

## ATTACHMENT A

### **Second 15-Day Modifications to the Original Proposal**

#### **MODIFICATIONS TO THE PROPOSED 2011 AMENDMENTS TO THE CALIFORNIA PHASE 3 REFORMULATED GASOLINE REGULATIONS**

**Note:** The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions, compared to the preexisting regulatory language. The symbol “\* \* \* \* \*” means that intervening text not being amended is not shown. The text of amendments proposed in the first 15-day comment period is shown in double underline to indicate additions; no further deletions were proposed. The text of the amendments proposed in the second 15-day comment period—the only proposed modified text subject to comment during this period—is shown in italicized double underline to indicate additions; no further deletions are proposed. All other portions remain unchanged and are indicated by the symbol “\* \* \* \* \*” for reference. Subsection headings are shown in ***bold italics*** and are to be italicized in Barclays California Code of Regulations. While the entire regulatory amendments are provided here for convenience and context, the proposed modifications subject to comment are on page 17.

Repeal title 13, California Code of Regulations (CCR) section 2258, and amend sections 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 to read as follows:

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

#### **Subarticle 1. Gasoline Standards That Became Applicable Before March 1, 1996**

##### **§ 2258. Oxygen Content of Gasoline in the Wintertime.**

###### **(a) *Regulatory Standard.***

- (1) Starting November 1, 1992, within each of the air basins during the regulatory control period set forth in section (a)(2), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless the gasoline has an oxygen content of not less than 1.8 percent by weight and not more than 2.2 percent by weight.

(2) Regulatory Control Periods.

(A) October 1 through February 29

South Coast Air Basin and Ventura County

(B) October 1 through January 31

Sacramento Valley Air Basin

San Joaquin Valley Air Basin

San Francisco Bay Area Air Basin

Lake Tahoe Air Basin

Great Basin Valley Air Basin

Mountain Counties Air Basin

North Coast Air Basin

Lake County Air Basin

Northeast Plateau Air Basin

North Central Coast Air Basin

San Luis Obispo County

(C) November 1 through February 29

San Diego Air Basin

Southeast Desert Air Basin

Santa Barbara County

(3) Section (a)(1) shall not apply to transactions involving gasoline not meeting the minimum oxygen content standard where the person selling, supplying, or offering the gasoline demonstrates by affirmative defense that: [i] the gasoline has not yet been supplied from the final distribution facility, and [ii] the documents accompanying such gasoline clearly state that it does not comply with the minimum oxygen content standard in section (a)(1), and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline within the standards in section (a)(1) before it is supplied from the final distribution facility, or [iv] at or before the time of the transaction the person has obtained a written statement from the purchaser, recipient, or offeree of the gasoline stating that he or she will take reasonably prudent precautions to assure that the gasoline is brought within the standards of section (a)(1) before it is supplied from the final distribution facility.

(4) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser consumer's fueling facility when the station or facility is not subject to a basic regulatory control period.

~~(5) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the last delivery of gasoline to the stationary storage tank occurred more than fourteen days before the start of the regulatory control period.~~

~~(6)(A) The regulatory standards in section (a)(1) shall not apply to a transaction occurring in the air basin during a transition period, where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that he or she has made, prior to the transaction, specific arrangements with a gasoline distributor for the delivery of an oxygenated or nonoxygenated gasoline blend containing oxygenates in quantities that will result in gasoline in the stationary storage tanks at the facility having an oxygen content of from 1.8 percent to 2.2 percent by weight by the end of the transition period.~~

~~(B) The regulatory standards in section (a)(1) shall not apply to a transaction occurring in an air basin during a transition period, where the transaction involves the sale, offer for sale, supply, offer for supply, or transport of gasoline to a retail gasoline outlet or bulk purchaser consumer's facility and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the gasoline is being distributed pursuant to a prior arrangement to deliver oxygenated or nonoxygenated gasoline to bring the retail gasoline outlet or bulk purchaser consumer's facility into compliance with the regulatory standards in section (a)(1) by the end of the transition period.~~

