

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Response**

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

Public Hearing Date: July 25, 2002
Agenda Item No: 02-6-2

I. GENERAL

In this rulemaking the Air Resources Board (ARB or Board) is adopting amendments to the California Phase 3 Reformulated Gasoline (CaRFG3) regulations. The amendments will postpone the prohibition of the use of methyl tertiary butyl ether (MTBE) and other oxygenates other than ethanol in California gasoline supplied by refiners and importers from December 31, 2002 to December 31, 2003. The amendments will also postpone the schedule for reducing residual levels of MTBE in CaRFG3 by one year, postpone the imposition of the CaRFG3 standards for gasoline properties for one year, and make various other changes.

The rulemaking was initiated by the June 7, 2002 publication of a notice for a July 25, 2002 public hearing. A "Staff Report: Initial Statement of Reasons" (referred to as the Initial Statement of Reasons) was also made available for review and comment starting June 7, 2002. The Initial Statement of Reasons, which is incorporated by reference herein, contains an extensive description of the rationale for the proposal. Appendix A to the Initial Statement of Reasons contained the text of the proposed amendments to sections 2261, 2262, 2262.4, 2262.5, 2262.6, 2262.9, 2266.5, 2269, 2271, 2272, and 2296 of title 13, California Code of Regulations (CCR). These documents were also posted by June 7, 2002 on the ARB's Internet site for the rulemaking:
<http://www.arb.ca.gov/regact/mtbepost/mtbepost.htm>.

At the July 25, 2002 hearing, the Board received written and oral comments. At the conclusion of the hearing, the Board adopted Resolution 02-25, in which it approved amendments to the CaRFG3 regulations, including staff-proposed modifications to the originally proposed amendments. These modifications were suggested by staff in response to public comments made after issuance of the original proposal. The text of the suggested modifications is contained in a 9-page document entitled "ARB Staff's Suggested Modifications to the Proposed Amendments to the CaRFG3 Regulations,"

distributed at the hearing and included as Attachment B to the Resolution. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period. He was then directed either to adopt the amendments with such additional modifications as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the comments.

The additional modifications approved by the Board would postpone, by one year, the date for the reduction of the CaRFG3 sulfur content cap limit from 60 parts per million (ppm) to 30 ppm, retain the original 2002 date for the removal of the month of October from the wintertime oxygen requirement in the South Coast area, and delay by one month the start of the 2003 Reid vapor pressure (RVP) season in Southern California for production and import facilities that are making the transition from MTBE gasoline to ethanol gasoline on the original MTBE phase-out schedule.

Subsequent to the hearing, the staff concluded that the modified text should spell out in more detail how the conditional one-month delay of the start of the 2003 RVP season in Southern California will work for gasoline producers and importers complying early with the MTBE ban and the CaRFG3 standards. Accordingly, the staff drafted additional proposed modifications to section 2262.4(b)(2)(A), title 13, California Code of Regulations (CCR), under which a gasoline producer or importer would have the option of electing to have the March 1 start of the RVP season delayed until April 1 in either 2003 or 2004 (but not both) at each production and import facility. If the delay occurs in 2003, it would only apply to gasoline designated as subject to the CaRFG3 standards, and to CaRFG2 that is produced without the use of MTBE or other oxygenates other than ethanol.

The staff also identified another set of post-hearing modifications that are necessary to correct drafting errors associated with how the seasonal RVP standard applies under the CaRFG3 standards. These modifications, to section 2262.4(b)(1), title 13, CCR, will assure that producers and importers can effectively use the CaRFG3 Predictive Model if they choose to do so before 2004. The modifications also clearly identify the seasonal applicability of the RVP limits when the evaporative emissions model element of the CaRFG3 Predictive Model is used. The modifications are designed to reflect the common understanding of how the CaRFG3 standards will apply.¹

The texts of the modifications to the originally proposed regulatory amendments were made available for a supplemental 15-day comment period by issuance of a "Notice of Public Availability of Modified Text and Supporting Documents and Information." This

¹ The modifications also included an amendment to title 13, CCR section 2265, which was not one of the sections to be amended in the original proposal. The amendment to section 2265(b)(1)(C), added for clarity, simply directs the reader to section 2262.4(b) for the provisions on how the RVP specifications in a predictive model alternative formulation are to be applied. The original proposal included amendments to section 2262.4(b).

