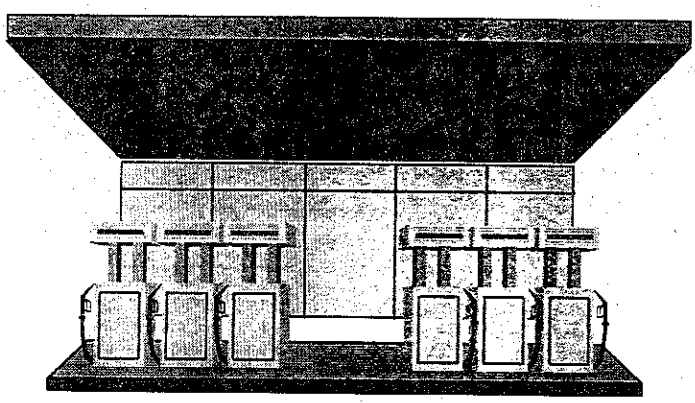
California Environmental Protection Agency

Air Resources Board

Staff Report



Proposed Amendments to the California Reformulated Gasoline Regulations, Including Amendments Regarding the Downstream Blending of Oxygenates

Release Date: October 27, 1995

ACKNOWLEDGMENTS

This report was prepared with the assistance and support from the other divisions and offices of the Air Resources Board. In addition, we would like to acknowledge the assistance and cooperation that we have received from many other individuals and organizations.

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I. REPORT SUMMARY AND RECOMMENDATIONS

A. INTRODUCTION

1. Why are we proposing amendments to the California Reformulated Gasoline Regulations?

We are proposing amendments to the California Reformulated Gasoline (CaRFG) regulations to address several implementation issues raised by gasoline producers over the past year and to fine-tune various requirements. The changes we are proposing in this rulemaking are part of our ongoing effort to provide implementation flexibility to refiners as they prepare to introduce CaRFG next year, without compromising the environmental benefits of the program.

2. What is the staff proposing?

The staff is proposing a number of amendments to the CaRFG regulations. Collectively, we refer to these changes as "housekeeping" changes, because the proposed changes can, in the main, be characterized as administrative changes that clarify the manner in which the ARB will enforce the regulations. No changes to the basic regulatory requirements are being proposed. The staff's proposed amendments address the following:

a) Application of the CaRFG standards when oxygenate blending occurs "downstream" from the refinery;
b) Offsetting high batches when averaging is used during start-up of the program;
c) Changes from a flat limit under the predictive model to an averaging limit;
d) The definition of "production facility";
e) Restrictions in the small refiner provisions;
f) The wintertime oxygenates season for San Luis Obispo County;
g) Modification of the 1996 RVP control period for gasoline supplied from a production or import facility; and
h) Downstream blending of nonoxygenate blendstocks with CaRFG.

The proposed amendments are designed to provide additional flexibility to gasoline producers without sacrificing either the emission benefits or the enforceability of the CaRFG regulations. We expect this additional flexibility will allow producers to make more gasoline at lower cost. This, in turn, should lower the expected cost to the consumers and minimize any potential for disruptions in the supply of gasoline.

B. BACKGROUND AND SUMMARY

1. What do the CaRFG regulations require?

The Board adopted the CaRFG regulations following a November 1991 hearing. The CaRFG regulations define a comprehensive set of specifications for various physical and chemical properties of gasoline. Gasoline supplied from California production facilities on and after March 1, 1996, will have to meet the specifications, which cover the following eight gasoline properties:

- o Reid vapor pressure (RVP)
- o Sulfur Content
- o Oxygen Content
- o Aromatic Hydrocarbon Content
- o Benzene Content
- o Olefin Content
- o Temperature at which 90 percent of the fuel has evaporated (T90)
- o Temperature at which 50 percent of the fuel has evaporated (T50)

The CaRFG regulations include gasoline specifications that must be met at the time gasoline is supplied from the production facility.[1] Producers have the option of meeting either "flat" limits or "averaging" limits. The flat limits must not be exceeded in any gallon of gasoline leaving the production facility. For example, the sulfur content of gasoline, subject to the flat limit for sulfur content, could not exceed 40 parts per million by weight.

The averaging limits established in the regulations are numerically more stringent than the comparable flat limits. Under the averaging option, the producer may assign differing "designated alternative limits" (DALs) to different batches of gasoline being supplied from the production facility. Each batch of gasoline must meet the DAL for the batch. In addition, a producer supplying a batch of gasoline with a DAL less stringent than the averaging limit must, within 90 days before or after the batch is shipped, supply from the same facility sufficient quantities of gasoline subject to more stringent DALs to fully offset the exceedances of the averaging limit.

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[1] The CaRFG provisions that apply to producers and the gasoline they supply from their production facilities also generally apply to persons who import California gasoline into the state ("importers") and the gasoline they supply from their import facilities. To simplify the discussion of the regulations in this report, references to "producers" apply to both producers and importers unless otherwise indicated.

The CaRFG regulations also contain "cap" limits. The cap limits are absolute limits that cannot be exceeded by any gallon of gasoline sold or supplied throughout the gasoline distribution system. Without the cap limits, there would be no practical way to enforce the CaRFG regulations at terminals, bulk plants, or service stations.

Small refiners meeting certain conditions will qualify for a two-year extension for meeting four of the eight CaRFG standards--sulfur content, olefin content, T50 and T90.

In July 1994, the ARB approved amendments to the CaRFG regulations that provide additional compliance flexibility to gasoline producers by allowing them to produce alternative complying gasolines. A number of mathematical equations, collectively referred to as the predictive model, can be used by refiners to blend complying gasoline. Hence, these amendments are referred to as the predictive model regulations.

The predictive model allows the gasoline producers to comply with alternative flat or averaging limits, as long as the emissions from a gasoline meeting these alternative flat or averaging limits are less than or equal to the emissions of a gasoline meeting the flat or average limits adopted by the Board. Alternative gasolines complying under the predictive model are referred to as PM alternative gasolines. The predictive model provisions greatly increase the number of complying gasolines that will be allowed, substantially increasing the compliance flexibility provided to the producers. We expect that this additional flexibility will translate into reduced compliance costs and savings to the gasoline consumer.

The standards for oxygen content are administered differently from the rest of the CaRFG standards. Oxygen is added to gasoline by blending in an "oxygenate," the most common of which are currently methyl tertiary butyl ether (MTBE) and ethanol. In most cases, CaRFG must have an oxygen content between 1.8 wt.% and 2.2 wt.%. Producers and importers may use the predictive model mechanism--or an analogous mechanism in which alternative gasoline formulations are certified based on a vehicle test program--to establish a maximum oxygen content limit as high as 2.7 wt.%. Since adding oxygen to gasoline reduces carbon monoxide (CO) emissions and ambient concentrations of CO are highest during the wintertime, the CaRFG regulations do not allow alternative formulations with oxygen contents below 1.8 wt.% during specified wintertime oxygenate control periods. In the rest of the year, gasoline formulations meeting the predictive model or vehicle testing criteria are allowed to have less or no oxygen.

The U.S. Environmental Protection Agency (U.S. EPA) administers federal reformulated gasoline regulations, which have applied in most of southern California since January 1995 and will also apply in the Sacramento area starting June 1996. One of the federal requirements is that gasoline have a per gallon minimum oxygen content of 2.0 wt.%, or an average oxygen content of 2.1 wt.% with a 1.5 wt.% minimum. Once the CaRFG program goes into effect, gasoline in these areas will be subject to the federal standards, including the oxygen content standards, as well as the California standards. However, recognizing that CaRFG will be cleaner overall than the

reformulated gasoline required under the federal program, U. S. EPA is exempting California gasoline from most of the federal enforcement requirements starting March 1, 1996.

2. What are the emissions benefits of the CaRFG regulations?

The CaRFG program will result in 1996 emission reductions of 15 percent for ozone precursors (about 300 tons per day statewide) and about 11 percent for CO emissions. Also, the potential cancer risk associated with emissions from gasoline-powered vehicles will be reduced by about one-third.