~~(7) Section (a)(1) shall not apply to a transaction involving the sale, offer for sale, supply, or offer for supply of gasoline to a stationary storage tank at a retail gasoline outlet, or the transfer of gasoline from a stationary storage tank at a retail gasoline outlet to a motor vehicle fuel tank, if the person selling, offering, or supplying the gasoline demonstrates by affirmative defense all of the following:~~

- ~~(A) The retail gasoline outlet is within Modoc, Lassen, Sierra, Nevada, Placer, El Dorado, Alpine, Mono, Inyo, or San Bernardino counties, and is not within the Lake Tahoe or Sacramento Valley Air Basins.~~
- ~~(B) The final distribution facility from which the gasoline is being or has been delivered is outside California.~~
- ~~(C) The gasoline is being or has been delivered to the stationary storage tank by a tank truck having a total capacity not exceeding 4500 gallons.~~

(D) The stationary storage tank at the retail gasoline outlet has a total capacity not exceeding 2500 gallons, and

(E) The retail gasoline outlet has a monthly throughput not exceeding 10,000 gallons.

(8) For the purposes of section (a)(1), each sale of California gasoline at retail, and each dispensing of California gasoline into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of section (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Bulk purchaser-consumer" means a person who purchases or otherwise obtains gasoline in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(2) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.

(3) "Distributor" means any person engaged in the business of transporting and delivering gasoline to a retail gasoline outlet or bulk purchaser-consumer's facility.

(4) "Final distribution facility" means the stationary gasoline transfer point from which gasoline is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the gasoline will be delivered to the facility at which the gasoline will be dispensed into motor vehicles; except that a cargo tank truck is the final distribution facility where the cargo tank truck is used to transport gasoline and carries written documentation demonstrating that oxygenates, in quantities that will bring the gasoline into compliance with section 2258(a)(1), will be or have been blended directly into the cargo tank truck prior to delivery of the gasoline from the cargo tank truck to the facility at which the gasoline will be dispensed into motor vehicles.

(5) "Gasoline" means any fuel which is commonly or commercially known or sold as gasoline.

(6) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(7) "Northern California" means the area of California not contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(8) "Southern California" means the area of California contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(9) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(10) "Transition period" means:

- a. the first 15 days of any October regulatory control period.
- b. November 1 to November 15, 1992, and
- c. November 1 through November 15 of 1993, 1994, or 1995 in the San Diego Air Basin, the Southeast Desert Air Basin, and Santa Barbara County.

(c) Sampling Procedures and Test Methods.

Compliance with the oxygen content standards in this regulation shall be determined by use of an applicable sampling methodology set forth in Title 13, California Code of Regulations, section 2296, and use of American Society for Testing and Materials Test Method ASTM D 4815-94, which is incorporated herein by reference. Another test method may be used following a determination by the executive officer that the other method produces results equivalent to the results obtained with ASTM D 4815-94.

(d) Inability to Produce Conforming Gasoline in Extraordinary Circumstances.

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner, importer, or oxygenate blender and which could not have been avoided by the exercise of prudence, diligence, and due care, the executive officer may permit a refiner, importer, or oxygenate blender, for a brief period, to distribute gasoline which does not meet the requirements in section (a)(1) if:

- (1) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls which cannot otherwise be compensated for);

- (2) The refiner, importer, or oxygenate blender exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;
- (3) The refiner, importer, or oxygenate blender can show how the requirements for oxygenated gasoline will be expeditiously achieved;
- (4) The refiner, importer, or oxygenate blender agrees to make up air quality detriment associated with the nonconforming gasoline, where practical; and
- (5) The refiner, importer, or oxygenate blender pays to the Air Pollution Control Fund an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to section (d)(4), in making up the air quality detriment.

(e) Effect of Supply Waiver Under Federal Clean Air Act.

- (1) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas of California, section (a)(1) shall not apply in any air basin containing an area covered by the waiver, during the effective period of the waiver.
- (2) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Southern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Southern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.
- (3) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Northern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Northern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.

