging limit standards in [section 2262](#), the averaging limit compliance requirements in [section 2262.3\(c\)](#), the PM averaging limit(s), the PM emissions offsetting compliance option requirements in [section 2265.1](#), and the alternative emission reduction plan requirements in [section 2265.5](#). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(b)(1) For each final blend which is sold or supplied by a producer or importer from the party's production facility or import facility, and which contains volumes of gasoline that party has produced and imported and volumes that the party neither produced nor imported, the producer or importer shall establish, maintain and retain adequately organized records containing the following information:

(A) The volume of gasoline in the final blend that was not produced or imported by the producer or importer, the identity of the person(s) from whom such gasoline was acquired, the date(s) on which it was acquired, and the invoice representing the acquisition(s).

(B) The sulfur, benzene, aromatic hydrocarbon, olefin and benzene content, T50 and T90 of the volume of gasoline in the final blend that was not produced or imported by the producer or importer, determined either by (A) sampling and testing, by the producer or importer, of the acquired gasoline represented in the final blend, or (B) written results of sampling and test of the gasoline supplied by the person(s) from whom the gasoline was acquired.

(2) A producer or importer subject to this section (b) shall establish such records by the time the final blend triggering the requirements is sold or supplied from the production or import facility, and shall retain such records for two years from such date. During the period of required retention, the producer or importer shall make any of the records available to the executive officer upon request.

(c) In the event a producer or importer sells, offers for sale, or supplies, in California, gasoline which the producer claims is not California gasoline, such gasoline shall be presumed to exceed the standards that would be applicable pursuant to this subarticle if it was California

gasoline. The producer or importer shall maintain, for two years from the date of any sale or supply of such gasoline, records demonstrating that the gasoline was not California gasoline, or that it complied with all of the standards of this subarticle 2, when it was sold or supplied by the producer.

§ 2271. Variances.

(a) *Applications for variances.*

Any person who cannot comply with the standards or compliance requirements set forth in [sections 2262](#), [2262.3](#), [2262.4](#), [2262.5](#), [2262.6](#), [2265.1](#), or [2265.5](#) because of reasons beyond the person's reasonable control may apply to the executive officer for a variance. Except for emergency variances as provided in [section \(h\)](#), the application shall be accompanied by a fee of \$6700.00 to cover the costs of processing the variance. If the applicant withdraws the application before the variance hearing is held, \$4100.00 of the fee shall be refunded. The application shall set forth:

- (1) The applicable section(s) from which the variance is sought;
- (2) The specific grounds upon which the variance is sought;
- (3) The proposed date(s) by which compliance with the provisions of the applicable section(s) will be achieved; and
- (4) A compliance plan reasonably detailing the method by which compliance will be achieved. That proposed compliance plan shall include increments of progress (i.e., specific events and dates) that describe periodic, measurable steps toward compliance during the proposed term of the variance.

(b)(1) *Notices and public hearings for variances.*

Upon receipt of an application for a variance containing the information required in [section \(a\)](#), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements of the applicable section(s) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

- (2) Treatment of confidential information. Information submitted to the executive officer by a variance applicant may be claimed as confidential. Information claimed as confidential

shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations (CCR), sections 91000 to 91022 except that: (A) at the time the information is submitted, the submitter must provide accompanying documentation in support of the claim of confidentiality, including the documentation identified in section 91022(c), and (B) for the purposes of this [section 2271](#), the time period specified in section 91022(e)(2) is 10 days instead of 21 days. The executive officer may consider such confidential information in reaching a decision to grant or deny a variance.

(c) *Public participation in the variance process.*

At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to submit written and oral testimony at the hearing and their testimony shall be considered.

(d) *Necessary findings for granting variances.*

The decision to grant or deny a variance shall be based solely upon substantial evidence in the record of the variance proceeding. No variance shall be granted unless the executive officer makes all of the following findings:

- (1) That, because of reasons beyond the reasonable control of the applicant, requiring compliance with the applicable section(s) would result in an extraordinary economic hardship;
- (2) That the public interest in mitigating the extraordinary hardship by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and
- (3) That the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(e) *Factors to be considered in making the necessary findings for granting variances.*

In making the findings specified in [section \(d\)](#), the factors set forth below shall be considered. It is the responsibility of the applicant to provide the information necessary to adequately evaluate these factors.

