

FINAL REGULATION ORDER

2007 AMENDMENTS TO THE CALIFORNIA PHASE 3 REFORMULATED GASOLINE REGULATIONS

Note: The amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The symbol "****" means that intervening text not being amended is not shown. Subsection headings are shown in italics rather than bold italics. **AND ARE TO BE ITALICIZED IN BARCLAYS CALIFORNIA CODE OF REGULATIONS.**

California Code of Regulations, Title 13, Division 3 Chapter 5. Standards for Motor Vehicle Fuels Article 1. Standards for Gasoline

Subarticle 2. Standards for Gasoline Sold Beginning March 1, 1996

Section 2260. Definitions.

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

(0.5) "Air basin" has the same meaning as defined in section 39012 of the Health and Safety Code.

(0.7) "Alternative emission reduction plan" means with respect to a specific gasoline property, the compliance option set forth in section 2265.5.

* * * * *

(6.9) "Common carrier pipeline" means a pipeline operating under Public Utilities Commission tariffs which offers refined petroleum product transportation services to any qualified shipper.

* * * * *

(7.5) "Designated emissions offsetting limit" means an alternative gasoline specification limit, expressed in the nearest hundredth pound per square inch for RVP, nearest tenth percent by weight for oxygen, nearest part per million by weight for sulfur content, nearest hundredth percent by volume for benzene content, nearest tenth percent by volume for aromatic hydrocarbon content, nearest tenth percent for olefin content, and nearest degree Fahrenheit for T90 and T50, which is assigned by a producer or importer that produces gasoline to a final blend of California gasoline pursuant to section 2265.1.

* * * * *

(8.5) “Emissions associated with permeation” means the incremental increase in emissions because of permeation which is calculated as the difference between the emissions from the producer’s or importer’s final blend formulation and the flat limits without ethanol. The Phase 3 reformulated gasoline Predictive Model, as described in the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,” as corrected November 18, 2004 and last amended **April 25, 2008**, which is incorporated herein by reference, shall be used to calculate emissions associated with permeation.

Emissions are calculated as follows:

Ozone Forming Potential (tons per day) = 18.4 (tons per day) * (PCE(OFP)/2.39) * 2.80 * percent share of California gasoline sales covered by the AERP, and

NOx (tons per day) = 427.8 (tons per day) * PCE(NOx) * percent share of California gasoline sales covered by the AERP, where

PCE(OFP) and PCE(NOx) = Percent change in emissions, as predicted by the CaRFG3 Predictive Model for Ozone Forming Potential (OFP) and Oxides of Nitrogen (NOx), respectively, as described in the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,” as corrected November 18, 2004 and last amended **April 25, 2008**, which is incorporated herein by reference.

* * * * *

(10.5) “Final blend credit” means the credit from a final blend of gasoline that may be used to offset a producer’s or importer’s final blend deficit. The amount of final blend credit shall be calculated as follows:

Final Blend Credit = (PCE – PCE_t) * V_c, where

PCE = Percent change in emissions values as reported by the producer or importer pursuant to section 2265(a)(2)(C).

PCE_t = Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for the PM alternative specifications that the producer or importer was intending to produce and which would have met the criteria for approval in the applicable Predictive Model Procedures but for the elevated sulfur content.

V_c = volume, in barrels, of the final blend that has a final blend credit.

(10.7) "Final blend deficit" means the deficit from a final blend of gasoline that a producer or importer must offset. The amount of final blend deficit shall be calculated as follows:

Final Blend Deficit = (PCE – 0.04) * V_d, where

PCE = Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, which are greater than 0.04%. If the percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, are all less than 0.04%, there is no final blend deficit.

V_d = volume, in barrels, of the final blend that has a final blend deficit.

* * * * *

(19.7) "Percent change in emissions values, as they pertain to the PM emissions offsetting compliance option" means values calculated, each for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics, from the Phase 3 Predictive Model using the designated emissions offsetting limits for the candidate fuel and the flat limits in section 2262 for the reference fuel, as described in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended **April 25, 2008**, which is incorporated herein by reference.

* * * * *

(19.8) "Pipeline tender" means a specific volume of product having a unique name or designation which is offered to a pipeline for transportation.

* * * * *

(23.5) "PM emissions offsetting compliance option" means, with respect to a specific gasoline property, the compliance option set forth in section 2265.1(a).

(23.7) "PM emissions offsetting formulation" means a final blend of gasoline that is subject to a set of designated emissions offsetting limits assigned pursuant to section 2265.1(a).

* * * * *

(37) "Third party" means any person who applies for, or has a, third party AERP or a third party EERP.

(38) "Third party AERP" means an AERP whose application was submitted by a third party and approved by the Executive Officer.

(39) "Third party EERP" means an EERP whose application was submitted by a third party and approved by the Executive Officer.

Section 2261. Applicability of Standards; Additional Standards.

* * * * *

(b) *Applicability of the CaRFG Phase 3 Standards.*

(1) (A) Unless otherwise specifically provided, the CaRFG Phase 3 cap limit standards set forth in section 2262, and the CaRFG Phase 3 cap limit compliance requirements in 2262.3(a), 2262.4(a), and 2262.5(a) and (b), shall apply starting December 31, 2003. The CaRFG Phase 3 benzene and sulfur content cap limit standards in section 2262, and the CaRFG Phase 3 benzene and sulfur content cap limit compliance requirements in 2262.3(a), shall apply:

1. starting December 31, 2003 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), ~~and~~ December 31, 2005 (for the 30 parts per million sulfur content cap limit), and December 31, 2011 (for the 20 parts per million sulfur content cap limit) to all sales, supplies or offers of California gasoline from the production facility or import facility at which it was produced or imported.
2. starting February 14, 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), ~~and~~ February 14, 2006 (for the 30 parts per million sulfur content cap limit), and February 14, 2012 (for the 20 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline except for transactions directly involving:
 - a. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
 - b. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility, and
3. starting March 31, 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit), ~~and~~ March 31, 2006 (for the 30 parts per million sulfur content cap limit), and March 31, 2012 (for the 20 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline, including transactions directly involving

the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

* * * * *

- (2) The CaRFG Phase 3 benzene and sulfur content cap limit standards in section 2262 shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to February 14, 2004 (for the benzene content limit and the 60 parts per million sulfur content limit), ~~or~~ February 14, 2006 (for the 30 parts per million sulfur content limit), or February 14, 2012 (for the 20 parts per million sulfur content limit) or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to March 31, 2004 (for the benzene content limit and the 60 parts per million sulfur content limit), ~~or~~ March 31, 2006 (for the 30 parts per million sulfur content limit), or March 31, 2012 (for the 20 parts per million sulfur content limit).

* * * * *

(3) ***Early Compliance with the CaRFG Phase 3 Standards Before December 31, 2003.***

- (A) Any producer or importer wishing to supply from its production or import facility, before December 31, 2003, any final blends of gasoline subject to the CaRFG Phase 3 standards instead of the CaRFG Phase 2 standards may notify the executive officer of its wish to do so. The notification shall include all of the following:
1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with the CaRFG Phase 3 standards if permitted to do so;
 2. A reasonably detailed demonstration of the producer's or importer's ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline meeting the CaRFG Phase 3 standards on or after the date specified;
- (B) 1. Within 15 days of receipt of a request under section 2261(b)(3)(A), the executive officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.
2. Within 15 days of notifying the producer or importer that the request is complete, the executive officer shall either grant or deny the request. If

the request is granted the executive officer shall specify the date on which producers and importers may start to supply from their production or import facilities final blends that comply with the CaRFG Phase 3 standards. The executive officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline complying with the CaRFG Phase 3 standards reasonably soon after the date specified. If the executive officer denies the request, he or she shall provide the producer or importer with a written statement explaining the reason for denial.

3. Upon granting a request made under section 2261(b)(3)(A), the executive officer shall notify interested parties of the date on which (i) producers and importers will be permitted to start supplying final blends of gasoline complying with the CaRFG Phase 3 standards, and (ii) the CaRFG Phase 2 cap limits for RVP and aromatics will become 7.20 psi and 35.0 volume percent respectively for gasoline downstream of the production or import facility. This notification shall be made by posting the pertinent information on the state board's Internet site, providing electronic mail notification to all persons subscribing to the state board's Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
4. With respect to all final blends supplied from a production or import facility from the day specified by the executive officer in granting a request made under section 2261(b)(3)(A) through December 30, 2003, any producer or importer may comply with the CaRFG Phase 3 standards that apply starting December 31, 2003 as an alternative to the CaRFG Phase 2 standards. Whenever a producer or importer is supplying a final blend subject to the CaRFG Phase 3 standards pursuant to this section 2261(b)(3)(B)4., any notification required by sections 2264.2 or 2265(a) shall indicate that the final blend is subject to the CaRFG Phase 3 standards. When it is sold or supplied from the production or import facility, no such final blend may contain MTBE in concentrations greater than 0.60 volume percent, or contain a total of more than 0.10 weight percent oxygen collectively from all of the oxygenates identified in section 2262.6(c)(4) that have not received a determination by the California Environmental Council as described in section 2262.6(c)(1).

(4) Early compliance with the CaRFG Phase 3 Amendments (Emissions Associated with Permeation) Before December 31, 2009.

- (A) Any producer or importer that produces gasoline electing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,” as corrected November 18, 2004 and last amended **April 25, 2008**, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in section 2261(b)(4)(E).
- (B) Any producer or importer that produces gasoline electing to supply from its production or import facility, before December 31, 2009, any final blends of CARBOB subject to the “Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB),” as adopted April 25, 2001, last amended **April 25, 2008**, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in section 2261(b)(4)(E).
- (C) Any producer or importer electing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,” as corrected November 18, 2004 and last amended **April 25, 2008**, or to the “Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB),” as adopted April 25, 2001, last amended **April 25, 2008**, may elect to use either one of the two compliance options (exhaust + evaporative emissions model elements or the exhaust emissions model element only) as defined in the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model” to certify alternative blends of gasoline. Beginning December 31, 2009, only the first compliance option (exhaust + evaporative emissions model elements) shall be used during the RVP regulatory control periods in section 2262.4(b)(2) and only the second compliance option (exhaust emissions model element only) shall be used outside of the RVP regulatory control period.
- (D) Any producer or importer electing to use an alternative emission reduction plan or third party electing to use a third party alternative emissions reduction plan, before December 31, 2009, shall notify the Executive Officer of its wish to do so. The notification shall include all of the information listed in section 2265.5.
- (E) Notification.
1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,” as corrected November 18, 2004 and last amended **April 25, 2008** or the

“Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB),” as adopted April 25, 2001, last amended **April 25, 2008**, referred to as the amended Procedures Guides, if permitted to do so;

2. A reasonably detailed demonstration of the producer’s or importer’s ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline or CARBOB meeting the amended Procedures Guides on or after the date specified;
 3. All of the information required pursuant to section 2265.5(b)(2).
- (F)1. Within 15 days of receipt of a request under section 2261(b)(4)(A) or (B), the Executive Officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.
2. Within 15 days of notifying the producer or importer that the request is complete, the Executive Officer shall either grant or deny the request. If the request is granted the Executive Officer shall specify the date on which producers and importers that produce gasoline may start to supply from their production or import facilities final blends that comply with the amended Procedures Guides. The Executive Officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline or CARBOB complying with the amended Procedures Guides reasonably soon after the date specified. If the Executive Officer denies the request, he or she shall provide the producer or importer with a written statement explaining the reason for denial.
 3. Upon granting a request made under section 2261(b)(4)(A) or (B), the Executive Officer shall notify interested parties of the date on which producers and importers that produce gasoline will be permitted to start supplying final blends of gasoline complying with the amended Procedures Guides. This notification shall be made by posting the pertinent information on ARB’s Internet site, providing electronic mail notification to all persons subscribing to ARB’s Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
 4. With respect to all final blends supplied from a production or import facility from the day specified by the Executive Officer in granting a request made under section 2261(b)(4)(A) or (B) through December 30, 2009, any producer or importer that produces gasoline may comply with the amended Procedures Guides that apply starting December 31, 2009. Whenever a producer or importer that produces gasoline is supplying a

final blend subject to the amended Procedures Guides pursuant to this section 2261(b)(4)(F)4., any notification required by sections 2264.2 or 2265(a) shall indicate that the final blend is subject to the amended Procedures Guides. When it is sold or supplied from the production or import facility, no such final blend may result in emissions associated with permeation unless those emissions are offset through the Predictive Model or a valid AERP or third party AERP.

