

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

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

Public Hearing Date: July 29, 1994
Public Availability Date: August 10, 1994
Deadline for Public Comment: August 25, 1994

At a public hearing held on July 29, 1994, the Air Resources Board (ARB/Board) approved regulatory amendments to the small refiner volume provisions in the regulation limiting the aromatic hydrocarbon content of California motor vehicle diesel fuel (Title 13, California Code of Regulations, section 2282). The originally proposed amendments were described in detail in the Staff Report released to the public on June 10, 1994.

At the hearing, the Board approved the amendments with significant modifications to the originally proposed regulatory language. The modifications were proposed by staff in response to comments made during the 45-day comment period. The primary modification deleted the originally proposed option under which a small refiner could elect to produce more than its annual "exempt volume" as California motor vehicle diesel fuel subject to the 20 percent aromatic hydrocarbon content standard, and substituted a new option that a small refiner could use to calculate its exempt volume. Under the new option, a small refiner's exempt volume would be calculated using the following steps:

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 ARB from the California Energy Commission (CEC) and are derived from "Monthly Refining Reports" (EIA 810) submitted to the CEC no later than June 30, 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.

Second, this 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.

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.

Fourth, the resulting volume is multiplied by the average of the small refiners' two highest annual fractions of distillate production that have been sold as California motor vehicle diesel fuel during the period 1988 through 1992. These fractions shall be determined by the Executive Officer 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.

Another modification would allow a small refiner to designate batches of its diesel fuel as subject to the 10 percent aromatic hydrocarbon content standard, and therefore not counting against the refiner's exempt volume. A final modification would provide that for any independent refiner qualifying for interim treatment as a small refiner, exempt volume will continue to be determined in accordance with the method designated in the regulation prior to this rulemaking.

Attachment I to this Notice is a copy of Board Resolution 94-52, which sets forth the action taken at the hearing. Included with the Resolution is an Attachment B, which describes the modifications to the original proposal suggested by the staff and approved by the Board. The Resolution directs the Executive Officer to incorporate into the approved amendments the modifications described in Attachment B, with such other conforming modifications as may be appropriate, and to make the modified regulatory language available to the public for a 15-day comment period.

Attachment II to this Notice contains the modified text of Title 13, California Code of Regulations, section 2282, with additions to the originally proposed text shown by *bold italics* and deletions shown by ~~slashes~~. This modified text being made available in conjunction with this Notice includes three conforming modifications reflecting changes from the language in Attachment B to the Resolution. First, language has been added to the third step of the optional mechanism for identifying exempt volume to provide that the "per day" calculation is multiplied by 365 to obtain an annualized value. Second, modifications have been made to step four to clarify how the calculation is to be done, including the addition of language describing the small refiners on whose activities the calculation will be based. Third, the modified text in Attachment II provides that a small refiner may elect use of the optional exempt volume calculation in an amendment to its application for treatment as a small refiner.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt the amendments after making the modified regulatory language available for the 15-day comment period, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such 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.

Written comments must be submitted to the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, no later than the deadline identified on the first page of this notice for consideration by the Executive Officer prior to final action. Only comments relating to the modifications described in this notice, will be considered by the Executive Officer.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Venturini". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Peter D. Venturini, Chief
Stationary Source Division

Attachments

ATTACHMENT I

State of California
AIR RESOURCES BOARD

Resolution 94-52

July 29, 1994

Agenda Item No.: 94-7-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) to adopt standards, rules and regulations necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Health and Safety Code section 43013 authorizes the Board to adopt and implement motor vehicle fuel specifications for the control of air contaminants which the Board has found to be necessary, cost-effective, and technologically feasible to carry out the purposes of Division 26 of the Health and Safety Code;

WHEREAS, sections 43018(a) and (b) of the Health and Safety Code direct the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date, and direct the Board no later than January 1, 1992 to take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, by December 31, 2000, specified reductions in the emissions of air pollutants from vehicular sources, including emissions of oxides of nitrogen (NOx) and particulate matter (PM);

WHEREAS, section 43018(c) of the Health and Safety Code provides that in carrying out section 43018, the Board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including but not limited to specification of vehicular fuel composition;

WHEREAS, sections 43013 and 43018 of the Health and Safety Code further provide that in adopting standards and regulations pertaining to motor vehicle fuels, the Board shall consider the effect of the standards and regulations on the economy of the state;