(f) Sunset. This section shall not apply to gasoline sold or supplied after February 29, 1996.

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)~~

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

### **§ 2260. Definitions.**

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

\* \* \* \* \*

(6.5) "California reformulated gasoline blendstock for oxygenate blending, or 'CARBOB,'" means a petroleum-derived liquid which is intended to be, or is represented as, a product that will constitute California gasoline upon the addition of a specified type and percentage (or range of percentages) of oxygenate to the product after the product has been supplied from the production or import facility at which it was produced or imported.

\* \* \* \* \*

(7.7) "Drag reducing agent" means a long chain polymer chemical that is used in crude oil, refined products or non-potable water pipelines injected by the pipeline operator in small amounts (parts per million) and is used to reduce the frictional pressure drop along the pipeline's length.

\* \* \* \* \*

(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 applicable version of 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 August 7, 2008, which is incorporated herein by reference in section 2265(a)(2)(A), 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 applicable version of 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 August 7, 2008 which is~~  
incorporated herein by reference in section 2265(a)(2)(A).

\* \* \* \* \*

(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 August 7, 2008~~  
the applicable version as described in section 2265(a)(2), which is incorporated herein by reference in section 2265(a)(2)(A).

\* \* \* \* \*

(29.5) "Racing vehicle" means a ~~competition vehicle not used on public highways~~  
vehicle that:

- (A) Is exclusively operated in conjunction with sanctioned racing events;
- (B) Exhibits racing features and modifications such that it is incapable of safe and practical street or highway use;
- (C) Is not licensed by the State of California Department of Motor Vehicles for operation on public streets or highways; and
- (D) Is never operated on public streets or highways.

\* \* \* \* \*

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, 39048, 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).

## **§ 2261. Applicability of Standards; Additional Standards.**

\* \* \* \* \*

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

\* \* \* \* \*

(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 any of the applicable versions of 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 August 7, 2008 which are incorporated by reference in section 2265(a)(2)~~, 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 any of the applicable versions of 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 August 7, 2008 which are incorporated by reference in section 2265(a)(2)~~, 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 August 7, 2008, may elect to use either one of the two compliance options ~~(exhaust + evaporative emissions model elements or the exhaust emissions model element only) (total hydrocarbon model or the exhaust hydrocarbon model)~~ 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. With certain limited exceptions, which are described in the "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," beginning December 31, 2009, a candidate fuel that is designated as "non-RVP-controlled gasoline" must use the

~~exhaust hydrocarbon model in determining the emissions equivalency of the candidate fuel specifications. A candidate fuel that is designated as "RVP-controlled gasoline" must use the total hydrocarbon model in determining the emissions equivalency of the candidate fuel specifications. 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.~~

\* \* \* \* \*

(E) Notification.

1. The approximate date by which it intends to begin supplying from its production or import facility gasoline complying with any of the applicable versions of 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 August 7, 2008 which are incorporated by reference in section 2265(a)(2)~~, or the "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001, last amended August 7, 2008, referred to as the amended Procedures Guides, if permitted to do so;

\* \* \* \* \*

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, 43101 and 43830.8, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal. Rptr. 249 (1975).

**§ 2264. Designated Alternative Limits.**

\* \* \* \* \*

**(d) *Designated alternative limits for PM alternative gasoline formulations.***

The producer or importer of a final blend of California gasoline that is subject to the PM averaging compliance option for one or more properties may assign a designated alternative limit to the final blend by satisfying the notification requirements of section 2264(a). The producer or importer of such a final blend shall

be subject to all of the provisions of this section 2264, except that, with respect to that final blend, the PM averaging limit (if any) for each property subject to the PM averaging compliance option shall replace any reference in this section 2264 to the averaging limit specified in section 2262.

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).