Notice and its two attachments were mailed by September 17, 2002, to all parties identified in section 44(a), title 1, CCR.² The Notice and its two attachments were also posted on the ARB's Internet site for the rulemaking on September 17, 2002, along with a 68 page document showing the complete CaRFG3 regulations with the proposed amendments and modifications. An email message announcing and linking to this posting was transmitted to the more than 200 parties that have subscribed to the ARB's "fuels-general" List Server for notification of postings pertaining to motor vehicle fuels. Only one party submitted comments during the 15-day comment period. After a review of these comments, the Executive Officer issued Executive Order G-02-072, in which he adopted the modified amendments to Title 13.³

This Final Statement of Reasons updates the Initial Statement of Reasons by identifying and providing the rationale for the modifications made to the originally proposed amendments. It also summarizes and responds to comments submitted during the rulemaking.

Fiscal Impacts. The ARB has determined that this regulatory action will not result in a mandate to any local agency or school district, the costs of which are or are not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

Consideration of Alternatives. The ARB has determined that no alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by ARB.

II. MODIFICATIONS TO THE ORIGINAL PROPOSAL

As discussed above, the final amendments reflect a number of modifications to the original proposal. In order to make the supplemental 15-day comment process as meaningful as possible, the documents showing the proposed modified text of the regulations and incorporated documents contained "commentaries" explaining the rationale for each substantive modification and specifically noting modifications that had been developed after the July 25, 2002 hearing. Rather than having those commentaries repeated in this section of the Final Statement of Reasons, the modified regulatory text containing the commentaries have been appended as Attachment A.

² The mailout included 11 pages of excerpts from the complete CaRFG3 regulations, showing the instances in which the modified text appears. As explained in the 15-Day Notice, a 68-page document showing the complete text of all of the California reformulated gasoline regulations with the proposed modifications indicated was posted on the Internet site for the rulemaking on September 17, 2002.

³ The adopted amendments also show corrections to Barclays' erroneous failure to print subsection headings in italics despite the fact that they had been shown in italics in the previous CaRFG rulemakings.

III. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

During the 45-day comment period, the Board received written comments from:

NAME	AFFILIATION (IF ANY)
Charles J. Maguire	ExxonMobil
Lou Heyn	Camaro Club of San Diego
James S. Crowley, P.E.	Santa Clara Valley Water District
Jack Coffey	ChevronTexaco Corporation
Gina Grey	Western States Petroleum Association (WSPA)
Matt Katen, R.g., C.Hg.	Alameda County Flood Control and Water Conservation District, Zone 7
Steven Smith	Phillips Petroleum Company
Dan Smith	The Association of California Water Agencies (ACWA)
Cal Hodge	A 2 nd Opinion, Inc.
M. Donald Reighley, P.E.	Placer County Water Agency
Ronald Hunsinger	East Bay Municipal Utility District (EBMUD)
Jay McKeeman	California Independent Oil Marketers Association (CIOMA)
James S. White	White Environmental Associates
Michael F. Dougherty	Petro Diamond Inc.
Al R. Sorensen	Sweetwater Authority
Steven D. Inn	Alameda County Water District
Ron Miller	Williams Bio-Energy
Russell J. Hammer	Los Angeles Area Chamber of Commerce
Lew Morris	
Gilbert G. Bendix, P.E.	
Michael Mostello, Jr.	
Dr. Joseph P. Day	

At the July 2002 hearing, oral testimony was presented by:

James Uihlein	WSPA
Steve Douglas	Alliance of Automobile Manufacturers (AAM)
Gary Herwick	General Motors Corporation (GM)
Gary Welch	Williams Bioenergy
Cal Hodges	A 2 nd Opinion, Inc.
John Marchand	Alameda County Flood Control and Water Conservation District
James White	White Environmental Associates

Neil Koehler
Steve Smith

California Renewable Fuels Partnership
Phillips Petroleum

During the supplemental 15-day comment period, the one written comment was received, from White Environmental Associates.