WHEREAS, following a public hearing on November 17, 1988, the Board approved and subsequently adopted statewide regulatory limits on the sulfur and aromatic hydrocarbon content of California motor vehicle diesel fuel, which are now contained in Title 13, California Code of Regulations, sections 2281 and 2282 respectively;

WHEREAS, section 2282 establishes a basic 10 percent limit on the aromatic hydrocarbon content of California motor vehicle diesel fuel sold or supplied

on or after October 1, 1993; refiners are permitted to sell diesel fuel formulations having aromatic hydrocarbon contents greater than 10 percent if the formulation has been certified through engine testing to result in emissions equivalent to the emissions resulting from diesel fuel having a 10 percent aromatic hydrocarbon content;

WHEREAS, section 2282 establishes a less stringent aromatic hydrocarbon standard of 20 percent (or equivalent) for California motor vehicle diesel fuel produced by small refiners, but limits the quantity of diesel fuel that a small refiner is permitted to produce each year subject to the 20 percent standard instead of the 10 percent standard; this quantity is referred to as the small refiner's "exempt volume" and is calculated as 65 percent of the average of the three highest annual production volumes of "distillate fuel" (No. 1, No. 2, No. 4 diesel fuel and No. 1 and No. 2 fuel oil) that each refinery produced during the base years 1983-1987, as reported to the California Energy Commission, except that for refineries that were not operating for two or more years during 1983-1987, exempt volume may be calculated as 65 percent of the average annual production volumes of distillate reported for 1989 and 1990;

WHEREAS, section 2282(a)(4) provides that the aromatic hydrocarbon content limits will not apply during the effective period of any suspension of the limits on the sulfur content of diesel fuel; three small refiners--Kern Oil and Refining (Kern), Paramount Petroleum (Paramount) and Powerine Oil Company (Powerine)--have received suspensions of the sulfur content limits effective through September 30, 1994, and accordingly diesel fuel produced by these refiners and supplied from their refineries prior to October 1, 1994 is not subject to the ARB's aromatic hydrocarbon standards;

WHEREAS, the staff has initially proposed amendments to section 2282 which would allow a small refiner the option each year of producing California motor vehicle diesel fuel subject to the 20 percent aromatic hydrocarbon content limit in volumes up to 100 percent of its "distillate fuel" production during the base years, providing that under the option the small refiner's total sales in the year of "distillate fuel" (including diesel fuel) for the California market could not exceed 100 percent of its "distillate fuel" production during the base years;

WHEREAS, the staff's originally proposed amendments would also delay the effective date of the small refiner exempt volume limits now in the regulation from October 1, 1994 to January 1, 1995, for small refiners not subject to the aromatic hydrocarbon limits until October 1, 1994 due to suspensions of the diesel fuel sulfur content limits; staff proposes that the diesel fuel produced by such a small refiner and supplied from its refinery during the fourth quarter of 1994, which will be subject to the less stringent 20 percent aromatic content standard, be limited to the quarterly volume limits imposed by the Executive Officer in connection with issuance of the suspension orders;

WHEREAS, at the public hearing to consider this matter the ARB staff has proposed modifications to the originally-proposed amendments, set forth in Attachment B hereto;

WHEREAS, the California Environmental Quality Act and Board regulations require that an action not be adopted as proposed where it will have significant adverse environmental impacts if feasible alternatives or mitigation measures are available which would substantially reduce or avoid such impacts;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the state;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code; and

WHEREAS, the Board finds that:

The presence of small refiners in the California motor vehicle fuels market has an important procompetitive impact, and small refiners are often critical suppliers for the independent, unbranded marketers who distribute a considerable percentage of California motor vehicle diesel fuel;

Since the Board acted in 1988 to approve the small refiner provisions of section 2282, most of the then-existing California small refiners have either ceased operations altogether or have ceased producing motor vehicle diesel fuel;

The cost to the remaining small refiners of producing 10 percent or equivalent aromatic hydrocarbon content diesel fuel would be far greater on a per-gallon basis than the cost to large refiners, and these small refiners would suffer substantial economic penalties if they were forced to sell their noncomplying diesel fuel to out-of-state markets;

The three remaining small refiners other than Witco would not be able to operate economically after October 1, 1994 under the small refiner provisions now in place which set the exempt volumes at 65 percent of distillate fuel volumes produced during the base years, in part because California motor vehicle diesel fuel has represented considerably more than 65 percent of the small refiners' distillate fuel sales and because Paramount's and Powerine's below-average refinery utilization levels in the base years were well below the industry average due to financial difficulties;