3. How did the public participate in the development of the proposed amendments?

The amendments we are proposing are a result of conversations between the ARB staff, gasoline producers, and others over the past year. During this period, we met individually with each of the gasoline producers in an effort to determine what, if any, changes could be made to the CaRFG regulations that would provide to the producers additional flexibility without changing the basic requirements, emission reduction benefits, or enforceability of the regulations. On September 6, 1995, the staff conducted a public consultation meeting to receive and discuss suggestions on potential regulatory changes that would provide additional compliance flexibility. Representatives of all the gasoline producers attended this meeting. The regulatory amendments proposed in this staff report reflect the suggestions and comments received during the individual meetings with the producers and the September consultation meeting.

C. STAFF RECOMMENDATIONS

1. What changes to the regulations are we recommending?

We recommend the Board adopt the amendments to the CaRFG regulations contained in Appendix A. These amendments are summarized below.

a. **New provisions pertaining to reformulated blendstock for oxygenate blending, including new section 2266.5.** The amendments would permit a producer to supply from its production facility nonoxygenated gasoline that does not comply with the CaRFG standards, as long as it is specially formulated to be combined with a specific type and amount of oxygenate downstream from the refinery, and will at that time meet the applicable flat or averaging standards. These amendments reflect an approach developed by U.S. EPA in the federal RFG regulations. It will enable entities wishing to oxygenate gasoline downstream from the refinery to take advantage of the contribution oxygenates can make to meeting the CaRFG standards. The amendments include a number of notification, reporting, sampling, testing, and

recordkeeping requirements to assure that the appropriate amount of oxygenate is added.

b. **Extension of offset period during start-up of the CaRFG program.** Refiners supplying a high-DAL batch of gasoline between March 1 and May 30, 1996 could offset it with low-DAL batches supplied through August 28, 1996. This will assure that refiners have a 180-day offset period for batches shipped during the beginning of the program.

c. **Changes from a PM flat limit to PM averaging limit.** A refiner would be allowed to change the flat limit of a PM alternative gasoline to the equivalent averaging limit, regardless of the state of offsets for the other PM averaging limits.

d. **Change in the definition of "production facility."** The Executive Officer may currently stipulate, at the request of a refiner, that the refiner's production facility includes a physically separate bulk storage facility that is owned and operated by the producer and is not used to store or distribute gasoline that is not supplied from the production facility. The amendment would make the provision apply to a separate bulk storage facility that is leased instead of owned by the producer, and is operated at the direction of the producer instead of directly by the producer's own employees.

e. **Changes in the small refiner provisions.**

   i) Include March 1996 production in second quarter production for purposes of meeting requirement that two-thirds or more of the gasoline supplied from the small refinery each quarter be refined at the refinery from crude oil.

   ii) Exclude oxygenates when determining whether two-thirds of the small refiner's gasoline was refined from crude oil at the small refinery.

   iii) Make clear that the two-thirds determination does not count gasoline supplied from the small refiner's refinery but not produced by the small refiner.

   iv) Allow a small refiner to exclude fully complying gasoline from gasoline counted against its qualifying volume.

f. **Change in the wintertime oxygenates season for San Luis Obispo County.** Makes the period consistent with the period applicable under the currently applicable existing wintertime oxygenates regulation.

g. **Clarify the 1996 RVP season.** Assure that producers and importers who have to meet the CaRFG RVP standard for gasoline supplied from their production and import facilities in March 1996 will also have to meet that standard for gasoline

supplied from their production and import facilities during April 1996 before the cap limits become applicable on April 15.

h. **Downstream blending.** Expressly prohibit persons from combining California gasoline that has been supplied from a production or import facility with any nonoxygenate blendstock, other than a deposit control additive, unless the person can affirmatively demonstrate that (i) the blendstock meets all of the California gasoline standards without regard to the properties of the gasoline to which the blendstock is added, and (ii) the person meets with regard to the blendstock all requirements applicable to producers of California gasoline.

II. DISCUSSION OF THE STAFF PROPOSAL

A. PROPOSED AMENDMENTS REGARDING BLENDSTOCK DESIGNATED FOR DOWNSTREAM OXYGEN BLENDING

The CaRFG regulations currently allow gasoline with less than the required minimum oxygen content to be shipped from a production facility as long as the producer takes appropriate measures to assure that the minimum levels of oxygen will be added before the gasoline is shipped from the final distribution facility. This element was included because it is generally not feasible to oxygenate gasoline with ethanol at "upstream" points in the gasoline distribution system. However, the regulations currently require that gasoline supplied from the production or import facility without oxygen must at that point meet all of the other CaRFG specifications.

In contrast, the U.S. EPA allows non-oxygenated gasoline to be shipped from the refinery without complying with the federal RFG standards if it is specially formulated to be combined with oxygenate "downstream" from the refinery and the resulting blend will meet all of the federal RFG standards. The primary benefit of this approach is that it allows entities wishing to oxygenate gasoline downstream from the refinery to take advantage of the contribution oxygenates can make to meeting the federal RFG standards. U.S. EPA calls the specially formulated product "Reformulated gasoline Blendstock for Oxygen Blending," or "RBOB". We are proposing that a similar approach be taken in the CaRFG regulations. The proposed amendments would allow refiners to supply a nonoxygenated blendstock called "California reformulated gasoline blendstock for oxygen blending," or "CARBOB."

The addition of oxygenates to gasoline affects the properties of the resultant blend in several ways. Oxygenates generally (but not always) contain none of the compounds for which the ARB has adopted weight or volume content CaRFG specifications (i.e. sulfur, benzene, aromatics, olefins). As a result, the addition of oxygenates to gasoline reduces the concentration of these compounds in the resultant blend through simple dilution. Therefore, the addition of oxygenates assists in meeting the CaRFG specifications for these compounds. The addition of oxygenates to gasoline also reduces the T50 of the resultant blend, thus helping to meet the CaRFG T50 requirement. This reduction varies with the type and amount of the oxygenate. The

addition of ethanol usually results in the greatest reduction in T50. The addition of oxygenates usually has little effect on the gasoline's T90. Thus, compliance with the CaRFG T90 requirement is helped little through the addition of oxygenates. The addition of oxygenates usually increases the gasoline's RVP. This increase varies with the oxygenate. Of the two oxygenates that are likely to be used to comply with the CaRFG requirements, ethanol causes the largest RVP increase, while MTBE causes the smallest.

The proposed amendments are intended to make it more practical to produce CaRFG with an oxygenate that is added to the gasoline downstream from the refinery, thus affording refiners and blenders greater flexibility in satisfying the CaRFG requirements. At the same time, we have designed the amendments to help assure that the necessary amounts of oxygenate will in fact be added, that addition of the oxygenate will not cause the resulting blend to fail to meet any of the applicable CaRFG limits, and that ARB enforcement personnel will be able to monitor compliance effectively.

Fitting the downstream oxygen blending concept into the CaRFG regulations. Our goal was to have the amendments make as few changes as possible to the way the CaRFG standards apply to producers and importers. Most of the CARBOB provisions are contained in a proposed new section 2266.5. They would be triggered by a gasoline producer's designation of a final blend being supplied from a refinery as CARBOB. The designation must identify the oxygenate type and amount or range of amount to be added downstream of the refinery. The final blend of CARBOB will be subject to all of the standards and compliance options applicable to final blends of CaRFG being supplied from the refinery. However, in identifying the properties of the CARBOB for purposes of determining compliance with the CaRFG standards, the designated type and amount of oxygenate will first be added to the CARBOB and the resulting gasoline blend will then be analyzed.

Because all of the CaRFG compliance options will still be available to the refiner, a final blend being supplied from a refinery as CARBOB can also have DALs assigned for various properties, and can also be identified as a predictive model alternative formulation. The only difference is that in determining whether the CARBOB meets the assigned DALs or limits under the predictive model, the oxygenate will be added to the CARBOB before the properties such as sulfur content or T50 are identified.