(1) Regarding the finding specified in [section \(d\)\(1\)](#):

- (A) To demonstrate that noncompliance is "beyond the reasonable control of the applicant," the applicant must demonstrate that reasonably diligent and timely efforts to achieve compliance have been made. Where a variance is sought from initial

compliance with the CaRFG Phase 3 requirements, the applicant shall show that timely capital expenditures and efforts to obtain the permits for necessary refinery modifications have been made, and that the applicant has been reasonably diligent in attempting to follow the periodic compliance plans required by [section 2269](#), "Submittal of Compliance Plans." Where a variance is sought due to a breakdown, the applicant shall demonstrate that the breakdown could not have been prevented or mitigated by the application of standard industrial practices. "Standard industrial practices" means elements of design, methods of operation, and levels of oversight and maintenance that are regarded as generally accepted practice in the applicant's type of business.

- (B) To demonstrate that requiring compliance would result in an "extraordinary economic hardship," the applicant must make a substantial showing that no alternative to a variance would eliminate or mitigate the need for a variance. Potential alternatives that the applicant shall address include the following: 1. obtaining complying gasoline from outside sources, or obtaining blending materials that would allow production of complying gasoline, 2. using the applicable California Predictive Model (as specified in Title 13, CCR, [section 2265](#)) to maximize the production of complying gasoline, or to minimize the degree of noncompliance, through the use of a PM alternative gasoline formulation, 3. electing to use the PM emissions offsetting compliance option, and 4. applying for an alternative emission reduction plan. The applicant shall compare the economics of operations without a variance, for the period over which the variance is proposed, with the economics of operations after the variance compliance plan has been implemented (e.g., the economic hardship during the term of the variance shall be measured against the eventual cost of long-term compliance.) The operations may include facets of the applicant's business other than gasoline operations, if those facets are directly affected by the ability to conduct the gasoline business. An applicant may also address any supply shortages that could result from the failure to grant a variance and the economic affects of such shortages on the persons who do, or could, receive gasoline from the applicant.

(2) Regarding the finding specified in [section \(d\)\(2\)](#):

- (A) The executive officer shall consider the potential effects of issuing or denying the variance on the applicant's customers, the producers of complying fuel, the general public, and upon air quality. The executive officer shall also consider whether granting the variance will place the applicant at a cost advantage over other persons, including those persons who produce complying gasoline.
- (B) To evaluate the potential effect upon air quality, the excess emissions from granting the variance shall be estimated as follows:

1. Exhaust emissions: The fractional change in emissions from using the variance gasoline shall be estimated with the California Predictive Model (model). Inputs to the model shall be the limits to be placed on the regulated properties of the variance gasoline by the variance conditions and the limits set forth in [section 2262](#) that correspond in form (flat or averaging) to the variance limits. For each air basin in which the variance gasoline will be sold, the estimate of excess exhaust emissions shall be the fractional change in emissions (output by the model), times the estimated fraction of gasoline use in the air basin represented by the variance gasoline, times the inventory of exhaust emissions from gasoline-powered vehicles in the air basin.

2. Evaporative hydrocarbon emissions: Excess evaporative emissions shall be estimated for a limit greater than 7.0 pounds per square inch (psi) on the Reid vapor pressure (RVP) of variance gasoline. This estimate shall apply only for the period when RVP is limited to 7.0 psi. The true vapor pressure corresponding to the RVP limit for variance gasoline shall be divided by the true vapor pressure corresponding to RVP at 7.0 pounds per square inch. For each air basin in which the variance gasoline will be sold, the estimate of excess evaporative emissions shall be that ratio, minus 1.0, times the estimated fraction of gasoline use in the air basin represented by the variance gasoline, times the inventory of emissions due to the evaporation of gasoline from all sources in the air basin.

(3) Regarding the finding specified in [section \(d\)\(3\)](#):

The applicant shall demonstrate why the proposed compliance plan is the most expeditious way to achieve compliance, and the applicant shall demonstrate sufficient control over the implementation of the plan to make the plan practical. In the case of a proposed variance that would begin on December 31, 2003, the compliance plan shall identify and provide a date for each key step that remains to be accomplished for attaining compliance. As applicable, these steps shall include financing, engineering plans, ordering and contracts, receipt of major equipment, commencement and completion of construction, and testing.

