

State of California
AIR RESOURCES BOARD

Executive Order G-94-049

WHEREAS, on July 29, 1994, the Air Resources Board (ARB) conducted a public hearing to consider proposed amendments to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel;

WHEREAS, following the public hearing on July 29, 1994, the Board adopted Resolution 94-52, in which the Board approved the amendments to section 2282, Title 13, California Code of Regulations, as set forth in Attachment A thereto, with the modifications set forth in Attachment B thereto;

WHEREAS, Resolution 94-52 directed the Executive Officer to adopt the amendments as set forth in Attachment A thereto with the modifications set forth in Attachment B thereto, with such conforming modifications as may be appropriate, after making the modified text available to the public for a supplemental written comment period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications 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;

WHEREAS, the text of section 2282, Title 13, California Code of Regulations, was made available, in accordance with section 44, Title 1, California Code of Regulations, for a 15-day period during which comments on the modifications to the original proposed text were solicited; the text of the regulation clearly indicated the modifications to the original proposal;

WHEREAS, 10 written comments were received during the 15-day comment period; the Executive Officer has considered the comments pertaining to the modifications to the original proposal and has determined that no further modifications are necessary or appropriate;

WHEREAS, the amendments to section 2282(e)(1) approved by the Board included changes pertaining to the fourth quarter 1994 volume limits for small refiners subject to a suspension from the aromatic hydrocarbon content requirements until October 1, 1994; Resolution 94-52 directed the Executive Officer to take whatever expedited action was necessary to assure that these amendments became effective prior to October 1, 1994;

WHEREAS, since the amendments approved by the Board in Resolution 94-52 pertaining to the fourth quarter 1994 volume limits reflected no modifications to the originally proposed text, no supplemental comment period for this element of the amendments was necessary and no supplemental comment was solicited;

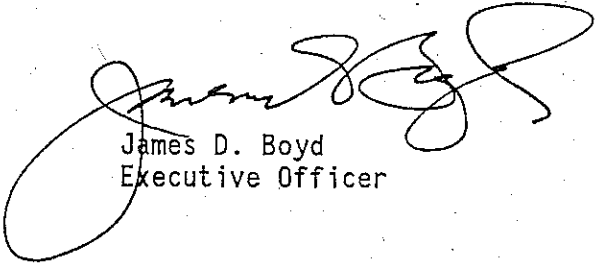
WHEREAS, in accordance with the Board's direction in Resolution 94-52, the Board-approved amendments to section 2282(e)(1) pertaining to the fourth quarter 1994 volume limitations, with three nonsubstantive modifications, were adopted in Executive Order G-94-048, and are now in effect; and

WHEREAS, Attachment A hereto contains the text of section 2282 as it is now in effect, clearly indicating the amendments that were made available in connection with the 15-day comment period and have not yet become effective.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 94-52 are incorporated herein.

IT IS FURTHER ORDERED, in accordance with Resolution 94-52 and Health and Safety Code sections 39515 and 39516, that the amendments to sections 2282, Title 13, California Code of Regulations, are hereby adopted as set forth in Attachment A hereto.

Executed this 9th day of June, 1995, at Sacramento, California.



James D. Boyd
Executive Officer

Attachment

FINAL REGULATION ORDER

The text of the amendments is shown below in underline to indicate additions and ~~strikeout~~ to show deletions. Amendments approved by the Office of Administrative Law on September 29, 1994 and effective on that same date are treated as part of the preexisting text.

Amend Title 13, California Code of Regulations, section 2282 to read as follows:

Section 2282. Aromatic Hydrocarbon Content of Diesel Fuel**(a) Regulatory Standard.**

(1) On or after October 1, 1993, except as otherwise provided in this subsection (a), no person shall sell, offer for sale, or supply any vehicular diesel fuel unless:

(A) The aromatic hydrocarbon content does not exceed 10 percent by volume; or

(B) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (d), and:

(i) The aromatic hydrocarbon content does not exceed the designated alternative limit, and

(ii) Where the designated alternative limit exceeds 10 percent by volume, the excess aromatic hydrocarbon content is fully offset in accordance with subsection (d); or

