

**TITLE 4. BUSINESS REGULATIONS
DEPARTMENT OF FOOD AND AGRICULTURE**

NOTICE OF PROPOSED RULEMAKING

The Department of Food and Agriculture (Department) proposes to promulgate regulations contained in the California Code of Regulations (CCR), Title 4, Division 9 for the retail sale of natural gas motor vehicle fuels in California.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Department. Comments may be submitted by mail, FAX or email. The written comment period closes at 5:00 p.m. August 8, 2016. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Pamela Fitch
Senior Environmental Scientist (Specialist)
Department of Food and Agriculture
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(916) 229-3026 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY and REFERENCE

Pursuant to the authority vested by §§ 12027, 12107, 13404.5, 13440, and 13446 of the Business and Professions Code (BPC), and to implement, interpret, or make specific §§ 13400 (b) (9), 13400 (c), 13400 (g), 13400 (p), 13400 (t), 13413(a), 13413 (b) (1), 13440, 13591, 13592 and 13595(a) of the BPC, the Department is proposing to make changes to Title 4, Division 9, Chapters 1, 6, and 7 of the CCR.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

BPC, Division 5, § 12027 provides that the Secretary of the Department of Food and Agriculture may make such rules and regulations as are reasonably necessary for the purpose of carrying out the provisions of the division.

BPC, Division 5, § 12107 provides for the Secretary to establish tolerances and specifications and other technical requirements for commercial weighing and measuring devices. The latest requirements in the National Institute of Standards and Technology (NIST) Handbook 44 *“Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices”* are adopted by reference unless specifically modified, amended, or rejected by regulation.

BPC, Division 5, § 13404.5 provides for the Secretary to establish the method of sale of motor vehicle fuels and lubricants sold at retail to the public. The latest method of sale requirements for motor vehicle fuels and lubricants published in the National Institute of Standards and Technology Handbook 130 *“Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality”* are adopted by reference except as specifically provided by the Legislature or modified, amended, or rejected by regulations adopted by the Secretary.

BPC, Division 5, § 13440 provides for the Department to establish specifications for automotive spark-ignition engine fuels. The Department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as ASTM International or SAE International, for automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

BPC, Division 5, § 13446 provides for the Department to establish interim specifications for alternative fuel for use in motor vehicles until a standards development organization accredited by the American National Standards Institute (ANSI) formally adopts a standard for the fuel for use in motor vehicles. The Department shall then adopt, by reference, the latest standard established by the ANSI-accredited standards development organization for alternative fuel, except that no specification shall be less stringent than required by any California state law.

BPC, Division 5, § 13404 was amended as a result of Assembly Bill 1907 (Ridley-Thomas, Chapter 805, Statutes of 2014) to provide a unit of measure for natural gas sold as a motor fuel to the public: compressed natural gas shall be sold in a gasoline gallon equivalent equal to 5.66 pounds and liquefied natural gas shall be sold in a diesel gallon equivalent equal to 6.06 pounds.

Summary of Existing Regulations

CCR, Title 4, Division 9, Chapter 1 contains the tolerances and specifications for commercial weighing and measuring devices, including those adopted by reference from NIST Handbook 44, and any exceptions and additions. CCR, Title 4, Division 9, Chapter 6 contains definitions and specifications for automotive products, including fuels and lubricants. CCR, Title 4, Division 9, Chapter 7 contains advertising and dispenser labeling requirements for motor vehicle fuels.

Summary of Effect

The Department proposes to except and add sections to CCR, Title 4, Division 9, Chapter 1 to conform with the gasoline gallon equivalent and diesel gallon equivalent units adopted as a result of Assembly Bill 1907 (Ridley-Thomas, Chapter 805, Statutes of 2014).

The Department proposes to add sections to CCR, Title 4, Division 9, Chapter 6 to define terms and product specifications for natural gas as a motor vehicle fuel.

The Department proposes to add sections to CCR, Title 4, Division 9, Chapter 7 to provide labeling and price sign advertising requirements for natural gas sold as a motor vehicle fuel.

Anticipated Benefits of the Proposed Regulations

The proposed regulation will protect consumers and businesses and assist with California's climate change goals to reduce petroleum consumption, greenhouse gas emissions, and local air pollution. Defining the legal requirements for fuel quality and advertising for natural gas sold as a motor vehicle fuel will ensure that consumers can make value comparisons before purchase and between competing retail service stations. Specifying the unit of measure for compressed natural gas (CNG) and liquefied natural gas (LNG) sold at retail will provide for accurate delivery of a full measure. Positive consumer experiences with high-quality natural gas vehicle fuel may result in a greater awareness and acceptance of alternative fuels and alternative fuel vehicles in general.

Consistency and Compatibility with Existing State Regulations

The Department has evaluated this proposal and believes that it is not inconsistent nor incompatible with existing state regulations. The Department is the only state agency with the authority to adopt motor vehicle fuel quality, labeling, and advertising requirements. The California Public Utilities Commission (CPUC) has authority over the composition, quality, and distribution of natural gas in the state's pipeline network. Since the proposed regulations deal only with natural gas dispensed for retail sale as a motor vehicle fuel, they are not in conflict with any CPUC regulations.