(G) AERPs and third party AERPs approved under this section are subject to sections 2265.5(d) – (i).

(5) Early compliance with the CaRFG Phase 3 Amendments (PM Emissions Offsetting) Before December 31, 2009.

(A) Any producer or importer that produces gasoline wishing to supply from its production or import facility, before December 31, 2009, any final blends of gasoline subject to section 2264.2(d), shall notify the Executive Officer of its wish to do so. The notification shall include all of the following:

1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with section 2264.2(d), if permitted to do so;
2. A reasonably detailed demonstration of the producer's or importer's ability and plans to begin supplying from its production or import facility substantial quantities of one or more grades of gasoline meeting section 2264.2(d) on or after the date specified;
3. All of the information required pursuant to section 2265.1(a)(2)(A).

(B)1. Within 15 days of receipt of a request under section 2261(b)(5)(A), the Executive Officer shall notify the producer or importer making the request either that the request is complete, or specifying what additional information is necessary to make the request complete.

2. Within 15 days of notifying the producer or importer that the request is complete, the Executive Officer shall either grant or deny the request. If the request is granted the Executive Officer shall specify the date on which producers and importers that produce gasoline may start to supply from their production or import facilities final blends that comply with section 2264.2(d). The Executive Officer shall grant the request if he or she determines it is reasonably likely that the producer or importer making the request will start supplying substantial quantities of one or more grades of gasoline complying with section 2264.2(d) reasonably soon after the date specified. If the Executive Officer denies the request, he or she

shall provide the producer or importer with a written statement explaining the reason for denial.

3. Upon granting a request made under section 2261(b)(5)(A), the Executive Officer shall notify interested parties of the date on which producers and importers that produce gasoline will be permitted to start supplying final blends of gasoline complying with section 2264.2(d). This notification shall be made by posting the pertinent information on ARB's Internet site, providing electronic mail notification to all persons subscribing to ARB's Fuels-General Internet electronic mail list, and mailing notice to all persons registered as motor vehicle fuel distributors under Health and Safety Code section 43026.
4. With respect to all final blends supplied from a production or import facility from the day specified by the Executive Officer in granting a request made under section 2261(b)(5)(A) through December 30, 2009, any producer or importer that produces gasoline may comply with section 2264.2(d) that applies starting December 31, 2009. Whenever a producer or importer that produces gasoline is supplying a final blend subject to section 2264.2(d) pursuant to this section 2261(b)(5)(B)4., any notification required by sections 2264.2 or 2265(a) shall indicate that the final blend is subject to the PM emissions offsetting provisions. When it is sold or supplied from the production or import facility, no such final blend may result in sulfur levels above the applicable standards unless those sulfur emissions are fully offset as provided in section 2265.1.

(E) Any producer or importer that produces gasoline that supplies from its production or import facility, before December 31, 2009, any final blends of gasoline subject to section 2264.2(d), shall comply with section 2265.1.

* * * * *

(6) Ethanol Emission Reduction Plan (EERP)

(A) Applicability. This section shall apply to a producer or importer that produces gasoline that elects to use an EERP or to a third party that elects to use a third party EERP when all of the following conditions are satisfied:

1. In the case of a third party EERP, the third party has a contract or agreement to offset, in whole or in part, the elevated emissions associated with increased ethanol blending from the producer's or importer's gasoline.
2. With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing or importing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to section 2265(a),

3. But for the elevated emissions associated with increased ethanol blending, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,
4. All measures to correct the emissions associated with increased ethanol blending would result in an economic hardship to the producer or importer and the benefit in allowing the producer or importer to use an EERP is not outweighed by the public interest in enforcing the applicable Predictive Model Procedures,
5. The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to section 2264(c), and
6. The amount of ethanol blended into the final blend may not exceed 10.0 volume percent denatured ethanol.
7. All EERPs and third party EERPs sunset on December 30, 2009.

(B) Requirements.

1. Where the producer or importer that produces gasoline has reported its final blend of gasoline as a flat limit formulation pursuant to section 2264.2(b), averaging limit formulation pursuant to section 2264.2(a), PM alternative gasoline formulation pursuant to section 2265(a), or test-certified alternative gasoline formulation pursuant to section 2266(c), compliance with a valid EERP or third party EERP shall constitute compliance with the requirements of section 2262.3(b), 2262.3(c), 2265, or 2266, respectively.
2. An EERP or third party EERP application demonstrating compliance with this subsection shall contain at a minimum all of the following information:
 - a. The company name, address, phone number, and contact information,
 - b. The producer's or importer's name, batch name, number or other identification, grade of California gasoline, and other information that uniquely identify the California gasoline subject to the EERP or third party EERP,
 - c. An explanation describing why the producer or importer cannot eliminate the emissions associated with increased ethanol blending by reformulation or reprocessing its gasoline,
 - d. The total emissions of oxides of nitrogen (NOx), total ozone forming potential, and potency-weighted toxics that would be associated with the

use of California gasoline were the producer or importer to eliminate the emissions associated with increased ethanol blending from its gasoline,

- e. Documentation, calculations, emissions test data, or other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the producer's or importer's gasoline,
- f. The emission reduction strategy(ies) for the EERP or third party EERP and the date(s) that the offsets will accrue and expire for each strategy,
- g. The producer or importer's market share for the fuel produced under the EERP or third party EERP,
- h. Demonstration that the emission reduction strategy(ies) in the EERP or third party EERP will result in equivalent or better emission benefits for NOx, total ozone forming potential, and potency-weighted toxics than would be achieved through elimination of emissions associated with increased ethanol blending from the gasoline for the same affected region and for the period the EERP or third party EERP will be in effect, during and outside the RVP regulatory control periods in section 2262.4(b)(2),
- i. Demonstration that the emission reductions are achieved in the general region where the fuel is sold,
- j. The proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the EERP or third party EERP and achievement of each increment of progress toward compliance,
- k. Adequate enforcement provisions,
- l. The projected volume of each final blend of California gasoline subject to the EERP or third party EERP during the period the EERP or third party EERP will be in effect,
- m. The period that the EERP or third party EERP will be in effect,
- n. A compliance plan that includes increments of progress (specific events and dates) that describe periodic, measurable steps toward compliance during the proposed period of the EERP or third party EERP,
- o. The date by which the producer or importer plans to discontinue using the EERP or third party EERP,
- p. A statement, signed by a legal representative for the producer or importer that all information submitted with the EERP or third party EERP

application is true and correct, and

- q. The producer's or importer's agreement to be bound by the terms of the EERP or third party EERP.
- r. In the case of a third party EERP, all of the above including all of the following:

 - i. The third party's name, address, phone number, and contact information.
 - ii. Documentation of the contract or agreement between the third party and the producer or importer.
 - iii. Documentation of the amount of NO_x, total ozone forming potential, and potency-weighted toxics (reported as tons/day and percentage of the total tons/day) from the producer's or importer's gasoline that will be offset by the third party EERP.
 - iv. A list of all EERPs and third party EERPs that currently apply to the producer or importer.
 - v. A statement, signed by a legal representative for the third party that all information submitted with the third party EERP application is true and correct, and
 - vi. The third party's agreement to be bound by the terms of the third party EERP.
3. Emission reduction calculations demonstrating equivalence between the EERP or third party EERP and elimination of the emissions associated with increased ethanol blending from the gasoline shall only include NO_x, total ozone forming potential, and potency-weighted toxics emissions from California gasoline sold or supplied in California.
4. A producer or importer wishing to participate in an EERP may include one or more production facilities or import facilities, but the producer or importer shall only include such facilities that the producer or importer owns or operates under their direct control. A third party wishing to participate in a third party EERP may include one or more production facilities or import facilities, but the third party shall only include such facilities with which the third party has a contract or agreement to offset emissions associated with permeation.
5. The emission reduction associated with the EERP or third party EERP must be from combustion related sources or gasoline related sources.

6. EERPs and third party EERPs may include, but are not limited to:

a. Vehicle scrappage,

b. Offsetting emissions with lower emitting diesel fuel batches,

c. Incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.

7. Emission reductions included in an EERP or third party EERP shall not include reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from equipment not located within the region associated with the EERP or third party EERP, or that are claimed under section 2265.1, or that are claimed under another program, such as the Voluntary Accelerated Vehicle Retirement or Carl Moyer program, or the result of standard business practices that the producer or importer would have done without the EERP or third party EERP.

8. The producer or importer subject to an approved EERP or third party EERP shall maintain all records required to verify compliance with the provisions of the EERP or third party EERP in a manner and form specified by the Executive Officer in the approved EERP or third party EERP. Required records may include, but are not limited to, volume of California gasoline sold, offered, or supplied to which the EERP or third party EERP applies, and/or emissions test results. Such records shall be retained for a period of not less than five (5) years and shall be submitted to the Executive Officer within 20 days in the manner specified in the approved EERP or third party EERP and upon request by the Executive Officer.

9. Prior to selling, offering, or supplying a batch of California gasoline with increased ethanol blending, the producer or importer shall first have established sufficient offsets for the applicable emissions associated with permeation. With the exception of offsets from vehicle scrappage and incentive grants for cleaner-than-required engines, equipment, and other sources of pollution, offsets shall expire at midnight on the day they accrued.

c. Application Process.

1. Applications for an EERP or third party EERP shall be submitted in writing to the Executive Officer for evaluation.

2. The application shall be accompanied by a fee of \$6,700.00 to cover the costs of processing the EERP or third party EERP application. If the producer or importer withdraws the application before the 30-day comment period, \$4,100.00 of the fee shall be refunded.

3. The Executive Officer shall make available for public review all documents pertaining to an EERP or third party EERP application.
4. The Executive Officer will send a notice to subscribers of the Fuels listserv that a person has requested the Executive Officer consider a request for an EERP or third party EERP. The Executive Officer shall also provide a copy of all such documents to each person who has requested copies of the documents. Collectively, those persons on the Fuels listserv and those persons who have requested copies of the documents shall be treated as interested parties.
5. After an EERP or third party EERP application has been received and deemed complete, the Executive Officer shall provide a 30-day public comment period to receive comments on any element of the EERP or third party EERP application. Any public comment addressing whether the Executive Officer should approve or disapprove the EERP or third party EERP application shall be based on the contents and merits of the application. No comment received by the Executive Officer after the 30-day period will be considered. The Executive Officer shall send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, the following:

- (A) The identity of the applicant producer(s) or importer(s);
- (B) The start and end dates for the 30-day comment period;
- (C) The address of the EERP internet site where the application is posted;
- and.
- (D) Where and how to submit comments.

The Executive Officer shall post on the EERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, notification of public comments received during the 30-day comment period.

6. The Executive Officer may hold a public hearing to accept public comments or decide the merits of the application.
7. *Final Action.*
After the public comment period ends, the Executive Officer may take final action to either approve or deny the EERP or third party EERP application. The Executive Officer shall notify the producer or importer, post on the ARB internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the final action.
8. *Notification to the Executive Officer of Changes to information in the EERP or third party EERP application.* The producer or importer shall notify the

Executive Officer in writing within 30 days upon learning of any information that would alter any information provided in the EERP or third party EERP application.

d. Revocation or Modification of an Approved EERP or third party EERP.

1. With 30-days written notice to the producer or importer, the Executive Officer may revoke or modify, as needed, an approved EERP in any of the following situations:
 - a. There has been more than one violation of the approved EERP or third party EERP,
 - b. The Executive Officer has reason to believe that an approved EERP or third party EERP has been granted that no longer meets the criteria or requirements for an EERP or third party EERP,
 - c. The producer or importer demonstrates that it can no longer comply with the requirements of the approved EERP or third party EERP in its current form,
 - d. The producer or importer demonstrates to the satisfaction of the Executive Officer that the continuation of the EERP or third party EERP will result in economic hardship to the producer or importer, the producer or importer submits a substitute plan in accordance with section 2265.5(c) to offset any emissions not otherwise offset by the EERP or third party EERP, and the Executive Officer approves the substitute plan, or
 - e. The producer or importer's facility modifications and/or other means of eliminating emissions associated with increased ethanol blending from its gasoline have been completed.
2. The Executive Officer shall notify the producer or importer, post on the EERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of a revocation or modification of an approved EERP or third party EERP.
3. Any violations incurred pursuant to subsection (e) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an EERP or third party EERP.

e. Additional prohibitions.