Set forth below is a summary of each objection or recommendation specifically directed at the proposed amendments or to the procedures followed by the ARB in proposing or adopting the amendments, together with the agency response. Comments not involving objections or recommendations specifically directed towards the proposed amendments or procedures followed are generally not summarized. These comments generally either supported or opposed the use of ethanol in California gasoline or recommended changes to CaRFG3 standards, particularly the standards for sulfur content, T50, T90, and aromatics.

Comments from gasoline producers generally supported the proposed amendments, although some modifications were requested as described below. Support for the proposal was also expressed by the Los Angeles Area Chamber of Commerce and White Environmental Associates.

A. COMMENTS PRESENTED PRIOR TO OR AT THE HEARING

1. Comment: We oppose postponement of the MTBE prohibition because it would result in additional underground storage tank (UST) leakage of MTBE, additional ground and surface water contamination, additional environmental risks, additional public health risk, additional loss of drinking water supplies, additional costs for water cleanup, and additional costs for water source replacement. (ACWA, Santa Clara Valley Water District, Alameda County Flood Control and Water District, Association of California Water Agencies, Placer County Water Agency, East Bay Municipal Utility District, Sweetwater Authority, Gilbert G. Bendix, P.E., Lou Heyn, Camaro Club of San Diego)

Please stay with the ethanol and forget the other petrochemical industry garbage.
(Michael Mostello)

Agency Response: This action is being taken largely in response to the Governor's Executive Order D-52-02, which states, "the current production, transportation and distribution of ethanol is insufficient to allow California to meet federal requirements and eliminate use of MTBE on January 1, 2003; and . . . strengthened underground storage tank requirements and enforcement have significantly decreased the volume and rate of MTBE discharges since Executive Order D-5-99 was issued in March of 1999; . . . [therefore,] the board shall take the necessary actions to postpone for one year the prohibitions of the use of MTBE and other specified oxygenates in California gasoline"

As discussed extensively in the Initial Statement of Reasons, the decision to delay the phase-out of MTBE is primarily predicated on the concern that the use of MTBE could not be eliminated by January 2003 without significantly risking the disruption of the availability of gasoline in California. If all the elements necessary for a successful transition away from MTBE are not in place, gasoline shortages could develop. It is likely that such shortages would substantially increase gasoline prices, harm California's economy and impose an unnecessary burden on motorists. With a shortage in supply, prices could be expected to increase by 50 percent or more. The benefit of postponing the phase-out of MTBE for California motorists could be 30 million dollars a day for the duration of the supply problem.

UST facilities continue to represent the greatest potential source of future MTBE releases to groundwater. Overall, the integrity of the UST systems in California has improved dramatically during recent years as old bare-steel, single-walled tanks have been upgraded with corrosion protection and leak detection systems, or replaced with new double-contained systems. Preliminary results of field tests currently being conducted by the State Water Resources Control Board (SWRCB) indicate that this upgrade and replacement program has been very successful in reducing liquid releases. In addition, by the beginning of the postponement period over half of the gasoline sold in California will be MTBE-free, due to early compliance by California refiners. Much of California's gasoline, including all of the gasoline supplied to the Lake Tahoe region, is already MTBE-free.

Delaying the phase-out of MTBE for another year may result in a few additional leaking UST sites and public water wells that must be remediated for the presence of MTBE. The SWRCB estimates that the cost of cleanup of MTBE contaminated sites could range from 250,000 to 3 million dollars per site depending on the extent of the contamination, while the cost of replacing public water wells will range from 200,000 to 1 million dollars per well. Surface water contamination with MTBE, due to deposition from the air and watercraft usage, is self-mitigating over relatively short periods, due to the high volatility of MTBE. The rate of mitigation is dependent on the movement and temperature of the water. To the extent delaying the phase-out of MTBE from California gasoline poses additional environmental or human health risks, those risks will be relatively small compared to the amount of damage attributable to MTBE used before the beginning of the postponement period. In Resolution 02-25, the Board found that there are no feasible mitigation measures or alternatives available to the Board which would substantially reduce the potential adverse impacts of the amendments while at the same time providing the substantial overall public health and economic benefits that will result – primarily the reduction in the risk of significant disruptions in gasoline supplies and the major gasoline price increases that could follow.

