

State of California
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

**PUBLIC HEARING TO CONSIDER THE 2011 AMENDMENTS TO THE PHASE 3
CALIFORNIA REFORMULATED GASOLINE REGULATIONS**

Public Hearing Date: October 21, 2011
Agenda Item No.: 11-8-5
Addendum Prepared: October 5, 2012

I. GENERAL

On August 27, 2012, the Air Resources Board (ARB or Board) submitted the Final Statement of Reasons (FSOR), a Final Regulation Order containing proposed amendments, and the incorporated “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model” (Predictive Model Procedures) for the “Proposed 2011 Amendments to Phase 3 California Reformulated Gasoline Regulations” to the Office of Administrative Law (OAL) for its review and approval.¹

In the course of its review, OAL submitted preliminary comments on the retroactive applicability of the Predictive Model Procedures, the need to further justify incorporation of certain documents, the need for an explanation why certain incorporated documents are not attached to the text or included in the file, the need to more clearly identify where certain documents are incorporated by reference, a consideration to capitalize “Executive Officer” throughout section 2266(c), removal of a comma in section 2266.5(f)(1)(G), a clarification whether the bolded texts at the beginnings of a number of subsections should be italicized, and the need to include the comment addressed in section I.B.1 of the Initial Statement of Reasons. Each of these issues is addressed in turn below.

II. ADDITIONAL NON-SUBSTANTIVE CHANGES

ARB agrees with all of OAL’s comments and suggestions as they add clarity and consistency to the regulations.

A. Retroactive applicability of the Predictive Model Procedures

In drafting the proposed amendments to the CaRFG3 regulations, ARB did not intend to retroactively apply any version of the Predictive Model Procedures. ARB’s intent was to break up an extremely cumbersome paragraph that continued to grow

¹ The affected sections include sections 2258, 2260, 2261, 2264, 2265 (and the incorporated “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model” as last amended August 7, 2008), 2265.1, 2266, 2266.5, and 2271 of Title 13, California Code of Regulations (CCR).

as the Predictive Model Procedures were amended. On June 16, 2000, ARB initially adopted the Phase 3 Predictive Model Procedures, which were effective from September 2, 2000 through August 19, 2001, inclusive. On April 25, 2001, ARB amended the Phase 3 Predictive Model Procedures, which were effective from August 20, 2001 through April 8, 2005, inclusive. On November 18, 2004, ARB again amended the Phase 3 Predictive Model Procedures, which were effective from April 9, 2005 through December 30, 2009, inclusive. On August 7, 2008, ARB again amended the Phase 3 Predictive Model Procedures, which were effective from December 31, 2009 through present (day before the operative date of the 2011 amendments). In these 2011 rulemaking amendments, ARB intended to amend the Phase 3 Predictive Model Procedures to be effective from the operative date of these amendments. A summary of the applicable Predictive Model Procedures and their applicable dates is provided in Table 1.

TABLE 1. Phase 3 Predictive Model Procedures and the applicable periods.

Predictive Model Version	Applicable Period
Adopted June 16, 2000	September 2, 2000 – August 19, 2001
Amended April 25, 2001	August 20, 2001 – April 8, 2005
Amended November 18, 2004	April 9, 2005 – December 30, 2009
Amended August 7, 2008	December 31, 2009 - October 8, 2012
Amended August 24, 2011	Beginning October 9, 2012

The final regulation order submitted by ARB to OAL inadvertently combined the first two lines of the above table and reads “3. Gasoline Subject to the CaRFG Phase 3 Standards and Supplied Before April 9, 2005. For a final blend subject to the CaRFG Phase 3 standards and starting to be sold or supplied from the production or import facility before April 9, 2005, the producer or importer shall evaluate the candidate PM alternative specifications in accordance with the Air Resources Board's "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as adopted April 25, 2001, which is incorporated herein by reference.” (proposed section 2265(a)(2)(A)3.). Therefore, it appears that ARB is attempting to retroactively apply the April 25, 2001 version of the Predictive Model to the period from September 2, 2000 to April 8, 2005. That was not ARB’s intent. To correct this error, the final regulation order is being revised to reflect what is included in Table 1. These changes are non-substantive in nature in that producers and importers were previously required to use the June 16, 2000 version of the Predictive Model during the period September 2, 2000 – August 19, 2001 and to use the April 25, 2001 version during the period August 20, 2001 – April 8, 2005. Therefore, this correction is a change without regulatory effect as it does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. (Cal. Code Regs., tit. 1, § 100.)

B. Justification for Incorporation of Certain Documents

Section 2265(a)(2)(A)2. incorporates the "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model." Sections 2265(a)(2)(A)3. – 2265(a)(2)(A)7. incorporate the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model." The regulation identifies the incorporated documents by title and date. The incorporated documents are readily available from ARB upon request, were made available in the context of this rulemaking in the manner specified in Government Code section 11346.5(b).

The CaRFG3 Predictive Model Procedures are incorporated by reference, because it would be cumbersome and impractical to print the roughly 74-page document in the California Code of Regulations (CCR). Existing ARB administrative practice has been to have the Predictive Model procedures incorporated by reference rather than printed in the CCR because these procedures are highly technical and complex, have pages of equations and numerous tables, include various worksheets, and have a very limited audience. The affected public is accustomed to the incorporation format used for these procedures. Therefore, these documents are incorporated by reference because it would be cumbersome, unduly expensive, or impractical to publish these incorporated documents in the CCR.