Designation and notification. In order to have a final blend treated as CARBOB, the refiner would be required to provide notification to the Executive Officer before the start of physical transfer of the blend from the production facility, and in no case less than 12 hours before the producer either completes physical transfer or commingles the final blend. Notification is required because ARB inspectors will need to know what standards apply to a blend in order to determine whether the blend complies with the applicable standards. The description of the time period in which the notification must be made for a final blend of CARBOB is identical to the time period for the other notifications which would need to be made in order to assign DALs or identify the blend as a predictive model alternative formulation.

We are proposing adoption of new section 2263.7, which provides that where a refiner is subject to multiple notification requirements, the refiner is to combine the notifications to the extent practicable. We expect that for each final blend at a refinery there will only be one initial notification--which will cover all of the necessary information under all applicable compliance options--and one follow-up notification if necessary to revise the designated volume of the blend. The proposed CARBOB notification requirements in section 2266.5(b) contain provisions on protocols and late notifications that are identical to the provisions applicable to other notifications; this will facilitate use of a single notification.

The refiner's notification will have to provide the identity and location of the final blend, and its designation as CARBOB. It will also have to identify each oxygenate type and amount or range of amounts to be added to the CARBOB. Since the CaRFG regulations impose limits on both the maximum and minimum oxygen content, we expect that refiners will typically identify a range of the oxygenate amount to provide a blending tolerance. CaRFG not treated as an alternative formulation under the predictive model or the vehicle testing option must have an oxygen content no less than 1.8 wt.% and no greater than 2.2 wt.%. The proposed regulation provides that for gasoline subject to these oxygenate limits, the designated range of oxygenate volumes must be such that neither the minimum nor the maximum oxygen content standards are exceeded. A refiner wishing to designate a narrower range--for example one that would result in an oxygen content between 2.0 wt.% and 2.2 wt.%--would be able to do so. In the case of a predictive model or vehicle testing alternative formulation, the designated amount or range of amounts of oxygenate would have to be such that the oxygenated gasoline has an oxygen content that is identical to the oxygen content alternative specification.

For the reasons described below, the notification would also have to identify the estimated volume of the final blend after it is oxygenated with the minimum amount of oxygenate designated. As with other volume notifications, this estimated volume could be updated up to 48 hours after the final blend is shipped from the refinery.

Application of the CaRFG standards to CARBOB. Where a refiner has identified a range of the amount of oxygenate to be added, the precise properties of the gasoline after blending will depend on the specific volume of oxygenate actually added. For properties such as benzene content that are affected by dilution, the smallest volume permitted under the designated range will result in the highest concentration in the oxygenated gasoline. To assure that the amount of oxygenate that is added to a sample of CARBOB for purposes of determining compliance does not dilute the CARBOB more than will actually occur in the field, we are proposing that the volume added will always be the **minimum** volume within the range of oxygenate amounts designated by the refiner. To apply this principle consistently, we are also proposing that the volume of the CARBOB for DAL averaging purposes will also be based on adding the minimum amount of oxygenate designated. At least one refiner has suggested that in some cases, some oxygenates may contain impurities such as sulfur that could affect the regulated properties of the resulting oxygenated gasoline. Therefore we are proposing that the oxygenate added when determining compliance of the CARBOB with the CaRFG standards is to be

representative of the oxygenate the producer reasonably expects will subsequently be added.

There may be an advantage for ARB inspectors to be able to sample and analyze a final blend of CARBOB at a refinery without going through the additional step of adding the oxygenate. Such testing could be done more quickly and might reduce possible uncertainties associated with testing the CARBOB after adding the oxygenate. In the case of four CaRFG properties--sulfur, benzene, olefin and aromatic hydrocarbons--the only effects adding the oxygenate is expected to have are dilution and the possible introduction of impurities. We are proposing that a producer be prohibited from shipping CARBOB from a production facility where the sulfur, benzene, olefin and aromatic hydrocarbon content of the CARBOB, when multiplied by (1 - the designated minimum volume the oxygenate will represent, expressed as a decimal fraction, 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. For example, where the oxygenate will make up 6 percent of the oxygenated blend, the measured properties of the CARBOB would be multiplied by 0.94. Any CARBOB found to be out of compliance under this mathematical adjustment would necessarily be out of compliance after the minimum designated amount of oxygenate is added. The adjustment will fully account for the resulting dilution, and any impurities in the oxygenate would only result in the oxygenated gasoline being **more** out of compliance than shown by the mathematical adjustment. This will provide ARB inspectors an additional compliance tool while imposing no additional testing or recordkeeping requirements on refiners.

The proposed amendments provide that the designated minimum amount of oxygenate is added to CARBOB before determining compliance only if the refiner has complied with all applicable CARBOB requirements. We believe it is not appropriate to allow the refiner to take advantage of the contribution the oxygenate will make to complying with the CaRFG standards if the refiner has not meet the requirements designed to assure that the CARBOB will be properly oxygenated downstream from the refinery.

Sampling and testing requirements for producers and importers. The proposed amendments require the producer of a final blend of CARBOB to take a representative sample and to determine all of the properties covered by the CaRFG standards. Before conducting the tests the producer is to add the appropriate amount of oxygenate. Sampling and testing is already required for all properties of final blends subject to the averaging compliance options. It is necessary to have all final blends of CARBOB sampled and tested because compliance is premised on the addition of the oxygenate and the effect of the oxygenation should therefore be verified. Due to the differences involved in determining compliance with CARBOB, the sampling and testing provisions in the new section 2266.5(c) would take the place of the preexisting sampling and testing requirements in section 2270(a). However, protocols would be permitted to the same extent they are permitted to meet other testing requirements.

Documentation accompanying CARBOB. The amendments require persons transferring CARBOB to provide a document identifying the oxygenate type or types and

amount or range of amounts that must be added before the CARBOB is supplied from the final distribution facility. Since the CARBOB will only be in compliance with the CaRFG standards after the oxygenate is added, it is essential for recipients of CARBOB to know that it needs to be oxygenated and how that is to be done. These requirements would be contained in section 2266.5((d) and similar to the federal requirements in 40 C.F.R. §80.69(a)(10).

Restrictions on transferring CARBOB. The proposed regulation would prohibit persons from transferring ownership or custody of CARBOB to another person unless the recipient has agreed in writing with the person transferring the CARBOB that either (i) the recipient is a registered oxygen blender who will appropriately oxygenate the gasoline before the CARBOB is transferred from a final distribution facility, or (ii) the recipient will take all reasonably prudent steps necessary to assure that the CARBOB will be transferred to a registered oxygen blender who will appropriately oxygenate the gasoline before the CARBOB is transferred from a final distribution facility. These requirements are similar to the CaRFG requirements previously applicable to the transfer of unoxygenated gasoline (section 2262.5(e)(1), proposed to be repealed), and to the federal requirement in 40 C.F.R. §80.69(a)(5). They are necessary to help assure that the CARBOB is appropriately oxygenated before it is delivered to the retail outlet or other facility used to fuel motor vehicles.

Restrictions on blending CARBOB with other products. There would be no way to assure that the necessary type and amount of oxygenate is added to a batch of CARBOB if the CARBOB was mixed with oxygenated California gasoline or with another batch of CARBOB for which another type or amount of oxygenate has been designated. Accordingly, like the federal regulations, the proposed amendments would prohibit combining CARBOB that has been shipped from the refinery with any other CARBOB, gasoline, blendstock or oxygenate, except for oxygenate of the type and amount (or range of amounts) designated by the refiner, or other CARBOB for which the refiner has designated the same type and amount or range of oxygenate. The analogous federal requirement is in 40 C.F.R. §80.78(a)(7).

Quality audit requirements for producers. We are proposing that any producer supplying CARBOB from its refinery must conduct a quality assurance sampling and testing program substantially satisfying the federal requirements for such a program in 40 C.F.R. §80.69(a)(7). The producer may alternatively enter into a protocol with the Executive Officer for a substitute program. U.S. EPA does not require a refiner to conduct the quality audit program if the RBOB (the federal analogue of CARBOB) is designated "any-oxygenate" or "ether-only," and the refiner makes all compliance determinations on the assumption that the RBOB so designated is oxygenated with ethanol or MTBE respectively resulting in an oxygen content of 2.0 wt.%.