(f) *Conditions and fees in variance orders.*

In imposing fees and conditions in variance orders, the executive officer shall take into account the potential for such fees and conditions to place the applicant at a cost advantage over other persons, including those persons who produce complying gasoline.

(1) Conditions.

- (A) Any variance order shall specify a final compliance date by which the requirements of the applicable section(s) will be achieved. Any variance order shall also contain a

condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code. Such conditions may include, but are not limited to, reporting requirements, limitations on the gasoline specifications, and the elements of the variance compliance plan as proposed by the applicant, with any modifications made by the executive officer.

- (B) Any variance order granting a variance from [2262.4](#) shall impose a substitute gasoline Reid vapor pressure limit as stringent as feasible under the circumstances, in no case to exceed 9.0 pounds per square inch. For areas where, and in seasons when, federal regulations require a lesser maximum Reid vapor pressure limit, a variance order shall not impose a Reid vapor pressure limit that is less stringent than the federal limit.
 - (C) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.
 - (D) The variance order shall limit the amount of variance gasoline sold or supplied from the applicant's production or import facility during each 30-day period of the variance, or during such other time period as the executive officer may specify. In determining the limit on the amount of variance gasoline, the Executive Officer shall consider available data on the applicant's production of complying gasoline. The limit shall not exceed the applicant's capacity to produce complying gasoline.
 - (E) The variance order shall specify that once a quantity of variance gasoline has been sold or supplied by the applicant in accordance with the variance, subsequent transactions involving that variance gasoline by another producer, distributor, retailer, end user, or other person shall also be exempt from the applicable requirements.
- (2) Fees. A fee of \$0.15 shall be levied on the applicant for each gallon of gasoline sold or released for sale under variance during the term of the variance. The fee shall be paid by the applicant periodically, in advance of the sale or release of variance gasoline in each period. The executive director shall specify the payment schedule in the variance order.

(g) *Duration of variances.*

- (1) A variance shall be granted only for the minimum period necessary for the applicant to attain compliance with the applicable regulations. Except for a variance related to a physical catastrophe, no variance shall have a duration of more than 120 days; however, a variance may be extended for up to 90 additional days if the applicant demonstrates that the requirements of [sections \(d\)](#) and [\(e\)](#) are met. In order to receive an extension of a variance, the applicant must submit an application as specified in [section \(a\)](#), and a hearing must be held as specified in [sections \(b\)](#) and [\(c\)](#).
- (2) Variances related to a physical catastrophe. Notwithstanding the provisions of [section \(g\)\(1\)](#), a refiner may be granted a variance with a duration of more than 120 days, or a variance extension of more than 90 days, if the applicant demonstrates that the additional time is necessary due to a physical catastrophe, and the requirements of [sections \(d\)](#) and [\(e\)](#) are met. In order to receive a variance or variance extension, the applicant must submit an application as specified in [section \(a\)](#) and a hearing must be held as specified in [sections \(b\)](#) and [\(c\)](#). As used in this section, "physical catastrophe" means a sudden unforeseen emergency beyond the reasonable control of the refiner, causing the severe reduction or total loss of one or more critical refinery units that materially impact the refiner's ability to produce complying gasoline. "Physical catastrophe" does not include events which are not physical in nature such as design errors or omissions, financial or economic burdens, or any reduction in production that is not the direct result of qualifying physical damage.

(h) *Emergency variances.*

- (1) The executive officer may, after holding a hearing without complying with the provisions of [sections \(b\)](#) and [\(c\)](#), issue an emergency variance to a person from the requirements of the applicable section(s) upon a showing of reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. The applicant for an emergency variance shall pay a fee of \$2500.00. [Section \(f\)](#) shall apply to emergency variances, except that a variance order is not required to specify a final compliance date by which the requirements of the applicable sections(s) will be achieved.
- (2) No emergency variance may have a duration of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of the applicable section(s) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in [section \(d\)](#) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to [section \(h\)](#), and shall provide

advance telephone notice to any such person as soon as practicable, considering the nature of the emergency.

(i) ***Situations in which variances shall cease to be effective.***

A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition of the variance.

(j) ***Modification and revocation of variances.***

Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements the applicable section(s) after holding a hearing in accordance with the provisions of [sections \(b\)](#) and [\(c\)](#).

