

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATIONS FOR
GASOLINE AND DIESEL FUEL TEST METHODS

Public Hearing Date: January 25, 2013
Agenda Item No.: 13-2-3

I. GENERAL

In this rulemaking, the Air Resources Board (ARB or Board) is amending its regulations on the test methods used for gasoline and diesel fuel analysis. These amendments add three new test methods, update four test methods to their most recent published versions, and delete one obsolete test method. The specific sections amended are 2262.9, 2263, and 2282, Title 13, California Code of Regulations (CCR).

The Staff Report: Initial Statement of Reasons for Rulemaking (staff report or ISOR), entitled *Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to the Regulations for Gasoline and Diesel Fuel Test Methods*, released December 5, 2012, is incorporated by reference herein. The staff report contained the rationale for the proposed amendments. All documents associated with this rulemaking are available on ARB's web site at: <http://www.arb.ca.gov/regact/2013/diesel2013/diesel2013.htm>

At the hearing on January 25, 2013, staff suggested modifications to the original proposal, in response to written comments which had been received during the 45-day comment period.

The Board adopted Resolution 13-4, in which it approved the originally proposed changes to the regulations with the modifications proposed by staff. The resolution directs the Executive Officer to adopt the modified amendments after a 15-day public comment period, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration, if he determines that this is warranted.

A Notice of Public Availability of Modified Text was published on April 23, 2013, along with the proposed regulatory amendments. No comments were received during the supplemental comment period. The Executive Officer issued Executive Order R-13-006 adopting the modified regulatory text.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and providing the rationale for the modifications made to the originally proposed regulatory text. The FSOR also contains a summary of the comments received on the proposed regulatory amendments during the formal regulatory process, and ARB's responses to those comments.

Documents incorporated by reference. Sections 2262.9, 2263, and 2282 incorporate test methods of ASTM International for determining various properties of gasoline and diesel fuel. The referenced test methods are published by ASTM International, a well-established and prominent organization in the standard setting and measurement areas. These documents are therefore reasonably available to the affected public from a commonly known source.

These documents are referenced and incorporated into the CCR because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the CCR. It has been a longstanding and accepted practice of ARB to incorporate ASTM test methods into the CCR by reference rather than printed in the CCR because these test methods are highly technical and complex, have pages of equations and numerous figures and tables, include various worksheets, have a very limited audience, and are copyrighted. Among other things, ARB's practice enables interested parties to verify that the test methods have been adopted by a consensus-driven, authoritative source. The affected public is accustomed to the incorporation format used in the regulations.

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

The Executive Officer has also determined, pursuant to CCR, Title 1, Section 4, that the proposed regulatory action would not affect small businesses because only gasoline refiners are affected and they are not small businesses.

The Board determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective as and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by the Board. Information supporting this determination may be found in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR. In addition, the proposed regulation provides the following benefits, which would not be achieved by any proposed alternative:

- The proposed amendments enable ARB and stakeholders to adequately measure the chemical properties of California Reformulated Gasoline (CaRFG) and denatured ethanol to determine their compliance with ARB's fuel regulations.

- The newer versions of the test methods correct errors, provide additional information, and streamline test procedures.
- Removal of the obsolete CaRFG test method provides for more sensitivity in the analyses.

II. MODIFICATIONS TO THE ORIGINAL PROPOSAL

As noted above, staff received several comments containing suggested modifications to the proposed regulatory changes during the 45-day comment period. The modifications approved by the Board and ultimately incorporated do the following: (1) for all test method changes, provide an effective date of October 10, 2013, or two months after filing with the Secretary of State, whichever is later; and (2) clarify that the newly proposed test methods for denatured ethanol are an optional alternative to the existing denatured ethanol procedures.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments in response to the ISOR were received during the 45-day comment period prior to the hearing from the following:

Ms. Gina Grey, Western States Petroleum Association (WSPA)
Mr. Russell G. Kinzig, Kinder Morgan Energy Partners (KM)
Mr. Miles T. Heller, BP West Coast Products LLC (BP)
Mr. Matthew Darton, Park Vasona Automotive (PVA)

Below is a summary of each comment made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each comment, or the reasons for making no change. Comments not involving objections or recommendations specifically towards the rulemaking or to the procedures followed by ARB in this rulemaking are not summarized below.

1. Comment: We support the ARB's proposed new and updated test methods. (WSPA, BP)

Agency Response: We appreciate the comments.

2. Comment: We are concerned with the effective date of the regulatory changes, since companies will in many cases need to purchase or modify testing equipment. Moreover, pipeline companies may require certification of fuels by the approved ARB method in effect at the time the fuel is transferred via pipeline. We request that an effective date be set, and that it be far enough in the future to allow instrumentation procurement and familiarization. KM requests nine months following OAL adoption. WSPA requests an implementation date close to the end of 2013. (WSPA, BP, KM)

Agency Response: ARB agrees with the comment for an effective date, and has set a date of October 10, 2013, or two months after filing with the Secretary of State, whichever is later. This implementation schedule was discussed with stakeholders and provides sufficient lead time for any company which chooses to purchase or modify test equipment. This effective date will apply to all test methods affected by this regulatory change.

3. Comment: In the proposed regulatory language included in the ISOR, the proposed new test methods for denatured ethanol appear to be mandatory. Our understanding is that the new test methods are intended to be an optional alternative to the existing procedures for denatured ethanol. (KM)

Agency Response: ARB agrees that the new denatured ethanol test methods are intended to be optional; language to that effect was inadvertently omitted from the proposed regulatory language. It has been corrected to reflect the intent that the new denatured ethanol test methods are an option to the existing method.

4. Comment: We suggest a period of time (before the effective date discussed above) in which both the old and new test methods could be utilized. This way, there is not an abrupt change from one method to another. (BP)

Agency Response: ARB does not support a time frame in which both the old and the new test methods are simultaneously in effect. The primary purpose of the designation of fuel test methods in the regulations is to establish the methods that ARB will use to enforce the regulations. If there are multiple test methods that may be used during the same time period, there may be ambiguity and confusion as to how the regulations are being enforced. The regulatory language, as proposed, i.e., which does not allow the use of both the old and new test methods during a transition period, makes clear to industry that ARB will enforce the standards using the specified test methods. As the regulations do not require testing by industry, they can choose not to test or if they do test, they could use a test method of their choice.

5. Comment: KM agrees with the proposed section 2262.9 (b)(1)(a)(1)(D), which establishes the new method as the referee method. (KM)

Agency Response: We appreciate the comment.

6. Comment: If this hearing is about considering no longer testing tail pipe emissions on 2000 and newer vehicles. I would encourage this hearing to vote no. I also would like to see a test at idle added for tail pipe emissions testing. (PVA)

Agency Response: The proposed amendments do not relate to tail pipe emission testing.