

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDING THE VARIANCE PROVISIONS OF THE CALIFORNIA REFORMULATED GASOLINE REGULATIONS

The Air Resources Board (ARB or Board) will conduct a public hearing to consider amending the section of the "California Reformulated Gasoline (CaRFG) Regulations" that allows variances to be granted from the CaRFG standards. The time and place of the hearing will be:

DATE: January 25, 1996

TIME: 9:30 a.m

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board, which will commence at the time shown above and which may continue at 8:30 a.m. on January 26, 1996. This item may not be considered until January 26, 1996. Please consult the agenda for the meeting, which will be available at least 10 days before January 25, 1996, to learn the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to section 2271, Title 13, California Code of Regulations (CCR).

Background

The CaRFG regulations were adopted by the Board following a public hearing in November 1991. These regulations establish specifications for eight gasoline properties:

sulfur content	oxygen content
aromatic hydrocarbon content	benzene content
Reid vapor pressure (RVP)	olefinic hydrocarbon content
50% distillation temperature	90% distillation temperature

All gasoline offered for sale in California by a refiner or importer (collectively: "producer") must comply by March 1, 1996. For each property but RVP and oxygen, a producer may choose to meet

either the "flat" limit specified in the regulations or the "averaging" limit. The flat limit applies to every batch of finished gasoline. The averaging limit is similar to a number that must not be exceeded by the rolling 180-day average value of a property. A producer can opt for alternative values of the specified limits (except RVP) if the alternatives have emission effects equivalent to (at least as effective as) the specified limits. The "Predictive Models" or an emission test program must be used to demonstrate the equivalency.

A "variance" is temporary and limited relief from a regulation. The CaRFG regulations (section 2271, Title 13, CCR) authorize the Board's Executive Officer to grant variances from the CaRFG limits, under certain conditions. A variance can be considered whenever (1) the applicant cannot meet a regulatory standard and (2) that inability is due to reasons beyond the applicant's reasonable control. For a variance to be granted, a public hearing must be held and satisfaction of these and other criteria must be demonstrated.

In 1995 the Legislature enacted Senate Bill 709 (Stats. 1995, Chapter 675), which added a new section 43013.2 to the Health and Safety Code. SB 709 requires the Board, among other things, to adopt regulations that establish "guidelines for the consideration of variances and the imposition of fees and conditions". SB 709 further requires these regulations to include:

- methods for estimating excess emissions due to a variance,
- factors to be considered in determining what is beyond the reasonable control of the applicant, and
- a schedule of fees to cover the reasonable and necessary costs to the ARB in processing the variance.

SB 709 also requires the regulations to be initially adopted by the Board as emergency regulations. Finally, SB 709 includes a number of other provisions relating to the granting of variances by the Board.

Description of Proposed Amendments

The proposed amendments are intended to implement the provisions of SB 709, and to provide other clarifications to the CaRFG variance procedures set forth in section 2271, Title 13, CCR. Following is a description of the more significant provisions of the proposed amendments. The proposed amendments would:

- Levy a fee on the variance applicant of \$0.15 per gallon for all gasoline sold under a variance. (Under SB 709, the collected fees must go to the "High Polluter Repair or Removal Account", and are available to help fund the vehicle scrappage strategy specified in the California State Implementation Plan for Ozone).

- Limit most variances to 120 days duration or less, with an allowable extension of up to 90 additional days after a new application and public hearing. These time limits would not apply for variances related to a "physical catastrophe" that occurs at a refinery.
- Set fees to accompany variance applications, so that the ARB can recover its costs of processing the variance.
- Require an applicant's variance compliance plan to include specific increments of progress, and to demonstrate the most expeditious practical route to compliance.
- Specify that information designated "confidential" by a variance applicant will be handled according to the ARB's existing confidentiality regulations, and that such information may be considered by the Executive Officer in reaching a decision to grant or deny a variance.
- Specify factors for the Executive Officer to consider in making the necessary findings for granting a variance. Among other things, these provisions would ensure that a variance will be granted only when the applicant has made reasonably diligent and timely efforts to achieve compliance, and has made a substantial showing that no alternative to a variance would eliminate or mitigate the need for a variance.
- Specify that the California Predictive Model and true vapor pressures will be used to estimate the excess emissions from granting the variance.