(C) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (g)(7), and meets all of the specifications for a certified diesel fuel formulation identified in an applicable Executive Order issued pursuant to subsection (g)(6); or

(D) The vehicular diesel fuel is exempt under subsection (e) and:

(i) The aromatic hydrocarbon content does not exceed 20 percent by volume; or

(ii) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (d), and

[a] The aromatic hydrocarbon content does not exceed the designated alternative limit, and

[b] Where the designated alternative limit exceeds 20 percent by volume, the excess aromatic hydrocarbon content is fully offset in accordance with subsection (d), treating all references in subsection (d) to 10 percent by volume as references to 20 percent by volume; or

(iii) The vehicular diesel fuel has been reported in accordance with all of the requirements of subsection (g)(7), and meets all of the specifications for a certified diesel fuel formulation identified in an applicable Executive Order issued pursuant to subsections (g)(6) and (g)(8).

(2) Subsection (a)(1) shall not apply to a sale, offer for sale, or supply of vehicular diesel fuel to a refiner where the refiner further processes the diesel fuel at the refiner's refinery prior to any subsequent sale, offer for sale, or supply of the diesel fuel.

(3) For the purposes of subsection (a)(1), each sale of diesel fuel at retail for use in a motor vehicle, and each supply of diesel fuel into a motor vehicle fuel tank, shall also be deemed a sale by any person who previously sold or supplied such diesel fuel in violation of subsection (a)(1).

(4) This subsection (a) shall not apply to a small refiner during the effective period of any suspension of the sulfur in diesel fuel limits issued pursuant to Section 2255(g).

(b) Definitions.

For the purposes of this section:

(1) "Chemical composition" means the name and percentage by weight of each compound in an additive and the name and percentage by weight of each element in an additive.

(2) "Designated alternative limit" means an alternative aromatic hydrocarbon limit, expressed in percent aromatic hydrocarbon content by volume, which is assigned by a producer or importer to a final blend of vehicular diesel fuel pursuant to subsection (d).

(3) "Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in ASTM Standard Specification for Diesel Fuel Oils D 975-81, which is incorporated herein by reference.

(4) "Exempt volume" means:

(A) Except as otherwise provided in subsection (b)(4)(B), 65 percent of the average of the three highest annual production volumes of distillate fuel reported for a small refiner's California refinery in the period 1983 to 1987, inclusive, to the California Energy Commission (CEC) as required by the Petroleum Industry Information Reporting Act of 1980 (Public Resources Code Sections 25350 et seq.); provided that for any small refiner that reported no distillate fuel production for two or more years in the 1983-1987 period and that has installed hydrotreating processes which allow the production of diesel fuel with a sulfur content of 500 parts per million or less, exempt volume may be calculated as 65 percent of the average annual production volumes of distillate fuel reported for the small refiner's California refinery for 1989 and 1990.

(B) In the case of a small refiner who, in an application or amended application submitted pursuant to subsection (e)(2), notifies the executive officer of its election to be subject to this subsection (b)(4)(B), a volume determined in accordance with the following four steps:

(i) First, the barrel per calendar day "operable crude oil capacity" of the small refiner's refinery for 1991 and 1992 is identified, based on data which are reported to the executive officer from the CEC and are derived from "Monthly Refining Reports" (EIA 810) submitted to the CEC no later than June 20, 1994. If the CEC is unable to derive such data from the "Monthly Refining Reports" for a particular small refiner, the executive officer shall determine the small refiner's operable crude oil capacity for 1991 and 1992 based on other publicly available and generally recognized sources.

(ii) Second, this operable crude oil capacity is multiplied by 0.9011, representing the overall refinery utilization rate (crude oil run divided by operable crude oil capacity) in the California refining industry for 1991 and 1992, as derived from reports of crude oil run and operable capacity in the "Quarterly Oil Reports" issued by the CEC.

(iii) Third, the resulting crude throughput volume is multiplied by the average of the refinery's two highest annual ratios of distillate produced to crude oil distilled in the period 1988 through 1992, based on distillate production data recorded by the CEC from MO-7 reporting forms submitted to the CEC no later than June 30, 1994 and from crude oil run data derived by

the CEC from "Monthly Refining Reports" submitted to the CEC no later than June 30, 1994, and is further multiplied by 365 to identify an annualized value.