1. No person may sell, offer, or supply California gasoline that creates emissions associated with increased ethanol blending unless the producer or importer, or in the case of a third party EERP, the third party has first been notified in

- writing by the Executive Officer that the EERP or third party EERP application has been approved.
2. Failure to meet any requirement of this section or any condition of an approved EERP or third party EERP shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied.
 3. False reporting of any information contained in an EERP or third party EERP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this article for each day that the approved EERP or third party EERP is in effect.
 4. Any net exceedance at any given time, taking into consideration the amount of offsets and the gasoline produced under the EERP or third party EERP, of NO_x, total ozone forming potential, or potency-weighted toxics during the period the EERP or third party EERP is in effect shall constitute a single, separate violation of the requirements of this article for each day the California gasoline subject to the EERP or third party EERP is sold, supplied, or offered in California.
 5. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement or condition is satisfied:
 - a. Failure to report data or failure to report data accurately in writing to the Executive Officer when required by this section or the approved EERP or third party EERP;
 - b. False reporting of any information submitted to the Executive Officer for determining compliance with the EERP or third party EERP;
 - c. Failure to completely offset emissions, pursuant to any offset reconciliation requirements in the EERP or third party EERP, during the period the EERP or third party EERP is in effect;
 - d. Sale, supply, or offer of volumes of California gasoline which purportedly complies with the EERP or third party EERP in excess of the approved EERP or third party EERP.
 6. Offsets shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced in the same air basin as the gasoline associated with the EERP or third party EERP, or that are claimed under section 2265.1.

- f. A cause of action against the producer or importer or third party under this section shall be deemed to accrue on the date(s) when the records establishing a violation of the EERP or third party EERP are received by the Executive Officer.
- g. Transferability. Rights to use, or protection under, the EERP or third party EERP are non-transferable, unless such transfer is approved in writing by the Executive Officer.
- h. Notification of final blends associated with an EERP or third party EERP
 - 1. Except as otherwise provided, for each final blend, the producer or importer shall notify the Executive Officer in writing, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility 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, with the following information:
 - a. The company name, address, phone number, and contact information,
 - b. The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the EERP or third party EERP,
 - c. The estimated volume (in barrels),
 - d. The identity of the EERP or third party EERP, which was approved by the Executive Officer and the NO_x, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan,
 - e. The PM alternative specifications for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content,
 - f. Documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the final blend of California gasoline to which the EERP or third party EERP applies,
 - g. A statement, signed by a legal representative for the producer or importer that all information submitted with the notification is true and correct, and
 - h. Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.

2. A producer or importer may report an actual volume that is less than the estimated volume, as long as notification of the actual 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 facility or import facility. If notification of the actual volume is not timely received by the Executive Officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is larger than initially estimated, the producer or importer shall revise the reported estimated volume by notifying the Executive Officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(l) Notification of Increased Ethanol Blending Offsets

1. Vehicle scrappage. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the vehicle scrappage and the date(s) the offsets accrued.
2. Fuels. Except as otherwise provided, the producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility 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, with the information in subsection (h)(1) as they relate to other batches of California gasoline or diesel fuel used to offset the emissions associated with increased ethanol blending.
3. Incentive grants. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions and the date(s) the offsets accrued.
4. Other reduction strategies. The producer or importer shall notify the Executive Officer in writing as provided in the EERP or third party EERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the reduction strategy and the date(s) the offsets accrued.

* * * * *

(7) Election allowing a producer or importer that produces gasoline to blend percentages of denatured ethanol into CARBOB that are higher than the common carrier pipeline specifications for oxygen and denatured ethanol until December 30, 2009.

(A) A producer or importer that produces gasoline may elect to blend a higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification. The producer or importer that produces gasoline may elect to do such blending after it supplies from its production or import facility a CARBOB that concurrently meets the common carrier pipeline CARBOB specification and a CARBOB PM formulation having oxygen and denatured ethanol ranges greater than the common carrier pipeline specification. A producer or importer that produces gasoline may elect to do such blending before December 31, 2009. A person may not elect to blend a higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification after December 30, 2009.

(B) In order to elect to blend higher volumes of denatured ethanol, the producer or importer must satisfy the following requirements:

1. Notification for each elected final blend by the producer or importer. For each final blend that the producer or importer elects to blend higher volumes of denatured ethanol, the producer or importer must notify the Executive Officer. The notification must be consistent with the requirements specified in section 2266.5 and must include the following additional information:

a. Statement of election. A statement that the producer or importer is electing to have the final blend subject to the requirements of section 2261(b)(7);

b. CARBOB certification for pipeline specifications. Information set forth in section 2266.5(b) demonstrating that the CARBOB meets the current common carrier pipeline specifications;

c. CARBOB certification for a wider range of oxygen and oxygenate. Information set forth in section 2266.5(b) demonstrating that the same CARBOB identified in (B)1.b. meets a CARBOB PM formulation with a wider range of oxygen and denatured ethanol. The wider ranges must encompass the oxygen and denatured ethanol ranges specified by the common carrier pipeline specifications;

d. Volume of the final blend. The volume (gallons) of CARBOB of the final blend. This information will be replaced with the actual volume upon receipt of the producer's or importer's month end reconciliation report;

e. **Final blend identification.** The final blend identification number (batch number), grade of CARBOB, production tank number, tank location, name of producer or importer, name and phone number of contact person;

f. **Start of transfer.** The estimated date that transfers of the final blend from the production or import facility will begin;

g. **Bulk terminals.** The name, address, and contact person's name and phone number of oxygenate blending facilities that the producer or importer has arranged for blending at higher volumes of denatured ethanol.

2. **Agreement with an oxygenate blender.** Before a producer or importer notifies an oxygenate blender to blend higher volumes of denatured ethanol into CARBOB, the producer or importer must enter into a contractual agreement with the oxygenate blender stating that the oxygenate blender agrees to be obligated by the requirements in section (C) regarding the blending of denatured ethanol into CARBOB, record keeping and retention, and month end reconciliation notification to CARB. The producer or importer must submit a copy of the contractual agreement to the Executive Officer for each oxygenate blending facility before notifying an oxygenate blender to blend higher volumes of denatured ethanol into CARBOB.

3. **Notification to the oxygenate blender.** After the producer or importer notifies the Executive Officer of its election in (B)1., the producer or importer may notify the oxygenate blender of the maximum volume percent of denatured ethanol to blend into CARBOB, the maximum number of gallons of CARBOB that may be blended with higher volumes of denatured ethanol, and the start of blending date which blending higher volumes of denatured ethanol may begin. The notification must include a statement that permission for blending higher volumes of denatured ethanol is in accordance with the producer's or importer's election in section 2261(b)(7). The notification must also include a statement that the oxygenate blender must not exceed the volume percent of denatured ethanol, not exceed the volume of CARBOB, not start blending higher volumes of denatured ethanol before the start date, and not blend higher volumes of denatured ethanol after December 30, 2009. The producer or importer may notify only oxygenate blenders located in the geographical area normally supplied by its production or import facility.

4. **Month end reconciliation by the producer or importer.** The producer or importer must notify the Executive Officer of the following. The notification shall be received by the Executive Officer by the twentieth of the month for all final blends elected by the producer or importer in accordance with section 2261(b)(7)(B)1., which completed physical transfer of at least one pipeline tender from the production or import facility during the preceding calendar month. If the twentieth occurs on a weekend or holiday, the notification shall be received by the Executive Officer by the first business day after the twentieth of the month. The

notification must include:

a. The final blend identification number;

b. With reference to each final blend identification number:

i. The grade of CARBOB;

ii. The estimated volume (gallons) of CARBOB as reported in (B)1.d.;

iii. For each discrete sale or supply of CARBOB:

I. The pipeline tender identification number;

II. The volume (gallons) of the pipeline tender;

III. The date that the pipeline tender started and ended delivery from the production tank to the pipeline;

IV. The identification of the pipeline; and

V. The identification of the oxygenate blending facility that receive the pipeline tender;

iv. Actual volume (gallons) of CARBOB supplied from the final blend; and

v. Date of completion of physical transfer of the last pipeline tender of CARBOB from the final blend;

c. The sum of the volume (gallons) CARBOB listed in section (B)4.b.iv. for each final blend identified in section (B)4.a.;

d. Copies of each notification specified in section (B)3..

e. The volume (gallons) of CARBOB blended at a higher volume of denatured ethanol than the amount specified by the common carrier pipeline specifications listed by each individual oxygenate blending facility. The sum of the volume (gallons) from all oxygenate blending facilities.

f. **The opening balance at the beginning of the month.** The volume (gallons) of CARBOB qualified under this section 2261(b)(7) that was not blended at a rate higher than common carrier pipeline specifications carried over from the previous calendar month. This volume is available for blending at the higher rate.

g. **The ending balance at the end of the month.** The volume (gallons)

calculated as follows:

The volume listed in section (B)4.f. plus the volume listed in section (B)4.c. minus the sum of the volumes in section (B)4.e..

This volume is available to carry over to the next calendar month.

5. Whenever a producer or importer fails to provide the notification in section (B)4., regarding a volume of California gasoline or CARBOB in accordance with this section (B)4., the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of section (B)8..

6. **Averaging.** A producer or importer may not elect the provisions in section 2261(b)(7) if the producer or importer is using the provisions of section 2264 for Designated Alternative Limits or the provisions of section 2266.5(a)(5) for averaging. If the producer or importer is using the provisions in section 2261(b)(7) and notifies the Executive Officer that it elects to use the provisions of section 2264 or section 2266.5(a)(5), the election of the provisions of section 2261(b)(7) shall terminate and no further blending of higher volumes of denatured ethanol into CARBOB may occur beyond the date of such election. Any remaining volume (gallons) that otherwise may be blended with higher volumes of denatured ethanol are forfeited.

7. **Start of oxygenate blending date.** The start of oxygenate blending date is the date on which at least one pipeline tender has completed physical transfer from the production or import facility.

8. **Producer's or importer's responsibilities.** A producer or importer electing final blends in accordance with section 2261(b)(7) is responsible for the activities at the oxygenate blending facility involving blend a higher volume of denatured ethanol. A producer or importer may not blend or allow the blending of denatured ethanol at the oxygenate blending facility that:

- a. Exceeds the volume available for blending at higher rates as determined by the notifications identified in section (B)1.;
- b. Exceeds the denatured ethanol volume percent designated by the producer or importer; or
- c. Precedes the start of oxygenate blending date.

9. Producer or importer must specify denatured ethanol that meets the requirements in section 2262.9(a)(1).

10. **Recordkeeping by producers and importers.** Each producer or importer must compile and maintain records that affirmatively demonstrate the production

or import and the sale or supply of all final blends elected under section (B). The records must show, at a minimum:

a. Information regarding the production or import of the final blend;

i. The final blend identification number;

ii. The grade of CARBOB;

iii. The CARBOB PM formulation that shows compliance with the common carrier pipeline specifications;

iv. The CARBOB PM formulation having oxygen and denatured ethanol ranges greater than, and encompasses, the common carrier pipeline specification for oxygen and denatured ethanol.

v. Volume of the blend;

vi. Tank number, location; and

vii. Date of notification to CARB of the final blend.

b. Information regarding sales or supply of the final pipeline tender;

i. Pipeline tender identification number;

ii. Start and end date and time;

iii. Volume of the pipeline tender;

iv. Destination of the pipeline tender; and

v. Pipeline company name.

c. Copies of the notifications specified in section (B)3. that the producer or importer sent to the oxygenate blender regarding oxygenate blending;

d. Information regarding the reconciliation of gallons of CARBOB certified for a wider range at the production or import facility and the gallons of CARBOB blended with higher volumes of denatured ethanol at the oxygenate blending facility.

11. Each producer or importer must provide to the Executive Officer any such records within 20 days of written request received from the Executive Officer or his or her designee. Whenever a producer or importer fails to provide records regarding a volume of California gasoline or CARBOB in accordance with this

section (B)11., the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of section (A).

12. Nothing in section 2261(b)(7) shall be construed to allow monthly averaging of volumes of CARBOB blended at higher volumes of denatured ethanol at the oxygenate blending facility.

