

TITLES 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE SMALL REFINER VOLUME PROVISIONS IN THE REGULATION LIMITING THE AROMATIC HYDROCARBON CONTENT OF CALIFORNIA MOTOR VEHICLE DIESEL FUEL

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the small refiner volume provisions in its regulation limiting the aromatic hydrocarbon content of diesel fuel sold for use in motor vehicles in California.

DATE: July 28, 1994

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board, which will commence at 9:30 a.m., July 28, 1994 and may continue at 8:30 a.m., July 29, 1994. This item may not be considered until July 29, 1994. Please consult the agenda for the meeting, which will be available at least 10 days before July 28, 1994, to determine the time when this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed amendments to Title 13, California Code of Regulations, section 2282.

Background. ARB regulations impose statewide limits on the aromatic hydrocarbon content and the sulfur content of diesel fuel sold or supplied after September 30, 1993, for use in motor vehicles in California. The aromatic hydrocarbon content limits are contained in Title 13, California Code of Regulations, section 2282. Motor vehicle diesel fuel produced by large refiners or imported into the state is subject to a 10 percent aromatic hydrocarbon content limit. As described in more detail below, qualifying small refiners are subject to a aromatic hydrocarbon content limit of 20 percent; for a limited period of one to three years, independent refiners can also be subject to this less stringent limit.

A producer or importer is allowed to sell or supply batches of its California motor vehicle diesel fuel exceeding the applicable 10 percent and 20 percent aromatic hydrocarbon content limits, as long as the batches are reported to the ARB and the excess aromatic hydrocarbon content is fully offset by other batches sold within specified time limits and having aromatic hydrocarbon contents below the applicable limits. Producers and importers are also permitted to seek certification of an alternative diesel fuel formulation, based on an engine test demonstration that the alternative formulation will

result in the same emission benefits as typical diesel fuel meeting the 10 percent (or, as applicable, 20 percent) aromatic hydrocarbon content standard. Once the ARB certifies the alternative formulation, a producer or importer may comply with the regulation by selling diesel fuel that meets the designated specifications for the alternative fuel formulation.

The aromatic hydrocarbon content regulation imposes an annual limit on the quantity of California motor vehicle diesel fuel produced by a small refiner that is subject to the less stringent 20 percent standard. This specified quantity of diesel fuel is called the small refiner's "exempt volume." For each small refiner, the "exempt volume" equals 65 percent of the average of the three highest annual production volumes of "distillate fuel" at the small refiner's refinery during 1983-1987, as reported in required annual reports to the California Energy Commission (CEC). In these reports, "distillate fuel" includes the refiner's production of No. 1, No. 2 and No. 4 diesel fuel, and No. 1 and No. 2 fuel oil, whether sold for use in California or exported.

The "exempt volume" provisions were designed to limit the small refiner's production of 20 percent aromatic hydrocarbon content diesel fuel to the small refiner's historic production level of California motor vehicle diesel fuel. The Board based the exempt volumes on data reported to the CEC for 1983-1987 because the reports provided fixed, preexisting figures that could not be modified to maximize production of diesel fuel subject to the less stringent 20 percent aromatic hydrocarbon limit. Because the reported "distillate fuel" volumes included fuel that was not sold for use in California diesel vehicles, it was necessary to adjust the reported volumes to exclude that nonvehicular fuel. The Board applied a single adjustment factor for all small refiners, based on the industry-wide average proportion of California motor vehicle diesel fuel to all reported distillate fuel. This proportion, based on a survey of both large and small refiners, was 65 percent.

The regulation permits a different calculation of the "exempt volume" of a small refiner that was shut down for two or more years during 1983 - 1987, but that had already installed hydrotreating processes allowing the production of low-sulfur diesel fuel. Such small refiners may have their exempt volume determined as 65 percent of their reported distillate fuel production in 1989 and 1990. Only one small refiner--Powerine--qualifies for this alternative calculation of "exempt volume." In this notice, "base years" refers to 1989 and 1990 in the case of Powerine, and to 1983-1987 in the case of the other small refiners.

While a small refiner's "exempt volume" represents an annual value that is to be applied each calendar year, the regulation identifies a special calculation for the fourth quarter of 1993 since compliance was required starting October 1, 1993. In that quarter, a small refiner's production of California motor vehicle diesel fuel is subject to the less stringent 20 percent aromatic hydrocarbon content standard until the small refiner reaches one quarter of its exempt volume. Another provision of the diesel aromatics regulation states that the aromatic hydrocarbon content limits do

not apply to a small refiner during the effective period of a suspension of the statewide limits on the sulfur content of diesel fuel, contained in Title 13, California Code of Regulations, section 2281. Three small refiners--Kern Refining, Paramount and Powerine--have had the statewide diesel fuel sulfur content limits suspended, through September 30, 1994 (the remaining qualifying small refiner, Witco-Golden Bear, has been operating subject to the 20 percent aromatic hydrocarbon content limits since October 1993). The aromatics regulation does not expressly state how a small refiner's exempt volume is to be applied in the fourth quarter of 1994 where the refiner was operating under a suspension of the sulfur content limits during the first three quarters of 1994.