(iv) Fourth, the resulting annual volume of distillate production is multiplied by a fraction determined in accordance with this subsection (b)(4)(iv), which represents the average proportion of small refiners' distillate production that has been sold as diesel fuel for use in motor vehicles in California from 1988 through 1992. The fraction shall be based on the activities of all small refiners who during October 1, 1993 through June 30, 1994 lawfully produced and supplied vehicular diesel fuel. With respect to each such small refiner, the executive officer shall calculate a single fraction representing the average of the refiner's two highest annual ratios of [a] diesel fuel produced by the small refiner and sold for use in California motor vehicles to [b] distillate produced, over the period 1988 through 1992. In calculating these ratios, distillate production shall be based on distillate production data recorded by the CEC from MO-7 reporting forms submitted to the CEC no later than June 30, 1994, and the volume of diesel fuel produced by the small refiner and sold for use in California motor vehicles shall be derived from sales data certified by authorized representatives of the small refiners and such other information from the small refiners deemed necessary by the executive officer. The executive officer shall then combine the single fractions for each such small refiner. The annual distillate production volume identified pursuant to subsection (b)(4)(iii) shall be multiplied by the fraction that represents the average of the single fractions for each small refiner.

(5) "Executive Officer" means the executive officer of the Air Resources Board, or his or her designee.

(6) "Final blend" means a distinct quantity of diesel fuel which is introduced into commerce in California without further alteration which would tend to affect the fuel's aromatic hydrocarbon content.

(7) "Formulation" means the composition of a diesel fuel represented by a test fuel submitted pursuant to subsection (g).

(8) "Further process" means to perform any activity on diesel fuel, including distillation, treating with hydrogen, or blending, for the purpose

of bringing the diesel fuel into compliance with the standards in subsection (a)(1).

(9) "Hydrodearomatization process" means a type of hydrotreating process in which hydrogen is used in the presence of heat, pressure, and catalysts to saturate aromatic hydrocarbons in order to produce low-aromatic hydrocarbon content diesel fuel.

(10) "Importer" means any person who first accepts delivery in California of vehicular diesel fuel.

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

(12) "Independent refiner" means any refiner who:

(A) Is not, and has not been since September 1, 1988, a small refiner;

(B) Owns or operates a refinery in California at which, in the third calendar quarter (July-September) of 1988, and in each calendar quarter thereafter, more than 70 percent of the crude oil input is obtained directly or indirectly from crude oil producers who contemporaneously do not control, are not controlled by, and are not under common ownership with, the owner or operator of the refinery;

(C) In the third calendar quarter (July-September) of 1988, and in each calendar quarter thereafter, directly or indirectly obtains more than 70 percent of the aggregated crude oil input at its refineries in the United States, from crude oil producers who contemporaneously do not control, are not controlled by, and are not under common ownership with, such refiner.

(D) In calendar year 1988 had more than 70 percent of its worldwide total gross sales, combined with the gross sales of entities which own, are owned by, or are under common ownership with the refiner, directly attributable to the wholesale distribution of petroleum products refined by the refiner or affiliated entity.

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

(14) "Polycyclic aromatic" means the sum of the concentrations of the compound types defined in paragraphs 3.8 through 3.12 of ASTM D 2425-83, which is incorporated herein by reference.

(15) (A) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel. When a person blends volumes of blendstocks which are not diesel fuel with volumes of diesel fuel acquired from another person, and the resulting blend is diesel fuel, the person conducting such blending has produced only the portion of the blend which was not previously diesel fuel. When a person blends diesel fuel with other volumes of diesel fuel, without the addition of blendstocks which are not diesel fuel, the person does not produce diesel fuel.

(B) Subsection (b)(15)(A) notwithstanding, for the purposes of subsection (e) only, a small refiner who blends volumes of blendstocks which are not diesel fuel, or volumes of diesel fuel having an aromatic hydrocarbon content exceeding 20 percent by volume, with diesel fuel acquired from another person, in order to make diesel fuel having an aromatic hydrocarbon content not exceeding 20 percent by volume, shall be deemed to have produced the entire volume of the resulting blend and the person who initially converted nonvehicular compounds into the acquired diesel fuel has also produced the volume of acquired diesel fuel.