Registration of oxygenate blenders. California Health and Safety Code section 43021 currently requires all persons who blend motor vehicle fuel or transport the fuel with an ownership interest to submit annually to the ARB specified information including name, address, and places of business where company records are kept. The ARB then issues to all such persons, who are collectively referred to as "motor vehicle fuel distributors," a certificate of compliance.

The proposed amendments would require oxygenate blenders to specifically register with the ARB as such. This provision, along with the requirement that CARBOB may only be transferred to a certified oxygenate blender or someone who will assure it will end up with a registered oxygenate blender, will be oxygenated appropriately. The federal regulations similarly require the registration of oxygenate blenders. (40 C.F.R. §80.76.)

The proposed amendments require that whenever an oxygenate blender receives CARBOB from a person to whom the oxygen blender has represented that he/she will add oxygenate to the CARBOB, the blender must follow through with that representation and add the appropriate oxygenate. This will help assure the transferee that the CARBOB will in fact be oxygenated.

Sampling and testing by oxygenate blenders. Like the federal regulations (40 C.F.R. §80.69(c)), the proposed amendments require an oxygenate blender who blends oxygenate with CARBOB in any storage tank other than a delivery tank to determine the oxygen content of the gasoline after the blending. The amendments also require an oxygenate blender who blends oxygenate directly into delivery tanks to conduct a quality assurance sampling and testing program substantially satisfying the federal requirements for such a program in 40 C.F.R. §80.69(e)(2). As an option, the blender may enter into a protocol with the Executive Officer specifying an alternative quality audit program. All of these provisions are designed to provide assurances that the designated type and amount of oxygenate is being added to the CARBOB.

B. OTHER PROPOSED AMENDMENTS

1. Deadline for providing offsets for gasolines with high DALs during the start-up of the CaRFG program

This proposed amendment would revise the requirements for offsetting batches of gasoline with high designated alternative limits (DALs) that are supplied from refineries during the first 90 days after March 1, 1996. The CaRFG regulations provide that within 90 days before or after a refiner supplies from its refinery a batch of gasoline with a DAL in excess of the averaging limits for a regulated property, the refiner must supply enough gasoline with a lower DAL to fully offset the high DAL batch. However, a refiner supplying a high DAL batch between March 1, 1996 and May 30, 1996 would not have 90 days before supplying the batch to provide offsets because the regulations would have only taken effect on March 1, 1996. For any high-DAL batch supplied after May 30, 1996, a refiner will have the full 180-day period for offsets--90 days before and 90 days after. To provide additional flexibility during the initial implementation of the program, we are proposing an amendment that would allow a refiner supplying a high-DAL batch between March 1 and May 30, 1996 to offset it with low-DAL batches supplied through August 28, 1996. This will ensure that the refiners have a full 180-day offset period for batches shipped during the startup of the program.

2. Changes from a predictive model flat limit to a predictive model averaging limit

We propose that section 2265(c)(2) be amended to allow refiners to change the flat limit of a PM alternative formulation property to the equivalent averaging limit, regardless of the state of offsets for any of the alternative formulation's other averaging limits. The equivalent averaging limit would be determined by the predictive model. The current regulation does not allow any change from a PM flat limit for a given fuel property to a PM averaging limit for that property if there are outstanding debits for any other property for which there is a PM averaging limit. For example, a refiner currently is not allowed to change a PM flat limit for sulfur to the equivalent PM averaging limit for sulfur if there are any outstanding debits for aromatics. Under the staff's proposal, such a change would be allowed. The proposed change makes the requirements for PM formulations consistent with the requirements for formulations subject to the basic CaRFG flat and averaging limits.

3. Amendment to the definition of "production facility"

Since the flat and averaging CaRFG limits apply to a batch of gasoline when it is supplied from the "production facility," the definition of "production facility" can have an important impact on how a refiner structures its operations to comply with the applicable limits. The current definition authorizes the Executive Officer to stipulate, at the request of a refiner, that the refiner's production facility includes a physically separate bulk storage facility that is owned and operated by the producer and is not used to store or distribute gasoline that is not supplied from the production facility. In response to comment, we are proposing amendments to make the provision apply to a separate bulk storage facility that is leased instead of owned by the producer, and is operated at the direction of the producer instead of directly by the producer's own employees. With these amendments, the definition would still be limited to storage tanks that can appropriately be defined as an extension of the production facility.

4. Amendments to the small refiner provisions

The CaRFG regulations provide small refiners a two-year extension of the compliance date for four of the eight CaRFG specifications (sulfur content, olefin content, T50, and T90), subject to number of conditions. One of the conditions is that the extension can only apply to gasoline supplied from the small refiner's refinery in a calendar quarter in which two-thirds or more of the gasoline supplied from the refinery was refined at the small refinery from crude oil. We propose three amendments to this requirement, all of which result from comments made by Kern Oil and Refinery Co. (Kern Oil).

The first proposed amendment is to include the month of March, 1996 in the second quarter for purposes of calculating the percentage of the small refiner's gasoline that was refined at the small refinery from crude oil. Making this calculation based on the data for the entire first quarter would be inappropriate because the small refiner would not be operating under the two-year extension in January and February, before the CaRFG program begins. Counting

March 1996 separately would give the small refiner significantly less than the three-month averaging time intended under the regulation.

Second, we propose a clarification to expressly provide that the volume of oxygenates is not included in the pool of gasoline subject to the quarterly requirement that two-thirds of the volume have been refined at the small refinery from crude oil. During the second supplemental comment period in the original CaRFG rulemaking, the American Independent Refiner's Association urged the Executive Officer to modify the "two-thirds" calculation to exclude oxygenates. In the Final Statement of Reasons (p. 228), the Executive Officer responded that the ARB would interpret the provision to not include oxygenates--since to date it had been uncommon for oxygenates to be added to California gasoline, oxygenates were not typically derived from crude oil, and the context of the comments on the provision indicated that it was unlikely oxygenates were intended to be included.

Third, we propose the correction of a drafting error so that the quarterly two-thirds requirement does not apply to gasoline that is supplied from the small refiner's refinery but was not produced by the small refiner. The two-thirds requirement is intended to limit gasoline produced by a small refiner under the two-year extension. It was not intended to limit gasoline that was produced by another refiner subject to all of the CaRFG standards, but was subsequently supplied through a small refinery that is essentially serving as a terminal with respect to gasoline. This is why the monthly reports submitted by small refiners are specifically required to identify any gasoline that was supplied from the small refiner's refinery in the month but was not produced by the small refiner, and to provide a demonstration supporting this characterization. (Section 2272(d)(1)(C)).

We are proposing one additional amendment to the provisions applicable to small refiners, also in response to comments from Kern Oil. The CaRFG regulations impose an annual limit on the amount of small refiner gasoline that qualifies for partial two-year extension; this is called the small refiner's "qualifying volume." Section 2272(c)(3) provides that all of the gasoline produced by the small refiner and supplied from the small refinery during the two designated 12-month periods is counted against the qualifying volume. The proposed amendment would allow a small refiner to enter into a protocol with the Executive Officer under which batches of gasoline that are reported by the small refiner as not exempt from any of the CaRFG specifications would not be counted against the small refiner's qualifying volume. This would provide additional flexibility to a small refiner that may be able to produce some amounts of fully complying gasoline before the annual qualifying volume is reached.

5. Changing the wintertime oxygenate season for San Luis Obispo County

The regulations identify wintertime oxygenate control periods for each air basin, during which gasoline is not permitted to have an oxygen content less than 1.8 weight percent even if the refiner is using the predictive model or vehicle testing compliance options. These wintertime periods are when ambient concentrations of carbon monoxide (CO) have historically been the

highest. When the ARB adopted the CaRFG regulations, the wintertime oxygenate control periods were identical to the periods in the 1992-1996 wintertime oxygenates regulation. Following a July 1992 hearing, the Board amended the original wintertime oxygenates regulation to change San Luis Obispo County's wintertime control period to October 1 through January 31. This was done to align the control period more closely with the control period for areas that supply San Luis Obispo county with most of its gasoline. The staff now proposes that the identical change be made in the CaRFG regulations.