2. Comment: If the ARB decides not to forgo the postponement of the MTBE prohibition entirely, it should at least have the postponement not apply to those regions of the state where there is a relatively high degree of vulnerability to groundwater contamination from surface sources. This would include the

groundwater basin in the Livermore-Amador Valley. (Alameda County Flood Control and Water Conservation District) The ARB should revise the proposed amendments to maintain the current MTBE phase-out date for, at a minimum, those areas identified by the SWRCB as being particularly vulnerable to MTBE releases. (Alameda County Water District, Santa Clara Valley Water District)

Agency Response: From a distribution standpoint, it would not be practical to require different gasolines for different communities for a one-year period. If a community were designated MTBE-free, then other communities might have to be MTBE-only to balance out the demand for gasoline with the availability. Many gasoline stations would have to switch to different distributors or shut down for one year. Refiners would have to trade gasoline types at various levels of the distribution system, and this might require more gasoline storage tanks. This would require yet another transition during an already difficult transition period. In some regions MTBE-free gasoline will not be available for general distribution until all of California's gasoline is MTBE-free.

3. Comment: We are extremely disappointed with the regulatory justification for the proposed postponement of the ban on MTBE. As required, ARB has placed a notice in the California Regulatory Notice Register regarding the one-year delay of the MTBE ban. In the notice, the ARB takes great pains to point out the supply and pricing problems that oil companies may face if the MTBE ban of December 2002 is upheld. However, the notice does not make a single mention of the supply and pricing problems that water agencies may face when MTBE turns up in more drinking water supplies. Considering that the entire reason MTBE was banned was to protect water supplies from contamination, we find it astonishing that the ARB has made no consideration of water supply impacts in its regulatory rationale. (ACWA, Sweetwater Authority, East Bay Municipal Utilities District, Placer County Water Agency)

The Initial Statement of Reasons acknowledges that delaying the phase-out of MTBE for another year may result in the contamination of additional public water supply wells and that the costs to replace them could reach \$1 million per well. However, the actual cost to a water agency would most likely exceed several million dollars per well in legal, planning, and engineering costs, not to mention the disruption to water service and the economic loss to the community. Further, finding a suitable replacement well cannot be guaranteed and regional building or growth moratoriums could result. (Alameda County Flood Control and Water Conservation District, Zone 7)

Agency Response: The Initial Statement of Reasons, which was issued the same day as the hearing notice, contained a discussion of the potential effects of the amendments on water quality (pp. 29-30); and the potential increased costs to remediate MTBE contamination of groundwater in the relatively few instances in which leaks of gasoline containing MTBE in the next year may trigger the need to remediate (p. 35). The Board has seriously considered the concerns in this area.

The SWRCB estimates provided on page 35 of the Initial Statement of Reasons identified clean-up costs ranging from 250,000 dollars to 3 million dollars per contaminated site, depending on the extent of the contamination, and costs of replacing public water wells ranging from 200,000 dollars to 1 million dollars per well. We believe the estimates were well supported and sound.

4. Comment: We have real concerns regarding the multimedia evaluation that has been conducted on ethanol. (ACWA, East Bay Municipal Utilities District) According to Health and Safety Code section 43830.8(h), the multimedia evaluation must show “. . . that there will be no significant adverse impact on public health or the environment, including the impacts on air, water, or soil” However, a preliminary review of the ARB’s evaluation and approval of ethanol shows major data gaps. Although the ARB conducted a very thorough review of the available ethanol research, its own assessment document concludes that “substantial uncertainties and research needs remain.” (ACWA)