(16) "Producer" means any person who produces vehicular diesel fuel in California.

(17) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.

(18) "Refinery" means a facility that produces liquid fuels by distilling petroleum. A small refiner's refinery includes all bulk storage and bulk distribution facilities jointly owned or leased with the facility that produces liquid fuels by distilling petroleum.

(19) "Small refiner" means any refiner who owns or operates a refinery in California that:

(A) Has and at all times had since January 1, 1978, a crude oil capacity of not more than 50,000 barrels per stream day;

(B) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled

refineries in California with a total combined crude oil capacity of more than 50,000 barrels per stream day; and

(C) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day.

(20) "Straight-run California diesel fuel" means diesel fuel produced from crude oil which is commercially available in California by distillation, without the use of cracking or other chemical conversion processes.

(21) "Stream day" means 24 consecutive hours of actual operation of a refinery.

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

(23) "Vehicular diesel fuel" means any diesel fuel (A) which is not conspicuously identified as a fuel which may not lawfully be dispensed into motor vehicle fuel tanks in California; or (B) which the person selling, offering for sale, or supplying the diesel fuel knows will be dispensed into motor vehicle fuel tanks in California; or (C) which the person selling, offering for sale, or supplying the diesel fuel in the exercise of reasonable prudence should know will be dispensed into motor vehicle fuel tanks in California, and that is not the subject of a declaration under penalty of perjury by the purchaser, offeree or recipient stating that s/he will not sell, offer for sale, or transfer the fuel for dispensing, or dispense the fuel, into motor vehicle fuel tanks in California.

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[No amendments to subsection (c), "Test Method,"
or to subsection (d), "Designated Alternative Limit."]

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(e) Small Refiner Diesel Fuel.

(1) The provisions of subsection (a)(1)(A), (B) and (C) shall not apply to the diesel fuel that is produced by a small refiner at the small

refiner's California refinery and that is first consecutively supplied from the refinery as vehicular diesel fuel in each calendar year, up to the small refiner's exempt volume (up to one quarter of the small refiner's exempt volume for the period from October 1, 1993-December 31, 1993). Diesel fuel which is designated by the small refiner as not exempt under this section (e), and which is reported to the executive officer pursuant to a protocol entered into between the small refiner and the executive officer, shall not be counted against the exempt volume and shall not be exempt under this subsection (e). This exemption shall not apply to any diesel fuel supplied from a small refiner's refinery in any calendar quarter in which less than 25 percent of the diesel fuel supplied from the refinery was produced from the distillation of crude oil at the refinery. The foregoing notwithstanding, in the case of any small refiner that pursuant to subsection (a)(4) has not been subject to subsection (a)(1) until October 1, 1994, all vehicular diesel fuel produced by the small refiner at the small refiner's California refinery and supplied from the refinery from October 1, 1994 through December 31, 1994, shall be exempt from the provisions of subsection (a)(1)(A), (B) and (C), up to the quarterly volume limits imposed by the executive officer in connection with issuance of suspension orders pursuant to section 2281(g).

(2) To qualify for an exemption under this subsection (e), a refiner shall submit to the executive officer an application for exemption executed in California under penalty of perjury, on the Air Resource Board's Resources Board's ARB/SSD/CPB Form 89-9-1, for each of the small refiner's California refineries. The application shall specify the crude oil capacity of the refinery at all times since January 1, 1978, the crude oil capacities of all the refineries in California and the United States which are owned or controlled by, or under common ownership or control with, the small refiner since September 1, 1988, data demonstrating that the refinery has the capacity to produce liquid fuels by distilling petroleum, and copies of the reports made to the California Energy Commission as required by the Petroleum Industry Reporting Act of 1980 (Public Resources Code Sections 25350 et seq.) showing the annual production volumes of distillate fuel at the small refiner's California refinery for 1983 through 1987. Within 90 days of receipt of the application, the executive officer shall grant or

deny the exemption in writing. The exemption shall be granted if the executive officer determines that the applicant has demonstrated that s/he meets the provisions of subsection (b)(19), and shall identify the small refiner's exempt volume. The exemption shall immediately cease to apply at any time the refiner ceases to meet the definition of small refiner in subsection (b)(19).