6. Amendment to the 1996 RVP control period for gasoline supplied from a production or import facility

We are proposing a technical amendment to correct a drafting error pertaining to the phasing-in of the RVP season in March and April 1996. In the South Coast, San Diego, and Southeast Desert Air Basins and Ventura County, the RVP standard applies each year throughout the gasoline distribution system from April 1 through October 31. The RVP standard also applies each year to persons supplying gasoline from a production or import facility in those air basins during the month of March. The phase-in of the CaRFG standards in the spring of 1996 is structured so that the flat and averaging limits apply to gasoline supplied from a production or import facility starting March 1, and the cap limits apply starting April 15 to transactions involving gasoline throughout the gasoline distribution system except for gasoline being supplied from a bulk storage facility or dispensed into a motor vehicle. This means that in 1996, the RVP standard for gasoline being supplied from southern California production and import facilities will end on March 31, but the system-wide standard will not apply until April 15. It of course was not the ARB's intent for the RVP standard to lapse for gasoline supplied from a refinery during the first half of April 1996 in southern California. Accordingly, we are proposing that for 1996 only, the RVP standard for production and import facilities in these areas will run from March 1 through April 15.

7. Limitations on combining nonoxygenate blendstock with California gasoline

While the CaRFG cap limits apply throughout the gasoline distribution system, the more stringent flat or averaging limits apply only when the producer or importer is supplying the gasoline from the production or import facility. Every gallon of California gasoline must be attributable to a specific producer or importer, and must be subject to the flat or averaging limits when the gasoline is supplied from its production or import facility. Otherwise, the full emission benefits of the flat and averaging limits will not be achieved. We are proposing an amendment which would help assure that this principle is applied where nonoxygenate blendstock is blended into California gasoline that has already been supplied from the production or import facility.

The existing regulations provide that where a person blends volumes of blendstocks that are not gasoline with volumes of blendstocks of gasoline acquired from another person, the person conducting the blending has produced only the portion of the blend that was not previously gasoline. (section 2260(a)(26)(A).) The effect of this is that the blendstock itself must

meet the flat or averaging standards without taking into account the gasoline with which the blendstock is blended. The proposed amendment will expressly prohibit a person from combining nonoxygenate blendstock into California gasoline that has already been shipped from the refinery, unless the person can affirmatively demonstrate that (i) the blendstock meets all of the California gasoline standards without regard to the properties of the gasoline to which the blendstock is added,[2] and (ii) the person meets with regard to the blendstock all requirements applicable to producers of California gasoline.

The proposed amendment is very similar to a U.S. EPA requirement that applies to all California gasoline subject to the federal RFG standards, and will continue to apply after the March 1996 implementation of the CaRFG program. The federal RFG regulations similarly impose less stringent "per gallon minimum or maximum" standards that apply to gasoline throughout the distribution system and more stringent "per gallon" or "averaged" standards that apply just to the refiner or importer. (40 C.F.R. §80.41.) To help assure that all gasoline meets the applicable refiner standard--including gasoline produced through adding blendstocks to RFG downstream of the refinery--the federal regulations expressly prohibit persons from combining federal RFG with any nonoxygenated blendstock unless the person meets all requirements applicable to refiners and the blendstock being added meets all federal RFG standards without regard to the RFG to which the blendstock is added. (40 C.F.R. §80.78(a)(5).) This requirement will continue to apply to federal RFG in California after March 1996. We believe including a similar requirement in the California regulations will help prevent adding nonconforming blendstocks to CaRFG. It is appropriate to place the responsibility on the blender to demonstrate that the blendstock is fully complying because the blender is best equipped to identify the properties of the blendstock, and because after the blending it will not be feasible for ARB inspectors to determine whether the blendstock met the CaRFG standards.

The proposed amendments would not prohibit a person from blending transmix into CaRFG that has been supplied from a production facility, as long as the person is conducting the blending in accordance with a protocol with the Executive Officer. The Executive Officer would be authorized to enter into such a protocol if he determines that alternatives to the blending are not practicable and the blending will not significantly alter the properties of the CaRFG into which the transmix is added. This will assure that necessary blending of transmix is not precluded as long as appropriate safeguards are in place.

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2 Combining a blendstock meeting all of the CaRFG refinery standards with CaRFG could occur in situations such as blending into the CaRFG a product that meets all of the refinery standards but has an octane below the level necessary for gasoline.

III. ECONOMIC IMPACTS

The amendments proposed by the staff do not affect any of the basic CaRFG regulatory requirements. Therefore there will be no adverse economic impacts resulting from implementation of the staff proposal. The amendments proposed by the staff will provide additional compliance flexibility for some refiners. This increased flexibility should result in a some cost reductions.

Although the proposed amendments pertaining to downstream oxygenate blending impose various new testing, quality audit and recordkeeping requirements which will result in various compliance costs, the amendments will also allow producers to take advantage of the contribution that adding oxygenates can provide in meeting the CaRFG specifications for some properties other than oxygen content. Overall, the amendments will significantly improve the economics of adding oxygenates in California downstream from the production facility. Thus, the proposed amendments are not expected to have a significant adverse economic impact on large or small businesses in other states, or on directly affected private persons.

IV. ENVIRONMENTAL IMPACTS

Because the staff is not proposing any changes to the basic CaRFG regulatory requirements, there will be no emissions impacts resulting from adoption of the staff proposal. The emissions benefits of the CaRFG regulations will be those estimated during the original rulemaking. Apart from emissions impacts, the staff has not identified any significant adverse environmental impacts that would result from the proposal.

REFERENCES

1. California Environmental Protection Agency - Air Resources Board, California Phase 2 Reformulated Gasoline Specifications, Proposed Regulations for California Phase 2 Reformulated Gasoline, Technical Support Document, Sacramento, CA., October 4, 1991.

2. California Environmental Protection Agency - Air Resources Board, California Phase 2 Reformulated Gasoline Specifications, Volume 1, Proposed Regulations for California Phase 2 Reformulated Gasoline, Staff Report, Sacramento, CA., October 4, 1991.

3. California Environmental Protection Agency - Air Resources Board, Proposed Amendments to the California Phase 2 Reformulated Gasoline Regulations, Including Amendments Providing for the Use of a Predictive Model, Staff Report, April 22, 1994.

4. California Environmental Protection Agency - Air Resources Board, Amendments to the California Phase 2 Reformulated Gasoline Regulations, Including Amendments Providing for the Use of a Predictive Model, Final Statement of Reasons, April, 1995.

5. California Environmental Protection Agency - Air Resources Board, California Phase 2 Reformulated Gasoline Specifications, Final Statement of Reasons, October, 1992.

6. United States Environmental Protection Agency, Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, Final Rule, 40 CFR Part 80, December 15, 1993.

7. United States Environmental Protection Agency, Final Regulatory Impact Analysis for Reformulated Gasoline, Draft, December, 1993.

8. United States Environmental Protection Agency, Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, Preamble, December, 1993.

APPENDIX A
PROPOSED REGULATION ORDER

APPENDIX A

PROPOSED REGULATION ORDER

AMENDMENTS TO THE CaRFG REGULATIONS, INCLUDING AMENDMENTS REGARDING THE DOWNSTREAM BLENDING OF OXYGENATES

NOTE: New text proposed to be added in this rulemaking is shown in *italics* to show additions and ~~strikeout~~ to show deletions. All subsection headings are shown in ***bold italics***. New language proposed to be added to subsection headings is shown in ***shaded bold italics***.

Adopt and amend portions of section 2260(a) of Title 13, California Code of Regulations, to read as follows:

Section 2260. Definitions.

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

* * * *

(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.

* * * *

(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.

(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 ~~oxygenates, in quantities that will bring the gasoline *CARBOB* into compliance with section 2262.5(a) and (c),~~ *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.

* * * *

(16) "Import facility" means the facility at which imported California gasoline *or CARBOB* is first received 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.