(C) **Oxygenate blender.** An oxygenate blender that has entered into a contractual agreement in accordance with section (B)2. with a producer or importer may blend higher volumes of denatured ethanol into CARBOB at it's oxygenate blending facility provided that:

1. The oxygenate blender complies with the instructions specified in section (B)3. from the producer or importer. The oxygenate blender must not exceed the maximum volume percent of denatured ethanol to blend into CARBOB, the maximum volume (gallons) of CARBOB that may be blend with higher volumes of denatured ethanol, and must not begin such blending before the start of oxygenate blending date.

2. **Month end reconciliation by the oxygenate blender.** The oxygenate blender notifies the Executive Officer of the following. The notification shall be received by the Executive Officer by the twentieth of the month for all oxygenate blending related activities occurring at its facility during the preceding calendar month. If the twentieth occurs on a weekend or holiday, the notification shall be received by the Executive Officer by the first business day after the twentieth of the month. If the oxygenate blender operates more than one oxygenate blending facility, the information in the notification must be presented per facility. The notification must include:

a. **Information regarding the receipts of CARBOB.** The pipeline tender identification number of each receipt of CARBOB to the oxygenate blending facility by pipeline or identification number of any receipt other than pipeline. With reference to each receipt:

i. Grade of CARBOB;

ii. The volume (gallons) of the CARBOB pipeline tender;

iii. The date the oxygenate facility began receiving the CARBOB pipeline tender;

iv. Name of the supplier of the CARBOB; and

v. Identification number of the storage tank that received the CARBOB pipeline tender;

b. Information regarding the receipts of denatured ethanol. The identification number or bill of lading number of each receipt of denatured ethanol to the oxygenate blending facility. With reference to each receipt:

- i. The volume (gallons) of denatured ethanol;
- ii. The means by which the denatured ethanol was delivered to the oxygenate blending facility (by truck, rail car, etc.);
- iii. The name of the supplier of the denatured ethanol;
- iv. The date the denatured ethanol was received; and
- v. Identification number of the storage tank that received the denatured ethanol;

c. Information regarding oxygenate blending. For each day of the calendar month at the oxygenate blending facility (if the oxygenate blender is oxygenate blending for more than one producer or importer, the information must be listed for each producer or importer):

- i. The volume (gallons) of CARBOB that was blended with higher volumes of denatured ethanol (if more than one producer or importer, identify the producer or importer);
- ii. The volume (gallons) of denatured ethanol that was used in blended at the higher rate (if more than one producer or importer, identify the producer or importer);
- iii. If blending denatured ethanol at two rates that are higher than the common carrier pipeline specifications, list the CARBOB volumes and the denatured ethanol volumes for section (C)1. and (C)2. separately for the two rates;
- iv. The volume (gallons) of CARBOB that was blended with denatured ethanol according to common carrier pipeline specifications;
- v. The volume (gallons) of denatured ethanol that was used in blended according to common carrier pipeline specifications;

d. Summary. Sums of the daily volumes (gallons) listed in c.i, c.ii., c.iv., and c.v. for the calendar month.

3. Whenever the oxygenate blender fails to provide the notification in section (C)2., regarding a volume of California gasoline or CARBOB in accordance with section (C)2., the volume of California gasoline or CARBOB will be presumed to

have been sold by the person in violation of section (C)1..

4. Recordkeeping by the oxygenate blender. The oxygenate blender compiles and maintains records that affirmatively demonstrate the denatured ethanol blending activities at it's oxygenate blending facility. The must records show, at a minimum:

a. All information regarding the receipt of each pipeline tender of CARBOB;

b. All information regarding the receipt of each delivery of denatured ethanol;

c. All information regarding the daily oxygenate blending activities at the rack. If the oxygenate blender is oxygenate blending for more than one producer or importer, the information must be listed for each producer or importer.

d. All notifications specified in section (B)3. from the producer or importer to the oxygenate blender regarding oxygenate blending and any responses from the oxygenate blender to the producer or importer;

e. The oxygenate blender provide to the Executive Officer any such records within 20 days of written request received from the Executive Officer or his or her designee. Whenever the oxygenate blender fails to provide records regarding a volume of California gasoline or CARBOB in accordance with this section (C)5., the volume of California gasoline or CARBOB will be presumed to have been sold by the person in violation of section (C)1..

(D) Protocols.

1. Recordkeeping or reporting for producers or importers. The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying alternative recordkeeping or reporting requirements to satisfy the requirements of sections (B)1., (B)2., (B)3., (B)4., (B)9., and (B)11.. The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of sections (B)1., (B)2., (B)3., (B)4., (B)9., and (B)11.. Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

2. Recordkeeping or reporting for oxygenate blenders. The Executive Officer may enter into a written protocol with any oxygenate blender for the purpose of specifying alternative recordkeeping or reporting requirements to satisfy the requirements of sections (C)2., and (C)4.. The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of sections (C)2., and (C)4.. Any such

protocol shall include the oxygenate blender's agreement to be bound by the terms of the protocol.

3. Notifications from producer or importers to oxygenate blenders.

The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying alternative notification requirements from the producer or importer to the oxygenate blender to satisfy the requirements of section (B)3.. The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of sections (B)3.. Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

4. Number of ethanol ranges for producers or importers. The Executive Officer may enter into a written protocol with any producer or importer for the purpose of specifying a different number of denatured ethanol ranges to satisfy the requirements of section (H). The Executive Officer may only enter into such a protocol if he or she reasonably determines that application of the regulatory requirements under the protocol are not less stringent or enforceable than application of the express terms of sections (H). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(E) Proprietary pipeline. Nothing in this regulation prohibits the use of this election in a producer's or importer's proprietary pipeline and terminaling system.

(F) Electing to use section 2261(b)(7) will not be considered an act of changing from an initial to a new type of CARBOB as described in section 2266.5(f)(1)(C).

(G) The provisions in this section 2261(b)(7) are not specific or limited to the grade of CARBOB.

(H) Maximum of two ethanol blending levels. Producers or importers of each production or import facility electing to use section 2261(b)(7) may designate up to two levels of denatured ethanol when certifying its CARBOB. For example, one mid-level of at about 7.7 v% and another level at about 10.0 v%.

(I) Use the same version of the Predictive Model. If the producer or importer elects to have two levels of denatured ethanol, the producer or importer must use the same version of the Predictive Model when evaluating and reporting PM formulations to ARB.

* * * * *

(c) California gasoline sold or supplied on or after March 1, 1996, is also subject to section 2253.4 (Lead/Phosphorus in Gasoline), section 2254 (Manganese Additive Content), and section 2257 (Required Additives in Gasoline). California gasoline

that is supplied from a small refiner's California refinery prior to March 1, 1998, and that qualifies for treatment under section 2272(a), shall also be subject to section 2250 (Degree of Unsaturation of Gasoline) and section 2252 (Sulfur Content of Gasoline).

- (d) The standards contained in this subarticle shall not apply to a sale, offer for sale, or supply of California gasoline to a refiner if: (1) the refiner further processes the gasoline at the refiner's refinery prior to any subsequent sale, offer for sale, or supply of the gasoline, and (2) in the case of standards applicable only to producers or importers, the refiner to whom the gasoline is sold or supplied is the producer of the gasoline pursuant to section 2260(a)(26)(B).
- (e) The prohibitions in sections 2262.3(b) and (c), 2262.4(b), and 2262.5(c) shall not apply to gasoline which a producer or importer demonstrates was neither produced nor imported by the producer or importer.
- (f) This subarticle 2, section 2253.4 (Lead/Phosphorus in Gasoline), section 2254 (Manganese Additive Content), and section 2257 (Required Additives in Gasoline) shall not apply to gasoline where the person selling, offering or supplying the gasoline demonstrates as an affirmative defense that the person has taken reasonably prudent precautions to assure that the gasoline is used only in racing vehicles.

* * * * *

Section 2262. The California Reformulated Gasoline Phase 2 and Phase 3 Standards.

The CaRFG Phase 2 and CaRFG Phase 3 standards are set forth in the following table. For all properties but Reid vapor pressure (cap limit only) and oxygen content, the value of the regulated property must be less than or equal to the specified limit. With respect to the Reid vapor pressure cap limit and the oxygen content flat and cap limit, the limits are expressed as a range, and the Reid vapor pressure and oxygen content must be less than or equal to the upper limit, and more than or equal to the lower limit. A qualifying small refiner may comply with the small refiner CaRFG Phase 3 standards, in place of the CaRFG Phase 3 standards in this section, in accordance with section 2272.

The California Reformulated Gasoline Phase 2 and Phase 3 Standards

<i>Property</i>	<i>Flat Limits</i>		<i>Averaging Limits</i>		<i>Cap Limits</i>	
	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>
Reid Vapor Pressure ¹ (pounds per square inch)	7.00	7.00 or 6.90 ²	Not Applicable	Not Applicable	7.00 ³	6.40 - 7.20
Sulfur Content (parts per million by weight)	40	20	30	15	80	60 ⁴
						30 ⁴
						<u>20⁴</u>
Benzene Content (percent by volume)	1.00	0.80	0.80	0.70	1.20	1.10
Aromatics Content (percent by volume)	25.0	25.0	22.0	22.0	30.0 ³	35.0
Olefins Content (percent by volume)	6.0	6.0	4.0	4.0	10.0	10.0
T50 (degrees Fahrenheit)	210	213	200	203	220	220
T90 (degrees Fahrenheit)	300	305	290 ⁵	295	330	330
Oxygen Content (percent by weight)	1.8 - 2.2	1.8 - 2.2	Not Applicable	Not Applicable	1.8 ⁶ - 3.5	1.8 ⁶ -3.5 ⁷
					0 ⁶ - 3.5	0 ⁶ - 3.5 ⁷
Methyl tertiary-butyl ether (MTBE) and oxygenates other than ethanol	Not Applicable	Prohibited as provided in § 2262.6	Not Applicable	Not Applicable	Not Applicable	Prohibited as provided in § 2262.6

¹ The Reid vapor pressure (RVP) standards apply only during the warmer weather months identified in section 2262.4.

² The 6.90 pounds per square inch (psi) flat limit applies ~~only~~ when a producer or importer is using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model, in which case all predictions for evaporative emissions increases or decreases made using the evaporative emissions model are made relative to 6.90 psi and the gasoline may not exceed the maximum RVP cap limit of 7.20 psi to certify a final blend not containing ethanol. ~~Otherwise, the 7.0 psi limit applies. Where the~~

~~evaporative emissions model element of the CaRFG Phase 3 Predictive Model is not used, the RVP of gasoline sold or supplied from the production or import facility may not exceed 7.00 psi.~~

- 3 For sales, supplies, or offers of California gasoline downstream of the production or import facility starting on the date on which early compliance with the CaRFG Phase 3 standards is permitted by the ~~e~~Executive ~~e~~Officer under section 2261(b)(3), the CaRFG Phase 2 cap limits for Reid vapor pressure and aromatics content shall be 7.20 psi and 35.0 percent by volume respectively.
- 4 The CaRFG Phase 3 sulfur content cap limits of ~~60, and 30, and 20~~ parts per million are phased in starting December 31, 2003, ~~and~~ December 31, 2005, and December 31, 2011, respectively, in accordance with section 2261(b)(1)(A).
- 5 Designated alternative limit may not exceed 310.
- 6 The 1.8 percent by weight minimum oxygen content cap only applies during specified winter months in the areas identified in section 2262.5(a).
- 7 If the gasoline contains more than 3.5 percent by weight oxygen from ethanol but no more than 10.0 volume percent ethanol, the maximum oxygen content cap is 3.7 percent by weight.

* * * * *

Section 2262.3 Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90.

