

State of California
AIR RESOURCES BOARD

AMENDMENTS TO THE PORTABLE FUEL CONTAINER REGULATION

Resolution 16-2

February 18, 2016

Agenda Item No.: 16-2-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or non-vehicle engine categories;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reduction possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, on September 23, 1999, the Board adopted title 13, California Code of Regulations, Division 3, Chapter 9, Article 6, Portable Fuel Containers and Spouts, containing section 2467, Applicability, section 2467.1, Definitions, section 2467.2, Performance Standards for Portable Fuel Containers and Spill-Proof Spouts, section 2467.3, Exemptions, section 2467.4, Innovative Products, section 2467.5, Administrative Requirements, section 2467.6, Variances, section 2467.7, Test Procedures, and section 2467.8, Severability;

WHEREAS, on September 15, 2005, the Board adopted amendments to the portable fuel container (PFC) regulation, which required utility jugs and kerosene containers to adhere to the regulation's performance standards, established a certification program, and amended the test procedures to combine evaporative and permeation standards into a single standard;

WHEREAS, the PFC regulation was projected to reduce statewide reactive organic gas (ROG) emissions from portable fuel containers by 75 tons per day in 2007;

WHEREAS, on February 27, 2007, United States Environmental Protection Agency (U.S. EPA) promulgated a PFC rule;

WHEREAS, staff has proposed amendments to the PFC regulation, as set forth in Appendix A to the Initial Statement of Reasons released to the public on December 29, 2015;

WHEREAS, in implementing the amendments, staff has regularly obtained portable fuel containers for enforcement and screening testing for compliance with the performance standards for portable fuel containers and spouts;

WHEREAS, the results from such tests indicate that approximately half of the portable fuel containers tested do not comply with the performance standards;

WHEREAS, there is no expiration for PFC executive orders;

WHEREAS, certification results submitted by manufacturers are 100 percent compliant with the 0.3 g/gal/day diurnal performance standard;

WHEREAS, the inability of portable fuel containers to comply with the performance standards adversely impacts the emissions benefit of the regulation;

WHEREAS, the proposed PFC regulation amendments achieve emissions benefits by resolving the ROG shortfall caused by noncompliant products;

WHEREAS, current ARB PFC certification fuel does not contain ethanol;

WHEREAS, in-use California Phase III reformulated gasoline and U.S. EPA certification fuels contain 10 percent ethanol;

WHEREAS, all currently certified PFCs are to be recertified to the updated certification procedure with E-10 certification fuel;

WHEREAS, separate applications for certification are required for ARB and U.S. EPA;

WHEREAS, certification requirements are similar for ARB and U.S. EPA;

WHEREAS, the proposed amendments to the PFC regulation hereto include the following primary amendments:

Replacing the term "spill-proof system" with "portable fuel container system;"

Updating the list of reactive organic gas exclusions to align with U.S. EPA;

Removing expired performance standard requirements; and

Adding a sell-through requirement for certification to the updated certification procedure using E-10 certification fuel.

WHEREAS, the proposed amendments to "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts (CP-501)," hereto include the following primary amendments:

- Requiring the PFCs selected for certification testing to exhibit "worst-case" emissions and to come from different production molds;
- Requiring the same six containers to be tested for TP-501 and TP-502;
- Clarifying that secondary openings shall be normally closed;
- Specifying an emission control information warranty statement;
- Removing the Optional Consumer Acceptance Program;
- Requiring reporting of all certification test data and providing a pathway for certification if any failure occurs; and
- Implementing a limited certification term of four years.

WHEREAS, the proposed amendments to "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems (TP-501)," hereto include the following primary amendments:

- Clarifying that any leaks constitute failure;
- Amending the test fixture pre-fill volume equation;
- Amending the Pressurized Leak Test to apply pressure without making modifications to the PFCs;
- Adding a Pressure Cycling Test, UV Exposure Test, and Slosh Test; and
- Requiring recordkeeping for five years.

