Updated Informative Digest

ADOPTION OF AMENDMENTS TO THE VARIANCE PROVISIONS OF THE CALIFORNIA REFORMULATED GASOLINE REGULATIONS

Sections Affected: 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 <u>and</u> (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 Amendments

The amendments implement the provisions of SB 709, and 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 amendments. The amendments:

-- 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 do 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 procedures, except that for variance applications a few procedural changes are made to expedite the process of making confidentiality determinations. The amendments also specify that confidential 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 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 are to be used to estimate the excess emissions from granting the variance.

The 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.