Furthermore, California average refinery utilization rates have increased substantially since the beginning of the base years, from an average of about 70 percent in 1983-1984 to an average of about 90 percent in 1991-1992, and are significantly higher than 90 percent at the present time; this increase is attributable in large part to the need of refiners to spread increased operating costs across a maximized production volume, and operation at substantially lower utilization rates under current conditions may not be economically viable;

Accordingly, it is necessary and appropriate to allow each small refiner to base its exempt volume on the crude throughput level of its refinery when operated at the 90 percent average industry-wide refinery utilization rate for 1991-1992 in California; in order to identify specific and reasonable diesel fuel production levels when the refinery is operated at such a utilization rate, it is appropriate to multiply the crude throughput by the average of the refinery's two highest annual ratios of distillate produced to crude oil distilled in 1988-1992, and to further adjust that volume to reflect the average percentage of the refiner's distillate fuel production that was sold as California motor vehicle diesel fuel;

Under the amendments approved herein, the costs of small refiners to produce diesel fuel meeting the 20 percent or equivalent aromatic hydrocarbon limit will still on average be greater on a per-gallon basis than the costs to large refiners of producing diesel fuel meeting the 10 percent or equivalent aromatic hydrocarbon content limit;

The amendments approved herein pertaining to the volume limitations on the 20 percent aromatic hydrocarbon content diesel fuel produced by small refiners and supplied in the fourth quarter of 1994 are necessary and appropriate to assure a more orderly transition to the lower volume limits during the January-February low demand period rather than during October when the fall harvesting season results in a period of relatively high demand;

WHEREAS, the Board further finds that:

The amendments approved herein will result in a significant adverse environmental impact in that the amendments will increase the amount of 20 percent aromatic hydrocarbon content diesel fuel that may lawfully be supplied by small refiners by approximately 24,700 barrels per day during the fourth quarter of 1994 and by approximately 12,800 barrels per day starting January 1, 1995 compared to the lower

volume limits that would be imposed under the existing regulation starting October 1, 1994; this could reduce the emission benefits that would otherwise occur under the existing regulation in the fourth quarter of 1994 by up to about 5.9 tons per day of NOx and 1.3 tons per day in PM10, and could reduce the emission benefits that would otherwise occur under the existing regulation starting January 1, 1994 by up to about 3 tons per day of NOx and 0.6 tons per day of PM10;

The ARB has investigated whether there are any feasible mitigation measures or alternatives that would lessen or eliminate the significant adverse emission impacts of the amendments approved herein, and has not identified any such mitigation measures or alternatives which would also allow the remaining small refiners to produce diesel fuel in an economically viable manner;

The need to avoid the severe economic hardship to the remaining small refiners that would likely occur in the absence of the action taken herein, and the need to help assure that small refiners remain a procompetitive force in the motor vehicle fuels markets, is an overriding consideration that outweighs the significant adverse environmental impacts that will result from this action;

Although the amendments approved herein will clearly result in reduced emission benefits in October 1994 and thereafter compared to the emission benefits that would occur without the amendments, it is noteworthy that the total emission benefits from the aromatic hydrocarbon content limits in section 2282 as amended in this rulemaking will be at least as great as the emission benefits that would have been expected when the original regulation was adopted in 1988.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to section 2282, Title 13, California Code of Regulations, as set forth in Attachment A hereto, with the modifications described in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate into the approved regulatory amendments the modifications described in Attachment B hereto with such other conforming modifications as may be appropriate, and either to adopt the modified amendments after making them available to the public for a supplemental written comment period of 15 days, with such additional modifications as may be appropriate in light of supplemental comments received, or to present the amendments to the Board for further consideration if he determines that this is warranted in light of supplemental written comments received.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to take whatever expedited action is necessary to assure that the amendments approved herein pertaining to the volume limits for 20 percent aromatic hydrocarbon content diesel fuel supplied in the fourth quarter of 1994 by small refiners previously subject to suspensions of the sulfur content limits become effective prior to October 1, 1994.

I hereby certify that the above is a true and correct copy of Resolution 94-52 as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary

Resolution 94-52

July 29, 1994

Identification of Attachments to the Resolution

Attachment A: Proposed amendments to section 2282, Title 13, California Code of Regulations, as set forth in Appendix A to the Staff Report.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the hearing on July 29, 1994).