We request that more research be conducted on the environmental and public health impacts of ethanol prior to its widespread use in California’s gasoline. (ACWA, Alameda County Water District, East Bay Municipal Utilities District, Placer County Water District)

Agency Response: Pages 7-14 of the June 2000 Final Statement of Reasons for the CaRFG3 rulemaking (a document identified as a reference in the current rulemaking; see Appendix H to the Initial Statement of Reasons) describe the steps taken to comply with Health and Safety Code section 43830.8(h). In order to comply with the section 43830(h) mechanism, the Environmental Policy Council must have reviewed the environmental assessment of the proposed CaRFG3 standards and determined that “there will be no significant adverse impact on public health or the environment, including any impact on air, water, or soil, that is likely to result from the change in motor vehicle that is expected to be implemented to meet the ARB’s revised motor vehicle fuel specifications.” The Environmental Policy Council is a seven-member body established by section 71017(b) of the Public Resources Code and consists of the Secretary for Environmental Protection, the Chairpersons of the ARB, SWRCB and California Integrated Waste Management Board, and the Directors of the Office of Environmental Health Hazard Assessment (OEHHA), the Department of Toxic Substances Control, and the Department of Pesticide Regulation.

At a January 18, 2000 meeting the Council considered the extensive environmental assessments by the ARB, the SWRCB and OEHHA on the air, water, and health impacts of ethanol in California gasoline as a result of the CaRFG3 standards. The Council also took testimony from interested parties. At the conclusion of the meeting, the Environmental Policy Council unanimously adopted a Resolution which approved the overall *Health and Environmental Assessment of the Use of Ethanol as a Fuel Oxygenate* and the individual elements prepared by the ARB, SWRCB and

OEHHA. The Environmental Policy Council found that, for purposes of determining the potential environmental impacts of motor vehicle fuels expected to be marketed in California as a result of the approved CaRFG3 regulations, the gasoline blends evaluated by ARB, SWRCB, and OEHHA adequately represent the range of CaRFG3 gasoline formulations expected to be marketed in the state. Based on the report and comments received, the Resolution expressed the Environmental Policy Council's determination that:

“there will not be a significant adverse environmental impact on public health or the environment, including any impact on air, water, or soil, that is likely to result from the change in gasoline that is expected to be implemented to meet the CaRFG3 regulations approved by the ARB.”

We believe this satisfied the requirements of Health and Safety Code section 43830.8(h), which also provides that “such a determination by the council shall be deemed final and conclusive.”

While the ARB continues to consider any new information on the environmental impacts of the use of ethanol in CaRFG3, and is participating with the Coordinating Research Council on a study of the permeation emission impacts of the use of ethanol in gasoline, we do not believe that the use of ethanol should be prohibited pending the receipt of additional information.

5. Comment: We oppose postponement of the MTBE prohibition because it will lead to additional damage to our vehicles. (Lou Heyn, Camaro Club of San Diego)

Agency Response: In 1995 and 1996, before the implementation of California's Phase 2 RFG regulations, the ARB staff and others studied the performance and compatibility of gasoline containing MTBE in fleet vehicles. Overall, when compared to vehicles operated on their normal fuel and to what would normally be expected from other vehicles of the same model and year, they found no adverse effects on vehicles that could be attributed to the new fuel. Since 1996, and the implementation of the California's Phase 2 RFG, almost all of California's gasoline has contained MTBE at about 11 percent by volume. We are not aware of any reports of damage to vehicles attributable to the use of MTBE in California gasoline since that time, and the commenter has provided no information regarding such damage.

6. Comment: We want to ensure the one-month delay of the South Coast spring RVP season is maintained for 2004 to aid in the smooth transition to the new start date. We recommend, therefore, that the ARB grant the delay for both 2003 and 2004, with 2003 being applicable to those refiners who convert to ethanol early, and 2004 to those who convert according to the Governor's delayed timetable. (WSPA, ChevronTexaco, Phillips Petroleum)

Agency Response: We agree with the general approach recommended, and have made modifications to subsections 2262.4(a)(2)(A), (b)(1), and (b)(2)(A) to address the concerns raised. The commentaries on pages 6-9 of Attachment A explain the rationale for the modifications finally adopted.