* * * *

(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.

(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.

* * * *

(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 ~~a person~~ *an oxygenate blender* blends oxygenates into ~~gasoline~~ *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 ~~way~~ *manner except for the addition of deposit control additives*, the ~~person does not produce gasoline~~ *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.

(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 ~~and~~ *or leased by the producer, and (B) is* operated by *or at the direction of* the producer, and ~~which~~ *(C)* is not used to store or distribute gasoline *or CARBOB* that is not supplied from the production facility.

* * * *

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 40000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Amend Title 13, CaliforniaCode of Regulations, section 2262.1(b) to read as follows:

Section 2262.1. Standards for Reid Vapor Pressure.

* * * *

(b) **Additional Regulatory Standards for Gasoline Sold, Supplied or Transferred from a Production or Import Facility.**

(1) California gasoline sold, offered for sale, supplied or offered for supply by a producer or importer from its production facility or import facility in an air basin during the regulatory period specified in section (b)(2) shall have a Reid vapor pressure not exceeding 7.00 pounds per square inch. California gasoline transported directly from a production facility or import facility in an air basin during the regulatory period set forth in section (b)(2) shall have a Reid vapor pressure not exceeding 7.00 pounds per square inch.

(2) *Additional Regulatory Control Periods.*

(A) March 1 through March 31 *(March 1 through April 14 in 1996):*
South Coast Air Basin and Ventura County
San Diego Air Basin
Southeast Desert Air Basin

(B) April 1 through April 30:
San Francisco Bay Area Air Basin
San Joaquin Valley Air Basin
Sacramento Valley Air Basin
Great Basin Valley Air Basin
Mountain Counties Air Basin
Lake Tahoe Air Basin

(C) May 1 through May 31:
North Central Coast Air Basin
South Central Coast Air Basin (Excluding Ventura County)
North Coast Air Basin
Lake County Air Basin
Northeast Plateau Air Basin

* * * *

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121Cal.Rptr. 249 (1975).

Amend Title 13, California Code of Regulations, section 2262.5 to read as follows:

Section 2262.5. Standards for Oxygen Content.

(a) ***Minimum wintertime oxygen content standard for all California gasoline.***

(1) 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 it has an oxygen content of not less than 1.8 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
~~South Central Coast Air Basin (Excluding Ventura County)~~
Santa Barbara County
Southeast Desert Air Basin

(b) ***Maximum oxygen content standard for all California gasoline.*** No person shall sell, offer for sale, supply, or transport California gasoline which has an oxygen content exceeding 2.7 percent by weight.

(c) ***Additional oxygen content standards for producers and importers.*** 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 1.8 percent by weight or more than 2.2 percent by weight, unless the gasoline has been reported as a PM alternative gasoline formulation pursuant to section 2265(a) or as an alternative gasoline formulation pursuant to section 2266(c), and complies with the standards contained in sections (a) and (b).

(d) ***Restrictions on adding oxygenates to California gasoline ~~produced or imported by others~~ after it has been supplied from the production or import facility.*** No person may add *any* oxygenates to California gasoline ~~produced or imported by another person where the resulting oxygenated gasoline blend has an oxygen content exceeding 2.2 percent by weight, except where the person adding the oxygenates demonstrates that: (i) the gasoline to which the oxygenates are added has been reported pursuant to section 2266(c) as an alternative gasoline formulation and has not been commingled with other gasoline, and (ii) the person adding the oxygenates is doing so at the express request of the producer or importer of the gasoline, and (iii) the resulting oxygenated gasoline blend has an oxygen content not more than the maximum oxygen content specification in the certification for the reported alternative gasoline formulation.~~ *after it has been supplied from the production or import facility at which it was produced or imported, provided that nothing in this section (d) prohibits adding oxygenate to CARBOB.*

(e) ***Application of prohibitions.***

~~(1) Sections (a) and (c) 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 sections (a) and (c), and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline within the standards in sections (a) and (c) 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) and (c) before it is supplied from the final distribution facility.~~

~~(2)~~ Section (a) 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 regulatory control period.

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

* * * *

Adopt Section 2263.7 to read as follows:

Section 2263.7. Multiple Notification Requirements.

Where a producer or importer is subject to multiple notification requirements pursuant to sections 2264(a)(2)(A), 2264.2(a)(2), 2264(b)(2), 2265(a)(2), 2266(c) or 2266.5(b), the producer shall combine the notifications to the extent practicable.

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Amend section 2264, Title 13, California Code of Regulations, to read as follows (the only portions affected are section (a) and new subsection (j)):

Section 2264. Designated Alternative Limits.

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

(1) A producer or importer that has elected to be subject to sections 2262.2(c), 2262.3(c), 2262.4(c), 2262.6(c), 2262.6(e), or 2262.7(c) 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 0.80 percent by volume benzene content, 30 parts per million by weight sulfur content, 4.0 percent by volume olefin content, 22.0 percent by volume aromatic hydrocarbon content, T90 of 290 degrees Fahrenheit, or T50 of 200 degrees Fahrenheit, 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 0.80 percent by volume benzene content, 30 parts per million by weight sulfur content, 4.0 percent by volume olefin content, 22.0 percent by volume aromatic hydrocarbon content, T90 of 290 degrees Fahrenheit, or T50 of 200 degrees Fahrenheit, 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) 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) 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 0.80 percent by volume benzene content, 30 parts per million by weight sulfur content, 4.0 percent by volume olefin content, 22.0 percent by volume aromatic hydrocarbon content, T90 of 290 degrees Fahrenheit, or T50 of 200 degrees Fahrenheit, 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 0.80 percent by volume benzene content, 30 parts per million by weight sulfur content, 4.0 percent by volume olefin content, 22.0 percent by volume aromatic hydrocarbon content, T90 of 290 degrees Fahrenheit, or T50 of 200 degrees Fahrenheit, 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 excess sulfur.*** 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 sulfur content exceeding 30 parts per million, 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 30 parts per million to offset the mass of sulfur in excess of a limit of 30 parts per million.

(d) ***Offsetting excess benzene.*** 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 benzene content exceeding 0.80 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 0.80 percent by volume to offset the volume of benzene in excess of a limit of 0.80 percent by volume.

(e) ***Offsetting excess olefins.*** 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 content 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 olefins in excess of a limit of 4.0 percent by volume.

(f) ***Offsetting T90.*** 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 T90 exceeding 290 degrees Fahrenheit, 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 290 degrees Fahrenheit to offset the extent to which the gasoline exceeded a T90 of 290 degrees Fahrenheit.

(g) ***Offsetting T50.*** 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 T50 exceeding 200 degrees Fahrenheit, 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 200 degrees Fahrenheit to offset the extent to which the gasoline exceeded a T50 of 200 degrees Fahrenheit.

(h) ***Offsetting excess aromatic hydrocarbons.*** 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 aromatic hydrocarbon content exceeding 22.0 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 22.0 percent by volume to offset the volume of aromatic hydrocarbons in excess of a limit of 22.0 percent.

(i) ***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:

(A) The PM averaging limit (if any) for benzene content shall replace any reference in this section 2264 to 0.80 percent by volume benzene content;

(B) The PM averaging limit (if any) for olefin content shall replace any reference in this section 2264 to 4.0 percent by volume olefin content;

(C) The PM averaging limit (if any) for sulfur content shall replace any reference in this section 2264 to 30 parts per million by weight sulfur content;

(D) The PM averaging limit (if any) for aromatic hydrocarbon content shall replace any reference in this section 2264 to 22.0 percent by volume aromatic hydrocarbon content;

(E) The PM averaging limit (if any) for T90 shall replace any reference in this section 2264 to T90 of 290 degrees Fahrenheit; and

(F) The PM averaging limit for T50 (if any) shall replace any reference in this section 2264 to T50 of 200 degrees Fahrenheit.

(j) Offsetting exceedances generated by final blends supplied from production or import facilities from March 1, 1996 through May 30, 1996. Notwithstanding the 90-day periods identified in sections (c) through (h), for any final blend of gasoline triggering the need for offsets and supplied from the production or import facility starting March 1, 1996 through May 30, 1996, the producer or importer may offset the exceedance by completing by August 28, 1996 the physical transfer from the same production or import facility of gasoline offsetting the exceedance as described in sections (c) through (h).

