

## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

### **NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA REFORMULATED GASOLINE REGULATIONS TO POSTPONE IMPOSITION OF THE CaRFG3 STANDARDS AND THE PROHIBITION OF MTBE AND OXYGENATES OTHER THAN ETHANOL IN CALIFORNIA GASOLINE FROM DECEMBER 31, 2002 TO DECEMBER 31, 2003**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the California Reformulated Gasoline (CaRFG) Regulations. The proposed amendments would postpone the prohibition of the use of methyl tertiary butyl ether (MTBE) and other oxygenates other than ethanol in California gasoline, postpone the imposition of the CaRFG3 standards, and make other changes.

Date	July 25, 2002
Time	9:00 a.m.
Place	California Environmental Protection Agency Air Resources Board Central Valley Auditorium 1001 "I" Street Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on July 25, 2002, and may continue at 8:30 a.m. on July 26, 2002. This item may not be considered until July 26, 2002. Please consult the agenda for the meeting, which will be available at least 10 days before July 25, 2002, and posted on the ARB's website, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board at (916) 322-5594, or Telecommunications Device for the Deaf (TDD) (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, by July 11, 2002, to ensure accommodation.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed amendments to sections 2261, 2262, 2262.4, 2262.5, 2262.6, 2262.9, and 2266.5, 2269, 2271, 2272, and 2296 of Title 13, California Code of Regulations (CCR).

## Background

The ARB administers the Phase 2 CaRFG (CaRFG2) regulations, which have applied to all California gasoline since March 1996. The regulations establish standards for the following eight gasoline properties: sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen contents, the 50 percent distillation temperature, (T50), the 90 percent distillation temperature, (T90), and summertime Reid vapor pressure (RVP).

The CaRFG regulations allow refiners to use a “Predictive Model” to specify alternative formulations. The Predictive Model is a set of mathematical equations that relate emissions rates of exhaust hydrocarbons, oxides of nitrogen (NOx), and potency weighted toxics for four toxic air contaminants (benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) to the values of the eight regulated gasoline properties. An alternative gasoline formulation is acceptable if emissions of hydrocarbons, NOx, and potency-weighted toxics resulting from this formulation are no greater than emissions from gasoline having the specifications set forth in the CaRFG2 standards. Currently, most of the gasoline sold in California complies with the CaRFG2 regulations through the use of the Predictive Model.

Since 1995, most of the state’s gasoline has contained about 11 percent MTBE, which, along with ethanol, is an oxygenate that is used to introduce oxygen into gasoline and to improve octane. The widespread use of MTBE has primarily resulted from two programs mandated by the federal Clean Air Act (CAA) – the federal reformulated gasoline (RFG) program administered directly by the U.S. Environmental Protection Agency (U.S. EPA), and the wintertime oxygenates program which is ultimately administered by ARB. In areas not subject to the federal RFG or the CO wintertime oxygen requirements, the Predictive Model may be used to reduce or eliminate oxygen in California gasoline.

One of the requirements for federal RFG is that it contain at least 2.0 weight % oxygen year-round in on-road vehicles in severe and extreme non-attainment areas for ozone. In 2002, the federal RFG requirements apply in San Diego County, the greater Los Angeles area (Los Angeles, Orange and Ventura Counties, and parts of Riverside and San Bernardino Counties), the greater Sacramento area (Sacramento County and parts of Yolo, Solano, Sutter, Placer, and El Dorado Counties), and the San Joaquin Valley Air Basin. Together, these areas account for about 80 percent of the gasoline sold in California. California has asked U.S. EPA to exercise its authority to waive the minimum oxygen requirement, but in June 2001 the agency denied the state’s request. A lawsuit challenging the denial is currently pending in the U.S. Court of Appeals for the Ninth Circuit.

California’s wintertime oxygenates requirements have resulted from requirements in the federal CAA that states mandate the use of oxygenated gasoline during the winter in most areas that are in nonattainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). The use of oxygen in gasoline reduces emissions of CO from the

existing vehicle fleet, and ambient CO concentrations are the highest in the winter. As ambient CO concentrations have declined in California as a result of fleet turnover, the ARB has been able to eliminate the winter oxygen requirement in areas where it is no longer necessary for attainment and maintenance of the NAAQS for CO. At present, the ARB requires a wintertime minimum oxygen content of 1.8 wt.% only in Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial counties.

Several years ago, concerns began to increase about adverse environmental impacts from the use of MTBE in the state's gasoline. The main concern with the continued use of MTBE is the potential for contamination of California's groundwater, surface water, and drinking water systems. MTBE is very soluble in water and will transfer to groundwater faster, and will travel farther and more easily than other gasoline constituents when gasoline leaks from underground storage tanks or pipelines.

The California MTBE Public Health and Environmental Protection Act of 1997 directed the University of California (U.C.) to conduct research on the effects of MTBE. The legislation also required the Governor to take appropriate action based on the U.C. findings and information from public hearings conducted on the U.C. report. On March 25, 1999, Governor Davis signed Executive Order D-5-99, in which he found that, on balance, there is a significant risk to the environment from using MTBE in gasoline in California. The Executive Order directed the California Energy Commission (CEC) to issue a timetable for the removal of MTBE from gasoline at the earliest possible date, but not later than December 31, 2002. It also directed the ARB to adopt CaRFG3 regulations that will provide additional flexibility in lowering or removing the oxygen content requirement while maintaining current emissions and air quality benefits and ensuring compliance with the State Implementation Plan (SIP).

