

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

**PUBLIC HEARING TO CONSIDER AMENDING THE TEST METHODS
DESIGNATED TO MEASURE THE CONCENTRATIONS OF TOTAL AROMATIC
HYDROCARBONS, POLYNUCLEAR AROMATIC HYDROCARBONS, NITROGEN
AND SULFUR CONTENT IN, AND DISTILLATION OF, CALIFORNIA
COMMERCIAL AND CERTIFICATION DIESEL FUELS**

Public Hearing Date: October 24, 1996
Agenda Item No.: 96-8-3

I. GENERAL

This rulemaking was initiated by the publication on September 6, 1996, of a notice of public hearing to consider regulatory amendments to update the test methods designated to measure the total aromatic hydrocarbons, polynuclear aromatic hydrocarbons, nitrogen and sulfur in, and distillation of, California commercial and certification diesel fuels. A Staff Report (Initial Statement of Reasons for Proposed Rulemaking) was also made available for public inspection on September 6, 1996. The Staff Report, which is incorporated by reference herein, contained the text of the regulatory amendments as initially proposed by the staff, along with an extensive description of the rationale for the proposal.

The proposed action consisted of amendments to Title 13, California Code of Regulations, sections 1956.8(b), 1960.1(k), 2281(c), and 2282(b), (c), and (g). It also included amendments to the "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles" and "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," which are incorporated by reference in sections 1956.8(b) and 1960.1(k), respectively.

On October 24, 1996, the Air Resources Board (ARB) conducted a public hearing at which it received written and oral comments on the regulatory proposal. At the conclusion of the hearing, the Board approved regulatory amendments by adopting Resolution 96-54. As approved, the amendments included two minor modifications to the originally proposed text, reflecting suggestions made by the staff at the October 24, 1996 hearing. In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to make the approved modifications available to the public for a supplemental written comment period of 15 days. He was then directed either to adopt the amendments with such additional modifications

as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the comments.

Both modifications approved by the Board affected section 2282 only. The first modification to the originally proposed text consisted of substituting “ASTM D5186-96” for “ASTM D5186-9x (2/2/95 Draft).” This reflects the fact that the method has now been formally approved by ASTM; there is no significant change in content. The second modification consisted of substituting “ASTM D4629-96” for “ASTM D4629-91.” This designates the most up-to-date ASTM version; again, there is no significant change in content.

The text of the Board-approved modifications to section 2282, with the modifications clearly indicated, were made available for a 15-day comment period by issuance of a “Notice of Public Availability of Modified Text” on April 7, 1996. No written comments were received during the 15-day comment period. The Executive Officer then issued Executive Order G-97-27, adopting the amendments.

Incorporation of Test Procedures. The amended portions of sections 2281 and 2282 designate and incorporate by reference several American Society of Testing and Materials (ASTM) test methods which are identified by name and date. These test methods are readily available from the ARB upon request and were made available in the context of this rulemaking in the manner provided in Government Code section 11346.5(b). The test methods are also published by ASTM, a well-established and prominent organization in the sampling and analysis field, and are therefore reasonably available to the affected public from a commonly known source. The documents are incorporated into the California Code of Regulations by reference because it would be cumbersome, unduly expensive and otherwise impractical to publish them in the Code. It has been the longstanding and accepted practice for the ARB to incorporate ASTM test methods into the Code by reference (see, e.g., Cal.CodeRegs. tit. 13, §§ 2252, 2263 and 2291.1-2291.7). As the interested audience for the methods is small and is generally accustomed to following ASTM test methods, distribution to all recipients of the Code is unnecessary.

No mandates. The Board has determined that this regulatory action will not result in a mandate to any local agency or school district, the costs of which are reimbursable pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

Alternatives. The Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

Before or at the hearing, two written comments were received, from the Western States Petroleum Association (WSPA) and 76 Products Company. WSPA provided the only oral testimony at the hearing. No comments were received during the 15-day comment period. 76 Products Company's comments were limited to support of the amendments. WSPA also supported the amendments, and made the following comment.

1. **Comment:** We understand that ASTM D5186-96 for total hydrocarbons and polynuclear aromatic hydrocarbons, as well as the methods for distillation, sulfur and nitrogen, will be referenced in proposed amendments to specifications for low-aromatics certification diesel fuels (Cal.CodeRegs. tit. 13, §§ 1956.8(b) and 1960.1(k)). It is WSPA's understanding that the adoption of D5186-96 for total aromatic hydrocarbons and abandonment of D1319 will not affect prior certification of diesel fuel formulations. WSPA would like to seek confirmation that our position is correct, and that the presently certified diesel fuels are not subject to recertification.

Agency Response: WSPA's understanding is correct.

The regulation on aromatic hydrocarbon content allows refiners to comply by selling a certified alternative diesel fuel formulation that has an aromatic hydrocarbon content greater than the basic aromatic hydrocarbon limit. An alternative formulation will be certified if it is found in an engine test program to result in emissions equivalent to the emissions resulting from diesel fuel meeting the 10 percent aromatic hydrocarbon limit (20 percent in the case of qualifying small refiners). A batch of diesel fuel identified by the producer or importer as a certified diesel fuel formulation will comply with the regulation as long as the diesel fuel meets certain specifications of the "candidate" fuel that was compared to the 10 (or 20) percent aromatic hydrocarbon content "reference" fuel in the engine test program. The required specifications for a certified diesel fuel formulation include maximum total aromatic hydrocarbon, polynuclear aromatic hydrocarbon, nitrogen and sulfur contents. The test method amendments adopted in this rulemaking affect the determination of the properties of the reference fuel and the candidate fuel for the engine test program, and also affect the determination of the properties of commercial diesel fuel sold pursuant to one of the certified alternative formulations.

Since initial adoption of the aromatic hydrocarbon limits for diesel fuel in 1988-89, there has been one instance where a subsequent amendment made previous alternative formulation certifications no longer valid. To have that effect, the Board added subsection 2282(g)(10), which expressly provides that certifications issued before the December 26, 1991 effective date of the amendments in question would no longer be considered effective after that date unless the Executive Officer made specified findings. Given the absence of such an express provision in the test method amendments now being adopted, the current amendments clearly do not affect previous certifications.