7. Comment: We request that the current regulation, which eliminates October from the winter oxygen season in the South Coast effective 2003, remain unchanged. The date should not be delayed until 2004 because:
- The South Coast has not exceeded the CO air quality standard in October for many years,
 - Many expect the federal oxygen mandate to be eliminated by 2003, giving South Coast refiners the flexibility to produce non-oxy gasoline that summer, and
 - A winter oxy season beginning October 1 overlaps with the summertime RVP season, which could force refiners to use MTBE again, if they are not yet in a position to make summertime CARBOB. The November 1, 2003 start, which is part of the existing regulation, eliminates this potential dilemma.

(WSPA, ChevronTexaco, Phillips Petroleum)

Agency Response: We agree, for the reasons given. The originally proposed amendment to section 2262.5(a)(2)(B) delaying elimination of the October oxygen requirement until 2004 has been removed.

8. Comment: We request postponement by one year of the initial effective date of the phase-in of the lower CaRFG3 sulfur content cap limit of 30 ppm, originally scheduled to go into effect December 31, 2004. We strongly agree with making all CaRFG3 parameters consistent in terms of implementation dates. Additional complexities in the CaRFG3 formulation and schedules will lead to a significant potential of phase-in difficulties – both for the oil industry as well as ARB's enforcement team. (WSPA, ChevronTexaco, Phillips Petroleum)

Agency Response: We agree that applicability of the more stringent sulfur cap limit of 30 ppm should be delayed one year. Modifications have been made to subsections 2261(b)(1) and (2), and to footnote 4 of the table in section 2262, to reflect this revision.

9. Comment: It appears that staff will be delaying until a future hearing – perhaps November – the section 2262.6(a) clarifications of “produced with MTBE” and revisions to the MTBE de minimis levels. We note that ARB is adding language in section 2261(b)(3)(B)(4) clarifying that early CaRFG3 “produced with MTBE” is prohibited, but that de minimis levels don't yet apply. This still leaves the definition of “produced with MTBE” in early CaRFG3 as a very gray area. We would like an expeditious resolution to this item. We request that ARB clarify the section 2262.6(a)(1) definition as soon as possible via regulation or another appropriate mechanism. Until then, this will continue to be a compliance uncertainty

for any company producing early CaRFG3. (WSPA, ChevronTexaco, Phillips Petroleum)

The prohibition on oxygenates other than ethanol will disrupt the supply of gasoline if not amended, because of issues related to trace amounts of oxygenates other than ethanol and MTBE. We need to have that on the November agenda and get it taken care of. (A 2nd Opinion, Inc.)

Agency Response: We agree that the Board needs to address issues related to the prohibitions of gasoline produced with the use of MTBE, and gasoline produced with the use of any oxygenate other than ethanol or MTBE, in section 2262.6(a) and (c). The ARB has issued a 45-day notice for a December 12, 2002 hearing to consider amendments addressing these concerns, and intends to have appropriate amendments go into effect as quickly as possible thereafter.

10. Comment: We request that December 31, 2002 be maintained as the effective date for the denatured ethanol standards in title 13, CCR section 2262.9. It is the right thing to do – Williams Bio-Energy (the second largest producer and marketer of fuel grade ethanol) and the Renewable Fuels Association (a trade association for the domestic ethanol industry) are volunteering to meet a more stringent standard one year early. The RFA has completed an extensive survey of domestic ethanol producers and the results generally indicate the industry can comply with the new standards. Unless the ARB adopts the Phase 3 standards for denatured ethanol, two different grades of ethanol will be allowed in the California marketplace. One standard will make enforcement easier. Moreover, early adoption of the denatured ethanol standard would provide ethanol producers additional flexibility to exchange and for outright ethanol purchase and sale agreements. We have discussed early adoption with a major ethanol producer also, and they have no problems with compliance. (Williams Bio-energy, Renewable Fuels Association)

Agency Response: During the one-year postponement of the prohibition of MTBE, we believe that imposition of the standards for denatured ethanol could reduce refiners' flexibility in producing complying CaRFG3 by potentially restricting the sources of denatured ethanol. The additional flexibility should be allowed to facilitate the early production of MTBE-free CaRFG3. Since the finished gasoline blends must meet the early CaRFG3 requirements regardless of the composition of the ethanol component, we choose to postpone the denatured ethanol requirements.