At a December 9, 1999, hearing, the Board approved the CaRFG3 regulations consistent with the Governor's directive and the subsequent CEC recommendation that December 31, 2002 was the earliest feasible date for a ban on MTBE. The CaRFG3 regulations prohibited California gasoline produced with MTBE starting December 31, 2002, established CaRFG3 standards applicable the same date, established a CaRFG3 Predictive Model, and made various other changes. The CaRFG3 standards modify the specifications for 5 of the 8 gasoline properties regulated by CaRFG2, with the objective of providing additional flexibility in lowering or removing the oxygen content requirement while maintaining current emissions and air quality benefits.

The CaRFG3 regulations ban gasoline produced with the use of MTBE, for all California gasoline supplied from production and import facilities starting December 31, 2002. The prohibition is phased in for most deliveries of gasoline to retail outlets occurring after February 13, 2003, and to gasoline throughout the distribution system starting March 31, 2003. The regulations also established a three-stage schedule for reducing residual MTBE levels. The regulations require that the concentration of MTBE in

distributed CaRFG3 not exceed 0.3 percent, by volume, beginning December 31, 2002. This level is reduced to 0.15 percent by volume starting December 31, 2003 and 0.05 percent by volume starting December 31, 2004.

The CaRFG3 regulations also place a conditional ban, starting December 31, 2002, on the use of any oxygenate other than ethanol, as a replacement for MTBE in California gasoline. Such oxygenates may not be used to produce California gasoline unless a multimedia evaluation of the use of the oxygenate in California gasoline has been conducted, and the California Environmental Policy Council (CEPC) has determined that its use will not have a significant adverse impact on the public health or the environment.

### **The Proposed Amendments**

Current information indicates that the timetable adopted in 2000 for removal of MTBE would not satisfy the directive of Executive Order D-5-99 that the timetable ensure adequate supply and availability of gasoline for California consumers. The results of a study commissioned by the CEC in 2001 show that phasing out MTBE from gasoline by the end of 2002 could result in a gasoline supply shortfall, which could in turn result in price levels that are 50 to 100 percent higher than normal. Further, there still exists uncertainty regarding the supply and availability of ethanol necessary to meet California's requirements.

On March 14, 2002, Governor Davis issued Executive Order D-52-02, which directed the ARB to take the necessary actions, by July 31, 2002, to postpone for one year the prohibitions of the use of MTBE and other specified oxygenates in California gasoline, and the related requirements for California Phase 3 reformulated gasoline. The Governor found that it is not possible to eliminate use of MTBE on January 1, 2003 without significantly risking disruption of the availability of gasoline in California. This would substantially increase prices, harm California's economy and impose an unjustified burden upon our motorists.

The ARB staff is proposing amendments to the CaRFG3 regulations consistent with the Governor's Executive Order D-52-02, along with a few other amendments designed to ensure that the regulations work effectively.

**Prohibitions regarding MTBE and other oxygenates other than ethanol.** The proposed amendments would postpone the prohibition of the use of MTBE and other oxygenates other than ethanol in California gasoline supplied by refiners and importers from December 31, 2002 to December 31, 2003, with the downstream phase-in requirements also postponed by one year. Similarly, the schedule for reducing residual levels of MTBE in CaRFG3 would be postponed one year. Starting December 31, 2003, California gasoline could not contain more than 0.30 volume percent MTBE. This residual

limit of 0.15 volume percent MTBE would apply starting December 31, 2004, with the 0.05 volume percent residual limit starting December 31, 2005.

**Delaying imposition of the CaRFG3 standards.** The amendments would also postpone the imposition of the CaRFG3 standards for gasoline properties for one year, from December 31, 2002 to December 31, 2003. With the proposed delay in the prohibition of the MTBE prohibition, it is appropriate to allow refiners to meet the CaRFG2 standards for an additional year for producing gasoline oxygenated with MTBE. However, individual refiners importers will retain the ability to elect to have batches of gasoline subject to the CaRFG3 standards – including the prohibition of MTBE – prior to December 31, 2003.

**Other amendments.** Staff is proposing additional amendments to ensure that the regulations work effectively, provide additional flexibility where feasible, and correct errors. One set of amendments simplify the testing provisions for determining whether gasoline blendstock designed for blending with ethanol will comply with the CaRFG standards after it is oxygenated. Another amendment would correct errors in the assignment of RVP regulatory control periods for the North Coast Air Basin and the North Central Coast Air Basin.

### **COMPARABLE FEDERAL REGULATIONS**

As noted above, the U.S. EPA administers the federal RFG regulations, which currently apply to about 70 percent of California's gasoline and are contained in 40 CFR §§ 80.40 and following. The federal RFG regulations do not prohibit the use of MTBE.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the environmental and economic impacts of the proposal. The report is entitled "Proposed Amendments to the California Reformulated Gasoline Regulations Postponing Imposition of the CaRFG3 Standards and the Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline From December 31, 2002 to December 31, 2003.

Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Environmental Resources Center, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (July 25, 2002).

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

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Steven Brisby, Manager, Fuels Section, (916) 322-6019, or Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Marie Kavan, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, will be available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/mtbepost/mtbepost.htm>.

### **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 by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Delaying the phase-out of MTBE may impact a number of parties, including business and individual purchasers of gasoline, MTBE producers, ethanol producers, and refiners and others who have made investments to comply with the CaRFG3 standards by December 31, 2002.

The decision to delay the phase-out of MTBE is primarily predicated on the concern that the use of MTBE could not be eliminated by December 31, 2002 without significantly risking the disruption of the availability of gasoline in California. Such disruptions would substantially increase gasoline prices, harm California's economy, and impose an unjustified burden on individual and business motorists. Without the additional year directed by Governor Davis, it is likely that various segments of the transportation industry

would not be ready to make the transition away from MTBE, precipitating gasoline supply problems and their associated price spikes. These increases would be expected to be larger than those experienced in the past. Previous supply problems have resulted in tightness of supply but not shortages. With an actual shortage of supply, prices could be expected to increase by 50 percent or more. The benefit to individual and business motorists of avoided gasoline price spikes could be \$30 million per day for the duration of the supply problem.

If a failure to postpone the MTBE prohibition were to result in a shortfall in gasoline supplies, it is likely that independent gasoline marketers would be disproportionately impacted. Independent marketers typically purchase gasoline on the unbranded market. Unbranded wholesale fuel is the portion of refinery production that would be impacted first if there is a shortfall in the market. A one-year postponement of the phase-out of MTBE and the related CaRFG3 standards would benefit independent marketers by allowing additional time to complete the infrastructure improvements and contingency provisions needed to ensure adequate supply and availability of gasoline after MTBE is prohibited.

California currently uses approximately 90,000 barrels per day of MTBE. Some California refiners operate small MTBE processing units that supply between 10,000 and 15,000 barrels per day of MTBE. The remaining demand is met from imports of MTBE from foreign and other domestic sources. A one-year postponement of the ban on MTBE would allow MTBE producers to continue to supply MTBE in California for up to an additional year. The amount will depend on decisions of refiners whether to continue to use MTBE to produce CaRFG or to elect to use ethanol early.

California refiners, product pipeline companies and terminal operators have completed a portion of the work necessary to accommodate the phase-out of MTBE. Delaying the phase-out of MTBE would mean that these businesses invested capital earlier than would be required, resulting in a potential delay in recovering their capital investment. This cost only applies to those companies who have completed the conversion and do not elect to phase out MTBE early. Those businesses that have not completed the conversion would experience an economic benefit from the proposed delay in the prohibition of MTBE.

Delaying the phase-out of MTBE by one year means that ethanol demand in California during 2003 may be significantly less than originally anticipated, resulting in excess capacity for ethanol producers who constructed or expanded plants in anticipation of the ban. This excess capacity may mean a temporary drop in profits during 2003 for ethanol producers, but this trend should be reversed once MTBE is phased out of use in the entire State by 2004. The size of this impact depends on whether other markets for the use of ethanol develop. Few ethanol producers are situated in California.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting

businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has 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 the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report (ISOR).

The Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the proposed regulatory action will affect small businesses. For the reasons discussed above, any impacts on the cost of gasoline to small businesses, and on independent oil marketers that are small businesses, are likely to be beneficial.

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

With regard to costs or savings necessarily incurred in reasonable compliance with the proposed amendments to the CaRFG regulations, 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 nondiscretionary savings to local agencies.

Like businesses and individuals, state and local agencies purchase gasoline for their motor vehicle fleets. As discussed above, the proposed amendments are expected to reduce the risk of gasoline supply shortages and price spikes that could occur if the MTBE prohibition is implemented on December 31, 2002 as currently scheduled. To the extent that changes in the price of gasoline resulting from the proposed amendments are considered costs or savings to state or local agencies, those agencies would likely experience a cost savings from the amendments. Given the many variables that will affect the price of gasoline in 2003, the amount of cost savings is unquantifiable.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency or that has otherwise been identified and brought to the attention of 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 at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board,

written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, July 24, 2002**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 "I" Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic mail is to be sent to: to: [mtbepost@listserv.arb.ca.gov](mailto:mtbepost@listserv.arb.ca.gov) and received at the ARB **no later than 12:00 noon, July 24, 2002**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, July 24, 2002**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB 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 REFERENCES**

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43013.1, 43018, 43101, and 43830, 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). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43021, 43101, 43830 and 43830.8, 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).

## **HEARING PROCEDURES**

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 nonsubstantial 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 ARB's Public Information Office, Air Resources Board, 1001 "I" Street, Environmental Services Center, 1<sup>st</sup> Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

#### CALIFORNIA AIR RESOURCES BOARD

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Michael P. Kenny  
Executive Officer

Date: May 28, 2002

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at [www.arb.ca.gov](http://www.arb.ca.gov).*