* * * * *

(b) ***Compliance by producers and importers with the flat limits.*** No producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which exceeds an applicable flat limit for the properties of sulfur, benzene, aromatic hydrocarbons, olefins, T50, or T90 set forth in section 2262, unless the gasoline (1) is subject to the averaging compliance option for the property in accordance with section 2264.2(a), (2) has been reported as a PM alternative gasoline formulation pursuant to section 2265(a), ~~or~~ (3) has been reported as a test-certified alternative gasoline formulation pursuant to section 2266(c), (4) has been reported as a PM emissions offsetting formulation pursuant to section 2265.1 (applicable only to producers and importers that produce gasoline), or (5) is subject to an alternative emission reduction plan pursuant to section 2265.5 (applicable only to producers and importers that produce gasoline). Notwithstanding section 2265.5(a), a producer or an importer that produces gasoline and that has elected to be subject to the flat limits specified in section 2262 shall offset its emissions associated with permeation by complying with sections 2265.5(b) – (i). An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

* * * * *

(c) ***Optional compliance by producers and importers with the averaging limits.*** No producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which is subject to the

averaging compliance option for the properties of sulfur, benzene, aromatic hydrocarbons, olefins, T50 or T90 in accordance with section 2264.2(a) if any of the following occurs: Notwithstanding section 2265.5(a), a producer or an importer that produces gasoline and that has elected to be subject to an averaging limit specified in section 2262 shall offset its emissions associated with permeation by complying with sections 2265.5(b) – (i). An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

* * * * *

(d) Optional compliance by producers or importers that produce gasoline with the PM emissions offsetting compliance option. No producer or importer that produces gasoline shall sell, offer for sale, supply, or offer for supply from its production facility or import facility a final blend of California gasoline as a PM emissions offsetting formulation subject to the designated emissions offsetting limits if any of the following occurs:

- (1) The gasoline exceeds any of the designated emissions offsetting limits for sulfur, benzene, aromatic hydrocarbons, olefins, oxygen, T50, or T90 for the final blend; or
- (2) The gasoline exceeds the designated emissions offsetting limit for the final blend for RVP during any of the regulatory control periods in section 2262.4(b)(2).
- (3) The excess emissions of oxides of nitrogen, total ozone forming potential, or the potency-weighted toxics associated with excess sulfur in a final blend of gasoline is not fully and timely offset in accordance with section 2265.1(c).
- (4) The gasoline required to be offset and the offsetting gasoline are sold, offered, or supplied in different regions where the gasoline is normally offered for sale.

* * * * *

Section 2262.4. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure.

* * * * *

(b) Compliance by producers and importers with the flat limit for Reid vapor pressure.

(1) Reid vapor pressure standard for producers and importers.

(A) In an air basin during the regulatory control periods specified in section (b)(2), no producer or importer shall sell, offer for sale, supply, or offer for supply

from its production facility or import facility California gasoline which has a Reid vapor pressure exceeding the applicable flat limit set forth in section 2262 unless the gasoline has been reported as either a PM alternative gasoline formulation pursuant to section 2265(a) or a PM emissions offsetting formulation pursuant to section 2265.1 (applicable only to producers and importers that produce gasoline) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model.

(B) In an air basin during the regulatory control periods specified in section (b)(2), no producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which has been reported either as a PM alternative gasoline formulation pursuant to section 2265(a) or a PM emissions offsetting formulation pursuant to section 2265.1 (applicable only to producers and importers that produce gasoline) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model if the gasoline has a Reid vapor pressure exceeding the PM flat limit for Reid vapor pressure in the identified PM alternative specifications or the designated emissions offsetting limits, as applicable.

* * * * *

Section 2262.5. Compliance With the Standards for Oxygen Content.

* * * * *

(c) ***Compliance by producers and importers with the flat limits for oxygen content.***

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 flat limit for minimum oxygen content, or more than flat limit for maximum oxygen content, unless the gasoline has been (1) reported as a PM alternative gasoline formulation pursuant to section 2265(a), or as a PM emissions offsetting formulation pursuant to section 2265.1 (applicable only to producers and importers that produce gasoline), or as an alternative gasoline formulation pursuant to section 2266(c), and (2) complies with the standards contained in sections (a) and (b).

(d) ***Restrictions on adding oxygenates to California gasoline after it has been supplied from the production or import facility.***

(1) *Basic Restriction.* No person may add oxygenates to California gasoline after it has been supplied from the production or import facility at which it was produced or imported, except where the person adding the oxygenates demonstrates that: ~~[(A)]~~ (A) the gasoline to which the oxygenates are added has been reported as a PM alternative gasoline formulation pursuant to section 2265(a), or as a PM emissions offsetting formulation pursuant to section 2265.1 (applicable only to producers and importers that produce gasoline), or as an alternative gasoline formulation pursuant to section 2266(c), and has not been commingled with other

gasoline, and ~~[(B)]~~ both before and after the person adds the oxygenate to the gasoline, the gasoline has an oxygen content within the oxygen content specifications of the applicable PM alternative gasoline formulation, PM emissions offsetting formulation, or alternative gasoline formulation. Nothing in this section (d) prohibits adding oxygenates to CARBOB.

* * * * *

Section 2262.9. Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline.

(a) ***Standards.***

- (1) ***Standards for denatured ethanol.*** Starting December 31, 2003, no person shall sell, offer for sale, supply or offer for supply denatured ethanol intended for blending with CARBOB or California gasoline that fails to comply with any of the following standards:

* * * * *

- (B) ***Standards based on ASTM D 4806-99.*** All test methods and standards identified in the title and the table below are incorporated herein by reference.

<i>Specification</i>	<i>Value</i>	<i>Test method</i>
Ethanol, vol.%, min.	92.1	ASTM D 5501-94(1998) ^{ε1}
Methanol, vol.%, max.	0.5	
Solvent-washed gum, mg/100 ml, max.	5.0	ASTM D 381-00, air jet apparatus
Water content, vol.%, max.	1	ASTM E 203-96 or E 1064-00
Denaturant content, vol.%, min. vol.% max. The only denaturants shall be natural gasoline, gasoline components, or unleaded gasoline.	1.96 4.76 <u>5.00^a</u>	
Inorganic Chloride content, mass ppm (mg/l), max.	40 (32)	Modification of ASTM D512-89(1999), Procedure C ^{4b}
Copper content, mg/kg, max.	0.1	Modification of ASTM D1688-95, Test Method A ^{2c}
Acidity (as acetic acid), mass % (mg/l), max.	0.007 (56)	ASTM D 1613-96 (1999)
pHe	6.5 - 9.0	ASTM D 6423-99
Appearance	Visibly free of suspended or precipitated contaminants (clean and bright)	Determined at indoor ambient temperature unless otherwise agreed upon between the supplier and purchaser

Note a: The maximum denaturant content limit is changed from 4.76 v% to 5.00 v% to be consistent with ASTM 4806-06c

Note 4b: The modification of ASTM D 512-89(1999), Procedure C consists of using 5 ml of sample diluted with 20 ml of water in place of the 25 ml sample specified in the standard procedure. The water shall meet ASTM D 1193-99, Type II. The volume of the sample prepared by this modification will be slightly larger than 25 ml. To allow for the dilution factor, report the chloride ion present in the fuel ethanol sample as the chloride ion present in the diluted sample multiplied by five.

Note 2c: The modification of ASTM D 1688-95, Test Method A (atomic absorption) consists of mixing reagent grade ethanol (which may be denatured according to the U.S. Bureau of Alcohol, Tobacco, and Firearms (BATF) of the U.S. Treasury Department Formula 3A or 30, as set forth in 27 CFR sections 21.35 and 21.57, as in effect April 1, 2001) in place of water as the solvent or diluent for the preparation of reagents and standard solutions. However, this must not be done to prepare the stock copper solution described in 11.1 of ASTM D 1688-95. Because a violent reaction may occur between the acid and the ethanol, use water, as specified, in the acid solution part of the procedure to prepare the stock copper solution. Use ethanol for the rinse and dilution only.

* * * * *

(3) **Standards for products represented as appropriate for use as a denaturant in ethanol.**

* * * * *

(B) A person may sell, offer for sale, supply or offer for supply a product that is represented as only suitable for use as an ethanol denaturant in ethanol intended for blending with CARBOB or California gasoline if the denatured ethanol contains no more than a specified percentage of the denaturant that is less than ~~4.76~~ 5.00 percent. In this case, the product must be prominently labeled as only lawful for use as a denaturant where the denatured ethanol contains no more than the specified percentage of the denaturant, and the seller, supplier or offeror must take reasonably prudent precautions to assure that the denaturant will not be used in concentrations greater than the specified percentage in ethanol intended for blending with CARBOB or California gasoline. If these conditions are met, the standards in section (a)(3)(A) for the denaturant will be adjusted by multiplying the stated values by $(\frac{4.76}{5.00} \div \text{max.}\%)$, where "max.%" is the maximum percentage by volume of denaturant specified for the denatured ethanol.

(b) **Test Methods.**

(1) In determining compliance with the denatured ethanol standards in section (a)(1)(A):

* * * * *

(B) The aromatic hydrocarbon, benzene and olefins content of denatured ethanol shall be determined by sampling the denaturant and using the methods specified in section 2263 to determine the content of those compounds in the denaturant. The result will then be multiplied by ~~0.0476~~ 0.0500, except that where it is demonstrated that the denatured ethanol contains less than ~~4.76~~ 5.00 percent denaturant, the result will be multiplied by the decimal fraction representing the percent denaturant.

* * * * *

Section 2263. Sampling Procedures and Test Methods.

* * * * *

(b) Test Methods.

(1) In determining compliance with the gasoline standards set forth in this subarticle 2, including those in the sections identified in Table 1, the test methods presented in Table 1 shall be used. All identified test methods are incorporated herein by reference.

Table 1

<i>Section</i>	<i>Gasoline Specification</i>	<i>Test Method</i> ^a
2262	Reid Vapor Pressure	ASTM D 323-58 ^b or 13 C.C.R. Section 2297
2262	Sulfur Content	ASTM D 2622-94 ^{c, d} or ASTM D 5453-93
2262	Benzene Content	ASTM D 5580-00 ^e
2262	Olefin Content	ASTM D 1319-95a ^f (Through December 31, 2001) ASTM D 6550-00 ^{g,h,i} (Starting January 1, 2002)
2262	Oxygen Content	ASTM D 4815-99 <u>04</u>
2262	T90 and T50	ASTM D 86-99aε1
2262	Aromatic Hydrocarbon Content	ASTM D 5580-00 ^j
2262.5(b)	Ethanol Content	ASTM D 4815-99 <u>04</u>
2262.6	MTBE Content	ASTM D 4815-99 <u>04</u>
2262.6(c)	Oxygen from oxygenates identified in section 2262.6(c)(4)	ASTM D 4815-99 <u>04</u>

* * * * *

Section 2263.7. Multiple Notification Requirements.

Where a producer or importer is subject to multiple notification requirements pursuant to sections 2264(a)(2)(A), 2265.1 (applicable only to producers and importers that produce gasoline), 2265.5 (applicable only to producers and importers that produce gasoline), 2264.2(a)(2), 2264.2(b)(2), 2265(a)(2), 2266(c) or 2266.5(b), the producer or importer shall combine the notifications to the extent practicable.

* * * * *

Section 2264.2. Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility.

(a) *Election of the averaging compliance option.*

* * * * *

(3) A producer or importer may not elect to sell, offer, or supply from its production facility or import facility a final blend of California gasoline subject to the averaging compliance option in section 2264 if the producer or importer is subject to any outstanding requirements to provide PM emissions offsets pursuant to section 2265.1(c) or emission reductions pursuant to section 2265.5 at the same production facility or import facility.

(b) *Election of flat limit compliance option.*

* * * * *

(3) Once a producer or importer has made an election under this section 2264.2(b) with respect to a gasoline property, all final blends subsequently sold or supplied from the production or import facility shall be subject to the flat limit compliance option for that property until the producer or importer either (A) elects in accordance with section 2264.2(a) to have a final blend at the facility subject to the averaging compliance option for that property, or (B) elects in accordance with section 2265(a) to sell or supply a final blend at the facility as a PM alternative gasoline formulation, or (C) elects in accordance with section 2264.2(d) to sell or supply a final blend at the facility as a PM emissions offsetting formulation (applicable only to producers and importers that produce gasoline), or (D) elects in accordance with section 2265.5 to have a final blend at the facility subject to a PM alternate emissions reduction plan (applicable only to producers and importers that produce gasoline), or (E) elects in accordance with

section 2266(c) to sell or supply a final blend at the facility as an alternative gasoline formulation.

* * * * *

- (5) A producer or importer may not elect to sell, offer, or supply from its production facility or import facility a final blend of California gasoline subject to the flat limit compliance option if the producer or importer is subject to any outstanding requirements to provide PM emissions offsets pursuant to section 2265.1(c) or emission reductions pursuant to section 2265.5 at the same production facility or import facility.

* * * * *

(d) Election of the PM emissions offsetting compliance option.