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

* * * *

Amend section 2265, Title 13, California Code of Regulations, to read as follows (the only portion affected is section 2265(c)(2)):

Section 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 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, which is incorporated herein by reference (hereafter the "Predictive Model Procedures"). If the PM alternative specifications meet the criteria for approval in the Predictive Model Procedures, the producer shall notify the executive officer of: (A) The identity, location, and estimated volume 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, hydrocarbons, and potency-weighted toxic air contaminants as determined in accordance with the 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.

(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 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; 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) through (i)(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 2262.2(b) and (c), section 2262.3(b) and (c), section 2262.4(b) and (c), section 2262.5(c), section 2262.6(b), (c), (d), and (e), and section 2262.7(b) and (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 any provision in section 2264 (c), (d), (e), (f), (g), or (h).

(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 the applicable provisions in section 2264 (c), (d), (e), (f), (g), or (h). *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 the only change is that a PM flat limit is changed to the equivalent PM averaging limit for one or more properties.*

(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), (d), (e), (f), (g), or (h) for any final blend sold or supplied from the production or import facility subsequent to the election.

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

* * * *

Adopt Title 13, California Code of Regulations, section 2266.5 to read as follows:

Section 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 2262.1, 2262.2, 2262.3, 2262.4, 2262.5, 2262.6, 2262.7, 2264, 2264.2, 2264.4, 2265, 2266, 2267, 2268, 2270(b), 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 CARBOB complies with the standards for California gasoline. 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 2262.1 through 2262.7 shall 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). The oxygenate added shall be representative of the oxygenate the producer or importer reasonably expects will be subsequently added to the final blend. Where the producer or importer has in accordance with section (b)(1)(D) designated a range of amounts of oxygenates to be added to the CARBOB, the minimum amount of oxygenate designated shall be added to the CARBOB when determining the properties and characteristics of the final blend. If the producer or importer has not complied with any applicable provisions of this section 2266.5, the properties of the final blend for purposes of the producer's or importer's compliance with sections 2262.2 through 2262.7 shall be determined without adding oxygenate to the gasoline.

(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 a final blend shall be calculated for all purposes under section 2264 by adding the minimum amount of oxygenate specified 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 2262.1 through 2262.7 shall be calculated without adding the amount of oxygenate to the CARBOB.

(4) No producer or importer may sell, offer for sale, supply or offer for sale a 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 - the designated minimum volume the oxygenate will represent, expressed as a decimal fraction, 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 under section (a)(2).

(b) Notification 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. 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) The designation of each oxygenate type or types and amount or range of amounts to be added to the CARBOB. 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 or is reported as an alternative formulation in accordance with section 2266(c), 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, the amount of oxygenate to be added must be such that the resulting California gasoline has a range of oxygen content that is identical to the oxygen content PM alternative specification for the final blend. For a final blend of CARBOB that is reported as an alternative formulation in accordance with section 2266(c), the amount or range of amounts of oxygenate to be added must be such that the resulting California gasoline has an amount or range of oxygen content that is identical to the oxygen content alternative specification identified in the certification order for the formulation;

(D) The estimated volume of the final blend of CARBOB, and of the California gasoline that will result when the minimum specified amount of oxygenate is added to the final blend of CARBOB. 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.

(2) 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)(2) have been met, timely notification shall be deemed to have occurred.

(3) 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) Sampling, testing and recordkeeping by producers and importers of CARBOB.

(1) Each producer of CARBOB shall sample and test for the sulfur, aromatic hydrocarbon, olefin, oxygen and benzene content, T50, T90, and, during the regulatory control periods identified in section 2261.1(a)(2) and (b)(2), the Reid vapor pressure, of each final blend of CARBOB that the producer has produced, by collecting and analyzing a representative sample of CARBOB taken from the final blend, in accordance with section (a). If a producer blends CARBOB directly to pipelines, tankships, railway tankcars or trucks and trailers, the loading(s) shall be sampled and tested by the producer or authorized contractor.

(2) Each importer of CARBOB shall sample and test for the sulfur, aromatic hydrocarbon, olefin, oxygen and benzene content, T50, T90, and, during the regulatory control periods identified in section 2261.1(a)(2) and (b)(2), the Reid vapor pressure, of each shipment of CARBOB which the importer has imported by tankship, pipeline, railway tankcars, trucks and trailers, or other means, by collecting and analyzing a representative sample of CARBOB taken from the shipment, in accordance with section (a).

(3) Each producer or importer required to sample and analyze a final blend or shipment of CARBOB pursuant to this section (c) shall maintain, for two years from the date of each sampling, records showing the sample date, identify of blend or product sampled, container or other vessel sampled, the final blend or shipment volume, and the sulfur, aromatic hydrocarbon, olefin, oxygen and benzene content, T50, T90, and Reid vapor pressure as determined in accordance with section (a)(2). All CARBOB produced or imported by the producer or importer and not tested as required by this section shall be

deemed to have a Reid vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen and benzene content, T50 and T90 exceeding the standards specified in sections 2262.1(a) or (b), 2262.2(c), 2262.3(c), 2262.4(c), 2262.5(c), 2262.6(c), 2262.6(e), and 2262.7(c), or exceeding the comparable PM averaging limit(s) if applicable, unless the importer demonstrates that the CARBOB 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 (c) 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 or shipment of CARBOB in accordance with the requirements of this section, the final blend or shipment of CARBOB shall be presumed to have been sold by the producer or importer in violation of the standards in sections 2262.1(a) or (b), 2262.2(c), 2262.3(c), 2262.4(c), 2262.5(c), 2262.6(c), 2262.6(e), and 2262.7(c), or exceeding the comparable PM averaging limit(s) if applicable, unless the importer demonstrates that the CARBOB meets those standards and limit(s).

(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 (c)(1) or (c)(2). 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 provisions of sections 2262.1(a) or (b), 2262.2(c), 2262.3(c), 2262.4(c), 2262.5(c), 2262.6(c), 2262.6(e), and 2262.7(c), and the PM averaging limit(s). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

*(d) **Documentation required when CARBOB is transferred.** On each occasion when any person transfers custody or title of CARBOB, the transferor shall provide the transferee a document that prominently:*

(1) states that the CARBOB does not comply with the standards for California gasoline without the addition of oxygenate, and

(2) 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.

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

(1) 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 transfered from a final distribution facility.

(2) 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.** 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:*

(1) 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, or

(2) Other CARBOB for which the same oxygenate type and amount (or range of amounts) was specified by the producer or importer at the time the CARBOB was supplied from the production or import facility.

*(g) **Quality audit requirements for a producer or importer supplying CARBOB from its production or import facility.***

(1) Each producer or importer supplying CARBOB from its production or import facility shall conduct a quality assurance sampling and testing program substantially satisfying the requirements in 40 C.F.R. §80.69(a)(7) as it existed on July 1, 1995, (A) changing "RBOB" to "CARBOB"; (B) changing in the first paragraph ". . . using the methodology specified in §80.46 . . ." to ". . . using the methodology specified in section 2263 . . ."; and (C) changing in paragraph (a)(7)(ii) "(within the ranges specified in §80.65(e)(2)(i))" to "(within the ranges of the applicable test methods)." 40 C.F.R. §80.69(a)(7) as it existed on July 1, 1995 is incorporated by reference.

(2) The executive officer may enter into a protocol with any producer or importer for the purpose of specifying alternative quality audit requirements which shall satisfy the provisions of section (g)(1). 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 provisions of sections 2262.1(a) or (b), 2262.2(c), 2262.3(c), 2262.4(c), 2262.5(c),

2262.6(c), 2262.6(e), and 2262.7(c), and the PM averaging limit(s). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

*(h) **Requirements for oxygenate blenders.***

*(1) **Registration and Certification.***

(A) 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, a oxygenate blender must register with the executive officer annually by January 1. The registration must addressed to he attention of the Chief, Compliance Division, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.

