

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

AGENCY Air Resources Board			AGENCY FILE NUMBER (if any)	
OAL FILE NUMBERS	NOTICE FILE NUMBER 295-0919-07	REGULATORY ACTION NUMBER '96 0001 015	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER

ENDORSED FILED
IN THE OFFICE OF
96 SEP 13 PM 3:08
Bill Jones
BILL JONES
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only	
RECEIVED FOR FILING SEP 19 '95	PUBLICATION DATE SEP 29 '95
Office of Administrative Law NOTICE	Office of Administrative Law REGULATIONS

ENDORSED FILED
96 SEP 13 PM 12:26
OFFICE OF ADMINISTRATIVE LAW
SEP 13

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE Gasoline Deposit Control Additive	TITLE(S) 13	FIRST SECTION AFFECTED 2257	2. REQUESTED PUBLICATION DATE September 29, 1995
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Kathleen C. Walsh		TELEPHONE NUMBER (916) 322-2884
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER 95-#397
			PUBLICATION DATE 9-29-95

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)	
TITLE(S) 13	ADOPT
SECTIONS AFFECTED	AMEND 2257 and the Incorporated Documents
	REPEAL

2. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346) Resubmittal Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) Emergency (Gov. Code, § 11346.1(b))

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 or to, or within 120 days of, the effective date of the regulations listed above.

Print Only Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

December 22, 1995 - January 12, 1996

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

Effective 30th day after filing with Secretary of State Effective on filing with Secretary of State Effective other (Specify)

5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) Fair Political Practices Commission State Fire Marshal

Other (Specify)

6. CONTACT PERSON
Kathleen C. Walsh, Senior Staff Counsel

TELEPHONE NUMBER
(916) 322-2884

7. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Tom Cackette

DATE
7/2/96

TYPED NAME AND TITLE OF SIGNATORY
Tom Cackette, Chief Deputy Executive Officer

FINAL REGULATION ORDER

1. Amend title 13, California Code of Regulations, section 2257 to read as follows:

§ 2257. Required Additives in Gasoline.

(a) Regulatory Standard.

(1) On or after January 1, 1992, no person shall sell, offer for sale, supply, or offer for supply any California gasoline unless at the time of the transaction:

[i] the producer, importer, or distributor of the gasoline has been issued a currently effective certification pursuant to subsection (c), and

[ii] the gasoline contains at least the minimum concentration of the additive or additives identified in *the* final application for certification.

(2) Subsection (a)(1) shall not apply to transactions where the person selling, supplying, or offering the gasoline demonstrates that:

[i] the gasoline has not yet been sold, offered, or supplied from the final distribution facility, and either

[ii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline into satisfaction with the requirements of subsection (a)(1) before it is sold, supplied or offered from the final distribution facility, or

[iii] 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 is a distributor who has been issued a currently effective certification pursuant to subsection (c), and will cause the gasoline to satisfy the requirements of subsection (a)(1) before it is sold, supplied or offered from the final distribution facility.

(3) *Subsection (a)(1)[ii] shall not apply to the sale, supply, or offer of gasoline from a final distribution facility where the person selling, supplying, or offering the gasoline demonstrates that the gasoline will be corrected to comply with section (a)(1)[ii] prior to the sale of gasoline from the retail outlet to be dispensed into motor vehicles. If such corrective action is taken, the producer, importer, or distributor of the gasoline must notify the Compliance Division of the Air Resources Board by telephone or in writing within 2 business days of the correction and must maintain records to document each occurrence in accordance with subsection (d).*

(4) For the purposes of subsection (a)(1), each sale of gasoline at retail for use in a motor vehicle, and each supply of 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 subsection (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Additive" means any substance or mixture of substances that is intentionally added to gasoline for the purpose of reducing or preventing fuel injection system or intake valve deposits, and that is not intentionally removed prior to the gasoline's sale or use.

(2) "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.

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

(4) "Chemical composition" means the name, percentage by weight, and chemical identification of each compound in an additive.

(5) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline, produced or imported by another person, at any point between any producer's or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(6) "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.

(7) "Gasoline" means any fuel which is *sold or intended for sale as a California motor vehicle fuel and is either: (a) commonly or commercially known or sold as gasoline, or (b) any fuel blend which is a mixture of gasoline as defined in (a) and alcohol in which the portion of gasoline is more than 50 percent of the total blend fuel commonly known or sold as gasoline and alcohol and which is sold or intended for sale as a motor vehicle fuel in California.*

(8) "Gasoline production facility" means a facility in California at which gasoline is produced; it does not include a facility whose sole operation is to transfer gasoline or to blend additives into gasoline.

(9) "Importer" means any person who first accepts delivery of gasoline in California.

(10) "Import facility" means the facility at which imported gasoline is first received in California, including, in the case of gasoline imported by cargo tank and delivered directly to a facility for dispensing gasoline into motor vehicles, the cargo tank in which the gasoline is imported.

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

(12) "Produce" means to convert liquid compounds which are not gasoline into gasoline.

(13) "Producer" means any person who produces California gasoline in California.

(14) "Retail outlet" means any establishment at which gasoline is sold or offered for sale for use in motor vehicles.

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

(c) Certification Requirements.

(1)(A) No gasoline formulation shall be certified under this subsection (c) unless the applicant for certification demonstrates each of the following to the executive officer's satisfaction:

(i) The gasoline formulation meets the unlimited mileage standard of ~~an average of a~~ maximum of 100 milligrams ~~per averaged over all~~ intake valves when tested in accordance with ~~ASTM D 5500-94 the Stationary Source Division's BMW 10,000 Mile Intake Valve Test Procedure, dated March 1, 1991,~~ which is incorporated herein by reference.