## **§ 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 August 7, 2008, which is incorporated herein by reference. The three 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, total 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.~~

**(2)(A) Evaluation of the Candidate PM Alternative Specifications.**

- 1. The producer or importer shall evaluate the candidate PM alternative specifications in accordance with the applicable "Predictive Model Procedures" documents incorporated by reference below.**
- 2. Gasoline Subject to the CaRFG Phase 2 Standards.** 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.
- 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.
- 4. Gasoline Supplied From April 9, 2005 through December 30, 2009.** For a final blend starting to be sold or supplied from the production or import facility from April 9, 2005, through December 30, 2009, 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 amended November 18, 2004, which is incorporated herein by reference.
- 5. Gasoline Supplied From December 31, 2009 through [Insert day before operative date of amendments].** For a final blend starting to be sold or supplied from the production or import facility from December 31, 2009 through [Insert day before operative date of amendments], 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 last amended August 7, 2008, which is incorporated herein by reference.

**6. Gasoline Supplied Starting [insert operative date of amendments].** For a final blend starting to be sold or supplied from the production or import facility on or after [insert operative date of amendments], 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," last amended [insert date of amendment], which is incorporated herein by reference.

(B) **Notification to the Executive Officer.** If the PM alternative specifications being evaluated meet the criteria for approval in the applicable Predictive Model Procedures, the producer or importer shall notify the Executive Officer of:

1. The identity and location of the final blend;
2. 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;
3. the numerical values for percent change in emissions for oxides of nitrogen, total ozone forming potential, and potency-weighted toxic air contaminants as determined in accordance with the applicable Predictive Model Procedures;
4. the grade of gasoline of the final blend;
5. the location of the final blend with sufficient specificity to locate and sample the gasoline. This shall include, but is not limited to, the name of the facility, address, and identification of the storage tank.

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.

\* \* \* \* \*

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).

## **§ 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.

\* \* \* \* \*

(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) 1. The company name, address, phone number, and contact information,
- (2) 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) 3. The estimated volume (in barrels),
- (4) 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) 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) 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) 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.

\* \* \* \* \*

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).

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

\* \* \* \* \*

- (c) ***Notification regarding sales and supplies of a test-certified alternative gasoline formulation.*** A producer or importer intending to sell or supply a final blend of California gasoline from its production facility or import facility as a test-certified alternative gasoline formulation shall notify the ~~e~~Executive ~~e~~Officer in accordance with this section (c). The notification shall identify the final blend and the identification name of the test-certified alternative gasoline formulation. The notification shall be received by the ~~e~~Executive ~~e~~Officer at least 12 hours before start of physical transfer of the final blend from the production or import facility. ~~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.~~ A producer or importer intending to have a series of its final blends be a specific test-certified alternative gasoline formulation may enter into a protocol with the executive officer for reporting such blends as long as the executive officer reasonably determines the reporting under the protocol would provide at least as much notice to the executive officer as notification pursuant to the express terms of this section (c).

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).

## **§ 2266.5. Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending.**

\* \* \* \* \*

- (e) ***Restrictions on transferring CARBOB.***

- (1) ***Required agreement by transferee.*** No person may transfer ownership or custody of CARBOB to any other person unless the transferee has agreed in writing with

the transferor that either:

\* \* \* \* \*

- (B) The transferee will take all reasonably prudent steps necessary to assure that the CARBOB is transferred to a registered oxygen blender who adds the type and amount (or within the range of amounts) of oxygenate designated in accordance with section (b) to the CARBOB before the CARBOB is transferred from a final distribution facility.
- (2) *Prohibited sales of CARBOB from a final distribution facility*. No person may sell, offer, or supply CARBOB from a final distribution facility where the type and amount or range of amounts of oxygenate designated in accordance with section (b) has not been added to the CARBOB.

(f) ***Restrictions on blending CARBOB with other products materials.***

- (1) *Basic prohibition*. No person may combine any CARBOB that has been supplied from the facility at which it was produced or imported with any other CARBOB, gasoline, blendstock or oxygenate, material except:

\* \* \* \* \*

(F) Deposit Control Additives that meet the limits specified in sections 2253.4 and 2254, and that are certified pursuant to 2257.

(G) Additives that a pipeline operator that would add for operational purposes, such as, drag reducing agent.