In 1992, the California Air Resources Board (CARB) adopted prescriptive quality specifications for CNG and LNG motor vehicle fuels in CCR, Title 13, Division 3, Chapter 5, Article 3, Subarticle 1 §§ 2292.5. and 2292.6. These specifications were aimed at limiting toxic tailpipe emissions such as nitrogen oxides produced by the combustion of natural gas fuels. CARB attempted to revise its regulation in 2010, but instead issued waivers to all fuel producers and retailers who could not comply with the requirements. These waivers remain in effect and CARB has not revisited specifications for natural gas fuels since 2010. The Department’s proposed regulation is performance-based and has been developed to be compatible with any public health-based prescriptive regulations CARB may adopt in the future.

Consistency and Compatibility with Existing Federal Regulations

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing federal regulations. The proposed regulation is not mandated by federal law or regulation. The Federal Trade Commission (FTC) has adopted regulations for the labeling of alternative motor vehicle fuels, including CNG and LNG in 16 CFR 306 “Automotive Fuel Ratings, Certification and Posting” and 16 CFR 309 “Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles.” FTC 16 CFR 309 requires that natural gas fuel dispensers be labeled with the minimum percent methane of the fuel. The proposed regulation does not mandate a specific minimum percentage or range of percentages for methane content in natural gas fuel, and so does not conflict with FTC 16 CFR 309.

Comparable Federal Regulations: The United States is unique in that it is the only major country in the world with no national weights and measures program. The responsibility of enforcing weights and measures laws is vested in each individual state when it adopts, modifies, rejects, or amends the model laws, regulations, tolerances and specifications published by the U.S. Department of Commerce in the NIST Handbooks.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None

Significant effect on housing costs: None

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 et seq. Require Reimbursement: None

Other nondiscretionary cost or savings imposed on local agencies: None

Impact on Jobs/New Businesses: The Department estimates that between one and ten new businesses in the commercial measuring device repair and engine mechanics sectors could be created as a result of increasing use of CNG and LNG fuels. These new business opportunities could add between 10 and 100 new jobs.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business Impact: The Department is aware of only five retail CNG stations located in limited service areas that may be impacted by the fuel quality specifications in the proposed regulation. Two are owned and operated by Southern California Gas Company, one by Clean Energy, one by Waste Management and one by Revolution CNG. These are large companies who the Department believes possess the necessary resources to absorb any additional compliance costs associated with the adoption of proposed specifications and labeling requirements.

Effect on Small Businesses: The Department's proposal may affect small businesses. These entities will incur minimal costs to comply with the proposed dispenser labeling requirements.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that the proposed regulation: (1) is unlikely to eliminate any jobs for natural gas motor vehicle fuel retailers; (2) may create new jobs within California; (3) may create new businesses within California; (4) may affect the expansion of businesses within California; and (5) is unlikely to eliminate any existing businesses.

The Department has initially determined that the proposed regulation would not have a significant adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The retail sale of natural gas motor vehicle fuel is a localized economic activity and currently, there are relatively few retailers that sell natural gas to the public.

The Department has determined that the proposed regulation will likely have a positive effect on existing small business by creating new business opportunities. Existing fuel retailers in California could choose to expand their operations to include sales of natural gas. This in turn could lead to job creation or expansion in California for registered service agencies (RSA) that install, repair, and maintain the fuel dispensers and vehicle mechanics who repair and maintain natural gas engines. The Department estimates that between 1 and 10 new businesses in the RSA and mechanics sectors could be created as a result of increased sales of natural gas fuels. These new businesses could add between 10 and 100 new jobs.

Benefits of the Proposed Regulations: The proposed regulation will protect consumers and businesses, and assist with California's climate change goals to reduce petroleum consumption, greenhouse gas emissions, and local air pollution. Defining the legal requirements for fuel quality and advertising for natural gas sold as a motor vehicle fuel will ensure that consumers can make value comparisons before purchase and between competing retail service stations. Specifying the unit of measure for CNG and LNG sold at retail will provide an accurate delivery of a full measure. Positive consumer experiences with high-quality natural gas vehicle fuel may result in a greater awareness and acceptance of alternative fuels and alternative fuel vehicles in general.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified would be more effective in carrying out the purpose for which the action is proposed. In addition, the Department has determined that no reasonable alternative would be as effective as or less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries about this notice may be directed to:

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The backup contact person is:

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AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the

express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file and all information on which the proposal is based are located at the Division of Measurement Standards, 6790 Florin-Perkins Road, Suite 100, Sacramento, California 95828, and may be obtained upon request. Additionally, all documents relating to this rulemaking file are available on the Department's web site located at www.cdfa.ca.gov/dms.

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differs from, but is sufficiently related to, the action proposed will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Kevin Schnepf, Environmental Program Manager, Fuels and Lubricants Laboratory, Division of Measurement Standards at (916) 229-3000.

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: www.cdfa.ca.gov/dms/regulations.html