ATTACHMENT B

Proposed Amendments to the Small Refiner Volume Provisions
in the Regulation Limiting the Aromatic Hydrocarbon Content
of California Motor Vehicle Diesel Fuel

STAFF'S SUGGESTED MODIFICATIONS TO THE ORIGINAL PROPOSAL

July 29, 1994

1. Modifications to provisions identifying an optional mechanism for determining the volume of a small refiner's diesel fuel production that is subject to the less stringent 20 percent limit on aromatic hydrocarbon content

Delete the originally proposed provisions identifying the option under which a small refiner could elect to produce more than its "exempt volume" as California motor vehicle diesel fuel subject to the 20 percent aromatic hydrocarbon content standard. This includes deleting the originally proposed new provisions in section 2282(e)(1)(B) through 2282(e)(1)(C); deleting the proposed amendments in section 2282(e)(3); deleting the proposed new definitions in section 2282(b)(1), (b)(5), and (b)(6), and making other necessary conforming modifications.

Add new language that allows small refiners to elect each year to use an optional calculation of exempt volume, set forth in a revised definition of exempt volume (section 2282(b)(4) in the existing regulation). This optional calculation is made in accordance with the following steps.

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 ARB from the California Energy Commission (CEC) and are derived from "Monthly Refining Reports" (EIA 810) submitted to the CEC no later than June 30, 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.

Second, this 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.

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.

Fourth, the resulting volume is multiplied by the average of the small refiners' two highest annual fractions of distillate production that have been sold as California motor vehicle diesel fuel during the period 1988 through 1992. These fractions shall be determined by the Executive Officer 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.

2. Identifying batches of diesel fuel as nonexempt

The small refiner provisions in the diesel aromatics regulation currently provide that all of the California motor vehicle diesel fuel that is shipped from a small refinery starting January 1 of each year is counted against the small refiner's "exempt volume." To provide additional flexibility, the staff recommends that the Board add the following sentence after the first sentence in section 2282(e)(1). The language is derived from a similar sentence in the small refiner provisions of the regulation limiting the sulfur content of motor vehicle diesel fuel sold in the South Coast Air Basin before October 1, 1993 (section 2280(h)(1)):

Diesel fuel which is designated by the small refiner as not exempt under this section (e), and which is reported to the executive officer or his/her designee pursuant to a protocol entered into between the small refiner and the executive officer or his/her designee, shall not be counted against the exempt volume and shall not be exempt under this section (e).

3. Determination of exempt volume for independent refiners temporarily subject to the small refiner provisions

Add language to section 2282(j) providing that, for any independent refiner qualifying for interim treatment as a small refiner, exempt volume shall be determined in accordance with the method set forth in section 2282(b)(4) prior to the addition of the optional methodology for calculating exempt volume adopted in this rulemaking.

ATTACHMENT II

PROPOSED REGULATION ORDER

The text of the originally proposed amendments is shown below in underline to indicate additions and ~~strikeout~~ to show deletions. The modifications now proposed are shown in *bold italics* to show additions and ~~slashes~~ to show deletions.

Amend Title 13, California Code of Regulations, section 2282(b) and (e) 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) California nonvehicular distillate fuel means all distillate fuel except for (A) vehicular diesel fuel and (B) distillate fuel which is conspicuously identified as a fuel that is not to be consumed in California and which is supplied from the refinery under circumstances that would lead a reasonably prudent refiner to believe the distillate fuel will be consumed outside California

(1) (2) (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) (2) (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) ~~(A)~~ (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.

(B) Distillate fuel and residual fuel oil have the same meanings as defined in Title 20, California Code of Regulations, section 13631.

(6) Exempt total distillate fuel volume means a small refiner's exempt volume determined in accordance with subsection (b)(7), without the 65 percent adjustment.

(4) ~~(7)~~ (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 30, 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} ~~(8)~~ (5) "Executive Officer" means the executive officer of the Air Resources Board, or his or her designee.

{6} ~~(9)~~ (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} ~~(10)~~ (7) "Formulation" means the composition of a diesel fuel represented by a test fuel submitted pursuant to subsection (g).

{8} ~~(11)~~ (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} ~~(12)~~ (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} ~~(13)~~ (10) "Importer" means any person who first accepts delivery in California of vehicular diesel fuel.