(B) The registration must include the following:

1. The identify 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) 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 43021.

(D) Any oxygen blender must submit updated registration information to the executive officer at the address identified in section (h)(2) within 30 days of any occasion when the registration information previously supplied becomes incomplete or in accurate.

*(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.*

*(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 bull 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 a and analyzing a representative sample of gasoline taken from the final blend, using methodology set forth in section 2263.

(4) Additional requirements for oxygenate blenders who blend oxygenate in trucks.

(A) Any oxygen blender who obtains any CARBOB in any gasoline delivery truck shall conduct a quality assurance sampling and testing program substantially satisfying the requirements in 40 C.F.R. §80.69(e)(2) as it existed on July 1, 1995, (A) changing "RBOB" to "CARBOB"; (B) changing in paragraph (e)(2)(iv) ". . . using the testing methodology specified in §80.46 . . ." to ". . . using the testing methodology specified in section 2263 . . ."; and (C) changing in paragraph (e)(2)(v) "(within the ranges specified in §80.65(e)(2)(i))" to "(within the ranges of the applicable test methods)." 40 C.F.R. §80.69(e)(2) as it existed on July 1, 1995 is incorporated by reference.

(B) The executive officer may enter into a protocol with any producer or importer for the purpose of specifying alternative quality audit requirements which shall satisfy the provisions of section (h)(4)(A). 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 provisions of sections 2262.1(a) or (b), 2262.2(c), 2262.3(c), 2262.4(c), 2262.5(c), 2262.6(c), 2262.6(e), and 2262.7(c), and the PM averaging limit(s). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(i) Downstream blending of California gasoline with nonoxygenate blendstocks.

(1) No person may combine California gasoline which has been supplied from a production or import facility with any nonoxygenate blendstock, other than a deposit control additive, 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) Notwithstanding section (i)(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 practicable 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.

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, 43021, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

* * * *

Amend section 2272 of Title 13, California Code of Regulations, to read as follows (the only portions affected are subsections (c)(2) and (c)(3)):

Section 2272. Gasoline Produced by Small Refiners.

(a) ***Inapplicability of specified standards prior to March 1 and April 1, 1998.***

(1) The standards contained in sections 2262.2(b) and (c) (sulfur content), 2262.4(b) and (c) (olefin content) and 2262.6(b), (c), (e) and (f) (distillation temperatures) shall not apply to gasoline supplied from a small refiner's California refinery prior to March 1, 1998, if the small refiner has been issued a currently effective certification pursuant to section (b), and the gasoline qualifies for treatment under section (c).

(2) Prior to April 1, 1998, the standards in sections 2262.2(a), 2262.4(a), and 2262.6(a) shall not apply to gasoline described in section (a)(1).

(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 92-4-1, for each of the small refiner's California refineries. An application for qualification for the 12 month period March 1, 1996 through February 28, 1997 shall be submitted by December 1, 1995. An application for qualification for the 12 month period March 1, 1997 through February 28, 1998 shall be submitted by December 1, 1996. 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] copies of the reports made to the California Energy Commission as required by the Petroleum Industry Reporting Act of 1980 (Public Resources Code Sections 25350 et seq.) showing the annual production volumes of all grades of motor gasoline at the small refiner's California refinery for 1987 through 1991; the copies of the reports shall be accompanied by a statement by a responsible corporate officer stating whether the reported gasoline volumes

include any oxygenates, and the volume of any such oxygenates included.

(3) The application shall include a compliance schedule showing how the small refiner will modify the California refinery(ies) to enable the production of gasoline meeting the standards set forth in sections 2262.2, 2262.4 and 2262.6 by March 1, 1998, in a volume equal to or greater than the small refiner's qualifying volume. The compliance schedule shall set forth the sequence and respective dates of all key events in the construction process including securing of financing, completion of plans and engineering drawings, ordering of equipment, receipt of equipment, signing of construction and other necessary contracts, commencement and completion of various phases of work, commencement and completion of testing, and other similar events and dates. An application for qualification for the 12 month period March 1, 1996 through February 28, 1997 shall additionally include evidence of capital commitments to make the refinery modifications identified in the compliance plan. Such evidence shall include copies of binding contracts for design and construction, and copies of approved permits for construction of the equipment. An application for qualification for the 12 month period March 1, 1997 through February 28, 1998 shall additionally include evidence that on-site construction has begun.

(4) Within 60 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; [B] the applicant meets the definition of small refiner, and [C] the compliance schedule is reasonably likely to enable the small refiner to produce gasoline in compliance with sections 2262.2, 2262.4 and 2262.6 by March 1, 1998. An order certifying a refiner as qualifying for treatment under this section shall set forth the compliance schedule found by the executive officer to be reasonably likely to enable compliance. Any denial of an application shall include a statement of the reasons for denial.

(5) A small refiner who has received a certification pursuant to section (b)(4) shall notify the executive officer in writing within 10 days after the failure of the small refiner to meet any increment of progress on the compliance schedule identified in the certification order, and the likely effect of that failure on the ability of the small refiner to comply with sections 2262.2, 2262.4 and 2262.6 by March 1, 1998.

(6) Upon a determination of good cause, based on receipt of a notification made pursuant to section 2272(b)(5) or other relevant information, the executive officer may conduct a public hearing on the ability of a small refiner that has received a certification pursuant to section (b)(4) to produce gasoline in compliance with sections 2622.2, 2262.4 and 2262.6 by March 1, 1998. At least 10 days written notice of the hearing shall be given to the small refiner and to any person who has requested such notice. If following the hearing the executive officer determines that the small refiner is no longer reasonably likely to be able to produce gasoline in compliance with sections 2262.2, 2262.4 and 2262.6 by March 1, 1998, s/he shall rescind the order issued pursuant to section (b)(4), effective 10 days after written notification of the rescission to the small refiner.

(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 two-thirds 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 March 1, 1996 through June 30, 1996 shall be treated as a calendar quarter under this section (c)(2).*

(3) For the 12 month periods March 1, 1996 through February 28, 1997, and March 1, 1997 through February 28, 1998, 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 the 12 month period. In calculating the volume of gasoline supplied from the refinery in the 12 month periods, the volume of oxygenates in the gasoline shall not be counted. *Gasoline that is designated by the small refiner as not qualifying for treatment under this section (c), 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 and shall be subject to all of the standards identified in section 2272(a)(1).*

(4) At the time the gasoline was supplied from the small refiner's refinery, the small refiner met the definition of a small refiner.

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

(1) In addition to the requirements of section 2270, for the period from March 1, 1996 through February 28, 1998, 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. The reports shall be executed in California under penalty of perjury, and must be received within the time indicated below:

(A) The quantity, ASTM grade, sulfur content, olefin content, T90 and T50 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;

(B) The identity and volume of each oxygenate contained in the gasoline described in section (d)(1)(A) above, within 15 days after the end of the month;

(C) The quantity and ASTM grade of any gasoline that is supplied from the small refinery in each month and that was not produced by the small refiner, accompanied by a demonstration why the gasoline was not produced by the small refiner, within 15 days

after the end of the month;

(D) For each calendar quarter, a statement whether two-thirds or more of the gasoline transferred from the small refiner's refinery was produced by the distillation of crude oil at the small refiner's refinery, within 15 days after the close of such quarter;

(E) The date, if any, on which the small refiner completes transfer from its small refinery in the 12 month periods March 1, 1996 through February 28, 1997, and March 1, 1997 through February 28, 1998, 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;

(F) 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

(G) Any change of ownership of the small refiner or the small refiner's refinery, within 10 days after such change of ownership.

(2) Whenever a small refiner fails to provide records identified in sections (d)(1)(A), (B), or (C) in accordance with the requirements of those sections (d)(1)(A), (B), or (C), the California gasoline supplied by the small refiner from the small refiner's refinery in the time period of the required records shall be presumed to have been sold or supplied by the small refiner in violation of sections 2262.2, 2262.4, and 2262.6.

NOTE: Authority cited: sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 40000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).