We note that a representative of Phillips Petroleum, which is blending a significant amount of ethanol in California gasoline today to supply many of its 1500 Union 76 outlets that have all been converted to non-MTBE gasoline, testified in support of the proposal to postpone the denatured ethanol standards to December 31, 2003. He indicated that, as a buyer today of large amounts of ethanol from both domestic and foreign suppliers, Phillips believes that maintaining the current flexibility in its ethanol purchases is appropriate.

11. Comment: Section 2266.5(i)(1), title 13, CCR would restrict the blending of California specification MTBE-gasoline with California specification ethanol-gasoline at the retail outlet if the blend were to exceed the RVP cap limit. We believe this subsection should be reviewed and modified to allow the limited commingling of MTBE-blended gasoline and ethanol-blended gasoline at the retail level during a supply disruption of either type of gasoline. Allowing limited commingling at the retail level would help reduce the potential price volatility and supply outages that could result from a shortage of one type of gasoline. It would also enable refiners and suppliers to use exchanges to cover outages. These problems will be more critical for unbranded suppliers, who do not exercise control over the purchasing habits of their customers. (Petro-Diamond, Inc.)

Unfortunately, we are moving towards a situation in the very near future with a high probability of non-fungible unbranded fuels, which will lead to significant hardships for independent oil marketers in a number of ways. It appears that all major oil companies will follow the same time line in switching to non-MTBE fuels, in which case it will be possible for service station operators to switch back and forth between ethanol-containing fuels and other fuel types gasolines. This could create an off-spec fuel batch, generating an RVP violation. We look forward to immediate attention on these issues by ARB staff, and would appreciate Board and ARB executive staff oversight to assure adequate resources are being devoted to these issues in a timely manner. (CIOMA)

Agency Response: To the extent the commenters may be urging that changes be made in this rulemaking to the restrictions on blending ethanol-gasoline and nonethanol-gasoline unless there is no violation of the RVP cap, such an action would likely be beyond the scope of the hearing notice. The staff has been meeting with the concerned parties to discuss ways to address the issue raised. Among other things, at the December 12, 2002 hearing referred to in the response to Comment 9, the Board will consider adoption of additional labeling requirements to help prevent inadvertent commingling of ethanol and non-ethanol gasoline blends.

12. Comment: We believe that there is an incorrectly numbered paragraph in section 2262.6 and suggest that paragraph (3) following (b)(C) should be (c) and the current paragraph (c) should be (d). We have noted that ARB has renumbered this paragraph from (3) to (2). Given the new subject of the paragraph and the format at the beginning of the paragraph, it is more likely that this is a separate subsection (c) of section 2262.6. (White Environmental Associates)

Agency Response: Since both relettered (b)(1) and (b)(2) pertain to the phasing-in of the MTBE prohibitions – with (b)(2) providing an exception to the basic principle in (b)(1) – we believe the originally proposed renumbering is appropriate. At the December 12 hearing referred to in the response to Comment 9, the Board will be considering proposed amendments to subsection 2262.6(b) that would add a new subsection (b)(2) and renumber subsection (b)(2) as (b)(3).

B. COMMENTS SUBMITTED DURING THE SUPPLEMENTAL 15-DAY COMMENT PERIOD

The September 17, 2002 Notice of Public Availability of Modified Text in this rulemaking stated that only comments relating to the modifications to the text of the regulations made available with the notice would be considered by the Executive Officer. One letter was submitted during the supplemental 15-day comment period ending October 2, 2002, from White Environmental Associates. This letter solely addressed matters other than the modifications to the originally proposed amendments, and the points made in the letter are accordingly not summarized or responded to in this Final Statement of Reasons.