§ 2272. CaRFG Phase 3 Standards for Qualifying Small Refiners.

(a) ***CaRFG Phase 3 standards for qualifying small refiners.***

In place of the CaRFG Phase 3 standards set forth in [section 2262](#), a qualifying small refiner may elect to have a final blend of California gasoline supplied from the small refiner's refinery subject to the "small refiner CaRFG Phase 3 standards," which are identical to the CaRFG Phase 3 standards in [section 2262](#) except that: (i) the flat limit for benzene content is 1.00 percent by volume (vol.%) instead of 0.80 vol.%, (ii) the flat limit for aromatics content is 35.0 vol.% instead of 25.0 vol.%, (iii) the flat limit for T50 is 220 ° F. instead of 213 ° F, and (iv) the flat limit for T90 is 312 ° F. instead of 305 ° F. This election may only be made if the small refiner has been issued a currently effective certification pursuant to [section \(b\)](#) and the gasoline qualifies for treatment under [section \(c\)](#).

(b) ***Certification of small refiners.***

- (1) A small refiner wishing to produce gasoline subject to this section shall submit to the executive officer an application for certification on the Air Resources Board's ARB/SSD/CPB Form 00-3-1, for each of the small refiner's California refineries. The application shall be executed by a responsible corporate officer under penalty of perjury.
- (2) The small refiner's application shall set forth: [A] the crude oil capacity of the refinery since January 1, 1978; [B] the crude oil capacities of all the refineries in California and the United States which are owned or controlled by, or under common ownership or control with, the small refiner since September 1, 1988; [C] data demonstrating that the refinery has the capacity to produce liquid fuels by distilling petroleum; and [D] a demonstration that the small refiner's California refinery was used in 1998 and 1999 to

produce and supply California gasoline meeting the CaRFG Phase 2 standards.

- (3) Within 30 days of receipt of the application, the executive officer shall grant or deny it in writing. The executive officer shall grant the application if he or she determines that: [A] the application contains all of the information identified in [sections \(b\)\(1\)](#) and [\(2\)](#) above, and [B] the applicant meets the definition of small refiner. Any denial of an application shall include a statement of the reasons for denial.

(c) *Criteria for qualifying gasoline.*

Gasoline shall only be subject to treatment under this section if the small refiner demonstrates all of the following:

- (1) The gasoline was produced by the small refiner at the small refiner's California refinery.
- (2) The gasoline was supplied from the small refiner's California refinery in a calendar quarter in which 25 percent or more of the gasoline that was produced by the small refiner and that was supplied from the refinery in the calendar quarter was refined at the small refinery from crude oil. The volume of oxygenates in the gasoline shall not be counted in making this calculation. The period from December 31, 2003 through March 31, 2004 shall be treated as a calendar quarter under this section (c)(2).
- (3) For the period December 31, 2003, through December 31, 2004, and for each subsequent calendar year, the gasoline was supplied from the small refiner's California refinery before the full qualifying volume of gasoline produced by the small refiner had been supplied from the refinery during that period or year. In calculating the volume of gasoline supplied from the refinery, the volume of oxygenates in the gasoline shall not be counted. Gasoline that is designated by the small refiner as subject to all of the CaRFG Phase 3 standards in [section 2262](#), and is reported to the executive officer pursuant to a protocol entered into by the small refiner and the executive officer, shall not be counted against the qualifying volume.
- (4) At the time the gasoline was supplied from the small refiner's refinery, the small refiner met the definition of a small refiner.
- (5) The excess emissions of hydrocarbons, oxides of nitrogen, and potency-weighted toxics are offset pursuant to section 2282, title 13, California Code of Regulations. The excess emissions from gasoline subject to the small refiner CaRFG Phase 3 standards are: 0.0206 pounds of exhaust hydrocarbons per barrel, 0.0322 pounds of oxides of nitrogen per barrel, and the potency-weighted toxic emissions equivalent of 0.0105 pounds of benzene per barrel.

(d) *Compliance with applicable federal RFG requirements.*

Any small refiner subject to this section shall comply with all applicable requirements of the federal reformulated gasoline regulations in 40 CFR Part 80 Subpart D, commencing with § 80.40.