- (1) Applicability. A producer or importer that produces gasoline and is selling, offering, or supplying a final blend of gasoline from its production facility or import facility may elect pursuant to this section 2264.2(d) to have the final blend subject to the PM emissions offsetting compliance option when all of the following conditions are satisfied:

(A) With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to section 2265(a),

(B) The actual sulfur content in the PM alternative gasoline formulation exceeds the PM alternative specification,

(C) But for the elevated sulfur content, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,

(D) The gasoline reported as a PM alternative gasoline formulation has a percent change in emissions value either for oxides of nitrogen, total ozone forming potential, or potency-weighted toxics that results in a final blend deficit, and

(E) The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to section 2264(c).

(2) Once a producer or importer has made such an election for a final blend of gasoline, all final blends subsequently sold or supplied from the production facility or import facility, whether associated with a final blend deficit or a final blend credit, shall be subject to the PM emissions offsetting compliance option until the producer or importer either (A) elects in accordance with section 2264.2(a) to have a final blend at the facility subject to the averaging compliance option, or (B) elects in accordance with section 2264.2(b) to have a final blend at the facility subject to the flat limit compliance option for all fuel properties, or (C) elects in accordance with section 2265(a) to sell or supply a final blend at the facility as a PM alternative gasoline formulation, or (D) elects in accordance with section 2266(c) to sell or supply a final blend at the facility as an alternative gasoline formulation.

(3) In order to elect to have a final blend subject to the PM emissions offsetting compliance option for a final blend, the producer or importer shall notify the Executive Officer of such election and of the information identified in section 2265.1(a)(2)(A), within the time limits set forth in section 2265.1(a)(2)(A) and subject to section 2265.1(a)(3) and (4).

(4) Once a producer or importer has made an election under this section 2264.2(d) with respect to the PM emissions offsetting compliance option, the producer or importer may not use any previously assigned designated alternative limit for any fuel property to provide offsets pursuant to section 2264(c) for any final blend sold or supplied from the production facility or import facility subsequent to the election.

* * * * *

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.*

* * * * *

(2) The producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 2 standards 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 and last amended December 11, 1998, which is incorporated herein by reference. The producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 3 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as

corrected November 18, 2004, which is incorporated herein by reference. Starting December 31, 2009, the producer or importer shall evaluate the candidate PM alternative specifications for gasoline subject to the CaRFG Phase 3 standards in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as corrected November 18, 2004 and last amended April 25, 2008, which is incorporated herein by reference. (theThe twethree documents incorporated by reference in this section 2265(a)(2) are collectively referred to as the "Predictive Model Procedures." If the PM alternative specifications meet the criteria for approval in the applicable Predictive Model Procedures, the producer shall notify the executive officer of: (A) The identity and location 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, hydrocarbonstotal ozone forming potential, and potency-weighted toxic air contaminants as determined in accordance with the applicable 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, or (D) elects in accordance with section 2264.2(d) to sell or supply a final blend at that facility as a PM emissions offsetting formulation (applicable only to producers and importers that produce gasoline), or (E) elects in accordance with section 2265.5 to have a final blend at that facility subject to a PM alternative emissions reduction plan (applicable only to producers and importers that produce gasoline).

* * * * *

- (c) ***Restrictions associated with elections to sell or supply final blends as PM alternative gasoline formulations.***

* * * * *

(4) A producer or importer may not elect to sell or supply from its production facility 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 pursuant to section 2265.1(c) or emission reductions pursuant to section 2265.5 at the same production facility or import facility.

* * * * *

Section 2265.1. Offsetting Emissions Associated with Higher Sulfur Levels.

(a) Assignment of designated emissions offsetting limits and percent change in emissions values for batches of gasoline for which the emissions associated with higher sulfur levels are being offset.

(1) A producer or an importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option must assign a designated emissions offsetting limit for the sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen (maximum and minimum) contents, and for the T90, T50, and RVP (during the RVP regulatory control period in section 2262.4(b)(2)) for each final blend of California gasoline produced by the producer or the importer and satisfying the notification requirements in this section (a). In no case shall a designated emissions offsetting limit be less than the sulfur, benzene, olefin, or aromatic hydrocarbon contents, T90, T50, or RVP, or less than the maximum oxygen content or greater than the minimum oxygen content of the final blend shown by the sample and test conducted pursuant to section 2270. For each final blend, the producer or the importer that produces gasoline shall also assign the percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics.

(2) Notification of final blends associated with a final blend deficit

(A) Except as otherwise provided, for each final blend that has a percent change in emissions value greater than 0.04 percent for oxides of nitrogen, total ozone forming potential, or potency-weighted toxics (referred to as the deficit final blend), the producer or the importer that produces gasoline shall notify the executive officer in writing, for receipt by the executive officer before the start of physical transfer of the gasoline from the production facility or the import facility, and in no case less than 12 hours before the producer or the importer that produces gasoline either completes physical transfer or commingles the final blend, with the following information:

1. Justification for using the PM emissions offsetting compliance option, including but not limited to, an explanation for the elevated sulfur level in

the final blend and why the batch will not be re-blended or a different predictive model formulation will not be developed.

2. The targeted PM alternative specifications that the producer or the importer that produces gasoline was intending to produce and which would have resulted in a passing PM formulation but for the actual sulfur content of the blend.
 3. The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the targeted PM alternative specifications.
 4. The company name, address, phone number, and contact information.
 5. The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the PM emissions offsetting compliance option.
 6. The estimated volume (in barrels).
 7. The designated emissions offsetting limit for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content for the final blend.
 8. The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the final blend.
 9. A statement, signed by a legal representative for the producer or the importer that produces gasoline that all information submitted with the notification is true and correct, and
 10. Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.
- (B) A producer or importer that produces gasoline may report an actual volume that is less than the estimated volume, as long as notification of the actual 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 facility or import facility. If notification of the actual volume is not timely received by the executive officer, the reported estimated volume shall be

deemed the reported actual volume. If the actual volume is larger than initially estimated, the producer or the importer that produces gasoline shall revise the reported estimated volume by notifying the executive officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(3) Notification of final blends associated with a final blend credit.

(A) For each final blend associated with a final blend credit, the producer or the importer that produces gasoline shall notify the executive officer in writing for receipt by the executive officer before the start of physical transfer of the gasoline from the production facility or the import facility, and in no case less than 12 hours before the producer or the importer that produces gasoline either completes physical transfer or commingles the final blend, with the following information:

(1) The company name, address, phone number, and contact information,

(2) The production facility or the import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline associated with a final blend credit,

(3) The estimated volume (in barrels),

(4) The designated emissions offsetting limits for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content for the final blend,

(5) The percent change in emissions values, as they pertain to the PM emissions offsetting compliance option, for oxides of nitrogen, total ozone forming potential, and potency-weighted toxics for the final blend,

(6) A statement, signed by a legal representative for the producer or the importer that produces gasoline that all information submitted with the notification is true and correct, and

(7) Within 24 hours after the completion of the physical transfer, the date and time of the completion of physical transfer from the production facility or the import facility.

(B) A producer or importer that produces gasoline may report an actual volume that is more than the estimated volume, as long as notification of the actual

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 facility or the import facility. If notification of the actual volume is not timely received by the executive officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is less than initially estimated, the producer or the importer that produces gasoline shall revise the reported estimated volume by notifying the executive officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(4) If, through no intentional or negligent conduct, a producer or importer that produces gasoline cannot report within the time period specified in (a)(2) or (a)(3) above, the producer or importer that produces gasoline 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)(4) have been met, timely notification shall be deemed to have occurred.

(5) The executive officer may enter into a written protocol with any individual producer or importer that produces gasoline for the purposes of specifying how the requirements in sections (a)(2) and (c) 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 sections (a)(2) and (c). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(b) Additional prohibitions regarding gasoline with designated emissions offsetting limits and final blend credits or deficits.

(1) No producer or importer that produces gasoline shall sell, offer for sale, or supply California gasoline with a final blend deficit, 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 that produces gasoline shall sell, offer for sale or supply California gasoline with a final blend credit, 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).

(3) Final blend credits shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced or imported in the same air basin as the gasoline with a final blend deficit, or that are claimed under any alternative emission reduction plan.

(c) Offsetting a final blend deficit. With respect to each final blend for which a producer or importer that produces gasoline has elected to be subject to the PM emissions offsetting compliance option, within 90 days after the start of physical transfer from a production facility or import facility of any final blend of California gasoline with a final blend deficit, the producer or importer shall complete physical transfer from the same production facility or import facility of California gasoline with a final blend credit in sufficient quantity and for the same emissions parameter (oxides of nitrogen, total ozone forming potential, or potency-weighted toxics) to fully offset the final blend deficit.

For example, within 90 days after the start of physical transfer from a production facility or import facility of 100 barrels of any final blend of California gasoline to which a producer or importer that produces gasoline has assigned a designated emissions offsetting limit which results in a 0.10 percent increase in oxides of nitrogen, the producer or importer that produces gasoline shall complete physical transfer from the same production facility or import facility of California gasoline in sufficient quantity and quality to offset the 6 deficit points for oxides of nitrogen. The final blend deficit is calculated as:

$$\text{Final Blend Deficit} = (0.10 - 0.04) \times 100 = 6$$

(d) Automatic termination of the producer's or importer's use of the PM emissions offsetting compliance option.

When a producer or importer that produces gasoline has fully offset the final blend deficit, the producer's or importer's use of the PM emissions offsetting compliance option automatically terminates. Prior to selling, supplying, or offering California gasoline after the termination, the producer or importer that produces gasoline must elect to use the flat limits, designated alternative limits, PM alternative specifications, or TC limits for its next final blend. The producer or importer that produces gasoline may not use any remaining final blend credits to provide offsets pursuant to section 2265.1(c) for any final blend sold, offered, or supplied from the production facility or import facility subsequent to the election.

NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 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, 43013, 43013.1, 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).

Section 2265.5 Alternative Emission Reduction Plan (AERP)

(a) Applicability. This section shall apply to a producer or importer that produces gasoline that elects to use an AERP or to a third party that elects to use a third party AERP when all of the following conditions are satisfied:

- (1) In the case of a third party AERP, the third party has a contract or agreement to offset, in whole or in part, the elevated emissions associated with permeation from the producer's or importer's gasoline.
- (2) With regard to a batch of gasoline that does not meet the criteria for approval in the applicable Predictive Model Procedures, immediately prior to producing or importing that batch, the producer or importer has reported its gasoline as a PM alternative gasoline formulation pursuant to section 2265(a).
- (3) But for the elevated emissions associated with permeation, the PM alternative specifications would have met the criteria for approval in the applicable Predictive Model Procedures,
- (4) All measures to correct the emissions associated with permeation would result in an economic hardship to the producer or importer and the benefit in allowing the producer or importer to use an alternative emission reduction plan is not outweighed by the public interest in enforcing the applicable Predictive Model Procedures,
- (5) The producer or importer is not subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to section 2264(c), and
- (6) All AERPs and third party AERPs sunset on December 31, 2011, unless the producer or importer, or the third party in the case of a third party AERP, requests in writing, and the Executive Officer approves in advance, an extension of the AERP or third party AERP for up to one additional year.

(b) Requirements.