Proposed Amendments. At the hearing, the Board will consider amendments to two aspects of the small refiner exempt volume provisions in the regulation limiting the aromatic hydrocarbon content of diesel fuel.

The first set of amendments addresses the annual volume of diesel fuel a small refiner is permitted to produce subject to the less stringent 20 percent aromatic hydrocarbon content limits. It now appears likely that substantially more than 65 percent of all or most of the small refiners' reported distillate fuel production volumes in the base years represented diesel fuel sold for use in motor vehicles in California. This means that the annual volume of 20 percent aromatic hydrocarbon content motor vehicle diesel fuel that each of the small refiners will be permitted to sell under the existing regulation will likely be substantially less than the small refiners' production of California motor vehicle diesel fuel during the base years. As a result, the existing provisions will not effectuate the Board's underlying intent when it adopted the diesel fuel regulations in 1988-89.

The staff is accordingly proposing amendments which permit small refiners to produce motor vehicle diesel fuel under either the existing requirements or a new option. Under the option, the Executive Officer would calculate each small refiner's "exempt distillate volume." This would be equal to the small refiner's "exempt volume" under the current regulation before applying the 65 percent adjustment. Each year, the refiner would be permitted to produce 20 percent aromatic hydrocarbon content diesel fuel, and other fuels reported to the CEC as distillate, until the small refiner's total refinery shipments of these fuels in the year reaches the exempt distillate volume. For the remainder of the year, the small refiner would be prohibited from supplying distillate fuel for use in California, except for motor vehicle diesel fuel that meets the 10 percent aromatic hydrocarbon content standard or equivalent. This proposed option is designed to assure that a small refiner has the opportunity to sell 20 percent aromatic hydrocarbon content diesel fuel in volumes equal to its production of motor vehicle diesel fuel during the base years, while at the same time precluding the refiner from using the less stringent 20 percent standard to increase its total sales of California distillates beyond base-year levels.

Each calendar year, a small refiner would have the opportunity to elect to operate under the proposed new option, up until seven days before the refiner reaches its annual exempt volume as calculated under the current exempt

volume provisions. The proposed amendments would impose additional reporting requirements on small refiners to assure an accurate accounting of sales of total distillates.

The second set of amendments would result in the effective date of the exempt volume limits for small refiners now operating under a suspension of the sulfur and aromatic hydrocarbon content requirements being delayed three months to a period of low diesel fuel demand. Under the amendments, California motor vehicle diesel fuel produced by such small refiners and supplied from their refineries in the fourth quarter of 1994 would continue to be subject to the 20 percent aromatic hydrocarbon content limit. The volume of these refiners' California motor vehicle diesel fuel subject to the less stringent 20 percent aromatic hydrocarbon content standard in that quarter would no longer be subject to the "exempt volume" limits. However, the volume of 20 percent aromatic hydrocarbon content motor vehicle diesel fuel produced by these small refiners and supplied from their refineries during October 1, 1994 through December 31, 1994 could not exceed the quarterly volume limits imposed on these refiners by the Executive Officer in connection with issuance of the suspension orders. These volume limits were based on the capacity of the small refiners' hydrodesulfurization units to produce low-sulfur diesel fuel by October 1, 1994. Any additional California motor vehicle diesel fuel produced by these refiners and supplied during the fourth quarter of 1994 would be subject to the 10 percent aromatic hydrocarbon content standard.

Comparable Federal Regulations. The United States Environmental Protection Agency administers a regulation that imposes a sulfur content limit of 0.05 percent on diesel fuel sold for use in on-highway vehicles. (40 C.F.R. § 80.29.) Such diesel fuel is also required to have either an aromatic hydrocarbon content of no more than 35 percent, or a cetane index of at least 40. The federal regulations apply to large and small refiners equally. The ARB has sought to avoid unnecessary duplication and conflicts between the state and federal diesel fuel regulations. The more stringent aromatic hydrocarbon content standards in the California regulation are necessary to address the unique air pollution problems in California, where 75 percent of the nationwide exposure to unhealthy levels of ozone (the main constituent of smog) occurs.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal. Copies of the Staff Report may be obtained from the Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. The Staff Report contains the full text of the proposed amendments. The staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below.

The ARB has determined that it is not feasible to draft the amendments in plain English due to their technical nature; however, a plain English summary of the amendments is available from the contact person named below.

Further inquiries regarding this matter should be directed to John Courtis, Manager, Fuels Section, Stationary Source Division, at (916) 322-6019.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

In preparing the regulatory proposal, the staff has considered the potential economic impacts on California business enterprises and individuals. The Executive Officer has determined that the proposed regulatory action will not have an adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, or on directly affected private persons.

In accordance with Government Code section 11346.54, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, or 2020 L Street, 5th Floor, Sacramento, CA 95814, no later than 12:00 noon, July 27, 1994 or received by the Board Secretary at the hearing.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of the staff in advance of the hearing.


STATUTORY AUTHORITY AND HEARING PROCEDURES

These regulatory amendments are proposed under the authority granted to the Board in 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). The amendments are proposed to implement, interpret, and make specific 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).

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the modifications are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. Such modifications would be limited to revisions to the small refiner exempt volume provisions and conforming modifications necessary to effect such revisions. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD


for James D. Boyd
Executive Officer

Date: May 31, 1994