C. Explanation why Incorporated Documents Are Not Attached to the Text or Included in the File

Government Code section 11343(c) requires each state agency to deliver to OAL, at the time of transmittal for filing a regulation or order of repeal, six duplicate copies of the regulation or order of repeal, together with a citation of the authority pursuant to which it or any part thereof was adopted. As documents incorporated by reference are considered a part of the regulation, this provision requires that six duplicate copies of all incorporated document be filed with OAL. In the past, with the adoption of each amendment to the Predictive Model Procedures, ARB had provided the requisite six duplicate copies to OAL. However, as the Predictive Model Procedures are updated, the number of versions (and total pages) increases. For example, with the Phase 2 Predictive Model Procedures and the various versions of the Phase 3 Predictive Model Procedures, there are currently a total of roughly 291 pages, not including the version being proposed by the 2011 amendments. To provide six copies would result in adding roughly 1,748 pages, or roughly 3.5 reams, to the rulemaking file. This seems contrary to the goal of reducing paper. All versions of the adopted or amended versions of the Predictive Model Procedures are in their respective rulemaking files, are available on ARB's website, and are available upon request. For these reasons, copies of previous versions of the Predictive Model Procedures that were incorporated by reference have not been included in this submission to OAL. Six duplicate copies of the newly amended version have been provided.

D. Need to More Clearly Identify Where Certain Documents Are Incorporated By Reference

Four times in the regulations ARB states “the applicable version as described in section 2265(a)(2)...” or “which are incorporated by reference in section 2265(a)(2).” However, due to the 2011 amendments, the incorporation by reference no longer occurs in (a)(2); it occurs in section 2265(a)(2)(A). Therefore, as a non-substantive change, the language in sections 2260(a)(19.7), 2261(b)(4)(A), 2261(b)(4)(C) and 2261(b)(4)(E)1 has been changed to “the applicable version as described and incorporated by reference in section 2265(a)(2)(A)” or “which are incorporated by reference in section 2265(a)(2)(A).” These changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision, since the change merely clarifies more precisely where in section 2265(a)(2) the applicable document is incorporated by reference. (Cal. Code Regs., tit. 1, § 100.)

E. Capitalization of “Executive Order” Throughout Section 2266(c)

In section 2266(c), “executive officer” is sometimes capitalized, and sometimes it’s not. For consistency, all occurrences of that term are capitalized in section 2266(c).

F. Removal of a Comma in Section 2266.5(f)(1)(G)

Section 2266.5(f)(1) prohibits any person from combining any CARBOB that has been supplied from the facility at which it was produced or imported with any other material except what is specifically listed in subsections (A) – (K). Section 2266.5(f)(1)(G) as proposed by the 2011 amendments state “Additives that a pipeline operator that would add for operational purposes, such as, drag reducing agent.” For clarity and grammatical correctness, this section is changed to read “Additives that a pipeline operator ~~that~~ would add for operational purposes, such as, drag reducing agent.”

G. Clarification Whether the Bolded Texts at the Beginning of a Number of Subsections Should be Italicized.

In the Final Regulation Order, ARB has included a note that “Subsection headings are shown in ***bold italics*** and are to be *italicized* in Barclays California Code of Regulations.” It has been ARB’s practice in the fuels program to italicize some of the subsections to more easily locate the start of the subsection. Therefore, each heading or text depicted in ***bold italics*** should be *italicized*.

H. Comment Received During the 45-Day Comment Period

In section I.B.1 of the Initial Statement of Reason, ARB stated “In response to comments received during the 45-day comment period, at the hearing, staff presented suggested conceptual modifications...” ARB inadvertently stated that a comment was received **during** the 45-day comment period. However, this comment, which was communicated by telephone, was provided **prior to** the 45-day

comment period and prior to publication. The comment should have been handled like a comment at a workshop, without the need for mention in the Final Statement of Reasons. Nevertheless, mention of the comment adds to the transparency and understanding of the rationale for change.

As a result of the comment, staff worked with stakeholders to develop conceptual modifications to the regulation order, which were provided to stakeholders as Attachment B to the Resolution and presented at the Board hearing. Subsequent to the conceptual modifications, actual regulatory language was provided to the public in the first 15-day notice of availability of modified text. Following that comment period, an additional modification was made and a second 15-day notice of availability of modified text was published. No further comments were made regarding the applicable section, section 2266.5(f)(1).

I. Compliance with Gov. Code section 11346.9(a)(4)

No alternative would be more effective at providing detail to regulated entities on how they will be required to comply during the implementation of the program, nor as effective and less burdensome than what is included in the rulemaking. Finally, ARB did not identify any alternative that would be more cost effective to regulated entities.

III. CONCLUSION

The ARB staff believes that the regulatory text is sufficiently clarified, consistent with the Board's directives at the public hearing, and addresses the OAL's concerns. The proposed 2011 amendments to the Phase 3 California Reformulated Gasoline Regulations are necessary, cost effective, and technologically feasible. The final modifications were adopted by the ARB through Executive Order R-12-008, dated August 24, 2012.