- (1) Where the producer or importer that produces gasoline has reported its final blend of gasoline as a flat limit formulation pursuant to section 2264.2(b), averaging limit formulation pursuant to section 2264.2(a), PM alternative gasoline formulation pursuant to section 2265(a), or test-certified alternative gasoline formulation pursuant to section 2266(c), compliance with a valid AERP or third party AERP shall constitute compliance with the requirements of section 2262.3(b), 2262.3(c), 2265, or 2266, respectively.
- (2) An AERP or third party AERP application demonstrating compliance with this subsection shall contain at a minimum all of the following information:
 - (A) The company name, address, phone number, and contact information,

- (B) The producer's or importer's name, batch name, number or other identification, grade of California gasoline, and other information that uniquely identify the California gasoline subject to the AERP or third party AERP,
- (C) An explanation describing why the producer or importer cannot eliminate the emissions associated with permeation by reformulation or reprocessing its gasoline,
- (D) The total emissions of oxides of nitrogen (NOx), total ozone forming potential, and potency-weighted toxics that would be associated with the use of California gasoline were the producer or importer to eliminate the emissions associated with permeation from its gasoline,
- (E) Documentation, calculations, emissions test data, or other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the producer's or importer's gasoline,
- (F) The emission reduction strategy(ies) for the AERP or third party AERP and the date(s) that the offsets will accrue and expire for each strategy,
- (G) The producer's or importer's market share for the fuel produced under the AERP or third party AERP,
- (H) Demonstration that the emission reduction strategy(ies) in the AERP or third party AERP will result in equivalent or better emission benefits for NOx, total ozone forming potential, and potency-weighted toxics than would be achieved through elimination of emissions associated with permeation from the gasoline for the same affected region and for the period the AERP or third party AERP will be in effect, during and outside the RVP regulatory control periods in section 2262.4(b)(2),
- (I) Demonstration that the emission reductions are achieved in the general region where the fuel is sold,
- (J) The proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the AERP or third party AERP and achievement of each increment of progress toward compliance,
- (K) Adequate enforcement provisions,
- (L) The projected volume of each final blend of California gasoline subject to the AERP or third party AERP during the period the AERP or third party AERP will be in effect,

(M) The period that the AERP or third party AERP will be in effect,

(N) A compliance plan that includes increments of progress (specific events and dates) that describe periodic, measurable steps toward compliance during the proposed period of the AERP or third party AERP,

(O) The date by which the producer or importer plans to discontinue using the AERP or third party AERP,

(P) A statement, signed by a legal representative for the producer or importer that all information submitted with the AERP or third party AERP application is true and correct,

(Q) The producer's or importer's agreement to be bound by the terms of the AERP or third party AERP, and

(R) In the case of a third party AERP, all of the above including all of the following:

1. The third party's name, address, phone number, and contact information,
 2. Documentation of the contract or agreement between the third party and the producer or importer,
 3. Documentation of the amount of NOx, total ozone forming potential, and potency-weighted toxics (reported as tons/day and percentage of the total tons/day) from the producer's or importer's gasoline that will be offset by the third party AERP,
 4. A list of all AERPs and third party AERPs that currently apply to the producer or importer,
 5. A statement, signed by a legal representative for the third party that all information submitted with the third party AERP application is true and correct, and
 6. The third party's agreement to be bound by the terms of the third party AERP.
- (3) Emission reduction calculations demonstrating equivalence between the AERP or third party AERP and elimination of the emissions associated with permeation from the gasoline shall only include NOx, total ozone forming potential, and potency-weighted toxics emissions from California gasoline sold or supplied in California.

- (4) A producer or importer wishing to participate in an AERP may include one or more production facilities or import facilities, but the producer or importer shall only include such facilities that the producer or importer owns or operates under their direct control. A third party wishing to participate in a third party AERP may include one or more production facilities or import facilities, but the third party shall only include such facilities with which the third party has a contract or agreement to offset emissions associated with permeation.
- (5) The emission reduction associated with the AERP or third party AERP must be from combustion related sources or gasoline related sources.
- (6) AERPs and third party AERPs may include, but are not limited to:
- (A) Vehicle scrappage.
 - (B) Offsetting emissions with lower emitting diesel fuel batches,
 - (C) Incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions.
- (7) Emission reductions included in an AERP or third party AERP shall not include reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from equipment not located within the region associated with the AERP or third party AERP, or that are claimed under section 2265.1, or that are claimed under another program, such as the Voluntary Accelerated Vehicle Retirement or Carl Moyer program, or the result of standard business practices that the producer or importer would have done without the AERP or third party AERP.
- (8) The producer or importer subject to an approved AERP or third party AERP shall maintain all records required to verify compliance with the provisions of the AERP or third party AERP in a manner and form specified by the Executive Officer in the approved AERP or third party AERP. Required records may include, but are not limited to, volume of California gasoline sold, offered, or supplied to which the AERP or third party AERP applies, and/or emissions test results. Such records shall be retained for a period of not less than five (5) years and shall be submitted to the Executive Officer within 20 days in the manner specified in the approved AERP or third party AERP and upon request by the Executive Officer.
- (9) Prior to selling, offering, or supplying a batch of California gasoline with emissions associated with permeation, the producer or importer shall first have established sufficient offsets for the applicable emissions associated with permeation. With the exception of offsets from vehicle scrappage and incentive grants for cleaner-than-required engines, equipment and other sources of pollution, offsets shall expire at midnight on the day they accrued.

(c) Application Process.

- (1) Applications for an AERP or third party AERP shall be submitted in writing to the Executive Officer for evaluation.
- (2) The application shall be accompanied by a fee of \$6,700.00 to cover the costs of processing the AERP or third party AERP application. If the applicant withdraws the application before the 30-day first comment period, \$4,100.00 of the fee shall be refunded.
- (3) The Executive Officer shall make available for public review all documents pertaining to an AERP or third party AERP application.
- (4) The Executive Officer will send a notice to subscribers of the Fuels listserv that a person has requested the Executive Officer consider a request for an AERP or third party AERP. The Executive Officer shall also provide a copy of all such documents to each person who has requested copies of the documents. Collectively, those persons on the Fuels listserv and those persons who have requested copies of the documents shall be treated as interested parties.
- (5) After an AERP or third party AERP application has been received and deemed complete, the Executive Officer shall provide a 30-day public comment period to receive comments on any element of the AERP or third party AERP application. Any public comment addressing whether the Executive Officer should approve or disapprove the AERP or third party AERP application shall be based on the contents and merits of the application. No comment received by the Executive Officer after the 30-day period will be considered. The Executive Officer shall send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the following:
 - (A) The identity of the applicant producer(s) or importer(s);
 - (B) The start and end dates for the 30-day comment period;
 - (C) The address of the AERP internet site where the application is posted; and.
 - (D) Where and how to submit comments.The Executive Officer shall post on the AERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, notification of public comments received during the 30-day comment period.
- (6) The Executive Officer may hold a public hearing to accept public comments or decide the merits of the application.
- (7) Final Action.

After the public comment period ends, the Executive Officer may take final action to either approve or deny the AERP or third party AERP application. The

Executive Officer shall notify the applicant, post on the ARB internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of the final action.

(8) Notification to the Executive Officer of Changes to information in the AERP or third party AERP application. The applicant shall notify the Executive Officer in writing within 30 days upon learning of any information that would alter any information provided in the AERP or third party AERP application.

(d) Revocation or Modification of an Approved AERP or third party AERP.

(1) With 30-days written notice to the producer or importer, or in the case of a third party AERP, the third party, the Executive Officer may revoke or modify, as needed, an approved AERP or third party AERP in any of the following situations:

(A) There has been more than one violations of the approved AERP or third party AERP,

(B) The Executive Officer has reason to believe that an approved AERP or third party AERP has been granted that no longer meets the criteria or requirements for an AERP or third party AERP,

(C) The producer or importer, or in the case of a third party AERP the third party, demonstrates that it can no longer comply with the requirements of the approved AERP or third party AERP in its current form,

(D) The producer or importer, or in the case of a third party AERP the third party, demonstrates to the satisfaction of the Executive Officer that 1. the continuation of the AERP or third party AERP will result in economic hardship to the producer or importer, or in the case of a third party AERP, the third party, 2. the producer or importer, or in the case of a third party AERP the third party, submits a substitute plan in accordance with section 2265.5(c) to offset any emissions not otherwise offset by the AERP or third party AERP, and 3. the Executive Officer approves the substitute plan, or

(E) The producer's or importer's facility modifications and/or other means of eliminating emissions associated with permeation from its gasoline have been completed.

(2) The Executive Officer shall notify the applicant, post on the AERP internet site, send to subscribers of the Fuels listserv, and mail to those interested parties who have requested copies by mail, of a revocation or modification of an approved AERP or third party AERP.

(3) Any violations incurred pursuant to subsection (e) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an AERP or third party AERP.

(e) Additional prohibitions.

(1) No person may sell, offer, or supply California gasoline that creates emissions associated with permeation unless the producer or importer, or in the case of a third party AERP, the third party has first been notified in writing by the Executive Officer that the AERP or third party AERP application has been approved.

(2) Failure to meet any requirement of this section or any condition of an approved AERP or third party AERP shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied.

(3) False reporting of any information contained in an AERP or third party AERP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this article for each day that the approved AERP or third party AERP is in effect.

(4) Any net exceedance at any given time, taking into consideration the amount of offsets and the gasoline produced under the AERP or third party AERP, of NO_x, total ozone forming potential, or potency-weighted toxics during the period the AERP or third party AERP is in effect shall constitute a single, separate violation of the requirements of this article for each day the California gasoline subject to the AERP or third party AERP is sold, supplied, or offered in California.

(5) Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement or condition is satisfied:

(A) Failure to report data or failure to report data accurately in writing to the Executive Officer when required by this section or the approved AERP or third party AERP;

(B) False reporting of any information submitted to the Executive Officer for determining compliance with the AERP or third party AERP;

(C) Failure to completely offset emissions, pursuant to any offset reconciliation requirements in the AERP or third party AERP, during the period the AERP or third party AERP is in effect;

(D) Sale, supply, or offer of volumes of California gasoline which purportedly complies with the AERP or third party AERP in excess of the approved AERP or third party AERP.

(6) Offsets shall not include offsets or other reductions that are otherwise required by any local, State, or federal rule, regulation, or statute, or that are achieved or estimated from California gasoline not produced in the same air basin as the gasoline associated with the AERP or third party AERP, or that are claimed under section 2265.1.

(f) A cause of action against the producer, importer, or third party under this section shall be deemed to accrue on the date(s) when the records establishing a violation of the AERP or third party AERP are received by the Executive Officer.

(g) *Transferability.* Rights to use, or protection under, the AERP or third party AERP are nontransferable, unless such transfer is approved in writing by the Executive Officer.

(h) *Notification of final blends associated with an AERP or third party AERP*

(1) Except as otherwise provided, for each final blend, the producer or importer shall notify the Executive Officer in writing, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility 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, with the following information:

(A) The company name, address, phone number, and contact information,

(B) The production facility or import facility name, batch name, number, or other identification, the blend identity, grade of California gasoline, the location (with sufficient specificity to allow ARB inspectors to locate and sample the gasoline; this shall include, but is not limited to, the name of the facility, address, and identification of the tank), and other information that uniquely identifies the California gasoline subject to the AERP or third party AERP,

(C) The estimated volume (in barrels),

(D) The identity of the AERP or third party AERP, which was approved by the Executive Officer and the NO_x, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan,

(E) The PM alternative specifications for RVP, sulfur content, benzene content, aromatics content, olefins content, T50, T90, and oxygen content,

(F) Documentation, calculations, emissions test data, and other information that establishes the amount of NO_x, total ozone forming potential, and potency-weighted toxics associated with the final blend of California gasoline to which the AERP or third party AERP applies,

(G) A statement, signed by a legal representative for the producer or importer that all information submitted with the notification is true and correct, and

(H) Within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production facility or import facility.

(2) A producer or importer may report an actual volume that is less than the estimated volume, as long as notification of the actual 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 facility or import facility. If notification of the actual volume is not timely received by the Executive Officer, the reported estimated volume shall be deemed the reported actual volume. If the actual volume is larger than initially estimated, the producer or importer shall revise the reported estimated volume by notifying the Executive Officer no later than 24 hours after completion of the physical transfer of the final blend from the production facility or import facility.

(i) Notification of permeation offsets

(1) Vehicle scrappage. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the vehicle scrappage and the date(s) the offsets accrued.

(2) Fuels. Except as otherwise provided, the producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP, for receipt by the Executive Officer before the start of physical transfer of the gasoline from the production facility 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, with the information in subsection (h)(1) as they relate to other batches of California gasoline or diesel fuel used to offset the emissions associated with permeation.

(3) Incentive grants. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-weighted toxics associated with the incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions and the date(s) the offsets accrued.

(4) Other reduction strategies. The producer or importer shall notify the Executive Officer in writing as provided in the AERP or third party AERP with all documentation, calculations, emissions test data, and other information that establishes the amount of NOx, total ozone forming potential, and potency-

weighted toxics associated with the reduction strategy and the date(s) the offsets accrued.

NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 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, 43013, 43013.1, 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).

Section 2266. Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing.