(3) In addition to the requirements of subsection (f) below, each small refiner who is covered by an exemption shall submit to the executive officer reports containing the information set forth below for each of the small refiner's California refineries. The reports shall be executed in California under penalty of perjury, and must be received within the time indicated below:

(A) The quantity, ASTM grade, aromatic hydrocarbon content, and batch identification of all diesel fuel, produced by the small refiner, that is supplied from the small refinery in each month for sale for use in motor vehicles as vehicular diesel fuel, within 15 days after the end of the month;

(B) For each calendar quarter, a statement whether 25 percent or more of the diesel fuel transferred from the small refiner's refinery was produced by the distillation of crude oil at the small refiner's refinery, within 15 days after the close of such quarter;

(C) The date, if any, on which the small refiner completes transfer from its small refinery in a calendar year of the maximum amount of vehicular diesel fuel which is exempt from subsection (a)(1)(A) and (B) pursuant to subsection (e), within 5 days after such date;

(D) Within 10 days after project completion, any refinery addition or modification which would affect the qualification of the refiner as a small refiner pursuant to subsection (b)(19); and

(E) Any change of ownership of the small refiner or the small refiner's refinery, within 10 days after such change of ownership.

(4) Whenever a small refiner fails to provide records identified in subsection (e)(3)(A) or (B) in accordance with the requirements of those subsections, the vehicular diesel fuel supplied by the small refiner from the small refiner's refinery in the time period of the required records

shall be presumed to have been sold or supplied by the small refiner in violation of section (a)(1)(A).

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[No proposed amendments to subsections (f) through (i).]

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(j) Independent Refiner Diesel Fuel.

(1) Until October 1, 1994, a producer who has demonstrated to the satisfaction of the Executive Office that it is an independent refiner shall be subject to all of the provisions of this Section 2282 applicable to small refiners. Such demonstration shall be included in any compliance plan submitted by an independent refiner pursuant to subsection (i).

(2) The Executive Officer shall issue an Executive Order making a independent refiner subject to all of the provision of this Section 2282 applicable to small refiners until October 1, 1996, if the independent refiner demonstrates to the Executive Officer's satisfaction that it is making good faith efforts to construct additional dearomatization equipment, either at the independent refiner's refinery or in a cooperative agreement with one or more other independent refiners, in accordance with a schedule which is reasonably likely to enable the independent refiner to comply with subsection (a)(1) through use of the dearomatization equipment by October 1, 1996.

(3) In order to qualify for an Executive Order under subsection (j)(2), the independent refiner shall, by June 30, 1994, submit to the Executive Officer a compliance schedule setting forth the sequence and respective dates of all key events in the construction process including completion of plans and engineering drawings, ordering of equipment, receipt of equipment, signing of construction and other necessary contracts, commencement and completion of various phases of work, commencement and completion of testing, and other similar events and dates.

(4) A independent refiner who has received an Executive Order pursuant to subsection (j)(2) shall notify the Executive Officer in writing within 10 days after the failure of the independent refiner to meet any increment of

progress on the compliance schedule submitted, and the likely effect of that failure on the ability of the independent refiner to comply with subsection (a)(1) by October 1, 1996. If, following a public hearing conducted on at least 10-days written notice to the independent refiner, the Executive Officer determines that the independent refiner will no longer be able to achieve compliance with subsection (a)(1) through the use of the specified dearomatization equipment by October 1, 1996, s/he shall rescind the Executive Order effective 10 days after written notification of the rescission to the independent refiner.

(5) The provisions of this subsection (j) shall immediately cease to apply to any refiner who ceases to meet the definition of independent refiner in subsection (b)(12).

(6) In the case of any independent refiner subject, pursuant to this subsection (j), to the provisions of this section applicable to small refiners, exempt volume shall be determined in accordance with subsection (b)(4)(A).

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[No proposed amendments to subsection (k).]

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).