WHEREAS, the proposed amendments to "Test Procedure for Determining Emissions from Portable Fuel Containers (TP-502)," hereto include the following primary amendments:

- Adjusting the balance sensitivity requirements;
- Updating certification fuel to contain 10 percent ethanol;
- Preconditioning at nominal capacity rather than at 50 percent;

Replacing the elevated temperature preconditioning soak using a correlation coefficient with a prescribed 70 day preconditioning soak to align with U.S. EPA;

Amending the diurnal emission rate calculation; and

Requiring recordkeeping for five years.

WHEREAS, the proposed regulatory amendments are estimated to increase the cost of a PFC by a maximum of \$0.36;

WHEREAS, in developing the regulatory proposal, staff conducted two public workshops, released concepts for review and comment, and held stakeholder meetings throughout the rulemaking process in order to involve the public and affected stakeholders in the regulatory development process;

WHEREAS, staff prepared a Regulatory Notice and Staff Report: Initial Statement of Reasons (Staff Report) for these provisions and presented them to the Board with a single analysis of the proposed amendments, costs, and associated environmental impacts and benefits;

WHEREAS, the Board has considered the impact of this proposed regulatory action on the economy of the State;

WHEREAS, the Board has considered the community impacts of the proposed regulatory action, including environmental justice concerns;

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and ARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter IV of the Staff Report. Additionally, staff has determined the proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the amendments will enhance the environment by better protecting the public from health impacts associated with exposure to reactive organic gases, the regulatory process involves procedures for protection of the environment, and the amendments will not result in any significant adverse environmental impacts as described in Chapter IV of the Staff Report;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, the Board finds that:

Despite advances in reducing emissions from mobile sources, stationary sources, and area sources, California still has the most severe air pollution problems in the United States;

To meet Federal and California Clean Air Act emissions reductions requirements, ARB must continue to seek reductions from all sources under its authority, including portable fuel container systems;

The amendments adopted herein will include the incorporation of a sell-through date and require renewal of PFC certification executive orders every four years, which will increase future PFC in-use compliance rates with ARB performance standards, thus recovering the projected shortfall of PFC ROG emissions benefits resulting from noncompliance by allowing ARB to evaluate PFC performance over the term of its certification, and determine if executive order renewal is warranted;

The amendments adopted herein will update certification fuel to reflect what is commercially available, and therefore, more accurately estimate emissions from PFCs and ensure that PFCs introduced into California commerce are emissions compliant with the current motor vehicle fuel formulation;

The amendments adopted herein will harmonize certain aspects of ARB's certification and test procedures with those of U.S. EPA, allowing PFC manufacturers to submit a single certification application that satisfies both ARB and U.S. EPA requirements;

The proposed amendments meet the statutory requirements identified in sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code;

The proposed amendments were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

The proposed amendments are consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption: amendments to section 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.7, 2467.8 and 2467.9, title 13, California Code of Regulations, as set forth in Attachment A, and the proposed amendments to certification procedure CP-501 and test procedures TP-501 and TP-502 as set forth in Attachment B through D.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment A, and the proposed amendments to certification procedure CP-501 and test procedures TP-501 and TP-502 as set forth in Attachment B through D. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, submit the proposed regulatory action to the U.S. EPA for approval as a revision to the California State Implementation Plan (SIP) as required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intending to reduce emissions of air pollutants to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA under the CAA.

I hereby certify that the above is a true and correct copy of Resolution 16-2 as adopted by the Air Resources Board.



Tracy Jensen, Clerk of the Board

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Identification of Attachments to the Board Resolution

- Attachment A:** Proposed amendments to the Portable Fuel Container Regulation Title 13, California Code of Regulations 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.7, 2467.8 and 2467.9, as set forth in Appendix A to the Initial Statement of Reasons, released December 29, 2015.
- Attachment B:** Proposed amendments to the "CP-501, Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts," as set forth in Appendix B to the Initial Statement of Reasons, released December 29, 2015.
- Attachment C:** Proposed amendments to the "TP-501, Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems," as set forth in Appendix C to the Initial Statement of Reasons, released December 29, 2015.
- Attachment D:** Proposed amendments to the "TP-502, Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers," as set forth in Appendix D to the Initial Statement of Reasons, released December 29, 2015.