(H) Non-CARBOB material in a pipeline. Where a person is transporting a tender of CARBOB followed by a tender of non-CARBOB material in a pipeline, or vice versa, the interface between the CARBOB and non-CARBOB material shall be diverted to a separate storage tank and may not be offered, sold, or supplied as CARBOB or as California gasoline.

(I) Non-CARBOB material in a storage tank. Where a person is changing from a non-CARBOB material to a CARBOB in a storage tank at a terminal or bulk plant, the resultant mixture shall not exceed the CARBOB cap limits. If this condition is met, the resultant mixture in the tank may be treated as CARBOB. In addition, all persons who are subject to this exception shall maintain, for two years from the date of each occurrence, records demonstrating that the resultant mixture did not exceed the CARBOB cap

limits. During the period of required retention, the person subject to this exception shall make any of the records available to the Executive Officer upon request. Whenever such a person fails to provide the foregoing records, the volume of blended material will be presumed to have been blended by the person in violation of section (f)(1). If the resultant mixture does not meet the CARBOB cap limits, no person may offer, sell, or supply it as CARBOB or California gasoline. Where a person is changing from a CARBOB to a non-CARBOB material in a storage tank, no person may offer, sell, or supply the resultant mixture as CARBOB.

(J) Non-CARBOB material in a compartment of a cargo tank truck, marine vessel, rail car, or other vessel. Where a person is changing from a non-CARBOB material to a CARBOB in a compartment, the non-CARBOB material shall not exceed 0.25 percent of the compartment's safe fill volume. If this condition is met the resultant mixture in the compartment may be treated as CARBOB. Where a person is changing from a CARBOB to a non-CARBOB material in a compartment, no person may offer, sell, or supply the resultant mixture as CARBOB.

(K) Vapor recovery condensate, provided the resulting mixture of CARBOB has an oxygen content not exceeding 0.1 percent by weight.

\* \* \* \* \*

## (2) Protocols

\* \* \* \* \*

(D) Protocols for the incidental mixing of non-CARBOB material with CARBOB during the normal and correct operation of a business. Notwithstanding section (f)(1), the Executive Officer may enter into a written protocol with any person to identify conditions under which the person may lawfully mix non-CARBOB materials with CARBOB that has been supplied from a production or import facility. The Executive Officer may enter into such a protocol if he or she reasonably determines that alternatives to the blending are not practical, commingling of the non-CARBOB with CARBOB material will be minimized as much as is reasonably practical, and the blending will not significantly affect the properties of the CARBOB into which the non-CARBOB material is added and will not exceed CARBOB cap limits. If the Executive Officer reasonably determines that the resultant mixture will not be offered, sold, or supplied as CARBOB, he or she may also enter into such a protocol. Any such protocol shall include the person's agreement to be bound by the terms of the protocol.

\* \* \* \* \*

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, 43021 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).

## **§ 2271. Variances.**

\* \* \* \* \*

### **(g) Duration of variances.**

\* \* \* \* \*

- (2) *Variances related to a physical catastrophe.* Notwithstanding the provisions of section (g)(1), a refiner may be granted a variance with a duration of more than 120 days, or a variance extension of more than 90 days, if the applicant demonstrates that the additional time is necessary due to a physical catastrophe, and the requirements of sections (d) and (e) are met. In order to receive a variance or variance extension, the applicant must submit an application as specified in section (a) and a hearing must be held as specified in sections (b) and (c). As used in this section, "physical catastrophe" means a sudden unforseen unforeseen emergency beyond the reasonable control of the refiner, causing the severe reduction or total loss of one or more critical refinery units that materially impact the refiner's ability to produce complying gasoline. "Physical catastrophe" does not include events which are not physical in nature such as design errors or omissions, financial or economic burdens, or any reduction in production that is not the direct result of qualifying physical damage.

\* \* \* \* \*

NOTE: Authority cited: Sections 39600, 39601, 43013, 43013.1, 43013.2, 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, 40000, 41511, 43000, 43013, 43013.1, 43013.2, 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).