

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE PORTABLE FUEL CONTAINER REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider approval for adoption of the proposed amendments to the portable fuel container (PFC) regulation requiring certification fuel to contain 10 percent ethanol, harmonizing aspects of ARB's PFC certification and test procedures with those of United States Environmental Protection Agency (U.S. EPA), revising the certification process, and streamlining, clarifying, and increasing the robustness of ARB's certification and test procedures.

DATE: February 18, 2016

TIME: 9:00 am

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., February 18, 2016, and may continue at 8:30 a.m., on February 19, 2016. This item may not be considered until February 19, 2016. Please consult the agenda for the hearing, which will be available at least 10 days before February 18, 2016, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)

Sections Affected: Proposed amendments to California Code of Regulations, title 13, sections 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.8, and 2467.9; repeals of section 2467.7; and proposed amendments to the following documents incorporated by reference therein: "CP-501, *Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts*," adopted July 26, 2006; "TP-501, *Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems*," adopted July 26, 2006; and "TP-502, *Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers*," adopted July 26, 2006.

Documents Incorporated by Reference:

The following document is incorporated by reference in the regulation text:

- United States Environmental Protection Agency, *Engine Fluids, Test Fuels, Analytical Gases and Other Calibration Standards*. Title 40, Code of Federal Regulations, Part 1065.710 of Subpart H (as existed on November 20, 2015).

The following documents are incorporated by reference in the certification and test procedures:

- *California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium-Duty Vehicles*. Part II, section A.100.3.1.2 (September 2, 2015).
- United States Environmental Protection Agency, *Control of Evaporative Emissions from New and In-Use Portable Fuel Containers*. Title 40, Code of Federal Regulations, Part 59, Subpart F (as existed on November 20, 2015).
- United States Environmental Protection Agency, *Engine Fluids, Test Fuels, Analytical Gases and Other Calibration Standards*. Title 40, Code of Federal Regulations, Part 1065.710 of Subpart H (as existed on November 20, 2015).
- ASTM Standards, 2008, F852-08: Standard Specification for Portable Gasoline Containers for Consumer Use, as revised July 1, 2008. Copyrighted.
- ASTM Standards, 2008, F976-08: Standard Specification for Portable Kerosene and Diesel Containers for Consumer Use, as revised July 1, 2008. Copyrighted.

Background and Effect of the Proposed Rulemaking:

Overview

ARB staff proposes to amend the existing ARB regulation for controlling reactive organic gas (ROG) emissions from portable fuel containers (PFC or gas cans). PFCs are used to store and dispense fuel into on-road and off-road mobile sources and small off-road equipment.

ARB first adopted a regulation to reduce uncontrolled ROG emissions from PFCs in September 1999. The PFC regulation became effective in October 2000. The regulation reduces ROG emissions from five processes: evaporation of fuel vapors through PFC openings, permeation of fuel through PFC walls, leaks during transport and storage, displaced vapor, and spillage during fueling events.

The 1999 PFC regulation also included performance standards for fill height, flow rate, pressure maintenance, automatic closure, and automatic shutoff. However, diesel and kerosene containers were not subject to the regulation, and became inexpensive PFC substitutes. Additionally, uncontrolled utility jugs were being used to store and transfer gasoline.

In 2005, ARB amended the PFC regulation based on consumer feedback regarding PFC user-friendliness and the growing use of diesel, kerosene, and utility containers as PFC substitutes. Staff established a new certification procedure, expanded the definition of a PFC to include utility jugs and containers used to store diesel and kerosene fuels, modified spout performance standards to improve spillage control, reduced the diurnal emissions standard from 0.4 grams ROG per gallon per day (g/gal/day) to 0.3 g/gal/day beginning in 2009, and adopted new test procedures.

Current Proposal

Proposed major amendments to the PFC regulation are identified below. In addition, a number of modifications are being proposed to the certification and test procedures for PFCs, which are identified in the Staff Report.

- Change certification fuel formulation from 0 percent ethanol (E-0) to 10 percent ethanol (E-10) to reflect motor vehicle fuel currently available in California;
- Harmonize, wherever possible, and without compromising ARB PFC standards, with the U.S. EPA PFC regulation;
- Require PFCs currently certified for sale in California to be certified to the new procedures;
- Require PFC executive order certification to be renewed; and
- Streamline, clarify, and increase the robustness of ARB certification and test procedures.

Objectives and Benefits of the Proposed Regulatory Action:

The main purpose for this regulation amendment is to require fuel used for PFC certification testing to contain 10 percent ethanol to reflect commercially available pump fuel. Currently, the certification procedure specifies the use of fuel that does not contain ethanol. Subsequent to the adoption of the PFC regulation specifying the current certification fuel, ARB mandated commercially available pump fuel to contain 10 percent ethanol. Ethanol based fuel has different chemical properties than non-ethanol based fuel; therefore the regulation will be updated to require certification fuel which contains 10 percent ethanol, in order to accurately estimate emissions from portable fuel containers PFC and prevent certification of PFCs for sale in California that will not meet ARB performance standards when exposed to commercial grade fuel dispensed at California gasoline stations.