(e) *Additional reporting requirements for small refiners.*

- (1) In addition to the requirements of [section 2270](#), each small refiner who qualifies for treatment under this section shall submit to the executive officer reports containing the information set forth below for each of the small refiner's California refineries, starting on the date on which a qualifying small refiner supplies from its refinery gasoline subject to the small refiner CaRFG Phase 3 standards. The reports shall be executed in California under penalty of perjury, and must be received within the time indicated below. December 31, 2003 through January 31, 2004 shall be treated as a month.
 - (A) The quantity of all gasoline, produced by the small refiner, that is supplied from the small refinery in each month, within 15 days after the end of the month, the quantity of all such gasoline that is California gasoline subject to the small refiner CaRFG3 standards, and the quantity of all such gasoline that is California gasoline not subject to the small refiner CaRFG3 standards;
 - (B) The identity and volume of each oxygenate contained in the gasoline described in section (e)(1)(A) above, within 15 days after the end of the month;
 - (C) For each calendar quarter, a statement whether 25 percent or more of the gasoline that was produced by the small refinery and that was supplied from the refinery in the calendar quarter was refined at the small refinery from crude oil, within 15 days after the close of such quarter;
 - (D) The date, if any, on which the small refiner completes transfer from its small refinery in the period December 31, 2003 through December 31, 2004, and in each subsequent calendar year, of the small refiner's qualifying volume of gasoline produced by the small refiner, calculated as described in [section \(c\)\(3\)](#), within 5 days after such date;
 - (E) Within 10 days after project completion, any refinery addition or modification which would affect the qualification of the refiner as a small refiner pursuant to the definition in [section 2260\(a\)\(22\)](#); and
 - (F) Any change of ownership of the small refiner or the small refiner's refinery, within 10 days after such change of ownership.

§ 2273. Labeling of Equipment Dispensing Gasoline Containing MTBE.**(a) *MTBE labeling requirement.***

All devices dispensing gasoline containing methyl tertiary butyl ether (MTBE) at filling stations, garages or other outlets where petroleum products are sold or offered for retail shall be marked with a conspicuous label at all times the product is offered for retail sale.

- (1) The label shall state that the gasoline being dispensed "Contains MTBE. The State of California has determined that the use of this chemical presents a significant risk to the environment."
- (2) The label shall be contrasting in color to the gasoline dispensing equipment and have capitalized lettering using not less than one-eighth inch high letters, except that "MTBE" shall have lettering using not less than five-eighth inch high letters with a stroke of not less than one-eighth in width and "Contains" shall have lettering using not less than one-quarter inch high letters.
- (3) The label shall be placed on the gasoline dispensing equipment's vertical surface, on each side with gallonage and price meters.
- (4) The label shall be conspicuous and legible to a customer when viewed from the driver's position inside the car.
- (5) The label shall be capable of withstanding extremes of weather conditions for at least one year and shall be resistant to gasoline, oil, grease, solvents, detergents, and water. Damaged labels that are not legible shall be replaced.

(b) *Residual levels of MTBE.*

- (1) The labeling requirements in [section 2273\(a\)](#) do not apply to equipment dispensing gasoline from a storage tank containing gasoline having an MTBE content of less than 0.6 percent by volume, as determined by American Society of Testing and Materials (ASTM) Test Method D 4815-04, which is incorporated herein by reference, or any other test method determined by the executive officer to give equivalent results.
- (2) The labeling requirements in [section 2273\(a\)](#) do not apply where the equipment is dispensing gasoline from a storage tank containing gasoline having an MTBE content of less than 3.0 percent by volume, as determined by a test method identified in [section 2273\(b\)\(1\)](#), and the operator of the retail outlet demonstrates that the conditions in either [section 2273\(b\)\(2\)\(A\)](#), [\(B\)](#), [\(C\)](#) or [\(D\)](#) have occurred.

(A) The gasoline storage tank has been consecutively drained and refilled to at least 95 percent of capacity with gasoline containing less than 0.6 volume percent MTBE as specified in the following table.