(a) ***Certification of test-certified alternative gasoline formulations.*** Following application by a producer or importer, the executive officer may certify, and identify alternative specifications for, test-certified alternative gasoline formulation pursuant to the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," as last amended April 25, 2001, which is incorporated herein by reference. Notwithstanding section 2265.5(a), a producer or an importer that produces gasoline that has elected to be subject to a test-certified alternative gasoline formulation pursuant to section 2266 shall offset its emissions associated with permeation by complying with sections 2265.5(b) – (i).

(b) ***Prohibited activities regarding test-certified alternative gasoline formulations.***

* * * * *

(3) 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 test-certified 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 section 2264(c).

(4) A producer or importer that produces gasoline may not elect to sell or supply from its production facility or import facility a final blend of California gasoline as a test-certified alternative gasoline formulation if the producer or importer is subject to any outstanding requirements to provide offsets at the same production facility or import facility pursuant to section 2265.1(c) or 2265.5.

(5) An importer that does not produce gasoline shall not sell, offer for sale, supply, or offer for supply California gasoline if the gasoline creates emissions associated with permeation.

* * * * *

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.*

* * * * *

(2) *Determining whether a final blend of CARBOB complies with the standards for California gasoline.*

* * * * *

(B) *Determining whether a final blend of CARBOB complies with the standards for California gasoline by use of the CARBOB Model.*

1. A producer or importer may elect to have the CARBOB model used in determining whether a final blend designated as CARBOB complies with the standards applicable to California gasoline, by providing the notice in section (b)(1)(C). In this case, the CARBOB limits for the final blend shall be determined in accordance with the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended April 25, 2008, which is incorporated by reference herein. The CARBOB's compliance with the assigned CARBOB limit for a property shall constitute compliance with the corresponding finished gasoline limit – be it a section 2262 flat limit, PM flat limit, TC limit, or (if no designated alternative limit has been established) section 2262 or PM averaging limit. In addition, where the producer or importer has elected to use the CARBOB model for a given final blend that is not being transferred from its production or import facility during the Reid vapor pressure control period for that facility set forth in section 2262.4(a), the final blend must have a Reid vapor pressure no lower than the value used in the T50 CARBOB model.

* * * * *

(C) *Determining whether a final blend of CARBOB complies with the standards for California gasoline by oxygenate blending and testing.*

Except as otherwise provided in section (a)(2)(B), the properties of a final blend of CARBOB shall be determined for purposes of compliance with sections 2262, 2262.3, 2262.4, 2262.5, 2262.6, 2265, and 2266 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).

* * * * *

- (5) **Assignment of designated alternative limits for CARBOB and for the oxygenated California gasoline where the producer or importer has elected to use the CARBOB model.**

* * * * *

- (C) **Determining the designated alternative limit for the final blend after the CARBOB is oxygenated.** Whenever a producer or importer has assigned a designated alternative limit for a final blend of CARBOB, the designated alternative limit for the final blend after the CARBOB is oxygenated shall be determined in accordance with the “Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB),” as adopted April 25, 2001, last amended April 25, 2008, which is incorporated by reference herein. This will be the final blend’s designated alternative limit for purposes of compliance with sections 2262.3(c)(3) and 2264(b) and (c).

* * * * *

- (6) **Determining whether downstream CARBOB complies with the cap limits for California gasoline.**

- (A) **Determining whether downstream CARBOB complies with the cap limits for California gasoline through the use of CARBOB cap limits derived from the CARBOB Model.** Whenever downstream CARBOB designated for ethanol blending has already been supplied from its production or import facility, the CARBOB’s compliance with the cap limits for California gasoline may be determined by applying the CARBOB cap limits in the following table:

Property	CARBOB Cap Limits	
	CaRFG2	CaRFG3
Reid Vapor Pressure ¹ (pounds per square inch)	5.78	5.99
Sulfur Content (parts per million by weight)	89	66 ²
		32 ²
		21 ²
Benzene Content (percent by volume)	1.33	1.22
Aromatics Content (percent by volume)	33.1	38.7
Olefins Content (percent by volume)	11.1	11.1
T50 (degrees Fahrenheit)	232 ³	232 ³
	237 ³	237 ³
T90 (degrees Fahrenheit)	335	335

- 1 The Reid vapor pressure standards apply only during the warmer weather months identified in section 2262.4.
- 2 The CaRFG Phase 3 CARBOB cap limits for sulfur are phased in starting December 31, 2003, ~~and~~ December 31, 2005, and December 31, 2011, in accordance with section 2261(b)(1)(A).
- 3 The first number applies to CARBOB that is subject to the Reid vapor pressure standard pursuant to section 2262.4, and the second number applies to CARBOB that is not subject to the Reid vapor pressure standard.

* * * * *

(b) Notification to ARB 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, along with any information required under section 2265(a)(2) (for a PM alternative gasoline formulation), section 2265.1 (for a PM emissions offsetting formulation, applicable only to producers and importers that produce gasoline), section 2265.5 (for an alternative emission reduction plan, applicable only to producers and importers that produce gasoline), or 2266(c) (for a test-certified alternative

gasoline formulation). 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.

* * * * *

(E) The designation of each oxygenate type or types and amount or range of amounts to be added to the CARBOB, and the applicable flat limit, PM alternative specification, designated emissions offsetting limit, or TC alternative specification for oxygen. 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, designated emissions offsetting limits, alternative emission reduction plan, or TC alternative specifications, 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 or designated emissions offsetting limits, the amount or range of amounts of oxygenate to be added must be such that the resulting California gasoline has an oxygen content that meets the oxygen content PM alternative specification or designated emissions offsetting limits for the final blend. For a final blend of CARBOB that is subject to TC alternative specifications, the amount or range of amounts of oxygenate to be added must be such that the resulting California gasoline has an oxygen content that meets the oxygen content alternative specification for the final blend.

* * * * *

(d) ***Documentation required when CARBOB is transferred.***

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

* * * * *

(B) Identifies the applicable flat limit, PM alternative specification, designated emissions offsetting limit, or TC alternative specification for oxygen, and

* * * * *

Section 2270. Testing and Recordkeeping.

- (a) (1) The requirements of this section (a) shall apply to each producer and importer that has elected to be subject to an averaging limit in section 2262, or to a PM averaging limit, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to sulfur content shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for sulfur, or to a PM averaging limit for sulfur, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to benzene content shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for benzene, or to a PM averaging limit for benzene, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to olefin content shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for olefin content, or to a PM averaging limit for olefin content, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to T90 shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for T90, or to a PM averaging limit for T90, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to T50 shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for T50, or to a PM averaging limit for T50, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to aromatic hydrocarbon content shall apply to each producer or importer that has elected to be subject to the section 2262 averaging limit for aromatic hydrocarbon content, or to a PM averaging limit for aromatic hydrocarbon content, or to a producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d). The references to oxygen content and RVP shall apply to each producer or importer that produces gasoline that has elected to be subject to the PM emissions offsetting compliance option pursuant to section 2264.2(d).
- (2) Each producer shall sample and test for the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in section 2262.4(b)(2)), T50 and T90 in each final blend of California gasoline which the producer has produced, by collecting and analyzing a representative sample of gasoline taken from the final blend, using the methodologies specified in section 2263. If a producer blends gasoline components directly to pipelines, tankships, railway tankcars or trucks and trailers, the loading(s) shall be sampled

and tested for the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in section 2262.4(b)(2)), T50 and T90 by the producer or authorized contractor. The producer shall maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, sulfur, aromatic hydrocarbon olefin, oxygen, and benzene content, RVP, T50 and T90. All gasoline produced by the producer and not tested as California gasoline by the producer as required by this section shall be deemed to have a sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content, RVP (during the RVP regulatory control periods in section 2262.4(b)(2)), T50 and T90 exceeding the applicable averaging limit standards specified in section 2262, exceeding the comparable PM averaging limits if applicable, or exceeding the designated emissions offsetting limits, unless the producer demonstrates that the gasoline meets those standards and limits.

- (3) Each importer shall sample and test for the sulfur, aromatic hydrocarbon, olefin and benzene content, T50 and T90 in each final blend of California gasoline which the importer has imported by tankship, pipeline, railway tankcars, trucks and trailers, or other means, by collecting and analyzing a representative sample of the gasoline, using the methodologies specified in section 2263. The importer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, the volume of the final blend, sulfur content, aromatic hydrocarbon, olefin and benzene content, T50 and T90. All gasoline imported by the importer and not tested as California gasoline by the importer as required by this section shall be deemed to have a sulfur, aromatic hydrocarbon, olefin and benzene content, T50 and T90 exceeding the applicable averaging limit standards specified in section 2262, or exceeding the comparable PM averaging limit(s) if applicable, or exceeding the designated emissions offsetting limits, unless the importer demonstrates that the gasoline 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 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 of California gasoline in accordance with the requirements of this section, the final blend of gasoline shall be presumed to have been sold by the producer or importer in violation of the applicable averaging limit standards in section 2262, or the PM averaging limit(s), or the designated emissions offsetting limits, to which the producer or importer has elected to be subject.
- (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 (a)(2) or (a)(3). 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 averaging limit standards in section 2262, the averaging limit compliance requirements in section 2262.3(c), ~~and the PM averaging limit(s), the PM emissions offsetting compliance option requirements in section 2265.1, and the alternative emission reduction plan requirements in section 2265.5.~~ Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

* * * * *

Section 2271. Variances.

(a) ***Applications for variances.*** Any person who cannot comply with the standards or compliance requirements set forth in sections 2262, 2262.3, 2262.4, 2262.5, ~~or 2262.6, 2265.1, or 2265.5~~ because of reasons beyond the person's reasonable control may apply to the executive officer for a variance. Except for emergency variances as provided in section (h), the application shall be accompanied by a fee of \$6700.00 to cover the costs of processing the variance. If the applicant withdraws the application before the variance hearing is held, \$4100.00 of the fee shall be refunded. The application shall set forth:

* * * * *

(e) ***Factors to be considered in making the necessary findings for granting variances.***

In making the findings specified in section (d), the factors set forth below shall be considered. It is the responsibility of the applicant to provide the information necessary to adequately evaluate these factors.

(1) Regarding the finding specified in section (d)(1):

* * * * *

(B) To demonstrate that requiring compliance would result in an "extraordinary economic hardship," the applicant must make a substantial showing that no alternative to a variance would eliminate or mitigate the need for a variance. Potential alternatives that the applicant shall address include the following: 1. obtaining complying gasoline from outside sources, or obtaining blending materials that would allow production of complying gasoline, ~~and~~ 2. using the applicable California Predictive Model (as specified in Title 13, CCR, section 2265) to maximize the production of complying gasoline, or to minimize the degree of noncompliance, through the use of a PM alternative gasoline formulation, 3. electing to use the PM emissions offsetting compliance option,

and 4. applying for an alternative emission reduction plan. The applicant shall compare the economics of operations without a variance, for the period over which the variance is proposed, with the economics of operations after the variance compliance plan has been implemented (e.g., the economic hardship during the term of the variance shall be measured against the eventual cost of long-term compliance.) The operations may include facets of the applicant's business other than gasoline operations, if those facets are directly affected by the ability to conduct the gasoline business. An applicant may also address any supply shortages that could result from the failure to grant a variance and the economic affects of such shortages on the persons who do, or could, receive gasoline from the applicant.

* * * * *

Section 2273. Labeling of Equipment Dispensing Gasoline Containing MTBE.

* * * * *

(b) *Residual levels of MTBE.*

- (1) The labeling requirements in section 2273(a) do not apply to equipment dispensing gasoline from a storage tank containing gasoline having an MTBE content of less than 0.6 percent by volume, as determined by American Society of Testing and Materials (ASTM) Test Method D 4815-~~9904~~, which is incorporated herein by reference, or any other test method determined by the executive officer to give equivalent results.

* * * * *

(d) *Deliveries of gasoline to retail outlets.*

- (1) Any person delivering gasoline to a retail gasoline outlet from December 16, 1999 through December 30, 2003 shall provide to the outlet operator or responsible employee, at the time of delivery of the fuel, an invoice, bill of lading, shipping paper, or other documentation which states whether the gasoline does or does not contain 0.6 percent by volume or more MTBE, and which may identify the volumetric amount of MTBE in the gasoline. For purposes of determining compliance with this section 2273(d), the volumetric MTBE content of gasoline shall be determined by ASTM Test Method D 4815-9904, which is incorporated herein by reference, or any other test method determined by the executive officer to give equivalent results.

* * * * *