The proposed amendments also include various other provisions designed to clarify the variance procedures and make them more specific.

Comparable Federal Regulations

The 1990 amendments to the federal Clean Air Act (CAA) require the United States Environmental Protection Agency (U.S. EPA) to adopt regulations regarding reformulated gasoline. (CAA section 211(k).) These regulations have been adopted as 40 C.F.R. sections 80.40 to 80.82. The U.S. EPA regulations have applied in most of Southern California since December 1994.

The ARB has worked with the U.S. EPA and gasoline producers to avoid unnecessary duplication and conflicts between the federal and state enforcement requirements. In 40 C.F.R. section 80.81, the U.S. EPA has exempted California producers from many of the federal enforcement requirements from March 1, 1996 to January 1, 2000, as long as certain criteria are met. In the case of two parts of the federal program, California producers are exempt before March 1996 as well. While in some instances the federal test procedures differ from the ARB's, 40 C.F.R. section 80.81(h) allows producers of California gasoline to use the California sampling and test methodologies in lieu of the applicable federal methodology. With respect to variances, a variance granted from the California RFG requirements will not excuse the variance applicant from complying with applicable U.S. EPA requirements.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a staff report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed amendments may be obtained from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990. The Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below. The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the Staff Report for this regulatory action.

Further inquiries regarding this matter should be directed to John Courtis, Manager of the Fuels Section, Stationary Source Division, at (916) 322-6019.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other non-discretionary savings to local agencies.

The Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected resulting from the proposed action.

In preparing this regulatory proposal, the staff evaluated the potential economic impacts on California businesses enterprises and individuals. The Executive Officer has determined that adoption of the proposed amendments will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the Executive Officer has also determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

As explained in the Staff Report, it is possible that some individual businesses may be

adversely affected by this regulatory action, even though overall there should be no significant adverse economic impact on businesses as a whole. Therefore, the Executive Officer finds that the adoption of this regulatory action may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (I) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P. O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, January 24, 1996, or received by the Board Secretary at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND HEARING PROCEDURES

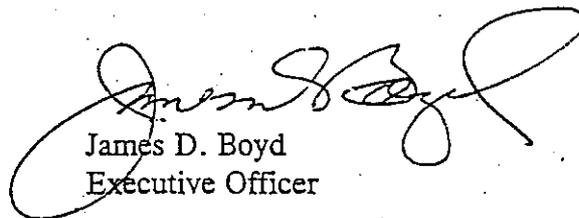
This regulatory action is proposed under the authority granted to the Board in Health and Safety Code sections 39600, 39601, 43013, 43013.2, 43018, and 43101; and Western Oil and Gas Association vs. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). This action is proposed to implement, interpret, and make specific Health and Safety Code sections 39000,

39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 40000, 43000, 43013.2, 43016, 43018, and 43101; and Western Oil and Gas Association vs. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990.

In addition to the standard regulatory adoption process described in the previous paragraph, the ARB also intends to initially adopt the proposed amendments as emergency regulations. Initial adoption as emergency regulations is required by SB 709 (see Health and Safety Code section 43013.2(c).) Following the public hearing, therefore, the ARB intends to adopt the proposed amendments (or a modified version of the proposed amendments) as emergency regulations pursuant to Government Code section 11346.1. Upon approval by the Office of Administrative Law (OAL), emergency regulations are legally effective for a 120-day period. Prior to the expiration of the 120-day period, the ARB staff will complete the requirements specified in Government Code sections 11346.2 to 11346.9, inclusive, to complete the regulation adoption process, to formally replace the emergency regulation.

CALIFORNIA AIR RESOURCES BOARD


James D. Boyd
Executive Officer

Date: November 28, 1995