(ii) The gasoline formulation does not result in a flow loss of more than five percent for any fuel injector when tested in accordance with *ASTM D 5598-94* the Stationary Source Division's Test Method for evaluating Port Fuel Injector Deposits in Vehicle Engines, dated March 1, 1991, which is incorporated herein by reference.

(iii) The gasoline formulation is capable of reducing fuel injector deposits so that no fuel injector suffers a flow loss of more than five percent when tested in accordance with the Stationary Source Division's Test Method for Evaluating Port Fuel Injector Deposits in Vehicle Engines, dated March 1, 1991 July 2, 1996, which is incorporated herein by reference.

(B) The executive officer may approve alternative test procedures for demonstrating satisfaction with any of the performance criteria set forth in subsection (c)(1)(A) if an applicant or potential applicant demonstrates to the executive officer's satisfaction that a gasoline formulation which meets the performance criteria of the alternative test procedure would also meet the performance criteria specified in subsection (c)(1)(A).

(2) Any producer, importer, or distributor may apply to the executive officer for certification of a gasoline formulation in accordance with this subsection (c). The application shall be in writing and shall include, at a minimum, the following:

(A) The name and chemical composition of the additive or additives in the gasoline formulation, except that if the chemical composition is not known to either the applicant or to the manufacturer of the additive (if other than the applicant), the applicant may provide a full disclosure of the chemical process of manufacture of the additive in lieu of its chemical composition.

(B) The minimum concentration of each additive in the gasoline formulation *in terms of gallons of additive per thousand gallons of gasoline.*

(C) The results of tests conducted on the gasoline formulation pursuant to the test procedures set forth in subsection (c)(1), all data generated by the tests, the identity of the entity which conducted each test, and a description of the quality assurance and quality control procedures used during the testing.

(D) ~~Data demonstrating that the gasoline formulation used in the tests is representative of the gasoline produced, imported, or distributed by the applicant~~ *fuel used for certification testing ("certification test fuel") is representative of the gasoline formulation for which certification is requested. Properties of the certification test fuel must be at least 80 percent of the maximum properties of the gasoline formulation to be certified for the following: aromatic hydrocarbon content, olefin content, sulfur content, and oxygen content. All other certification test fuel properties must be representative of typical commercial gasoline.*

(E) *Data demonstrating that the certification test fuel will be produced from typical refinery blend stocks.*

(FE) The theoretical mechanism of action (if known) of the additive in meeting any of the performance criteria set forth in subsection (c)(1)(A).

(GF) Copies of all material pertaining to the additive or additives in the gasoline formulation, submitted by the applicant to the U.S. Environmental Protection Agency pursuant to 40 CFR sections 79.6, 79.10 and 79.11. If the applicant has submitted no such material, copies of all material pertaining to the additive or additives in the gasoline formulation,

submitted by the additive manufacturer to the U. S. Environmental Protection Agency pursuant to 40 CFR sections 79.6, 79.20 and 79.21.

(HG) A test method reasonably adequate for determining the presence and concentration of each additive in the gasoline, *including test method reproducibility*. The test method may involve identification of the presence of a surrogate marker substance if the applicant demonstrates that such test method will adequately demonstrate the presence and concentration of the additive.

(3) Within 30 days of receipt of an application, the executive officer shall advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of submittal of additional information, the executive officer shall advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

(4) If the executive officer finds that an application meets the requirements of this section and determines that the applicant has satisfactorily made the demonstrations identified in subsection (c)(1), then he or she shall issue an Executive Order certifying the gasoline fuel formulation. The executive officer shall act on a complete application within 30 days after the application is deemed complete.

(5) If the executive officer determines that the gasoline sold by a producer, importer or distributor contains the minimum concentration of additives identified in an applicable certification, but substantially fails to meet the performance criteria set forth in subsection (c)(1), the executive officer shall revoke or modify the prior certification as is necessary to assure that gasoline sold by the producer, importer or distributor meets the performance criteria set forth in subsection (c)(1). The executive officer shall not revoke or modify a prior certification order without first affording the applicant for the certification an opportunity for a hearing in accordance with title 17, California Code of Regulations, part III, chapter 1, subchapter 1, article 4 (commencing with section 60040). If the executive officer determines that a producer, importer or distributor would be unable to comply with this regulation as a direct result of a certification revocation or modification pursuant to this subsection, the executive officer may delay the effective date of such revocation or modification for such period of time as is necessary to permit the person to come into compliance in the exercise of all reasonable diligence.

(d) Recordkeeping.

(1) Each producer, importer, and distributor who has been issued a certification pursuant to subsection (c) shall *must* maintain records identifying each facility at which he or she adds an additive to California gasoline in order to comply with subsection (a)(1). For each such facility, ~~commencing January 1, 1992,~~ the producer, importer or distributor shall *must* compile records showing on a monthly basis for each grade of gasoline:

[i] the volume of California gasoline supplied from the facility by the producer, importer or distributor,

[ii] the volume of California gasoline to which the producer, importer or distributor added the additive to comply with subsection (a)(1), and

[iii] the name and volume of each additive (or additive package) used added to the California gasoline fuel. Records covering a month shall *must* be compiled no later than 30 days after the end of the month, and shall *must* be retained for at least two years after the end of the month.

(2) Any person required by subsection (d)(1) to compile and retain records shall *must* provide to the executive officer any such records within 20 days of a written request received from the executive officer or her/her designee before expiration of the period during which the records are required to be retained. Whenever such a person fails to provide records regarding a volume of California gasoline in accordance with this subsection (d)(2), the volume of California gasoline shall *will* be presumed to have been sold by the person in violation of subsection (a)(1).

Note: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the 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, 39500, 39515, 39516, 41511, 43000, 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).