The percent of the total gasoline storage tank capacity that is emptied prior to refilling	The consecutive number of times the gasoline storage tank must be drained and refilled
90%	2
80%	3
70%	3
60%	4
50%	6
40%	8
30%	11
20%	19
10%	60

(B) The gasoline storage tank has been consecutively drained and refilled to at least 95 percent of capacity with gasoline containing less than 0.6 volume percent MTBE according to the following equation.

$$N = -(0.222) + \log C_0 / \log (V_L / V_T)$$

Where:

N = The number of times the gasoline storage tank must be drained and refilled. If the resultant number is not an integer, it shall be rounded up to the nearest integer.

C₀ = The initial concentration, in volume percent, of MTBE in the gasoline storage tank.

V_L = The volume of gasoline (in gallons) left in the gasoline storage tank after each draining.

$V_T = 95\%$ of the capacity (in gallons) of the gasoline storage tank.

- (C) The following equation has been applied to consecutive drainings and fillings of the gasoline in the storage tank, and the equation shows an MTBE content of less than 0.6 percent by volume. The initial MTBE concentration (C_O) of the gasoline in the storage tank when the equation is first applied shall be deemed to be 15 volume percent unless the MTBE content is determined in accordance with a testing methodology identified in [section 2273\(b\)\(1\)](#). For purposes of the equation, [i] the MTBE concentration of gasoline containing less than 0.6 volume percent MTBE shall be deemed to be zero, and [ii] the MTBE concentration of gasoline delivered with an invoice or other documentation stating that the gasoline contains MTBE shall be deemed to be 15 volume percent or, if the concentration of MTBE is stated on the documentation, that stated concentration. The executive officer shall make available upon request a computer program that may be used in applying the equation.

$$C = C_O(V_L/(V_L+V_D)) + C_D(V_D/(V_L+V_D))$$

Where:

C = The final concentration, in volume percent, of MTBE in the gasoline storage tank after the fuel delivery.

C_O = The initial concentration, in volume percent, of MTBE in the gasoline storage tank before the fuel delivery.

C_D = The concentration, in volume percent, of MTBE in the fuel being delivered to the gasoline storage tank.

V_L = The volume of gasoline (in gallons) left in the gasoline storage tank prior to fuel delivery.

V_D = The volume of gasoline (in gallons) delivered to the gasoline storage tank.

- (D) The gasoline has been consecutively drained and refilled in accordance with an alternative protocol which the executive officer has previously found in writing provides assurances of MTBE removal equivalent to the conditions in [section 2273\(b\)\(2\)\(A\)](#), [\(B\)](#), and [\(C\)](#).

(c) ***Responsibility for compliance.***

The operator of the retail gasoline outlet shall be responsible for compliance with the labeling requirements in [section 2273\(a\)](#).

(d) *Deliveries of gasoline to retail outlets.*

- (1) Any person delivering gasoline to a retail gasoline outlet from December 16, 1999 through December 30, 2003 shall provide to the outlet operator or responsible employee, at the time of delivery of the fuel, an invoice, bill of lading, shipping paper, or other documentation which states whether the gasoline does or does not contain 0.6 percent by volume or more MTBE, and which may identify the volumetric amount of MTBE in the gasoline. For purposes of determining compliance with this section 2273(d), the volumetric MTBE content of gasoline shall be determined by ASTM Test Method D 4815-04, which is incorporated herein by reference, or any other test method determined by the executive officer to give equivalent results.
- (2) No person shall deliver gasoline containing 0.6 percent by volume or more MTBE to a storage tank at a retail gasoline outlet unless at the time of the delivery either:
 - (A) All pumps dispensing gasoline from the storage tank are labeled as containing MTBE, or
 - (B) The party delivering the gasoline, or on whose behalf the delivery is being made, can demonstrate that it has received and is maintaining a nonsuperseded written notification from the operator of the retail gasoline outlet that all of the outlet's gasoline dispensing equipment, or all of the outlet's dispensing equipment dispensing gasoline of the grade being delivered, is labeled as containing MTBE.

§ 2273.5. Documentation Provided with Delivery of Gasoline to Retail Outlets.

Any person delivering gasoline to a retail gasoline outlet shall provide to the outlet operator or responsible employee, at the time of delivery of the fuel, an invoice, bill of lading, shipping paper, or other documentation which states whether the gasoline does or does not contain ethanol, and which may identify the volumetric amount of ethanol in the gasoline. If neither the outlet operator nor a responsible employee is at the outlet at the time of delivery, the documentation may be left at a reasonably secure location at the outlet.