{11} ~~(14)~~ (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} ~~(15)~~ (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)~~ ~~(16)~~ (13) "Motor vehicle" has the same meaning as defined in Section 415 of the Vehicle Code.

~~(14)~~ ~~(17)~~ (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)~~ ~~(18)~~ (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) ~~(18)~~~~(A)~~ (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)~~ ~~(19)~~ (16) "Producer" means any person who produces vehicular diesel fuel in California.

~~(17)~~ ~~(20)~~ (17) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.

~~(18)~~ ~~(21)~~ (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)~~ ~~(22)~~ (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)~~ ~~(23)~~ (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)~~ ~~(24)~~ (21) "Stream day" means 24 consecutive hours of actual operation of a refinery.

~~(22)~~ ~~(25)~~ (22) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

~~(23)~~ ~~(26)~~ (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.

* * * *

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

* * * *

(e) **Small Refiner Diesel Fuel.**

(1) ~~(A)~~ 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 for use in motor vehicles, 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. *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).

(B)(1) In any calendar year in which a small refiner has elected to be subject to this subsection (e)(1)(B), the provisions of subsection (a)(1)(A), (B) and (C) shall not apply to the diesel fuel that is produced by the small refiner at the small refiner's California refinery and that is first consecutively supplied from the refinery as vehicular diesel fuel during the calendar year, up to the point in that calendar year at which the vehicular diesel fuel and California nonvehicular distillate fuel produced by the small refiner and supplied from the refinery equals the small refiner's exempt total distillate fuel volume.

(1) In any calendar year in which a small refiner has elected to be subject to this subsection (e)(1)(B), once the small refiner supplies from its California refinery vehicular diesel fuel and California nonvehicular distillate fuel it has produced in a combined volume equal to the small refiner's total distillate fuel exempt volume, the small refiner shall not supply from its California refinery any further California nonvehicular distillate fuel produced by the small refiner, any further vehicular diesel fuel produced by the small refiner and supplied from the refinery in the calendar year shall meet the standards in subsection (a)(1)(A), (B), or (C).

(1) In order to elect to be subject to this subsection (e)(1)(B) instead of subsection (e)(1)(A) for a given calendar year, a small refiner shall notify the executive officer of the election in writing at least 7 days prior to the date on which the small refiner completes transfer from its California refinery of the maximum volume of diesel fuel which would be exempt from subsection (a)(1)(A), (B) and (C) pursuant to subsection (e)(1)(A).

(C) The exemptions in subsection (e)(1)(A) and (e)(1)(B) 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.

(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 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)(22)(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)(22)(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) The quantity, aromatic hydrocarbon content (if claimed to be 20 percent by volume or less), grade, and batch identification of all distillate fuel produced by the small refiner that is supplied from the small refinery in each month as California nonvehicular distillate fuel within 15 days after the end of the month, provided that in any calendar year in which a small refiner has notified the executive officer that the small refiner waives the opportunity to make an election pursuant to subsection (e)(1)(B)(iii), the small refiner shall not be required to report

the information described in this subsection (e)(3)(B) and subsection (e)(3)(C) for the period following the waiver notification.

(C) The quantity, aromatic hydrocarbon content (if claimed to be 20 percent by volume or less), grade and batch identification of all distillate fuel and separately of all residual fuel oil produced by the small refinery that is supplied from the small refinery in each month and is not covered by subsections (e)(3)(A) and (B), within 15 days after the end of the month.

(D) The quantity, ASTM grade, aromatic hydrocarbon content (if claimed to be 20 percent by volume or less), and batch identification of all diesel fuel not produced by the small refinery that is supplied from the small refinery in each month, within 15 days after the end of the month.

(B) (E) (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;

(G) (E) (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 or would be exempt from subsection (a)(1)(A) and (B) pursuant to subsection (e), within 5 days after such date;

(H) In the case of a small refiner that has elected to be subject to subsection (e)(1)(B), the date (if any) on which the small refiner completes transfer from its small refinery of vehicular diesel fuel and California nonvehicular distillate fuel it has produced in a combined volume equal to the small refiner's total distillate fuel exempt volume for the calendar year, within 5 days after such date.

(D) (H) (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)(22)(19); and

(E) (H) (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) or (B) through (e)(3)(E) 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).

* * * *

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

Amend Title 13, California Code of Regulations, section (j) to read as follows:

(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).

* * * *

[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).