An additional purpose of this regulation amendment is to harmonize, where possible, ARB PFC certification and test procedures with those of U.S. EPA. U.S. EPA worked with ARB when adopting their regulation in 2009, and implemented many aspects of ARB's existing regulation. Since the two regulations are similar, it is advantageous for PFC manufacturers to submit one certification application that is acceptable to both

ARB and U.S. EPA. Currently, a PFC manufacturer seeking certification of their product must submit separate applications to ARB and U.S. EPA to certify PFCs that originate from the same manufacturing process. This regulation amendment will eliminate this duplication.

The regulation amendments also include revisions which make the certification process more robust. Revisions include the implementation of a sell-through date and certification executive order renewal every four years. These revisions are intended to increase in-use PFC compliance rates by allowing ARB to evaluate PFC performance over the term of its certification.

There are no direct impacts, either negative or positive, on health, or welfare to California residents, worker safety, and California's environment associated with the proposed regulatory amendments.

Additional contributions to the regulatory amendments resulted from public workshops on May 12, 2015 and October 20, 2015. Industry representatives and other stakeholders attended the workshops and were given the opportunity to learn about the proposed regulatory amendments and to provide input.

DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)(D)

During the process of developing the proposed regulatory action, ARB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

This regulation is not mandated by federal law or regulations.

COMPARABLE FEDERAL REGULATIONS

U.S. EPA worked with ARB to adopt federal regulations for portable fuel containers in 2009. Many aspects of U.S. EPA regulations are similar to ARB regulations, except for labeling, diurnal temperature profile, leak checks, certification fuel, preconditioning options, number of containers tested, and durability testing. ARB procedures will maintain its more stringent temperature profile, additional leak checks, and continue requiring certification testing using six containers rather than the three required by U.S. EPA. ARB will adopt U.S. EPA labeling requirements, allow use of U.S. EPA's more volatile certification fuel in addition to ARB's specified certification fuel, require nominal capacity for preconditioning, and adopt the additional U.S. EPA durability tests. It is the goal of ARB to harmonize regulations and test procedures to the extent possible so that PFC manufacturers can submit one set of certification data which satisfies both U.S. EPA and ARB regulations without compromising ARB's stricter standards.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

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

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on December 29, 2015.

Final Statement of Reasons Availability

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

Agency Contact Persons

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Matthew Holmes, Air Resources Engineer, Testing and Certification Section, at (916) 322-8913 or Angus MacPherson (designated back-up person), Manager, Testing and Certification Section, at (916) 445-4686.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2016/pfc2016/pfc2016.htm>

INITIAL DISCLOSURES REGARDING THE PROPOSED REGULATIONS

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

**Fiscal Impact/Local Mandate Determination Regarding the Proposed Action
(Government Code Sections 11346.5(a)(5)(6)&(7))**

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

**Significant Statewide Adverse Economic Impact Directly Affecting Business,
Including Ability to Compete**

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

Cost Impacts on Representative Private Persons or Businesses

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

**Results of The Economic Impact Analysis/Assessment Prepared Pursuant to
Government Code Sec. 11346.3(b)**

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed amendments to the regulation is to update certification fuel, harmonize aspects of ARB's PFC certification and test procedures with those of U.S. EPA, and increase the robustness of the certification process.

A summary of these benefits is provided. Please refer to "Objectives and Benefits" discussion under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) on page (3).

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the proposed regulatory amendments are expected to minimally impact the price of individual PFCs.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Business Reports

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

Alternatives

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

Environmental Analysis

ARB, as the lead agency for the proposed regulation amendments, has concluded that this action is exempt from CEQA, as described in CEQA Guidelines §15061, because the action is both an Action Taken by Regulatory Agencies for Protection of the Environment (as described in CEQA Guidelines § 15308 for "class 8" exemptions); and it is also exempt pursuant to CEQA Guidelines § 15061(b)(3) ("common sense" exemption) because it can be seen with certainty that there is no possibility that the proposed action may result in a significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter IV of the Staff Report.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 1, 2016. To be considered by the Board, written comments not physically submitted at the hearing, must be submitted on or after January 1, 2016 and received **no later than 5:00 pm on February 16, 2016**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 43013, 43018, and 43101. This action is proposed to implement, interpret, and make specific sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 4300, 43013, 43016, 43017, and 43018 of the California Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

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

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

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

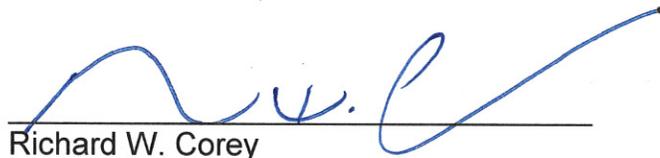
To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno u otro idioma
- Una acomodación razonable relacionados con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: December 15, 2015

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